CPT/Inf (2013) 31

Response

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

from 14 to 18 June 2010

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

Strasbourg, 19 November 2013

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

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

April 5th, 2011

Italy is in a position to provide the following information:

Cooperation
Paragraph 4.

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

- As far as the Governor knows, the original destination of the Viterbo prison was not "a high-security prison for men". In particular, after the opening of the Mammagialla structure in 1993, during the first years of activity of the prison, the D1 Building (*Padiglione*), destined to "common" prisoners, and the Female Block were active. Only afterwards, after the opening of the D2 Building (in 1995) and the transformation of the Female Block into a Maximum Security Block for prisoners undergoing the special detention regime provided for by article 41-b of the Law 354/1975 – Penitentiary Act (in 1996-97), the structure was destined also to the management of "special detention circuits".

- The prison is not composed of "three-storey blocks", but by:
    - Two big four-storey buildings (Buildings D1 and D2), in the part inside the surrounding walls (considering that the Ground Floors and the First floors include only rooms for interviews/visits, for treatment activities, for medical surgeries, offices and other services)
    - One two-storey building (Maximum Security Wing for 41-b prisoners) in the part inside the surrounding walls
    - One one-storey Building (for persons under the regime of Semi-liberty), in the part outside the surrounding walls.

- In the D1 and D2 Buildings, the prisoners belonging to the ordinary Medium Security circuit are accommodated in nine wings, 6 of which are situated in the D1 Building (2nd, 3rd and 4th floors, sides A and B) and 3 are situated in the D2 Building (2nd, 3rd and 4th floors, side C, dedicated to the circuit of "finally sentenced prisoners" ("*reclusione*"))

- The Circuit (and not the wing) of High Security includes three wings situated in the D2 Building (2nd, 3rd and 4th floors, side D). In the above-mentioned statement of CPT, it is wrongly said that among these three High Security wings there is one wing "for the so-called 41-b" (perhaps the CPT reports refers to the circumstance that in the High Security circuit there are some prisoners charged with or sentenced for crimes provided for by article 4-b of the Penitentiary Act – Law nr 354/1975)

- The Circuit for the 41-b prisoners is situated in a separated dedicated block composed of:

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

Paragraph 6.

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

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

Paragraph 7.

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

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph 9.

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

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

Paragraph 10.

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

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

Prevention of suicide (and self-harm) in the prison context
Identification of prisoners who may be at risk of self-harm or suicide

Paragraph 15.

The Department of Penitentiary Administration underlines what follows.

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

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

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

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

In line with that guidance, the Penitentiary Administration actively shares, with all the other institutions involved, every project concerning the above-mentioned matter, at national, regional and local level[1]. As it will be better specified below, a permanent Table of consultancy was established; within that Table, a specific working group, named "*New arrivals reception, prevention of suicide risk and/or self-harm, interactive organisational models*", took the charge of analysing in depth the matter of psychological and psychiatric uneasiness since the subject's entry into a prison,

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

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

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

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

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

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

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

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

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

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

Management of prisoners at risk

Paragraph 17.

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

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

Paragraph 18.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph 19.

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

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

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

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

Paragraph 20.

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

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

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

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

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

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

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

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

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

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

Paragraph 25.

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

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

Paragraph 26 (from the Ministry of Health)

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

Paragraph 28.

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

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

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

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

Paragraph 38.

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

Paragraph 40.

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

On the 8th July 2010 the Unified Conference approved the Agreement providing for the monitoring of the state of enforcement of the Decree of the President of the Council of Ministers of 1st April 2008 (concerning the modalities and criteria for the transfer to the National Healthcare Service of the health functions, of the work relationships, of the financial resources and of instruments and equipments in matter of penitentiary healthcare). In this connection, it must be highlighted that in the Regions governed by Ordinary Statute the monitoring is carried out by the Regions and then is forwarded to the Ministry of Health to be put at the disposal of the permanent Table of consultancy established at the Unified Conference[2].

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph 31 (from the Ministry of Health).

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

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

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

Paragraph 32.
As for the allocation of funds specifically for prison health, which were previously managed by the Ministry of Justice, all the funds available have been allocated. The resources have been transferred to the ordinary regions (15 out of 20), while the Special Status Regions, including the autonomous Provinces of Trento and Bolzano have not approved yet the implementation rules laying down, as per Art. 8 of the 1 April 2008 DPCM, the transfer of the Prison Authorities and Juvenile Justice System functions and staff to the aforementioned SSRs and Autonomous Provinces. Pending this approval, the Ministry of Justice will continue to act as paying office for the staff of the regions and the provinces in question.

Paragraphs 33 to 35.
The right to health and health services is enshrined in the Italian Constitution (Art.32) and thus by law:

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

Paragraph 36.
Competency for health care in Judicial Psychiatric Hospitals has been transferred in to the ASLs, including obviously psychiatric treatment and rehabilitation, whereas competency for the administrative management lies with the Ministry of Justice.
For these structures (JPHs), a special plan is envisaged to make the Regions aware of their responsibility towards their patients.
The plan is described in a specific policy document dedicated to these structures (Annex C of the 1 April 2008 DPCM), a summary of which follows:
In the first phase, once competency has been transferred, the Regions will become fully responsible for the health management of the JPHs situated on their territory. *Indeed, the Lombardy Region becomes responsible for the Castiglione facility, the Emilia-Romagna Region for the Reggio Emilia facility, Tuscany for the Montelupo Fiorentino facility, Campania for the Naples and the Aversa facility and Sicily for the Pozzo di Gotto facility.*

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

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

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

In the second phase, there is to be an initial distribution of current internees so that each JPH, without substantially modifying its capacity or consistency, becomes the institutional care facility for the inmates of the neighbouring or nearby Regions, so as to immediately strike up preliminary collaboration relations with a view to helping inmates to become better acquainted with their geographical areas of origin.
Programmes for the treatment, rehabilitation and social recovery of each internee must be prepared between the Region that has management competency for the JPH and the neighbouring and nearby regions. These must include relations between the various social and health services that may be useful or are needed to prepare a further decentralization programme for the Regions of origin. The areas of competence of the individual JPHs are thus redefined:

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

REGGIO EMILIA
Emilia-Romagna
Autonomous Provinces of Trento and Bolzano
Friuli Venezia Giulia
Veneto
Marche

MONTELUPO FIORENTINO
Tuscany
Umbria
Liguria
Sardinia

CAMPANIA (NAPLES and AVERSA)
Campania
Abruzzi
Molise
Latium

BARCELLONA POZZO DI GOTTO
Sicily
Calabria
Basilicata
Apulia
Female patients from the following regions: Abruzzi, Molise, Campania, Apulia, Basilicata, Calabria, Sicily

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

At present, phase II is under way.

Paragraphs 37 and 38.
It is agreed upon the need to maintain "the confidentiality in the physician-patient relationship". It is also agreed that it is not advisable for the detainee's general practitioner to participate as a member of the disciplinary committee. If it is necessary to acquire a forensic medical opinion on a disciplinary measure, it is advisable to contact an "outside" physician. The Ministry of Health commits itself to submitting this issue to the Standing Consultative Group on prison health.

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

October 13th, 2011

Italy is in a position to provide the following information:

ACCOUNTABILITY FOR ILL-TREATMENT OF PERSONS IN CUSTODY

PARAS 5-11-15:
On a very general note, the relevant constitutional and normative framework envisages as follows:
By the joint reading of **Art.112 of the Italian Constitution and Art.50** of the Italian criminal proceeding code: "The public attorney is obligated to initiate the penal action". Under **Art. 112 of the Italian Constitution,** prosecution is compulsory and the public prosecutor is the body belonging to the judiciary that is autonomous and independent from any other power. Therefore, the public prosecutor, once received the notice of crime, is obliged to carry out investigations within six months and to exercise prosecution against the responsible persons - if there is any element. Besides, the public prosecutor is obliged to communicate to the relevant public Administration any proceeding carried out against a civil servant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PARA 8.
In general, it is the Director of the health-care service in each prison who manages the requests for specialist examinations.

PARA.13
With specific regard to the information on Mr. X, to be provided by the Public Attorney's Office in Rome, please refer to the document annexed to the Italian observations.

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

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

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

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

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

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

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

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

PARAS.14-16
With specific regard to the information on Mr. Y, the material by the General Attorney’s Office in Rome is annexed to the present Document. In addition to that, we are in a position to provide you with brief pieces of information, including on the suspension from the duty, particularly for the members of the Police forces:

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

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

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

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

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

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

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

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

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

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

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

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

PARA 15
The Penitentiary Administration takes note of what is highlighted by the CPT and will make any necessary effort towards the solutions of the problems concerning possible obstacles arising during the carrying out of the administrative inquiry. As for the criminal inquiry, the Judicial Authority has every legislative instrument at its own disposal for overcoming any obstacle which should arise.

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

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

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

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

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

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

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

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

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

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

PARA.16
For the members of the Penitentiary Police Corps, possible disciplinary measures in consequence of final sentences for ill-treatments in the case A or for the Genoa G8 events (paragraph 31 of this Supplementary Report) shall be imposed at the end of the respective penal procedures (suits No. 53892/09 R.G.N.R. Tribunal and No. 1313/09 R.G.C.A. Court of Appeal of Genoa), which are still pending and are not concluded by a final sentence.

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

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

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

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

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

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

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

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

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

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

PARA 18-19:
As previously recalled, the code of criminal procedure envisage specific safeguards. It should be stressed, on a general note, once again, that the presence of police personnel in the security rooms, during medical checks, relies on the request by the physician, for security purpose, it being understood the compliance with the privacy law, namely Legislative Decree No. 196/2003.

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

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

PARA. 20
As already communicated in September 2010 in reply to the CPT's end-of-visit preliminary observations, the Department of Penitentiary Administration confirms that, as for the medical confidentiality, the penitentiary police staff is never present in prisoners' medical examinations nor interviews, unless their presence is requested by the physician for specific security reasons.

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

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

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

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

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

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

Para. 22

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

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

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

PARA 23

Please refer to para.27

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

PARA 25

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

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

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

PREVENTION OF ILL-TREATMENT IN PRISONS

PARA 26

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

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

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

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

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

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

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

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

PARA. 27

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

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

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

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

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

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

PARA. 28

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

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

By circular letter of 26 April 2010, all prisons have been invited to:
Take care of the choice of the accommodation of the prisoner, even to the purpose of avoiding assault events among prisoners; carry out in details the observation of the personality of the person arriving in prison, even to the purpose of measuring better the management of the most difficult or reactive persons; start diagnostic or therapeutic programmes, if necessary. Besides, the help of volunteers has been asked, allowed them to enter wings in a wider range of times.

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

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

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

FINAL OBSERVATIONS

PARA. 29

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

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

PARA.30

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

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

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

PARA31.

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

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

PARA.32

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

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

AoB

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

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

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

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[i] The Act enforcing Article 111 of the Constitution provides, in its present wording, that any person, since his/her first contact with the judicial authorities, shall be informed of his/her rights in the language s/he knows. The Supreme Court (*Corte di Cassazione*) recently reaffirmed that any judicial act regarding the suspect (*indagato*) and/or the accused (*imputato*) shall be null and void if it has 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 defence (More specifically, this Decree simplifies and extends the access to legal aid in civil and administrative proceedings). As to the criminal proceedings, Act No.134/01 envisages the self-certification procedure for the income of the defendant. Such procedure is also extended to those foreigners who have an income abroad (In this regard, ad hoc information desks have been established at Bar Associations).

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

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

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

[v] Art.347 of the code of criminal procedure.