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Response

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

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.

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* 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*"**[i].

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 personnel[1].

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 interventions[2]".

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 2001[ii]. 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 skills[iii]. 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 loose 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 counsel[3]**.

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).

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[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 looses 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**[vii].

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 enivsaged, 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 isolation**[4]. 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].

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[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);*

1-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.

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* 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 discretional 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 discretional 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 in[5].

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 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 phisicians 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 treatment[6].

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.

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[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 cusotdia); 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 internees.**

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 dated18/12/08);
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 Iacontino** 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.

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

[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)

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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.

1.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 where 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.

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* 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 refluent 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 peal 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 fro 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).