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

from 21 November to 3 December 2004

The Italian Government has requested the publication of this response. The report of the CPT on its November/December 2004 visit to Italy is set out in document CPT/Inf (2006) 16.

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ITALIAN REMARKS ON THE REPORT OF THE COMMITTEE ON PREVENTION OF TORTURE ON ITS MISSION TO ITALY (November 21 - December 3, 2004)

Rome, January 2006

ITALIAN REMARKS
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THE COMMITTEE ON PREVENTION OF TORTURE
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INTRODUCTION

General political framework and basic principles of the Italian Constitution

The Italian Constitution of 1948 envisages **the protection of all rights and fundamental freedoms** as included in the relevant international standards, such as the European Convention on Human Rights and Fundamental Freedoms, the Human Rights Universal Declaration or the International Covenant on Civil and Political Rights. The Basic Law determines the political framework for action and organization of the State. The structural principles of the constitutional system governing the organization of the State are as follows: democracy (as laid down in Article 1); the so-called *personalistic* principle (as laid down in Article 2), which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Arts. 2 and 5); the importance of labour, as a central value of the Italian community (Arts. 1 and 4); the principle of solidarity (Article 2); the principle of equality (as laid down in Article 3). The latter is also the basic criterion applied in the judiciary system when bringing in a verdict; the principles of unity and territorial integrity (Article 5); and above all the principles of the welfare state and of the state based on the rule of law.

Italy recognizes and guarantees the inviolability of human rights - be it individual or referred to social groups expressing their personality – by ensuring the performance of the unalterable duty to political, economic, and social solidarity (Art.2 of the Italian Constitution). The protection and promotion of rights – be it civil and political, economic, social and cultural, be it referred to freedom of expression or to the fight against racism or to the rights of the child and of women – is one of the fundamental pillars of both domestic and foreign Italian policies.

In our view, the basic rule, if any, which should guide modern democracies in the protection of rights is the effective implementation of the principle of non-discrimination. The latter is indeed one of the main pillars of our constitutional code upon which the domestic legislative system is based, when referring to different categories of people, such as women, minorities and other vulnerable groups: “All citizens have equal social status and are equal before the law, without regard to their sex, race, language, religion, political opinions, and personal or social conditions. It is the duty of the republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organization of the country” (Art.3 of the Italian Constitution).

- Along these lines, “the 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 (from Art. 13 of the Italian Constitution on personal liberty).

With specific regard to **the insertion and the formal definition of the crime of torture** in the Italian Criminal Code, the absence of such crime in the Criminal Code does not mean in any case that in Italy torture exists. If, on the one hand, torture does not exist because this is a practice far from our mentality, on the other hand some sections of the Criminal Code severely punish such behaviour, even though the term "torture" as such is not included in the Code itself. Moreover, we are considering the possibility, in relation to the adjustment of our legal system to the Statute of the International Criminal Court, to insert the crime of torture in our system, through a wider and more comprehensive definition if compared to the relevant international Conventions. However, the substance will not change; with or without the word "torture" in the Criminal Code. Art.32 of Bill No. 6050 (2005), as introduced at the Senate level, envisages *inter alia* that: "Anybody who harms an individual under his/her control or custody with serious sufferings, both physical and psychological, is convicted to detention penalty of up to ten years ..."

In this context, a step forward was made in early 2002 with the introduction of the crime of torture in the Military Penal Code in Time of War (Art. 185 bis of the aforementioned Code). Such provision may be applied to all "the task force members abroad taking part in military armed interventions", including interventions "in time of peace". Art. 185 bis of the cited Code provides that "the forces personnel that, on grounds pertaining to war, commits acts of torture or other inhuman treatment…harming prisoners of war or civilians or other vulnerable persons… is convicted to detention penalty of up to five years".

Within the constitutional framework, **the Constitutional Court** exercises its duty as one of the highest guardian of the Constitution in various ways. The constitutional jurisdiction is exercised by the Italian Constitutional Court, which plays a vital role throughout the life of our State. The Constitutional Court is outside the instances of the specialist courts and deals only with infringements of specific constitutional law (from Art.134 through 137-Art.127 of the Italian Constitution). This institution becomes active when it is called on. For example, it supervises the preliminary stages of referenda and it is competent to judge in case of presidential impeachment. Procedurally, the Constitutional Court is empowered to judge (Article 134). When sitting to decide on a case of impeachment against the Head of State, the court consists of its three panels of judges (fifteen judges) and sixteen additional members, who are drawn by lot from a list of citizens elected by the Parliament (Article 135 (7)); otherwise, as to its "ordinary mission", the Constitutional Court consists of and works with its fifteen judges: one-third being appointed by the president, one-third by the parliament in joint session, and one-third by ordinary and administrative supreme courts.

i.a. Complaints of unconstitutionality may be submitted to the Italian Constitutional Court by central and local authorities claiming that a state or a regional Act is unconstitutional. Therefore, the Court monitors authorities to see whether they have respect the Constitution in their actions. It also arbitrates in controversies between the highest State organs and decides in proceedings between central and local authorities.

i.b. The courts must examine *ex officio* (the public prosecutor) or upon request of the plaintiff/defendant whether the provisions to apply are in compliance with the Italian Constitution. When a court considers that an act is not in line with the Constitution, pursuant to Article 134 it suspends the proceedings until a decision by the Italian Constitutional Court is taken.

ii.a. The Constitutional Court decides on (and its decisions may not be appealed to): 1. disputes concerning the constitutionality of laws and acts with the force of law adopted by state or regions; 2. conflicts arising over the allocation of powers between branches of government within the state, between the state and the regions, and between regions; 3. accusations raised against the President in accordance with the constitution.

ii.b. The Constitutional Court decides on the validity of legislation, on its interpretation and whether its implementation, in form and substance, is in line with the Basic Law. Thus, when the Court declares a law - or an act with the force of law - unconstitutional, the norm becomes ineffective the day after the publication of the decision.

Within this framework, it is worth recalling the constitutional reform concerning **the principle of "due process of law".** This has been implemented, at the constitutional level, by Act No. 2/1999 which entered into force on 7 January, 2000 integrating Art.111 of the Constitution with five new sections. Such amendments were inspired by the principle of "due process of law" stemming from the common law system and aiming at enhancing the **accusatory model** within our legislative system. The principles thus emanating are as follows: the procedural system is regulated only by statute ("due process of law"); impartiality of judges; taking evidence after hearing both parties to the proceedings and derogation admissible thereto when the defendant provides his/her consent, when it is impossible to take evidence by hearing both parties, or when there is evidence of illicit conduct; "equality of arms" between the prosecution and the defence; the reasonable duration of the process; the right to be promptly informed.

To date, the observations of international organizations, including the Council of Europe, on the measures to be adopted at the domestic level in order to improve in particular the efficiency of the system of justice, have been subject to an in-depth examination by the Italian Government.

Along these lines, while acknowledging that **access to information** is one of the basic components of international obligations, we emphasize that the Italian Government is used to keep NGOs, the Parliament, the relevant authorities, and the public opinion at large informed about the state of implementation of human rights standards. Therefore, when shortcomings and gaps have emerged, such as those from the events at the Railway Police Station of Roma Termini and at the Police Station of Civitavecchia, they have stemmed from specific circumstances, which we commit to overcoming in the near future.

Within this framework, it is worth recalling that over the years, relevant steps have been taken and range from **the signature of the Optional Protocol to International Convention Against Torture, the ratification of which is currently under examination at the inter-ministerial level**, to the introduction of the crime of torture in the Penal Military Code of War.

Moreover, it is also worth recalling that the Inter-ministerial Committee for Human Rights, within the Ministry of Foreign Affairs, has drawn up **a study on the feasibility of a draft legislation aimed at establishing the National Commission for the Promotion and Protection of Human Rights and Fundamental Freedoms** in the Italian Legal System, in compliance with the UN Resolution 48/134 of 20 December 1993.

The National Commission for the Promotion and Protection of Human Rights and Fundamental Freedoms, would have the duty to promote respect for and observance of human rights and fundamental freedoms in Italy, as established by the UN Covenants, the Council of Europe and the European Union, as well as protected by our Constitution.

The Commission would be tasked with protecting all the rights and the fundamental freedoms – right to life and personal integrity, right to dignity and fair treatment, right not to be discriminated; economic, social and cultural rights, individual, civil and political freedoms, as well as new aspects of rights deriving from social, scientific and technical progress – as established by the International Covenants and endorsed by Italy.

As regards the subjects to be protected, the Commission would be responsible for the entire population on the national territory, with particular attention to vulnerable categories such as national and religious ethnic minorities; women and minors, the elderly and differently-baled person, detainees, asylum seekers, refugees and immigrants, homosexuals.

Nevertheless, in order to avoid competence overlaps and waste of resources, the Commission would work in connection with the bodies still existing and working on the national territory with similar objectives, such as the National Observatory for Infancy and Childhood set up with Act no. 451/97, in compliance with the specific UN Covenant; the National Commission for Gender Equality set up with Act no. 164/90 of 20 June 1990 in accordance with Art.3 of the Italian Constitution; the National Office Against Discriminations set up with Legislative Decree of 9 July 2003 in accordance with Directive 2000/43/CE for equal treatment apart from race or ethnic origins; the Inter-ministerial Committee for Human Rights, which has been working since 1978 at the Ministry of Foreign Affairs. Once established, the Commission will set close relations with the cited bodies and cooperate with them.

The Commission will play an important role in the mediation and institutional reporting between Agencies, Committees, European and UN Commissions or other international institutions, whether existing or under creation, including the future European Agency for Human Rights, as well as similar institutions operating in other Countries.

In compliance with the relevant UN Resolution, the Commission would enjoy operative and financial autonomy and will be independent from Government's judgements and assessments. Although autonomous, the Commission should submit to the Government, on an advisory basis, opinions, proposals and recommendations.

The structure of the new institution, aiming at guaranteeing exchange of information between the State and civil society in the field of human rights, as well as guaranteeing pluralism in opinions and beliefs, should be composed of: a Collegial body teamed up of five appointees chosen among representatives of the cultural, academic and institutional sectors; a Council on human rights, vested with competence to advice the Commission and represent civil society, composed of no more than sixty appointees; a Secretariat General and a Commission Office, that should play an infrastructure role and tasked with the conduct of activities, the administration, and the support to the Commission's activities.

As above-mentioned, worthy of mention is the work carried out, to date, by **the Inter-ministerial Committee on Human Rights (CIDU)**. Established within the Ministry of the Foreign Affairs (MFA), by Ministerial Decree, on 15 February 1978. CIDU is composed of representatives from the main Italian Ministries, responsible in human rights field.

CIDU monitors the compliance of international standards nation-wide and is also tasked with the drafting of Italy's reports relating to international human rights standards adopted under the umbrella of the United Nations and the Council of Europe's.

Also worthy of mention is the recent monitoring process initiated by CIDU – to assess at the domestic level the state of the implementation of Recommendations and Observations put forward by relevant, international machinery. By this activity, CIDU aims at assessing recommendations and, where necessary, at determining the corrective measures to be adopted. This is the very first time that such a process is carried out by Italian authorities, in a structured way.

A. Police facilities

Preliminary remarks

While reiterating its full commitment towards the implementation of the relevant Convention and confirming that due consideration was given to all the remarks and recommendations put forward by the Committee on Prevention of Torture on the occasion of its last mission to Italy, the Italian Government is pleased to note that no case of torture and ill-treatment emerged from the CPT report.

As to the **crime of torture**, while other systems provide only a single provision, the Italian system considers the concept of torture within a wide range of conducts (*para. 11 of the CPT report*).

Article 606 and other provisions contained in the same section of the Penal 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). Even more so, the provisions under article 575 (homicide) and article 605 (kidnapping), to which general aggravating circumstances apply (article 61, paragraph 1, number 4 and 9 of the Penal Code), 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.

Moreover, the criminal procedure code contains principles aiming at safeguarding the moral liberty of individuals: Article 64, paragraph 2, and article 188 of the criminal procedure code establish 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 problem is twofold: the risk to punish less harsher than it can be done under the current Penal Code (which generally adds the aggravating circumstances of brutality and abuse of power to the punishment foreseen for the general crime); and the difference between the behaviours already envisaged and the behaviours we may introduce is still blurred.

However, at the chronological level, it should be mentioned that under the current Legislature (14^{th}) several bills concerning the introduction of the crime of torture have been under consideration before the Parliament. By recalling Bills No. A.C. 1483; A.C. 1518; A.C. 1948, as translated into the Consolidated Text–Bill No. 4990 (entitled “Introduction of Articles 613-bis and 613-ter of the Penal Code concerning Torture”), the crime of torture is committed by “anyone who inflicts a physical or psychical torture on an individual, subjecting him/ her to inhuman treatment or grave sufferings”. It is also worth mentioning that by Act No. 74/05, entitled “Voluntary granting of a contribution to the Fund of the United Nations for the Victims of Torture”, a voluntary annual national contribution amounting to 120.000,00€ for the 2004-2008 term has been recently allocated.

Therefore, although the crime of torture has not been formally introduced in the Penal Code, it should be noted that a relevant legislative framework, prohibiting its perpetration, is in force.

Torture and other forms of ill-treatment

As to the events linked to the **Naples Global Forum** and the **Genoa G-8**, the public prosecutors of Naples and Genoa immediately started due investigations, in compliance with the legislation in force. With regard to the alleged episodes of violence occurred during the Naples Global Forum, criminal proceedings are currently under way against 31 State Police officers, who are charged with the following offences as envisaged by the penal code: abuse of power (Art. 323), kidnapping (Art. 605), unlawful search of person and personal inspection (Art. 609), violence (Art.610), aggravated bodily injuries (Arts. 582 and 585), damage (Art.635), forgery perpetrated by a public official (Art. 479). Some aggravating circumstances have been taken into account, such as futile or vile motivation or the fact of having taken advantage of time, place or personal circumstances such as to hamper public or private defence. Following the request put forward by the Public Prosecutor of the Naples Court, the magistrate for the pre-trial examination (GUP) decided on 13 July, 2004 to commit for trial the 31 indicted persons. In the same pre-trial examination, the magistrate issued a judgement for the dismissal of charge for some of the above-mentioned criminal charges against some defendants. We are awaiting further developments of the proceedings.

As to the events occurred during the **Global Forum** held in March 2001 in Naples, the trial on indictment before the Naples Court is underway and concerns the following offences: participation in abuse of power (Arts.110, 323 criminal code), unlawful search of person and personal inspection (Art. 609 criminal code), violence (Art.610 p.c), kidnapping (Art. 605 p.c), damage and aggravated bodily injuries (Arts.582 e 585 criminal code), damage (Art.635), forgery perpetrated by a public officer (Art. 479). However, it is worth mentioning that the magistrate for the pre-trial examination (GUP) issued judgement for the dismissal of charge for some of the above-mentioned criminal charges. In compliance with relevant legislation, the Naples public prosecutor immediately started due investigations.

With specific regard to the Carabinieri personnel, as to the disorders occurred after the Third Global Forum of March 2001, no Carabinieri Serviceman was involved with criminal charge, while 12 Carabinieri servicemen of the 9th Battalion "Sardinia", deployed for keeping public order during the Genoa G8 Summit, have been committed for trial. These Carabinieri servicemen have been indicted due to their responsibility for abuse of power against persons under arrest and for not preventing other servicemen co-accused of abuse against persons under detention. The trial is currently underway (*para.14 of the CPT report*).

As to the so-called **"Genoa events"**, the judicial proceedings refer and concern three different episodes:

i. As to the events occurred at the provisional penitentiary centre set up at the police station of the Genoa State Police Mobile Unit in Bolzaneto, the trial has started on 12 October 2005. The magistrate for the pre-trial investigation has requested the committal for trial of 45 members of the following forces: state police, Carabinieri corps and penitentiary police, including some members of the medical staff of the latter. They have been charged with the following crimes: abuse of power (Art. 323 criminal code), abetting (Art.370 criminal code), abuse of power against persons under arrest or detention (Art. 608 criminal code), violence (Art. 610 criminal code), battery (Art. 581

criminal code), bodily injury (Art. 582 criminal code), abuse (Art. 594 criminal code), assault (Art. 612 criminal code), forgery by a public officer (Art. 479 criminal code), assisting offender (Art. 378 criminal code), omission of medical report (Art. 365 criminal code), damage (Art. 635 criminal code), refusal to comply with official duties (Art. 328 criminal code), misprision of felony (Art. 361 criminal code). All these crimes have been aggravated by taking into account the vulnerable position of victims, the violations of duties and the abuse of power, in addition to the aggravating circumstances, such as the misconduct of the officer (Art.323 criminal code), the *futile* and *vile* motivation (Art.61 n1,5,9 criminal code) or the fact of having taken advantage of time, place or personal circumstances such as to hamper public or private defence or the violation of duties and the abuse of power.

ii. As to the criminal proceeding following the arrest of some members of the NO GLOBAL movement, the first hearing was scheduled for 17 November 2005. The outcome of the cited hearing is awaited.

iii. As to the criminal proceeding following the events occurred at the "Diaz primary school premises", the last hearing took place on 11 January 2006. The outcome of the cited hearing is awaited. The cited indications underline that such conduct does not lack of punishment. In fact, despite the lack of the *nomen* of torture in the Italian relevant code, several provisions are applied when such conduct is reported.

In light of Article 11 of Presidential Decree No.737/1981, no disciplinary measures have been applied so far to the Police staff who are subject of criminal proceedings in connection with the cited events, due to the fact that, even if sanctions were imposed, these would necessarily have to be suspended. The reasoning behind this provision is self-evident: to avoid any interference with the criminal action for events that are still being evaluated by the Judicial Authority both in terms of the detection and historical reconstruction of facts and of defence safeguards. **A disciplinary evaluation of individual behaviour will therefore follow the conclusion of the relevant criminal cases without a possibility to invoke any statute of limitations**. It should be noted in particular that, after 2001, thanks to various initiatives taken by the Department of Public Security at the Interior Ministry also in the training field, no remarks have been made with regard to the policing of major events. Moreover, also on the occasion of ordinary events which are important in terms of public order management such as sport events a substantial decrease has been registered in the episodes requesting the use of force or deterrence measures.

The Department of Pubic Order at the Interior Ministry has always been attentive towards the problems that have emerged. In fact, the circumstances of ill-treatment have been put always under careful check as far as the disciplinary profile is concerned. Furthermore, the same Department, following the experience matured as regards the management of public order and security duties on the occasion of great events both in Italy and abroad in the last five years, worked out the training programmes for the personnel belonging to managerial and leading qualifications of the State Police. The vocational programmes included specific hours of lessons given up to the management of public order on the occasion of events envisaging the participation of a great number of people and to the use of force by the personnel working there. In 2001 a directive to the Questori was disseminated aiming at making the personnel aware of the correct and always cautious use of the dissuasive means supplied, particularly with regard to the tear artifices and to the truncheon, on the occasion of events leading to upset the public order.

Along these lines, the Carabinieri have drawn the attention of their local HQs. on the necessity to assure, through appropriate measures, the regular performance of public demonstrations during which the enjoyment of the rights as guaranteed by the Italian Constitution is fully secured.
Against this background, as to the above-mentioned proceedings, **the Italian authorities will keep the CPT members informed on their progress and outcomes** (*para. 14 of the CPT report*).

On a more general note, it is worth reiterating that the Italian Constitution recognizes and protects human rights and envisages the punishment for any physical and psychological violence perpetrated against persons whose liberty is restricted (*paras. 12 ss. of the CPT report*).Within this framework, the use of force and weapons by the Police is allowed only under specific circumstances: they must respond to specific circumstances under which a conduct not permitted can fall within the institute of the so-called "objective causes for the exclusion of the crime (*cause oggettive di esclusione del reato*)", namely specific cases within which a conduct prohibited by Law may be allowed or envisaged as is the case with the police officer reacting to violence or to threats from an armed thief. These cases are expressly envisaged by Law and have been under constant consideration from the Supreme Court (*Corte di Cassazione*) that has cleared up their limits. Moreover, due care and attention are paid to this issue as emerged from ***ad hoc*** **memos, vocational training and refresher courses which are organised for the entire category of law enforcement officials.**

Human Rights Training for National Police Staff. By working in a social context characterised by a variety of ethnic groups, races, cultures and religions, the Italian National Police has launched a number of activities over the years which - in addition to the enhancement of the professional knowledge and skills of police officers - are also aimed at raising awareness of law enforcement officers for the respect of the ethical principles in the profession, which are closely connected to the protection of individuals at risk of discrimination because of their belonging to ethnic minority groups particularly vulnerable to be exploited and involved in criminal activities.

i. Basic Training. In order to raise awareness and foster the discussion of a variety of initiatives undertaken in the field of human rights protection by the Council of Europe and other international institutions over the last fifty years, the Central Directorate for Police Training Institutes of the Department of Public Security has incorporated the subject of Human Rights Law in the curricula of training courses for police officers of all ranks (from constable superintendent) including a study of the relevant instruments, as well as of possible methods to implement them effectively in the performance of police duties. As a rule, 20-60 periods are devoted to this subject, which is addressed in its various aspects under diverse disciplines ("professional ethics", "protection of human rights", "victimology (*vittimologia*)", "inter-cultural communication", "international humanitarian law", "public service ethics", etc.), depending on the level of the training course.

Training activities are conducted by university lectures and experts designated by non-profit organisations active in this specific field, as well as by National Police senior officers who have attended a special course on "human rights" held at the National Police College by the Centre for Human Evolution Studies (CEU) in cooperation with University of Rome "Tor Vergata". In addition, every year a number of trainers- police officers- attend university master courses and other post-graduate specialisation courses in this specific subject at the above Centre and University, with other National Police trainers of various ranks attending the several runs of the 2nd course on "human rights and international humanitarian law" held at the National Police College by the Catholic University "Sacro Cuore" in cooperation with the Italian Red Cross.

ii. Permanent Training. The subject of Human Rights Law has been fully incorporated in the training programmes for police personnel for at least eight years now and represents, in its different aspects, a professional updating area of study (continuous training) for all serving police officers.

By way of an example, it is worth pointing out that the 2003 professional updating course for police personnel was specifically devoted to the study of the "Code of the Police Ethics", adopted by the Council of Europe-Committee of Ministers in 2001. The main subjects of the **training** courses are focused in particular on issues related to the determination of the "mission" to be performed by the law enforcement service in a democratic society; National Police human-centred training; the fight against discrimination in all its forms and policing guidelines to be followed by police operators as regards the respect for the right to life, the fight against torture and any inhuman or degrading treatment as well as fair use of force and impartiality.

In addition to refresher courses for the police personnel, the Public Security Department at the Interior Ministry has also developed specific teaching aid material, available at the National Police offices, such as ad hoc videocassettes (VHS) devoted to "The European Code of Police Ethics" and "The Charter of Fundamental Rights of the European Union".

To Institutes of Education of the State Police, was delivered a booklet in Italian "A visit by the CPT: what's it all about? – 15 Questions and Answers for the Police", published by the Association for the Prevention of Torture (APT) in cooperation with the Council of Europe and the Geneva Police Service, in order to spread the knowledge among all the people attending the basic formation courses.

In order to further spread the knowledge referring to the previous point and to keep the attention about prevention of torture and inhuman and degrading treatments, all the publications of CPT were transmitted to the Police offices. In particular, the following brochures: "The CPT standards", "The CPT in brief", "Preventing ill-treatment" and "European Convention for the prevention of torture and inhuman or degrading treatment or punishment", are available in Italian on the institutional web-site of the State Police (www.poliziadistato.it).

On a more general note, among several relevant awareness raising and educational activities, the Central Directorate of the State Police has also carried out the following activities: translation and distribution among stakeholders of the "Rotterdam Charter on the Police Role within a Multi-ethnic Society"; translation and the distribution of Recommendation Rec.(2001)10 entitled "Ethics Code for a democratic Police", as adopted on September 19, 2001 by the Ministers Committee of the Council of Europe; A Publication for the Police entitled "The Police activities within a multicultural society, which was drafted jointly with COSPE ("Cooperazione e sviluppo paesi emergenti", an Italian NGO) and members from the following communities: Chinese, Roma, Nigerian, Jews and Islamic; drafting of a Handbook for the training of trainers, entitled "Human Rights and the Police", as edited by the above-mentioned C.E.U. and printed out by the Public Order Department.

Human Rights Training for Carabinieri forces. Along these lines, Human Rights Law and its enforcement within the framework of the police activities is a specific subject which is taught by professors from *Libera Università Internazionale di Studi Sociali* (LUISS) at the **Carabinieri** Corps' training schools. Such subject is broadly discussed at the relevant educational Institutes, particularly vis-à-vis the behaviour adopted during the performance of duties, which must be inspired by humanity and respect for human rights.

At every regional Command, the General Command carries out lectures regarding human rights-related issues. From January 2004 onwards, 750 officers, 1.500 marshals, and 10.000 *brigadieri*, lance-corporals and servicemen of the Carabineri have attended ad hoc human rights courses or those provided by the training school. This subject is also summarized in specific publications distributed to all Commands. The Carabinieri army corps is used to distribute at all ranks the publication entitled "the human rights protection system within the framework of the Police activities" which expressly recalls the ECHR provisions devoted to **the prohibition of torture and to personal liberty**.

More in detail, it is worth mentioning the specific activities undertaken so far by Carabinieri:

i. General educational courses:

a. In September 2000, the Institute for military-legal studies was established at the School for Carabinieri officers, which includes a specific programme on human rights law. With the aim of better performing military and criminal investigation police functions, such courses are focused on domestic and international law, in particular *ius in bellum.* Specific attention is also devoted to the International Bill of Human Rights and to the all relevant international standards.

With specific attention to the schools for cadet-officers, human rights law is taught by university professors and high-ranking officers, and includes the following subjects: history; racism; the phenomenon of the fundamentalism as a threat to "life, security, freedom"; theory of law and proceedings; the ECHR and the ICC; EU counter-terrorism law while protecting human rights; the new international order; old and new emergencies – peace missions and conflicts; protection of civilians.

With specific attention to the schools for the so-called "auxiliary Carabinieri", an ad hoc programme run by officers with a specific expertise is in use at every school. This course is taught to soldiers under military service and is considered as an important measure to raise awareness of human rights law (the knowledge of which will be useful also at the expiry of the military service term).

ii. *Specific in-depth courses:*

a. Higher Institute for the General Staff of combined forces for high-ranking officers. An ad hoc Inter-Forces Course on international humanitarian law was initiated to train "Legal Counsellors of the Armed Forces". The programme on legal-related issues takes two working weeks, and includes lessons and conferences, which are held by scholars and officers with a relevant expertise.

b. International Institute of International Humanitarian Law in San Remo. Several officers attend every year the relevant course at the aforementioned Institute. Specific attention is paid to subjects relevant to international peace missions.

c. The Italian Red Cross is in charge, by Law, with the dissemination of information on international humanitarian law and awareness campaigns addressing Armed Forces and relevant organizations. The campaign addressing Armed Forces is implemented at the central and local levels: the former is realised, at the cited Institutes, by ad hoc courses on international humanitarian law in armed conflict, with the aim of training military personnel pursuant to Act No. 762/85; the latter is carried out at the Headquarters and includes brief introductory seminars on international humanitarian law in armed conflict.

d. Post-graduation Institute Sant'Anna in Pisa. The Major State of Carabinieri has signed an ad hoc MoU with the cited Institute to better train its personnel when participating in international missions, such as peace-keeping operations, peace-building, human rights monitoring, humanitarian aid, electoral monitoring missions.

e. Rome University "Tor Vergata" and the Studies Centre for Human Evolution organize a specific upper-level course for Carabinieri officers on "protection and promotion of human rights". This programme includes *inter alia*: theory and history of human rights law; philosophy and anthropology; conflict management and conflict resolution; protection of human rights.

f. Personnel to be deployed with peace missions must attend an additional five-week course, the programme of which includes: "history of the crisis area – *introduction to local culture*"; "legal framework of the mandate"; "*HUMINT activity*"; "international and international criminal law"; "international humanitarian law" (the latter is taught with the contribution of the Italian Red Cross): this course focuses on the relevant international standards; codes of conduct and publications, such as the "Practical Handbook for the personnel in Police Missions".

Human Rights training for the penitentiary system personnel. Several measures aimed at disseminating human rights law have been also adopted by the Department of the Penitentiary Administration (DAP) at the Justice Ministry.

In order to prevent any arbitrary conduct, relevant educational and training activities focussing on "education to legality" have been undertaken so that specific attention has been paid to all those issues relating to the fight against intolerance, racism or xenophobia.

In particular, human rights law has been dealt with within training, specialisation and refresher courses. In the year 2004, to this end, approximately 70 relevant courses took place. All the penitentiary staff attending such courses agreed on the importance of thoroughly examining the international dimension of human rights. Within this framework specific attention is paid to this issue from *Gruppo Operativo Mobile* at DAP that is in charge with managing the special detention regime, the so-called 41 bis. In a wider framework, the relevant 2005 Plan for training activities devoted a specific section to in–depth reflection on the deontology principles vis-à-vis relevant legislative reforms and the implementation of human rights standards. Its aim is to raise awareness of human rights education at every level of the penitentiary system and to enhance the connection between the protection of human rights and the implementation of the principles of deontology, paying due attention to Art.27 of the Italian Constitution.

At the factual-procedural level, it is worth mentioning that the Carabinieri Corps General Regulations Book envisages that any ill-treatment against arrested persons represents a gross negligence, to be severely punished in accordance with the penal legislation in force[•]. To this end,

[•] In the fulfillment of their duties, the Carabinieri Servicemen are obliged to maintain polite manners with all people and must remember, at all times, that the use of improper and offensive words towards anyone, even towards persons under arrest, is severely prohibited. In lack of such respect towards the citizens, every violent and rude manner used against persons under arrest, every type of harassment, any abuse or insulting word, may constitute a serious guilt that will be severely punished.

The Carabinieri Servicemen must never forget that, in order to succeed in their duty, they must have the respect and trust of the citizens. In order to achieve these values, an exemplary behavior in every relation, the perfect and conscientious execution of their duties and the rigorous respect of the rights and liberty of citizens, are needed.

The interference in the citizen's private affairs, when not required by law, is a reprehensible conduct, thus the Carabinieri Servicemen must not intervene if not necessary. When such intervention is necessary, they must act with readiness, without ever losing their calm and caution. This will always allow them to judge exactly the situation and not lead them beyond the limits defined by law.
Their actions must be free of any thought of resentment or hostility.

specific directives concerning ethics, professionalism and management of Carabinieri personnel have been issued so as to prevent and repress any bold or arrogant approach that might undermine the relationship with citizens•. In particular, Art.606 of the penal code envisages the detention penalty for the public officer who abuses of his/her power when proceeding to the arrest of a person (*paras.12-13 of the CPT report*).

Fundamental guarantees against ill-treatment. Observations

When the criminal police arrests or detains a person they shall immediately inform the public prosecutor and notify the arrested or detained person of his/her right to appoint a hired counsel. Against this background it is also worth mentioning that the Italian Penal Code clearly envisages the procedures and timeframe on the basis of which the Criminal Investigations Police officers perform an arrest or a detention measure.

At the operational level, the Criminal Investigations Police either executing an arrest or a police detention measure or having under its custody arrested persons must promptly notify it to the Public Prosecutor of the place where the arrest or detention has been performed. They also inform the person under arrest or detention of the right to choose a legal counsel. In relation to the arrest or detention, the officers and agents of the Criminal Investigations Police promptly inform about that the chosen counsel or the lawyer appointed by the court. Moreover, as to the requests made by the Committee, the local State Police officers were requested by means of a Ministerial Directive, issued on 29 December 2005 and mentioned below, to adopt an information sheet containing the list of the arrested or detained persons' rights, to be given to them when entering the security rooms or when they are deprived of their freedom (*para.26*).

Precaution measures, even those regarding repression which the Serviceman may be obliged to take, must never be set apart from the concept of respect to be used towards a person. This is part of his responsibilities while performing his duties and is within the interest of Justice. In one word, his behavior on duty, must be firm, respectable, imperturbable and distant from any form of informality, but at the same time must always be characterized by human kindness.

• **ETHICS AND PROFESSIONALISM**

1. The consciousness of high ethic values has always motivated the Carabinieri Servicemen to perform their duties, with courtesy and availability, even during moments of intense actions and to serve with the utmost determination. If safeguarding civil living on the one hand may have imposed adopting a **strong and severe behaviour** in order to remove disorder and unrest, on the other hand, it has demanded an **exemplary commitment** of the Servicemen to adapt their behaviour to professional ethics. In this framework, the traditional **decorum** of the Carabinieri Serviceman and his respect for people have strengthened in time.

2. There is a current tendency that shows a certain loosening of moral strictness, which is still essential for the Corps' reliability. I refer to **poor formal behaviour** or even worse, to uncivil manners, at times used while on duty or furthermore to the **indifference** with which the servicemen reply to the citizens' request (even by telephone). More in general, I refer to the **widespread and accommodating way** they undertake their duty by delegating others with the responsibility of actions. This deficiency is paradoxically shown when the Law Maker brings to attention the must to improve relations between the Public Administration and Citizens, by eliminating the abuse o power and by establishing a behavioural conduct among police officers that concentrates more on the respect of dignity and meets the needs of others (i.e.: Law n. 241 of August 7, 1990 of the "Nuove Norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi) (*New regulations concerning administrative procedures and the right to have access to administrative documentation*). In addition, recent actions have also determined to introduce new categories of behaviour that may be punished by law. Even harassment may be considered illegal and liable of punishment.

3. It is clear, therefore, action must be immediately taken not only to praise **professionalism**, but above all to urge our Servicemen to behave with courtesy and unselfishness and to show more **solidarity** to citizens. I am certain that each individual will think about the **ethical value** of his actions and choose to modify, where necessary, his behaviour, constantly adapting it to the principles of **human kindness** and **severity**, that have traditionally characterized the Carabinieri Serviceman's conduct.

   I rely on the strong commitment of all so that the deplorable behaviour of few, does not jeopardize the devotion with which the most perform their duties, thus compromising the prestige and image of the Institution.

While reporting that no information sheet was envisaged at the time when the Committee for the Prevention of Torture made its visit – *inter alia* no other European police force seems to have adopted such a sheet – the police officer drawing up the report shall expressly indicate if – for instance - the person detained resorted to the mentioned right and if the court appointed a counsel.

Turning to the proceeding, it is worth recalling that the officers of the Criminal Investigations Police put the person under arrest or detention at the Public Prosecutor's disposal as soon as possible and no later than twenty-four hours following the arrest or the police detention. Within the same lapse of time, unless the Public Prosecutor authorizes a longer timeframe, the police officers transmit the relevant report containing the indication of the legal counsel if chosen, the indication of the day, hour and place where the arrest or the detention was performed and a statement of the reasons that have determined the arrest, pursuant to Art. 386 of the criminal proceeding code (*para.9 of the CPT report*).

Moreover, 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**. Article 143 of the criminal proceedings code 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 (*paras.22 ss. of the CPT report*).

As to para.24 of the CPT report concerning the request of **amendments to Art. 104** of the criminal proceedings code, a preliminary remark focuses on the institution of the **arrest** which covers two different cases: the so-called "arrest in the act *(flagrante delicto)*"; and the arrest to execute a warrant released by the justice.

An additional remark regards the two institutes by which the law enforcement officials may proceed to the arrest *flagrante delicto* and to the police detention measure respectively. In this regard, **Art.13 of the Italian Constitution** fixes the terms for this detention up to 96 hours, of which 48 hours is the maximum time-frame for the police to give prompt notice of the arrest to the judicial Authority, and further 48 hours for the judicial Authority to confirm the arrest or to release the person arrested. In particular, Art.390 of the criminal proceedings code lays down that the public prosecutor within 48 hours following the arrest (or the police detention) must request the adoption of the relevant measure by the magistrate for the preliminary examination. Art.390, para.3, lays down that the arrest or the police detention goes ineffective in law if the public prosecutor does not take action within the terms fixed by Llaw. On his/her own, the magistrate for the preliminary examination must fix the hearing for the confirmation of the measure under reference as soon as possible and at the latest within the following 48 hours, in accordance with Art.390, para.2, criminal proceeding code. *A fortiori*, Art. 391 criminal proceeding code sets out that the arrest measure becomes ineffective in law if the justice does not adopt the order of confirmation within that term. Therefore, there is no possibility to hold a person under arrest for a five-day term.

The right to defence is a fundamental right as guaranteed by the Italian Constitution (Art.24 of the Italian Const.). 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 arrested 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 arrested, pursuant to Art. 97 of the criminal proceeding code. Thus, the Italian legal system includes a general provision on the basis of which **no waiver of legal defence is allowed** to those who are put under arrest.

Moreover, Art. 104 of the criminal proceeding code envisages that the person arrested *flagrante delicto* or under police detention (pursuant to Art. 384 of the criminal proceeding code) has **the right to hearing with his/her legal counsel soon after the arrest (or the execution of the police detention measure) or at the beginning of the pre-trial custody.** Art. 104, para. 4 of the criminal proceeding code envisages as an **exception** to the cited general rule that the justice may postpone, up to five days, the exercise of the right to hearing with the legal counsel **only by motivated decree.** Such measure is envisaged **only under specific circumstances**, namely "the existence of specific and exceptional precaution reasons". Along these lines, Art.104, para.3 of the criminal proceeding code envisages that apart from the case of the hearing for the confirmation of the arrest measures, given the cited exceptional circumstances, the justice may postpone the exercise of the right to hearing with his/her legal counsel. The application of such provision is very strict, as emerged from relevant verdicts by the Supreme Court (*Corte di Cassazione*). In particular, the Supreme Court has stressed that the decree by the competent justice not including detailed indications about the cited "specific and exceptional precaution reasons, as laid down by law" makes void the following examination before the justice of the person under custody, in accordance with Art. 294 criminal proceeding code (if previously the person under arrest did not have the chance to contact and take hearing with his/her counsel).

The provision, to be applied in exceptional cases, as included in Art.104, para.4, of the criminal proceeding code, does not affect the right of the person arrested to be examined with the support of his/her legal counsel. In particular, Art.391 criminal proceeding code expressly envisages the mandatory participation of the legal counsel in the examination before the justice.

Lastly, it is worth reporting that no complaints before the ECHR relating to the breach of the Convention provisions vis-à-vis the application of Art.104, para. 4 of the criminal proceeding code to person arrested *flagrante delicto* has emerged so far. Along these lines, in case of arrest executing the order released by the justice, **Art. 104 criminal proceeding code sets out**, as a general rule, that the charged person being under pre-trial detention enjoys the right to hearing with his/her counsel since the beginning of the execution of the measure under reference. Therefore, Art. 104 of the criminal proceeding code envisages, as an **exception** to such provision, the possibility for the justice to postpone by motivated decree the exercise of the right to hearing with the legal counsel, up to five days. Moreover, **to guarantee the right to self-defence, the examination before the justice must take place with the participation of the legal counsel, as laid down in Art. 294 criminal proceeding code**

In brief, the Criminal Investigations Police, when proceeding to the arrest of a person must inform him/her on his/her rights, in accordance with the Law:

- In particular, the person under arrest or detained is informed of the right to choose a legal counsel, to give prompt notice of the arrest to his/her relatives, and not to be obliged to respond during the examination (however, the proceeding will continue its due course).

- Provided the fundamental value of the right to defence, no derogation to the mandatory participation of the legal counsel is allowed in both the examination of the person arrested to be adopted during the hearing of confirmation (*udienza di convalida dell'arresto*) and the examination to be held when controlling the regular execution of the pre-trial detention. Moreover, when a measure restricting the personal liberty is taken, the possibility to lodge a complaint before the so-called Review Court *(Tribunale del Riesame)* is envisaged. Along these lines, due attention has also been paid to the institution of **legal aid**, the system of which was amended by the relevant 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. Access to this institution is guaranteed to whoever has an income below 9.296,22 € per year. As to the criminal proceedings, Act No.134/01 envisages the self-certification procedure for the income of the defendant. Such procedure is also extended to those foreigners who have an income abroad (In this regard, ad hoc information desks have been established at Bar Associations). In this regard, between 1.7.2003 and 31.12.2004, the legal aid vis-à-vis civil law suits amounted to 4.200.053, 08 €, while the legal aid vis-à-vis criminal proceedings in the year 2004 amounted to 61.953.238 € and was recognized to 71.523 persons. Therefore, some of the considerations by CPT do not seem to reflect properly the right to defence-system vis-à-vis the person arrested as recognized and enforced within the Italian legal system (*paras. 25-26 of the CPT report*).

- Along these lines, the intervention of medical personnel is always guaranteed when the person under arrest or detained requires medical assistance or when s/he explicitly requests *it (para.25 of the CPT report*). The State police underlines that the person deprived of his/her freedom has the right to request the presence of a physician who, regardless of such a request, shall be present in any case when the Police officer deems it to be necessary. Such indication emanates inter alia from memos and internal regulations of the Carabinieri army corps. Moreover, on the basis of the internal practice, the access to medical services for persons under arrest must be reported in the ad hoc register devoted to record individuals who are placed in security rooms, the so-called *Registro delle persone ristrette nelle camere di sicurezza*, under the item "AOB".

- The law implementing 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.**

With specific regard to the "**security rooms**" where people are placed as soon as they are arrested, these institutions have been criticized as structures of punitive nature. In fact, such rooms are furnished and structured in a way so as to prevent the persons under arrest from hurting themselves or attempting suicide. It is in fact well known that persons arrested for the first time, because of the trauma they undergo, are exposed to some kind of self-injuring attitude while, on the contrary, persons that have gone through a trial and have been convicted, are already used to the idea of being deprived of freedom. Through the security rooms, such as those the Police and Carabinieri forces in Italy are endowed with, suicides of persons just detained for the first time have almost disappeared: they probably sleep badly or find the environment less comfortable, but surely they have not got any pretext to attempt to their own safety!

Within this framework, the Carabinieri General Command has adopted and distributed to all its dependent Commands, **a register** in order to record individuals who are placed in security rooms (*"Registro delle persone ristrette nelle camere di sicurezza")* which collects all relevant information. The document is a sort of check-list for high-ranking officers when inspecting the Commands. Similar instructions were given in the past to the Police offices and recently updated by means of the Ministerial Directive mentioned below concerning the system of registration of persons being detained in the security rooms, by which it was reiterated that the following data should be recorded in said registers: full personal details of the detained persons; hour and reason of the arrest or detention, and of the subsequent release, as well as a list of personal belongings, indication of any person authorized to access and reporting of any information emerging from the carrying out of their duties. It was also recommended that the register, whose pages shall be numbered and authenticated, should be maintained by an officer entrusted with the registration operations – possibly the surveillance shift foreman – and periodically checked by the responsible officer (*para.27 of the CPT report*).

The Carabinieri forces have already arranged **periodic inspections** by high-ranking officers in order to verify the dependent commands' activities, particularly the state of play, the discipline and the implementation of directives to solve problems and remove eventual deficiencies. A complete chapter of the Carabinieri Corps General Regulation (*Regolamento Generale dell'Arma dei CC*) Book, is devoted to this specific issue (*para.28 of the CPT report*).

Conditions of detention

As to the notification regarding the use of inadequate security rooms**,** the Public Security Department, by means of two directives of 20 September 2004 and 29 December 2005, invited the Interregional Directors of the State Police to undertake all initiatives aimed at re-establishing, in the aforementioned facilities, the necessary security and dignity levels envisaged by the relevant legislation or at disusing said facilities. To this end, the obligation to notify immediately all priority situations to the above mentioned Department was envisaged so as to adopt the necessary measures.

Moreover, further instructions have been given to review the distribution of the security rooms at the provincial level and to control that the staff strictly complies with the provisions regulating the holding or temporary detention of persons in said security rooms.

The *Questore* of **Verona** has already ensured that the problems detected by the Committee for the Prevention of Torture are being solved. Administrative procedures have been undertaken to purchase mattresses and to improve the heating system in the entire detention area.

In particular, the competent offices of the General Command of Carabinieri have been entrusted to examining the possibility to identify a type of **mat** made of a special material, to be used by people placed in the security rooms of the Commands/peripheral Departments, which meets the necessary requirements to prevent any attempts by individuals under detention from harming themselves. The material is provided according to the limited financial budget. However, blankets have already been provided (*para. 18 of the CPT report*).

Along these lines, at present **no electrical switches or devices are allowed within the Carabinieri Security Rooms system**. This is aimed at preventing the persons detained from any attempt of harming themselves. The competent Offices of the Carabinieri General Headquarters have been assigned to examine a proposal to install such systems, according to ultimate technology aimed at preventing any attempt of destroying them, in respect with the necessary requirements to assure physical protection to those detained and to the servicemen under surveillance duty.
For this reason, **the period of time for persons arrested to be detained in the security rooms is very limited**, in accordance with the Italian Penal Code. Moreover, the Security Rooms are usually located very close to the serviceman under surveillance duty. He is able to directly hear the requests that the detained person may forward and according to the Regulations in act, he must frequently carry out inspections.

The Carabinieri Regional Command "Sicilia", in relation to the request for improving **the ventilation system** at the Carabinieri Station in **Lampedusa**, pointed out that S.I.I.T. (*Servizi Integrati Infrastrutture e Trasporto* – Integrated Services concerning infrastructure and transportation), involved in this issue by the Company Command of Agrigento, assured that, a small window-like opening with grid would have been built in a short time, so as to provide the required air within the compartments, according to the design-planning regulation standards (*para. 20 of the CPT report*).

With specific regard to the visits made by the CPT (Committee for the Prevention of Torture) delegation, the Committee defined the cooperation offered to the delegation also at the local level as an example and at the same time regretted the almost complete lack of cooperation by the personnel working at the railway Police Station of Roma Termini and at the Police Station of Civitavecchia. In the CPT report it is referred to as "peculiar" due to insufficient information by local bodies on the Committee visit and on its inspection prerogatives as well as to the lack of information by the operators concerning the goals of the Committee itself. In this regard, it has to be pointed out that the competent administration, prior to Committee visit, had often informed the Interregional Directors of the State Police and the Senior Police Officers (*Questori*), both of the arrival of the delegation and of the functions attributed to the CPT.

With the following circulars sent in September, October and November 2004, the involved offices received indications of the possible date of arrival to Italy of the CPT delegation as well as the dispatch of the copy of the badges identifying the delegation, including indication of the investigation powers attributed to it, as well as of the right for the Committee to choose, by a final judgement, the places to be visited.

It has to be made clear that from the previous month of August, prior to the visit of the Committee, a monitoring exercise was launched, at the national level, in the relevant places of detention (so-called cell-rooms) located within the buildings of the State Police. The list once arranged was sent to the Ministry of Justice on the occasion of the visit of the Committee: it included the Police State facilities which are equipped with cell-rooms in conformity with the envisaged requirements and which are therefore "feasible". Consequently, as regards some facilities, among which the railway Police station in Roma Termini and the Police station in Civitavecchia, the relevant Administration decided that the cell-rooms were not accessible and therefore their use was prohibited. That is why the two Police Offices, together with other in similar conditions, were not included in the list of the communications concerning the visit of the Committee and did not have then sufficient information on the inspection visit.

Regarding the long waiting time complained about by the delegation at the railway Police station in Roma Termini, this can be attributed to the temporary absence of the responsible personnel, who was working exceptionally for prevention within the railway station Termini, in connection with the transit of many supporters (the visit took place on a Sunday) and with the emergency following a fatal accident that occurred on the same morning within this railway station. Having said that, in order to avoid that similar regrettable episodes might occur again, by an *ad hoc* directive from December 29, 2005 the Interregional Directors of the State Police and the senior police officers (*Questori*) were made aware of it so as to provide to all offices appropriate communication concerning the tasks and the functions of the Committee. It was also stressed the importance that all the State Police personnel, including the agents on duty for the security at the entrance of the facilities, should have had sufficient information allowing the Committee, in the future, to accomplish its mission anywhere with no obstacle and without unjustified delay.

As regards the claimed "hiding attempt" of two prisoners at the railway station Police of Roma Termini that occurred through the transfer of the same persons to the "seat of the judiciary police", located near the railway station of Roma Termini, it has to be said that this episode was an unfortunate misunderstanding. These persons were arrested by the agents of the judiciary police squad of the Section of the Railway Police of Rome and not by the agents of the above-mentioned Polfer station. Consequently, these individuals were temporarily arrested by the officers of the Judiciary Police for the time necessary to complete the report and to transfer them immediately to the cell-rooms of the *Questura* or to the prison in Regina Coeli, following a specific order of the judicial authority. The cell-rooms of the Polfer station, as they are not completely accessible, even if they were in satisfactory conditions, were not, in fact, used as a place for detention, but only as waiting rooms, for very short times. The same applies also to the police station in Civitavecchia.

B. Temporary Stay and Assistance Centres for Foreigners

Preliminary remarks

The CPTAs general framework. In order to effectively apply the 1951 Geneva Convention concerning the recognition of the refugee status, Art.32 of Act No.189/2002, first and foremost, makes a distinction, as to the Centres for the stay of the asylum-seekers, namely **Identification Centres and the Temporary Stay and Assistance Centres (CPTAs)**. The CPTAs were established with the aim of hosting the foreigners to be expelled, or those applicants for refugee status already expelled whose application is under review.

With the aim of guaranteeing a higher protection of the rights of the asylum-seekers, Italy has set up seven territorial committees for the examination of the asylum applications. The Territory Commissions, which include UNHCR representatives, are in the following municipalities: Gorizia, Milan, Rome, Foggia, Siyracuse, Crotone, Trapani. Such initiatives have been adopted *inter alia* so as to reinforce and improve practical measures, ensuring adequate health care, legal assistance, interpreters and cultural mediators to immigrants.

Act No. 189/02 envisaged *inter alia* the creation of a "Protection System for Refugees and Asylum-Seekers", which paved the way to **the establishment of a National Fund on the policies and services relating to asylum**. As a consequence, the cited Fund resources are allocated to local authorities when providing assistance and protection services to asylum-seekers, refugees, and foreigners under humanitarian protection. By Order of the President of the Council of Ministers, No. 3326/2003, entitled "additional urgent measures were adopted in order to combat the illegal migration". Art. 3, while derogating Act No.189/02, envisaged the adoption, by the Interior Ministry, of ad hoc Decrees to further the allocation of resources to the local authorities involved in the above assistance process.

In June 2004, the Ministry of Interior issued the first Decree – which takes into account the resources (five million euros) provided for by the 2003 Financial Act - allocating resources to the main municipalities in accordance with Art.32 of Act No.187/2002. The contributions amounted to 18,52.00€, per diem, per person.

Ill-treatment

On 9 October 2004, at 00,30 p.m., the motor coaster **"Lydia Oldendorff"** docked at the port of Gioia Tauro (RC). During the routine border controls, the police officers were informed by the Security MCT3 personnel about the alleged presence of stowaways inside one of the containers discharged from the above mentioned ship. The inspection confirmed the presence of 13 foreigners (among them 2 children) without travel documents and in possession only of Turkish identity cards carrying their personal data. The foreigners were given staple commodities and were granted medical assistance also thanks to the local first aid service (118). One of the foreigners was taken to the first aid station in order to carry out more detailed diagnostic checks, after which he was immediately discharged. The captain of the motor coast, Mr. Janinic Miroslav, a Serbian-Montenegrin citizen born the 15 August 1948, was immediately questioned about the presence of the stowaways on his ship. According to his declaration, that their presence was not noticed before due to the fact that the container where they were hiding was stowed at the fourth level under the upper deck.

With the help of an interpreter, two of the stowaways were formally questioned in order to acquire useful information as to the embarkation on the motor coaster. According to their declarations, they paid an amount of 3000€ to a certain Hussein, about whom they could not provide any further personal particulars and who, after placing the foreigners inside the container, enjoined on them to stay silent in order not to be spotted. They also reported that they had been eating food supplies got in Turkey. While the motor coaster was anchored in the port of Gioia Tauro, the crew repeatedly asked the technical staff - assisted by police officers – for help in order to fix the door of the cabin where the foreigners, in the meantime, had been put up and which the foreigners themselves had repeatedly damaged.

In consideration of the above mentioned facts and, once all the envisaged photo-identification procedures had been carried out by the scientific police (*polizia scientifica*) – also involved in the event – on 12 October, at 11,45 p.m., the motor coaster Lydia Oldendorff set off for Malta. The 13 foreigners were embarked on the motor coaster following a lawfully formalized escorting-to-the-border measure.

Under this respect, it is worth highlighting that, in order to guarantee a safe trip and following a communication of the local harbour-office, the Lydia Oldendorff was equipped with further two tenders, taken from another motor coaster belonging to the same shipping company and moored in the same port. Along these lines, the following elements must be remarked:

- Despite the long stay (from 9 through 12 October) of the foreigners in the port of Gioia Tauro and the assistance provided to them by the Red Cross workers, there was no communication either from the stowaways or from the captain about their intention to apply for asylum to the Italian Authorities. Besides, the declarations made by the two foreigners and recorded in the reports further confirm the absence of any request (or intention to make a request) for asylum (in particular, one of the two foreigners informed about his plan to reach his wife, regularly resident in Germany).

- The behavior of the police personnel involved in the facts was marked by the maximum professional correctness.

- The regulation in force concerning borders checks as well as the relevant "*allontanamento*" measures were correctly enforced.

Nonetheless, after contacting the Malta Authorities (in whose seas the ship moored after leaving the Italian port), around 07,30 of 23 October the cited ship came back to Italy and docked at the port of Augusta (Syracuse). All the relevant measures were immediately adopted and granted, particularly the assistance ones. Moreover, **the thirteen foreigners** were transferred to the First Aid and Assistance Centre named "Pian del Lago" in Caltanissetta where, after filling in their asylum application, they **were granted a stay permit.** UNHCR publicly welcomed the decision taken by the Italian Authorities.

Conditions of detention

The Island of Lampedusa: **The Assistance Centre based in Lampedusa is mandated to providing rescue and first-aid services to the shipwrecked** migrants who are subsequently moved, under the supervision of the Security and Public Order Department at the Interior Ministry, into other Centres. A *Decreto Interministeriale* (Interior, Work, Social Policies, Economy and Finance) will be soon signed. This Decree will confer the actual Lampedusa Centre the specific nature of a first reception and rescue facility, under *Decreto Legge* 30 October 1995 No. 451, converted in Law No. 563/1995 (the so-called Legge Puglia). The new legal status of this Centre entails that the immigrants should stay in the Centre for a strictly necessary period and should be then transferred to an Identification Centre (for the potential asylum seekers) or to a Temporary Stay Centre (for the potential expulsed people), avoiding to overcrowd the Centre and create dysfunctions in providing services. Thus, **the juridical status of the Centre will be progressively adapted to the function it has carried out all along under the growing pressure of the migratory flow**. In this framework, the system of transfer of illegal immigrants will be improved with the purpose not to exceed the maximum capacity of the Centre (300 persons).

Among other initiatives undertaken in order to improve the hosting conditions of immigrants, it is worth mentioning the renewal of the agreement with the organisation « Misericordia», as well as the decision **to purchase a land bordering on the Centre of Lampedusa in view of the construction of new sanitary infrastructures**. In this specific regard, as for **the hygienic services** of this Centre, renovation works have been recently approved (ten new showers were built). Moreover, works for the improvement and re-adaptation of the Centre have been also approved in line with the proposals by the *Prefetto* in Agrigento and based upon a preliminary planning presented by the Civil Engineer Service in Agrigento. Within this framework, by a DCPM (Ordinanza Protezione Civile. No. 3476/2005), a delegate Commissioner was appointed in order to work out in Lampedusa all the activities aimed at acquiring the adequate reception structures for the illegal immigrants. His task is to co-ordinate and to facilitate the connection among all the administrations concerned. Besides, another area has been identified where a provisional camp will be set up in cases of emergency for those immigrants waiting to be relocated.

Along with these urgent measures, **the construction of a new Centre will also take place** on an area so far occupied by barracks of the Army. By overcoming some resistances, this project has been finally accepted by the local community. The aim is to put the new centre in place **before next year**. Besides, a new Temporary Stay Centre will be established in **Trapani and settled in the State property of Milo; it will be able to receive 200 people and the preliminary planning activities are being implemented**. Furthermore, the following three initiatives will be undertaken with the aim of improving the hosting capacity on the island of Sicily: i. The consruction in Porto Empedocle of a tensostructure for first aid and hosting-related activities. ii. The restructuring and re-opening of the centre in Agrigento. iii. The enlargement and rationalisation of the centre of Caltanissetta which will become a modern multi-functional structure for the management of the migratory flows.

Health-care

Among the initiatives improving the stay conditions of immigrants in the Lampedusa Centre, with specific regard to the health and psychological assistance actually offered in the Lampedusa Centre, the convention for the management of the structure, in force for the year 2006, clearly sets forth the characteristics of the **medical Centre**, which in case of a number of 500 people hosted provide for the 24h/24 presence of a doctor and a medical service with professional personnel and ambulances. In case of particular pathologies, the medical personnel of the Centre shall get immediately in contact with the Lampedusa *Poliambulatorio* (health-care centre) and, if necessary, the patients will be transferred to the closest hospital by helicopters. Moreover, in order to ensure to the disembarked immigrants a prompter social humanitarian assistance, the *Prefettura* in Agrigento signed in 2004 **an ad hoc MoU with "Médecins sans frontière"** which is still in force. This organisation is authorized to make a preliminary screening of the illegal immigrants in order to implement specific measures and ensure the necessary hygiene in the Lampedusa Centre. Recently, *Médecins Sans Frontière* has requested, in particularly serious conditions detected by the first screening, to extend their assistance activity even to the *Poliambulatorio* of the island. To this end and in order to draw up a possible MoU for the future cooperation, the *ASL* (local health-care Centre) and *MSF* have started preliminary contacts. These requests were accepted and will be defined in the MoU, to be signed by the *Prefet* in Agrigento.

Guarantees

Cooperation with international organisations: Regarding the possibility **to allow international organisations to visit the CPTAs** (Centres of Temporary Stay and Assistance), it is worth recalling that they can be authorised to access the Centres provided that each time a previous verification of security conditions (a security clearance is needed) inside the Centre takes place, so as to guarantee the safety of the visitors.

In particular, the Ministry of the Interior, together with the UNHCR, the IOM and the Italian Red Cross, presented a project - within the framework of the EU programme, entitled **ARGO 2005** - for the management of migratory flows on the Island of Lampedusa in emergency situations. Other projects will be designed to tackle the issue of non-accompanied minors. As for this specific point, ad hoc MoUs between the Ministry of the Interior and three Organizations, namely UNHCR, IOM, Italian Red Cross, are being defined in order to fix the information and assistance contributions that these organizations should provide, within the framework of their institutional competencies, to the illegal immigrants when they reach Italy. To date, the initiative is limited to the Lampedusa Centre which represents a pilot project.

With reference to **the request of acceding to the *Lampedusa* Centre** made by the UNHCR representatives, it is worth mentioning that this request was accepted. The authorization for the request made on 4 October 2005 was granted two days later, on 6 October 2005, for the above mentioned reasons. It was deemed that the risks for the safety of the individuals (foreign nationals and personnel) was extremely high and the maintenance of law and order must be considered a priority vis-à-vis the two-day delayed access.

Moreover, the Lampedusa Centre was often visited by members of Italian or foreign institutions. It was last visited by a Delegation of the European Parliament members on 15 and 16 October 2005. This visit follows that one made on 28 June by a delegation of European Parliament members belonging to the left-wing party. The Centre was also visited recently by the Council of Europe Commissioner on Human Rights, Mr. Gil Robles and by the UN Special Rapporteur on Human Rights of Migrants, Ms. Rodriguez Pizarro (visit in June), as well as by Italian Parliament members.

The respect for human rights of migrants hosted in the Temporary Stay and Assistance Centres (CPTAs): The Ministry of Interior issued a number of directives, including the so-called Bianco Directive (2000) and the 8 January 2003 Decree, by which the Guidelines to better manage the Centres for immigrants, as drafted in the year 2002, were confirmed. This text envisages the services to be provided in order to ensure adequate standards. These Guidelines define **the minimum quality and quantity standards of the services that should be offered to the hosted people living in the Centres**. They represent the minimum indispensable protocol on the basis of which the Law establishes that the contracting parties (the local *Prefettura* and the Managing Body) signatories of the convention could improve the quality of the services, their diversification, the number of personnel who should operate, in order to respond more effectively to the needs of the hosted people. Along these lines, as for the **specific training of the personnel engaged in the illegal immigrants Centres**, it is worth mentioning that they belong to public or private bodies well known for their competence, professional skills, and institutional vocation in the social voluntary field. **This personnel regularly attend refresher training courses in their specific matter**.

The Guidelines on the management of the Centres specify that the Managing Body **is obliged to register the personal and judicial data of each new person hosted and to draw a specific weekly report of the presence which should be sent to** *Dipartimento per le Libertà civili e l'Immigrazione* (Department on Civil Rights and Immigration). The Managing Body has a **criminal liability for the validity of these data**. The Guidelines oblige the Managing Body to ensure to foreign nationals all the information on the Immigration Law, on the duties and obligations as a general service offered to each individual. Furthermore, the Interior Ministry - Department on Civil Rights and Immigration - **supervises the activity of the Prefectures involved in the Centres' functioning**. These Prefectures, on their own, must supervise the correct functioning of the Centres, particularly the respect for fundamental rights of immigrants, in line with the Directive of *ad interim* Interior Ministry, Hon. E. Bianco, as adopted on August 30, 2000.

To this end, while controlling that services are provided by the managing bodies in compliance with the Guidelines, the Prefectures supervise: the entire management system; the respect for the minorities and members of ethnic groups hosted in the Centres; an adequate health-care assistance (the protection of the hosted people is an essential principle, guaranteed by the Constitution and reflected in the Legislation in force). As a matter of fact, the above mentioned Guidelines establish **the obligation of health assistance** to be provided by medical personnel on a 24h/24 basis. Moreover, during the SARS alert (2004/2005), the Ministry of the Interior has used ad hoc containers in order to hospitalize the suspected cases or those patients who suffered from potentially infectious pathologies); **Legal counselling** (The State provides a lawyer to indigents (Art. 97 c.p.p.); **An interpreter and a cultural mediator.**

- As to legal counselling, the competent Authorities will transmit the report to the National Bar Association in order to further raise awareness of the matter. As to cultural mediators, given the right to be promptly informed in the language of one's understanding as guaranteed by the Italian legal system, their role was envisaged and introduced in programs to be carried out by the Penitentiary System Administration.

Inter alia, the cited Directive - **the August 2000 Directive of the then Hon. E. Bianco - envisaged that "the representatives of Italy-based UNHCR, upon authorization of the Ministry of Interior, are entitled to access the Centres except for prevailing security reasons**. Such possibility has been always guaranteed when the security conditions could allow it. Along these lines, some of the latest **visits to the Centres (CPTAs) made by representative of international monitoring mechanisms**, such as the CoE - CPT (Art.3 ECHR), the FIDH and the CHR Special Rapporteur on the human rights of migrants, Ms.Pizarro may be recalled. All the cited bodies and organisations' representatives acknowledged the good management and functioning of the Centres. In particular, by visiting several Centres, the CPT-CoE declared that such Centres were in line with the respect for human rights, except for **Agrigento** – ASI B9 CPTA, which was closed down on 3rd Decemebr 2004 in accordance with the recommendation of the Committee. Along these lines, on 30.3.2005, at the expiry of the Memorandum with the managing body of the Centre, the CPTA "Regina Pacis", located in Meledugno - Lecce, was also closed.

As for **the carefulness of the access and exit registers of the foreign nationals who transit through Lampedusa Centre**, it is important to underline that the Managing Body records the newly arrived persons and the relating personal data, including judicial proceedings, and draws up a specific weekly report (including data such as the number of people hosted) to be subsequently sent to the *Dipartimento per le Libertà civili e l'Immigrazione.* The Managing Body is thus penally liable for the validity and the correctness of the data contained therein.

Further to the specific request to establish **a unit accountable to the Questura of Agrigento at the CPTA of Lampedusa Island**, the Interior Ministry has already ordered to increase the State Police personnel at Lampedusa Temporary Stay and Assistance Centre. With a view to streamlining the administrative procedures concerning the identification of foreign nationals and to ensuring that the foreign nationals present in the centres are correctly informed about their rights in compliance with the immigration and asylum legislation, it should be noted that the competent Administration has already ordered to increase the police personnel at Lampedusa Temporary Stay and Assistance Centre to perform the tasks connected with the arrival of illegal immigrants to the Island.

Along these lines, with specific regard to the activities carried out by Carabinieri forces, it is worth mentioning that **the Carabinieri Division based on the Lampedusa Island has been deployed to perform only surveillance activities within and around the reception Centre**. Their tasks focus on guaranteeing public order within the community; preventing possible escapes and episodes of violence among host residents who are not EU citizens, etc.. The administrative tasks (identification and photo-cataloguing) and the investigative ones linked to the landing of people on the coasts are carried out by the State police.

The return measures to Libya

The table below shows the number of illegal immigrants who have landed in Italy since 1999.
Illegal immigrants landing in Italy

	1999	2000	2001	2002	2003	2004	2005
Individuals landing in Lampedusa	356	447	923	9,669	8,819	10,497	14,855
Individuals landing in other Sicilian places	1,617	2,335	4,581	8,556	5,198	3,097	7,969
Individuals landing in Apulia	46,481	18,990	8,546	3,372	137	18	19
Individuals landing in Calabria	1,545	5,045	6,093	2,122	177	23	88
Individuals landing in Sardinia	0	0	0	0	0	0	8
TOTAL	**49,999**	**26,817**	**20,143**	**23,719**	**14,331**	**13,635**	**22,939**

Despite the strong migratory pressure - organised in the slightest details by criminal groups - and despite the serious danger posed by this phenomenon to public order and security, the administrative action conducted towards immigrants was always in full compliance with the law and **every single case was considered with accuracy**. All foreigners illegally landed on the Island of Lampedusa were identified and each of them was given the opportunity to apply for political asylum and to inform the authorities about alleged personal prosecution in their home or origin country. Members of the same family remained together and were transferred as speedily as possible to adequate equipped centres. Minors were immediately transferred and entrusted to the care of local communities and the relevant measures of protection and assistance were activated. Those foreigners who expressed the intention of applying for asylum were transferred to the national centres for the reception of refugees. However, many of them, through violent and well organised actions, escaped from the cited centres before the procedure itself could be completed. **All illegal immigrants sent back to Libya and Egypt, were received by their home countries and did not suffer any ill-treatment**. The summary given below contains the activities implemented after the landings of huge flows of illegal immigrants in Lampedusa in October 2004:

➢ **from 29 September through 8 October 2004,** 1,787 illegal immigrants reached the Island of Lampedusa on 20 small vessels which were sighted and rescued by our police forces even at a considerable distance from the coast. Despite the serious danger posed to public order and security because of an overcrowded temporary staying centre (its maximum capacity amounts to one tenth of the persons actually hosted at the time) and the manifestly pre-arranged action by powerful criminal organizations all foreign nationals concerned were immediately given medical care, supplies (clothes, food, personal hygiene products) and any other support. They were identified and each of them was given the opportunity of explaining his/her personal situation, communicating possible persecution suffered in their home or origin countries and applying for political asylum.

➢ 544 foreign nationals who expressed their intention of obtaining protection from Italy because of alleged persecutions were transferred to reception centres located in other provinces in order to submit their asylum applications. Out of them 181 immediately received a temporary permit of stay pending the decision by the Commission, whereas reporting procedures for further 223 foreign nationals took place at a later stage. 140 individuals, however, escaped by eluding controls.

➢ Complying with the Italian legislation on immigration and by fully respecting the applicable international provisions 1,153 foreign nationals (most of them of Egyptian nationality) were returned to Libya on 11 charter flights. In this regard, mention should also be made of the fact that the relevant **measures were taken at the individual level, on the basis of Legislative Decree No 286 of 25 July 1998** (Consolidation Act on Immigration and the Status of foreign nationals). In this context it is worth reiterating that the request to access to the Centre as put forward from UNHCR representatives on 4th October, was accepted on 6th October, due to the difficult security conditions present at that time.

The legal framework pursuant to Article 10 and Article 13 of the Unified Text on Immigration: rticle 10 para.1 of the "Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero"(286/98) envisages that ***"the border police sends back*** (**respingimento**) ***the foreigners crossing the borders without the necessary requirements for the entry into the State's territory as provided for in the "Testo Unico"***. However, it is worth stressing that pursuant to para. 4 of the same Article: "***The provisions of the paras. 1,2,3 as well as of paras. 3 and 6 of art. 4 do not apply in the cases provided for by the current legislation regulating political asylum, the recognition of the refugee status as well as the adoption of temporary protective measures for humanitarian reasons".***[i] Therefore, the term "*respingimento" as above reported* does not correspond to the internationally recognised term "refoulement".

[i] **Art.10** Respingimento
(Legge 6 marzo 1998, No. 40, art. 8)
1. La polizia di frontiera respinge gli stranieri che si presentano ai valichi di frontiera senza avere i requisiti richiesti dal presente testo unico per l'ingresso nel territorio dello Stato.
2. Il respingimento con accompagnamento alla frontiera e' altresi' disposto dal questore nei confronti degli stranieri: a) che entrando nel territorio dello Stato sottraendosi ai controlli di frontiera, sono fermati all'ingresso o subito dopo; b) che, nelle circostanze di cui al comma 1, sono stati temporaneamente ammessi nel territorio per necessita' di pubblico soccorso.
3. Il vettore che ha condotto alla frontiera uno straniero privo dei documenti di cui all'articolo 4 o che deve essere comunque respinto a norma del presente articolo e' tenuto a prenderlo immediatamente a carico ed a ricondurlo nello Stato di provenienza, o in quello che ha rilasciato il documento di viaggio eventualmente in possesso dello straniero.
4. Le disposizioni dei commi 1, 2 e 3 e quelle dell'articolo 4, commi 3 e 6, non si applicano nei casi previsti dalle disposizioni vigenti che disciplinano l'asilo politico, il riconoscimento dello status di rifugiato, ovvero l'adozione di misure di protezione temporanea per motivi umanitari.
5. Per lo straniero respinto e' prevista l'assistenza necessaria presso i valichi di frontiera.
6. I respingimenti di cui al presente articolo sono registrati dall'autorita' di pubblica sicurezza.

With reference to the legitimacy of the relevant measures adopted after the cited disembarkation episodes occurred **from September 29 through October 6, 2004,** it is important to underline the legal framework which constitutes their basis. The Unified Text on Immigration and the Conditions of Foreigners sets forth a much more varied discipline on **respingimento** (Art. 10) if compared to that envisaged for **expulsion** (Art.13). Apart from the basic differences lying at the origin of each measure (attempt or a speedy illegal entry to the national territory in the first case, real presence on the territory in the second case), the former measure is less afflictive if compared to the latter. Indeed, while the immigrant sent back under Art-10 can afterwards legally enter to Italy (provided s/he fulfils all the envisaged requirements), the expelled person, for a period of ten years since the execution of the measure, is not in the same position. In this framework, the expulsion requires a confirmation order by the justice of peace (Art. 13, para. 5-bis). Instead, the execution of a *Art-10 measure* does not envisage any intervention by the judicial authority. Both measures can be supported by the adoption of a retention measure in a Centre for temporary stay and assistance (Art. 14), the precondition of which is the impossibility for the senior police officer (*Questore)* to carry out immediately these measures for several fixed reasons. Therefore, if the foreigner's identity is certain, there is no need for the individual assistance and if the vehicle and the travel documents are available, it is not necessary that the Senior Police Officer *(Questore)* adopts the cited measure. In these cases, the Police authority implements the so-called "escorting police measure to the borders" (which does not require a judicial validation).

The legitimacy of the relevant measures: With specific regard to **the situation in Lampedusa**, all measures concern illegal landings. Therefore, once rescue services are provided and with the exception of those cases where the adoption of protection measures is prescribed – such as cases of alleged risks of prosecution in the home or country of origin - the applicable provision to irregular foreigners is that of the measure pursuant to Article 10 of the above mentioned Unified Text. With specific regard to the cases related to the measures adopted after the disembarkation episodes occurred from 29 September to 6 October 2004, these provisions were legally issued without the validation of the justice of peace (*Giudice di Pace).* As for the notification to the foreign nationals concerned by such measure, under the Italian Law, this can be implemented even without a formal act, but through the delivery of a copy of that provision.

As a matter of fact, Art. 3 para.3 of the Executive Regulation of the UT on Immigration states that "…the "*respingimento*", the expulsion decree…are communicated to the foreign national through the hand-over or notification of the act…". This represents in any case a circumstance without any consequence on the legitimacy of the provisions adopted and on the correctness of the individual position verification vis-à-vis those persons who undergo the relevant measure. For clarity's sake, it is worth mentioning within this framework that the decree released by the *Prefet* is immediately executing, in accordance with Art 13 of the UT on Immigration. And this measure envisages ad hoc provisions vis-à-vis the foreign national who is under criminal proceeding. Moreover, as a general rule, all the ministerial acts are immediately executing. Therefore, the Act under reference does not amend this rule. Different considerations have to be put forward vis-à-vis the adoption of a measure released by the senior police officer (*Questore)* "to escort the foreigner to the borders (Art.13, para 5)": According to the relevant Constitutional Court verdicts, such proceeding must take place in line with the adversarial model and the execution of the relating measure in abeyance until its confirmation, as laid down in Art.13m, para.5 bis (*para. 61 of the CPT report* concerning amendments to the effects of the expulsion as a ministerial measure).

Italian-Libyan cooperation on migration: As for concerns related to the treatment of illegal immigrants returned to Libya, it is worth highlighting that almost all relevant cases involved Egyptian nationals. Any return to Libya has resulted in the planning and monitoring by Italy of the ensuing escort of the persons involved to their countries of origin. All operations have been promptly carried out with no problem. The Egyptian authorities have confirmed the nationality of their subjects and granted them re-admission into their State through the Libyan border**.** Cases of ill-treatment have been reported neither to Italy nor to our Embassy in Tripoli**.** On the other hand, a major role at the international level as well as a growing attention from the European Union should be recognised to Lybia. The conclusions of the JHA Council held on 3rd June 2005 confirm, in fact, this trend and echo at the EU level the action already undertaken in our national capacity towards Libya. In fact, on last June 3, the European Union JHA Council endorsed various proposals put forward by Italy and approved a final text (ASIM 24 RELEX 291) in order to start a dialogue and cooperation between the European Union and Libya. Said document reflects the action carried out by Italy and adopts many initiatives already undertaken at the bilateral level.

For a long time, Italy has been supporting the Libyan commitment to reinforce co-operation in the field of migration, based on an accurate assessment of policies towards Arab and other African countries in relation to the treatment of foreign nationals. Libya's Arab and African-oriented policy is based on brotherhood with those countries' peoples and absolute absence of any oppressive intention towards clandestine migrants. Over the years, the Libyan Government has been taking a series of actions aimed at revitalising the Organisation of African Unity and developing initiatives to support all neighbouring countries. By way of example, mention should be made of the COMESSA forum (Community of the Sahel and Saharan States) and the corridor for humanitarian aid to the Darfur population through Bengasi, the Oasis of Coufra and the desert paths connecting to Sudan. Along these lines, recently, **Italy, in agreement with the IOM (International Organization for Migration) submitted a project - called "Across Sahara"** - to the European Commission for the development of regional cooperation as well as of institutional capacity of Libya and Niger in the field of border management and fight against illegal immigration.

The agreements with Lybia: There is currently no agreement with Libya on readmission of illegal migrants, the collaboration which we refer to is the one signed in Rome on 13 December 2000 on the Cooperation in The Fight against Terrorism, Organized Crime, Drug Trafficking and Illegal Immigration. The agreement is in force since 22 December 2002 (Official Journal Communication No. 111, S.O., 15 May 2003). On this basis, the two Ministers of the Interior started several consultations, especially in the second semester of 2003, with the aim at implementing a program of technical assistance to the Libyan authorities and various forms of collaboration to combat illegal immigration. The aim is to improve the institutional capacities when managing immigration and to provide the Libyan law enforcement officials with a more effective training in compliance with the European standards.The terms of this cooperation are well known.

On the Italian Ministry of Interior's website several press releases (among others, the following press releases from the Interior Minister Hon. Pisanu,, as of: 27 September 2004; 12 October 2004; 25 November 2005; and lastly 19 January 2006) on the activities and programmes on migration and migration related issues carried out with Lybia are available (www.interno.it). Moreover, the Minister of Interior has provided detailed information on this bilateral collaboration before the Parliament (hearings on 8 October 2004 and on 29 June 2005). Along these lines, and prior to the cited interventions by the Minister of Interior, two Under Secretaries of State, the Hon. Ventucci and the Hon. Antonione, respectively, explained the terms of reference of such agreements (press-release of the following Parliament sessions: on 19 June and on 10 December 2003). In fact, there were initiatives in the following areas: a) Professional training; b) Assistance for the repatriation of illegal migrants to Third Countries; c) Supply of goods and services; d) Setting up of reception centres for illegal immigrants; e) Operational and investigative cooperation.

C. Penitentiary facilities

Preliminary remarks

Prison population strongly increased over the last decades**: in 1980 the average number of prisoners was about 30.000, while in 2004 it was beyond 56.000 and in the current year it did not drop under 59.000, out of a capacity of 43.000 places**.

As for the **actual accommodation possibilities for prison population**, despite the interventions carried out in the penitentiary structures in order to adapt them to the rules of the new enforcement Regulations of the Penitentiary Act, the conditions of increasing overcrowding make it difficult to ensure the necessary detention spaces. With the purpose of coping with prison overcrowding, the Penitentiary Administration has carried out various renovation interventions in various prisons in order to restore the availability of 1218 places; whereas 2935 more places will be made available following renovations which are at an advanced stage. Eventually, about 1500 more places could be restored by carrying out renovation interventions.

At the same time, a programme to build **twelve new prisons is ongoing** (Rieti remand prison will be delivered in the course of 2007;as for Sassari, Tempio Pausania, Oristano, Trento remand prisons and Cagliari prison, works have been let on contract and are on going; as for Savona and Rovigo remand prisons, competitive biddings are on going;as for Marsala, Varese and Pordenone remand prisons, works have been let on contract, but judicial cases are pending. As for Forlì remand prison, the preliminary project has been drafted). All those projects are inspired by new criteria included in the new Penitentiary Regulations, which provide for modern and comfortable cells, equipped with toilets and shower, a small kitchen and wall sockets for TV, radio and computer. In every wing, adequate common spaces will accommodate the whole of treatment activities: education, spare time, religion, sport and work. Classrooms are provided to enable prisoners to carry on their education path. There will be one library and spaces for individual and collective treatment activities. Special classrooms for theoretical lessons and workshops for practical exercise are provided for vocational training courses. Suitable handicraft workshops with a very modern equipment will be at working prisoners' disposal. Indoor spaces (recreation rooms, theatre-cinema halls) for leisure activities are foreseen as well as open spaces for outdoor exercise. A gymnasium and a football field will enable sports activities. Different religious worships will be practised in different rooms.

As regards the prisons visited by the CPT's Delegation, it has to be pointed out that at **Parma Prison** a wing with 18 places available for paraplegic prisoners has been opened and during the year 2006 further interventions shall be provided for. As for **Civitavecchia Prison**, renovation works of "Cattaneo" wing are being completed so that 48 places for prisoners will be restored and within 2006 the renovation and adaptation of wings "Ferri", "Beccaria" and "Romagnosi", currently unused, are foreseen, thus obtaining further 134 places for prisoners. With reference to **Verona Prison**, the Governor of that prison, together with the local Civil Engineer Office – Public Works (*Ufficio del Genio Civile delle Opere Pubbliche*), is carrying out the drafting of a project providing for the dismantling of existing shower rooms, and the reconstruction of showers in the toilets of the detention rooms.

Conditional release is granted by the Supervisory Court; the Governor of the prison transmits the prisoner's claim together with the report on the results of the observation of the prisoners to the said Court. The Offices for the Execution of sentences in the Community, on the territory, shall provide as soon as possible the Supervisory Court with the necessary information so that the decision could be adopted as quick as possible. Conditional release, shall be revoked if the person released commits an offence or where s/he infringes the obligations imposed by the order (*paras. 70-73*).

Ill-treatment

As it is provided for by current legislation, the Penitentiary Administration orders the assignments of prisoners having particular care to the possibility of carrying out a common rehabilitation program. Special care is paid to the assignments and grouping of the prisoners into wings, in order to avoid mutual bad influences among prisoners, and trying to organize within the wings subdivisions for limited groups of persons, in order to protect them, as well as to avoid possible aggressions or clashes. The difficult situation of **Verona Montorio remand prison**, was caused by the impossibility to ensure adequate detention spaces for prison population, due to the very serious overcrowding of the cited prison. This issue has been dealt with and partially solved by a progressive reduction of overcrowding of the prison. In fact, two detention wings were closed where renovation works have been started, and during 2005, 275 prisoners were transferred to other prisons (*para.76*).

The two members of the penitentiary police are still on duty at Civitavecchia remand prison, as the criminal proceedings are not yet concluded and this does not enable the Administration to carry out the disciplinary proceedings with regard to said staff. However **the Penitentiary Administration, in order to avoid possible prejudices against the concerned prisoner and ensure him serene conditions of detention, provided for the immediate transfer of the said prisoner to Roma Regina Coeli remand prison, by order dated 1.08.2003**. Said prisoner has then left Roma Regina Coeli remand prison, having being granted house arrest on 04.11.2003 (*para.74*).

Prisoners under special detention regime

The reduced financial resources available to the Governor of the prison of Parma during last year were used to carry out works considered as a priority. The re-activation of the system of call will however soon be carried out, as soon as the relevant funds will be allocated for this year. Besides, the Penitentiary Administration, paying attention to the indications formulated by supervising bodies, has invited the prison governors, where the wings for 41b of the Penitentiary Act are located, to carry out the appropriate interventions so that the detention spaces used for outdoor exercises be adequate to what is provided for by Art.10 of the Penitentiary Act and by Art.16 of the enforcement Regulations, also for ensuring exercises in wide outdoor spaces for adequate periods of time even through the health and psychological assessment of the prisoners, and carrying out treatment activities, as an instrument reducing the negative effects of the deprivation of personal liberty (*para. 81*).

As regards treatment activities, it has to be pointed out that 41b wings have a common room, a library and a gymnasium, currently equipped to carry out a regular physical activity. In addition, prisoners under the 41b regime can carry out study activities, even at university level, as private students (*para.82*).

Special care is paid to **the selection of the penitentiary police staff supervising prisoners under the 41b regime**. In particular, the persons working in the 41b wings are chosen according to criteria of proven skill and experience, also considering the working skills such as to ensure a correct management of possible dangerous situations for the order and security of the prison. In general, for order and security reasons, the management of the 41b wings is carried out by the Special Intervention Team, composed by skilled staff and sent on mission for short periods of time, just for the purpose of avoiding that an excess of acquaintance with the prisoners could be a source of pressure, through outside criminal groups, as it is peculiar of Mafia-type organization. The Penitentiary Administration tries to disseminate the improvement of the ethical basis of the penitentiary workers' professional requirements as well as the culture of legality and of the protection of human rights (*para. 83*).

With reference to the remark formulated by the CPT, it has to be pointed out that the prisoner who during the visit was in **the so-called "reserved area"** of Parma prison, on 20.01.2005 was transferred to Viterbo remand prison. The legal basis of the so-called "reserved area" is provided, in general, for by art.32, Presidential Decree No.230/2000, according to which the Penitentiary Administration orders the assignment of prisoners who request particular care to specific prisons or wings, where the protection of their safety is easier, also in order to protect other prisoners from possible aggressions or clashes; the assignment to said wings does however imply neither a deprivation of human contacts with penitentiary workers, nor with the other prisoners having the same problems; treatment and support activities provided for by the Penitentiary Act, including recreational activities to be carried out by groups not exceeding three persons, continue to be guaranteed (*para.84*).

The special detention regime provided for by Art. 41b entails some limitations to the ordinary rules of the prison, connected with the purposes of prevention provided for by said regime. This is the consequence of the fact that the persons involved are bosses of criminal organizations who are very dangerous and who, in the past, have repeatedly proved to have the capacity to keep contacts, even though imprisoned, with the other members of the said organisation at liberty, by keeping to manage illicit traffics and by giving orders to their criminal group. Since the easiest channel by which the prisoner keeps his relationships with the outside is the visit with relatives, the 41b regime, basing on the investigating and judicial experience, provides for only one visit per month according to such modalities as to prevent communications evading the foreseen controls, as well as the transfer of objects; those modalities could not be ensured in open visiting rooms. Also the prohibition of cumulating visiting hours they did not benefit from, or the prohibition of telephone calls within the first six months of the special regime are not, as the other prohibitions and obligations, oppressive modalities of enforcement (excluded by the Constitutional rule providing for the rehabilitation purpose of the punishment). They are instead the formalization of best practices which, according to the experience, are able to ensure the aim of the measure that is an effective prevention measure in order to interrupt the relationships between the prisoner, boss of the criminal organization and his/her group operating outside prison.

Where exceptional circumstances exist (Art.37, para.10, Presidential Decree No.230/2000), the possible extension of visits is however granted. In addition, without prejudice to the prohibition of application of the special regime for the first six months, telephone calls can be authorized independently from the case whether the prisoner had the visit in the same month. As it has already been said, we refer to prescriptions explicitly contained in article 41b of the Penitentiary Act, as amended by Law No.279 of 2002; said prescriptions represent the formalization of practices proved to be effective in order to interrupt contacts between the prisoners under the special regime provided for by Art.41b and their criminal group outside prison. Pursuant to current legislation, correspondence sent and received, which the prisoner exchanges with the CPT, cannot be submitted to check.

The consistency of the special regime of 41b of the Penitentiary Act with the Convention for the Protection of Human Rights and Fundamental Freedoms has been recently reaffirmed by the European Court of Human Rights which, **by the Judgment Argenti v. Italia dated 10.11.2005, acknowledged that the application of Art.41b of the Italian Penitentiary Act, even though prolonged, does not infringe Art.3** *("Nul ne peut être soumis à [.....] à des peines ou traitements inhumains ou dégradants.") as " les limitations n'étaient pas disproportionnés par rapport aux faits précédemment reprochés au requérant, qui avait été condamné à de lourdes peines pour des faits trés graves. De ce fait, la souffrance ou l'humiliation que le requérant a pu ressentir ne sont pas allées au-delà de celles que comporte inévitablement une forme donnée de traitement – en l'espèce prolongé – ou de peine légitime. En conclusion la Cour a établi qu'il n'y a pas eu violation de l'article 3 de la Convention. »* In the framework of said judgement the Court stated that there has not even be infringement of art.8 of the Convention, observing that: "*....le régime prévu à l'article 41b tend à couper les liens existant entre les personnes concernées et leur milieu criminel d'origine, afin de minimiser le risque qu'elles ne maintiennent des contacts personnels avec les structures des organisations criminelles. En effet, la Cour note en particulier, comme le Gouvernement l'indique, qu'avant l'introduction du régime spécial, les membres de la mafia incarcérés réussissaient à garder leur position au sein de l'organisation criminelle, à échanger des informations avec les autres détenus et avec l'extérieur, et à organiser et faire exécuter des crimes à l'intérieur et à l'extérieur des établissements pénitentiaires concernés. Dans ce contexte, la Cour tient compte de la nature spécifique du phénomène de la criminalité organisée et notamment de type mafieux, où les relations familiales jouent souvent un rôle primordial*».

As regards **the extension of the application of 41b regime**, it has to be pointed out that said extension is not automatic, but it follows a collection of information deriving from investigation and judicial authorities confirming the continuous high dangerousness of the prisoner. Therefore, in the absence of said dangerousness, the special regime is not extended (*paras. 86-88*).

Detention rooms located on the ground floor of wing 41b of Parma Prison comply with the provisions of Art. 6 of the Penitentiary Act providing that "premises where prisoners and internees are required to live shall be of a reasonable size, with artificial and natural lighting allowing reading and work to take place; well-aired, heated where required because of climatic conditions, and shall be equipped with private, adequate and functional sanitation". Cells are equipped with a window enabling to see outside for an horizontal space of about three metres (a limit complying with the civil code as regards houses) and upwards. The Governor of Parma prison has however pointed out that those spaces are intended to host only the "newly arrived" prisoners, who stay there for a short period of time waiting to enter the wings 41b, as well as the prisoners who, for justice and security reasons, cannot temporarily be located in the section. It has to be eventually pointed out that the Directorate General for Goods and Services has been involved in order to plan adequate building interventions to improve the present conditions of the structure.

As regards **the carrying out of housework activities in prison**, the difficulties daily met in making the prisoners under 41b carry out the ordinary working duties within the wing have been pointed out. In fact, the majority of them are available to carry out only some activities, while they categorically refuse to do other activities considered by them "degrading" (*paras. 89-90*).

As regards **Art.72 of the p.c**, it is worth recalling that the rationale behind the detention penalty institute is based upon the principle of the rehabilitation function of the penalties as laid down in Art.27 of the Italian Constitution which lays down that "**The punishment may not contradict humanity and must aim at re-educating the convicted**". Provided the limitations to the right of the person arrested, it is clear that its punitive character is one of the components of the penalty when considering its three-fold functions: the so-called "preventive, retributive, and educational functions". As emerged from several verdicts by the Supreme Court (*Corte di Cassazione*), Art. 72 of the criminal code is not a way to execute the life detention penalty. In fact, this aims at sanctioning those crimes committed in concurrence with that one to be served with a life detention penalty and which would be lacking of punishment without the so-called "day solitary confinement measure of Art.72)". Therefore, the remarks put forward by the Committee do not reflect the exact terms of "the re-educational function of the punishment (Art.27 of the Italian Constitution)". *A fortiori*, this measure cannot be considered contrary to humanity, in particular if considering that the convicted who are put under such measure may participate in working activities.

On a more specific note, the **day isolation** does not represent a mere modality of life in prison nor a provision governing prisons but a true criminal penalty by which crimes committed or judged are punished together with the crime punished with life imprisonment (otherwise they would remain without penalty). Therefore, the Penitentiary Administration has only the obligation to enforce the judgement of conviction "since criminal enforcement of judgement starts" (circular letter No.216953 of 14.05.02). Day isolation can be imposed only by the judge (for a maximum duration provided for by law), and does not exclude that the prisoner could participate in working activities, nor undertake a course of study as a private student (even at university level, with the subsequent possibility to take the exams foreseen), nor participate in religious functions or meet treatment penitentiary workers (art.73 Presidential Decree 230/2000). The allocation in a single cell inside the ordinary detention wings is also provided for. In addition to the day isolation as a type of penalty imposed by the judge, there are different cases of isolation based on different facts.

The special isolation regime can be provided for health reasons (Art.33 of the Penitentiary Act), applied only in case of necessity, for the protection of the community, in case of infectious disease and is carried out in specific infirmary rooms or in a healthcare wing. During the special isolation, particular care is paid by the staff to the ill person even to support him/her morally. Said isolation is also a disciplinary sanction in relation to conducts infringing rules of behaviour within the prison; it consists in the exclusion of the prisoner from common activities for a certain period of time and it is carried out in detention rooms. Only when the person's behaviour is such as to cause trouble or jeopardize the community and the order and security of the prison, the person is allocated to specific cells. Eventually, the Judicial Authority can submit the person under investigations to an isolation regime, for procedural reasons (prohibition to meet other prisoners). In this case, the regime does not differ from the other prisoners' regime, without prejudice to the limitations ordered by the proceeding Judicial Authority. However, the isolation is constantly monitored by adequate daily controls in the isolation place either by a physician and by a member of the observation and treatment group (*para.91*).

The **situation and the programmes of the treatment activities in the 3rd section in Parma prison improved remarkably following the CPT visit**: indeed, despite the scant financial resources a new pedagogic programme was drafted which is carried out by the staff on duty, waiting for the next allocation of further specialized staff (*paras.93-94*)..

General conditions of detention

With regard to **Civitavecchia prison**, as previously recalled, the renovation works in the "Cattaneo" wing are being completed and consequently 48 detention places will be restored; the renovation and the adaptation of the "Ferri", "Beccaria" and "Romagnosi" wings, actually unused, is planned for 2006, thus recovering 134 detention places.

As far as **the prison of Verona** is concerned, it is reaffirmed what previously said about the initiative of the prison Management that, together with the local Civil Engineer Office - Public Works, is going to draft a project for the dismantling of the existing shower rooms and the construction of showers in the bathrooms of the cells.

As regards **the programmes of activities proposed to prisoners**, it must be pointed out that in the prison of Civitavecchia some treatment activities are carried out, including school courses (junior school with about 40 prisoners enrolled; art institute with 30 prisoners; three- year vocational school for electrician), vocational courses (dress–making, computer), cultural projects such as "*Il teatro a righe*", projects addressed to non-EU prisoners ("*Information, Orienteering and Insertion*" project), and other initiatives for drug-addicts (cooperation with the Service for Drug-Addiction – *SERT* – and therapeutic communities "Mondo Nuovo" and "Villa Maraini").

The Verona Montorio prison, in addition to the ordinary literacy courses (two classes, 40 prisoners enrolled) and junior high school courses (20 prisoners enrolled), has started, in 2004/2005, a project entitled "*Una qualifica nel settore alberghiero*" aiming at the social and working rehabilitation of those who are leaving prison. Some vocational courses of basic computer science, data processing, applied art for floor mosaic layer, gardening, electricians and kitchen workers are also organised. Moreover, some recreational/cultural or sports projects have been planned (projects: "*Prison Sport*", "*Painters*", "*Sounds and Rhythms of Communication*", "*Library*"). A "*Cultural Mediators project*" has been provided in favour of foreign prisoners and a "*Desk for foreigners*" (*Sportello stranieri*) is working with the aim of giving information useful for the reinsertion into life outside prison. Other initiatives planned within the pedagogic project are: "*Homo Faber*" project (for the recovery of skills and work abilities of prisoners and/or persons serving sentences in the community); "*Oltre il carcere un mondo amico*" project (interventions in favour of needy families of former nomads); "*Borse lavoro per inserimenti lavorativi monitorati*" project (providing for the working insertion of prisoners at Cooperatives or other company realities).

As for **Parma prison**, it has to be pointed out that the Management has transmitted a detailed planning of the numerous activities provided for 2004/2005. Such initiatives go from a complete school course (elementary schools, junior schools, and high schools) to some vocational courses (course for persons employed in catering , in basic healthcare service, in computer-based activities), to working initiatives organised with external companies (assemblage). Various treatment opportunities are also offered, including an "information desk" (*Sportello informativo*) for immigrants, concerts and theatre performances, theatre laboratory, communication laboratory, football tournaments as well as several initiatives aimed at fostering a social-therapeutic recovery for drug-addicted prisoners.

On 26th January 2006, there are 565 prisoners at Civitavecchia prison (regular capacity of 340 places and tolerable capacity of 620 prisoners), there are 683 prisoners at the Verona Montorio prison (regular capacity of 564 places and tolerable capacity of 855 prisoners) and there are 640 prisoners at Parma prison (regular capacity of 446 units and a tolerable capacity of 695 prisoners).

For the reasons above, it can be stated that the problem pointed out by CPT was solved by **a progressive reduction of the overcrowding in the prisons concerned**, while respecting the rules for the allocation of space to prisoners, i.e. nine square meters per two prisoners and five square meters for toilets (*paras. 96, 99, 71*).

Health-care

Act No. 419 of 1998, and the relevant enforcement decree (Legislative Decree No.230 of 1999) assumed that the competence of the penitentiary healthcare service be transferred to the national health service; that transfer should lead, after a first experimental phase (Legislative Decree No. 433 of 2000), to the final re-organization of the health sector, thus ensuring full equality between free citizens and prisoners regarding health care.

The experimental phase started in six Regions and, while waiting for the full re-organization of the penitentiary healthcare service, the Penitentiary Administration is carrying out an integrated work with the national health-care service. Therefore, in consideration of the fact that prisoners, including non-EU prisoners without residence permit, keep their registration, or are registered in the national health service, adequate directions were given to the Regional Superintendents and to the prison Governors so that they actively involve the local healthcare service in the initiatives aimed at the protection of prisoners' health, mostly in the field of pharmaceutical supplies and of specialistic assistance.

As far as **the penitentiary healthcare assistance** is concerned, despite the progressive financial reduction (not in absolute terms, but by virtue of the high increase in the number of prisoners), the Penitentiary Administration tries to constantly ensure the principle of the continuous assistance: the assistance standards are ensured in each prison, on the basis of its level, which is identified according to its capacity (both the prisons of Verona Montorio and Civitavecchia belong to the second level of assistance), and the Administration is committed in not reducing the total amount of hours of medical and nursing service.

As for the budget, there were no further reductions on the item relevant to the organization and the functioning of the penitentiary healthcare and pharmaceutical service, both for 2004 and for 2005, in comparison with 2002 (€ 94.700.119,00) and 2003 (€ 79.380.000,00). In particular, for 2004 the allocation was of € 81.380.000,00 and for 2005 it was of € 97.000.000,00. For 2006, there is a provisional allocation of € 99.000.000,00, with 2,03% increase, if compared to 2005 (*paras. 100-101*).

With reference to **health-care personnel**, it should be pointed out that the Law provides for the activation of a medical and nursing service, as well as specialist consultation through the work of the staff on contract, in addition to the indentured physician ensuring basic healthcare. As regards qualified nurses, nurses employed by the Penitentiary Administration (about 600) together with nurses on contract, working in prisons. The procedure for the recruitment of further 90 nurses - to be probably concluded by June 2006 - is being carried out (*paras.102-103*).

The protection of mental health of prison population has always been taken in great consideration. With the circular letter n° 577373/2 dated 30 June 1999, the contract of specialists in psychiatry was modified providing for hourly remuneration in order to enhance their commitment while freeing them from an activity of mere counselling. The psychiatric specialist will establish and manage real therapeutic relationship with the patient, constantly monitoring the psychic pathologies of prisoners, thus he is also in the conditions to constantly monitor the psychic trouble of prisoners, that greatly contribute to the activities of other penitentiary workers inside the prisons. Notwithstanding the reduction of resources, which has obliged to redefine the specialists advice service, the specialist branch of psychiatry - provided for by Article 11 of the Penitentiary Act - has been maintained for all prisons.

Art.20 of the Presidential Decree No.230 of 2000 establishes that prisoners and internees afflicted with psychiatric pathologies are taken on by the National Health Service. Implementing the mentioned Decree, circular letter n° 0252624 dated 13 July 2005 provides the guidelines for the organisation of a network of interventions involving both the Penitentiary and the National Health Service (*paras.104-105*).

In 1989 **no project for the opening of a diagnostic Centre at Verona remand prison, nor at the new Verona Montorio remand prison** replacing the old structure on 05.05.1994, was envisaged. However, it must be pointed out that the Penitentiary Administration is carrying out projects aiming at the establishment of small wings with 4-5 places at the prisons of Palermo Pagliarelli, Catanzaro, Naples Secondigliano, Rome Rebibbia n.c., Florence Sollicciano, Bologna, Monza and Turin Lo Russo Cotugno with the aim of carrying out psychiatric observation ordered by the Judicial Authority. A similar wing of psychiatric observation is already active at Livorno prison (*para.106*). The importance of a **prompt communication to the judicial authority of injuries following alleged ill-treatment suffered by prisoners has been underlined in many circular letters issued by the Penitentiary Administration** since the Nineties, insisting on the fact that the medical examination has to be carried out “very promptly, very scrupulously and in the most in-depth way in order to avoid that pathological, physical and psychic forms escape from a timely control, thus lacking in adequate attention or care, during detention or internment”(circular letter n° 639845/2 dated 9th August 1990) (*paras.107-109*).

The penitentiary administration **provides for an adequate and appropriate pharmaceutical service in every prison**. More in detail, at Verona Montorio remand prison the first entry visit is carried out with great accuracy to ascertain, among other things, whether the prisoner makes use of medicines. If the latter are not available at the local infirmary, the Director of the Health Service immediately proceeds to the replacement of said medicines with other available at the chemist's of the prison and having the same characteristics and the same active principle. To further prove the efficiency of the medicines supply by prison pharmaceutical service it must be highlighted that often medicines difficult to purchase at public chemist's shops (for example anti-retro-viral medicines), are instead available at the chemist's shops inside the prisons (*para.110).*

Civitavecchia remand prison belongs to the so-called second assistance level and is therefore equipped with a medical service working 24 hours a day. In addition to two contracted physicians, that service is operating on 24 hours basis with six contracted physicians. Besides, on the occasion of the renewal of the contract, the Administration has increased up to 6 hours the nursing service, providing for a 24 hours service including holidays. This service is ensured by six contracted nurses plus a nurse employed by the Penitentiary Administration. **The service at the infirmary has been increased by supplementary Penitentiary Police staff**. The waiting time for the visits remarked by the CPT was due to the serious prison overcrowding, **subsequently decreased in a significant way**. All the prisoners requesting a daily medical check are visited by the doctors on duty (*medico di guardia*) active on 24 hours basis, with special attention for priorities and emergencies (*para.111*).

The refusal to take the prescribed medicines often represents a form of protest, made by the prisoners in order to obtain a positive outcome of their requests. In these cases, the Administration can only take note of the concerned person's behaviour, by activating all the possible measures in order to provide a more careful support action. In particular, beside ensuring interviews with a psychologist, a psychiatrist, as well as with other penitentiary workers, the best health surveillance is provided, with the aim of dissuading the patient from carrying on his protest by convincing him of the risks if he does not follow the prescribed therapy.

The case is different if one prisoner needs to undergo a compulsory medical treatment. (provided for by the law 833/78). In that case, the prisoner is sent to an external public healthcare centre, where s/he receives treatment equal to that of a free citizen, without prejudice to article 32 of the Italian Constitution, which provides that nobody can be submitted to medical treatments except in the cases provided for by the law.

With reference to Law No.180/1978, specific provisions have not been issued, considered that the entry into force of the said Law has not affected judicial psychiatric hospitals governed by explicit provisions provided for by the criminal code, by the criminal procedure code and by the Penitentiary Act, nor provisions have been issued concerning the other penal institutions (*para.112*).

As for **the drug addiction service**, on July, 31 2003, when funds were allocated to the Regions, the human and financial resources were shifted from the Ministry of Justice to the National Health Service. As a consequence, the staff (physicians, psychologists, nurses) who had an agreement with the Penitentiary Administration in order to work in the prison unit for drug-addicted is now employed by the National Health Service. Those resources, together with the resources already allocated by the National Health Service to the drug-addiction section, should improve the assistance provided to that particular category of prisoners.

The **Verona Montorio** remand prison, on 11th November 2005, had 661 male prisoners and 60 female prisoners, out of a regular capacity of 497 places (67 of them in the female wing) and of a so-called maximum capacity of 751 places (104 in the female wing). That prison belongs, according to a circular letter dated 1999, to the second assistance level, and it therefore provides a medical and nursing service on a 24 hours basis. Two indentured physicians are on duty in that structure, and seven contracted physicians provide a medical service (*guardia medica*) around the clock. The nursing service is active 30 hours per shift and it is ensured, on a contractual basis, by seven nurses, five of whom employed by the Hospital of Verona. As far as specialistic medicine is concerned, specialists in infectious diseases, dermatology, odontology, gynaecology, cardiology, ophthalmology, psychiatry operate in the prison. The medical examination upon the subject's entry in prison is carried out immediately after his registration and, anyway, within two hours from his entry. During the same examination, tests for HIV, HCV, HBV and LUE are proposed to him (on a voluntary basis), together with toxicological tests, which are usually accepted by most of the prisoners.

The remand prison of **Civitavecchia**, on 11th November 2005, had 542 male prisoners (49 of whom in the maximum security wing) and 32 female prisoners in the female section, out of a regular capacity of 340 places and a maximum capacity of 620 places (40 places in the female section). That prison belongs to the second assistance level, and it therefore provides a medical service working 24 hours a day. Two contracted physicians are on duty in that structure, and six contracted physicians provide a medical service (*guardia medica*) on a 24 hours basis. The nursing service provides for 18 hours per day covering and it is ensured by six contracted nurses plus one nurse employed by the penitentiary administration. As far as specialist medicine is concerned specialists in infectious diseases, dermatology, odontology, gynaecology, cardiology, ophthalmology, psychiatry, surgery operate in the prison. The medical examination upon the subject's entry in prison is carried out immediately after his registration and on average within one hour from his entry. The tests for the detection of infectious diseases include those for LUE and TST RIA for viral hepatitis. As for infectious diseases and their consequent anti-retro-viral the Civitavecchia prison has an agreement with the Spallanzani Hospital in Rome (*paras.113,114,115*).

As regards **the privacy protection** of prisoners' healthcare data, a system of computerization of the case history is being introduced, allowing to obtain, in real time, the clinical situation of the prisoner, on a case by case basis, as well as of the most common pathologies in the penitentiary population, thus ensuring, at the same time, the respect of privacy norms on health data. It is however opportune to recall that the legislation in matter of prisoners' health protection provides for a medical examination upon the offender's first entry in the prison in order to avoid the prisoner's assignment to cells with other inmates in case he is afflicted by contagious diseases, thus ensuring qualified care of his physical and psychic problems, since his very first contact with the penitentiary environment. Moreover, in urgent cases, the prison Governor can authorise the hospitalisation of inmates in public health structures outside the prisons. In compliance with the norms regulating the functions of the Penitentiary Police staff within the healthcare service, that Police staff keeps the keys of the entrance door with the purpose of allowing only authorised staff; they have to control that no object nor item not foreseen by the physician is introduced into the prison, and to that purpose every prisoner entering or exiting the infirmary is carefully searched and their names registered. Any fact which can jeopardize security, healthiness, hygiene of the environment as well as health and security of people is reported to the head of service (*para.117*).

Other matters

As for the lack, at national level, of **staff belonging to the category of treatment professionals, the General Directorate of Staff and Training ordered the extraordinary recruitment of 50 educators** under limited-time contract, in order to effectively meet the requirements of the penitentiary rehabilitation services. Furthermore, 751 persons are being recruited, under an open-ended contract: 447 of them are educators, 39 are psychologists and 90 are qualified nurses.

With regard to Civitavecchia and Verona prisons, during the years 2004-2005 at Civitavecchia remand prison there has been an increase of 23 units of penitentiary police (21 men and 2 women), while at Verona remand prison there has been the definitive allocation of 30 units of penitentiary police. As regards the remaining professional staff, in the light of the reduced financial resources (with a drastic reduction of competitions), the administration shall activate the competition procedures to stabilize the staff, continuing to avail itself of the staff under limited-time contract (*para.118*). Since 2000, particular attention has been paid to the problems met by foreign prisoners because of cultural and linguistic differences; the figure of cultural mediator (***mediatore culturale***) has been therefore introduced, as an instrument to overcome such obstacles (it is an experiment carried out in some prisons, but the programme provides the service to become permanent and widespread throughout the Country). The cultural mediator is a person endowed with particular linguistic and juridical skills, who gives his collaboration in order to facilitate the communication between foreign prisoners and penitentiary workers; the cultural mediator is chosen through agreements stipulated by the Italian Penitentiary Administration with local bodies or voluntary organizations. Moreover, *information desks* for foreign prisoners have been activated in many prisons; these "desks" offer a specific support for the dissemination of information, of prison rules, of the opportunities offered both inside and outside the prison, also in order to facilitate the access to prison benefits and to measures alternative to detention. School courses are also organized in every Italian detention centre for the literacy of immigrants who can not understand Italian.

In order to improve the situation of foreign prisoners a number of initiatives has been taken within the projects carried out by the Italian Penitentiary Administration:

a) the Italian Penitentiary Act was translated into English, French, Arabic, Spanish and German; those translations have been sent to all the Italian prisons;

b) the extracts of the Penitentiary Act and of its Enforcement Regulations were translated into Albanian, Spanish, Portuguese, Romanian and Turkish, and the already existing extracts of the Penitentiary Act and of its Enforcement Rules in English, French, Croatian, German and Arabic were updated. Those brochures, currently in press, are being distributed to foreign prisoners held in Italian prisons.

Though the cultural mediator is not still present **at Verona remand prison, the Governor of the institute is trying** to activate, together with outside organizations and with the help of local bodies, a cooperation in order to make a cultural mediator available (*paras.119,128*).

The accused prisoner who is under pre-trial detention has the right to hearing with his/her lawyer; that right is expressly provided for by Art.104 of the Code of penal procedure, and it can be exercised since the beginning of his imprisonment without any restriction as for the number nor for the duration of those interviews. Finally sentenced prisoners (that is those who are serving a sentence in consequence of a final verdict) have the same right, as confirmed by the judgement of the Constitutional Court No. 212 of 1997, according to which Art.18 of the Penitentiary Act, in the part where it did not provide for that right, is unconstitutional. Despite such a wide and intangible right, according to the law currently in force telephone interviews between prisoner and their lawyers are not included among prisoners' rights. It is therefore in the power of the competent Authority, in terms of art. 39 of the Presidential Decree 230/2000 (the prison governor for finally sentenced prisoners, the proceeding Judicial Authority for accused prisoners until the first degree sentence, the supervisory Judge after the first degree sentence), to grant a telephone interview "*when reasonable and verified grounds occur*". It does not seem possible, at present, to broaden the possibility for foreign prisoners to access telephone interviews even in the absence of official documents proving the kindred links with the subjects the prisoner wish to communicate to; indeed, in that case, apart from the fact that Italian prisoners would then be disadvantaged, priority requirements for security prevent the prisoners from eluding controls, when the adequate documents are lacking.

The Italian Penitentiary Administration commits itself to bring to **the attention of foreign consular authorities the need to provide, as promptly as possible, the information requested by foreign citizens from their respective countries** (*para.122*).

It has to be pointed out that **at Civitavecchia remand prison, in the so-called isolation wing, every cell is equipped with space for outdoor exercise**, provided for by a specific order.

At **Verona Montorio** remand prison there an isolation wing is not available and when the continuous isolation regime is required for health reasons, this is carried out in the same cell. Outdoor exercise is also allowed in the same space belonging to the ordinary wing but with an alternative timing with respect to the remaining prison population (*para.124*).

The **disciplinary proceeding** provided for by articles 77 and subsequent of the Presidential Decree 230/2000, despite its administrative nature, meets specific standards of guarantee and legality granting complete information about disciplinary proceedings (also through the handing over of a formal written document), from the moment of the notification of the infringement. The notification of the disciplinary infringement shall be made within 10 days; within a further short timeframe the disciplinary Council shall meet in order to evaluate the most serious cases. As provided for by art. 81 of the Presidential Decree 230/2000, the accused person, during the hearing before the Council (and also before the Governor in the less serious cases), is given the possibility of a personal hearing in order to present his/her apologies.

The Governor or of the Disciplinary Council's decision shall be motivated and shall include the mention of the inflicted sanction as well as of the modalities of appeal to the supervisory judge. Furthermore it shall be notified by handing over a copy to be signed by the prisoner. Against the provision inflicting a disciplinary sanction, an appeal can be lodged to the Supervisory Judge, in terms of art. 69 of the Penitentiary Act, following the procedure indicated in Art.14-*c* of the same Act. At this stage, the subject can be assisted by a defence counsel, who is entitled to obtain witnesses or further documentation. Against the final decision of the appeal procedure, a further appeal can be filed to the *Corte di Cassazione* - Supreme Court (*paras.126,127*).

One of the tasks assigned to the Regional Superintendents of the Penitentiary Administration, is to carry out periodical visits to the prisons falling under their responsibility, in order to personally verify the overall functioning of the establishments. These inspections concern the full enforcement of the current legislation, relating both to the treatment activities envisaged for prisoners and to the security measures in the prison, as well as to other technical-operational and administrative activities. **The said supervising function is constantly monitored by the Central Administration**; indeed, the above mentioned Superintendents have to send a six-month report, in compliance with the circular letter of the Department of Penitentiary Administration nr. 3565/6015 of 30 October 2001, about the activity carried out at Regional level (*para.127*).

D. The psychiatric service of diagnosis and care (SPDC) at the San Giovanni di Dio Hospital in Agrigento

Preliminary remarks

Article 32 of the Italian Constitution lays down that all people on the Italian territory enjoy the right to access health care services. In fact, Article 32, para.1, envisages that the Republic protects individual health as a basic right and in the public interest; it provides free medical care to the poor. Its para. 2 sets out that nobody may be forcefully submitted to medical treatment except as regulated by law. That law may in no case violate the limits imposed by the respect for the human being.

Legal Framework. The health care system for mentally-ill people in Italy: The psychiatric reform, implemented by Act No. 180/78 and better expounded by the sanitary reform Act No. 833/78, reflects, at the legal level, **a new approach to mental illness** following the last scientific acquisitions in the field of both psycho-dynamics and psychobiology and the consequent testing of increasingly more specific drugs.

The relevant legal reform pursued three main goals: 1. Decriminalizing mental illness, which was, up to that time, subject to the authority of the Public Prosecutor's office; 2. Promoting social rehabilitation while avoiding the mental hospitalisation to become chronic ; 3. Recommending an assistance model spread throughout the country, easily accessible for users and based upon both an inter-disciplinary interaction among different professional stakeholders as well as integrated interventions. Such objectives have been reinforced by two programmes entitled "Objective Projects for the Protection of Mental Health" which were implemented between 1994 and 1998. Through these two projects **four key-areas** have been highlighted in order to improve the overall quality of psychiatric assistance:

i. The creation of a service network providing an integrated intervention for the rehabilitation and management of patients' acute states of crisis;

ii.The development of the work management at the departmental level by providing the service network with specific technical and managerial responsibility in order to ensure a continuing integrated functioning of the services themselves;

iii.The increase of the professional skills of the staff in order to face all psychiatric pathologies - with particular regard to the most serious ones - through diversified interventions that include the participation of a higher number of stakeholders, including patients' relatives;

iv. The effective replacement of the psychiatric hospital through the implementation of programs aimed at providing new accommodations for patients.

The proposed intervention strategy provided for a fundamental reference framework in view of a systematic re-organization of the psychiatric care services. Its most significant elements are the following:

i. The establishment of the Mental Health Department (*Dipartimento di Salute Mentale* – DSM) as a coordinating body in charge of guaranteeing unity and integration among psychiatric services in a given area of the country;

ii. The determination of DSM's different organizational components (territorial structures, hospital services, structures for activities both in a semi-residential and residential regime) and the definition of relevant standards, in relation to the population;

iii. The determination of responsibilities of the DSM and of every organizational component respectively;

iv. The establishment of synergies with other "neighbouring services" (basic health care programmes, school medicine, doctors on duty, social advisory centres, child neuro-psychiatry).

While planning the activities aimed at contrasting the spread of mental diseases, the mental health-care services must give priority, over a three-year term, to prevention, care and rehabilitation measures for serious mental diseases, without neglecting of course the need of less seriously ill people. Such priority must be given taking into account that the cited serious diseases can infringe on the enjoyment of citizenship-related rights and risk to become chronicle thus enhancing social marginalisation. In order to carry out such interventions, the most appropriate measures identified are as follows:

i. The implementation by relevant services of practices aimed at active and direct interventions at the local level (schools, workplaces, etc), in collaboration with local communities, volunteers, as well as health and social care providers at large;

ii. The elaboration of personalized therapeutic-rehabilitating plans, with specific responsibilities and timeframe for assessment;

iii.The involvement in the cited plans of other health-care and social services, including general practitioners and other local resources, especially as regards working activities, the livelihood, and the so-called relationship assets (the establishment and fostering of affective and social relations);

iv.The application of the most effective therapeutic strategies in light of the Medicine Based on Tests of Effectiveness criteria (Evidence Based Medicines);

v.The involvement of patients' families in the formulation and in the implementation of the therapeutic plan;

vi.The start-up of specific programmes for the recovery of patients who do not follow or who leave the service, in order to reduce the suicides rate;

vii.The support for the establishment and the functioning of mutually -helping groups of relatives, patients and social cooperatives and, among the latter, especially of those favouring the access to the labour market;

viii.The implementation of awareness raising campaigns about serious mental diseases to be addressed to the general public. The aim is that of reducing prejudices and of fostering solidarity, thus increasing, among others, the possibility of directing serious mentally ill patients to the mental health-care services.

The mapping exercise of specific objectives to be pursued by the mental health departments is based upon clear indications as to the organizational model and, above all, the quality of the assistance services, the elements of which are as follows: i. Guidelines and professional consent procedures for a good clinical practice, as to the intervention methods; ii. An assessment process for the Continuous Quality Improvement (CQI) at the organizational and professional level, including quality as perceived by customers and relatives; iii. The accurate documentation of activities and performances carried out in favour of every single patient within the departmental information system, to which the medical file of every patient must be addressed.

Sanitary and social integration. By the latest reform measure, Legislative Decree No.229/1999, its Article 3-quater contains the first organic and systematic definition of *district*, as the operating branch of the Local Health Unit (USL). The district fulfils the function of guaranteeing accessibility, continuity and timeliness of the health care service, through programmes of activities involving all the operating structures of the USL. The district accomplishes the integration between sanitary services and social services: indeed, integrated assistance plans assure a unitary response to those health needs for which both sanitary and social protection are required. Along with the function of services provider in the field of primary assistance - through a departmental structure, in which the generalists and the free-lance paediatrists are systematically involved -, the district assumes a management role for the coordination and integration of both services and departments of USL and of the latter among themselves. In doing so, the district makes use of the aid of the municipality social services with the overall aim to respond to the specific health care needs of the community, at the local level.

The Mental Health Departments: The establishment of the Departments of Mental Health was formalised by all Regions and by the Autonomous Provinces. The Departments amount to 211 within which it must be taken into account the following structures: i. public structures within the departments of mental health (mental health centres, suburban outpatients' departments, day centres, residential structures, territorial day hospital, services of diagnosis and cure); ii. the university psychiatric clinics operating within the national health service; iii. the private mental health care services operating within the national health service, whose technical management is carried out by the mental health departments (the typologies of relating relevant structures can include the following ones: diurnal centres, residential structures, territorial day hospital, nursing homes); iv. the private structures linked to the National Health Care Service that are autonomous as to both the administrative management and the technical direction (the typology of relating structures may include: diurnal centres, residential structures, territorial and hospitals day hospital, nursing home); v. the personnel of the Departments of Mental Health; vi. the seconded staff personnel working within both the public structures of the DSM and the private structures, under the technical direction of the DSM•.

• **General guiding standards .** Staff: **1 operator every 1500 inhabitants.**

- *Mental Health Centres*: one medical facility every 150.000 inhabitants open at least 12 hours per day, 6 days per week;
- *Diurnal Centres*: one medical facility every 150,000 inhabitants with a opening timetable of at least 8 hours per day for six days per week;
- As to facilities within the hospitals (*Day hospital and Psychiatric Services of Diagnosis and Care*), the standard is 1 bed every 10,000 inhabitants;
- As to facilities within the residential structures, the standard is 1 bed every 10,000 inhabitants. This number can be doubled for those health Units which used to include psychiatric hospitals, the closing of which has led to the establishment of ad hoc residences. Another standard regards the maximum number of beds for each structure, fixed in the number of twenty for each medical centre.

Facilities

Mental Health Centres and medical centres

Mental Health Centres

There are 707 MHC with a rate *bed/population* amounting to 1,83. This is nearly the double if compared to the standard; however, in all Regions the rates exceed the cited one.

Hospital facilities

Psychiatric Services of Diagnosis and Cure

The total national amount is of 321 centres, with 3.997 beds.
D.H.Centres
There are 154 DHC, of which 147 public with 356 beds, and 7 private with 19 beds.
University Private Clinics
There are 8 UPC with 162 beds.
Private Health Care Centres
There are 56 PHCC with 3.975 beds.

Public hospital facilities (beds)
The total number (sum of the bed of the SPDC, the DH and the university clinics) is 5,295, to which corresponds a rate *beds/population* of 0,92, a bit less than the standard.
Private hospital facilities (beds) within the national health service
To the 3,975 beds of the above-mentioned private health care centres, 19 beds at the private DH Centres must be added for a total amount of 3.994.
Total number of beds
The national total number of beds is 9.289. On the national overall, the distribution in terms of percentage between public and private facilities is of 57.0% in the public sector *versus* 43.0% in the private one.

Diurnal Centres

There are 612 DC, with a rate vis-à-vis the population of 1,59, more than the relevant standard.
Distribution for type of management
The majority of the diurnal centres is under public management; in detail it is as follows:
520 DC are public (85% of the total);
35 DC are private but under technical management of DSM (5.7% of the total);
57 DC are private with autonomous technical management (9.3% of the total).

Residential Facilities

They amount to 1,552, for a total of 17.101 beds.
The national rate in terms of accommodation/population is 2,96, more than the standard. The average standard corresponds to 1 bed every 10,000 inhabitants. This rate can reach 2 beds every 10,000 inhabitants in the Regions involved in the process of closing down of the former psychiatric hospitals. Such process was carried out in all Regions, except for Valle d'Aosta, Molise and the Autonomous Province of Bolzano.
Distribution of the number of structures for type of assistance and management
The percentage distribution of accommodation/beds is definitely higher than that of facilities. There are 17.101 places which are divided as follows:
Public residential facilities 912 (58.8% of the total);
Private residential facilities under technical management of DSM amounting to 255 (16.4% of the total);

Living conditions of Patients

Turning to the first indications contained in the CPT report, it seems necessary to highlight that the areas under consideration refer **to hospitals where patients are not hosted for a long-term stay**. In fact, these are not residential facilities devoted to a long-term stay (*para. 133 of the CPT report*).

In this context, it seems necessary to clear up that for a very short lapse of time (one or two days) the number of patients has overcome the formal reception capacity of such facility. However, **this situation has always remained under control (up to 18 patients)**. There were also spare beds, including those ones for the day-hospital stay. Moreover, it is worth reiterating that the patients undergo **a hospital stay, the term of which is relatively short and its aim is to take care of the acute stage of the disease**. At the conclusion of this stage, the patient is put under the supervision and care of the local Health Care Service, namely the Mental Health Centre in order to continue a specific care and rehabilitation program. In this regard, it is worth emphasizing that **all the therapeutic and rehabilitation measures are decided only by health care providers**. Therefore, such measures are not taken by administrative authorities (*para. 134*).

Private residential facilities with autonomous technical management amounting to 385 (24.8% of the total).

Staff

The staff employed at the Mental Health Departments is divided into two categories: the first includes all the professional stakeholders envisaged by the so-called Project-goal entitled "Tutela salute mentale 1998-2000", which consider the relationship/rate between MHD staff/population; the second category, instead, refers to a wide range of other professionals, working also within the framework of the MHD, and reported under the item "other professionals". The total is of 34.446 operators, of which 30,711 relating to the first category, and 3,735 to the second one. There has been an increase in the staff personnel of approximately 4000 units since 1998, when the total number of the relevant workers amounted to 30.442.

Seconded and Long-Term Professional (professional figures from the " Project-Goal")

The detailed analysis of 30.711 relevant workers at the MHD supplies the following information: The several professional figures are distributed as follows (number and percentage on the total):

Doctors	5.561 (18,1%) ;
Psychologists	1.850 (6,0%) ;
Sociologists	120 (0,4 %) ;
Therapetists of the psychiatric rehabilitation	171 (0,6%);
Educators	2,095 (6.8%);
Social workers	1,551 (5.1%);
Nurses	14,760 (48.1%);
Technical Operators	(OTA) 2,698 (8.8%);
Auxiliary personnel	1,300 (4.2%);
Administration Units	605 (2.0%).

The national rate MHD workers/population, calculated on the basis of the professionals from the Project-Goal (30,711), corresponds to 0,80 MHD operators every 1,500 inhabitants. Even though such rate is still lower than the standard envisaged in the so-called "P.O.N. (Operative National Programme) - that is equal to 1 operator every 1,500 inhabitants", such value is increased if compared to the previous survey dating back to March 31st 1998, when it was 0,75.

Other Employees

In order to represent this category of employees, defined with the term "other", they are grouped under five categories: 1) generic and psychiatric nurses; 2) sanitary assistants; 3) technical personnel; 4) workers from social cooperatives; 5) entertainers and art experts. It was, however, necessary to insert a sixth category in order to represent a large group of other workers, which is not homogenous. Such group has been placed under the heading "other figures". The total of the personnel defined as "other" is thus of 3.735 units, distributed under the six groupings as follows (expressed in number and percentage):

generic and psychiatric nurses	1.496(40,1%);
sanitary assistants	85(2,3%);
technical workers	99(2,7%);
social cooperative workers	846(22,7%);
cultural/social sector workers	125 (3,3%);
other figures	1.084(29%).

Treatments

Given the above information, it is worth reiterating that the internal regulation of the Mental Health Department, including services such as SPDC, lays down that **ad hoc intervention programs, to be carried out by the local health care service (Mental Health Centre) must be taken for each patient and adopted upon agreement with each patient**. The Mental Health Department is also in charge of coordinating and supervising the cited programs (*paras. 135-136-138*).

As to para. 137, by considering that such decisions must be taken by the competent health care providers, the CPT recommendation, however, **will be promptly transmitted to the Mental Health Department in Agrigento**. By considering also the above indications, it is worth mentioning that in Italy the formal hospital documentation is based upon the hospital file, including the infirmary file which is the appropriate internal means of communication among health-care providers. In fact, this reports all relevant information which are necessary to assess the course of the care intervention (*para. 138*).

Provided that every Local Health Care Unit activity is based upon a Charter of Services which describes all services to be provided, it seems necessary to underline that both the patient and his/her relatives are broadly informed about the hospital management in terms of visits, food etc.. More importantly, given the fact that that we are dealing with mentally-ill people, to be put under health care treatment, especially during the acute stage of their disease, it would be more **appropriate that relevant information may be provided orally through direct contacts in lieu of a formal documentation** (*paras.139-140*).

Personnel

As to para. 141, given the CPT acknowledgement of the very positive rate between health-care providers/number of patients, **such issue refers to the general programming activity of each Hospital and to the resources available to be allocated to the personnel**.

In this context, it is worth mentioning that the hospitalisation is a short-term stage within the general plan of health-care activities for patients. In this regard, it is worth recalling that the so-called **Project-Objective entitled Protection of the Mental Health 1998-2000 is a measure of general programming within the Mental Health Departments**, which provides clear indications on the "mission" of the Mental Health Departments vis-à-vis the Health-goals and the type of priority-intervention to be realised. Along these lines, the determination of specific objectives to be pursued by the Mental Health Departments is based upon clear indications on the organizational model, as well as on specific indications concerning the quality of the health care processes (*para. 142*). On a more specific note, it is also worth mentioning that the cited so-called Project-Objective includes **an entire chapter devoted to training activities** for the personnel under reference (*para.143*).

Constraint and isolation measures

As to para.144, the relevant recommendation is correct. Therefore, the Health Ministry has decided to promote an Agreement with Regions on the text considered thereon.

Guarantees

It is worth mentioning that the current Italian legislation envisages, as acknowledged by the CPT delegation, the highest level of protection for the rights of citizens-patients, especially if compared to the legislation prior to the relevant reform on the basis of which patients could be placed in the psychiatric hospitals without any protection and for an unspecified term (*paras. 149 -155*). In this context, it is also worth mentioning that at present, **no situation of abuse has been recorded**, as emerged from the absence of complaints filed. In this regard, it seems necessary to underline that the medical record may be more or less detailed, however **the deontological/ethical responsibility remains at the core of this complex procedure aimed at the protection of *rights*** *(paras. 149 -155*).

By considering that the treatment is decided by physicians, fully aware of their deontological responsibility, it is important to recall that the decision to hospitalize a patient is decided and certified, at the end of the relevant process, by psychiatrists of the Hospital Division who have to draw up a report to be transmitted to the tutelary judge (*para. 150*).

As to para.151, the position according to which there could be some ethical conflict when the doctor in charge decides for the TSO measure, it is difficult to share. Perhaps, **this issue might be considered as a matter of opportunity**. However, in no case this issue may entail and be regulated by a legislative measure. Moreover, within this framework, it is worth recalling that that **the professional deontology lacks only when a damage, even indirect, is made to the patient, and this is not the case**.

As to paras. 152 through 154, the Italian legislation is particularly detailed vis-à-vis the tasks of the stakeholders involved in the TSO procedure, namely doctors, mayor and tutelary justice. Therefore, the procedure considered thereon aims at protecting patients from the risk of "an intentional interest" of the relatives or other interested persons. As to the specific role of the tutelary justice and the justice's way to confirm the TSO measure, while **acknowledging that a direct confrontation between the physician and the patient may be desirable**, a specific pattern cannot be set up. Furthermore, it is worth mentioning that the tutelary justice in his/her capacity who acts in line with the principles of deontology, may resort to a wide range of means to ascertain possible cases of abuse. Along these lines, the Italian legislation, as well as the deontological regulation, envisages that **the hospital file expressly reports the patient's consent**. Therefore, the shortcomings reported by the CPT Delegation have been duly considered, and the Managing Body of the Hospital under reference will be promptly informed (*para.156*).

As to para. 157, in general terms, the "hospitalisation aimed at keeping under observation the patient (which is sometimes defined with the following term: "casualty ward")" takes place when a patient goes to the Emergency and there is a temporary shortage of hospital beds. Along these lines, such event can take place also when a patient with a psychiatric disease must be kept under observation. Nevertheless, it seems necessary to underline that the admission to hospital is decided by a physician and must be accepted by the patient. On a more specific note, it seems necessary to reiterate that the relevant domestic system fully protects the patients' rights. In fact, worthy of mention is the possibility of filing a complaint as guaranteed inter alia by the ad hoc Divisons for Public Relations established at every Local Health-Care Unit (Azienda Sanitaria Locale). However, against this background, it is the intention of the relevant authorities to monitor and periodically verify the situation of patients undergoing the TSO procedure, along the lines put forward by the CPT delegation (*paras. 158-158*). Lastly, it is worth recalling that in accordance with Act No.180/1978, as to the release of the TSO measure, **the Mayor's decision must be confirmed within 48 hours by the tutelary justice whose decision may be challenged before the competent Tribunal** (*para.154*).