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Council of Europe anti-torture Committee publishes report on Italy

Strasbourg, 20.04.2010 – The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the [report](#) on its fifth periodic visit to Italy, carried out from 14 to 26 September 2008, together with the [response of the Italian Government](#). These documents have been made public at the request of the Italian authorities.

As concerns the treatment of persons deprived of their liberty by law enforcement officials, the report states that the CPT's delegation received a number of allegations of physical ill-treatment and/or excessive use of force by police and Carabinieri officers and, to a lesser extent, by officers of the Guardia di Finanza, particularly in the Brescia area. The alleged ill-treatment consisted mainly of punches, kicks, or blows with batons, at the time of apprehension and, on occasion, during custody in a law enforcement establishment. In a number of cases, the delegation found medical evidence consistent with the allegations made. The report assesses the procedural safeguards against ill-treatment and concludes that further action is required in order to bring the law and practice in this area into line with the CPT's standards. In their response, the Italian authorities state that specific directives have been issued to prevent and sanction inappropriate aggressive behaviour of law enforcement officials. Further, the authorities provide information on the points raised by the CPT as regards procedural safeguards against ill-treatment.

The conditions of detention at the Identification and Expulsion Centre in Milan, Via Corelli (CEI) were also examined. The CPT recommends, inter alia, that irregular migrants held there be offered a greater number and broader range of activities

On prison matters, the Committee's delegation focused on overcrowding, prison health care (responsibility for which has now been transferred to the regions) and the treatment of prisoners who are subject to a maximum security regime ("41-bis"). The CPT was very concerned by the level of inter-prisoner violence at Brescia-Mombello and Cagliari-Buoncammino Prisons, where episodes of inter-prisoner violence in the course of 2008 had resulted in serious injuries and, in one case, the death of a prisoner. In addition, a number of allegations were received at Cagliari that staff did not always intervene promptly when violence between prisoners occurred.

In their response, the Italian authorities have stated that the Directorate General for Prisons has called upon the Brescia and Cagliari prisons to adopt the necessary measures to counter inter-prisoner violence. Further, they have stated that since autumn 2008, episodes of violence have decreased as a result of a Convention entered into between Cagliari Prison and Caritas (a Catholic relief, development and social service organisation).

As regards the Filippo Saporito judicial psychiatric hospital (OPG) in Aversa, the report draws attention to the poor material conditions and the need to improve the patients' daily regime, by increasing the number and variety of day-to-day activities offered to patients. Further, the delegation found that certain patients were detained in the OPG for longer than their condition required and that others were held in the hospital even when

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their placement order had expired. In their response the Italian authorities state that the hospital is in the process of being renovated and that the law does not establish a maximum duration for the temporary enforcement of a security measure.

As regards the Psychiatric diagnosis and Treatment Department (SPDC) at San Giovanni Bosco Hospital in Naples, the delegation focused on the involuntary medical treatment of patients. The Committee recommends that the judicial phase of the involuntary medical treatment procedure (TSO) be improved

The CPT's report and the response of the Italian Government are available in English on the Committee's website (<http://www.cpt.coe.int>).



CPT/Inf (2010) 12

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 26 September 2008

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 (2010) 13.

Strasbourg, 20 April 2010

CONTENTS

Copy of the letter transmitting the CPT's report	7
I. INTRODUCTION.....	9
A. Dates of the visit and composition of the delegation	9
B. Establishments visited.....	10
C. Co-operation between the CPT and the Italian authorities.....	11
D. Immediate observation under Article 8, paragraph 5, of the Convention.....	12
II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED	13
A. Law enforcement agencies	13
1. Preliminary remarks.....	13
2. Ill-treatment	13
3. Safeguards against ill-treatment	14
4. Conditions of detention.....	17
B. Milan Identification and Expulsion Centre	18
1. Preliminary remarks.....	18
2. Ill-treatment	19
3. Conditions of detention.....	20
4. Staff.....	21
5. Seclusion	22
6. Health care.....	23
7. Other issues	24
C. Prisons	25
1. Preliminary remarks.....	25
2. Ill-treatment	27
3. Conditions of detention of the general prison population.....	29
4. Prisoners subjected to the "41-bis" regime	31
a. introduction	31
b. general description of the "41-bis" regime	32
c. conditions of detention.....	33

i.	<i>Novara Prison</i>	33
ii.	<i>Rome-Rebibbia Female Prison</i>	35
iii.	<i>human contacts (including contacts with the outside world)</i>	35
d.	safeguards.....	37
e.	“reserved area” (<i>area riservata</i>).....	39
5.	Health care.....	39
a.	introduction	39
b.	health-care facilities.....	40
c.	medical screening	41
d.	general health care	42
e.	psychiatric care in the Centre for Neuropsychiatric Observation (CONP) at Milan-San Vittore Prison.....	43
f.	psychiatric care in the other establishments visited.....	45
g.	dental care	47
h.	medical confidentiality.....	48
6.	Other issues	48
a.	situation of “collaborators of justice” (<i>collaboratori di giustizia</i>).....	48
b.	staff	50
c.	discipline	50
d.	inspection procedures	52
D.	Psychiatric establishments	52
1.	Filippo Saporito Judicial Psychiatric Hospital, Aversa	52
a.	introduction	52
b.	ill-treatment	54
c.	material conditions and regime	55
d.	treatment and rehabilitation.....	57
e.	staff	58
f.	means of restraint and seclusion.....	60
g.	safeguards.....	62
2.	Psychiatric Diagnosis and Treatment Department (SPDC) at San Giovanni Bosco Hospital, Naples.....	64

APPENDIX I:

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION.....	67
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APPENDIX II:

LIST OF THE NATIONAL AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS	83
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Copy of the letter transmitting the CPT's report

Mr Valentino SIMONETTI
Minister Plenipotentiary
President of the Inter-Ministerial Committee
on Human Rights
Ministry of Foreign Affairs
Piazzale della Farnesina 1
I – 00194 ROME

Strasbourg, 9 April 2009

Dear Sir

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 14 to 26 September 2008. The report was adopted by the CPT at its 68th meeting, held from 2 to 6 March 2009.

The various 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 the above-mentioned 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. It would also be most helpful if the Italian authorities could provide a copy of the response 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 faithfully

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 26 September 2008. The visit formed part of the CPT’s programme of periodic visits for 2008. It was the seventh¹ visit to Italy to be carried out by the Committee.

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

- Silvia CASALE, Head of delegation
- Birgit LIE
- Maria Rita MORGANTI
- Marc NEVE.

They were supported by Fabrice KELLENS, Deputy Executive Secretary of the CPT, and Michael NEURAUTER, Head of Division, of the CPT’s Secretariat and were assisted by:

- Timothy HARDING, forensic doctor and psychiatrist, former Director of the University Institute of Forensic Medicine, Geneva, Switzerland (expert)
- Catherine PAULET, psychiatrist, Head of the Regional Medico-Psychological Service, Baumettes Prison, Marseille, France (expert)
- Paula BRUNO (interpreter)
- Maria FITZGIBBON (interpreter)
- Salim GHOSTINE (interpreter)
- Antonella LUCCARINI (interpreter)
- Lisa PELLETI (interpreter).

¹ The CPT has carried out four other periodic visits (1992, 1995, 2000 and 2004), as well as two ad hoc visits (1996 and 2006) to Italy. 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 CPT's delegation visited the following places:

Law enforcement establishments

Brescia Municipal Police Headquarters
 Cagliari State Police Headquarters (*Questura*)
 Cagliari Provincial *Carabinieri* Headquarters
 Cagliari *Guardia di Finanza* Regional and Provincial Headquarters
 Cagliari Naval and Air Police Station
 Cagliari-Quartu Sant'Elena State Police Station (via Firenze)
 Gardone Val Trompia *Carabinieri* Station
 Montichiari *Carabinieri* Station
 Naples-Poggioreale State Police Station (via Stadera)
 Volla *Carabinieri* Station

Milan Identification and Expulsion Centre (via Corelli)

Prisons

Brescia-Mombello Prison
 Cagliari-Buoncammino Prison
 Milan-San Vittore Prison (Centre for Neuropsychiatric Observation)
 Naples-Secondigliano Prison
 Novara Prison (Unit for "41-bis" prisoners)
 Rome-Rebibbia Female Prison (Unit for "41-bis" prisoners)

Psychiatric establishments

Aversa Judicial Psychiatric Hospital (OPG)
 Psychiatric Service for Diagnosis and Care (SPDC) at the San Giovanni Bosco Hospital in Naples.

In addition, the delegation went to Naples-Poggioreale Prison, in order to interview newly-arrived remand prisoners. It also paid a brief visit to the OPG in Naples-Secondigliano, in order to examine how means of restraint are used.

C. **Co-operation between the CPT and the Italian authorities**

4. The meetings with the Italian authorities, both at the outset and the end of the visit, took place in a spirit of excellent co-operation. The CPT is very grateful for the time devoted to discussions with the delegation by Angelino ALFANO, Minister of Justice, and Michelino DAVICO, Under-Secretary of State of the Ministry of the Interior. The delegation had also fruitful consultations with senior officials from the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of the Interior and the Ministry of Labour, Health and Social Policies, 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.

5. The CPT wishes to express its appreciation of the assistance provided before and during the visit by Minister Valentino SIMONETTI, President of the Inter-Ministerial Committee on Human Rights of the Ministry of Foreign Affairs, and the CPT's liaison officer, Giuseppe CAPOCCIA, of the Ministry of Justice.

6. With two exceptions, the co-operation received by the delegation at local level was very good; it enjoyed rapid access to all the establishments 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 above-mentioned exceptions concerned Cagliari-Buoncammino Prison and Poggioreale Police Station (via Stadera) in Naples. At Cagliari, the delegation repeatedly encountered difficulties in interviewing prisoners in private. Prison officers indicated that they had been instructed by the management of the establishment not to let delegation members enter cells. At Naples-Poggioreale, the police officers present were instructed over the telephone by a senior police officer not to provide detailed information to the delegation. In both establishments, the problems were eventually resolved after lengthy explanations to the officers present.

The CPT trusts that the Italian authorities will take the necessary steps to prevent any repetition of such situations in the future.

7. Finally, the delegation found detention cells (*camere di sicurezza*) at Brescia Municipal Police Headquarters, despite the fact that this establishment was not included in the list of places of detention the Committee had received from the Italian authorities prior to the visit. Indeed, the list did not contain any municipal police establishments. **The CPT would like to receive a complete list of all such establishments which have detention cells.**

D. Immediate observation under Article 8, paragraph 5, of the Convention

8. At the end of the visit, on 26 September 2008, the CPT's delegation held final talks with the Italian authorities, in order to acquaint them with the main facts found during the visit. On this occasion, in pursuance of Article 8, paragraph 5, of the Convention, the delegation made an immediate observation, requesting the Italian authorities to carry out a thorough review of the current procedures for the use of means of restraint and seclusion at the Aversa Judicial Psychiatric Hospital (OPG).

The above-mentioned immediate observation was subsequently confirmed in a letter of 14 October 2008 from the Executive Secretary of the CPT, in which the Italian authorities were requested to provide, within one month, detailed information on the steps taken in response.

By letter of 14 November 2008, the Italian authorities provided information on various issues raised by the delegation during the final talks, including on the measures taken in response to the above-mentioned immediate observation. These measures will be assessed later in the report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

9. The general legal framework governing the detention of persons who are suspected of having committed a criminal offence remained unchanged since the 2004 visit². In practice, the great majority of criminal suspects did not spend more than a few hours in custody (24 hours at most) and were speedily transferred to prison³.

10. As regards the detention of foreign nationals under aliens' legislation, reference is made to paragraph 22.

11. Since, 2001, the CPT has been engaged in a dialogue with the Italian authorities in respect of the events which took place in Naples (on 17 March 2001) and Genoa (from 20 to 22 July 2001). The Committee took note of the information provided by the Italian authorities during the visit on the court proceedings concerning the above-mentioned events; **it would like to be informed, in due course, of the outcome of those proceedings.**

12. As regards the implementation of the long-standing plan to introduce the crime of torture into the Penal Code⁴, the CPT noted that little progress had been made since the 2004 visit. **The Committee encourages the Italian authorities to redouble their efforts to introduce as soon as possible the offence of torture into the Penal Code, in accordance with Italy's international obligations.**

2. Ill-treatment

13. As was the case during the 2004 visit, the great majority of detained persons met by the delegation indicated that they had been treated correctly by law enforcement officials (from the State Police, Municipal Police, *Carabinieri* and *Guardia di Finanza*).

However, the delegation did receive a number of allegations of physical ill-treatment and/or excessive use of force by police and *Carabinieri* officers and, to a lesser extent, by officers of the *Guardia di Finanza*. The alleged ill-treatment consisted in the main of punches, kicks, or blows with batons, at the time of apprehension and, on occasion, during custody in a law enforcement establishment. Most of the allegations received related to police and *Carabinieri* officers in the Brescia area. In a number of cases, the delegation found medical evidence consistent with the allegations made.

In addition, many allegations of verbal abuse by police officers were received.

² For further details, see paragraph 8 of the report on the 2004 visit (CPT/Inf (2006) 16).

³ As was the case at the time of the 2004 visit, detained persons were on occasion held on the premises of law enforcement agencies for more than 24 hours, in particular when they had been apprehended at a weekend.

⁴ See also paragraph 11 of the report on the 2004 visit (CPT/Inf (2006) 16).

The case of a remand prisoner met at Brescia-Mombello Prison merits particular attention. The prisoner claimed that he had sustained injuries when officers of the *Carabinieri* Station at Gardone Val Trompia had hit his head against the wall of a cell, causing a cut to the face, which bled. The injuries were recorded in the medical report drawn up upon admission to the prison, and some traces of the injuries were still visible when the prisoner concerned was met by the delegation. When the delegation went to the *Carabinieri* Station at Gardone Val Trompia, it found bloodstains on the wall of one of the establishment's two cells. No mention was made in the custody register that the prisoner concerned had been detained at this establishment, while the individual file (*fascicolo*) at the prison clearly indicated that he had been held in a detention cell (*camera di sicurezza*) at Gardone Val Trompia (in this regard, see also paragraph 18).

The CPT recommends that a formal statement emanating from the relevant authorities be delivered to all law enforcement officials (including municipal police officers) in the Brescia 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 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 the subject of severe sanctions. Police officers should also be reminded that no more force than is strictly necessary is to be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them.

3. Safeguards against ill-treatment

14. The CPT welcomes the fact that specific information sheets were introduced by the various law enforcement agencies after the 2004 visit, setting out the fundamental rights of detained persons (including the right of notification, the right of access to a lawyer and the right of access to a doctor). These sheets have been made available in a wide range of languages on the websites of the relevant Ministries.

The delegation noted that, in many establishments visited, officers had downloaded the sheets in various languages and given a copy in the relevant language to persons taken into custody. However, in several establishments (in particular, at Naples-Poggioreale State Police Station, Montichiari *Carabinieri* Station and Brescia Municipal Police Headquarters) it remained the case that detained persons were only informed verbally of their rights.

The CPT recommends that steps be taken by the relevant authorities to ensure that, in all law enforcement establishments in Italy, persons who have been detained – 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 the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a copy of the above-mentioned information sheet. Further, the persons concerned should be asked to sign a statement certifying that they have been informed of their rights.

15. The CPT is very concerned by the fact that certain legal safeguards (in particular, the rights of notification and access to a lawyer) were, as a rule, still not granted at the outset of the deprivation of liberty, but only once the persons concerned had been formally detained (*arrestato*), despite the specific recommendations repeatedly made by the CPT after all previous visits. As a matter of fact, many persons who had been accompanied to a law enforcement establishment as an apprehended person (*fermato*) were deprived of their liberty for several hours (or sometimes even more) before they were actually informed of their rights. In addition, during that period, detained persons were at times also subjected to informal questioning without the presence of a lawyer. Further, it remained the case that persons who had been deprived of their liberty for other reasons than being suspected of having committed a criminal offence (e.g. for identification purposes) were often not permitted to inform their family or a third party of their situation.

The CPT calls upon the Italian authorities to take effective steps to ensure that all persons deprived of their liberty by law enforcement agencies are granted the right to notify a close relative or third party of their choice of their situation and the right of access to a lawyer, as from the very outset of their deprivation of liberty. These rights should be enjoyed not only by criminal suspects, but also by anyone who is under a legal obligation to attend – and stay at – a law enforcement establishment.

16. As regards, more specifically, the right of access to a lawyer, the CPT has repeatedly expressed its concern about Section 104, paragraphs 3 and 4, of the Code of Criminal Procedure (CCP), which provides that the competent judicial authorities may invoke "exceptional and specific reasons of circumspection" to delay a detained person's access to a lawyer – whether chosen by the detained person or appointed *ex officio* – for up to five days⁵.

In their response to the report on the 2004 visit⁶, the Italian authorities indicated that the above-mentioned provision may apply "only by motivated decree" and that "[s]uch measure is envisaged only under specific circumstances, namely the existence of specific and exceptional precaution reasons". Reference was also made to the jurisprudence of the Supreme Court (*Corte di Cassazione*), according to which "the decree by the competent justice not including detailed indications about the cited 'specific and exceptional precaution reasons, as laid down by law' makes void the following examination before the justice of the person under custody". The authorities further pointed out that "no derogation to the mandatory participation of the legal counsel is allowed in both the examination of the person arrested to be adopted during the hearing of confirmation (*udienza di convalida dell'arresto*) and the examination to be held when controlling the regular execution of the pre-trial detention".

The CPT wishes to stress once again that the effective exercise of the right of access to a lawyer constitutes an essential safeguard in the prevention of ill-treatment. Experience has shown that it is usually during the period immediately following the deprivation of liberty – and, *a fortiori*, during which the individual is subjected to questioning under an investigation procedure – that the risk of intimidation and other ill-treatment is at its greatest.

⁵ See also paragraph 24 of the report on the 2004 visit (CPT/Inf (2006) 16).

⁶ See page 16 of CPT/Inf (2006) 17.

The CPT acknowledges that it may exceptionally be necessary to delay for a certain period a detained person's access to a particular lawyer chosen by him/her. However, this should not result in the rights to talk to a lawyer in private and have a lawyer present during interrogations 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 Committee calls upon the Italian authorities to take all necessary steps – including of a legislative nature – to ensure that every person detained by law enforcement agencies has 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*.**

17. As regards the right of 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 frequently carried out in the presence of law enforcement officials, and medical reports or data were often accessible to such officials. This is not acceptable.

Further, it is regrettable that the right of access to a doctor for persons in custody is still not expressly provided for by law, despite the specific recommendation made by the Committee to that effect after all previous visits. In addition, it would appear that detained persons are still not allowed to have access to a doctor of their own choice while being held in law enforcement establishments.

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 – including if they so wish (and at their expense) to one of their own choice. This right should apply as from the very outset of their deprivation of liberty.

Further, **the Committee recommends that the Italian authorities take immediate steps to ensure that in all law enforcement establishments:**

- **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;**
- **medical data are no longer accessible to non-medical staff.**

18. In the establishments visited, custody registers only existed for the recording of persons who were physically placed in a detention cell (*camera di sicurezza*). Thus, in none of the establishments visited were records 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. Regrettably, the specific recommendation made in this respect by the Committee after the 2004 visit has not been implemented.

Further, in several establishments visited, the delegation observed shortcomings in the maintenance of the custody register, the entries often being incomplete⁷ (e.g. no systematic recording of the time of apprehension and the time of placement in the cell; no recording of notification to the public prosecutor, the family or a lawyer, although the register format included these items).

The CPT reiterates its recommendation 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.

Further, **officers in all law enforcement establishments visited should be reminded to maintain custody registers meticulously.**

19. In the report on the 2004 visit⁸, the CPT recommended that the detention facilities of all law enforcement agencies be visited effectively⁹ by the relevant judicial authorities and that the possibility of inspections being carried out additionally by other independent bodies be examined.

In their response to the visit report¹⁰, the Italian authorities provided some information regarding *Carabinieri* establishments, but failed to give a comprehensive response in respect of all law enforcement agencies. **The CPT would like to receive more detailed information on the concrete steps taken by the Italian authorities in response to the above-mentioned recommendation.**

4. Conditions of detention

20. Material conditions of detention were on the whole acceptable in all the establishments visited.

That said, in none of the establishments visited were mattresses provided to detained persons being held overnight¹¹, despite the specific recommendation repeatedly made by the Committee following previous visits. **The CPT 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.**

Further, at Brescia Municipal Police Headquarters, the delegation found one cell which was fitted with metal bars fixed along two concrete platforms, to which detained persons had reportedly been handcuffed. Such a state of affairs is not acceptable. **The Committee recommends that these metal bars be removed without delay.**

⁷ See also the case described in paragraph 13, where a detained person was not registered at all in the custody register of a *Carabinieri* station, although the administrative file at the prison specifically referred to his detention in a custody cell of that *Carabinieri* station.

⁸ See CPT/Inf (2006) 16, paragraph 28.

⁹ To be fully effective, visits by such an authority should be both frequent and unannounced, and the authority concerned should be empowered to interview detained persons in private.

¹⁰ See CPT/Inf (2006) 16, page 20.

¹¹ Usually, detained persons were only provided with a blanket.

B. Milan Identification and Expulsion Centre

1. Preliminary remarks

21. Since its very first visits to Italy, the CPT has been carefully monitoring the situation in detention facilities established under the aliens legislation. A number of ad hoc visits with this specific focus have been carried out in addition to the scheduled periodic visits. These ad hoc visits concentrated primarily on places on Italy's southern borders, particularly in Sicily and Calabria. They served to observe on the spot the authorities' efforts to deal with the mass arrivals of irregular migrants in coastal areas, including Lampedusa. The 2008 visit, however, focused on the "return" phase and on another geographical area, northern Italy. For this purpose, the delegation visited the Milan-Via Corelli Identification and Expulsion Centre (*Centro di Espulsione e Identificazione* – CEI), which mainly accommodates irregular migrants apprehended in Lombardy.

22. Major changes have been made to the legislation on the entry and residence of foreigners since the CPT's last visit to Italy in June 2006. Law No. 40 of 6 March 1998 has been replaced by Law No. 189 of 30 July 2002. The main measures set out in this law include an extension of the period of placement in a holding centre from 30 to 60 days, and a change in the name of holding centres (*Centro di Permanenza Temporanea*) to CEIs.

23. The Milan CEI is located below a motorway in a sparsely populated area of Milan, Via Corelli. This newly built complex comprises various administrative, judicial and medical buildings and four 28-bed accommodation units for persons in the process of being identified and deported¹². The complex also includes a 20-bed reception centre for asylum-seekers (CARA).

24. The day-to-day management of the CEI has been entrusted to the Italian Red Cross since 1998, following a national call for tenders launched at the national level and renewed each year. The CEI also includes a branch of the State Police (Immigration Department and Department of Public Security), including offices for hearings and identifications, and a small contingent of military personnel in charge of perimeter security. Neither the members of the State Police nor those of the armed forces enter the "accommodation" area of the CEI (except in emergencies); this area is under the sole responsibility of the Red Cross.

25. At the time of the visit, the CEI was accommodating 26 men (Unit E), 26 women (Unit B) and 25 transsexuals (Unit C), with 24 nationalities represented. The CEI does not accommodate minors or families (except in the CARA/Unit A).

¹² One of the CEI's four accommodation units (Unit D) was out of service at the time of the visit.

2. Ill-treatment

26. With one exception, the delegation received no allegations of ill-treatment of foreigners held in the CEI by staff working there, whether members of the Red Cross, the State Police (Immigration Department and Department of Public Security) or the armed forces. The CPT wishes to underscore this positive point, given the tension levels in this type of establishment. In fact, incidents (mainly damage to premises or furniture, arson and hunger strikes) are comparatively frequent in the Milan CEI.

27. The exception in question concerns an episode that allegedly occurred on the night of 10 to 11 July 2008 and involved a Brazilian transsexual, Y*, and several police officers from the Department of Public Security of the State Police.

According to the information available to the delegation, at about 11.15 p.m. on 10 July 2008, Y was in the buffer zone (*cuscinetto*) of the CEI waiting to go to the infirmary for treatment. A dispute allegedly took place with a police officer, resulting in the transfer of Y to a room close to the infirmary, where, with the door closed, he was allegedly severely beaten (kicked, punched and hit with truncheons) by six police officers of the State Police (Department of Public Security) in the presence of an inspector. According to some sources, the beating took place in that room because it is not monitored by CCTV¹³. Y was then allegedly placed in detention again, after first being seen by a male nurse at about 11.55 p.m.. the nurse gave him a painkiller after Y had complained of diffuse pain all over his body.

28. After repeated complaints from the person concerned and from co-detainees and the beginnings of a riot, Y was finally transferred at about 3 a.m. on 11 July to San Raffaele Hospital in Milan, where a medical certificate was drawn up at 3.55 a.m. indicating that he "... has come on account of injury... detained patient... claims to have received blows all over his body and an injury to his skull; the patient says the facts occurred at about 11.30 p.m. on 10 July. Objective examination: alert... swelling of about 3 cm on the forehead, pain on anterior costal palpation. Diagnosis: bruises on the face, scalp and neck, except the eye; bruises in many places, neck sprain, unfit to work for 8 days... to wear a neck brace for 8 days... monitoring of the skull injury according to the appended recommendations...".

To the delegation's knowledge, the person concerned lodged a complaint on 31 July 2008 both against the police officers (for assault) and against members of the Red Cross (for failing to assist a person in danger). At the end of its visit, the delegation requested a detailed report on the incident, and information on any steps that would be taken.

* In accordance with Article 11, paragraph 3, of the Convention, certain names have been deleted.

¹³ The CEI has a CCTV system with a control room where the images from 20 or so surveillance cameras are on view. The images are kept for 20 days.

29. By letter of 14 November 2008, the Italian authorities forwarded to the CPT some information from the State Police on the incident in question and copies of Red Cross reports. The information quoted by the Red Cross includes the following: "... the police officers stopped the person [Y] and took him to the offices of the Department of Public Security... from which he returned a few minutes later". In the CPT's view, none of the information forwarded by the authorities casts doubt on Y's allegation that he was beaten by a group of police officers from the Department of Public Security in a room near the infirmary. According to information subsequently received by the CPT, the detained person concerned was heard by the Milan Public Prosecutor in mid-October 2008 and was again questioned by a judge shortly before Christmas.

30. **The CPT recommends that the Italian authorities remind all State police officers (and other law enforcement officials working in the CEIs), at regular intervals and in an appropriate manner, that all forms of ill-treatment of detained persons are unacceptable, that any information on instances of ill-treatment will be investigated and that those responsible for ill-treatment will be severely punished.**

Further, **the Committee would like to be informed of the outcome of the judicial investigation into the above incident, and of any measures taken as a result (at criminal and/or disciplinary level).**

31. It should be recalled that Red Cross staff or staff working under contract with the Red Cross (including medical and nursing staff) in all detention facilities established under the aliens legislation are under a duty to protect the physical integrity of detained persons entrusted to their care. This responsibility includes the comprehensive recording of any complaints made by a detained person about acts of violence (including complaints against law enforcement officials) and of objective descriptions of any injuries suffered, as well as taking appropriate medical and/or administrative measures (including, if necessary, informing the relevant authorities). **The CPT recommends that Red Cross staff (including medical and nursing staff) be reminded of these precepts.**

3. Conditions of detention

32. General conditions of detention at the Milan CEI may be described as adequate on the whole for detention periods of 30 (or even 60) days. That said, the general environment of the holding units, already distinctly austere and prison-like, was exacerbated by the presence of servicemen permanently patrolling the perimeter of the CEI.

The various accommodation units in the CEI afforded the same living conditions: dormitories about 24 m² each, equipped with 4 beds (with full bedding), and shelves, and a common room/canteen equipped with tables and chairs, a television set and a drinks dispenser. There was also a sufficient number of sanitary facilities (toilets, sinks and showers) and an exercise yard with a few benches. **The yard, however, only offered partial protection against inclement weather.**

33. As regards the day-to-day regime, an “open door” regime was in force in the various accommodation units: the persons held in the CEI were free to move around their unit at all times. Access to the exercise yard was available from 7 a.m. to 2 p.m. That said, the activities organised/on offer were minimal: detained persons spent their days reading, watching television or playing games (cards, draughts, etc.). No sports or other activities were organised, and, for example, the detained persons in Unit C had made a volley-ball net with sheets because no other material was available. No paid work was offered to indigent persons (5% of those detained in the CEI, according to the Red Cross). As the maximum length of stay in the CEI has been increased from 30 to 60 days, **the CPT recommends that the Italian authorities offer foreign nationals a greater number and broader range of activities (sports in particular).**

34. The CPT wishes to emphasise that any subsequent extension of the period of detention – which appears to be under consideration at present, with a period of detention of up to eighteen months – would definitely pose very serious problems. The Milan CEI was not designed for such long periods of detention and its infrastructure would be entirely unsuited to this situation. The Provincial Director of the Red Cross shared this view. He himself admitted that if such periods of detention were introduced, the design of the centres would have to be entirely revised.

35. The delegation also made a brief visit to the CARA (the reception centre which accommodated the asylum-seekers during the whole procedure). It was located inside the CEI, but in a distinct unit (Unit A); living conditions there were satisfactory for brief periods. The CARA premises were less austere than the other modules of the CEI ; they were decorated with drawings and poems produced by the residents. In terms of activities, Italian classes were organised, as well as information sessions on Italian legislation.

It is regrettable, however, that the centre is located in an area originally designed for detention purposes. The CPT’s delegation was informed that plans to relocate the CARA were being considered. **The CPT would like to receive further details on this subject.**

In any event, **the CARA should not be located in prison-like premises.**

4. Staff

36. First of all, the CPT wishes to emphasise the professionalism and commitment of the Red Cross staff who run the CEI (and the CARA) in Via Corelli in Milan. These are undoubtedly key factors in preventing violence in establishments of this type, where the atmosphere is by nature volatile.

37. As already stated, the Milan CEI had a fairly large staff consisting of about 30 members of the Red Cross¹⁴. In the delegation’s view, the Red Cross staff were sufficient in number to perform the tasks assigned to them (including health-care and social tasks), whether for the benefit of detained persons or asylum-seekers. An agreement had also been signed with the Milan Bar Association for the purposes of legal assistance (see, however, paragraph 47).

¹⁴ As well as 13 members of the State Police and 16 members of the armed forces.

38. The CPT also wishes to emphasise once again the very important part played in the CEI by cultural mediators¹⁵. The mediator, who was present in the CEI on all working days, acted as an interpreter for the many Arab-speaking detained persons and also provided them with basic information. The delegation also noted that the CEI staff had received training to improve their knowledge about transsexuality and the treatment of transsexual detained persons.

That said, the CPT's delegation also noted that the Red Cross staff were somewhat absent from the living units during the day (apart from the distribution of meals, etc.). This was deliberate and was apparently intended to avoid "putting further pressure" on the persons held there. The CPT understands the reasoning but nevertheless wishes to point out that **the regular (albeit not constant) presence of staff in the living units is necessary, in order to detect behaviour indicative of risk and to be able to intervene in time (and particularly to locate and protect vulnerable detained persons), as well as to organise simple activities.**

5. Seclusion

39. The CPT's delegation was informed on arrival at the establishment that it was neither legally nor materially possible to isolate a detained person for disciplinary or security purposes¹⁶. The most that could be done would be to transfer a "difficult" detainee to another unit or another CEI.

It soon emerged that, as there was no seclusion room, the officers of the Department of Public Security of the State Police used another space – the room (for sick patients) opposite the infirmary – when they wished to isolate a detained alien who was creating a disturbance in the centre. Such a measure is inappropriate; **a room for sick patients should as a rule not be used for purposes other than medical ones. Further, the use of the infirmary's room for medical seclusion purposes should be duly recorded in a specific register.**

40. More generally, the CPT is convinced that it is in the interests of both detained persons and staff working within CEI establishments, that clear procedures, accompanied by appropriate safeguards¹⁷, under which a detained person may be isolated from others for reasons of good order or security, be both formally established and applied in practice. Indeed, any grey areas in this respect entail the risk of unofficial (and uncontrolled) systems developing. **The CPT recommends that the Italian authorities remedy the shortcomings identified, in the light of the foregoing remarks.**

¹⁵ See also the reports on the CPT's ad hoc visits to Sicily and Calabria.

¹⁶ Of course, if disturbances constituted an established criminal offence, the police could intervene on their own initiative, apprehend the persons concerned and place them in normal police custody.

¹⁷ See, in this respect, the CPT's standards (CPT/Inf (2002) 1 Rev. 2006, page 19 (paragraph 55)).

6. Health care

41. Persons held in the Milan CEI and CARA received adequate health care. A team of five doctors worked in shifts, ensuring a doctor's attendance every weekday from 1 p.m. to 8 p.m. The team consisted of two general practitioners (including one specialised in infectious diseases), two gynaecologists and a dermatologist. The ten-member nursing team consisted of six professional nurses and four volunteers. A nurse was present on the premises around the clock, 365 days a year.

Specialist and hospital care were provided outside the centre, under police escort, and the emergency services would arrive quickly in case of need.

It should also be noted that a psychologist visited the CEI twice a week¹⁸, and that the Director of the CARA was a trained psychologist.

42. The doctor's room, the infirmary and the room for sick patients were adequate, as were the equipment, instruments and pharmacy.

43. Each detained person (or asylum-seeker) received a medical examination on admission.¹⁹ As with all medical consultations, this examination was systematically carried out in the absence of police or armed forces personnel. All those examined were screened for tuberculosis (Mantoux test) and, if necessary, underwent a chest X-ray. However, there was no policy of systematically offering an HIV or hepatitis C virus test. **The CPT considers that such an offer should be made systematically, in particular given that the foreigners held in the CEI and CARA constitute a high-risk group²⁰.** More generally, **it would also appear necessary for additional efforts to be made in terms of risk-management policy (for example, condoms should be made available, free of charge, at the infirmary)** (see also paragraph 98).

44. As regards mental illness, the CPT's delegation noted the high prevalence (one in two detained persons) of psychotropic medication, especially tranquillisers. For many persons, this is undoubtedly due to the time spent in a penitentiary environment, but also to the high level of anxiety caused by the fear of possible deportation.

45. All detained persons had a personal medical file; however, the diagnostic and follow-up notes were rather succinct. It would be desirable for consultations, treatments, emergencies and incidents (suicide attempts, hunger strikes, etc.) to be recorded in specific registers. It would also be advisable that staff be more diligent in keeping the nurses' records, and archiving them (as is already the case with other medical documents). **The CPT invites the Italian authorities to take steps to remedy the shortcomings mentioned above.**

¹⁸ At the time of the visit, she was treating four patients held in the centre.

¹⁹ 1,095 examinations on admission to the CEI in 2008 and 177 examinations on admission to the CARA since 2005.

²⁰ Most of the foreigners held came directly off the street or from prisons in Lombardy. More than a third were addicted to drugs and a number of them engaged in prostitution.

46. As regards medical matters, the CPT wishes to make two further comments. Firstly, **foreign nationals transferred directly from a prison to a CEI should be issued with a liaison sheet by the prison's medical service.** This should allow the CEI's medical service to be aware of any ongoing treatment and continue it without undue delay.

Secondly, **all foreign nationals returning to a CEI following a failed deportation by air should undergo a proper medical examination.** Such a measure is important to protect both persons whose deportation has failed and police officers escorting them.

7. Other issues

47. On arrival at the centre, foreign nationals were given an introductory leaflet explaining the rules in force in the centre, as well as a five-Euro phone card (replaced every ten days). Mobile phones were allowed (except those including a photo and/or video function). After eight days spent in the centre, visits were allowed from 3 p.m. to 6 p.m. every day, in two adequately equipped visiting rooms with tables. **The CPT invites the Italian authorities to abolish the eight-day waiting period before detained foreign nationals can receive visits from their relatives or friends.**

48. The CPT's delegation examined in detail the administrative and judicial procedures governing detention and deportation. It consulted all the files of the persons being held at the time of the visit and it attended a hearing held on the spot. Several comments are called for, in this respect.

Firstly, as regards the judicial procedures for confirmation (*convalida*), the detainee's lawyer – who is usually a duty lawyer – would perform a much more effective role if he or she could read the file and briefly confer with his/her client before the hearing with the justice of the peace, if necessary with the aid of an interpreter. **The CPT recommends that appropriate steps be taken to this effect.**

Secondly, **the CPT wishes to receive clarification of the various statutory time-limits in force in identification and deportation procedures, as from the moment when a foreign national illegally staying on Italian territory is stopped and questioned.** The delegation received contradictory information on this point during the visit.

It goes without saying that, in order to be effective, these time-limits must run from a specified moment (date and time), **which was not always the case in the documents seen by the delegation.**

*

* *

49. The CPT has been following closely for several years the situation of irregular migrants arriving and subsequently held on the island of Lampedusa²¹. In this context, **the Committee would like to receive updated information on the plan to set up a CEI in Lampedusa (capacity, staffing, etc.) and on the steps taken to ensure that the judicial authorities effectively perform their supervisory role in detention and deportation procedures.** Indeed, past experience has shown that this role was not easy to fulfil.

50. Finally, the prohibition of torture and inhuman or degrading treatment or punishment encompasses the obligation not to send a person to a country where there are substantial grounds for believing that he would run a real risk of being subjected to torture or ill-treatment²². In view of the CPT's essentially preventive function, the Committee is inclined to focus its attention on the question of whether the decision-making process as a whole offers suitable guarantees against persons being sent to countries where they run a risk of torture or ill-treatment. In this connection, the CPT wishes to explore whether the applicable procedure offers the persons concerned a real opportunity to present their case, and whether officials entrusted with handling such cases have been provided with appropriate training and have access to objective and independent information about the human rights situation in the country to which a person is to be deported. Further, in view of the potential gravity of the interests at stake, the Committee considers that a decision involving the removal of a person from a State's territory should be appealable before another body of an independent nature prior to its implementation.

The CPT requests detailed information on the practical steps taken by the Italian authorities in Lampedusa to prevent the deportation (*refoulement*) of foreign nationals to countries where there are substantial grounds for believing that they would run a real risk of being subjected to torture or ill-treatment.

C. Prisons

1. Preliminary remarks

51. The delegation carried out full visits to Brescia-Mombello, Cagliari-Buoncammino and Naples-Secondigliano Prisons. In addition, it carried out several targeted visits: at Milan-San Vittore Prison, it focused on the Centre for Neuropsychiatric Observation (CONP); at Novara Prison and Rome-Rebibbia Female Prison, it visited the units for prisoners who were subject to the "41-bis" regime; and at Naples-Poggioreale Prison, it did not visit the establishment as such but only interviewed newly-arrived remand prisoners.

²¹ See the reports on the CPT's visits to Lampedusa in 2004 and 2006.

²² In this context, see for example the judgements of the European Court of Human Rights in the cases of *Saadi v. Italy* (Application No. 37201/06 of 28 February 2008) and *Ben Khemais v. Italy* (Application No. 246/07 of 24 February 2009).

52. **Brescia Prison** was built at the end of the 19th century in the centre of Brescia, in the traditional form of two spur wings, radiating on three floors from a central atrium. The prison mainly operated as a remand prison (for male adults only), had a very high turnover of prisoners and was chronically overcrowded. With an official capacity of 206 places, it was accommodating 454 prisoners at the time of the visit, of whom 64 prisoners were sentenced (mostly serving prison terms of up to ten years). In recent years, the percentage of foreign nationals in the prison population had significantly increased (it was more than 60% at the time of the visit).

Cagliari Prison was constructed in 1880 on a rocky hill on the outskirts of Cagliari, overlooking the entire city centre and coastline. It was the first prison visited by the CPT on the island of Sardinia. Prisoners were accommodated in two three-storey wings ("left" and "right"). The official capacity of the prison was 353 places. At the time of the visit, it was accommodating 433 prisoners (including 23 women), of whom 116 were sentenced. The prisoner population also included 40 patients who were accommodated in the establishment's Centre for Diagnosis and Therapy (*centro diagnostico terapeutico* – CDT).

Naples-Secondigliano Prison, which opened in 1991, is located on a widely spread-out complex on the outskirts of Naples. The main prisoner accommodation consisted of four multi-storey wings, with two sections on each floor. In addition, the prison had a CDT (with some 100 beds). With an official capacity of 1,079 places, it was accommodating 1,131 prisoners (including 638 on remand) at the time of the visit. There were no female prisoners or juveniles.

53. It is clear from the information provided above that, in particular, Brescia and Cagliari Prisons were severely overcrowded. For prisoners, an overcrowded prison often entails cramped and unhygienic accommodation, a constant lack of privacy, reduced opportunities in terms of employment, education and other out-of-cell activities, overburdened health-care services, and increased tension – and hence more violence – between prisoners and between prisoners and staff. In addition, due to lack of adequate living space, a number of prisoners were transferred to prisons far away from their families. All of these negative consequences were to be found, in varying degrees, in the establishments visited.

54. More generally, the entire prison system is affected by the problem of overcrowding (as was the case in 2004). With an official capacity of 43,012 places, Italian prisons were accommodating more than 59,000 prisoners at the beginning of 2009.

A temporary reduction in the prison population (due to an amnesty in 2006) had been more than offset by subsequent developments, including the adoption of new legislation criminalising non-compliance with an order to leave the country and resulting in the imprisonment of a large number of foreign nationals. The dramatic increase in the number of prisoners was at the time of the visit attributable at least in part to this legislative change, coupled with a shift towards a reduction in alternatives to prison for persons considered "recidivists", and a lack of differentiation in the imposition of long prison sentences for different kinds of drug-related offences. The CPT notes the continuing high proportion of remand prisoners (over 60% at the time of the visit) and the concomitant pressure on prison facilities of the associated turnover.

At the end of the visit, the Minister of Justice informed the delegation of various measures being taken/envisaged to combat the problem of overcrowding, such as the construction of four new prisons, the enlargement of existing prisons and the preparation of draft legislation to introduce non-custodial sanctions instead of short prison sentences. The Ministry of Justice was also considering the introduction of electronic surveillance outside prison of released prisoners.

55. The CPT recalls that providing additional accommodation is not likely, in itself, to provide a lasting solution to the problem of overcrowding. Addressing this problem calls for a coherent strategy, covering both admission to and release from prison, to ensure that imprisonment really is the measure of last resort. This implies, in the first place, an emphasis on non-custodial measures in the period before the imposition of a sentence and, in the second place, the adoption of measures which facilitate the reintegration into free society of persons who have been deprived of their liberty.

The CPT recommends that the Italian authorities vigorously pursue the adoption and implementation of a coherent strategy designed to combat prison overcrowding, in the light of 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) and 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.

2. Ill-treatment

56. No allegations of physical ill-treatment by prison officers were received at Naples-Secondigliano Prison and Rome-Rebibbia Female Prison.

A number of allegations of physical ill-treatment by prison officers were received at Cagliari Prison²³ and, to a lesser extent, at Brescia Prison²⁴. In a few cases, an examination of the prisoners concerned by medical members of the delegation and/or a consultation of medical files revealed injuries which were fully consistent with the allegations made. Further, at Cagliari, the delegation received a number of allegations of verbal abuse of prisoners by prison officers²⁵ (including racial insults). Some allegations of this kind were also heard at Brescia Prison.

The CPT recommends that the management at Brescia and Cagliari Prisons recall to their staff that all forms of ill-treatment of prisoners (including verbal abuse) are not acceptable and will be the subject of severe sanctions.

57. Further, one allegation of excessive use of force was received at the “41-bis” Unit at Novara Prison. This allegation concerned two successive – and linked – incidents which had allegedly occurred in Section A on 8 September 2008, the first at 8.25 a.m., the second at 4.20 p.m., when a prisoner was immobilised by members of the GOM (*Gruppi Operativi Mobili*) and returned to his cell.

²³ Several allegations concerned patients in the CDT. Moreover, one prisoner claimed that he had been hit by an officer after an altercation with the latter, following an interview by a member of the delegation.

²⁴ According to a member of staff met by the delegation at Brescia Prison, violence by prison officers used to be “extremely frequent and well organised” in the past, but this had decreased over the past five years and particularly over the past two years.

²⁵ At Cagliari, one episode of verbal abuse of a prisoner by a prison officer was directly witnessed by a member of the delegation.

According to the information received by the delegation, on the morning in question, the prisoner concerned had threatened a member of the GOM while the latter was warning him again that he could not talk to a member of another group of prisoners (with whom communication had been permanently prohibited). As he had refused to obey these orders, the prisoner had been immobilised and then returned to his cell. The second incident had occurred that afternoon, when the prisoner concerned was being transferred to the infirmary, where he was due to undergo a medical examination. He had allegedly attempted to assault the same member of the GOM, following which he had been brought under control and immobilised on the ground. A prisoner who had witnessed these acts claimed that disproportionate force had been used on these occasions. A medical certificate drawn up at 4.20 p.m. on the same day described, in respect of the prisoner, “pain on palpation [in the posterior left rib region], without oedema or inflammation”. Two members of the GOM were slightly injured on this occasion, and two medical certificates were drawn up in consequence. A “debriefing” session was organised by the Head of the GOM with the staff members involved, in order to discuss the methods used and to draw from them operational conclusions for the future; this is a welcome approach.

The CPT wishes to recall that there can never be any justification for prison staff to strike a prisoner who is immobilised on the ground, after having been brought under control. Further, no more force than is strictly necessary and proportionate should be used to bring an agitated and/or violent prisoner under control. **The Committee recommends that officers of the GOM at Novara Prison be formally reminded of these principles.**

58. The CPT is very concerned by the level of inter-prisoner violence at Brescia-Mombello and Cagliari-Buoncammino Prisons. At Cagliari, episodes of inter-prisoner violence in the course of 2008 had resulted in serious injuries and, in one case, the death of a prisoner. In addition, a number of allegations were received at Cagliari that staff did not always intervene promptly and consistently when violence between prisoners occurred.

In both establishments, the problem of violence among prisoners was in part the result of serious overcrowding and a shortage of staff (see paragraphs 52 and 114).

59. The Committee wishes to recall that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills.

It is also obvious that an effective strategy to tackle inter-prisoner violence/intimidation should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at night-time) to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the exercise of their tasks. Of course, the implementation of the recommendation referred to in paragraph 55 is an essential part of any strategy to address inter-prisoner violence. Further, both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

The CPT recommends that the Italian authorities redouble their efforts to develop strategies with a view to addressing the problem of inter-prisoner violence at Brescia and Cagliari Prisons, in the light of the above remarks.

60. At Brescia and Cagliari Prisons, the prison directors told the delegation that they were facing a major dilemma. While prisoners were legally entitled to purchase and consume alcohol on a daily basis (half a litre of wine or one litre of beer)²⁶, experience had shown that many instances of inter-prisoner violence were related to the problem of alcohol abuse in prison (i.e. excessive consumption and/or illegal commerce among prisoners).

Therefore, the Director of Brescia Prison had taken the initiative to suspend the distribution of alcohol in the entire establishment. As a result, the number of instances of inter-prisoner violence within the prison had apparently decreased significantly and remained at a much lower level. At Cagliari Prison, the Director indicated that it had been decided to ban the distribution of alcohol to prisoners who were receiving psychotropic drugs. At the same time, he regretted being prevented by the existing legislation from imposing a total ban on the consumption of alcohol in the prison. **The CPT would like to receive detailed information on the concrete measures taken by the Italian authorities to tackle the problem of alcohol abuse in Italian prisons, with a view to preventing both violence and alcoholism among prisoners.**

3. Conditions of detention of the general prison population

61. Material conditions of detention were generally good at Naples-Secondigliano Prison, although some repairs were still needed, to solve the problem of water penetration in various parts of the establishment.

Material conditions were less satisfactory at Brescia Prison and even poor in many parts of Cagliari Prison. Both establishments displayed a number of shortcomings (e.g. poor state of repair, water penetration through the walls and ceiling, inadequate water supply; sanitary facilities out of order, etc.)²⁷. Further, many prisoners complained that there were insufficient supplies of basic personal hygiene products. It should also be added that, at Brescia Prison, a number of beds did not have a mattress.

Yet, the overriding problem in both establishments was the severe overcrowding (e.g. up to five prisoners in a cell of 9 m²). In this connection, reference is made to the recommendation in paragraph 55.

At Brescia, the delegation observed significant improvements in certain parts of the establishment (for instance, in the canteen, administrative block, visiting area, etc.) in the context of a major renovation programme which was ongoing²⁸. **The CPT recommends that the Italian authorities draw up and progressively implement a plan to improve material conditions in the detention areas at Brescia Prison. It would also like to receive a timetable for the implementation of this plan.**

²⁶ See Section 14, paragraph 3, of Presidential Decree No. 230 of 30 June 2000. It should be added, however, that this provision explicitly prohibits the storage of alcoholic beverages.

²⁷ On a positive note, material conditions were on the whole adequate in the high-security unit.

²⁸ A basic renovation of the detention areas was completed several years ago.

The Committee also recommends that steps be taken immediately at Brescia and Cagliari Prisons to ensure that all prisoners are provided with basic personal hygiene products and a bed with a mattress.

At Cagliari Prison, the delegation was informed that the construction of a new prison had started and that all prisoners would be transferred to the new premises as soon as possible. In their letter of 14 November 2008, the Italian authorities indicated that “[t]he new Cagliari prison is currently in an advanced building phase. In fact, the term of completion of works concerning the first functional lot, for a capacity of 400 detention places, is fixed at 13.11.09”. They also stated that the new premises would comprise, amongst other things, rooms for communal activities in each detention wing, workshops, a football field and “well-organised outdoor areas”.

The CPT welcomes this development; **it would like to be informed of the progress that has been made in the construction of the new prison in Cagliari.**

62. As regards the regime, the CPT appreciates the efforts made by the management in all establishments visited to provide work and other activities (such as vocational training or 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 Brescia Prison, 36 prisoners (out of 454) at a time were being offered work (e.g. kitchen, cleaning and maintenance, hair cutting, etc.) and 32 prisoners were enrolled in school classes. At Cagliari Prison, nearly 100 prisoners (out of 433) worked inside the prison and five outside (for private companies); 40 prisoners participated in educational activities²⁹. At Naples-Secondigliano Prison, there were 227 prisoners (out of 1,131) working at the time of the visit. In addition, a number of vocational training activities were being offered (such as building, gardening, repairs, plumbing, electrical work and farming). Some 90 prisoners were attending elementary or middle-school classes, and some 110 prisoners were enrolled in a commercial high school.

That said, the sad reality for the vast majority of remand prisoners and many sentenced prisoners was that regular out-of-cell activities were centred on four hours of outdoor exercise per day (which, on occasion, also included sporting activities). The situation was exacerbated by the lack of communal rooms in the detention areas of Brescia and Cagliari Prisons.

The CPT recommends that the Italian authorities redouble their efforts to improve the programme of activities offered to prisoners at Brescia, Cagliari and Naples-Secondigliano Prisons and, where appropriate, at other prisons in Italy. For this purpose, staffing levels and the staff attendance system should be reviewed. As has been highlighted by the CPT in previous visit reports, the aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).

²⁹

In the past, some vocational training activities had been offered, but these were discontinued some two years ago.

4. Prisoners subjected to the “41-bis” regime

a. introduction

63. At the time of the previous visits to Italy (1995, 2000 and 2004), the CPT examined in detail the regime applied to certain detainees under Section “41-bis” of the Prison Act No. 354 of 26 July 1975. This special detention regime applies to prisoners who have committed – or who are suspected of having committed – an offence in connection with mafia-type, terrorist or subversive organisations, and who are thought to be maintaining links with such organisations. At the end of the aforementioned visits, the CPT made several recommendations regarding these prisoners’ detention conditions, their regime and the procedures applied to them. In 2008, the delegation went to Novara Prison (Unit “41-bis” for men) and Rebibbia Prison (Unit “41-bis” for women), in order to review the action taken by the Italian authorities over the past four years in response to the CPT’s recommendations.

64. At Novara Prison, the “41-bis” prisoners are all accommodated in a single unit located in its own building, separated from the rest of the establishment. The unit also has an annexe housing one detainee who has been placed in strict isolation in an area called the *area riservata*. At the time of the visit, the “41-bis” unit was accommodating 70 prisoners (the official capacity being 70 places). Approximately half of them were sentenced prisoners, one-third were awaiting their first trial, and the rest were pursuing appeal procedures. Novara Prison’s “41-bis” unit is staffed by members of the GOM, although these staff (totalling 47) nevertheless remain under the authority of the prison director.

65. At Rebibbia Women’s Prison, “41-bis” prisoners are accommodated in the prison’s “high-security” unit. This department is divided into two separate sections, one for “41-bis” prisoners and the other for prisoners placed under the high-security (*alta sicurezza*) regime. At the time of the visit, the “41-bis” section was accommodating two prisoners (its official capacity is three places). It should be stated at the outset that the department concerned was not under the supervision of members of the GOM and that relations between the detainees and the prison staff seemed to be relaxed.

66. What is known as the “41-bis” regime was introduced in 1992 as a temporary emergency measure³⁰. The Minister of Justice was authorised to suspend, at his own initiative or at the request of the Minister of the Interior, application of the prison rules to specially selected sentenced or remand prisoners. The adoption of Act No. 279/2002 of 23 December 2002 made permanent the provisions governing this special detention regime. This legislative amendment was, *inter alia*, reflected in Prison Administration Circular No. 3592/6042 of 9 October 2003.

³⁰ The numbers of prisoners subject to the “41-bis” regime since 1992 have been relatively stable, with a minimum of 422 prisoners in 1997 and a maximum of 659 in 2002. There were 586 prisoners subject to this special detention regime in 2007. Some prisoners have been subject to this regime since its inception.

b. general description of the “41-bis” regime

67. In accordance with the aforementioned Circular No. 3592/6042 (which is itself incorporated into the Novara “41-bis” Prison Rules dated 30 November 2006), the “41-bis” regime continues to be characterised by a set of very significant restrictions affecting the whole of prison life, namely:

- *out-of-cell activities* are limited to a total of four hours per day (two hours of outdoor exercise and two hours of indoor group activities, in a room inside the unit specially equipped for cultural, leisure and sports activities), in small groups consisting of a maximum of five prisoners;
- one (or two) *visit(s)* is (are) allowed per month, by family members and/or partners (*conviventi*), and only under closed conditions (i.e. separated by transparent screens); furthermore, it is also possible for “41-bis” prisoners to see *their own children aged up to 12 in open conditions* (so as to allow direct physical contact), for a period not exceeding 1/6 of the duration of the visit (in this case, 10 minutes);
- *access to the telephone* may be granted once a month, for a maximum of ten minutes, to prisoners who have already completed an initial period of six months in “41-bis” detention, with strict security conditions being applied to telephone conversations (e.g. the obligation of the other party to phone from a law enforcement establishment or prison, and systematic recording of conversations);
- very strict regulations are applied concerning the *constitution of groups of prisoners; group activities, sports activities, telephone conversations and visits by defence counsel (lawyers); supplementary food supplies and the use of personal stoves; food supplies and cleanliness; the use of electric razors; radios and computers (including laptops); parcels; the stamping of checked mail; transfers*, etc.

68. That said, the rules governing the “41-bis” regime have also been the subject of interpretations by the appropriate judicial authorities (the supervisory judge responsible for Novara Prison and the Turin Supervisory Court, respectively), e.g. interpreting the relevant provisions in such a manner as to allow visits to prisoners on two consecutive days (i.e. the last day of one month followed by the first day of the following month).

69. At the time of the visit, the CPT’s delegation learned of two new Prison Administration circulars regulating certain aspects of the “41-bis” regime, dated 19 July and 22 September 2008 respectively.

The first circular recalls the absolute need to subject all “41-bis” prisoners to the same detention regime throughout the national territory, without any exceptions; the “extreme rigidity” of the composition of the groups of prisoners allowed to participate in group activities together; and the “absolute” prohibition of communication between the different groups (which is prevented by any means, including, if necessary, the closure of reinforced cell doors and the fitting of soundproofing)³¹.

³¹ The relevant extracts from this circular were drawn to the attention of the “41-bis” prisoners in Novara Prison on 9 September 2008.

The second circular – distributed the day before the delegation's arrival at Novara Prison³² – relates to the purchase by prisoners of local daily newspapers for the known purpose, according to the circular, of keeping themselves informed about the activities of the organisation to which they belong (by reading the news reports), and enabling them to verify whether their instructions have been carried out properly. The circular provides for the judicial authorities to be consulted about the advisability of prohibiting the purchase of local daily newspapers and, in the event that purchase is authorised, to censor the pages suspected of being likely to communicate the information concerned. **The CPT wishes to receive detailed information about the implementation of this circular in the “41-bis” unit at Novara Prison (in particular, the list of newspapers prohibited and/or censored and the number of bans imposed in 2008).**

c. conditions of detention

i. *Novara Prison*

70. Material conditions of detention in the “41-bis” unit were generally satisfactory. Prisoners were divided into four separate sections (A to D), each housing, depending on the circumstances, two or three “constituted groups” of prisoners. Each prisoner had an individual cell of a reasonable size (8.75 m²), well ventilated, with access to natural light and with adequate artificial lighting. Furthermore, each cell contained a bed (with a full set of bedding) and sufficient items of furniture (including a radio and television).

Two specific comments nevertheless need to be made about the cells and their contents: the prisoners were forbidden to shade the windows (causing them to wake up very early in the morning, especially in summer), and severe restrictions were imposed on the items which prisoners could keep in their cells (a detailed list had been drawn up for this purpose).

The CPT finds certain aspects of these restrictions puzzling. Apart from security reasons, the justification for which are still to be demonstrated in certain cases, they are perceived by the prisoners as pointless bureaucracy, or even harassment (such as the limited number of photos (30), books (5), and so on, allowed in each cell).

The CPT recommends that the Italian authorities permit those prisoners who wish to do so to shade the windows of their cell at night. Further, the Committee invites the Italian authorities to review the list of items that “41-bis” prisoners are allowed to keep in their cell.

³² This circular had not yet come into force in practice when the delegation visited the establishment on 23 and 24 September 2008.

71. However, the matter that the CPT found the most worrying was the situation of the general infrastructure available – or rather unavailable – to the “41-bis” department at Novara Prison. This infrastructure was scarcely conducive to, and in certain cases quite simply rendered impossible, the implementation of some of the provisions in the circular on the detention regime, and, furthermore, it was not without effect on the physical state of health of those concerned³³. When asked about the inadequacy of the space available for group activities and about the lack of sports facilities, the authorities replied that they were not in a position to comply with the criteria in Act No. 179³⁴. This lack of respect for the applicable national law raises fundamental questions.

The CPT recommends that the Italian authorities take steps to equip Novara Prison with the facilities necessary for the effective implementation of the legal provisions relating to group and sports activities³⁵. If this should prove impossible, consideration should be given to transferring the prisoners concerned to establishments which can fulfil the legal requirements.

72. As already indicated, group activities were greatly affected by the absence of suitable facilities and premises. As a result, the regime of “41-bis” prisoners also remained very restricted. In practice, prisoners were let out of their cells for only four hours a day (two hours in the activities room and two hours of exercise); the rest of the time (20 hours) they 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. or even midnight in summer). As already mentioned, group activities took place in small groups consisting of a maximum of five prisoners, either in a room which was far too small (approximately 12 m²), where prisoners had available to them a few games and some fitness equipment, or in one of the four exercise yards (approximately 20 x 15 m), which lacked any equipment and had a very austere appearance³⁶.

As regards the possibility of employment, a total of 12 prisoners (three in each section) were being paid for undertaking minor everyday tasks (distribution of meals, etc.), with prisoners being selected in turn. Five prisoners³⁷ had also enrolled in distance-learning courses (permission for which was granted very sparingly, and which had a high drop-out rate, brought about by a multitude of practical obstacles). The feeling of idleness was further exacerbated by the fact that Novara Prison had only one member of teaching staff, who merely made available to prisoners certain materials (books, games, etc.). He had apparently not been authorised to draw up personalised programmes for the prisoners (as had been done at Spoleto Prison, where meetings were organised with members of the teaching staff).

³³ Consultation of the medical files of the “41-bis” prisoners at Novara Prison brought to light a rather large proportion of musculo-skeletal disorders, which were due to the absence of proper physical exercise.

³⁴ “At 41-bis Wing of Novara Prison, the necessary technical controls have been carried out and it has been ascertained that for the reduced available area it is not possible to build other premises for prisoners under Art.41 bis regime for the activities in common. For the same reason it is neither possible to create sport infrastructures. ... It is not then possible, as already said, for room reasons, to create sports infrastructures both outdoor and indoor (such as gymnasium). The same is also for the rooms for social activities, which are lacking, to be built in adequate number, to comply with the provisions of the above-mentioned Act No. 279 (social activities in groups of five)”; see the letter dated 14 November 2008 from the Italian authorities to the CPT.

³⁵ As is the case, for instance, at Spoleto Prison, which has already been visited by the CPT.

³⁶ Some prisoners had definitively given up group activities because of the material conditions in which these had to take place.

³⁷ One at lower secondary level, two on “ragioneria” courses, one studying agriculture and one on a university course.

The CPT recommends that, in parallel with the provision of suitable facilities/premises, the detention regime of “41-bis” prisoners at Novara Prison be reviewed, so as to offer more purposeful activities to prisoners and allow them to spend more time outside their cells.

ii. Rome-Rebibbia Female Prison

73. Material conditions for the two women held under the “41-bis” regime at Rebibbia Prison were quite satisfactory. Each occupied a large cell of approximately 16 m² (the cells had originally been intended to hold three prisoners), which was well-equipped, ventilated and lit. The furniture was simple, but adequate. The facility was completed by a sanitary annexe. That said, the women were subject to the same restrictions as the men regarding the items which they were allowed to keep in their cells.

74. The detention regime from which they benefited was also similar to that of the men, i.e. two hours of exercise per day, in a large interior yard (over 200 m² in size), partly under cover, in which there was some sports equipment (bicycles, basketball net, volleyball net). The prisoners also benefited from two hours of “socialisation” in the yard or inside the “41-bis” unit. In addition, they cleaned their own cells, and their part of the unit.

iii. human contacts (including contacts with the outside world)

75. The CPT has on many occasions emphasised the importance that it attaches to the maintenance of appropriate human contact for “41-bis” prisoners. Such contact should take place not only with fellow prisoners, but also with prison staff, who play a fundamental role in the observation and treatment of these prisoners. The aim should be to build positive relations between staff and inmates, in the interest not only of humane treatment for the unit's prisoners, but also of the maintenance of effective control and staff safety (the concept of dynamic security). At Novara, no progress has apparently been made in this respect, notwithstanding the specific recommendations made by the Committee following its last visits to Italy, in 2000 and 2004. In fact, human contact between prisoners and GOM staff was reduced to a minimum, the staff apparently having been ordered not to engage in conversation with the prisoners.

76. The harmful effects of the lack of genuine human contact with fellow prisoners and staff were aggravated by the way in which contact with the outside world was regulated, particularly with families, first and foremost children. Most prisoners were entitled to only one hour of visits per month³⁸, under closed conditions, and they were prohibited from accumulating unused visiting time. In fact, “41-bis” prisoners only rarely received visits, as most families lived a very long way away from the place of detention³⁹. Some prisoners had even completely abandoned visits, especially from their young children, because of the trauma that such visits caused, on both sides.

³⁸ The supervisory judge had the power to allow a second hour of visits per month.

³⁹ The same usually applied to visits from lawyers.

77. At Novara, the delegation also took note of the very poor acoustics in the closed visiting facilities, and the fact that prisoners and their families were obliged to shout through the interphone to make themselves understood. **The CPT recommends that the sound quality in the closed visiting facilities be checked – when all the cubicles are being used simultaneously – and, if necessary, improvements be made.**

Further, the conditions in which visits between prisoners and their children took place were inappropriate, in particular, as regards material conditions and the prohibition for the mother to stay with the child (even if the latter was very young) during the open visit with the father. **Steps should be taken to review the conditions in which visits of young children take place at Novara Prison and other prisons accommodating “41-bis” prisoners.**

78. This combination of harmful factors causes serious concern to the CPT. In fact, the rarity of genuine human exchanges, whether with relatives, fellow prisoners or even staff, was not without negative effects on the mental condition of certain prisoners. As a result, at Novara, 15 to 20 of them were receiving psychiatric or psychological treatment. During the visit, six prisoners were regularly being seen by the clinical psychologist, and approximately half were receiving medication. Of the latter, 17 were undergoing psychotropic treatment⁴⁰, which was accompanied, in exceptional cases, by hospital treatment in an OPG.

The CPT calls upon the Italian authorities to take steps to improve the opportunities given to “41-bis” prisoners to maintain genuine human contact, whether with relatives (in particular children), fellow prisoners or members of staff. Such steps should be able to be taken without jeopardising the security of the establishment, and without facilitating contact between prisoners and the organisations to which they belong.

79. More specifically, there can be no justification, in the eyes of the CPT, for the systematic imposition of an initial waiting period of six months before a prisoner may have access to a *telephone*. Nor can any valid argument justify the current prohibition of the accumulation of visit entitlements (bearing in mind that the maximum allowed may in no circumstance exceed 24 hours per year). Lastly, the CPT sees no justification for the systematic refusal, for long periods of time, to allow “41-bis” prisoners to have open visits, in particular given the fact that these prisoners are already serving (very long) sentences. Appropriate safety measures can and must be found to enable open visits to be effectively supervised.

80. Consequently, **the CPT recommends that the Italian authorities take steps to ensure that “41-bis” prisoners:**

- **are not systematically denied access to a telephone during the initial six-month period of detention under the “41-bis” regime;**
- **are allowed to accumulate hours of visiting time over a calendar year;**
- **are not systematically refused open visits for long periods.**

⁴⁰ That is to say, four anti-depressant treatments, four neuroleptic treatments, and anxiolytic or hypnotic treatments.

81. The CPT also enquired about the conditions in which security searches were conducted in the “41-bis” unit of Novara Prison, given the importance usually attached to such procedures in high-security establishments. Body searches (“frisking”) were systematically conducted whenever a prisoner left or returned to his cell. In some cases, visual checks of completely naked prisoners were conducted. None of the procedures in use was particularly criticised by prisoners.

That said, the prisoners’ cells were very regularly searched (at least three times a week), while the prisoners were out of their cells. This procedure in itself is problematic. In particular, it infringes upon the confidentiality of correspondence with lawyers or certain authorities, which the prisoner has stored in his cell. **The CPT recommends that all cell searches be carried out in the presence of the prisoner concerned, in compliance with Rule No. 54 of the Revised European Prison Rules.**

d. safeguards

82. No-one denies that the application of Section 41-bis of the Prison Act entails serious violations of prisoners’ fundamental rights. This provision should therefore be applied only exceptionally and for a limited period. At the time of the visit, almost 600 prisoners in Italy were subject to this detention regime, of whom a large number had been subject to it for many years.

As had been the case during previous visits, the delegation made a detailed examination of the decisions taken in this respect by the judicial authorities⁴¹. It was evident that, for a considerable number of “41-bis” prisoners – if not for virtually all of them – application of this detention regime had been renewed automatically; consequently, the prisoners concerned had for years been subject to a prison regime characterised by an accumulation of restrictions, a situation which could even be tantamount to a denial of the concept of penitentiary treatment (*trattamento penitenziario*), which is an essential factor in rehabilitation. In addition, appeals lodged against renewal decisions (initially to the responsible supervisory court, and in the last instance to the court of cassation) were, with few exceptions, rejected, with the prisoner furthermore being ordered to bear the costs of the proceedings.

The Committee also wishes to recall that the use of the “41-bis” detention regime as a means of bringing psychological pressure to bear on prisoners to co-operate with the justice system – “dissociating themselves” from the organisation to which they belong, or “co-operating with the authorities” – would be a highly questionable practice⁴². Such use could give rise to questions under Article 27 of the Italian Constitution and international human rights instruments to which Italy is a Party.

⁴¹ To this end, the delegation asked for a copy of all the placement decisions relating to the prisoners present in the “41-bis” unit at the time of its visit.

⁴² Several prisoners met by the delegation made reference to the “pressure” which they said they felt in this respect.

83. The CPT's concern is all the greater now that it has become aware of a Bill recently passed in the Senate⁴³ providing, inter alia, in Section 34 for:

- an extension of the period of placement in the "41-bis" regime to four years, renewable for a period of two years⁴⁴;
- the holding of "41-bis" prisoners in prisons specifically designated for this purpose, preferably on islands⁴⁵;
- a reduction from four hours to two in the amount of time spent outside cells, in groups consisting of a maximum of four prisoners (currently five);
- a reduction (from two) to a single visit from relatives per month;
- permission to use the telephone to be granted only to prisoners who have not received visits;
- limitation of number of contacts with lawyers to three per week (either a 10-minute telephone call or a one-hour conversation);
- reversal of the burden of proof, the onus being placed on the prisoner to prove that he has severed all links with the organisation to which he belongs⁴⁶;
- the lodging of appeals against placement decisions to be permitted only to the Rome supervisory court;
- restriction of the powers of the supervisory courts to examination of the grounds on which the decision was based (and no longer including an assessment of whether the substance of the placement decision is consistent with the criteria).

84. As the CPT has already stated, the current "41-bis" regime is already highly detrimental to the fundamental rights of the prisoners concerned. Furthermore, it is not without an effect on the state of both the somatic and the mental health of some prisoners (cf. paragraphs 71 and 78). It is by no means the CPT's intention to cast doubt on either the legitimacy or the necessity of the Italian authorities' fight against all forms of organised crime; quite the contrary. However, the possible entry into force of the aforementioned legislative amendments would inevitably cause irreversible damage to the fragile balance which should be maintained between the interests of society and respect for fundamental human rights. The introduction of the reversal of the burden of proof, the removal of "41-bis" prisoners to prisons located on islands (which is de facto equivalent to banishment), the drastic reduction in the amount of time spent outside the cell and of visits and telephone calls, and the restrictions imposed on contacts with lawyers are all measures which, cumulatively, contain within them the seeds of what could easily amount to inhuman and degrading treatment. **The CPT urges the Italian authorities to reconsider the aforementioned draft legislative amendments.**

85. The severity of the "41-bis" detention regime makes all the more important the opportunity for prisoners to exercise their right to complain, and the existence of external monitoring of establishments.

⁴³ Bill No. 733 "Provisions on public security", Section 34, amending Section 41-bis of Act No. 354 of 26 July 1975, which is still to be debated in the Deputies' Chamber.

⁴⁴ The regime is currently applicable for a period of one to two years, renewed annually.

⁴⁵ It should be noted that the prisons for "41-bis" prisoners on the islands of Pianosa and Asinara were closed over 10 years ago.

⁴⁶ More specifically, proof needs to be given that something is not happening (*probatio diabolica*).

On the subject of the opportunities for prisoners to have their complaints dealt with effectively, the delegation was able to satisfy itself, during a long conversation, as to the effective role played by the responsible supervisory judge. The latter was clearly well-informed about the personal situation of the prisoners and sensitive to their situation. On the other hand, the delegation received numerous allegations that it was extremely difficult – or even impossible in practice – for “41-bis” prisoners in Novara Prison to gain access to the prison director. The day-to-day lives of “41-bis” prisoners at Novara Prison being permanently under the control of GOM staff, **the CPT considers it essential for these prisoners to have, as well as direct access to the responsible supervisory judge, direct access to the management of the establishment (both the prison director and the head of the medical service).**

On the subject of external monitoring of establishments designated to accommodate “41-bis” prisoners, the CPT has taken note of the recent visit to the establishment by members of parliament.

e. “reserved area” (*area riservata*)

86. The case of one “41-bis” prisoner (X)*, with whom the delegation had a long meeting, deserves particular attention. His placement for a period of three years in what is termed a “reserved area” (*area riservata*) had been decided by the Specialised Anti-Mafia Prosecutor, and he had been held under such a regime since 13 April 2006, for a period of three years. As soon as he had arrived at Novara Prison, on 13 April 2007, he had been placed in a cell located on a separate corridor, in an annexe adjoining the “41-bis” unit, and de facto placed in solitary confinement⁴⁷. In addition, the GOM members who were guarding him had been instructed not to engage in any conversation with him. Such a situation is quite simply unacceptable.

The CPT would like to receive confirmation that the above-mentioned prisoner is no longer detained in the *area riservata* and that he is now held in a “41-bis” unit under the same conditions as other “41-bis” prisoners.

5. Health care

a. introduction

87. Since the 2004 visit, important changes have taken place in the field of prison health care. By Governmental Decree of 1 April 2008 (which entered into force on 14 June 2008), the responsibility for the management of the entire prison health-care service (budget, staff and infrastructure) was transferred from the Ministry of Justice to the Ministry of Health and, more specifically, to the regional health authorities (ASL)⁴⁸. This transfer was due to be fully implemented by 1 October 2008.

* In accordance with Article 11, paragraph 3, of the Convention, certain names have been deleted.

⁴⁷ In fact, the three other cells in the same corridor had remained empty since his arrival (as had been the case for the prisoner held on this corridor before him (Z)).

⁴⁸ This process had already started in 2000 as a test phase in six regions (pursuant to Act No. 419 of 1998 and the related Legislative Decrees No. 230 of 1999 and No. 433 of 2000).

In the CPT's view, this is, in principle, a positive development. However, in the light of the information gathered during the visit, it is clear that many issues needed to be addressed as a matter of urgency by the relevant national and regional authorities in order to guarantee continuity and quality of care to prisoners. In this connection, the situation appeared to be particularly problematic in respect of the OPGs (see paragraph 122).

Having discussed the whole issue at length with representatives of the Ministries of Justice and Health and the regional health authorities, as well as with the management of the prisons visited, the delegation noted an overall failure in communications with management and staff concerned, an absence of clear planning concerning the budgetary implications and transfer of funding, and a lack of clarity concerning policies and practice related to the operational stages required for the transfer. It is also a matter of concern that no budget was apparently available to ensure overall co-ordination and leadership at national level, bearing in mind that many health-care structures within prisons cover several regions, such as diagnostic and treatment centres (CDTs), psychiatric observation centres or OPGs.

The CPT recommends that the Italian authorities take the necessary measures to ensure full communication across all levels of management and staff regarding the transfer of responsibility for prison health care from the Ministry of Justice to the Ministry of Health, as well as the careful planning and execution of the practical steps necessary to ensure continuity and quality of care to all prisoners.

Further, the Committee would like to receive detailed information on the implementation of the above-mentioned transfer of responsibility for prison health care from the Ministry of Justice to the Ministry of Health.

88. Before setting out in more detail the findings of the delegation, the CPT wishes to stress that the 2008 visit revealed a number of major shortcomings which have persisted for a long time. The most serious deficiencies were observed in the provision of psychiatric care to prisoners; dental care was also often inadequate, and the recording and reporting of traumatic lesions present on admission to prison frequently left much to be desired. Further, respect for confidentiality of medical consultations and data was practically non-existent in all the prisons visited, despite specific recommendations made by the Committee in previous visit reports. Such a state of affairs is not acceptable.

b. health-care facilities

89. At Brescia, Cagliari and Naples-Secondigliano Prisons, health-care facilities were well-equipped (including the CDTs at Cagliari and Naples-Secondigliano). Further, in all the establishments visited, pharmacies were well-stocked, and there were no shortages of medicines.

That said, within the CDT at Naples-Secondigliano Prison, the call system did not work in any of the patient rooms, and in many rooms the walls were severely affected by humidity. Further, the arrangements made for disabled prisoners at Naples-Secondigliano were not always adequate (e.g. a paralysed prisoner in the establishment's infirmary did not have a proper wheelchair). **Steps should be taken to remedy these shortcomings.**

c. medical screening

90. At Brescia, Cagliari and Naples-Secondigliano Prisons, all newly-arrived prisoners were examined by a doctor within a few hours of arrival. At Cagliari Prison, the medical screening on admission also included systematic testing (on a voluntary basis) for various transmissible diseases (such as HIV/AIDS, syphilis and tuberculosis).

However, it is a matter of concern that no systematic screening for tuberculosis (in addition to HIV/AIDS and syphilis) was performed at Brescia Prison. Further, a number of allegations were heard from prisoners at Naples-Secondigliano Prison that medical consultations were carried out in a perfunctory manner. **The CPT recommends that steps be taken at Brescia and Naples-Secondigliano Prisons to ensure that all newly-arrived prisoners are subjected to a comprehensive medical examination on admission (including screening for tuberculosis).**

91. The CPT has repeatedly stressed⁴⁹ the important role prison health-care services can play in the prevention of ill-treatment (by law enforcement officials and prison officers), through the systematic recording in Register 99 of any injuries observed on admission or subsequently and, if appropriate, the transmission of information to the relevant authorities.

Although the situation seems to have improved somewhat since the 2004 visit, major shortcomings and variations in practice were once again found concerning the recording of detected injuries and the reporting of the latter to the judicial authorities. Regrettably, the Circulars which the Department of Prison Administration had issued in this regard to prison directors in recent years were not being implemented in practice.

By way of example, at Brescia Prison, the delegation noted that cases of traumatic lesions upon admission were not recorded at all in Register 99, but in the register of new arrivals (*Nuovi Giunti*) as a print-out of the relevant section of the computerised medical examination upon admission. At Cagliari Prison, doctors simply made a brief descriptive note in Register 99, thus ignoring the various headings⁵⁰ of the register. Further, in all the establishments visited, statements made by prisoners as to the causes of the injuries sustained were often recorded in a very imprecise manner (in cases of alleged police ill-treatment, reference was often simply made to “beatings” – *percosse*). In addition, doctors did not systematically provide information as to the compatibility between the findings and any account given by the prisoner concerned.

As regards the transmission of information to the relevant judicial authorities, it was common practice in all the establishments visited to systematically inform the relevant prosecutors only of cases of traumatic lesions upon admission, where, according to the prison doctor, the prognosis for recovery exceeded 20 days⁵¹. If the prognosis was indicated as “recovery within 20 days”, no action was taken, unless the prisoner explicitly requested that his case be notified to the competent prosecutor.

⁴⁹ Most recently in the report on the 2004 visit (CPT/Inf (2006) 16, paragraph 108).

⁵⁰ Date, name, objective signs, diagnosis and prognosis, recommendations and prescriptions, statements by the prisoner, evaluation of compatibility of statements and decision taken by the prison management.

⁵¹ Pursuant to Section 582 of the Penal Code, the notification to the judicial authorities is only mandatory in cases where there are indications that a person has sustained injuries from intentional bodily harm which led to “incapacity for 20 days or more”.

Regrettably, the specific instructions⁵² issued in the past by the Department of Prison Administration largely remained a dead letter. One doctor met by the delegation stated that, in his view, current practice was “completely useless”.

92. **The CPT must recommend once again that steps be taken in all the establishments visited – and indeed in the entire prison system in Italy – to ensure 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 on request to the prisoner concerned and his/her lawyer.**

Further, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record should be immediately brought to the attention of the relevant prosecutor.

d. general health care

93. The delegation gained a positive impression overall of the general health care provided to prisoners in all the prisons visited. As a rule, a pool of duty doctors worked on rotation, thus ensuring the presence of at least one doctor around the clock.

94. Due to the ongoing re-organisation of the prison health-care services (in the context of the transfer of the responsibility for prison health care from the Ministry of Justice to the national health authorities), the situation remained somewhat unclear as regards the precise health-care staffing levels in the establishments visited. In the course of the visit, the delegation received little or contradictory information on this matter from relevant interlocutors. **The CPT would like to receive detailed information on the number of doctors and nurses (including an indication of the number of posts) employed in all the establishments visited.**

95. As regards CDTs, major shortcomings were observed at Naples-Secondigliano Prison. Due to the increasing number of referrals to the CDT from prisons in several regions of Southern Italy and Sicily, sick prisoners transferred to Naples-Secondigliano often had to wait for prolonged periods (up to several months) until they could gain a place in the CDT. As a result, the prisoners concerned were temporarily placed alone in a cell in a detention area outside the CDT, where they were not allowed to have contact with other prisoners and, on occasion, were not able to benefit from daily outdoor exercise. **The CPT recommends that these shortcomings be remedied without delay.**

⁵² According to Circulars No. 3476/5926 of 2 June 1998 and No. 3516/5966 of 16 March 2000, prison directors are instructed to systematically inform the competent prosecutor whenever injuries are recorded by a doctor which were consistent with allegations of ill-treatment made by a prisoner.

96. The most serious shortcoming in terms of quality of care was the limited number of nurses in the CDT at Naples-Secondigliano. For the entire CDT (with 100 beds), six nurses were usually present between 8 a.m. and 2 p.m., four between 2 p.m. and 8 p.m. and only two on night shifts (from 8 p.m. until 8 a.m.). This level of nursing coverage is clearly insufficient and not conducive to the adequate care of seriously ill patients. Thus, in the ward containing a number of geriatric patients, other patients had to help provide for the basic needs of these patients and also assist them with their mobility. The shortage of nurses meant that those present struggled to perform essential treatment and distribution of medication. There was little time for the human aspects of care and developing supportive relationships with patients, many of whom had chronic life-threatening diseases. As a result, the psychosocial aspects of care were largely neglected.

The CPT recommends that nursing staffing levels be significantly increased in the CDT at Naples-Secondigliano Prison.

97. At Novara Prison, the delegation noted that in respect of “41-bis” prisoners there were abnormally long delays – of several weeks, sometimes much longer – for both the supply of prescribed medicines and the carrying out of medical examinations which had to be performed outside the prison, apparently because of an extremely bureaucratic process. Interference by the prison management in the prescription of medicines was also observed. **The CPT recommends that steps be taken to put an end to this state of affairs.**

98. Finally, in the light of the information gathered during the visit, **the CPT encourages the Italian authorities to adopt a comprehensive preventive programme in all the establishments visited to reduce the spread of transmissible diseases inside prison (see also Recommendation (93) 6 of the Committee of Ministers of the Council of Europe concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison and the Guidelines of the World Health Organization on HIV infection and AIDS in prisons). Such a programme should also address the risks of HIV or hepatitis B/C infection through sexual contact and intravenous drug use.**

- e. psychiatric care in the Centre for Neuropsychiatric Observation (CONP) at Milan-San Vittore Prison

99. The Centre for Neuropsychiatric Observation (CONP) is located on the mezzanine floor of the clinic at San Vittore Prison in Milan. The CONP is a small psychiatric observation unit containing 16 beds; at the time of the delegation’s visit, 14 patients were undergoing treatment/observation there. The patients came mainly from the prison itself or from other prisons in the Lombardy region. They had been transferred to the CONP upon the advice of a psychiatrist because it had become impossible to deal with them under an ordinary detention regime. The average period spent in the CONP ranged from 15 to 30 days for prisoners from San Vittore, but could be longer (two to three months) for those from other establishments. It should be noted that the most serious cases were transferred to an OPG.

100. The CONP had seven “double” cells and two “single” cells⁵³, each measuring 9 m² (excluding the adjoining sanitary annexe) and equipped with a dual locking system (reinforced door and grille). The CONP cells were dark (with little access to natural light), poorly lit, poorly maintained and dirty. They were also scantily equipped (beds, table, chairs, mattresses, blankets), and the furniture was in a dilapidated state. The sanitary facilities (a floor toilet and a sink) were in a very poor condition (holes in the waste pipes, broken taps, etc.). In spite of efforts by the staff, there was a persistent fetid odour in the unit.

The medical facilities were limited: there was the medical director’s office and one administrative office on one side of the corridor, and on the other, the office which served as both infirmary and consultation room. The complete absence of rooms for group activities or meetings is noteworthy. The daily regime consisted of one hour (or even 1½ hours) of exercise in a small yard; prisoners spent the rest of the day confined to their cells (reinforced door open and grille closed). The atmosphere in the CONP was characterised by incessant noise and shouting.

101. In short, the general state of the CONP premises was quite simply unacceptable, and a very long way from meeting the criteria – especially in terms of hygiene – that one would be entitled to expect from a place of care. This situation was, moreover, not disputed at all by the local authorities, and reorganisation/renovation works had been planned at very short notice in order to rectify some of the most glaring inadequacies. In consequence, the prisoners were due to be transferred in the near future to the upper floors of the clinic. At the end of its visit, the delegation said that it wished to receive confirmation of that transfer within 15 days.

In their written reply dated 14 November 2008, the Italian authorities confirmed the seriousness of the situation, stating that the CONP “turns out to be in collapsing hygienic-healthy and structural conditions, as the entire Diagnostic Therapeutic Centre”. These same authorities, however, said that, on account of a lack of financial resources, the prison management’s requests for action relating to ordinary maintenance work on the cells and toilets in the CONP had been refused.

Furthermore, they stated that the third floor of the clinic, which was to be used to accommodate the CONP patients during the works in question, had had to be taken out of service because of leaks in the building’s roof, and that the planned transfer of the persons concerned would not take place until the necessary repairs had been completed. **The CPT recommends that all necessary measures be taken to speed up the afore-mentioned renovation of the CONP’s premises and to enable the CONP patients to be transferred to appropriate premises pending the completion of that renovation.**

More generally, **the CPT wishes to emphasise that the CONP’s current premises, even after renovation, would not provide all the necessary facilities (particularly a medical office and a consultation room worthy of the name, and a multi-purpose area for patients, which they could use as both an activities room and a refectory/TV room).**

⁵³ Cell No. 5 was equipped with furniture that had been fixed to the ground, and was used as the “restraint” cell; cell No. 6 had been out of service since 3 April 2008.

102. The turnover of patients in the CONP was fairly high. The majority of patients were suffering from pathological anxiety, adaptation problems or serious personality disorders. As regards the treatment in particular, all the patients were seen regularly by a psychiatrist and benefited from pharmacotherapy. That said, only two patients (of the 14) had access to therapeutic activities (art and film therapy, organised outside the CONP). **An increase in qualified health-care staff and the availability of suitable premises should enable a wider range of therapeutic approaches to be adopted, involving in particular the organisation of group activities for psycho/socio-therapeutic purposes.**

103. The primary-care psychiatrist at the CONP, by working overtime, was present in the department for 80 hours per month. With the other five psychiatrists working on contracts at San Vittore Prison, he provided a psychiatric service at the CONP for a few hours every day, even on Sundays. The team of nurses at the CDT (11 nurses) was not large enough to guarantee the presence of a nurse at the CONP in the mornings; the rest of the time, two nurses (in the afternoons) or one nurse (at night) covered the whole clinic. It should be noted that there was one member of the prison staff present in the department around the clock. Among his duties were the special checks (every 30 minutes) of the patients particularly needing to be monitored. **The CPT recommends that steps be taken to ensure that a nurse is present in the CONP around the clock; the health-care team should be reinforced by the presence of a second nurse during the day.**

Once the problems of premises have been resolved, **the regular provision of the services of an occupational therapist should also be considered.**

104. All the patients' medical files had been computerised two years before (although paper copies were still used); these files were, in principle, accessible only to the doctors. However, the delegation was concerned to note that the medical secretarial work at the CONP (like that of the rest of the CDT) was undertaken by three members of the prison service. **The CPT recommends that an immediate end be put to this practice; prisoners have the right – like any patient in the outside community – to protection of their medical data.**

105. On the subject of physical restraint, the CPT noted that such restraint was used only as a last resort (in combination with sedatives), and only for limited periods of time (a few hours), with very regular checks being made on the patient. That being so, although mention was made of it in individual medical files, **a register recording the use of restraint should be introduced at the CONP, in accordance with the CPT's standards on this subject (see paragraph 55).**

f. psychiatric care in the other establishments visited

106. The provision of psychiatric care was generally adequate at Novara Prison⁵⁴ and Naples-Secondigliano Prison.

⁵⁴ Specialist consultations were provided on-the-spot (a weekly visit by the psychiatrist; and two weekly consultation periods by the clinical psychologist, of which 23 hours were dedicated exclusively to the "41-bis" prisoners).

In contrast, major shortcomings were observed at Brescia and Cagliari Prisons. For instance, at Brescia, a psychiatrist was in attendance at the prison for only about five hours per week. Thus, he could only see a minority of those prisoners with significant psychiatric disorders. The situation was somewhat better, but still not adequate, at Cagliari, where two psychiatrists worked in the prison for a total of 25 hours per week. They were treating on a regular basis nearly one-third of the prison population (including prisoners under observation in the CDT). The situation was further exacerbated by frequent delays in escorting patients from the wings to the medical service, due to the shortage of prison staff (see also paragraph 114). The delegation was informed that it was not uncommon for psychiatrists to spend nearly half of their working hours waiting for patients.

107. Further, in particular at Brescia and Cagliari Prisons, the delegation observed serious problems in the handling of prisoners with severe psychiatric disorders or acute episodes of agitation. Delays often arose when arranging transfers to psychiatric establishments (such as an OPG or a psychiatric service in a general hospital - SPDC). This led to very disturbed prisoners being placed in bare cells, sometimes for prolonged periods (as was observed at Cagliari); in some cases, the prisoners concerned were held in such cells while handcuffed (as was the case at Brescia) or stripped of their clothes (as was the case at Cagliari). Thus, acutely ill prisoners with psychiatric disorders did not receive adequate care and were subjected to treatment which can easily be considered as inhuman and degrading. It is all the more worrying that some of the prisoners concerned had allegedly been subjected to physical ill-treatment by staff.

The situation of one mentally ill prisoner met by the delegation at Cagliari Prison gave rise to particular concern. He was psychotic and had a tendency to self-harm (by slashing his forearms and banging his head against the wall). In addition, his behaviour (shouting, banging on the door) caused a major disturbance for a large part of the prison population and for staff working in adjacent areas. Despite treatment with a variety of psychotropic drugs, his condition had not improved over the past eight months. According to a report drawn up by one of the prison's psychiatrists, the current situation made it impossible to bring about any improvement in the prisoner's condition. However, attempts to transfer the prisoner to the psychiatric unit (SPDC) of the local general hospital in Cagliari had failed.

The delegation was surprised to learn that transfers of severely mentally ill prisoners to the SPDC in Cagliari were not only impeded because of the chronic overcrowding⁵⁵ of the SPDC, but also because of the attitude of the head of the local mental-health service in Cagliari. The latter was said to be opposed on "ideological grounds" to the transfer of prisoners with psychiatric problems to establishments outside prisons (such as SPDCs or OPGs). In the CPT's view, any such doctrinaire position is indefensible.

During the end-of-visit talks, the delegation requested the Italian authorities to immediately transfer the above-mentioned prisoner to an appropriate psychiatric establishment. In their letter of 14 November 2008, the Italian authorities informed the Committee that, on 10 November 2008, the above-mentioned prisoner had been temporarily transferred, for observation, to the psychiatric ward of Turin "Lorusso and Cutugno" Prison.

Whilst acknowledging the action taken by the Italian authorities in respect of the above-mentioned case, the CPT must stress that the failure to provide appropriate hospital care for seriously ill psychiatric patients is a recurrent problem, not only at Cagliari Prison, but also in the other establishments visited.

⁵⁵

With an official capacity of 16 beds, the SPDC apparently usually accommodated at least 30 patients.

108. In the light of the above, **the CPT recommends that urgent steps be taken to review the provision of psychiatric care in the establishments visited. In particular, steps should be taken to:**

- **increase the presence of psychiatrists and ensure that prisoners suffering from severe disturbances are transferred without delay to an appropriate psychiatric establishment (if necessary a civil psychiatric institution);**
- **provide suicide-proof clothing for use in appropriate circumstances;**
- **ensure that patients are not handcuffed inside a cell.**

109. Finally, in none of the establishments visited were arrangements made by the health-care services to provide interpretation to prisoners who were not Italian-speaking. As a consequence, psychiatric care of prisoners who did not speak Italian was extremely difficult. The situation was particularly problematic in establishments with a high percentage of foreign nationals (such as Brescia and Cagliari). **The CPT recommends that the Italian authorities take the necessary steps throughout the prison system to ensure that foreign prisoners benefit, if necessary, from professional interpretation during medical consultations. For this purpose, the introduction of an interpretation service via the telephone should be considered.**

g. dental care

110. *Brescia Prison* had a particularly well-equipped dental treatment room, and two dentists usually worked in the establishment for one half-day per week each. However, the contract with one of the two dentists had been terminated by the prison management, because of the poor quality of the services provided, and the procedure for recruiting a new dentist was still pending at the time of the visit. This may in part explain the fact that many prisoners complained of long waiting periods to see the dentist. Furthermore, the delegation was somewhat surprised about the paucity of dental interventions performed by the second dentist. According to the register for dental treatment, on average, a mere five consultations each week had taken place over the previous four months.

A number of complaints about long waiting periods to see the dentist were also heard at *Cagliari Prison*. Further, at *Naples-Secondigliano Prison*, many prisoners complained that free-of-charge dental treatment was limited to extractions, while other dental care had to be paid for by the prisoners themselves.

The CPT recommends that the arrangements for the provision of dental care be improved in all the establishments visited, in the light of the above remarks. More particularly, dental treatment provided free of charge should not be limited to dental extractions.

h. medical confidentiality

111. The CPT is very concerned by the almost total lack of medical confidentiality in virtually all the prisons visited, despite the specific recommendations repeatedly made by the Committee in previous visit reports.

Firstly, with a few exceptions⁵⁶, medical consultations within the prison (upon admission as well as during imprisonment) and in outside hospitals were systematically carried out in the presence of prison officers⁵⁷. Secondly, in most of the establishments visited, it was common practice to include detailed medical data of a sensitive nature⁵⁸ in the administrative files of prisoners, which were available to non-medical staff at all times. Usually, a specific section (“*riservato al sanatorio*”) of the administrative file for new entries (“*Scheda detenuti nuovi giunti*”) was completed by a doctor at the time of admission.

Such a state of affairs is not acceptable. Clearly, Circular No. 3526/5976 of the Department of Justice dated 11 July 2000 (which is also referred to by the Italian authorities in their letter of 14 November 2008) has not had the desired effect.

The CPT calls upon the Italian authorities to take immediate steps 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 no longer accessible to non-medical staff.**

6. Other issues

a. situation of “collaborators of justice” (*collaboratori di giustizia*)

112. The CPT is concerned about the conditions under which prisoners classified as “collaborators of justice”⁵⁹ were being held at Naples-Secondigliano Prison. A number of such prisoners were accommodated in a separate section of the CDT, some others in a small section of the establishment’s infirmary.

⁵⁶ Such as psychiatric consultations in the infirmary of Cagliari Prison and the “41-bis” Unit at Novara Prison, as well as consultations with one particular duty doctor at Naples-Secondigliano Prison.

⁵⁷ In some cases, the systematic presence of prison officers during medical consultations had led prisoners to refuse medical treatment, although such treatment appeared to be necessary.

⁵⁸ The information included, *inter alia*, any history of drug dependence, alcohol abuse and psychotropic medication; presence of withdrawal symptoms; previous psychiatric history; current pathology; need for consultation by psychiatrist or a specialist in infectious diseases; etc.

⁵⁹ “Collaborator of justice” means any person who faces criminal charges, or has been convicted of taking part in a criminal organisation or in offences of organised crime, but who agrees to co-operate with criminal justice authorities, particularly by giving testimony about a criminal organisation or about any offence connected with organised crime.

Firstly, relations between the prisoners concerned and staff appeared to be strained and, in the section adjacent to the infirmary in particular, the tension was palpable. Almost all the prisoners described the prison officers as being very reserved and often even contemptuous towards them. The contrast with all other parts of the prison, where the general atmosphere was much more relaxed, was striking.

Secondly, collaborators were subjected to an impoverished regime, which, in practice, was not very different from the “41-bis” regime (cf. paragraph 72). The prisoners had no possibility to engage in any organised activities, and the provision of outdoor exercise was very problematic. Apparently, several of the prisoners had not been able to go outside for months on end. During the day, cell doors were usually kept open for several hours⁶⁰. For the rest of the time, the prisoners were locked up in their cells alone, their only occupation being reading and watching television.

Thirdly, the prisoners considered themselves to be “totally abandoned” by the prison administration, and complained about the lack of psychological support. Apparently, several of the prisoners had major psychological problems, and at least two of them had recently attempted to commit suicide.

The delegation was informed that the placement of collaborators of justice at Naples-Secondigliano Prison was intended to be a temporary arrangement (usually for treatment purposes). However, in practice, such prisoners were often held in the establishment for prolonged periods (of up to a year and more) and, as regards in particular those placed in the infirmary, even for non-medical reasons.

113. The CPT recommends that the Italian authorities review the situation of “collaborators of justice” at Naples-Secondigliano Prison, in the light of the above remarks. In particular, steps should be taken to ensure that the prisoners concerned are:

- **offered a greater range of activities; the longer the period they are in the establishment, the more developed should be the activities provided to them;**
- **effectively able to benefit from the legal outdoor exercise entitlement of at least two hours every day;**
- **provided with adequate psychological support.**

Further, staff dealing with these prisoners should be instructed to create appropriate relations with them.

Finally, the Committee encourages the Italian authorities to avoid accommodating “collaborators of justice” in the establishment’s health-care facilities, if there is no medical reason for doing so.

⁶⁰ In the section next to the infirmary, prisoners also had access for one hour per day to a small room equipped with a home trainer and a football machine.

b. staff

114. As already indicated in paragraph 52, Brescia and Cagliari Prisons were severely overcrowded at the time of the visit. In both establishments, the number of prisoners had steadily increased in recent years, while staffing levels of prison officers remained unchanged. Thus, the prison management had great difficulty in coping with the situation.

The CPT is particularly concerned about the situation found by the delegation at Cagliari Prison where, out of a total of 250 prison officers' posts, around 20% were vacant at the time of the visit. This inevitably had detrimental effects for prisoners and staff⁶¹ alike (see also paragraph 106).

The CPT recommends that the Italian authorities pursue their efforts as a matter of urgency to fill the vacant prison officers' posts at Cagliari Prison.

c. discipline

115. The delegation found no indications of excessive resort to disciplinary sanctions (including solitary confinement) in any of the prisons visited. In particular, at Brescia Prison, the delegation observed a very low incidence of solitary confinement as a sanction, and the effective use of suspended sanctions.

116. As regards disciplinary procedures, it transpired from consultation of disciplinary registers and files and discussions with staff, that various recommendations made by the Committee in previous visit reports had not been (fully) implemented in practice in the establishments visited.

In particular, disciplinary decisions were not always sufficiently reasoned. In many cases, decisions only contained one or two sentences summarising the statement made by the prisoner and the assessment by the disciplinary board. Further, in one establishment, it was common practice for prisoners to receive a brief notification of the sanction imposed (instead of a copy of the disciplinary decision itself). In addition, prisoners were usually informed only orally of the modalities to lodge an appeal.

In principle, prisoners are entitled to lodge an appeal to the supervisory judge (*magistrato di sorveglianza*) against the imposition of a disciplinary sanction. However, as was confirmed by the supervisory judge met by the delegation, such appeals are never examined on the merits but only on procedural grounds⁶². Thus, the effectiveness of such a legal remedy is considerably diminished⁶³.

⁶¹ For instance, a number of prison officers told the delegation that, for long periods, they had not been able to take any holidays.

⁶² Cf. Section 69, paragraph 2, of the Penitentiary Law, which stipulates that the supervisory judge "exercises the supervision aimed at ensuring that the custody of prisoners is carried out in conformity with laws and regulations".

⁶³ The supervisory judge met by the delegation affirmed that she was not in a position to alter either a disciplinary sanction or the duration of the latter.

Further, it remained somewhat unclear to what extent prisoners who are subjected to a disciplinary procedure have the right to legal assistance. The information provided by the Italian authorities in their response to the report on the 2004 visit⁶⁴ would suggest that prisoners are only entitled to be assisted by a lawyer in the context of appeal procedures. Such a state of affairs is not satisfactory. In this connection, reference is made to Rule 59 (c) of the European Prison Rules⁶⁵ and the relevant case-law of the European Court of Human Rights⁶⁶.

The CPT recommends that steps be taken to ensure, throughout the entire prison system, that prisoners who are subjected to a disciplinary sanction receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. The prisoners concerned should confirm in writing that they have received a copy of the decision.

Further, the Committee recommends that steps be taken to ensure that appeals against disciplinary sanctions are also examined on the merits by supervisory judges.

Finally, the current arrangements concerning the right of prisoners to legal assistance in the context of disciplinary proceedings should be reviewed, in the light of the above remarks.

117. In the report on the 2004 visit⁶⁷, the CPT had already expressed its misgivings about the involvement of doctors in disciplinary proceedings against prisoners. According to the existing legislation⁶⁸, prison doctors not only have to certify that a prisoner is fit to undergo punishment (in the case of disciplinary confinement), but, as members of the disciplinary board, they also take an active part in the disciplinary proceedings. Such a state of affairs is not acceptable and is also in contravention of internationally established standards of professional ethics. Regrettably, the Italian authorities did not address this issue in their response to the above-mentioned report.

The CPT wishes to stress once again that medical practitioners working in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote that relationship. This point was recognised in the Committee of Ministers' Recommendation (2006) 2 on 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.

The Committee must recommend once again that existing legal arrangements and practice concerning the role of prison doctors in relation to disciplinary matters be reviewed. In so doing, regard should be had to the Revised European Prison Rules and the comments made by the CPT in paragraph 53 of its 15th General Report (CPT/Inf (2005) 17).

⁶⁴ See CPT/Inf (2006) 17, page 46.

⁶⁵ Rule 59 (c) stipulates that "[p]risoners charged with disciplinary offences shall be allowed to defend themselves in person or through legal assistance when the interests of justice so require".

⁶⁶ See, for instance, the judgements *Ezeh and Connors v. the United Kingdom* (Applications nos. 39665/98 and 40086/98 of 9 October 2008), and *Güleç v. Turkey* (Application no. 16330/02 of 29 September 2008).

⁶⁷ See CPT/Inf (2006) 16, paragraph 127.

⁶⁸ See Sections 39 and 40 of the Penitentiary Law.

d. inspection procedures

118. All establishments visited by the delegation were regularly inspected by the regional branches of the Department of Prison Administration (*providitore regionale*).

As regards external inspections, the role of the supervisory judges in principle also included the function of overseeing various aspects of imprisonment.

However, from the information gathered during the visit and, in particular, from the consultations the delegation had with a supervisory judge, it became clear that the scope of the judges' role⁶⁹ and their consequent workload made it virtually impossible for the oversight function to be performed thoroughly and in a proactive way. The sheer number of prisoners falling within a single supervisory judge's remit, together with many other elements of the work, ensured that most matters were dealt with exclusively by written procedure.

The CPT recommends that the Italian authorities review the functions and resources of supervisory judges in order to ensure that the oversight of prisons is carried out in a proactive way. Those exercising the oversight function should talk with prisoners and staff in the detention areas and carry out spot checks of practice and conditions.

D. Psychiatric establishments

1. Filippo Saporito Judicial Psychiatric Hospital, Aversa

a. introduction

119. Filippo Saporito Judicial Psychiatric Hospital (OPG) is located in the small town of Aversa, about twenty kilometres north of Naples. It is one of five establishments of this kind in Italy⁷⁰, two of which have already been visited by the CPT in the past⁷¹. This large complex, originally an asylum built in 1876, includes many buildings and residential units, most of which are old and dilapidated, as well as some tree-planted spaces and gardens, all within an enclosed area.

At the time of the visit, the hospital was accommodating 268 male adult patients for an official capacity of 259 beds (and a so-called "tolerable" capacity of 306 beds). It is noteworthy that the maximum number of patients had been exceeded in 2007 and 2008 (there were over 300 patients). At the time of the visit, the Aversa OPG was accommodating 31 patients of foreign nationality.

⁶⁹ For instance, in the context of remission of sentence, exits and leave, earned privileges according to risk assessment by the establishment, and emergency leave, medical transfers, complaints, and appeals of the disciplinary process.

⁷⁰ The others are the OPGs in Barcellona, Castiglione delle Stiviere, Montelupo Fiorentino and Reggio Emilia.

⁷¹ The Napoli San Efrema OPG (1992 and 1996) and the Montelupo Fiorentino OPG (2000).

120. The patients' legal status could be analysed as follows:

- 100 patients declared criminally irresponsible and involuntarily placed in an OPG under Section 222 of the Penal Code⁷²;
- 66 patients whose provisional placement in an OPG had been ordered under Section 206 of the Penal Code⁷³;
- 7 sentenced prisoners requiring psychiatric care placed in the OPG under Section 148 of the Penal Code⁷⁴;
- 64 patients declared partially criminally irresponsible and placed in a "care and detention centre" (*Casa di Cura e Custodia*)⁷⁵ under Section 219 of the Penal Code⁷⁶;
- 31 patients provisionally placed in a *Casa di Cura e Custodia* under Section 206 of the Penal Code.

The Aversa OPG has not accommodated prisoners under psychiatric observation for nearly four years, as this procedure now takes place at the San Egidio Prison Medical Centre.

121. Since its first visit to Italy, in 1992, the CPT has been following the debate on the reform of prison health care, including with regard to the situation in the OPGs. Following a period of some years' experimentation in a number of regions, responsibility for health care in prisons was permanently transferred from the Ministry of Justice to the Ministry of Health under the law of 24 December 2007 (cf. paragraph 87). The OPGs were also included in this huge transfer process, regulated by implementing decrees issued in the course of 2008, and specific instructions were issued on 19 March 2008. The date set for the effective transfer of responsibility was 1 October 2008, just a few days after the end of the CPT's visit to Italy. Responsibility for the Aversa OPG itself was transferred to the Caserta 2 Local Health Care Agency (ASL).

122. The delegation's visit to the Aversa OPG accordingly took place at a critical juncture when the establishment was half-way through this difficult process, and many uncertainties surrounded the arrangements for the transfer to the Ministry of Health. For instance, the OPG's Medical Director had not yet been officially appointed and had had only a very brief meeting with the Director of the Caserta 2 ASL; the staff were in a state of uncertainty about their contractual situation, since only one information session had been organised for them in July 2008; the continued availability of funds after 1 October 2008 was not certain. All the information at the delegation's disposal, gathered from many sources, seems to indicate that this reform of the OPGs – while deemed essential by the CPT and long-awaited – seemed to have been ill-prepared, badly planned and implemented without any real consultation or information taking place at the level of the regional and local authorities, or the establishments themselves.

⁷² Under Section 222 of the Penal Code, persons declared criminally irresponsible for their acts shall be placed in a judicial psychiatric hospital for a minimum of two, five or ten years. The duration of their stay can subsequently be reduced or prolonged on the basis of the danger to society which the person concerned represents.

⁷³ Under Section 206 of the Penal Code, defendants who become a danger to others shall be transferred to a judicial psychiatric hospital under a provisional security measure; this measure shall be revoked when the judge considers that the person concerned no longer represents a danger to society.

⁷⁴ Under Section 148 of the Penal Code, prisoners who develop a mental illness following their conviction may be placed in an OPG by court order (at the same time, the execution of the prison sentence may be postponed or suspended).

⁷⁵ A *Casa di Cura e Custodia* is legally speaking a distinct establishment from an OPG.

⁷⁶ Under Section 219 of the Penal Code, persons with limited criminal responsibility shall be placed in a *Casa di Cura e Custodia* for a minimum of six months, one year or three years.

Furthermore, the transfer of the OPGs to the Ministry of Health rather paradoxically seems to have presented the opportunity for the prison authorities to "recover control" of the OPGs through the appointment of "Prison Directors" within these establishments, who were to be assisted by "Medical Directors". The former were given overall responsibility for the establishment (in particular the administrative, accounting and security aspects), while the latter were entrusted with the strictly therapeutic aspects. An approach of this kind seems inconsistent with the initial aim pursued, that of reinforcing the health-care and therapeutic aspects of these establishments. **The CPT would like to receive the comments of the Italian authorities in this respect.**

123. In any event, the CPT very much hopes that the transfer of responsibility for health care from the Ministry of Justice to the Ministry of Health will provide the opportunity for a genuine overhaul and complete re-examination of the foundations and organisation of the health-care arrangements for prisoners suffering from mental pathologies. One long-term solution might be to go beyond the very concept of OPGs and move towards high-security psychiatric hospitals where only health-care staff are present. **The CPT wishes to receive a detailed evaluation of the process underway, as well as information on the Italian authorities' medium- and long-term plans.**

b. ill-treatment

124. During its visit, the delegation received no allegations of ill-treatment of patients by the establishment's staff, whether health-care or prison personnel. On the contrary, it observed that good relations existed between patients and the various categories of staff, and it wishes to acknowledge the dedication to duty shown by the latter.

125. Brawling between patients (often linked to trafficking/theft of cigarettes) was, however, very common. These incidents were usually settled by transferring patients from one residential wing to another; in exceptional cases they could result in a patient's transfer to another OPG. Intensive use of transfers subsequent to incidents, as observed by the delegation, is scarcely conducive to the establishment of a stable, high-quality therapeutic relationship between patients and health-care (and custodial) staff. In addition, it does not indicate an appropriate approach to overcoming and managing interpersonal and group conflicts in such establishments, not to mention the therapeutic benefits that the patients themselves could derive from such an approach. **The CPT invites the Italian authorities to review the policy applied in these matters and to develop procedures for managing conflicts between patients (and possibly between staff and patients) that are more appropriate to the specific environment of a health-care establishment such as an OPG. These procedures should be an integral part of the training given to staff working in OPGs (both basic and in-service training).**

126. At this time, the CPT would like to underline the totally unacceptable situation at the OPG at Aversa, concerning the conditions and procedures followed with regard to the physical restraint of patients. In the view of the CPT, the situation observed appears tantamount to inhuman and degrading treatment. This subject will be dealt with later in the report.

c. material conditions and regime

127. The OPG had a total of six residential units, namely the "*Nuovo Reparto*" unit (sectors A (30 patients), B (33 patients), C (36 patients) and D (28 patients)); Unit No. 3 (16 patients); Unit No. 5 (36 patients); Unit No. 6 (43 patients); Unit No. 8 bis (43 patients) and Unit No. 9 bis (21 patients)⁷⁷. The residential units accommodated patients of all categories, regardless of their pathology or legal status. Moreover, assigning patients to units was apparently the responsibility of the custodial staff (and seemed to be based primarily on the number of places available). At best, an attempt was made to group together the most seriously affected patients in the "*Nuovo Reparto*" unit (opened in 2004), those with jobs in Unit No. 3 and the most stable, least dependent ones in Unit No. 9 bis (where the regime was one of so-called reduced supervision (*custodia attenuata*)). The OPG also had a unit used solely for the observation/isolation of arrivals who were new to the institution (Unit No. 4, with three single rooms).

128. Patients' material conditions varied considerably depending on the unit in which they were accommodated. They could be qualified as generally good in Units Nos. 3 and 5, which had both been recently renovated. In these units, patients were accommodated in dormitories offering an acceptable amount of living space and with satisfactory access to natural light, artificial lighting and ventilation. The beds and bedding and the various pieces of furniture (tables, chairs, cupboards, etc.) were in good condition and sufficient in number. In addition, the rooms were equipped with television sets and a call system. The sanitary facilities were well-equipped, clean and in good condition.

129. Material conditions were, however, unsatisfactory in the other units, and even very mediocre in Unit No. 6 and the *Nuovo Reparto* unit. The living space in the dormitories was smaller (some even had bunk beds, contrary to the prison authorities' guidelines), and they were less well-equipped (the number of cupboards, chairs and tables was insufficient) and sometimes disgustingly dirty. Further, the sanitary facilities were generally in a very poor condition (no hot water, leaking waste-water pipes, etc.). The presence of rats had even been reported in the exercise yard and certain sectors of the *Nuovo Reparto* unit. In a great many dormitories, the lack of furniture, apart from beds and shelves, and in particular the almost total lack of any personal belongings and decorative objects, gave the premises a very austere, impersonal quality.

130. The day-to-day regime offered to patients in the OPG was restricted and monotonous. The daily routine revolved essentially around meals, the taking of medicines and exercise (four hours per day), which, moreover, took place in yards with a fairly oppressive atmosphere. The patients therefore spent most of their time in the dormitories or the corridors of their respective units, watching television, reading or simply lying in bed. Some 25% of them performed small paid jobs (cleaning, meal preparation, etc.). The Aversa OPG had neither the facilities nor sufficient staff to provide a daily programme of activities for the vast majority of the patients. The day-to-day regime offered to patients fostered idleness and did little to encourage the development of autonomy.

Attention should be drawn to the efforts being made by groups of volunteers, working under the educators' supervision, although they can in no way replace the health authorities in a role which is first and foremost their responsibility.

⁷⁷ At the time of the visit, Units Nos. 8 and 9 were closed for renovation work.

131. The CPT also asks itself whether accommodating patients placed in OPGs together with patients who are the subject of a *Case di Cura e Custodia* placement is appropriate and legally founded. **The CPT would like to receive clarification regarding this subject.**

132. To sum up, the delegation observed a material environment with hardly any therapeutic value, which, combined with a very limited daily regime, is, in the opinion of the CPT, likely to worsen the condition of patients, most of whom have serious problems regarding contact with reality and relations with others.

The CPT recommends that the Italian authorities:

- **re-examine forthwith the running of the Aversa OPG with regard to both the material conditions and the patients' daily regime. The aim should be to establish a therapeutic environment, with residential structures based on single rooms or small units, which can facilitate the allocation of patients to relevant categories for therapeutic purposes;**
- **pursue their efforts to improve the number and variety of day-to-day activities offered to patients;**
- **improve the conditions under which patients take outdoor exercise and make it possible for patients to pursue supervised recreational and sports activities.**

133. Special mention must be made of the few bedridden and/or incontinent patients present in the establishment. As the CPT delegation could see for itself, for lack of appropriate equipment, the staff were reduced to using makeshift solutions, which required them constantly to change the foam mattresses and sheets. Such expedients are unacceptable in a hospital, which should have suitable equipment, in particular, beds with mattress protectors and/or mattresses suited to the patients' condition. The CPT was subsequently informed that the Director of the OPG had submitted a request along these lines to the local health authorities⁷⁸. **It would like to be informed of the follow-up to this request.**

134. More generally, the standards of hygiene in certain residential units left much to be desired. The delegation noted that the OPG's management had attempted to improve the situation in 2008 by recruiting six cleaning staff. However, the CPT considers these efforts to be completely inadequate, albeit praiseworthy. Mentally ill patients can scarcely be required to look after their rooms (and their residential units) in the same way as ordinary prisoners. **The CPT recommends that the number of cleaning staff working in the establishment be increased with the aim of attaining hospital-level hygiene.**

⁷⁸

See the letter dated 14 November 2008 from the Italian authorities to the CPT.

135. The delegation also finds it regrettable that the renovation work in progress or planned at the OPG did not afford the opportunity for the authorities to review the arrangements for accommodating patients in dormitories. This type of structure is indeed hardly conducive to the implementation of a programme of rehabilitation and care aimed at gradually fostering the patients' autonomy (apart from the possible problems of lack of privacy and of mixing patients with different pathologies and legal status). **The CPT trusts that this will be taken into account in future renovation projects.**

d. treatment and rehabilitation

136. The primary aim of a patient's stay in an OPG should be, with regard to the objective criteria that led to his/her placement, to provide a positive therapeutic environment conducive to the patient's rehabilitation (and his/her discharge from the establishment). However, at the Aversa OPG, the conditions for such a care approach are far from being met. The time during which psychiatrists are present is manifestly insufficient: an average of 330 hours per month for over 250 patients in the first quarter of 2008, reduced to 250 hours in June (giving one hour of attendance per patient per month)⁷⁹. In addition, only two full-time psychologists monitored the hospital's 268 patients, which made any personalised therapeutic work unrealistic. Nor were there any dedicated staff on site to take charge of occupational therapy activities and, as already mentioned, the few activities of this kind were run by outside volunteers⁸⁰. More generally, it should be noted that no individualised treatment plans were drawn up for patients by the health-care teams; treatment therefore consisted essentially of pharmacotherapy.

A situation with failings of this kind is likely to call into question the purpose of the "therapeutic" role played by this type of establishment. In the CPT's opinion, it is necessary to enhance considerably the treatment options offered to patients in the Aversa OPG (in particular occupational, group and individual therapies) and, first and foremost, to draw up individualised treatment plans for all of the hospital's patients. This would clearly necessitate a considerable reinforcement in the number of health-care staff in the establishment (see paragraph 145). **The CPT recommends that the Italian authorities draw up individualised treatment plans for all patients and further develop therapeutic activities in parallel, in the light of the above remarks.**

137. General medical care was dispensed by a team of five house physicians, each of whom had been allocated one or more residential units. On working days, these physicians held three-hour morning surgeries in the residential units. In addition, a doctor was on duty around the clock within the OPG. A team of seven general practitioners took turns to be on duty. Because one of these doctors was always present in the OPG, they de facto ensured the continuity of somatic and psychiatric care in the establishment (including decisions concerning emergency admission to an outside hospital and the use of means of restraint).

⁷⁹ In response to this situation, the OPG's Director issued a staff notice requiring the psychiatrists to ensure a total of 380 hours' presence per month, as from July 2008.

⁸⁰ 20% of the patients participated in therapeutic activities on a more or less regular basis, such as music therapy (4 patients); drama therapy (11 patients); animal therapy (3 patients); film discussion group (10 patients).

138. Specialist care was also available at the infirmary (cardiology, ophthalmology, dermatology, surgery, orthopaedic care, radiology, ultrasound scans). Dental care was also provided (there were one or two surgeries per week). That said, **both the radiography equipment (over 35 years old) and the dentist's chair (over 15 years old) were outdated and should be replaced.**

139. With regard to the medical files, the diagnostic and monitoring notes were generally satisfactory, **but the psychiatric notes were quite brief and incomplete.** Medical confidentiality was respected throughout the establishment.

140. Lastly, the OPG had recently (2007-2008) recorded a significant number of suicides (five in fourteen months). The establishment's medical practitioners had discussed the situation and a number of criteria had been identified. However, it did not seem that a genuine suicide prevention programme had been put in place following these discussions. The CPT naturally takes into account the remarkable work done by the Italian prison authorities in this field over many years; however, it considers that a study of the particular situation of OPG patients should be undertaken at national level, which would lead to the introduction of a specific suicide prevention programme adapted to OPGs. **The CPT invites the Italian authorities to take the necessary steps to this effect.**

e. staff

141. The Aversa OPG had a team of eight registered psychiatrists, each of whom held surgeries for between 30 and 60 hours per month. Each of these psychiatrists monitored the patients of a given residential unit, which amounted to an average of about forty patients each. As already mentioned in paragraph 136, this number of surgery hours did not adequately cover the needs of a population of over 250 persons suffering from mental pathologies, especially since some of the psychiatrists stated that they spent a not inconsiderable part of their time preparing assessment reports for the judicial authorities (in connection with the review of placement measures), rather than caring for patients.

142. With regard to staff qualified to run therapeutic activities, two full-time psychologists (working 34 hours per month) looked after about 130 patients each, allocated on an alphabetical basis. A team of four educators co-ordinated the work done by the volunteers (some thirty in all, usually trainee psychologists), who regularly organised activities both inside and outside the OPG. That said, the bulk of the educators' work was of an administrative nature⁸¹. It should also be pointed out that linking the activities of the psychologists and the educators with the psychiatrists' work was difficult due to the latter's intermittent presence and the lack of formal meetings (see paragraph 149).

⁸¹ In particular, they co-ordinated the preparation of the files needed for various hearings, whether of an administrative nature (Assessment Board hearings) or judicial (hearings by the judge supervising the execution of sentences).

143. A team of about fifty nurses provided day-to-day nursing care. Unfortunately, the number of nursing staff was clearly insufficient for the needs of a psychiatric hospital with over 250 beds. At best, it merely allowed the presence of one nurse per residential unit⁸² (in addition to one custodial staff member per unit, who had just been added to the team), although the nurses were not allocated to a particular unit. Furthermore, none of the OPG's nurses had apparently received specialist psychiatric training. The delegation was, however, informed that efforts were being made at a local level to ensure that nurses working at the hospital received some in-service training.

144. Lastly, the CPT has also taken note of the lack of a pharmacist at the OPG, the role being fulfilled by one of the general practitioners.

145. To sum up, the limited number of hours during which the psychiatrists were present, combined with the small number of psychologists, educators and nurses and the lack of occupational therapists, considerably restricted the possibility of giving patients access to therapeutic activities, and impeded the establishment of a therapeutic environment based on a multidisciplinary approach. Consequently, **the CPT recommends to the Italian authorities:**

- **that the psychiatrists' attendance hours be substantially increased, so as to ensure adequate cover every day in each unit, and a psychiatrist on call for the OPG around the clock;**
- **that the number of nursing staff be considerably increased so that three nurses (or two nurses and one medical orderly) are present during the day-shift in each residential unit;**
- **that the team of qualified specialists responsible for running the therapeutic and rehabilitation activities be reinforced, by increasing the number of psychologists and recruiting occupational therapists;**
- **that the educators be relieved of the administrative duties that are not part of their job and that additional social workers be recruited to liaise with the external social services.**

Further, **the problem of the management of the pharmacy in the OPG should be resolved.**

146. As regards the practice whereby the psychiatrists fulfil the dual role of treating doctor and expert for the judicial authorities, **the CPT wishes to emphasise that, in the interest of safeguarding the doctor/patient relationship, psychiatrists should not be required to draw up psychiatric reports on their own patients for judicial authorities.**

⁸² Plus a co-ordinating nurse in certain residential units.

147. Lastly, the hospital had a total of 118 custodial staff⁸³, members of the prison service, who were responsible for order and security in the residential units and for guarding the hospital's perimeter. It is regrettable that these members of staff, as they themselves pointed out, had received no specific training before beginning to work in the psychiatric hospital (they were apparently given only a very brief training session upon taking up their duties). Working with the mentally ill will indeed always be a difficult task for all categories of staff involved. Bearing in mind the challenging nature of this work, it is of crucial importance that staff performing security-related tasks in an OPG be carefully selected and that they receive both appropriate training before taking up their duties and in-service training. Further, during the performance of their tasks, they should be closely supervised by qualified health-care staff. **The CPT recommends that the Italian authorities take the necessary steps to comply with the above principles. In particular, training schemes for prison service staff working in judicial psychiatric hospitals should be developed.** This will reduce the risk of conflict between the care and custodial functions inherent in the current system.

148. In this connection, the delegation noted that certain members of custodial staff were concerned about the transmission by the medical and paramedical staff of strictly necessary information on the condition of patients, enabling them to perform their duties in an optimal manner (and also to give the health-care staff feedback on developments in the condition of patients). **A solution should be found making it possible to safeguard medical confidentiality, while providing the custodial staff with appropriate information.**

149. The delegation was struck by the general lack of formal meetings of health-care staff within the establishment⁸⁴, whether multidisciplinary (within each residential unit) or cross-sectoral (between all the psychiatrists in the OPG, for example). Informal communication plays an important role in a health-care establishment. However, proper medical management inherently involves certain formal elements, including the holding of regular meetings (for clinical, team, managerial, multidisciplinary or other purposes). **The CPT recommends that such meetings be introduced at all levels within the OPG.**

f. means of restraint and seclusion

150. In any psychiatric establishment, the use of means of restraint on agitated and/or violent patients may on occasion be necessary. This is an area of particular concern to the CPT, given the potential for abuse and ill-treatment.

151. At the Aversa OPG, patients who showed auto- or hetero-aggressive behaviour or who were seriously disturbed were immobilised on a restraint bed using cloth straps and/or were given sedatives. Patients were immobilised by order of the duty doctor/psychiatrist or, in cases of emergency, a nurse, subject to approval by the duty doctor/psychiatrist. The delegation was informed that the custodial staff could be called to assist nurses in immobilising a patient.

⁸³ Two directors, six inspectors (for eleven intended posts), 19 sub-intendants and 91 officers (out of 69 intended posts).

⁸⁴ Except for meetings of the Assessment Board, discussed later in the report.

152. The three restraint beds were located in a room at the end of the corridor in Sector A of the *Nuovo Reparto* unit. Fixed to the floor, these beds had a foam mattress with a rubber cover and a central opening allowing patients to relieve themselves when necessary. A bucket to collect the excrement was positioned under the opening in question.

The patients were attached to the bed with cotton straps; those used to secure their hands were sewn in place around the wrists with a big needle that resembled an upholsterer's needle. The straps at the wrists and ankles⁸⁵ and the chest band were never removed, not even at meal times. In consequence, a nurse hand-fed the patient. Furthermore, the patient was not washed during the whole period of his restraint. In addition, he stayed fixed to the bed, wearing just a vest; the lower half of his body was naked and covered only with a sheet.

The initial information gathered by the delegation was that the episodes of restraint did not generally exceed 24 to 48 hours, and that patients were checked on very regularly by the nurse (every 30 minutes) and regularly by the duty doctor (every two to three hours). Consultation of the registers and medical files in Sector A and speaking with patients soon demonstrated that the checks were much less frequent, that is to say, the nurse visited two or three times a day, and the doctor, once a day at best. The rest of the time, the patient was apparently left unattended. In addition, it emerged that the restraint beds were occupied virtually all the time⁸⁶ and that very long periods of restraint (of up to 9 or 10 days at a time) had been applied⁸⁷. The CPT considers that the material conditions in which the restraint is applied in the Aversa OPG, the duration of the measure observed, the absence of human company, and the sporadic clinical monitoring of patients, are tantamount to inhuman and degrading treatment.

153. As already indicated in paragraph 3, the CPT's delegation also visited the Naples (San Eframio) OPG, which is temporarily housed in a wing of the Naples-Secondigliano Prison, in order to enquire into the conditions and procedures in force there regarding the use of means of restraint. Contrary to what had been observed at the Aversa OPG, the material conditions were better here and the episodes of restraint much less frequent (approximately five cases per month, of which about a third lasted more than 12 hours, without, however, exceeding 48 hours). In addition, a guard was present the whole time very close to the restraint room (seated at a table, near the door), and a nurse came to check on the patient every two hours. One of the patient's arms was regularly freed to allow him to drink and eat, and a bedpan and a urinal were close by. That said, certain shortcomings had been observed, in particular a recording that had not been completed of information relating to episodes of restraint and rather superficial monitoring by a psychiatrist.

154. At the end of the visit, the delegation made an immediate observation to the Italian authorities, under Article 8, paragraph 5, of the Convention, requesting a complete revision of the seclusion and restraint procedures in force at the Aversa OPG based on the CPT's established standards in this matter. It asked to be informed within 30 days of the decisions and measures taken. In a letter dated 14 November 2008, the Italian authorities announced that the management of the OPG had approached the local health authorities with the aim of bringing the Aversa OPG's procedures in this matter into line with those applied in public health establishments.

⁸⁵ There were "tightening devices" at the end of the fastening, close to the bed, but these were no longer used.

⁸⁶ Nonetheless, to its credit, as far back as 2004, the management of the Aversa OPG had initiated a review of the use of seclusion and restraint measures, which had led, *inter alia*, to a drastic reduction in the number of restraint beds (from ten to three).

⁸⁷ As an example, the beds were in use for 29 days in January 2008, 28 days in February 2008, 14 days in March 2008, 23 days in June 2008, 24 days in August 2008... for average durations of 5 to 7 days, the delegation having noted a maximum duration in 2008 of 9 days (from 27 July to 4 August 2008).

155. The gravity of the situation observed at the Aversa OPG calls for a more determined response from the Italian authorities, preferably at national level. This response must, *inter alia*, be founded on the principles established by the CPT with regard to the use of means of restraint⁸⁸, which should serve as a base for the drawing up of a clear policy on this matter. **The CPT recommends that immediate steps be taken to this end.**

156. The delegation was informed that seclusion of patients was, in principle, not practised at the Aversa judicial psychiatric hospital⁸⁹. The CPT welcomes the fact that there is a clear trend in favour of no longer resorting to seclusion of violent or otherwise "unmanageable" patients.

Nonetheless, during the visit, the delegation noted that one patient had apparently been kept alone in a single room, in *de facto* permanent isolation from the other patients, for at least seven months, if not a year. This patient's case was discussed at length with the care and custodial staff. The patient, who suffered from a chronic respiratory disorder and who had uncontrollable cravings to smoke, had been placed in isolation for reasons that remain unclear, since the reasons advanced were scarcely convincing and in some respects contradictory. In addition, the patient was allowed only 30 minutes' exercise per day.

The CPT considers that this patient's case is symptomatic of the quantitative and qualitative shortage of care-staff in the residential units. The patient's situation should be reviewed, in particular the reasons for secluding him and the conditions under which he is confined to a single room. **The Committee recommends that immediate measures be taken along these lines.** In addition, **this patient should be allowed the same exercise time as other (non-secluded) patients.**

g. safeguards

157. The CPT will not revisit in detail the legal basis for placements in OPGs or the procedures in force, since they were described in its previous visit reports (1992, 1996 and 2000)⁹⁰. It nonetheless wishes to raise a number of questions which aroused the delegation's concern while it was visiting Aversa. In this context, the CPT also has in mind the considerable differences that exist between the relevant legislation and safeguards concerning civil patients (the TSO procedure – see the following section) and those concerning forensic patients⁹¹.

⁸⁸ "Means of restraint in psychiatric establishments for adults", CPT/Inf (2006) 35, paragraphs 36 to 54, and in particular the cases of recourse to restraint, the means used, permanent monitoring of patients by qualified staff, staff training, etc.

⁸⁹ This of course does not concern other grounds for isolating patients, as in the case of certain infectious diseases.

⁹⁰ The Italian Penal Code establishes the legal basis for the involuntary placement of persons deemed not to be criminally responsible for their acts or who have developed a mental illness after having committed an offence. The prolongation, modification or termination of these persons' placement in a judicial psychiatric hospital is decided by a judge supervising the execution of sentences on the basis of a recommendation issued by a board (known as the Assessment Board) composed of psychiatrists and other hospital staff (psychologists, social workers, educators). The patient, his/her family or his/her legal representative can appeal against the decision and can also request an independent opinion from an outside psychiatrist. During the period of hospitalisation, the application of the security measure is regularly reviewed within time-limits determined by law.

⁹¹ Not to mention the considerable difference in human and material resources, since a "civil" patient costs more than 200 Euros per day, and a "judicial" patient just over 50 Euros.

158. The first question concerns a matter of principle, the possibility for a "judicial" patient to refuse to be treated without his/her consent. The CPT considers that placement of a patient in a judicial psychiatric hospital⁹² does not necessarily allow the health-care staff to disregard the generally recognised rule of "free and informed consent" to treatment. However, during the visit it came to light that, from time to time, the health-care staff administered treatment by force (even if this took place in a very small number of cases).

In the case of civil psychiatric patients, this question has been settled by means of Law No. 180, which lays down a specific procedure designed to safeguard patients' rights. It can legitimately be asked why the general principles relating to the forced administration of treatments are not applied in the OPGs. This observation is all the more relevant since there currently seems to be no legislation expressly authorising health-care staff to proceed in this way. The recent transfer of the OPGs to the Ministry of Health should be an opportunity to launch a substantive debate on this subject. **The CPT would like to receive the Italian authorities' comments on this matter.**

159. The second question is a recurring one, already raised by the CPT and which has clearly still not been resolved in a satisfactory manner. It concerns the fact that, as the psychiatrists themselves acknowledge, some 20 to 30% of the patients held in OPGs who no longer pose any danger to society and whose mental condition no longer requires them to be detained in a psychiatric establishment, remain in the OPG due to a lack of adequate care and/or accommodation in the outside community (whether within their families or in an institution). This phenomenon seems all the more acute when it concerns patients who are being treated far from their place of residence, or patients of foreign nationality. The CPT wishes to recall emphatically that for persons to remain deprived of their liberty solely as a result of the lack of appropriate external facilities is a highly questionable state of affairs⁹³. **The CPT recommends that the Italian authorities take the appropriate steps to ensure that patients are not detained in OPGs for longer than their mental condition requires.**

160. In the same context, the CPT delegation noted that the various concepts of "dangerousness to society" (expressly mentioned in the legislation), criminal dangerousness (the risk of recidivism) and psychiatric dangerousness (linked to mental pathology) influenced, and interacted with, the supervising judges' decision-making processes when reviewing a patient's placement in an OPG. Since they are not well-defined, these concepts lend themselves to very broad, subjective interpretations, and to patients sometimes remaining in an OPG for lengthy periods (so-called "*ergastolo bianco*")⁹⁴. This situation increases further the need to introduce into the judicial process advice from independent psychiatric experts who do not have medical links to the patient (cf. paragraph 146). **The CPT would like to receive the Italian authorities' comments on this subject.**

161. On a strict point of procedure, the CPT delegation noted that, in a number of cases, patients were apparently kept in the Aversa OPG even when their respective placement orders had expired (the prolongation by the supervising judge having been issued retrospectively, several weeks later, and in one case nearly one year later). Such a state of affairs is again highly questionable and raises questions under the European Convention on Human Rights. **The CPT recommends that immediate steps should be taken to put an end to such situations.**

⁹² Or a *casa di cura e custodia*.

⁹³ Cf., *mutatis mutandis*, the recent judgment *Scoppola v. Italy* (Application No. 50550/06 of 10 June 2008).

⁹⁴ Five patients had been detained for over 20 years, three for over 15 years and seven for over 10 years.

162. Generally speaking, the information given to patients leaves a great deal to be desired. The majority of the patients interviewed had received no written information on the rules in force in the OPG (patients' rights and obligations). **The CPT recommends that a brochure describing the running of the hospital and the patients' rights and obligations be issued to each patient and his/her family at the time of admission. Patients who are unable to understand this brochure should be provided with appropriate assistance.**

163. Lastly, certain situations brought to light in this report (and in the past, concerning the other OPGs visited by the CPT) fully justify that the OPGs (and the *Case di Cura e Custodia*) be subject to inspections by the specialist inspection bodies already active in hospitals. Particular mention should be made of the *Nuclei Antisofisticazioni e Sanita* (NAS – sanitary inspection task force) attached to the *Carabinieri*. **The CPT recommends that the NAS be authorised to carry out regular, unannounced visits to OPGs and Case di Cura e Custodia.**

2. Psychiatric Diagnosis and Treatment Department (SPDC) at San Giovanni Bosco Hospital, Naples

164. Supplementing its visit which focused on the Aversa OPG, the delegation made a very brief visit to the SPDC at the San Giovanni Bosco Hospital in Naples, in order to monitor any developments which might have occurred in the context of the legislation on involuntary medical treatment (TSO), as regulated by Law No. 180 of 13 May 1978. In this context, it should be recalled that the CPT had, at the end of its visit in 2004 to the SPDC at San Giovanni di Dio Hospital in Agrigento, made a number of recommendations to the Italian authorities regarding the procedures implemented in application of the said law and, in particular, regarding the safeguards offered to patients who are involuntarily hospitalised and treated without their consent⁹⁵.

165. The SPDC at San Giovanni Bosco Hospital in Naples is a small health-care facility with 12 beds⁹⁶, which is part of ASL Napoli 1. Located on the premises of the hospital of the same name, it is physically separated from the rest of the hospital, mainly for security reasons. Overall, the premises are clean and bright. There is one male ward (4 beds) and two female wards (each with 4 beds), with adjoining bathrooms. A common room/refectory (with a television set and a public telephone) and a small enclosed garden complete the facility, offering patients satisfactory material living conditions. The daily routine revolves around meals, exercise, treatment and visits from families.

166. At the time of the visit, the SPDC was accommodating eight patients (three men and five women), only one of whom was the subject of a TSO measure. The patients being cared for at the SPDC (whether they were TSO patients or not) all benefited from abundant care, in accordance with an individual treatment plan based on pharmacotherapy and backed up by psychotherapy. Changes in the clinical condition of patients were regularly reviewed, as was their treatment. It should be noted that physical restraint (other than manual) was not practised at the SPDC.

⁹⁵ Cf. CPT/Inf (2006)16, paragraphs 145 to 159.

⁹⁶ During 2007, the management team had reduced the number of beds in use to eight, as it wished to have an adequate nurse/patient ratio to provide quality care, namely "a minimum of one nurse for every three patients".

167. The qualified health-care staff were numerous: a team of seven full-time psychiatrists⁹⁷ managed by a co-ordinator, a head nurse and 15 other nurses, provided permanent cover in the department (with two doctors present during the day, one at night and at weekends, and three nurses working on a rota system, providing 24-hour cover, and supplemented by another two nurses during the day). There were regular meetings of the medical team, as well as of the nursing team. That said, **a regular contribution from a psychologist and a social worker would be desirable.**

168. Approximately 250 TSO procedures were initiated each year. They lasted on average from five to six days. A detailed examination of the files of the latest TSO patients to have been admitted revealed, as had a similar exercise at the SPDC at San Giovanni di Dio Hospital in Agrigento four years previously, a few procedural shortcomings, for which remedies should be found.

169. In the case of the patient subjected to TSO at the time of the visit, it seemed that the – detailed – proposal for TSO had been drawn up by a doctor in District No. 45 of Naples. A "medical certificate of admission" to the SPDC had then been drawn up by a psychiatrist⁹⁸ and sent to the Mayor, who had issued his TSO placement order within the statutory time limit. A certificate of extension of the measure, for a seven-day period, had then been drawn up by a duty psychiatrist, on account of the patient's condition and refusal of treatment. That said, the delegation found no trace in that patient's file of the guardianship judge's order "co-validating" the Mayor's order. The delegation was told that the order in question had never been forwarded to the SPDC (not even a copy), and that the department automatically applied TSO unless it received a telephone call from the town hall informing it that the guardianship judge had not "co-validated" the measure.

170. As it had already stated at the end of its visit to Agrigento in 2004, the CPT considers that the procedure whereby a TSO measure is "co-validated" by a guardianship judge is a fundamental safeguard offered to patients who have been deprived of their liberty, even if this has occurred for health reasons. Hence the supervisory role of the judge should go beyond a purely formal check of the appropriate administrative documents; it should also include a proper hearing, which might take place at the hospital, enabling direct contact to take place between the parties concerned, namely the patient, doctor and judge. That would not only enable any explanations by the patient and the psychiatrist to be heard, but also enable the decision to be communicated directly to the patient (with the doctor's help if necessary). Furthermore, the judge's order should be placed in the patient's file, and a copy should be handed to the patient, officially informing him or her of the decision and of his or her possibilities to appeal against it. **The CPT recommends that the Italian authorities take measures to improve the judicial phase of the TSO procedure in the light of the above comments.**

In addition, **it would be desirable for changes to a patient's legal status – such as from involuntary to voluntary – to be countersigned by the patient concerned in his or her medical file (as well as being signed by the doctor)**⁹⁹.

⁹⁷ The psychiatrists present also provided the hospital's emergency psychiatric service, as well as a liaison psychiatry service.

⁹⁸ Although this is not explicitly indicated, the CPT is basing itself on the principle that this certificate is the "co-validation" certificate provided for by the law.

⁹⁹ Or the patient should countersign Form No. 4367 used at ASL Napoli 1, which explicitly mentions this possibility. In this respect, it should be noted that half the patients have originally been admitted to the SPDC by non-voluntary measures (TSO), and have subsequently given their verbal consent to treatment.

171. More generally, and in the context of the current discussions in Italy on the occasion of the 30th anniversary of Law No. 180, **the CPT wishes to reiterate the recommendations already made in its report on the 2004 visit concerning the medical aspects of the TSO procedure (see CPT/Inf (2006)16, paragraphs 149, 150, 151 and 155).**

APPENDIX I**LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS
AND REQUESTS FOR INFORMATION****Co-operation between the CPT and the Italian authorities**comments

- the CPT trusts that the Italian authorities will take the necessary steps to avoid any repetition of situations of the kind described in paragraph 6 (paragraph 6).

requests for information

- a complete list of all municipal police establishments which have detention cells (paragraph 7).

Law enforcement agencies**Preliminary remarks**comments

- the CPT encourages the Italian authorities to redouble their efforts to introduce as soon as possible the offence of torture into the Penal Code, in accordance with Italy's international obligations (paragraph 12).

requests for information

- the outcome of the court proceedings concerning the events in Naples (March 2001) and Genoa (July 2001) (paragraph 11).

Ill-treatmentrecommendations

- a formal statement emanating from the relevant authorities to be delivered to all law enforcement officials (including municipal police officers) in the Brescia 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 will be the subject of severe sanctions (paragraph 13);

- 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 the subject of severe sanctions. Police officers should also be reminded that no more force than is strictly necessary is to be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them (paragraph 13).

Safeguards against ill-treatment

recommendations

- steps to be taken by the relevant authorities to ensure that, in all law enforcement establishments in Italy, persons who have been detained – 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 the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a copy of the information sheet referred to in paragraph 14. Further, the persons concerned should be asked to sign a statement certifying that they have been informed of their rights (paragraph 14);
- the Italian authorities to take effective steps to ensure that all persons deprived of their liberty by law enforcement agencies are granted the right to notify a close relative or third party of their choice of their situation and the right of access to a lawyer, as from the very outset of their deprivation of liberty. These rights should be enjoyed not only by criminal suspects, but also by anyone who is under a legal obligation to attend – and stay at – a law enforcement establishment (paragraph 15);
- the Italian authorities to take all necessary steps – including of a legislative nature – to ensure that every person detained by law enforcement agencies has 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* (paragraph 16);
- specific legal provisions to be adopted governing the right of persons detained by law enforcement agencies to have access to a doctor – including if they so wish (and at their expense) to one of their own choice. This right should apply as from the very outset of their deprivation of liberty (paragraph 17);
- immediate steps to be taken to ensure that in all law enforcement establishments:
 - 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;
 - medical data are no longer accessible to non-medical staff (paragraph 17);
- 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 18).

comments

- officers in all law enforcement establishments visited should be reminded to meticulously maintain custody registers (paragraph 18).

requests for information

- the concrete steps taken by the Italian authorities in response to the recommendation made by the CPT in paragraph 19 of the report on the 2004 visit (i.e. that the detention facilities of all law enforcement agencies be visited effectively by the relevant judicial authorities and that the possibility of inspections of law enforcement detention facilities being carried out additionally by other independent bodies be examined) (paragraph 19).

Conditions of detention

recommendations

- 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 20);
- the metal bars fixed along two concrete platforms in one of the cells at Brescia Municipal Police Headquarters to be removed without delay (paragraph 20).

Milan Identification and Expulsion Centre

Ill-treatment

recommendations

- the Italian authorities to remind all State police officers (and other law enforcement officials working in the CEIs), at regular intervals and in an appropriate manner, that all forms of ill-treatment of detained persons are unacceptable, that any information on instances of ill-treatment will be investigated and that those responsible for ill-treatment will be severely punished (paragraph 30);
- Red Cross staff (including medical and nursing staff) to be reminded of their responsibility to protect the physical integrity of detained persons entrusted to their care. This responsibility includes the comprehensive recording of any complaints made by a detained person about acts of violence (including complaints against law enforcement officials) and of objective descriptions of any injuries suffered, as well as taking appropriate medical and/or administrative measures (including, if necessary, informing the relevant authorities) (paragraph 31).

requests for information

- the outcome of the judicial investigation into the incident described in paragraphs 27 and 28, and any measures taken as a result (at criminal and/or disciplinary level) (paragraph 30).

Conditions of detentionrecommendations

- foreign nationals at the Milan CEI to be offered a greater number and broader range of activities (sports in particular) (paragraph 33).

comments

- the outdoor exercise yard at the Milan CEI only offered partial protection against inclement weather (paragraph 32);
- the reception centre for asylum-seekers (CARA) in Milan should not be located in prison-like premises (paragraph 35).

requests for information

- further details on the plan to relocate the CARA in Milan (paragraph 35).

Staffcomments

- the regular (albeit not constant) presence of staff in the living units at the Milan CEI is necessary, in order to detect behaviour indicative of risk and to be able to intervene in time (and particularly to locate and protect vulnerable detained persons), as well as to organise simple activities (paragraph 38).

Seclusionrecommendations

- within all CEIs, clear procedures (accompanied by appropriate safeguards) for the segregation of a detained person from other inmates for reasons of good order or security to be formally established and applied in practice (paragraph 40).

comments

- a room for sick patients should as a rule not be used for purposes other than medical ones. Further, the use of the infirmary's room for medical seclusion purposes should be duly recorded in a specific register (paragraph 39).

Health carecomments

- all newly-arrived foreign nationals in the CEI and CARA in Milan should be systematically offered an HIV and hepatitis C virus test. More generally, it would also appear necessary for additional efforts to be made in terms of risk-management policy (for example, condoms should be made available, free of charge, at the infirmary) (paragraph 43);
- the Italian authorities are invited to remedy the shortcomings described in paragraph 45 regarding the keeping of medical and nurses' records at the Milan CEI (paragraph 45);
- foreign nationals transferred directly from a prison to a CEI should be issued with a liaison sheet by the prison's medical service (paragraph 46);
- all foreign nationals returning to a CEI following a failed deportation by air should undergo a proper medical examination (paragraph 46).

Other issuesrecommendations

- appropriate steps to be taken to ensure that, in the context of judicial procedures for confirmation (*convalida*), the detainee's lawyer can read the file and briefly confer with his/her client before the hearing with the justice of peace, if necessary with the aid of an interpreter (paragraph 48).

comments

- the Italian authorities are invited to abolish the eight-day waiting period before detained foreign nationals can receive visits from their relatives or friends (paragraph 47);
- in order to be effective, the statutory time-limits in force in identification and deportation procedures must run from a specified moment (date and time), which was not always the case in the documents seen by the delegation at the Milan CEI (paragraph 48).

requests for information

- clarification of the various statutory time-limits in force in identification and deportation procedures as from the moment when a foreign national illegally staying on Italian territory is stopped and questioned (paragraph 48);
- updated information on the plan to set up a CEI in Lampedusa (capacity, staffing, etc.) and on the steps taken to ensure that the judicial authorities effectively perform their supervisory role in detention and deportation procedures (paragraph 49);
- detailed information on the practical steps taken by the Italian authorities in Lampedusa to prevent the deportation (*refoulement*) of foreign nationals to countries where there are substantial grounds for believing that they would run a real risk of being subjected to torture or ill-treatment (paragraph 50).

Prisons

Preliminary remarks

recommendations

- the Italian authorities to pursue vigorously the adoption and implementation of a coherent strategy designed to combat prison overcrowding, in the light of 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) and 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 (paragraph 55).

Ill-treatment

recommendations

- the management at Brescia and Cagliari Prisons to recall to their staff that all forms of ill-treatment of prisoners (including verbal abuse) are not acceptable and will be the subject of severe sanctions (paragraph 56);
- officers of the GOM (*Gruppi Operativi Mobili*) at Novara Prison to be formally reminded that there can never be any justification for prison staff to strike a prisoner who is immobilised on the ground, after having been brought under control, and that no more force than is strictly necessary and proportionate should be used to bring an agitated and/or violent prisoner under control (paragraph 57);

- the Italian authorities to redouble their efforts to develop strategies with a view to addressing the problem of inter-prisoner violence at Brescia and Cagliari Prisons, in the light of the remarks made in paragraph 59 (paragraph 59).

requests for information

- detailed information on the concrete measures taken by the Italian authorities to tackle the problem of alcohol abuse in Italian prisons, with a view to preventing both violence and alcoholism among prisoners (paragraph 60).

Conditions of detention of the general prison population

recommendations

- the Italian authorities to draw up and progressively implement a plan to improve material conditions in the detention areas at Brescia Prison (paragraph 61);
- steps to be taken immediately at Brescia and Cagliari Prisons to ensure that all prisoners are provided with basic personal hygiene products and a bed with a mattress (paragraph 61);
- the Italian authorities to redouble their efforts to improve the programme of activities offered to prisoners at Brescia, Cagliari and Naples-Secondigliano Prisons and, where appropriate, at other prisons in Italy. For this purpose, staffing levels and the staff attendance system should be reviewed (paragraph 62).

requests for information

- a timetable for the implementation of the plan to improve material conditions in the detention areas at Brescia Prison (paragraph 61);
- the progress made in the construction of the new prison in Cagliari (paragraph 61).

Prisoners subjected to the “41-bis” regime

recommendations

- the Italian authorities to permit those “41-bis” prisoners at Novara Prison who wish to do so to shade the windows of their cell at night (paragraph 70);
- the Italian authorities to take steps to equip Novara Prison with the facilities necessary for the effective implementation of the legal provisions relating to group and sports activities. If this should prove impossible, consideration should be given to transferring the prisoners concerned to establishments which can fulfil the legal requirements (paragraph 71);

- in parallel with the provision of suitable facilities/premises, the detention regime of “41-bis” prisoners at Novara Prison to be reviewed, so as to offer more purposeful activities to prisoners and allow them to spend more time outside their cells (paragraph 72);
- the sound quality in the closed visiting facilities at Novara Prison to be checked – when all the cubicles are being used simultaneously – and, if necessary, improvements to be made (paragraph 77);
- the Italian authorities to take steps to improve the opportunities given to “41-bis” prisoners to maintain genuine human contact, whether with relatives (in particular children), fellow prisoners or members of staff. Such steps should be able to be taken without jeopardising the security of the establishment, and without facilitating contact between prisoners and the organisations to which they belong (paragraph 78);
- steps to be taken to ensure that “41-bis” prisoners are:
 - not systematically denied access to a telephone during the initial six-month period of detention under the “41-bis” regime;
 - allowed to accumulate hours of visiting time over a calendar year;
 - not systematically refused open visits for long periods (paragraph 80);
- all cell searches to be carried out in the presence of the prisoner concerned, in compliance with Rule No. 54 of the Revised European Prison Rules (paragraph 81);
- the Italian authorities to reconsider the draft legislative amendments described in paragraphs 83 and 84, in the light of the remarks made in paragraph 84 (paragraph 84).

comments

- the Italian authorities are invited to review the list of items that “41-bis” prisoners are allowed to keep in their cell, in the light of the remarks in paragraph 70 (paragraph 70);
- steps should be taken to review the conditions in which visits of young children take place at Novara Prison and other prisons accommodating “41-bis” prisoners, in the light of the remarks in paragraph 77 (paragraph 77);
- the CPT considers it essential for “41-bis” prisoners to have, as well as direct access to the responsible supervisory judge, direct access to the management of the establishment (both the prison director and the head of the medical service) (paragraph 85).

requests for information

- detailed information about the implementation in the “41-bis” unit at Novara Prison of the circular referred to in paragraph 69 (in particular, the list of newspapers prohibited and/or censored and the number of bans imposed in 2008) (paragraph 69);

- confirmation that the prisoner referred to in paragraph 86 is no longer detained in an *area riservata* and that he is now held in a “41-bis” unit under the same conditions as other “41-bis” prisoners (paragraph 86).

Health care

recommendations

- the Italian authorities to take the necessary measures to ensure full communication across all levels of management and staff regarding the transfer of responsibility for prison health care from the Ministry of Justice to the Ministry of Health, as well as the careful planning and execution of the practical steps necessary to ensure continuity and quality of care to all prisoners (paragraph 87);
- steps to be taken at Brescia and Naples-Secondigliano Prisons to ensure that all newly-arrived prisoners are subjected to a comprehensive medical examination on admission (including screening for tuberculosis) (paragraph 90);
- steps to be taken in all the establishments visited – and indeed in the entire prison system in Italy – to ensure 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 on request to the prisoner concerned and his/her lawyer (paragraph 92);
- whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record should be immediately brought to the attention of the relevant prosecutor (paragraph 92);
- the shortcomings listed in paragraph 95 concerning the situation of sick prisoners newly-admitted to Naples-Secondigliano Prison to be remedied without delay (paragraph 95);
- nursing staffing levels to be significantly increased in the Diagnostic and Treatment Centre (CDT) at Naples-Secondigliano Prison (paragraph 96);
- steps to be taken at Novara Prison to put an end to the long delays, for “41-bis” prisoners, as regards both the supply of prescribed medicines and the carrying out of medical examinations which have to be performed outside the prison (paragraph 97);

- all necessary measures to be taken to speed up the renovation of the premises of the Centre for Neuropsychiatric Observation (CONP) at Milan-San Vittore Prison and to enable the CONP patients to be transferred to appropriate premises pending the completion of that renovation (paragraph 101);
- steps to be taken to ensure that a nurse is present in the CONP at Milan-San Vittore Prison around the clock; the health-care team should be reinforced by the presence of a second nurse during the day (paragraph 103);
- an immediate end to be put to the practice of employing members of the prison service for medical secretarial work in the CDT at Milan-San Vittore Prison; prisoners have the right – like any patient in the outside community – to protection of their medical data (paragraph 104);
- urgent steps to be taken to review the provision of psychiatric care in the establishments visited. In particular, steps should be taken to:
 - increase the presence of psychiatrists and ensure that prisoners suffering from severe disturbances are transferred without delay to an appropriate psychiatric establishment (if necessary a civil psychiatric institution);
 - provide suicide-proof clothing for use in appropriate circumstances;
 - ensure that patients are not handcuffed inside a cell (paragraph 108);
- the Italian authorities to take the necessary steps throughout the prison system to ensure that foreign prisoners benefit, if necessary, from professional interpretation during medical consultations. For this purpose, the introduction of an interpretation service via telephone should be considered (paragraph 109);
- the arrangements for the provision of dental care to be improved in all the establishments visited, in the light of remarks made in paragraph 110. More particularly, dental treatment provided free of charge should not be limited to dental extractions (paragraph 110);
- the Italian authorities to take immediate steps 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 no longer accessible to non-medical staff (paragraph 111).

comments

- steps should be taken to remedy the shortcomings listed in paragraph 89 concerning the health-care facilities at Naples-Secondigliano Prison (paragraph 89);

- the CPT encourages the Italian authorities to adopt a comprehensive preventive programme in all the establishments visited to reduce the spread of transmissible diseases inside prison (see also Recommendation (93) 6 of the Committee of Ministers of the Council of Europe concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison and the Guidelines of the World Health Organization on HIV infection and AIDS in prisons). Such a programme should also address the risks of HIV or hepatitis B/C infection through sexual contact and intravenous drug use (paragraph 98);
- the CONP's current premises at Milan-San Vittore Prison, even after renovation, would not provide all the necessary facilities (particularly a medical office and a consultation room worthy of the name, and a multi-purpose area for patients, which they could use as both an activities room and a refectory/TV room) (paragraph 101);
- an increase in qualified health-care staff and the availability of suitable premises for the CONP at Milan-San Vittore Prison should enable a wider range of therapeutic approaches to be adopted, involving in particular the organisation of group activities for psycho/socio-therapeutic purposes (paragraph 102);
- once the problems of premises have been resolved, the regular provision of the services of an occupational therapist should also be considered at the CONP at Milan-San Vittore Prison (paragraph 103);
- a register recording the use of means of restraint should be introduced at the CONP at Milan-San Vittore Prison, in accordance with the CPT's standards on this subject (paragraph 105).

requests for information

- detailed information on the implementation of the transfer of responsibility for prison health care from the Ministry of Justice to the Ministry of Health (paragraph 87);
- detailed information on the number of doctors and nurses (including an indication of the number of posts) employed in all the establishments visited (paragraph 94).

Other issues

recommendations

- the situation of "collaborators of justice" at Naples-Secondigliano Prison to be reviewed, in the light of the remarks made in paragraph 112. In particular, steps should be taken to ensure that the prisoners concerned are:
 - offered a better range of activities; the longer the period they are in the establishment, the more developed should be the activities provided to them;
 - effectively able to benefit from the legal outdoor exercise entitlement of at least two hours every day;
 - provided adequate psychological support (paragraph 113);

- staff dealing with “collaborators of justice” at Naples-Secondigliano Prison to be instructed to create appropriate relations with the prisoners concerned (paragraph 113);
- the Italian authorities to pursue their efforts as a matter of urgency to fill the vacant prison officers’ posts at Cagliari Prison (paragraph 114);
- steps to be taken to ensure, throughout the entire prison system, that prisoners who are subjected to a disciplinary sanction receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. The prisoners concerned should confirm in writing that they have received a copy of the decision (paragraph 116);
- steps to be taken to ensure that appeals against disciplinary sanctions are also examined on the merits by supervisory judges (paragraph 116);
- existing legal arrangements and practice concerning the role of prison doctors in relation to disciplinary matters to be reviewed. In so doing, regard should be had to the Revised European Prison Rules and the comments made by the CPT in paragraph 53 of its 15th General Report (CPT/Inf (2005) 17) (paragraph 117);
- the Italian authorities to review the functions and resources of supervisory judges in order to ensure that the oversight of prisons is carried out in a proactive way. Those exercising the oversight function should talk with prisoners and staff in the detention areas and carry out spot checks of practice and conditions (paragraph 118).

comments

- the CPT encourages the Italian authorities to avoid accommodating “collaborators of justice” in the health-care facilities at Naples-Secondigliano Prison, if there is no medical reason for doing so (paragraph 113);
- the current arrangements concerning the right of prisoners to legal assistance in the context of disciplinary proceedings should be reviewed, in the light of the remarks made in paragraph 116 (paragraph 116).

Psychiatric establishments

Filippo Saporito Judicial Psychiatric Hospital, Aversa

recommendations

- the Italian authorities to :
 - re-examine forthwith the running of the Aversa OPG with regard to both the material conditions and the patients' daily regime. The aim should be to establish a therapeutic environment, with residential structures based on single rooms or small units, which can facilitate the allocation of patients to relevant categories for therapeutic purposes;
 - pursue their efforts to improve the number and variety of day-to-day activities offered to patients;
 - improve the conditions under which patients take outdoor exercise and make it possible for patients to pursue supervised recreational and sports activities (paragraph 132);
- the number of cleaning staff working in the Aversa OPG to be increased with the aim of attaining hospital-level hygiene (paragraph 134);
- the Italian authorities to draw up individualised treatment plans for all patients at the Aversa OPG and to further develop therapeutic activities in parallel, in the light of the remarks in paragraph 136 (paragraph 136);
- the Italian authorities to:
 - substantially increase the psychiatrists' attendance hours at the Aversa OPG, so as to ensure adequate cover every day in each unit, and a psychiatrist on call for the OPG around the clock;
 - considerably increase the number of nursing staff at the Aversa OPG so that three nurses (or two nurses and one medical orderly) are present during the day-shift in each residential unit;
 - reinforce the team of qualified specialists responsible for running the therapeutic and rehabilitation activities at the Aversa OPG, by increasing the number of psychologists and recruiting occupational therapists;
 - relieve educators at the Aversa OPG of the administrative duties that are not part of their job and recruit additional social workers to liaise with the external social services (paragraph 145);

- the Italian authorities to take the necessary steps to comply with the principles set out in paragraph 147 concerning the selection, training and supervision of members of the prison service who perform security-related tasks in an OPG. In particular, training schemes for prison service staff working in judicial psychiatric hospitals should be developed (paragraph 147);
- regular multidisciplinary and cross-sectoral meetings of health-care staff to be introduced at all levels within the Aversa OPG (paragraph 149);
- a clear policy to be drawn up, preferably at national level, concerning the use of means of restraint, on the basis of the relevant standards of the CPT (paragraph 155);
- immediate measures to be taken at the Aversa OPG to review the situation of the patient referred to in paragraph 156; in addition, this patient should be allowed the same exercise time as other (non-secluded) patients (paragraph 156);
- the Italian authorities to take the appropriate steps to ensure that patients are not detained in OPGs for longer than their mental condition requires (paragraph 159);
- immediate steps to be taken to put an end to the procedural irregularities described in paragraph 161 (paragraph 161);
- a brochure describing the running of the hospital and the patients' rights and obligations to be issued to each patient and his/her family at the time of admission to the Aversa OPG. Patients who are unable to understand this brochure should be provided with appropriate assistance (paragraph 162);
- the sanitary inspection task force (NAS) to be authorised to carry out regular, unannounced visits to OPGs and *Case di Cura e Custodia* (paragraph 163).

comments

- the Italian authorities are invited to review the policy applied in situations of conflicts between patients and to develop procedures for managing conflicts between patients (and possibly between staff and patients) that are more appropriate to the specific environment of a health-care establishment such as an OPG. These procedures should be an integral part of the training given to staff working in OPGs (both basic and in-service training) (paragraph 125);
- the CPT trusts that the arrangements for accommodating patients in dormitories will be reviewed in the context of future renovation projects at the Aversa OPG (paragraph 135);
- both the radiography equipment (over 35 years old) and the dentist's chair (over 15 years old) at the Aversa OPG were outdated and should be replaced (paragraph 138);
- the psychiatric notes in medical files at the Aversa OPG were quite brief and incomplete (paragraph 139);

- the Italian authorities are invited to undertake at national level a study of the particular situation of OPG patients, which would lead to the introduction of a specific suicide prevention programme adapted to OPGs (paragraph 140);
- the problem of the management of the pharmacy in the Aversa OPG should be resolved (paragraph 145);
- in the interest of safeguarding the doctor/patient relationship, psychiatrists should not be required to draw up psychiatric reports on their own patients for judicial authorities (paragraph 146);
- a solution should be found at the Aversa OPG making it possible to safeguard medical confidentiality, while providing the custodial staff with appropriate information (paragraph 148).

requests for information

- comments of the Italian authorities on the remarks made by the CPT concerning the distribution of roles between “Prison Directors” and “Medical Directors” in OPGs (paragraph 122);
- a detailed evaluation of the ongoing transfer of the responsibility for health care from the Ministry of Justice to the Ministry of Health with regard to prisoners suffering from mental pathologies, as well as information on the Italian authorities’ medium- and long-term plans (paragraph 123);
- clarification as to whether accommodating patients placed in OPGs together with patients who are the subject of a *Casa di Cura e Custodia* placement is appropriate and legally founded (paragraph 131);
- follow-up to the request submitted by the Director of the Aversa OPG to the local health authorities regarding the provision of appropriate equipment for bedridden and/or incontinent patients (paragraph 133);
- comments on the issue of safeguards in relation to the involuntary treatment of patients in OPGs (paragraph 158);
- comments on the need to introduce into the judicial process advice from independent psychiatric experts who do not have medical links to the patient (paragraph 160).

Psychiatric Diagnosis and Treatment Department (SPDC) at San Giovanni Bosco Hospital, Naplesrecommendations

- the Italian authorities to take measures to improve the judicial phase of the involuntary medical treatment (TSO) procedure, in the light of the remarks in paragraph 170 (paragraph 170);
- the Italian authorities to implement the recommendations already made in the report on the CPT's 2004 visit concerning the medical aspects of the TSO procedure¹⁰⁰ (paragraph 171).

comments

- a regular contribution from a psychologist and a social worker in the SPDC at the San Giovanni Bosco Hospital in Naples would be desirable (paragraph 167);
- it would be desirable for changes to a patient's legal status – such as from involuntary to voluntary – to be countersigned by the patient concerned in his or her medical file (as well as being signed by the doctor) (paragraph 170).

¹⁰⁰ See CPT/Inf (2006)16, paragraphs 149, 150, 151 and 155.

APPENDIX II

LIST OF THE NATIONAL AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS

A. National authorities

Ministry of Justice

Angelino ALFANO	Minister
Settembrino NEBBIOSO	Head of the Minister's Office
Franco IONTA	Head of the Department of the Correctional System
Italo ORMANNI	Head of the Department of Judicial Affairs
Sebastiano ARDITA	Director of the General Directorate for prisoners
Emilio DI SOMMA	Acting Vice-Head of the Department of the Correctional System
Serenella PESARIN	Director General at the Juvenile Justice System
Giuseppe CAPOCCIA	Director of the Unit on Studies, Research, Legislation and International Relations at the Department of the Correctional System, liaison officer of the CPT
Nadia PLASTINA	Head of the Human Rights Unit – Department of Judicial Affairs
Stefano AMORE	Officer at the Legislative Service

Ministry of the Interior

Michelino DAVICO	Undersecretary of State
Michele PENTA	Prefect, Deputy Director of the Department of Immigration and Civil Liberties
Giuseppe FORLANI	Prefect, Central Director of the Immigration Civil Service
Dario CAPUTO	Vice-Prefect, member of the Office of the Director of the Department of Immigration and Civil Liberties
Maurizio FALCO	Vice-Prefect, member of the Office of the Director of the Department of Immigration and Civil Liberties
Giuseppe LINARDI	Prefect, Director of the General Administration Directorate of the Public Security Department

Maria FORTE	Vice-Prefect, General Administration Directorate of the Public Security Department
Vincenzo GIACOBBE	Senior Officer of the State Police, Central Directorate for General Affairs of the State Police
Rosa Maria PRETEROTI	Senior Officer, Central Directorate of the Immigration and Border Police

Ministry of Labour, Health and Social Policies

Fabrizio OLEARI	Director General of the Health Prevention Directorate
Guido DITTA	Director of the VII Unit at the Health Protection Directorate
Teresa DI FIANDRA	Officer of the VII Unit at the Health Protection Directorate
Colomba IACONTINO	Senior Officer at the Department for Innovation

Ministry of Defence – Carabinieri Corps (*Arma dei Carabinieri*)

Colonel Saverio COTTICELLI	Commander of the sanitary inspection task force (<i>Nuclei Antisofisticazioni e Sanita – NAS</i>)
Colonel Marco MINICUCCI	General Headquarters of the <i>Carabinieri</i>
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Minister Valentino SIMONETTI	President of the Inter-Ministerial Committee on Human Rights
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B. Non-governmental organisations

Antigone

Consiglio italiano per i rifugiati



CPT/Inf (2010) 13

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 its visit to Italy**

from 14 to 26 September 2008

The Italian Government has requested the publication of this response. The report of the CPT on its September 2008 visit to Italy is set out in document CPT/Inf (2010) 12.

Strasbourg, 20 April 2010

Contents

INTRODUCTION.....	5
A. LAW ENFORCEMENT AGENCIES	7
B. MILAN IDENTIFICATION AND EXPULSION CENTRE	19
C. PRISONS	21
D. PSYCHIATRIC ESTABLISHMENTS	34
CONCLUSIONS	45
APPENDIX I:	
 PRELIMINARY COMMENTS BY THE ITALIAN AUTHORITIES,	
 TRANSMITTED BY LETTER OF 14 NOVEMBER 2008.....	49

INTRODUCTION

Further to Italy's preliminary remarks, dated November 14, 2008, Italy is in a position to provide the following additional relevant information:

1. The **Italian Basic Law** determines the political framework for action and organization of the State.
2. As recalled by Government's remarks dated January 2006, 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 right to work (Arts. 1, 4, 35 and ff.); 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 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.
4. As for the lack of **cooperation with the CPT at Cagliari prison** or of ill-treatment, Italian penitentiary administration will take care to intervene in order to verify what happened and to make aware all the workers involved, in order to take on all the initiatives which will be considered necessary.
5. In accordance with the legislation in force, specifically Article 296 of Royal Decree No. 1629/1930 - as amended by relevant subsequent legislation, lastly Presidential Decree No. 230/2000-, only individuals put under arrest or apprehended are brought to **security rooms**, within limits set forth by the code of criminal procedure, which favours the immediate transfer to jail (see also in this regard, hereinafter, Section C).
6. In accordance with Article 386, paras. 3 and 4 of the code of criminal procedure, "as soon as possible and in no event later than 24 hours after the arrest", the judicial police "makes the arrestee available" to the prosecutor, by bringing such individual to the remand prison or to the district penitentiary where the arrest or the apprehension took place.
7. By Article 3 of Act No. 65/1986, **upon request by the Mayor to the Prefect**, the municipal Police may also cover the role of public security agents, in order to support the State Police forces. Specifically, in accordance with Article 57, paras.2 and 3 of the code of criminal procedure, the **municipal Police** may execute investigations, in the same way and by covering the ranks of judicial police agents and officers.
8. When performing the above duties, the municipal Police is under the responsibility of the Judicial Authorities or Public Security's, and only for specific operations, previously agreed upon and by motivated decree.
9. Among acts to be carried out by the municipal Police, it is worth recalling as follows: apprehension (Art. 384 of the code of criminal procedure), identification (Art. 349 of the code of criminal procedure), the arrest in *flagrante delicto*, both mandatory and discretionary ones (Arts. 380 - 381 of the code of criminal procedure).
10. The arrest *flagrante delicto* is usually carried out by the judicial Police and only under exceptional circumstances by private citizens. The code envisages both detailed circumstances and the procedure to be followed, up to the confirmation by the justice.
11. Arts. 380 – 381 of the code of criminal procedure, following the arrest, envisage **specific duties to be performed by the judicial police, over which the prosecutor always executes an ad hoc control**.

12. As per procedure, by receiving the report on the arrest or the apprehension, the prosecutor carries out a preliminary control over the operation executed by the judicial police, through three options: **the first one**, as laid down by Article 389 of the code of criminal procedure, envisages that the prosecutor may free the arrestee in the event of : a) misidentification; b) ineffectiveness of the measure due to expiration of the terms for the transmission of relevant acts to the public prosecutor's office; c) the arrest or apprehension was carried out outside the law. In such cases, the public prosecutor will not request the justice to confirm the arrest or the apprehension measure. The **second one**, as envisaged by Art. 121 of the implementing provisions, enables the prosecutor to request the justice the confirmation of the arrest or the apprehension measure without applying the precautionary measure in accordance with Art.391, para.5 of the code of criminal procedure. The **third option** takes shape when the prosecutor requests the justice to confirm the arrest measure and further requests the issuance of a precautionary measure.

A. LAW ENFORCEMENT AGENCIES

13. As for the criminal proceedings **No. 1*** and **No. 2 at the Naples Tribunal, respectively**, they are about to be concluded. Proc. No. 1, against A, is at the stage of the investigation hearing. Next procedural activity refers to the prosecutor's bill of indictment to take place during the hearing dated October 9, 2009.

- Proc. No. 2, against B - in which the position of the first defendant, C has been separated by the main proceeding – has been the subject of various adjournments, to allow the summons notification to other defendants, residing outside said district; The proceeding was regularly initiated with the correct entry of appearance dated 7.07.06. Then there was an acquittal verdict for D. At this stage, it is envisaged the hearing of the witnesses for the defence. Next hearing has been scheduled for October 21, 2009.

14. As for three proceedings at **the Genoa Tribunal**, they are at the stage of the appeal. All the relevant documentation concerning **proceedings 3, 4 and 5** has been transferred to the Court of appeal on 28.7.2009, 21.4.2009, and 21.5.2009, respectively.

15. The Italian Constitution envisages the punishment for any physical and psychological violence perpetrated against persons whose liberty is restricted (Art. 13 of the Italian Constitution).

16. As far as the **crime of torture is concerned**, the military criminal code of war – as modified by Act No. 6/2002 – which explicitly provides that a soldier who, for reasons which are not unrelated to war, carries out acts of torture or other inhuman treatments, illegal transfers and other conducts which are prohibited by international conventions “to the detriment of war prisoners or civilians or other individuals protected by the above-captioned international conventions”, is punishable with military imprisonment, from one to five years (Article 185 bis of the military criminal code of war, R.D. No. 303 /1941).

17. In this regard, it is worthy of mention that the said provision is applied unless the fact constitutes a more serious offence: a conduct defined as torture could therefore fall within the definition of common offences, such as bodily injury (Article 582 of the criminal code), sexual assaults (Article 609 bis of the criminal code) and false imprisonment (Article 605 of the criminal code) **which are sanctioned with a more serious penalty**.

18. Moreover, Article 184 bis of the criminal military code of war provides for the offence of capturing hostages which is punishable with military imprisonment from two to ten years. The same penalty is inflicted upon a soldier who threatens to wound or kill a person who is unarmed or has not a hostile attitude, and who was captured or arrested for reasons which are not unrelated to war, in order to force her/him to surrender other persons or things.

19. If violence is committed, the provisions set forth in Article 185 apply. Article 185 provides that: “The soldier who, without it being necessary or, in any case, without any just cause, uses violence against private enemies, who are not taking part in the military operations, is punishable with military imprisonment for up to two years. If the violence consists in a manslaughter, even attempted or involuntary, or in a serious or very serious personal injury, penalties provided for by the criminal code are applied. However, the period of temporary imprisonment may be increased. The same penalties are inflicted upon the inhabitants of the territory of the enemy State occupied by Italian armed forces when such inhabitants use violence against any individual belonging to said forces”.

20. As to the criminal code, it is worth recalling 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.

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

21. These safeguards are supplemented by provisions under Article 581 (battery), Article 582 (bodily injury), Article 610 (duress, in cases where violence or threat being 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).

22. 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”.

23. Concerning the allegations received by the CPT, Italian Authorities reiterate their firm commitment towards the repression of any of such events and, thus, are available to get any relevant information in order to follow up, accordingly.

24. No complaint has been filed concerning alleged blows **by personnel of the Carabinieri Corps based in Brescia Province.**

25. **At Gardone Val Trompia Carabinieri barracks**, two arrestees were placed in the **security rooms** further to a car robbery. One of them, during the hot pursuit, went out of the way with the stolen car and reported very light abrasions to his face and his legs/arms, which were not visible even by the identification photos.

26. During the confirmation hearing before the preliminary investigations justice (acronym in Italian, GIP) and at the District Penitentiary in Mombello (Brescia), the above arrestees did not mention any events relating to alleged blows. However, it emerged that they were not reported on the Register of those who are place in the security cells “*Registro delle persone ristrette nelle camere di sicurezza*”. Therefore the superiors of the Carabinieri personnel, being in service at the relevant barracks, released the disciplinary sanction called “reprimand”, due to the lack of registration in the above Register

27. As for **alleged oral abuse episodes**, according to the General Regulation of the Carabinieri Corps, such acts fall under the so-called “gross negligence” – to be severely punished in line with the criminal legislation in force.

28. As for the internal management of the Carabinieri Corps, new provisions have been addressed to the local Headquarters, in order to draw attention to the correct maintenance of the “**Register for the individuals placed in the security rooms/Registro delle persone ristrette nelle camere di sicurezza**” and of “**the rights pamphlet/foglio dei diritti**”¹.

29. Equally worth of mention, **by signing under an ad hoc item of the above Register**, the arrestee confirms that **s/he received the above pamphlet**. Such procedure has been reminded to the Carabinieri personnel¹.

30. With respect to ethics, professionalism and management, **specific directives have been issued to prevent and repress any inappropriate or aggressive behaviour, which may contribute to negatively affect the contacts with private citizens.**

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).

31. There is an increasing acknowledgement of the importance and **the impact of training activities, including HRE courses**, for the entire category of law and order enforcement officers. All Italian forces pay the utmost attention to IHL and to human rights law within the framework of the training and educational activities performed at ad hoc Institutes.

32. In this context, it is worth recalling that the State Police and the financial Police fall under the responsibility of the Interior and Finance Ministries, respectively, while the penitentiary Police fall under the Ministry of Justice's.

33. The Ministry of Defense controls the Carabinieri Corps, a military security Force that, however, falls within the Ministry of Interior umbrella when performing public security and public order duties.

34. 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 performing police activity, Carabinieri are supervised by the Ministry of Interior.

35. As for the **Revenue Guard Corps**, human rights law is considered within the study of public international law. Such a subject included in training courses – carried out by the Italian Red Cross and by the UNHCR (in Italian, ACNUR). In 2009, 1202 members of the Revenue Guard Corps attended the following courses: 1. one on the role of the United Nations, specifically of the UN HCR; 2. another one on IHL; 3. last, an advanced course on IHL for the personnel of the Armed Forces.

36. One of the main concerns of the Penitentiary Administration is to provide **penitentiary police staff** with training and continuous training on the topics regarding the respect of the dignity and the rights of the person, as well as the management and treatment of the various typologies of prisoners (persons cooperating with justice, minors, “prisoners held under 41-b regime”, internees) and the different ways to approach them.

37. Such topics are included both in the basic training programme for the newly recruited persons, with particular regard to the operational aspect of their role and in training projects carried out in the course of the career of the employee for his/her continuous training or with reference to specific fields of interventions such as the training of staff employed in the transfers of persons cooperating with justice or in the surveillance of prisoners held under 41-b regime.

38. In the training activities planned by the Higher Institute of Penitentiary Studies of the Department of Penitentiary Administration the topic of human rights has always been included, addressed to penitentiary police staff, to executives and to administrative staff, both at a decentralized and a centralized level.

39. In particular in the planning 2006-2009, training guidelines have highlighted some action priorities among which the first has been the centralness of **the individual serving a sentence**. Paying attention to the person as main beneficiary of the service and bearing needs continuously evolving implies that penitentiary workers have to meet individual needs with appropriate behaviours.

40. The purpose is to guarantee the constitutional function of the penalty, in the context of a renewed vision of the security of society to which the second priority is linked. The latter is included in the wide context of “the culture of legality, which is the best instrument of prevention on which we can count”. Programmed training has been and will be addressed to the ethical value of interventions².

41. A particular attention has been paid to this topic, involving transversally all professionals, in order to increase the professional awareness of penitentiary workers towards the person serving a sentence to encourage his/her social integration.

² Mr. Giorgio Napolitano, Head of State, speech at Rebibbia prison, on May 8, 2007.

42. To this aim, the following issues have been addressed: **ethics**, guaranteeing and promoting the values of freedom and dignity of the person, through professional principles in order to prevent discriminations during the execution of the sentence; **Universal human rights** and the relevant operational implications which they have in the penitentiary system.

43. The principles of Law 354/75, provided for by the Constitutional Charter, in fact place the dignity of the person at the centre of the institutional interest. The strengthening and the recovery of his dignity, therefore, cannot be compromised by the afflictive character of the penalty. To this purpose, the Universal Declaration of human Rights protects the fundamental human rights and liberties of the individual in civil, political, social and cultural fields.

44. With specific regard to the **Carabinieri Corps**, by considering the nature of the tasks performed, the utmost attention is paid to the study of human rights law and international humanitarian law which are included in the relating educational programs.

45. Carabinieri work, on a daily basis, with and on behalf of citizens. A new subject was introduced in their training programs, entitled “victimology (*vittimologia*)” which led to change approach towards the phenomenon of criminality. The latter is tackled by taking into account the position both of the victims and the perpetrator.

46. Human rights law is a specific subject, which is included in the educational work-plan of those Carabinieri to be deployed with peace missions. Within this framework, the Italian Army Force promotes IHL courses, as organized in collaboration with ad hoc institutes, or, alternatively, recognizes ad hoc International Red Cross’ courses.

47. With the aim of enhancing relevant activities, the Head of Training and Regulation Division and the Head of the First Unit are members of the Inter-ministerial Committee for Human Rights, at the Italian Ministry of Foreign Affairs.

48. Along these lines, an overview of the general and advanced training activities is provided hereinafter:

General training activity: Carabinieri Officers School: Since September 1st, 2000, the Institute of Professional and Legal Military Studies has been included within the officers school, where human rights law is considered under the program of military international law. The teaching is designed to provide an in-depth knowledge of international and domestic law, to be applied in armed conflict (so that they may recognize legal and illegal behaviors and be able to perform, at best, their military and legal military police functions). Course programs include the study of the main HR standards, specifically the Universal Declaration on Human Rights, the United Nations Agreements, and, inter alia, the UN Convention against Genocide.

Warrant Officers School: The utmost importance is paid to human rights law in the training institutes for warrant officers and the permanent staff. The teaching, provided by academics and officers, is focused on the following topics: i. Evolution of HR (historical and cultural aspects); ii. Racism and fundamentalism among the main threats to the right to life, security and freedom; iii. Legal substantial and trial prospects; iv. the European Court for Human Rights and the International Criminal Court; v. The EU Legislation on the fight against terrorism at an international level, while protecting HR (the functions of the Foreign Office); vi. The new World order; vii. Old and new emergencies, armed conflict and peace missions.

As a common factor, both the above training programs include the teaching of “The Professional Ethics and Conduct”. In this context, it is worthy of mention the analysis of “how to manage cases of abuse and violation of HR by Carabinieri servicemen”. Additionally, also worthy of mention is the teaching of the International Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

Ad hoc training activities: Inter-Force General Staff Superior Institute (acronym, ISSMI). The ISSMI includes training courses for senior officers. A specific programme includes an inter-force course on “the role of the legal adviser of the Armed Forces on the subject of humanitarian law applied to armed conflict”. The 2-week training activity is divided in two series of lessons and conferences, which are held by academics and expert officers on topics regarding human rights and humanitarian law. The course aims at educating legal advisers to be put at service of the Commanders within missions abroad.

European Police Academy (acronym, CEPOL). The Carabinieri Corps has qualified officers attending courses and seminars concerning HR law (“HR, Ethics, and Prevention of Corruption”) which are organized by international agencies, such as the European Police Academy (CEPOL). Training is focused on topics that deal with “protection of minorities groups, categories at risk (vulnerable groups: immigrants, drug-addicts, Roma people, the elderly)”. This provides an in-depth examination of the following issues: i. HR and policing; ii. Comparative analysis of the EU partners; iii. Eradicating discrimination; iv. Ethics; v. Fighting corruption; vi. The various preventive methodologies.

The International Institute of Humanitarian Law in Sanremo. Every year, several officers attend a course on humanitarian law at the above Institute. The topics include the application of humanitarian or military law vis-à-vis the organization and the employment of Forces, including those deployed, abroad.

The Superior Inspectorate of the Italian Red Cross Military Corps. The Italian Red Cross is responsible, by Law, for disseminating humanitarian international law, within the Armed forces, government Institutions and the Organizations concerned. Dissemination within the Armed Forces is carried out along the following lines: at the central level, at training institutions, by qualification courses for Armed Forces personnel on the subject of humanitarian international law in the context of armed conflict, in line with Act No. 762/1985; at a local level, within the main Commands, through brief seminars introducing humanitarian international law.

Sant’Anna Superior School in Pisa. The Carabinieri General Command signed a memorandum of understanding with this Institute, to enhance mutual cooperation on training of personnel that will operate in international missions (peace-keeping operations, peace-building, HR monitoring, humanitarian assistance, electoral monitoring).

Personnel in peace support missions. All members who are selected for the involvement in missions abroad, attend a 1-week specific training course, to be considered within the wider framework of the above humanitarian law courses. This specific training includes the following topics: i. History of the region involved in the conflict; ii. Introduction to local culture (under the responsibility of the University of Trieste); iii. Legal implications of the relevant mandate; iv. HUMINT activity; v. International law and military criminal law; vi. Humanitarian international law (with the contribution of the Italian Red Cross). The course, providing an in-depth examination of the main institutes of humanitarian law, specifically includes the following topics: i. Proceedings to be applied in case of violations of relevant Conventions; ii. Code of conduct for those being deployed in missions abroad; iii. Main relevant publications, including a practical handbook “For the Personnel Employed in Police Missions”.

Personnel deployed in Public Order and Public Security duties. The topic of public order and security is also dealt with within the framework of Public Order training course which are organized with a view at educating all the personnel concerned at any rank.

Awareness raising activities: The HR protection system is the subject of several publications edited by the Institution. In the Corps’ General Regulations, representing the basic rules and principles of the service, an entire chapter is devoted to the rules for the correct fulfillment of the service, particularly the behavior to be taken when carrying out duties.

Specific provisions regarding HR and general provisions regarding “ethics and professionalism” as issued periodically by the General Command, are strictly and carefully considered at every stage of the career.

Lastly, it is worthy of mention the extensive awareness raising campaign carried out by Carabinieri by circulating, at the training Institutes and Territorial Departments levels: The Universal Declaration of Human Rights; The European Convention on Human Rights; The European System aiming at Protecting HR, within Police Activity; The EU, Police and Safeguard of HR. This Authority also publishes magazines, such as “La Rassegna” and “Il Carabiniere”, in which HR related issues are thoroughly examined.

49. As to the **State Police forces**, the following activities should be mentioned:

Training of the National Police personnel with respect to human rights: In a social environment characterized by ethnic, racial, cultural and religious differences the Italian National Police has launched, since long time, various initiatives aimed at combining police operator’s professional knowledge with a broader awareness of the code of conduct, which focuses, inter alia, on the respect of human dignity.

Specific attention is, thus, paid to the protection of people, particularly vulnerable groups (including minorities), the most exposed to the risk of discrimination and more importantly, an easy prey for exploitation and potential involvement in the criminal circuit.

Basic training: With a view to extensively raising awareness of the various initiatives promoted by international human rights mechanisms, the Central Directorate for Training Institutes of the Public Security Department within the Interior Ministry included human rights law in the training curricula for police staff at all ranks.

20/60 teaching hours, depending on the course level, are usually devoted to human rights-related issues, such as HR and the “code of conduct”, “human rights protection”, “victimology”, “intercultural communication”, “international humanitarian law”, “code of conduct of a public service”, etc..

Training activity is dealt with by university professors and experts recommended by non-profit organizations, active in this field and, mainly, by national police officials who previously attended an ad hoc training course on “Human Rights” as organized at the Police Institute for Advanced Studies, by the Centre for Human Evolution (Italian acronym, CEU) in cooperation with University “Tor Vergata” in Rome. Furthermore, every year some ad hoc training courses, including master courses, for trainers are envisaged.

Refresher courses. Continuous training: The teaching of human rights represents a core topic of refreshing courses for all police officers. In the year 2003, refreshing courses of police personnel were mainly focused on “The Code of Conduct for Police Service” as adopted by the Committee of Ministers of the Council of Europe in 2001ⁱⁱ. Along these lines, the Department of Public Security distributed relevant material, including the “European Code of Conduct for police services” and the “European Union Charter of Fundamental Rights”.

Human and financial resources are fully and extensively employed to raise awareness and develop police officers’ communication skillsⁱⁱⁱ. Awareness-raising activities, publications and teaching tools. The protection of human rights is a central issue in many publications of the Public Security Department, such as the monthly magazine “Polizia Moderna”, which contains many articles on this topic.

More specifically, the Central Directorate for Training Institutes of the Public Security Department introduced adequate teaching material in all its 28 Schools and training Centres. It also supervised the translation into the Italian language and the distribution of the following material, issued by the Council of Europe: 1. Policing in a democratic society – Is your police service a human rights champion?; 2. A pamphlet for Police. The protection of Human Rights under international law; 3. Discussion tools. A Police and human rights training manual; 4. The human rights challenge in police practice^{iv}.

50. **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).

51. 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.

52. As preliminary remarks, it has to be stressed that:

1. 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;
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). 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 and foll.): 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).

53. 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 counsel³.**

54. 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 trial^{iv}.

55. Pursuant to Art.143 of the code of criminal procedure, the defendant has the right to be assisted by an interpreter^v, 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^{vi}. 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.

56. 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).

³ 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."

57. Thus, **meetings with the defense counsel cannot be limited in any way and are possible since the very beginning of the imprisonment.**

58. **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.**

59. 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).

60. 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.

61. 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).

62. **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).

63. 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.

64. 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”.

65. 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 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.

66. 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).

67. **Even during the period of judicial isolation, the prisoner may have contacts with the prison guards, the surveillance magistrate and the medical staff^{xvii}.**

68. 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).

69. The jurisprudential enforcement of said rule is very strict, meaning that as results from the jurisprudence of the Supreme Court (Court of Cassation), the rule has been considered of narrow interpretation (judgment N° 3025/1992, judgment N° 1507/96, judgment N° 1758/95, judgment N° 2157/1994), with reference to the risk of tampering with evidence (judgment division VI - 06/10/03 Vinci). In particular, mention was made of the fact that the measure of the judicial authorities which does not contain a detailed indication of the specific and exceptional reasons foreseen by the ruling, gives rise also to the nullity of the further questioning of the person under precautionary custody, before the judge, according to Article 294 of the code of criminal procedure, in case the arrested person was not in the position to talk to his/her defense counsel before said questioning.

70. 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, namely the loss of efficacy of precautionary custody (judgment N° 3025/1992, confirmed by judgment division VI- 04/20/2000 Memushi Refat).

71. Hence there is no doubt that the exceptional provision contained in Art. 104, para 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: it should be stressed that 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.

72. To conclude on these issues, as to the arrestees and the health-care service, it has been shared very recently, at the Inter-Forces level, the proposal of a questionnaire on the arrestee’s health, supplementing “the Pamphlet on the Rights of the arrestees”.

73. The **right of access to medical care** is always guaranteed when the person under arrest or detained needs 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 a physician who, even without such a request, shall examine said individual when the Police officer deems it necessary. Such indication emanates inter alia from memos and internal regulations of the Carabinieri Corps.

74. 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”.

75. The topics falling under the competence of the Penitentiary Administration are governed by **articles 11 L. 354/1975, 17 and 23 D.P.R. 230/2000**; upon arrival, prisoners are submitted to a general medical visit, within the following day, in order to assess possible physical or psychical diseases. During imprisonment, periodical and frequent checking of health conditions of all the prisoners are guaranteed.

76. Article 11 of the Act under reference 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.**

77. Specifically, as per art. 11, para. 11 of Law 354/1975, prisoners and internees can request to be visited at their own expenses by **a physician of their own choice**. For accused persons the authorization of the proceeding Judicial Authority is necessary; after the first instance degree judgement, the authorization is given by the prison governor.

78. With particular reference to the newly arrived prisoners it is useful to mention the circular n. 0181045 of 6 June 2007 by which the “housing service” was established, for persons coming from liberty, with particular attention to the persons having a suicide risk and psychiatric pathologies.

79. The service, within which a multidisciplinary staff works (governor, physician, psychiatrist, psychologist, trained nurse, educator, penitentiary police staff) in close connection with social workers, cultural mediators and the social-health services of the territory, aims at obtaining a first contact with the prisoner in order to mitigate the traumatic effects of imprisonment and to plan interventions protecting physical and psychic safety consequent to the entry into prison.

80. With reference to the first issue, art.43 D.P.R. 15 February 1999 n.82 – concerning “Regulations of penitentiary Police Corps” – in governing the **“surveillance service in the infirmaries and in the other sanitary structures”**, expressly provides that the staff working for such service has to: 1)take care of the keys of the entry door, allowing the access only to authorized persons and avoiding the introduction of goods and objects not prescribed by the physician or not necessary to the service; 2)accurately search each prisoner or internee entering or leaving the infirmary; 3)register the names of the prisoners and internees who are ill, hospitalized in the infirmary or who ask to be visited; 4)report in good time to the person in charge of the service, even in writing, every fact jeopardising security, healthiness and hygiene of the facilities, as well as the health and safety of persons, temporarily and urgently adopting the provisions aiming at avoiding or reducing damages to persons or things; 5)scrupulously observe the provisions contained in the order of service as per article 29 and call the person in charge of the service, where necessary.

81. **During the medical visit, the presence of penitentiary police staff is not envisaged, unless the physician himself/herself requests it, for security reasons**

82. As for the second issue, the **consultation of health data** concerning prisoners and internees by non physician staff has been recently governed by the Agreement, ratified by the Unified Conference on 20.11.2008, between the Government, the Regions, the autonomous provinces of Bolzano and Trento and the local autonomies, concerning the definition of the forms of cooperation regarding security functions and the principles and criteria of cooperation between the healthcare system and the penitentiary and juvenile justice law implementing art. 7 D.P.C.M. 01/04/2008. Such Agreement explicitly provides that “the case diary and the case history possibly computerized and adopted throughout the national territory and falling under the competence of the Health-care Service, are the instruments to collect and manage healthcare data and their consultation is protected by current legislation on privacy”.

83. The **Penitentiary Administration and Juvenile Justice have access, according to agreed modalities, to sensitive healthcare data concerning prisoners and internees, to perform their institutional duties**

84. As for prison Administration facilities, art. 7 D.M. 30 September 1989 n.334 concerning “Regulations for the execution of the criminal procedural code”, provides that **each prison has an appropriate register – kept according to the modalities indicated in art.24 D.P.R. 230/2000** – containing, in a chronological order, the details of the persons kept in custody, the day of arrival, the time and place of apprehension, with the indication of the measure by which they have been arrested, and of the authority for which they are at disposal. In such register the date of release of prisoners, the measure ordering it and the declaration or election of domicile are recorded.

85. As per said art. 24 D.P.R. 230/2000, besides, in such register are included, in a chronological order, similar records concerning prisoners and internees entering and leaving the prison because of a transfer or a transit

86. **Prisons can be visited without the authorization of the persons indicated in Art. 67 of Law No. 354/1975, as modified by Law 27 February 2009 No.14 – including in said category also “the so named guarantors of the rights of prisoners”, in order to check the conditions of the life of prisoners and internees, including those under judicial isolation⁴.** As per art.117 D.P.R. 230/2000, visits have to be carried out in the respect of the personality of prisoners and internees; it is not allowed to make remarks on life in prison in their presence, or to deal with topics concerning ongoing criminal trial with accused persons.

87. Besides, as per Art.11, para. 12 of Law No. 354/1975, the provincial physician visits at least twice a year prisons in order to check their hygienic-healthy condition, while the supervisory judge, finally, as per Art. 69 of Law No. 354/1975, supervises the organization of prisons and shows to the Minister the requirements of the various services with particular regard to the implementation of the re-educational treatment. Such judge also exercises the direct supervision aiming at ensuring that the execution of the custody of accused persons is applied both in compliance with law and with regulations

88. As for the security rooms, with the intent of preventing any self-damaging behaviour, it has been selected **a specific kind of mattress, whose cost will be borne by the Ministry of Interior**. Therefore the above Ministry has launched the program - still ongoing - to buy this stock, since between 2007 and 2008 the call for biddings failed: the former, due to lack of offers; the latter, due to the fact that during the final inspection, it emerged clear analytical defects in the material^{viii}.

⁴ **Art. 67. Visits to prisons**

Prisons can be visited without authorization by:

- a) The President of the Council of Ministers and The President of the Constitutional Court;
 - b) Ministers, judges of the Constitutional Court, Undersecretaries, members of Parliament and members of the Superior Council of Judiciary;
 - c) The president of the Court of Appeal, the Prosecutor-General at the Court of Appeal, the president of the Court and the state prosecutor at the court, supervisory judges, within the respective jurisdictions; any other judge in the exercise of his functions;
 - d) Regional counsellors and the regional Government Commissioner, within their district;
 - e) The ordinary minister of religion for the exercise of his function;
 - f) The Prefect of the head of police of the province; the provincial physician;
 - g) The Director General of prisons (*actually the Head of the Department of penitentiary Administration*) and the judges and officers delegated by him;
 - h) The Inspectors general of penitentiary administration;
 - i) The inspector of chaplains;
 - j) The officials of the corps of the guards (*actually penitentiary police*);
- l-b) the so named guarantors of the rights of prisoners.

89. As to the **metal bars at Brescia Municipal Police HQs.**, please refer to Italy's letter dated November 14, 2008.

B. MILAN IDENTIFICATION AND EXPULSION CENTRE

90. As for the CPT observations concerning the Milan migrants Centres in Via Corelli, at the time of the CPT's visit such facilities were primarily dedicated to migrants waiting for the expulsion and, to a lesser extent and under specific circumstances, to asylum-seekers. They are currently called Centre for identification and expulsion (acronym in Italian, CIE) and Reception Centre for Asylum-seekers (acronym in Italian, CARA), respectively.

91. The Identification and Expulsion Centre (former CPTA), as set up by Decree dated April 30, 1998, is placed in a low population density area, in Milan-Lambrate. This hosts 132 places and is managed by the Italian Red Cross - a charity public law entity unrelated to any police or military force, as the winner of an ad hoc call for biddings, launched by the local Prefecture. The Italian Red Cross manages this facility from its opening in 1998, and on January 1, 2009 renewed the relating contract for another three-year term.

92. Those hosted in such Centre are placed in **four areas, each of them is equipped with a courtyard and bathrooms, including seven showers, w.c., sinks, etc.. There is also a football camp.**

93. This Centre has an equipped ambulatory and two casualty wards, **to isolate and treat the most serious cases.**

94. As for the considerations made by the CPT **concerning the opportunity of the separation between the area for irregular migrants and asylum-seekers'**, the CARA with the capacity to host up to 20 people, within the former Bartoli Barracks in Via Corelli, was an area clearly separated by the one for those to be expelled. By Minister's Decree dated May 26, 2009, the former is not in use anymore, and has been thus re-annexed to the CIE, which has been subsequently enlarged.

95. The preparatory works for the **new CARA** started in April 2009. Within this framework it is thus necessary a one-year contract. The Ministry of Interior intends to promptly convene a services Conference to speed up the realization process.

96. As for the **individual case**, about whom specific indications were provided by Letter dated November 14, 2008, it has to be stressed that a judicial investigation was initiated (...) ^{*} and for October 12, 2009 it has been scheduled the examination of those who have been put under investigations.

97. As for the role of the Red Cross within **the Identification and Expulsion Centre**, the Red Cross manages the Centre, as is the case with the other ones based in Turin, Rome and Foggia, respectively, following a tender and upon signing an MoU with the local Prefectures. Within this framework, such Organisation aims at the correct performance of relevant services, in order to ensure the protection of the rights of the foreigners.

98. **As for the contacts with outside** at the Centre in Via Corelli, specifically for the 8-day waiting term, there were at the very beginning some organisational problems which were solved early in the year 2009. The waiting time has been now reduced to two, at the latest, three days.

99. As far as **the situation in the Lampedusa Centres** is concerned, it has to be stressed that the size and the exceptional trend of the disembarkations registered throughout the year 2008 had led the Italian Government to play a firm role, while abiding by the law and respecting fundamental rights of all immigrants. Such situation led the Interior Minister to decide for the return of irregular migrants directly from Lampedusa Island, without passing by other areas on the national territory.

^{*} In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain data has been deleted.

100. By decree dated 21 January 2009, the Interior Minister has, thus, set up an Identification and Expulsion Centre in Lampedusa, at the State's facilities located in the former "Loran C" Base.

101. While renovating the above facility, due to the lasting emergency situation, the Interior Minister decided to promptly use as a CIE, on a provisional basis, for a sixty-day term, the facility in Contrada Imbriacola - being already in use as a Centre for Rescue and Initial Reception (in Italian, *Centro di soccorso e prima accoglienza* (CSPA). In doing so, it was also ensured that the above reception activities could be provided at the facilities of the Loran C Base, the latter being under renovation works, but already able to work as a Reception Centre.

102. The transitional use of the above facilities was extended up to May 15 (by Interior Minister Decrees dated 19 March and 10 April 2009, respectively) - due to the longer period requested for renovating Loran C Base, and also following the arson set on February 18, 2009 at the Centre in Imbriacola.

103. From May 18 onwards, the facility in Contrada Imbriacola has gathered both the functions of a rescue and initial reception Centre and of identification and expulsion, the latter was to be originally based at the former Loran C Base. In this regard, please note that the Loran C Base, further to a judicial investigation on alleged violations of environment rules, was put under judicial attachment, which prevented the conclusion of the renovation work.

104. Over the last months, following the reduction of the disembarkations events along the Italian coastlines, the situation has been gradually improving; and the number of irregular migrants within the Centres has been significantly reducing hitherto, when no foreigner stays over there.

105. Please see below the number of foreigners who stayed in Lampedusa Island between 2008 and 2009:

2008		2009	
JANUARY	3		1070
FEBRUARY	548		1221
MARCH	64		470
APRIL	584		699
MAY	685		166
JUNE	473		20
JULY	720		0
AUGUST	697		1
SEPTEMBER	1049 (up to 1800 people)	UP TO 9/22	0
OCTOBER	1282(up to 2002 people)		
NOVEMBER	1431		
DICEMBER	1067(up to 1500)		

C. PRISONS

106. Prisons continue to be characterized by the worrying aspect of growing overcrowding.

107. After the significant decrease in prison population following the application of collective pardon (law 31 July 2006 n.241), there has been in fact, a gradual, but constant increase in the number of prisoners with the risk of shortly achieving the dramatic levels which have led to the approval of the pardon law.

108. Another element remarkably worsening prison organization is **the frenetic turn over** of prisoners, obliging to cope with a very high number of new admissions to prison, in the majority of cases, for short or very short terms of imprisonment, mainly in the great metropolitan areas. **This is due to the non-use of the detention cells of law enforcement agencies for the custody of persons arrested in the act of the crime, despite the provisions of art.558 para 2 c.p.c., concerning summary trial.**

109. The analysis of such phenomenon has led the Directorate General for Prisoners and Treatment of the Department of penitentiary Administration to request the cooperation of the other law enforcement agencies, in order to ensure the compliance with current legislation.

110. The above-mentioned emergency situation is constantly kept under control by the Directorate General for prisoners and treatment which intervenes, where necessary, with ad hoc deflationary measures, addressed, on one hand, to guarantee a fair distribution of prison population on the territory, and on the other to recover, though temporarily, in the prisons with serious problems, minimum conditions of liveability for prison population. Besides, a careful study and monitoring activity is being carried out for the identification of solutions enabling a better management of existing prison facilities, in order to preserve order and security in prisons and to guarantee the protection of health and life of the prisoners.

111. Following the remarks expressed by CPT, the management of the Special Intervention Team has collected the documentation and any information useful on the facts happened at **Novara remand prison.**

112. From the documentation it results that the professionalism and the skills of the staff working in the prison wing have avoided worse consequences towards penitentiary workers.

113. From what results from the management of the Special Intervention Team, in both the mentioned cases the staff has worked correctly, carefully measuring the use of the necessary physical force, merely used to contrast the assaults carried out by the prisoner and to re-establish, contextually, the order within prisons.

114. Art.14 L. 354/1975 provides for the assignment of prisoners to prisons, having particular regard to the possibility of proceeding to a common re-educational treatment

115. Particular attention besides is paid to the groups of prisoners within the wings in order to avoid mutual and harmful effects and trying to organize subdivisions into limited groups of persons, in order to protect them and to avoid possible assaults and abuses of power

116. As remarked by the CPT, the problem of violence among prisoners in the above-mentioned prisons visited, is also the result of serious overcrowding and of shortage of staff. It has to be underlined that serious overcrowding – concerning the prisons of all the national territory – is constantly monitored by the Directorate General for Prisoners and Treatment of Penitentiary Administration, as already indicated.

117. Besides, circular n. 3620/6070 of 6 July, just to cope with the difficulties resulting from such situation, provides for appropriate directives to regional superintendents and to prison managements, protecting both internal order and security, and health and life of prisoners and internees.

118. The Directorate General for Prisoners and Treatment, taking into account CPT recommendations, has invited the **Managements of Brescia and Cagliari prisons (respectively with letters n. 0296519 and n. 0296524 of 12 August 2009)** to apply in synergy with the responsible for security and educational areas, each more appropriate device and internal organizational measure, under the aspect of security and treatment aspects, in order to prevent possible forms of violence among prisoners.

119. **Prison managements have been invited, besides, to remind working staff that all forms of ill-treatment** (including verbal abuses) are not acceptable and will be the object of strict sanctions

120. As for **the events happened in Cagliari prison**, it has to be said that penitentiary police staff has always intervened to repress quarrels among prisoners, as it results from the numerous disciplinary drafted reports. Besides that, being the penitentiary police staff reduced to the minimum, it is necessary a strong intervention in case of violence within cells or in outdoor courtyards, in order to avoid dangerous situations for the persons directly involved.

121. As for **the death of the prisoner** which has been mentioned and which has occurred in the outdoor courtyards, it has been unexpected and unpredictable, caused by one shot and, therefore, the agent on duty could not do anything but only indicate the guilty person, who has been sentenced for involuntary manslaughter.

122. The episodes of **violence among prisoners are, however, decreasing** since, in autumn 2008, an Assistance Centre for prisoners started to work, as a result of a Convention drawn up between Cagliari prison and Caritas, which has decreased pressures, as it has been noticed by **recent institutional visits and by politicians who, periodically, enter prison**.

123. **Staff has always been made aware to observe duties with discipline** and by fully respecting human dignity. Such values have always been perpetrated by educators, voluntary assistants and by all those who, for duty reasons, work in prison.

124. The **use of alcohol** is allowed by the Regulations (art.14 D.P.R. 230/2000) which provide for the possibility of purchasing at the internal shop and the daily consumption of wine not exceeding half a litre and of content not exceeding 12 degrees or of beer not exceeding one litre.

125. Drinks are distributed and consumed in the facilities where meals are served and cannot be stored up in the detention cells. For motivated security reasons, according to the opinion of prison managements, limitations to the purchase of alcoholic drinks are admitted. Generally, the purchase and use of such drinks are forbidden, upon indication of the physician, to prisoners who undergo treatment of different nature (psychotropic, antihistaminic, antiretroviral, substitutive or substances antagonist to common psychotropic ones), however inconsistent with the taking on of such drinks, or to addicted- persons.

126. The carrying out of training programmes on problems connected with the consumption of alcoholic drinks in prisons falls within the competence of the National Healthcare Service since 2000 (Legislative Decree 230/90) and specifically of drug-addicts Services:

By the programming Document entitled "Guidelines for the National Health-care Service, to protect the right to health of the prisoners and detainees at the penitentiary Institutes, as well as of juveniles under a penal measures", it is envisaged ".....There is the need to start up educational projects to make detainees aware of their health, with the additional aim to fight: sedentariness; incorrect diet; incorrect use of alcohol; smoke-addiction. The involvement of the detainees will be ensured inter alia by means of self-help groups"

127. By considering that all health-care services are provided by local health-care Departments (*Aziende Sanitarie Locali*), under the programming umbrella of Regions and autonomous Provinces of Trento and Bolzano, the prevention of the alcohol abuse has been put to the National Permanent Conference on the right to health in the penitentiary system, within the Unified Conference (about which further details will be provided under Section D, hereinafter).

128. Penitentiary Administration will improve material conditions in the prisons indicated by the CPT, within the allocations assigned to the relevant budget item, **under which additional expenses are placed, including those for detainees' food, consumption of electricity, water and garbage.**

129. As for the complaint of absence of mattresses in some beds, the competent Directorate General for Goods and Services of the Department of Penitentiary Administration has delegated Regional Superintendencies to purchase mattresses and pillows.

130. The new Cagliari prison is currently being built and the building is at an advanced phase. In fact, the term of completion of works concerning the first functional lot, for a capacity of 400 detention places, is established at 13 November 2009. However within the extraordinary programme as per Art. 44 b of Law 27 February 2009 No. 14, the financing of the second lot to complete works with a total number of about 600 detention places is provided for.

131. As for the lack of treatment, the Treatment Office of the Directorate General for Prisoners and Treatment of the Department of penitentiary Administration, has issued **provisions to regional Superintendencies and to prisons in order to identify the financing of projects concerning treatment even using European funds and/or funds of Local Bodies**, being the resources available to the Directorate General for Prisoners and Treatment limited. In fact, face to an increase in prison population of about 11.000 units last year, 25% of funds has been reduced and in particular the item from which the pays of prisoners are drawn has been reduced of about 22%.

132. The lack of treatment also suffers from the shortage of staff present in the educational area. To remedy such problem, the Directorate General for Prisoners and Treatment, in the course of last years, has issued some circulars in order to organize such sector, defining the areas of intervention of the educator. Such circulars provide for the assignment of administrative staff to support the educators to release them from some bureaucratic tasks and to privilege the direct relationship with prisoners. On the other hand, educators are called to comply with the institutional task which provides, among alias, the drafting of some documents necessary to treatment activities (for instance those concerning the secretarial staff of the observation and treatment équipe and the drafting of a summary report for the Supervisory Court).

133. It has to be pointed out, however, that **a training course for 80 educators who have won a competition is ongoing.** Such educators will be assigned to those geographic areas where there is shortage of staff.

134. Following the various allegations received, the Directorate General for Prisoners and Treatment of the Department of penitentiary administration has considered appropriate to invite all prisons managements of 41b circuit to consult, as per art.18ter of the Penitentiary Act, the competent Judicial Authorities as to the appropriateness that the prisoners under the special regime 41b of the penitentiary act are prohibited to purchase daily newspapers published on the territory from where criminals come. It turned out that **such prisoners purchase such daily newspapers to be informed on the events connected with the gang to which they belong**, of which such newspapers offer a detailed review.

135. There has been, therefore, a concrete risk that the prisoners can avail themselves of the press to check that their orders, transmitted outside, have been executed and, more generally, that they make detailed inquiries on what happens on the territory on which the criminal organization carries out its activity; in particular, as regards the internal dynamics of local political and administrative bodies, the economic events (calling for tenders, starting and closing down of entrepreneurial activities etc.) and social events (initiatives of citizens and associations against racket, reutilization for public purposes of goods confiscated to criminal organizations, etc.), as well as crime and judicial news (murders, extortions, damages arrests, new persons cooperating with justice, investigating activities of Judicial Police, carrying out of trials, seizures of goods, etc.)

136. Such information are not only a requirement of indispensable knowledge in order to continue to manage illegal activities from prison and the dynamics of the gang to which they belong to, but also a constant channel of one-way link with the outside world, enabling the entry into prison of objective Mafia-type data, which can be used to the following purposes: verification that the orders transmitted from prison are executed; control of the overall operational activity of crime organization; preservation of the internal leadership and the working out of new criminal strategies.

137. Such prohibition of reception of local press is therefore strictly functional to the safeguarding of the needs of prevention towards those persons who hold significant ranks within criminal associations.

138. Freedom of information is however guaranteed with the possibility of purchasing all national newspapers.

139. The security and public order legislation, as passed on July 2, 2009, significantly amends the special penitentiary regime under Article 41 bis of the Penitentiary Order.

140. Along the lines of the reform (Act No. 279) undertaken by the third Berlusconi Government, dated December 23, 2002, the high security regime has been further aggravated and made more effective.

141. The most relevant novelties are as follows: The Minister of Interior may request the Minister of Justice the release of a 41 bis decree, whose term has been extended up to 4 years; the extension will be decided every two years; the extension criteria are clearly defined, including the maintenance of the contacts between the prisoner and his/her terrorism or organised crime organisation.

142. To this end, the Legislative Decree stipulates that the justice shall consider the role of the prisoner within his/her organisation, the maintenance of the relationship, the new charges not previously judged, the result of the penitentiary treatment and, lastly, the living conditions of the person under reference's family.

143. The time expiration is not sufficient to set aside the risk of the existence of such a link; The responsibility to decide on complaints against the ministerial decree setting the 41bis regime has been given to the Supervisory Court in Rome, in order to avoid conflicting verdicts on this issue by the territorial Supervisory Courts being in the past entrusted to decide, depending on the territorial penitentiary at which the prisoner under 41 bis had been placed; the term to lodge a complaint has been extended from ten to twenty days, though such complaint does not suspend the execution of the relevant measure.

144. It has been introduced a new crime into the penal code under article 391 bis, whereby it is punished from one to a four-year detention penalty, whoever facilitates the communication and contact between who is under 41 bis regime and the outside. If such behaviour is perpetrated by a public official, the detention penalty is raised up to five years.

145. The **prohibition to shade the windows of the cells** finds its ratio in the necessity to encourage a control of the rooms by the supervisory staff so as to result as more discreet as possible. The complete darkness of the facilities would imply the use of artificial lights, even more invasive than natural light. Patrol rounds must occur on a regular basis, even in night hours, in order to avert dangers for order and security and possible self-injury gestures.

146. Even the limitation of goods and objects which the prisoners can hold in their cell meet the requirement of avoiding self and hetero-aggressive gestures as well as of simplifying ordinary controls. **Prisons managements have been however made aware to apply only the restrictions provided for by the legislation and strictly necessary to the achievement of such purposes.**

147. In **Novara remand prison**, as it happens in various other prisons, problems in the structures met in some sectors of the prison and the absence of further areas have made difficult to comply with legislative provisions, with particular regard to the entertainment activities of prisoners. Provided that the managements of prisons have been made aware to apply any possible intervention to improve the intramural life of prisoners, since the entry into force of law n.279/2002 the competent offices have been involved in order to increase the availability of funds for the adjustment of installations. At the time being, the capacity of all the prisons of the circuit is at a limit and therefore it is not possible to proceed to the moving of persons.

148. **The possibility for prisoners held under 41b to stay outdoor 4 hours** a day and in groups not exceeding 5 persons has been explicitly provided for by law n. 279/2002. The recent legislative intervention of 15.07.2009 modified such criteria by reducing the time of outdoor exercise from 4 hours to two hours and the number of the members of social groups from 5 to 4.

149. It has to be highlighted that **the lack of athletic equipment in social rooms used by 41b prisoners meets proved needs of security**. It occurred in fact that, such objects, certainly heavy, have been used by some prisoners as improper weapons to assault prisoners.

150. As far as **work is concerned**, 41b prisoners are given the opportunity to carry out working activities within their wing, in order to avoid that they get in touch with prisoners belonging to different circuits, escaping the purposes of the special regime. As it is provided for by prison reports, 41b prisoners, most of the times, refuse working activity because they consider the function assigned to them not adequate.

151. 41b prisoners can also carry out **study activities** as private persons, with the possibility of carrying out the relevant exams in video conference, or through the authorization of the examining commission to enter the prison. Many persons, in fact, in recent years, have obtained compulsory degrees and have successfully attended courses to graduate.

152. There is **no difference of management between men and women held under 41b regime**. The only distinction is made by the low number of female prisoners held under such regime (totally three) who can, therefore, benefit of wider areas.

153. The management of Novara remand prison has been invited to make aware the staff in order to favour "human contact", without prejudice to the limitations necessary to maintain a high security standard, taking into account the dangerousness and the charisma characterizing the persons belonging to organized crime.

154. **Contacts of 41b prisoners with the outside world** are strictly established by the legislation. The recent legislative amendment, entered into force on 8.08.2009, provides that such prisoners can have only one monthly visit lasting one hour. As for the visits with minor children, it is provided that they are carried out without a dividing windowpane for the entire duration if the child under 12 years is present or for 1/6 of the duration if adults participate in it..

155. The **quality of acoustics in the visiting facilities of 41b prisoners** is checked regularly. Prison managements are however urged to maintain such facilities in a state of optimal functioning by proceeding, if necessary, to technical specific interventions. With regard to the meetings of prisoners with their minor children, with reference to what has been already said at issue 76, current legislation expressly provides that the visits of such typology of prisoners occur with dividing windowpanes which are very high in order to prevent the passage of objects. Notwithstanding that, a particular favour is given to visits with children under 12. Instead, as for the possible motivated requests of the other relatives aimed at carrying out the visit without a dividing windowpane, the Honourable Minister of Justice is involved for the relevant authorization, which can be granted in case of particular and documented reasons.

156. The **visits between prisoners and minor children** in many prisons are already organized by taking into account children needs. However, the Treatment Office of the Directorate General for Prisoners and Treatment is dealing with this delicate matter in order to make aware the prisons managements which have not yet done it to activate all the procedures and the necessary devices to make less traumatic the entry of children into prisons..

157. **The limitations concerning the number and the modalities of telephone calls and visits are peremptorily established by the legislation and do not allow, in any way, a discretionary intervention of the administrative Authority.**

158. **Personal searches on 41b prisoners occur, usually, with the help of the metal detector and however with modalities which do not jeopardise the dignity of the person.** The denudation is requested only if there is the suspicion that the prisoner can hide materials which are not allowed and which are dangerous for order and security. Searches in the cells occur, generally, at the presence of the concerned person and however all the confidential correspondence subtracted by law from the censure visa is not submitted to control.

159. The application of the special 41b regime occurs following proved public security needs represented by the competent judicial Authorities and by police and investigating bodies; even the extension of such regime is carried out after an articulated preliminary investigation aimed at verifying that the links between the prisoner and the criminal organization to which he belongs have not been interrupted and that the person concretely preserves the skill to interact with it. 41b regime is not a retributive measure but it has exclusively prevention purposes.

160. This is not, therefore, an instrument used to lead prisoners to cooperate with justice but an instrument used to prevent that serious episodes which have caused the sacrifice of innocent lives and that, unfortunately, continue to populate national news, occur again.

161. Law No.94 of 15.07.2009, entered into force on 8.08.2009, introduced substantial amendments to legislative provisions previously in force in matter of the special prison regime, as per art.41b of the Penitentiary Act. Such intervention has been made necessary in order to update anti-mafia prevention measures, for a more articulated and effective activity to fight the phenomenon of organized and subversive crime.

162. **41b prisoners can, upon request, have visits with the governor of the prison and with the physician in charge of the health-care service.** They can also meet the supervisory judge in the course of the regular visits s/he carries out in prison. Even in the light of the new legislation, 41b prisoners have the possibility to complain against the special regime.

163. The fact that the competence on the decisions is now given only to the Supervisory Court of Rome, has not to be considered as a penalizing circumstance for the concerned persons but only as the necessity that the decisions of such Authority – which has the task not only to decide on the legitimacy of the decree but also on the single prescriptions contained in it – are linear and guarantee a uniformity of treatment for all the persons held under such a regime.

164. The **41b prisoner placed at the reserved area of Novara remand prison** has been held under the special regime as per art.41b of the Penitentiary Act since 13.04.2006; he has been placed in solitary confinement since the arrest, having to serve first the accessory penalty of day isolation for a duration of 3 years (see order of execution of the penalty n.241/ 2003 issued on 19.04.2006 by the Office of the General Prosecutor of Caltanissetta) from 11.04.2006 to 10.04.2009 and, from that date, a further period of 3 years of day isolation (see order of execution of the sentence n.157/08 SIEP issued on 16.05.2008 by the office of the General Prosecutor of Palermo).

165. The isolation of the prisoner does not depend therefore on a discretionary choice of Penitentiary Administration but is a direct consequence of the numerous life sentences issued in reason of the heinous crimes committed by such prisoner. He is however ensured all treatment and support activities provided for by the Penitentiary Act for prisoners held under the special prison regime.

166. Following the **Decree of the President of the Council of Ministers (D.P.C.M.) dated 1st April 2008, named “Modalities and criteria for the transfer to the National Health-care Service of the health functions, of the work relationships, of the financial resources and of instruments and equipments in matter of penitentiary health-care”**, the Regions promoted the establishment of a technical table, which was started in April 2008, at the Office for the Coordination of the Health-care Committee of the Conference of the Regions and Autonomous Provinces, composed of the representatives of the Regions, and which some delegates of the Ministry of Labour, Health and Social Policies and of the Ministry of Justice were invited to participate in⁵.

167. Given the complexity of the procedures, the following specific fields of intervention were identified within the technical table: Sector of agreements; Sector of computerised personal health file; Sector of the organisational models; Sector of the criteria for the allocation of financial resources; Sector of the types of healthcare structures; Sector of the Judicial Psychiatric Hospitals.

168. For each sector, some sub-groups were established, whose works and conclusions were analysed by the plenary meeting of the table. On behalf of the penitentiary Administration, some representatives of each Directorate General involved, according to the various subjects addressed, participated in the meetings of the technical group and of the sub-groups.

169. The proceedings were subsequently submitted to two distinct tables established by the deed nr. 81/CU dated 31st July 2008 of the Unified Conference State-Regions and local autonomous bodies, and namely: “table of permanent consultancy” provided for by the Annex A of the above-mentioned D.P.C.M. – last paragraph – for the verification of the fulfilment of the transfer of the penitentiary healthcare to the Regions throughout the Country; “inter-institutional joint committee”, provided for by art. 5, paragraph 2 of the above-mentioned D.P.C.M., with reference to the Judicial Psychiatric Hospitals.

170. Those tables carry out the preliminary activities relevant to the provisions which will be analysed by the Unified Conference. In particular:

⁵ The Conference of Regions and Autonomous Provinces was established in 1981 in order to facilitate the coordination among the Regions, as well as to connect with and to confront the central State. In this framework, the documents are drafted which will then be submitted and presented to the Government in the Meetings of the Conference State – Regions and of the Unified Conference. The activity of the Conference of the Regions and Autonomous Provinces is regulated by specific Regulations approved on 9th June 2005, which provides for the establishment of eleven working Commissions, including the Healthcare Commission, which is in charge of the following matters: health protection, healthcare and hospital assistance, healthcare staff. Currently, the Commission is coordinated by Tuscany Region.

Table of permanent consultancy:

It has the purpose of ensuring the uniformity, throughout our Country, of the healthcare and treatment activities for the prisoners, the internees and the minors submitted to penal measure, and it carries out the following activities:

- a) monitoring of the level of enforcement of the D.P.C.M. dated 1st April 2008, also with reference to the resources needed;
- b) assessment of the effectiveness and of efficiency of the interventions aiming at protecting the health of the prisoners, the internees and the minors submitted to penal measure, also by using the data of the National Information System about the prisoners' health;
- c) drafting of directions for facilitating the carrying out of programmes in local areas;
- d) establishment of tools aiming at facilitating the coordination among the Regions, the Regional Directorates of the Penitentiary Administration (P.R.A.P.) and the Centres for Juvenile Justice.

That Table is composed of three representatives of the Ministry of Justice (two from the Penitentiary Administration and one from the Juvenile Justice), of two representatives of the Ministry of Labour, Health and Social Policies, of one of the Ministry of Economics and of one of the Department of the Civil Service and of Innovation of the Council of Ministers' Presidency, of 5 representatives of the Regions and of Autonomous Provinces and of 5 representatives of local autonomous bodies, beside of the Secretary to the Unified Conference.

The decision nr 81 also provides for the possibility of inviting other delegates of the Regions, of the Local Bodies and of other public Administrations, to attend the meetings, according to the subjects under discussion.

Inter-institutional joint committee:

It has the purpose of putting into practice the guidelines for the actions to be taken in the Judicial Psychiatric Hospitals and in the Prison Hospitals as indicated in the Annex C of the above mentioned D.P.C.M., and it performs the following tasks:

- a) drafting of the directions on the fulfilment as provided for by the above-mentioned Annex C, in order to promote homogeneous actions throughout the Country;
- b) preparation of the tools necessary for supporting the programme of gradually abandoning the Judicial Psychiatric Hospitals and of encouraging the forms of cooperation between the Ministry of Justice and the National Health Service at national, regional and local level.

The documents drafted by the Joint Committee are forwarded to the Table of Permanent Consultancy, for the following analysis by the Unified Conference.

The Committee is composed of one representative from each of the following central Administration: Ministry of Labour, Health and Social Policies, Ministry of Justice, Ministry of Economics, Department of the Civil Service and of Innovation of the Council of Ministers' Presidency, one representative from each Region where a Judicial Psychiatric Hospital is based (Lombardia, Emilia Romagna, Toscana, Campania and Sicily) and five representatives of Local Autonomous Bodies, besides of the Secretary to the Unified Conference.

171. As for the final results achieved so far by the two Tables, we communicate what follows:

In the meeting of the 20th November 2008 – Rep. N. 102/C.U. – the Unified Conference approved the standard text for agreements, in terms of art. 7 of the D.P.C.M. dated 1st April 2008. Such text provides for the forms of cooperation relevant to the functions of security and the relations of collaboration between the healthcare law and the penitentiary law, also in the field of addiction pathologies. It is an agreement achieved among the Regions and the Ministry of Justice and the Ministry of Labour, Health and Social Policies; it will be followed by specific agreements which will be signed between the Regions and the Regional Directorates of the Penitentiary Administration as well as by operational protocols between the local health authorities and the prison governors;

In the Meeting of 17th December 2008, the Table of Consultancy analysed the proposal submitted by the Ministry of Labour, Health and Social Policies for the subsequent decision to be made by the CIPE (Inter-ministerial Committee for Economic Planning) about the criteria of allocating funds for the healthcare assistance to all the Regions;

In the Meeting of 29th April 2009, the Conference State-Regions approved the standard form of agreement for the use, by the Local Health Authorities, of the premises for the healthcare assistance in the prisons;

The inter-institutional communication at regional level is ensured by the regional observatories, in terms of the Annex A of the D.P.C.M. dated 1st April 2008; those observatories are established all over the Country and are composed of representatives of the Regions and of the Regional Directorates of the Penitentiary Administration.

As for the prisons visited by the CPT, and, more in general, as for the knowledge and the authorisation to process the health data of the prisoners, as well as the possibility of providing prisoners with **dental prosthesis** and other assistance which is not included in the Italian Basic Levels of Assistance, those subjects shall be soon the object of the works of the inter-institutional table.

172. Implementation of the transfer of responsibility of the penitentiary health-care service from the Ministry of Justice to the Ministry of Labour, Health and Social Policies:

What follows is a short analysis of the single issues provided for by the D.P.C.M. dated 1st April 2008, with the purpose of identifying the relevant activities already concluded and those ones currently being performed:

TRANSFERS OF THE EMPLOYER-EMPLOYEE RELATIONSHIPS

The transfer of the employer-employee relationships of the medical and technical and nursing staff was completed. In this connection, it is to be highlighted that the contracts with the medical and technical and nursing staff, who were already on duty in the prisons for the Penitentiary Administration, expired on 14th June 2009. Concerning this, the Department of Penitentiary Administration wishes that those relationships, while respecting the organisational autonomy of the Local Health Authorities, shall be kept, in order not to waste a patrimony of professionals already trained by the service in the prisons, who can contribute to maintain a high level the security necessary in the prisons.

TRANSFERS OF EQUIPMENTS AND INSTRUMENTS

The forms (prepared by the Healthcare Office of the Directorate General for Prisoners and Treatment of the Department of Penitentiary Administration, and forwarded to all the prisons through the Regional Directorates) containing all the data (type, quantity, function, year of purchase and value of inventory) relevant to all the equipments present in the penal institutions, were sent to the Regions, for the acquisition and the following transfer to the Local Health Authorities.

TRANSFER OF FINANCIAL RESOURCES

Since October 1st 2008, the Penitentiary Administration does not have anymore the financial resources for the penitentiary healthcare service in the Regions with normal statute, because the funds, already assigned to the Ministry of Justice for the last quarter of 2008, were transferred to the National Healthcare Fund.

TRANSFER TO THE REGIONS WITH SPECIAL STATUTE AND TO THE AUTONOMOUS PROVINCES

In the Regions with Special Statute and in the Autonomous Provinces, the D.P.C.M. dated 1st April 2008 entrusts the transfer of the penitentiary healthcare service to the respective statutes and to the relevant enforcing rules, which do not result to be issued yet. This problem is under the attention of the technical Table of permanent Consultancy at the Unified Conference. In the meanwhile, the penitentiary Administration is still competent to provide the healthcare assistance in the prisons situated in those areas. With the purpose of ensuring the necessary resources, the Law nr 203 of 22nd December 2008 (Financial Law 2009) provided for a dedicated funding for the prisons in the Regions with Special Statute and in the Autonomous Provinces; the Penitentiary Administration, however, invited the Regional Directorates to concretely involve the Healthcare Assessors Services and the Local Health Services concerned, and to inspire their action to the content of the guidelines indicated in the above-mentioned Annex A of the D.P.C.M. dated 1st April 2008.

173. It is worth stressing that the transfer of functions has been carried out from the Ministry of Justice to the National Health-care Service, whose management refers to Regions and autonomous Provinces, in line with the constitutional reform, introduced in 2001, and referring to Title V, Part II of the Italian Constitution.

174. The permanent consultancy national Table is about to launch a collection of data on the situation in the penitentiaries. Therefore, specific and more updated information on Brescia and Napoli-Secondigliano might be provided in a very near future.

175. The issue raised under para.92 has a very strict medico-legal nature. To this end, specific indications will be provided to the physicians of the penitentiary health-care services.

176. The **personnel** of the above services, specifically of the places visited by the CPT, remains the same except for the variation in terms of responsibility's umbrella. From now onwards they will rely on and be under the National Health-care Service's competence.

177. At each of the local health-care department, they are undergoing the adoption of ad hoc organizational models, including the personnel to be deployed.

178. The Penitentiary Administration commits itself to ask for information from Novara prison, *as for the alleged delays in the provision of medicines and in carrying out some medical examinations outside the prison for prisoners submitted to the 41b regime, which can seemingly be due to a mere bureaucratic procedure.*

179. As for the need of a **global preventive plan against infectious diseases** in all the Italian prisons, a collaboration has been active for several years among the Ministry of Justice, the Ministry of Labour, Health and Social Policies, Universities, Scientific Research and Care Institutes, Regions and Local Bodies, which allowed to draft and disseminate Guidelines and recommendations based on the most recent scientific studies on the prevention of HIV, patitic viruses and TBC.

180. The Penitentiary Administration will be pleased to put at the Committee's disposal those documents, if deemed opportune.

181. It falls under the ordinary management of the health-care services in prisons, to proceed, upon the consent of the person concerned, with medical examination and ad hoc check-up, in order to detect transmittable diseases, including inter alia HIV.

182. As for what falls **within the competence of the Penitentiary Administration, we point out that the renovation of the CONP in San Vittore Prison** in Milan is concluded and that the structure is functioning since January 2009.

183. There are 16 beds, which are always occupied. That wing is managed by the Hospital Service "Luigi Sacco". There is also a multi-functional and multi-professional centre, with an integrated team (psychologists, psychiatrists, educators), where the prisoners - 20 a day, on average - with psychological and psychiatric problems, including the prisoners hospitalised at the CONP, receive rehabilitation treatment⁶.

184. On the 15th November 2008, after the measure of transfer ordered by the Department of Penitentiary Administration for the above-mentioned prisoner, the Supervisory Magistrate in Cagliari deemed that it was not opportune to transfer said prisoner, since that transfer should have compromised the outcomes of the activities carried out by the local psychiatric services, which had taken care of that prisoner for a long time. Therefore, the supervisory magistrate in Cagliari requested the revocation or suspension of the transfer.

185. The Health Department within the Ministry of Labour is committed towards the improvement of the orthodontist service.

186. As recalled under Section A, **the medical examination is carried out by the solely physician, unless s/he requests the presence of the penitentiary police.**

187. As for the privacy relating to medical data of each prisoner, by Agreement dated November 20, 2008: ".....the medical paper-format diary and the medical file are under the responsibility of the National Health-care Service, and are covered by the current legislation on privacy".

188. The Penitentiary Administration and the Juvenile Justice may have access to sensitive data, according to agreed modalities, to perform institutional duties; "....Usually it is necessary to adopt ad hoc measure to ensure a better and adequate treatment, specifically for those who are newly arrived".

189. Prisoners who are currently collaborating (or who are starting their collaboration) with justice authorities are usually temporarily assigned to the Naples Secondigliano structure, except for particular requirements of the General Directorate for Prisoners and Treatment at the Penitentiary Administration Headquarters; those prisoners need either healthcare treatments of different kinds, or specialist services provided at the local CDT.

190. The "final" assignment of some prisoners can be decided either because of a next date of release or for full-blown and serious pathologies.

191. **The situation of the prisoner assigned for health reasons is quarterly assessed and, if there is an improvement of his health conditions, he is assigned to a more adequate structure, except for the protection of particular needs connected with his family in the Campania Region.**

192. Following the indication of the CPT after its visit of September 2008, **the General Directorate for Prisoners and Treatment ordered the transfer to other structures:** of all the subjects who, for various reasons, gave rise to management problems in the Secondigliano prison; of the prisoners who, periodically, end their healthcare treatment; of the subjects who completed the requirements of Judicial Authorities relevant to their participation in hearings.

⁶ The cited Guidelines devote an entire Charter to the psychiatric assistance, with the aim of: enhancing and improving the psychiatric system in each Institute, to provide health-care service for light problems or for those under compensation; enhancing the Centres for those who undergo acute crises; envisaging more branches for those prisoners whose conditions are not compatible with the ordinary regime. To this end, it is worth noting that the local health department (Aziende sanitarie locali) will deploy their personnel, to ensure an adequate response to these needs

193. In order to ensure **the separation among incompatible subjects** (ex.: **trial incompatibility, members of opposite mafia associations, events occurred during their detention**), there are currently 13 prisoners, out of a total capacity of 18 places.

194. Moreover, **in the prison of Secondigliano, within the limits of the available resources, some prison work activities are ongoing, and all the healthcare services are established for the psychological support to the prisoners**. The outdoor exercise is ensured for the time provided for by the legislation currently in force.

195. The penitentiary Administration is **completing the recruitment of 397 educators, which is a very important input of new and vital forces in the work for prisoners' social resettlement and rehabilitation. In October 2009, the training of 187 newly recruited agents of the Penitentiary Police will be concluded, in December 2009 the training of 255 will be over and in June 2010 the training of 299 more units will end.**

196. It is hoped that **the input of these staff units will contribute to fill the vacancies in many prisons, including in the Cagliari prison, which, anyway, has a presence of 240 units of penitentiary Police, out of a total of 267 units needed, together with 4 educators and 6 accountants.**

197. As for the information requested **about the number of medical doctors and nurses employed in Cagliari prison – the only one, among those which the CPT visited, run by the Ministry of Justice – in that structure there are 3 medical doctors appointed, one of whom has a temporary appointment; there are 11 medical doctors on duty in shifts and 12 specialists under a contract, 27 nurses under contract and 1 employed by the penitentiary Administration, two paramedical technicians under contract and 3 head of ward employed by the penitentiary Administration.**

198. Article 81 of the Regulations of Enforcement of the Penitentiary Act provides that: “The prison governor, at the presence of the Commander of the Penitentiary Police detachment of the prison, notifies the charge to the accused person [...] while informing him of his right to exculpate himself”. This initial charge starts the disciplinary procedure, which includes a preliminary investigation about the facts and possibly a meeting of the discipline council, as provided for by the above-mentioned Article, summoning also the accused person. In this framework, the accused person has the right to be heard and to exculpate himself

199. If a sanction is ordered, **the prisoner is informed of his right to appeal against that decision before the Supervisory Magistracy. A proceeding is drafted of the whole procedure, which is included in the prisoner's personal file.**

200. The participation of the medical doctor in the Discipline council **is provided for by the Law, article 40 of the Penitentiary Act (Law 354/1975), which expressly provides for that the disciplinary sanctions (except for the sanctions of “warning” and “admonition”, which are given by the governor) are decided by the discipline council, composed of the Governor, who act as President, the medical doctor and the educator.**

201. For the sake of completeness of information, please note that **the disciplinary sanctions which are decided by the above-mentioned body are:** exclusion from recreational and sports activities for not more than ten days; isolation during the time spent out of doors for not more than ten days; exclusion from association activities for not more than fifteen days. The last sanction cannot be enforced without a written certificate, issued by the medical doctor, stating that the subject is able to bear it. The subject excluded from association activities is constantly submitted to a medical control.

202. The Administration of Justice will take care of submitting the CPT recommendation to the Legislative Office of the Ministry of Justice, for an analysis of the problem, even in consequence of the reorganisation of the penitentiary healthcare and of the need of an in-depth analysis about the physicians' functions falling outside of their duty of assistance, which are not expressly provided for by the legislation regulating the transfer of the penitentiary healthcare service to the national health service.

D. PSYCHIATRIC ESTABLISHMENTS

203. Within the relevant framework, Regions and Local Health-care Departments have to organize the relevant system within the penitentiaries, emphasizing once again that this is not only an administrative transfer but a more extensive and complex one, under all aspects, including the management, the work-force and the economic level:

204. This transfer, as envisaged by DPCM, dated April 1, 2008, from the Penitentiary Administration to the National Health-care Service results in an outstanding commitment, involving all the relevant stakeholders, primarily Regions and Local Health-care Departments (Aziende sanitarie locali).

205. The guiding document is the Guidelines mentioned under Section C, namely **“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”**, dealing with the following issues: Principles; Purposes; Programming Actions and Priority areas; Organising the epidemiological knowledge; Promotion of the right to health; Protecting the environment and adequate living standards; Organising prevention, care and rehabilitation measures, including those for the reinsertion into society; general medicine and evaluation of the medical status of the newly arrived; specialised medical measures; emergency; infectious diseases; Prevention, care and rehabilitation from addictions and, more generally, in the mental health area; women detainees’ health, including mothers detainees with their children; protection of migrants health; explanation on the organisational models; Monitoring and evaluation.

206. **The second Annex to the above DPCM is dedicated to “Guidelines for the measures at Psychiatric and Judicial Psychiatric establishments”** whereby actions aim at developing a multi-phase program, to guarantee the correct harmonization between health-care measures, while ensuring high level of security.

207. Besides, it is worth recalling that the **Agreement dated November 20, 2008, between the Government, the Regions and the autonomous Provinces of Trento and Bolzano aims at defining the various forms of cooperation** among relevant stakeholders.

208. By this agreement, specific cooperation Protocols have been envisaged, both at the regional and local levels^{ix}.

209. The implementation of the above DPCM and the relating monitoring will be carried out by regional Observatories as well as by the National consultancy Table, while an ad hoc Committee will be entrusted to monitor the Judicial Psychiatric Hospitals (Please see below).

210. **The Judicial Psychiatric Hospital “Filippo Saporito” in Aversa (CE) is one of the five internment institutions in Italy for offenders with psychiatric pathologies.**

211. As the CPT well knows, the D.P.C.M. dated 1st April 2008 ended a long legislative path, started by the Legislative Decree 230 of 1999, which transferred the competences in matter of prisoners’ and internees’ healthcare from the Ministry of Justice to the National Healthcare System and, later, in consequence of the changes brought by Law No.3/2001 to the Title V of our Constitution, to the Regions.

212. The huge importance of the psychiatric problems among the prison population drew the attention of the Ministries involved (Justice and Health) and of the Regions on this specific aspect, which issued the “Guidelines for the actions of the National Healthcare Service for the protection of prisoners’ and internees’ health, as well as of the health of the minors submitted to a penal measure”, and, more specifically, of “Guidelines for the actions to be taken in the Judicial Psychiatric Hospitals (OPG) and in the prison hospitals, both annexed to the above-mentioned D.P.C.M..

213. The reform path of the organisational models of the OPGs had been prepared and planned for a long time by the Ministry of Justice. Through the Penitentiary Administration, together with the Ministry of Health, within the framework of the “Inter-ministerial Commission Justice – Health for the study of the problems relevant to the reorganisation of the penitentiary health”, in terms of the Ministerial Decree of the 16th May 2002 with the following Ministerial Decree of the 20th January 2004, the Ministry of Justice had started an in-depth analysis in order to propose possible innovative models of the intervention currently carried out towards dangerous subjects affected with psychiatric pathologies and hospitalised at the Judicial Psychiatric Hospitals.

214. On the 5th October 2004, that Commission established a technical group composed of experts from the National Health Service, from the Ministry of Justice and from the Ministry of Health, entrusted with the task of drafting a document, which constituted the grounds for the Guidelines of Intervention in matter of new operational models for the OPGs, annexed to the D.P.C.M. dated 1st April 2008.

215. Article 5, paragraph 2 of that D.P.C.M. provides for the establishment, at the Permanent Conference for the relations among the State, the Regions and Autonomous Provinces of Trento and Bolzano, of a dedicate Inter-institutional Joint Committee for the enforcement of the guidelines of intervention in the OPGs and in prison hospitals, indicated in the Annex C of the same Decree; such Committee was established on 31st July 2008.

216. The Joint Committee, in its first meeting, held on 11th March 2009, agreed to deepen some aspect of the problems under consideration and namely: re-definition of the catchment areas to the purposes of the distribution of internees to OPGs; preparation of a programme for the release of the internees from the OPGs; organisation of a model of the OPGs which define the roles of the Penitentiary Executives and of the Healthcare Directors.

217. The Ministry of Justice is represented, in that Committee, by the Department of Penitentiary Administration. In order to give its active contribution to the Committee work, and given the complicated engagement demanded to the Administration for the carrying out of the transfer of the penitentiary healthcare to the National Healthcare Service, it was deemed wise to establish a working group, with the task of studying the problems connected to the transfer of competence to the Regions and connected to the phase of transition, in order to analyse in depth the problems of the matter and to draw action strategies useful to overcome the various difficulties which are arising.

218. The proceedings and the documents drafted on that matter by the Penitentiary Administration and the Regions, which were submitted to the joint inter-institutional Committee are at the disposal of the CPT.

219. As for the problem indicated at item 3), the medical staff belonging to the technical-healthcare roll of the penitentiary Administration, which had the duty of directing an OPG, held the functions of both healthcare director and of Administrative Director of the structure he/she was assigned to. The Director of the OPG fulfilled all the functions provided for by the Penitentiary Act for the position of prison governor.

220. Such staff was transferred, as from October 1st 2008, to the staff of the Local Healthcare Service. The current law (articles 3 and 111 of the Decree of the President of the Republic 230/2000) does not allow that a penal establishment is directed by staff not belonging to the Penitentiary Administration, even if that structure has a prevailing healthcare duty, as the OPG has.

221. Therefore, penitentiary Executives took the directions of the OPGs, during the transfer, surely not to “retake the control” of the OPG, but as an additional resource; indeed, a common “mission” is shared with the Local Health Authority: the protection of the internees’ and of the staff health, also by ensuring security and leading to social rehabilitation.

222. The matter is really delicate and it is one of the priorities which the joint committee and the working group intend to address, together with all the other agencies concerned, in order to achieve an integration, while maintaining the distinction of the responsibilities, between the need of providing rehabilitation therapies and the need of ensuring safety and security.

223. Another priority which the two bodies (the joint committee and the working group) have established is the drafting of a new organisational model which keep into account the guidelines of the said DPCM; such new model should also keep into account, more in general, the trends of the reform drafted by the legislator, who wished to draw an institutional asset allowing to bring, as far as possible, the treatment of the mentally ill offender closer to the treatment of an outside patient, in order to ensure equal guarantees and levels of assistance among all the citizens: free persons, prisoners or internees.

224. There is a common effort for working out solutions to conciliate **the therapeutic actions with the actions for reinsertion and those ones for security**; one can even imagine a structure where the interventions can be individualised according to the users' needs, going as far as establishing a differentiated organisation within the same structure, with the establishment of wings with a low level of security and a higher level of social and therapeutic activities

225. The **internal moves of the patients** are ordered under the responsibility of the managing Authority, on the basis of a behavioural and medical assessment allowing the patient to recover his serenity. The transfers to and from other OPGs are authorised by the Directorate General for Prisoners and Treatment of the Penitentiary Administration, through a procedure involving a careful evaluation by a specialist in neuropsychiatry of the documents forwarded by the OPG Direction, and in particular of the foundation of the request, which cannot be based only upon the problems posed by the internee (those problems, indeed, appear to be if not ingrained, at least not unforeseen, for the same nature of the internee), but upon real and concrete incompatibilities jeopardising not only the continuation of the therapeutic programme, but even the safety of the patient himself, of the other inmates and of the staff.

226. The inter-institutional joint committee and the working group are thinking about drafting a plan leading to the release from OPGs of those subjects who are under a security measure because of the lack of structures in the community: the representatives of the penitentiary Administration in the joint committee and in the working group are strongly determined so that the Departments of mental health included in the Local Healthcare Services, and therefore under the competence of the Regions, establish external protected structures, alternative to the OPGs and to prison hospitals. In the meanwhile, the penitentiary Administration has activated and is activating wings for persons under observation and wings for mentally disabled; renovation works are ongoing in some OPGs in order to gain more usable spaces.

227. Thus deflating the existing structures, it will be possible to better design the catchment areas, to adapt the interventions, to improve the living conditions inside the establishments and, then, to decrease the situations of conflict. The Penitentiary Administration, in agreement with the Local Healthcare Service, will take care of organising joint permanent training courses for all the penitentiary and healthcare workers of the local OPG, besides reviewing the procedures activated in case of conflicts between internees and between internees and staff.

228. It is possible to have recourse to physical restraint of a subject only if it is really necessary, and always upon medical prescription. The intervention has to be justified in detail and has to be registered together with the evidences of the state of necessity, demanding the careful and continuous surveillance of the patient.

229. It must be underlined that the constriction in the bed for physical restraint finds its limited grounds only in the medical emergency, and never in reasons of punishment or generic security.

230. The penitentiary Administration brought its point of view in the above-mentioned working group and joint Committee, highlighting the necessity of finally overcoming the method of restraint in the psychiatric environment. This refers to a cultural evolution, bringing to a new “consciousness of assistance”, that is to a modern and fair training of all the professionals involved, for different reasons, in the psychiatric care.

231. The occupation of “wide” time, the personalisation of the living environments, the possibility of moving as well as the re-education to the system of normal inter-personal relationships have a strategic importance for the institutionalised psychiatric subjects, who are at the risk of having crisis of psychomotor agitation and require restraint measures.

232. The penitentiary Administration has the intention to go along this path, even among difficulties, because of the poor means at its disposal.

233. As a confirmation of what above, we inform you that, following a specific request made by the Direction, the competent Department of Mental Health has activated a protocol relevant to the psychiatric use of physical restraint which allowed the abolition of the restraint beds which were used by the healthcare staff in order to deal with internees’ crisis of psychomotor agitation.

234. That procedure, which was positively assessed, requires that the healthcare and paramedical staff pays more attention, and also requires a stronger commitment in terms of the presence of the psychiatrist.

235. The situation of the structure and of the services provided by the Aversa OPG is carefully followed by the Penitentiary Administration, as the other OPGs’ situation is. After the visit of the CPT (10th February 2009), the structure was visited by the Deputy Head of the Department, who was delegated by the Head of Department to coordinate the various structures in matter of penitentiary healthcare.

236. As of 10th February 2009, there were 257 internees, 101 of whom were sentenced to the final security detention measure of OPG internment; 66 sentenced to the security measure of prison hospital (casa di cura e custodia); 7 prisoners executing article 148 of the penal Code; 54 temporary internees in OPG and 29 temporary internees in the prison hospital. There were 16 foreigners.

237. In 2007, 20 internees were released from that OPG, and in 2008 25 were released in consequence of the revocation of the security measure. At the moment of that visit, there were 48 final experiment leaves ongoing, which last 6 months on average and can lead to the revocation of the measure, if they have a positive outcome.

238. In this structure, one third of the patients could be discharged if they could find housing at outside structures, upon the care of the Department of Mental Health.

239. Currently, the Departments of Mental Health follow the interned patients, by the access of some medical specialists in Aversa OPG.

240. It is self-evident that the situation of overcrowding does not help the availability of spaces for the social activities, thus limiting, somehow, every therapeutic programme. In order to improve the material conditions at the Aversa OPG, a plan of building renovation is gradually being carried out. The works involved, so far, the 4th, the 5th and the 9th wing :

Renovation of the 4th wing: rebuilding of the plumbing system, substitution of sanitary fixtures in porcelain by fixtures in steel. For a better functionality of the sanitary fittings, given the particular users, masonry parapets were made for the existing sinks and washbasins, beside overhauling the door of access to those premises; check of the electric installation in terms of the current legislation; substitution of the existing flooring and coating of the rooms; integration of the plaster and painting of walls, ceilings and iron parts.

Renovation of the 5th wing: with the purpose of ensuring the functionality of the whole detention wing, the whole flooring was substituted and the plaster was integrated. Moreover, sanitary fitting in steel were set in the cells; a septic tank was made and a new system of lightening was activated, in order to ensure an optimal level of light.

Renovation of the 9th wing: the same interventions as for the 5th wing were carried out on the electric installation, the hydraulic plant and the sanitary fitting, including the obvious re-flooring and painting interventions, as well as on the lightening system.

Finally, the works for the 8th wing have been let out on contract, and include: rebuilding of the sanitary fittings, substitution of the frames, remake of the electric installation and substitution of the lights, substitution of the flooring and of the coating in the sanitary fittings, painting of the rooms and consolidation of the plaster

241. The penitentiary Administration is also considering the possibility of utilising a large space (more than 1000 square meters), partially sheltered, close to the OPG, where it could be possible to establish a riding school as horse-therapy – and where it could be possible to carry out outdoor recreational and sport activities, as the CPT has recommended. (paragraph 132).

242. As for the request of clarification relevant to the presence, in the same structure, of internees sentenced to the security measure of OPG and of Prison hospital (paragraph 131), it must be said that article 62 the Penitentiary Act (Institutions for the execution of security measures) provides for the possibility of establishing wings for the execution of the security measure of Prison hospital within an OPG.

243. As far as the CPT recommendations are concerned about the subjects addressed so far relevant to the material conditions and the organisation of life, please note what follows:

244. The Penitentiary Administration carefully and constantly pursues its administrative action aiming at improving the material conditions of the internees, through the development of a well-designed programme of structural interventions for a better comfort of the premises and with the aim of facilitating the development of the therapeutic treatment.

245. Still with the aim of improving the quality of the treatment offer, given the current phase of enforcement of Annex C of the D.P.C.M. dated 1st April 2008, the Department of penitentiary Administration commits itself to promote specific activities in cooperation with the Local Health Service (ex.: horse-therapy project).

246. As for the complained lack of cleaning staff (paragraph 134), article 6 of the Regulations of Enforcement of the Penitentiary Act (D.P.R. 230/2000) provides for that the internees and prisoners themselves have to see to the cleaning of their bedrooms. Should not they be in physical or psychic conditions to perform the said activity, the penitentiary Administration shall avail itself of the paid work of other prisoners or internees.

247. The latter are entrusted with the cleaning of the structure; anyway, the penitentiary Administration will make every possible effort, in cooperation with the competent Local Health Service, for ensuring the hygienic and healthcare standard which comply with the respect of the human dignity; such need is even more felt in the case of internees, since they are persons affected by mental illnesses.

248. **The Administration works on the same wavelength as the Healthcare Authorities also in identifying the criteria and methods which inspire the renovation works.**

249. With reference **to the issue of suicides**, which occurred also in Aversa OPG, the penitentiary Administration, in order to prepare a specific prevention programme in the Italian prisons, started a range of initiatives for awakening awareness about that phenomenon, involving the Regional Directorates of the Penitentiary Administration as well as the Regional Assessors.

250. The penitentiary Administration, besides recalling its many interventions, which the CPT showed to appreciate, provided information about that issue, by which it invited the regional structures to promote public debates on that matter, through meetings to be held preferably in the prisons.

251. The Administration welcomes the invitation from the CPT to propose, jointly with the involved Regions, a study about the suicides which occur in the OPG, in consideration of the particular and delicate situation of the patients.

252. The CPT indicates that it is not advisable that the psychiatrist working in the OPG draft reports about the health state of his/her patients upon request of the judicial authority. The Supervisory Magistrate, in assessing whether an internee is still dangerous to society and whether s/he has to stay in the OPG, seldom asks the forensic psychiatrists to ascertain the psychic conditions of the subject.

253. **The said Magistrate usually bases his conclusions upon the results of the expertise ordered in the phase of cognisance as well as upon the work carried out by the Observation and Treatment Group of the OPG, which is coordinated by the Director of the OPG, but which cannot set aside the health assessment made by the physicians of the institution, who know well the concrete situations of the patients.**

254. **The forwarding of personal data, such as health data, is regulated in Italy by a “wide” law, a Consolidated Act No. 196/2003, named “Code about the protection of personal data”.** The medical service and every operation of personal data processing has to be made in the full respect of the patient’s dignity. All the more reason, the protection of the personal dignity has to be ensured to the internees, who are a weak group in condition of a particular discomfort.

255. The Penitentiary Administration and the healthcare bodies are therefore committed to put into effect some specific procedures, even through staff training courses, in order to conciliate the privacy protection with the necessary information which can be shared with the “lay” staff in the higher interest of the internee’s health.

256. In compliance with this recommendation, please note that **the Aversa OPG Director informed that the restraint beds were abandoned**, as a means of restraining patients under psychomotor agitation; those beds have been substituted by procedures similar to those ones put into effect in the Psychiatric Hospital Services of Diagnosis and Care, with a remarkable development of the medical intervention (by nurses and physicians) and of surveillance action (auxiliary personnel).

257. As for the specific **situation of a prisoner put under isolation**, which the CPT indicated, the Direction communicated that it is a patient in serious physical conditions, with a serious damage to his respiratory system. Due to his pathology, he compulsively smokes everything comes under his hands (paper, bed-sheets, ...). For this reason, in order to protect his physical health, it is preferred to keep him in a protected and controlled situation as for his smoking habit.

258. That patient being also a cardiopath, he can benefit from neuroleptic therapy with a reduced and controlled modality. The Director will take care of ensuring to him the regular time for outdoor exercise.

259. The maximum care will be put on the strict respect of what article 32 of the Constitution provides for, with reference to the voluntariness of the care, except from the need, in the patient’s interest, of having recourse to the TSO (Compulsory Health Treatment), should the situation require so in terms of the Law (articles 33 to 35 of the law 833/1978).

260. **The assessment of the danger to society, of the criminal danger and of the psychiatric danger is a well-debated issue within the Italian forensic and jurisprudence psychiatry.**

261. As a rule, those matters involve first of all the judge of cognisance, who orders, during the trial, the temporary enforcement of the security measure, in terms of article 206 of the penal Code, thus determining the moving of the charged person from the state of liberty to the OPG internment, as a security measure, on the basis of the facts ascertained and of the acquisition of a psychiatric diagnosis.

261. Such a situation may be compared to the TSO treatment, which entails a specific care programme, to be carried out by the psychiatrists at the OPG. Only the positive outcome of such process may bring the supervisory magistrate to decide for the security measure lift.

262. Upon the order of a temporary enforcement of a security measure, the trial is then suspended, on the basis of the subject's incapacity to stand in trial.

263. **Since a maximum time of duration is not provided for in the temporary enforcement of the security measure**, the status of internment of a person can sometimes last for a period even longer than the minimum period provided for by the law for the definitive measure. The security measure temporarily enforced could be revoked at any time by the judge who ordered it, if he deems that the above-mentioned danger does not exist anymore. On the basis of the first paragraph of article 208 of the penal Code in matter of review of the danger, "Once the minimum period of duration is expired, which is established by the law for each security measure, the judge takes again into consideration the condition of the subject, in order to assess whether he is still a danger to society".

264. **The Supervisory Magistrate sitting as a solo judge is competent for this judgment (article 679 of the code of penal procedure). The Supervisory Court only intervenes in case of appeal against the decisions made by the magistrate about the current state of the subject's danger to society. While stating, the Supervisory Magistrate, in order to ascertain the psychical conditions of the subject, usually relies upon the results of the expertise ordered in the phase of cognition as well as upon the work carried out by the Observation and Treatment Group of the OPG.**

265. A number of factors are evaluated, which involve not only the pathology, intended as a nosological framework, but also the whole person in his relational dimension and with his points of reference in the community. In terms of article 133 of the penal Code, besides the health conditions, also the subject's criminal records and his behavior during his internment have to be taken into consideration, as well as his willingness to undergo a therapy and, in case of double diagnosis, a detoxification treatment. The datum having the most weight is the perspective of a positive reinsertion in the community, which can be carried out either through the assignment of the patient to a "protected" structure, or through the support of and the attendance to the local competent services.

266. The lack of an adequate point of reference for housing and family, or the lack of a structure adequate to accommodate the subject implies *ipso iure* the enforcement, as a matter of fact, of the measure. Hence the importance of housing structures in the community, which the Regions and the Local Bodies should implement.

267. During the execution of the measure, the Supervisory Magistrate constantly renews the judgement of dangerousness, either upon request of the same subject or of the OPG; they can both ask for a decision by applying for an anticipated revocation before the deadline provided for by the law, or ex officio upon expiry of the said period.

268. The Constitutional Court pronounced decisions on that matter, by the sentences nr. 253/2003 and 367/2004, thus stating the constitutional illegitimacy of the articles 222 of the Penal Code - hospitalisation in OPG - and 206 of the Penal Code - temporary enforcement of the security measure - in the part where they do not allow the judicial authority to order alternative security measures instead of the hospitalisation in OPG. The Court stated that it is unconstitutional to impose a rigid bond to the Judge, by obligating him to order in any case the detention measure (the hospitalisation in the OPG is a detention measure, in terms of article 215, paragraph 1, nr. 3 of the penal Code), even when the more flexible and non-segregating measure of the supervised liberty – implying obligations and prohibitions ordered by a judge, adequate to avoid the opportunity of perpetrating new crimes (paragraph 2 of Article 228 of the penal Code) can concretely fulfil, at the same time, the requirements of protection and care of the subject concerned and of control of his danger to society.

269. The trend of the jurisprudence and of the science of law is then to limit, as far as possible, the hospitalisation in the OPG and to reduce the stay in those structures through systems of discharge in combination with instruments allowing the patient to be released from the OPG and to be assigned to a programme of care in the community.

270. The experience of the “experimental final leaves” is going in that direction; those leaves are granted by the Supervisory magistrate in terms of paragraph 1 of article 53 of the Penitentiary Act, upon request of the internee or upon an OPG proposal, on the basis of a specific and tailored treatment programme of rehabilitation and reinsertion in the community; such programme should provide for the inclusion of the internee in a protected structure, or in the local community through his assignment to the Mental Healthcare Services.

271. **The experimental final leave** is the result of the synergetic joint action made by the OPG treatment and observation Team and by the competent psychiatric service for every single internee, and it is approved by the Supervisory Magistrate.

272. That leave identifies an intermediate practicable way, between the patient’s undetermined internment in the OPG and the patient’s discharge without any effective follow-up assistance by the outside services (following the revocation of the security measure or the impossibility of enforcing it), because the final leave implies that the subject undergoes supervised liberty (article 53, paragraph 4 of the Penitentiary Act) and, thus, that he is put under some control and that his specific treatment programme is assessed and verified.

273. The penitentiary Administration, in cooperation with the Local Health-care Service of Caserta, welcomes the CPT’s recommendation, and **will draft a brochure in several languages describing the functioning of the hospital and the rights and duties of the patients; such brochure will be handed over to all interneers.**

274. We assure that no obstacle has ever been put to the entry into the structure by the inspection bodies of the National Healthcare Service or to the Carabinieri NAS. More generally, it is worth stressing that the Carabinieri Anti-sophistication Groups periodically carry out specific controls at Hospitals, OPGs, Clinics, ex officio or upon request by the competent Ministry. Accordingly, controls at the Penitentiaries may be carried out upon request by the Minister of Justice.

275. The action within OPGs entails the transfer of competences, financial and human resources, whose final stage will lead to the renovation of the entire spectrum of services' offer, allowing the Judiciary to place in appropriate facilities those prisoners under security measure who need rehabilitation treatment, under the external control of the penitentiary police. Also on this long-term project, the above Committee is working.

276. The initial step will lead to release 300 internees on the national territory, as long as they are not undergoing, anymore, any security measures. Since the relevant Institutes are located in different Regions with their own peculiarities, there will be a diversified programme on the basis of the analysis currently carried out by Regions.

277. It is worthy of mention all the relevant steps taken so far, by ASL Caserta 2, the local health-care Department, as for the Aversa OPG:

- The health-care functions of the Aversa OPG were transferred, on October 1, 2008, to the Mental Health Department (acronym in Italian, DSM) of the former A.S.L. CE/2.

In the last three months of 2008, all the actions were undertaken with the aim of tackling difficult situations, as emerged also by the CPT observations:

From 16 January 2009, by Memo No.589/DSM-ASL CE2, it was decided "The elimination of the restraint beds, never existed in the facilities under the DSM competence". By the same Memo, it was requested both the health and the penitentiary Directors of the Aversa OPG to make use "only under exceptional circumstances, as a last resort - of the restraint". Therefore:

- 1) The restraint has to be decided by the medical Executive for the time strictly necessary;
- 2) The medical Executive reports the beginning and the end of such measure in both the medical file and in an ad hoc Register;
- 3) All the time of such procedure, a C.P.S. nurse has to remain close to the patient, to control inter alia the life parameters;
- 4) The restraint has to be applied by small bands attached to the normal bed of the patient."

In this regard, it is worth stressing that, up to September 2009, such measure has not been adopted anymore.

278. As already recalled, all the resources and functions were transferred to ASL CE2. At the beginning, by urgent measures of the Strategy Unit (Memos 1827 DG, 1983 and 2240 DS and DA) it was decided that the DSM Director would be in charge of adopting prevention, care and rehabilitation measures for the prisoners affected by mental diseases, overall those in the OPGs, while the former OPG Director in Aversa would be in charge of the health-care services within that OPG.

279. The inclusion of the OPG within said Local Health-care Department, as consequently confirmed by a Frame Resolution on the Penitentiary Health-care system (D.G. Resolution No. 926 dated December 18, 2008), contributed to solve the main problems put forward by the CPT, as follows:

- 1) Increasing contacts between ASL (DSM) and those working at the OPG, including by periodic meetings between DSM and Penitentiary Directors;
- 2) Increasing number of health-care providers (two part-time psychiatrists, one psychologist and one nurses coordinators, in addition to more personnel to be used in the event of emergencies);
- 3) Increasing number of individualized therapeutic rehabilitation projects;
- 4) Definition of a programme to renovate the facility under reference (as a priority, such projects will be financed by Campania Region, to significantly reduce the number of patients, and by renovating few areas of this facility);
- 5) Stabilization of the personnel transferred with the inclusion in the local Department of the personnel and by re-negotiating contracts for those who had been seconded, in order to be better defined within the resources of such facility, by DG Resolution No. 813, dated November 25, 2008 and No. 943, dated December 30, 2008, respectively; Extraordinary Commissioner Resolution No. 229, dated May 25, 2009); subsequent liquidation of the competencies, through cash anticipation, relating to the failure of transfer to the Region of the due financial resources by D.P.C.M. dated 01.04.2008;
- 6) Organisation of the required activities by a regionally-financed project (D.G.R.C. 858/2009) concerning the possibility to replace of old health-care technologies and individualized external projects for those patients who can be dismissed.

280. As to the individual case above-reported and mentioned by the CPT, on amore specific note, it has been envisaged an individualized project, as well as the take into care by the local DSM of origin of this person.

281. Such approach has been followed also for three more internees.

282. As for the measures realized by the local DSM in the field of the health-care service in the penitentiary and with the direct impact over the health-care functions performed within the Aversa OPG, it is worth recalling, as follows:

- 1) 01 /10/2008: Authorization to continue up to 31/12/08 with the activities carried out according to the modalities used up to 30/09/08, as agreed upon on 26/09/08, at the Regional level between relevant stakeholders (Memo 16118 DG);
- 2) 02/10/2008: Internal advertisement for the search of health-care providers, at the level of the management and of the operators, the latter being used outside the working hours, at the Penitentiaries located within the ASL CE/2 area;
- 3) 02 /10/2008: Authorization for the DSM Director to envisage extra-work, only under extraordinary circumstances, for the relevant personnel, namely psychiatrists, psychologists, professional nurses and OTA/OSA at the Aversa OPG (Memo No. 1827 DG);
- 4) 24/10/08: Establishment of an initial structure for the local Penitentiary Health-care Department, appointment of a Coordinator working in tandem with the DSM, an organisational planning to overcome this transitional phase; the official indication of the inclusion of the Aversa OPG within the DSM, the transfer of the resources and all management functions to the DSM Director (Provision DS and DA, Prot. No.1983);
- 5) 24/11/2008, D.G. Resolution No. 813 "definition of the position of the nurse personnel transferred from the Ministry of Justice, in accordance with D.P.C.M. 01.04.2008";
- 6) 02/12/08: Dissemination at all relevant levels of the Agreement signed on 20.11.2008 (Memo DG-DS-DA No.2418);
- 7) 03/12/08: Tasking the Resp.Coord. Ass. San. within the Penitentiary field with all the acts necessary to liquidate all the competencies for the personnel appointed not on a permanent basis. Liquidation for the activities carried out in the penitentiaries as well as in the OPG, between October and December 2008 (Strategy Unit Provision No.2418);

- 8) 05/12/08: The former OPG Director is in charge of the management and the health-care assistance to the prisoners of said facility. (DS Service Provision, Prot.No. 734);
- 9) 18/12/08: D.G. Resolution 926 concerning the transition and the medical functions to be performed during the transfer;
- 10) 29/12/08: Convening of meeting among relevant stakeholders: actions-sharing on the service to be provided from 01/01/09; evaluation of the needs for each facility, specifically on human resources; meetings every 15 days, including the Penitentiary Management;
- 11) 30.12.2008: D.G. Resolution No.943 "concerning extension of the contracts, up to 13.06.2009; afterwards extended up to 31.12.2009, by Extraordinary Commissioner' Resolution No. 229 dated 29/05/09;
- 12) 21/01/09: Meeting and indication of the organization pattern/program (see Resolution D.G. 926 dated 18/12/08);
- 13) Definition of additional organizational programs (D.G. Resolution No. 926);
- 14) 16.01.2009: The DSM Director Resolution No. 589, drawn up jointly with the Penitentiary Director, to eliminate restraint beds and room in said OPG, with the contextual introduction of the procedure envisaged for the civilians' Hospitals (acronym in Italian, SPDC).

283. **The penitentiary Administration, through its local and central bodies, commits itself to be an active party towards the Campania Region and the Local Healthcare Service of Caserta about the following aspects, which do not fall within its competence:**

- Substitution of the mattresses and bedding items currently in use with other items adequate to bedridden and/or incontinent patients (paragraph 133);
- Increase in the number of socio-medical staff in order to ensure adequate levels of hygiene in the structure (paragraph 134 of the CPT report);
- Increase in the number of psychiatrists, psychologists, occupational therapists and nurses on duty at the Aversa OPG (paragraphs 136-143-144 of the CPT report);
- Re-organisation of the pharmaceutical service (paragraph 145 of the CPT report);
- Substitution of the X-ray equipment and of the dentist's chair (paragraph 138 of the CPT report);
- Adoption, in the methods of work of the healthcare staff, of routine staff meetings on clinical and organisational aspects (paragraph 149 of the CPT report).

284. As for **the TSO treatment, on a more specific note, the Health Department within the Ministry of Labor**, while noting the lack of complaint or *mal practice* cases, reported to the Justice Minister what recommended by the CPT in order to ensure a proactive role by the supervisory magistrate, beyond the formal control of the relevant documentation, with specific regard to the possibility of a hearing with the patient. Furthermore, it will be considered the possibility to get the consent in writing when those individuals concerned are being hospitalized under TSO treatment.

285. Last but not least, as to the List of Authorities met by the CPT during its visit to Italy (Appendix II) it emerged a minor factual error. **Mrs. Colomba Iacolino** is an Executive, acting Director, at Unit III (*Ufficio Relazioni Internazionali*) within the Directorate on Innovation of the Ministry of Labour, Health and Social Policies.

CONCLUSIONS

Italian Authorities reiterate their firm commitment to cooperating with the CPT and stand ready to supply any further information which the CPT might deem necessary.

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 In particular, most of the training focuses on the aspects concerning the police service "mission" in a democratic society, a human-centered training of the National Police, the fight against any form of discrimination as well as on the guidelines for police officers' activity as regards the respect of the right to life, the fight against torture and any inhuman or degrading treatment, correct use of force, impartiality.

iii Said resources consist in the following: 1. a group of trainers specialized in "Human Rights" who are already included in the list of expert trainers drawn up by the Council of Europe; 2. a group of trainers specialized in establishing an approach and an interrelation with populations of different culture or who already took part in humanitarian operations or training projects on topics related to cultural anthropology; 3. a group of trainers specialized in approaching different cultures; a team of officials who participated in different projects financed by the European Commission to combat racism and discrimination and promote integration (e.g., the Project "Transfer" against discrimination, the Project "Pavement", "Across Sahara", "Limenform" etc.); 4. a number of police officers, ranging from 500 to 1,000 units, belonging to different ranks and employed either at First Reception Centers and Temporary Holding Centers or in contingents engaged in peace-keeping operations abroad; 5. more than 2,000 neighborhood police officers who are committed to building a close relationship also with foreign communities immigrated to our country; 6. already tested partnerships with NGOs engaged in promoting integration and in combating discrimination or trafficking of human beings (e.g., COSPE and IOM); 7. foreign trainers ad hoc trained by the National Police in order to conduct activities of cultural mediation in the framework of a project of the Ministry of the Interior called "Limenform" including graduated trainers residing in Italy of Arabic, Romanian and Serbian-Croatian mother tongue; 8. international cooperation on various projects involving immigration offices, border police offices, offices responsible for training and those responsible for deploying neighborhood police officers; 9. police officers belonging to minority ethnic groups; 10. national and European budget allocations for initiatives and activities enhancing policing in the specific context.

iv Said Central Directorate supervised: the translation into Italian and the circulation among the officers of the "Chart of Rotterdam on Police Service in a multiethnic community"; the translation and circulation among police officers - as a personal kit - of the text of the Recommendation Rec.(2001)10, adopted on 19 September 2001 by the Committee of the Ministers of the Council of Europe ("Code of conduct for a democratic Police"); the drawing up, in partnership with the no-profit organization COSPE (Emerging countries cooperation and development) and representatives of the Chinese, Roma, Nigerian, Jewish and Islamic communities, of the Manual for police officers "Police duty in a multicultural community"; the drawing up of a manual aimed at training trainers "Human Rights and Police Forces", which was supervised by the C.E.U. and printed by the Public Security Department.

^v 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 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.

^{vi} 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 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).

^{vii} 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**.

^{viii} Briefly, as to the procedural safeguards: i. The judicial police, when proceeding to the arrest of a person, must inform him/her on his/her rights, in accordance with the Law. In particular, the person under arrest or detained is informed of the right to choose a legal counsel, to give prompt notice of the arrest to his/her family, and not to be obliged to respond during the examination (however, the proceeding will continue its due course). ii. Provided the fundamental value of the right to defense, no derogation to the mandatory participation of the legal counsel is allowed in both the examination of the person arrested to be adopted during the hearing of confirmation (*udienza di convalida dell'arresto*), and the examination to be held when controlling the regular execution of the pre-trial detention. Moreover, when a measure restricting the personal liberty is taken, the possibility to lodge a complaint before the so-called Review Court (*Tribunale del Riesame*) is envisaged. iii. Along these lines, the intervention of **medical personnel** 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. Such indication emanates, inter alia, from memos and internal regulations of the Carabinieri army corps. 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 nelle camere di sicurezza*, under the item "AOB". iv. In case of arrest executing the order released by the justice, **Art. 104 criminal proceeding code sets out**, as a general rule, that the charged person being under pre-trial detention enjoys the right to hearing with his/her counsel since the beginning of the execution of the measure under reference. Therefore, Art. 104 of the criminal proceeding code envisages, as an **exception** to such provision, the possibility for the justice to postpone by motivated decree the exercise of the right to hearing with the legal counsel, up to five days. v. **To guarantee the right to self-defense, the examination before the justice must take place with the participation of the legal counsel, as laid down in Art. 294 criminal proceeding code.** vi. There is no provision for bail; however, judges may grant provisional liberty to suspects awaiting trial. vii. As a safeguard against unjustified detention, panels of judges (liberty tribunals) review cases of persons awaiting trial on a regular basis per a detainee's request and rule whether continued detention is warranted (Persons under detention include not only those awaiting trial but also individuals awaiting the outcome of a first or second appeal)

^{ix} With specific regard to the “security rooms” where people are placed as soon as they are arrested, these institutions have been criticized as structures of punitive nature. In fact, such rooms are furnished and structured in a way so as to prevent the persons under arrest from hurting themselves or attempting suicide. It is in fact well known that persons arrested for the first time, because of the trauma they undergo, are exposed to some kind of self-injuring attitude while, on the contrary, persons that have gone through a trial and have been convicted, are already used to the idea of being deprived of freedom. Through the security rooms, such as those the Police and Carabinieri Forces in Italy are endowed with, suicides of persons just detained for the first time have almost disappeared: they probably sleep badly or find the environment less comfortable, but surely they have not got any pretext to attempt to their own safety.

^x Please find below the list of issues and activities about which penitentiary, including juvenile justice, and health departments have to commit themselves in terms of cooperation, at the regional and local levels: Detection of the areas for health-care services; Adequate support for the correct performance of relevant activities and continuity of the health patterns, while ensuring mutual respect for the respective competences; Respect for the professional autonomies; Sensitive data-sharing for the treatments of patients, specifically of the newly arrived; Judicial data-sharing to better deal with prisoners, internees and juveniles; Cooperation among these two branches, specifically when proceeding with the rehabilitation therapy in the OPG; Continuity of the programs, including when the individual is moved into another Region; Detection of areas for the rehabilitation of the drug-addicted and the mentally-ill detainees; The inclusion in therapy Communities, as decided by the Judicial Authorities, for those minors undergoing a penal measure; The implementation of preventive programs (such as those for reducing the suicide-risk); Implementation of programs to improve the quality of the care and treatment processes, with specific regard to minors conflicting with law; Implementation of ad hoc training, also for the personnel not providing health-care services.

APPENDIX I

ITALY

MINISTRY OF FOREIGN AFFAIRS

INTER-MINISTERIAL COMMITTEE ON HUMAN RIGHTS
Comitato Interministeriale dei Diritti Umani

PRELIMINARY COMMENTS BY ITALY,
FURTHER TO THE PERIODIC VISIT TO ITALY,
BY THE COE COMMITTEE ON PREVENTION OF TORTURE
(September 14-26, 2008)

Rome, November 14, 2008

**PRELIMINARY COMMENTS BY ITALY,
FURTHER TO THE PERIODIC VISIT TO ITALY, BY THE COE
COMMITTEE ON PREVENTION OF TORTURE
(September 14-26, 2008)**

INDEX

INTRODUCTION

I. Foreign National detained under aliens legislation:

The delegation would like to receive within one month detailed reports on this incident from both the State Police Public Security Department and the Red Cross, as well as on any measures which have been taken in this regard.

II. Prisons:

*The delegation would like to receive within one month confirmation of this transfer.
The delegation would like also to receive within one month confirmation of this transfer.*

III. Judicial Psychiatric Hospital (OPG):

Pursuant to Article 8, paragraph 5, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, the delegation makes an immediate observation and requests the Italian authorities to carry out a thorough review of the current procedures for the use of means of restraint and seclusion at the Aversa OPG, in the light of the aforementioned remarks and taking into account the standards set out by the CPT. It wishes to receive within one month detailed information on the decisions and measures taken in this regard.

IV. Additional relevant information

**PRELIMINARY COMMENTS BY ITALY,
FURTHER TO THE PERIODIC VISIT TO ITALY,
BY THE COE COMMITTEE ON PREVENTION OF TORTURE
(September 14-26, 2008)**

Further to your query, dated October 14, 2008, Italy is in a position to provide the following information:

While waiting for your periodic Report, the Italian authorities wish to reiterate the importance attached to this long-standing and constructive dialogue with the COE Committee on Prevention of Torture.

By paying specific attention to the preliminary observations put forward by Ms. Casale, Head of the CPT Delegation, on September 26, 2008 and going through your letter, we would like to draw your attention to the fact that the Carabinieri Corps Station in Gardone Val Trompia (Via Bellini 1) was, indeed, in the documentation transmitted to you: The requested relevant information was indicated at pag. 113 of the file sent, by fax, to your Office, at the attention of Mr. Trevor Stevens, on May 28, 2008 (approx. at 16:30 P.M.).

I. Foreign National detained under aliens legislation:

The delegation would like to receive within one month detailed reports on this incident from both the State Police Public Security Department and the Red Cross, as well as on any measures which have been taken in this regard.

I.a

The local police headquarters reported that Y*, during his stay at the Centre under reference, on July 10, 2008, while waiting for being brought to the infirmary, was placed in the area called "buffering area (*cuscinetto*)". Approx. at 11:15 P.M., a police serviceman on duty at the Centre asked Y to close the window, looking onto the sector reserved to the political refugees, which he had unduly opened. To such request, Y violently reacted - first orally and then physically - against that policeman.

Afterwards, Y caught the attention of the Red Cross workers on duty at the Centre, by stating that he had been victim of injury by a few Police agents. He was thus promptly examined by the paramedical staff on duty at the Centre, who did not find any injury that might have determined Y's transfer to an external medical facility.

By bringing Y back to the lodgings sector, called sector "C", soon his room-mates strongly protested against both the Police servicemen and the Red Cross workers. The room-mates in sector "D", mainly from North-Africa, joined the protest.

Approximately at 2:00 A.M., the hosts staying in the above sectors, after breaking the glass doors in the internal courtyard, set a fire by using throw-away bed sheets and mattresses, while from the

* 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.

outside it was registered the arrival of about fifteen individuals belonging to the Milan squats, swiftly stopped by the police forces. At the same time, from the overpass in front of the Centre, few other individuals started throwing tear-gas and petards against the facility.

The State Police officer, supported by Police servicemen and fire-fighters, extinguished the fire and cleaned up the area concerned.

At 3:00 A.M., the members of the squats went away, while at 4:30 A.M. Y, who meanwhile had been transported to the San Raffaele Hospital for an examination, came back to the Centre with an eight-day prognosis, due to contusions.

Against this background, it is worthy of mention that the examination of the images from the closed circuit cameras evidenced that few cameras during the protest had been darkened by the hosts in the facility.

1.b.

ITALIAN RED CROSS
Provincial Committee of Milan

Centre for temporary stay and assistance (CPTA)
Milano "CORELLI"

Dated Milan, July 11, 2008

Prot. 1127/08

Duty Report

To Prefecture of Milan
Deputy Prefect Dott.ssa Pavone

To the Director of the CPTA
Ms. Gabriella Salvioni

Called today at 1:50 A.M. for the events reported below, I, hereby, Antonio De Feudis, Ten. Commissioner of the Italian Red Cross and operative manager of the CPTA, state as follows:

Informed by our personnel, around 1:50 A.M.. Together with Mr. Alberto Bruno, the provincial President of the Italian Red Cross (CRI) in Milan, I arrive at the Centre where a violent riot was going on in the sector hosting transsexuals. The situation I had in front of me was seriously alarming. A dense smoke was coming out from the abovementioned sector (the hosts piled up the beds, both in the court and within the sector, and set a fire to it). Waiting for the arrival of the Fire Brigades, (already alerted by our personnel), the evacuation and anti-fire procedures were put in place.

In the meantime, signals of agitation came from sector "D" (male sector) opposite to sector "C" where the protest erupted. The normality was restored thanks to the joint intervention of our personnel and the personnel of Public Security, at about 4:00 A.M. today.

In the two sectors where the riot took place, the material destroyed during the fire, as mattresses, bed sheets and pillows, has been replaced and all the damaged material has been removed, thus making the sleeping area of the two sectors available.

Having heard the person responsible of the night shift, A*, Feminine Assistant, about the reasons behind the protest, it emerged that a transsexual host, identified with the name of Y - who went to the infirmary in order to take a therapy -, arrived in the buffering area with the clear aim of provoking the Police personnel, by insulting the officers on duty.

Not satisfied by what already said, this host spit on an officer and, subsequently, wet him by throwing a glass of water. Afterwards, the officers blocked the person and brought him towards the offices of Public Security from which he returned after very few minutes.

Once back to his sector, Y told the other hosts that he had been - in his opinion - ill-treated. As a consequence, the abovementioned riot started.

Y lamented widespread pain in all his body and, for this reason, was brought in the infirmary at 11:55 P.M. where he was administered an analgesic. Returned again to his sector, the abovementioned host kept on lamenting pain but refused, for several times, to be brought again to the infirmary and asked our personnel to allow some people, who according to him were outside the facility, to enter the Centre in order to bring him to the Hospital.

Notwithstanding the mediation of the CRI personnel and the Public Security Inspector, the riot occurred in the terms reported.

Y, at 3:00 A.M., was brought to the Emergency of the San Raffaele Hospital from which he came back at 5:00 A.M. with a diagnosis, from which it did not emerge any situation of grave/medium seriousness.

Following the riot, no damage to the people held in the CPTA or to the staff must be highlighted, while damages to the facility were registered, the detailed list of which will be sent after an accurate control, later today.

All this is dutifully transmitted.

Antonio De Feudis
CRI Ten. Commissioner,
Operative manager

II. Prisons:

2.a

The delegation would like to receive within one month confirmation of this transfer.

As for the prisoner with psychiatric problems, he is in the remand prison of Cagliari since February 23rd, 2008; he had been imprisoned several times before, he is a former drug-addict and is constantly followed by the psychiatrist and by the toxicologist.

* 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.

On a general note, since he is resident in Cagliari, at the disposal of the Cagliari Court of Appeal, and since he is monitored and followed, under the health-care point of view, by the medical services and the structures of the diagnosis and therapy centre of the prison, it was not deemed opportune to transfer him; in case of necessity, he can be hospitalised outside, in terms of article 11, para.2, of the Penitentiary Act, after authorisation by the Supervisory Magistrate, competent for the judicial district of Cagliari.

As for the request of the Committee, to take immediate steps to transfer the prisoner held at Cagliari prison to an appropriate psychiatric establishment, it has to be said that, on November 10th, 2008, an order of temporary transfer of such prisoner was issued, to Turin "Lorusso and Cutugno" prison, for making use of medical personnel and specialized equipment of the annexed psychiatric ward until the diagnosis is formulated and the clinical picture improves.

2.b

The delegation would like also to receive within one month confirmation of this transfer.

As far as the situation of the Neuropsychiatric Observation Centre of Milan San Vittore is concerned, on October 27th, 2008, the renovation works concerning the whole wing started.

For logistics, health and security reasons, it was deemed to carry out the works without transferring the patients from it; indeed, the subjects who were able to be discharged, were sent back to the prisons which they came from; the remaining 8 prisoners were accommodated to some rooms so as to allow the carrying out of the works alternatively in the different rooms. Such solution is functional and in conformity with the health management of those patients, whose hospitalisation is limited to the acute phase of the psychiatric pathology. During the hospitalisation, the therapeutic and treatment paths, aiming at a valid psychic compensation, are identified. To this purpose, at the Penal Wing a project is activated and financed by the Lombardia Region; such project specifically aims at rehabilitating the prisoners with psychic diseases.

The nurse service is assured during the whole day.

As for the diagnostic therapeutic centre conditions, the rehabilitation works ended, which involved a whole storey; currently, the prisoners who were temporarily accommodated to other infirmaries are going back to that wing.

On a more specific note, (as to Milano-San Vittore prison: Neuropsychiatry Observation Centre (CONPS) and Clinic Centre), at the Diagnostic Therapeutic Centre of Milano San Vittore prison, there is the Centre for the Observation of Psychiatric Diseases - at the mezzanine, which effectively, turns out to be in collapsing hygienic-healthy and structural conditions, as the entire Diagnostic Therapeutic Centre.

In order to improve the situation of the Centre for the Observation of Psychiatric Diseases, the Directorate of the prison asked the competent Super-intendency a financing of 35.000/40.000,00 Euros, to carry out interventions of ordinary maintenance to cells and toilets. Financing was not granted for lack of funds.

Subsequently, because of seepages coming from the roofs, the situation of the Diagnostic Therapeutic Centre is considerably worsened and the third floor has been declared unfit for use. Therefore, it has been considered necessary and urgent to carry out maintenance interventions directly managed by working prisoners. At the completion of works, which are still ongoing, the prisoners of the Centre for the Observation of Psychiatric Diseases, will be moved to the third floor renovated.

As for the Clinic Centre, where renovation works of the roof of the entire building are being carried out, it has to be pointed out that the situation of old age of the structure is at the attention of the Administration, therefore, as the economic resources will enable it, the renovation will be carried out.

To the above concern, in the drafting of the relevant educational project, it is ensured that the cells for handicapped prisoners are provided for; even a room for the activities in common of the prisoners of the Centre for the Observation of Psychiatric Diseases is provided for, even if, for the time being, because of the reduced available area, it is not possible to build it.

III. Judicial Psychiatric Hospital (OPG):

Pursuant to Article 8, paragraph 5, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, the delegation makes an immediate observation and requests the Italian authorities to carry out a thorough review of the current procedures for the use of means of restraint and seclusion at the Aversa OPG, in the light of the aforementioned remarks and taking into account the standards set out by the CPT. It wishes to receive within one month detailed information on the decisions and measures taken in this regard.

As for the situation of the Judicial Psychiatric Hospital (OPG) of Aversa, some rehabilitation works are currently being carried out, as well as some ordinary maintenance interventions in the New Wing, in order to improve its living conditions.

The shifting of the health-care responsibility to the Local Health Authority does not allow, in this moment, to make any assessment about the organisation of the service, which will be further redesigned. However, it is possible to say that the internees population, which amounted, as of last November 4th, to 268 people, increased during the last five years; the same occurred in all the other Judicial Psychiatric Hospitals. All the patients are anyway provided with the therapeutic treatment, which is not limited to pharmacotherapy.

In the treatment of psychiatric patients, the establishment of a local network of rehabilitation and treatment intervention with the community is crucial: Indeed, an early involvement of the local bodies in treatment management allows to discharge those patients who, since they are not considered as dangerous anymore by psychopathologic compensation, should not remain at the OPG, as well as those patients whose security measure is approaching to the end; the reintegration in the community safeguards those patients for whom an unjustified extension of the security measure could occur (due to the lack of family or the non acceptance by the family of the patient, or to local services not available for the follow-up).

The shifting of the penitentiary health-care service to the local health authority shall enable the development of the relations established so far with the local services, since a specific annex to the D.P.C.M. dated April 1st, 2008 (entitled “Guidelines for intervention in the judicial psychiatric hospitals and in the prison hospitals”) points out the path to be made, according to the shared operational modalities which are currently being studied by a technical team, composed of members from Regions, Ministry of Health and Ministry of Justice.

The main actions, which bodies involved have to agree upon, concern, on the one hand, the organisation of the therapeutic rehabilitative interventions and, on the other hand, the drafting of specific indications in order to achieve an organisational structure, able to guarantee a fair harmonisation between the health-care measures and the needs of security.

With reference to the living conditions of patients confined to bed or of incontinent patients, the OPG Director pointed out to the local Department of Mental Health, which is the body responsible for the health-care management of the internees, the lack of waterproof mattresses and of beds for constriction suitable to the CPT standards, by asking for the substitution of the instruments which were considered as inadequate with other instruments already in use in civilian hospitals.

The same Department was also addressed by the OPG Director as for the procedures adopted for the constriction of violent and aggressive patients, in order to adopt a shared protocol for the procedures used by the local services of the community. However, it must be specified that the use of means of physical constriction is only allowed in the cases and under the modalities indicated by Article 41 of the Penitentiary Act and by Article 82 of the D.P.R. No. 230/2000, under the medical control and by the same means which are usually used at civilian hospitals.

It has to be specified, to this purpose, that the Judicial Psychiatric Hospital works exactly as a hospital.

As far as confinement is concerned, it can be ordered, in terms of Article 33 of the Penitentiary Act, only for medical, disciplinary or judicial reasons - in the latter case by the proceeding judicial authority.

The confinement of prisoners and internees is very carefully monitored, by adequate daily controls both by the physician and by the treatment professionals, as well as by a continuous and adequate surveillance by the penitentiary police staff.

In relation to the issue of suicides at the Aversa OPG, in 2008 there were three deaths for natural causes and two suicides. Such events are strictly connected with the fact that in the OPG we find internees with serious psychic and even physical troubles.

In this connection, it must be specified that the penitentiary Administration issued many provisions, with the purpose of facing such a worrying phenomenon. The last provision is the circular letter No. 0181045, dated June 6th, 2007, establishing the reception service for the prisoners coming from liberty, taking particular care of the subjects with a suicide risk and with psychiatric diseases. Such service, staffed with a multi-disciplinary team (prison governor, physician, psychiatrist, psychologist, nurse, educator, penitentiary police staff), in a close cooperation with social workers, cultural mediators and social and health services of the local community, aims at obtaining a first knowledge of the prisoner, in order to mitigate the traumatic effects of imprisonment and to prepare the necessary interventions for the protection of the physical and mental safety following the subject's entry in a prison.

As to the renovating works, these are generally carried out for functional lots or for Units in order to guarantee the continuous functioning of the prison. As for Aversa Judicial Psychiatric Hospital, in the past various building interventions of adaptation and functional recovery have been carried out relatively to two wings (Unit n.4 and Unit n.5), as ascertained in the course of the visit by the delegation.

Recently, renovating works of Unit n.8 have been given on contract. Works began on October 22nd, 2008 and will last 240 days. Renovating works of Unit n.9 which will be completed within the end of this year, have already started.

Finally, as for the New Unit, various interventions for the complete recovery of the functioning of such Unit have been completed.

On a more general note, as for the health-care assistance to prisoners and internees, it must be stressed that by the Decree of the President of the Council of Ministers (DPCM), dated April 1st 2008, published in the Official Journal No. 126 of May 30th, 2008 and entered into force on June 14th 2008, the transfer of the penitentiary health-care service to the National Health Service was finally carried out. Such transfer had already been established by Legislative Decree No. 230/1999.

Since October 1, 2008, the Penitentiary Administration does not have any financial resources for the penitentiary health-care service. This Department currently keeps the responsibility of the organisation and functioning of the health-care assistance in the prisons located in the Regions with Special Statute - and the autonomous Provinces of Trento and Bolzano, until the transfer of that sector, which will be made in terms of the modalities provided for by the respective Regional Statutes.

IV. Additional relevant information:

4.a.

Prison building activity, aiming at the renovation, the development and the reorganisation of prisons, is carried out either through the building of new prisons, replacing old prisons which, mainly because they are old, they are in such conditions that they should be closed (activity falling under the competence of the Ministry for Infrastructure and Transport), either through the execution of interventions, of renovation, maintenance and the widening of existing prisons (activity falling under the competence of the Ministry of Justice).

The trend of continuous increase in prison population, causing the serious problem of overcrowding, has led the Administration to establish a building programme, through an Executive Action Plan, to acquire further detention rooms. Such building plan, which provides for interventions of renovation of wings previously closed and the widening of existing prisons through the building of new wards, or of new buildings in exiting areas and accessories, has already enabled to recover 485 places and within the first months of 2009, further 1270 places, while within 2009 further 575 places, for a total of new 2330 detention places.

In the following three years, the recovery project implemented by the penitentiary Administration will produce further 2100 places, compatibly with the funds available, while the activity carried out by the Ministry for Infrastructure, to build new prisons, will create, with regard to the delivery of the works already financed of the first lots, 1215 new places; the work of the second lots of such prisons - still not financed - will add further 810 places, for a total deriving from the new buildings equal to 2025.

Therefore, once the above-mentioned activities are over, the new detention places - in compliance with the regulations - will enable a substantial mitigation of the problem of overcrowding and a considerable improvement of the detention conditions from a hygienic-healthy point of view.

4.b.

As for the medical examinations of prisoners, which would be carried out in the presence of the penitentiary police staff, our Department already gave instructions (by a circular letter dated July 11, 2000) so that the medical examinations of prisoners and internees are only carried out by the medical and paramedical staff, working in the prisons, except for a different grounded request made by the physician, and without prejudice to possible security reasons. However, also in the case where, for the above-mentioned reasons, staff members different from the medical and nurse staff should be present at the medical examination, every arrangement shall be adopted in order to protect at best the necessary privacy of the examination.

As for the necessity of a medical transfer file for foreign prisoners transferred to an identification and exclusion centre, this Department, by a letter dated June 6th, 2008 - in the perspective of a fruitful cooperation with the competent structures of the Ministry of Interior -, gave adequate directions to the Regional Directorates so that a document is issued to the non-EU citizens, upon their release from the prison; that document should include the subject's health data necessary for the health-care interventions, to be carried out in the above-mentioned centres, in order to allow a faster identification of diseases as well as the follow-up of adequate therapies.

4.c

As far as the specific issues raised by the CPT delegation are concerned, after the visits carried out in the period 14-26 September 2008 at some prisons, the information about the prisons visited are as follows:

With reference to the issues raised for the Remand Prison of Cagliari Buoncammino, it must be underlined that, from the report sent by the Governor of that prison, we have no information concerning alleged physical mistreatments inflicted to prisoners by the penitentiary police staff. It has to be underlined, in this regard, that any event, even futile, which happens in prison, is punctually registered in appropriate registers.

Actually, since in that prison there is no segregation wing, in some cases of particular seriousness, the prisoners who are in a psychomotor agitation, are placed, after an adequate medical certification, in a room without harmful objects, in order to protect their safety. Sometimes, and always upon request of the physician, the prisoner is undressed, in order to avoid risks of suicide. In all cases, the patients are constantly followed by the specialists who authorize their reintegration in the ordinary association activities, once the critical phase is over.

As for the prisoner dead in Cagliari Hospital, on May 28th, 2008, he was imprisoned in Cagliari remand prison on March 10th, 2008; he was a drug-addicted, undergoing a methadone therapy, and had been hospitalised since May 26th, 2008 with a diagnosis of "right parietal-occipital epidural haematoma", which caused his state of coma, in consequence of a fight with a co-inmate for futile reasons.

All the deeds relevant to such death have been forwarded to the Public Prosecutor Office in Cagliari, and we are still waiting for the outcome of the penal procedure. The administrative investigation, delegated to the Penitentiary Administration Regional Director of Sardinia, did not find any responsibility of the penitentiary police staff and of the health-care staff, who intervened promptly and professionally, carrying out all the necessary actions.

As to the renovation of the Cagliari Buoncammino prison, this is among the prisons which will be closed because it is old, in order to be replaced by a new structure. Therefore, waiting for the building of a new prison, basic interventions exclusively aiming at prison security and at ensuring prisoners proper hygienic-healthy conditions are carried out.

The new Cagliari prison is currently in an advanced building phase. In fact, the term of completion of works concerning the first functional lot, for a capacity of 400 detention places, is fixed at 13.11.09.

In the project all premises and rooms as for the Decree of the President of the Republic, No. 230/00, have been provided for. In particular:

- for any detention wing at each floor, there is a room for social relations;
- for any detention wing at each floor, there is a room for social relations;
- at the ground floor of each detention wing there are premises for the activities in common; didactic, religious, recreational, training, etc.; outdoor, the establishment of wide courtyards is provided for.

Besides, the establishment of workshops for craft-made manufactures, of a cinema/theatre, of the Chapel, of a football field where the activities of prison population can be carried out.

Finally, in addition to the rooms for the visits between prisoners-family members indoor, even well-organized outdoor areas are provided for such purpose.

Brescia-Mombello prison

Granted that, in recent years, works have been carried out in compliance with Act No. 46/90, as far as detention wings are concerned, it has to be pointed out that the works of "renovation of former barracks, offices, canteen" are being concluded.

In fact, five deliveries shared out have been carried out and the state of work progress is about 95%.

The internal renovation of the barracks has been completed at floors III, II and I, where administrative, management and treatment offices, the main entrance and other very important activities of the prison and the canteen for the staff, which have been temporarily located at other facilities, renovation is ongoing.

The new building has been completed, by the building of two new wide structures: The first has accommodated for about one year the canteen and kitchen for agents; the second is employed for the visits and has been built in compliance with the New Prison Regulation, with four rooms provided with any kind of comfort, services and equipment, to receive handicapped family members, air plants, as well as surveillance comfortable positions for the staff.

The further steps of the intervention will concern the connection of the new buildings with the existing basements for the establishment of adequately protected paths and premises for store and deposit complying with current legislation.

It has to be pointed out that even basements have been renovated, in compliance with Act No. 46/90 and supplied with the necessary equipment to place stores and deposits.

It has to be underlined that in the framework of such intervention, elevator systems for detention wings, to enable the transport of litters in case of necessity, and of the trolleys carrying the food, have been established.

In the years 2004-2005, the intervention concerning the remaking of electrical and special equipment, including the establishment of a new control room, the parametrical security equipment - with a refurbishment of the boundary wall and renovation of parapets, was completed - as well as the building of a new transformer room.

In the framework of the above-mentioned works, the telephonic equipment and the structured wiring have been besides adapted.

Works improving the connection between detention wings and the administrative buildings at the round junction, have been carried out.

Besides, in the previous years the roofs of the detention building have been renovated by an intervention carried out by the Ministry for Infrastructure and Transport.

Within such works, anti-throw nets and other expedients to fight the presence of birds within the building, have been installed.

Finally, as provided for by the competent municipal authority, a very articulated intervention of remaking of the disposal nets of reflux waters, by separating the white ones from the black ones, has been carried out. Currently, the carrying out of such work is suspended because of the execution of works where there are the courtyards and the roofs of the wings: it is necessary to reduce half of the prisoners present, either for the impossibility of enjoying the courtyard, and for the necessity of preparing scaffolds along the facades, but until now it has not yet been possible to provide for the reduction of prisoners.

Napoli-Secondigliano prison

At Napoli Secondigliano prison, various building interventions have been carried out to eliminate raining water seepages.

As for the situation of justice cooperators held in the Remand Prison of Naples Secondigliano, such structure is intended to temporarily hold both those subjects who are going to cooperate with justice, and those who already got the status of cooperator and who need, in the meanwhile, a specific healthcare assistance or to whom specialist health services have to be provided by the local therapy centre.

The definitive placement is decided because of particular serious and clear pathologies, or because of a short sentence to be served. In the first case, after a positive assessment of the prisoner's health conditions, the subject can be transferred to a more adequate establishment, without prejudice to the need of protecting his specific family interests existing in the Campania region.

Novara prison: 41-bis wing

At 41-bis Wing of Novara prison, the necessary technical controls have been carried out and it has been ascertained that for the reduced available area it is not possible to build other premises for prisoners under Art.41 bis regime for the activities in common. For the same reason it is neither possible to create sport infrastructures.

Presently, as for sports activities, prisoners use courtyard to walk which, inter alia, pursuant to law (Art.2, para. 2-quater, subheading "f", Act No. 279/2002, providing for social activities in groups of maximum five persons), should be shared out, to create small-courtyard.

It is not then possible, as already said, for room reasons, to create sports infrastructures both outdoor and indoor (such as gymnasium). The same is also for the rooms for social activities, which are lacking, to be built in adequate number, to comply with the provisions of the above-mentioned Act No. 279 (social activities in groups of five).

As for the situation of the prisoners undergoing the regime provided for Article 41-b of the Penitentiary Act in the Novara remand prison, it must be said that such prison has a capacity of 70 places. The accommodation in a single cell is ensured, in compliance with the laws currently in force.

The restrictions of the association activities in small groups composed of not more than five persons and of the time of exercise limited to 4 hours - two of which in the library or in the gymnasium - are indicated in the ministerial provision applying the differentiated regime and are enforced within the full respect of the normative and regulation provisions of Act No. 279/2002 and of the Decree of the President of the Republic (DPR) No. 230/2000. Anyway, such restrictions are ordered so as to guarantee the enjoyment of the irrepressible spaces of the subjects' freedom.

The assignment to the so-called "reserved wing" is ordered for reasons of passive safety, connected with the danger of the prisoner, without prejudice, however, to the opportunities of treatment and support, which are provided for by the legislation currently in force and which are granted to the prisoners submitted to a differentiated regime. Indeed, the assignment to a reserved wing allows the prisoner, even under a special regime, to carry out all the prison activities provided for by the general legislation within the time of association; the assignment to that wing is made with the purpose both of protecting the prisoners' safety - given the criminal profile of such offenders who are exposed to the risk of attempts by members of opposite criminal organisations or even by members of the same gang - and of ensuring a better logistics.

That assignment concerns only logistics aspects, and its duration cannot be determined beforehand, just because it does not affect the modalities and the contents of the prison regime.

The daily isolation is provided for by Articles 72 and 184 of the Penal Code and is a real penal sanction for the crimes concurring with the crime punished with a life sentence (for which the night isolation is provided for, as for other detention punishments, in terms of Article 22 of the Penal Code).

The daily isolation does not exclude the possibility of carrying out work activities, as well as study and training activities different from the ordinary school courses and the possibility of participating in church ceremonies, with all the arrangements necessary to ensure the exact enforcement of the sanction (Article 72, para.3, of the Penal Code; Article 73, para.4, of the Decree of the President of the Republic, No. 230/2000).