



CPT/Inf (2013) 30 [Part 2]

Supplementary report

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

from 14 to 18 June 2010

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

Strasbourg, 19 November 2013

Note:

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

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Copy of the letter transmitting the CPT's report

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Minister Plenipotentiary
President of the Inter-Ministerial Committee on
Human Rights
Ministry of Foreign Affairs
Piazzale della Farnesina 1
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Strasbourg, 14 April 2011

Dear Mr Brasioli,

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

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

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

Yours sincerely,

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

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

I. INTRODUCTION

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

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

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

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

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

II. ACCOUNTABILITY FOR ILL-TREATMENT OF PERSONS IN CUSTODY

1. Preliminary remarks

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

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

The criteria which must be met by an investigation into suspected cases of ill-treatment in order for it to be described as "effective" have been established by abundant case-law of the European Court of Human Rights¹. In particular, the investigation must be *thorough*, it must be conducted *promptly* and *expeditiously*, and the officials responsible for conducting it must be *independent* of those implicated in the events. The real efforts shown by the competent authorities to meet these requirements and to ensure that the rule of law is respected will have a significant deterrent effect on those inclined to ill-treat persons deprived of their liberty.

2. Case examples examined by the CPT delegation

a. case A

6. Mr X, aged 31, was apprehended at 11.30 p.m.² on 15 October 2009 by Appia *Carabinieri* officers in Rome. He was taken to his family's residence for a search to be conducted, and then to Tor Sapienza *Carabinieri* station, where he was placed in a cell pending summary proceedings scheduled for the following morning. Shortly after 5 a.m. on 16 October, an ambulance was called to the station; according to the statements of *Carabinieri* officers, Mr X had complained that he was not feeling well. Nevertheless, Mr X apparently told the ambulance personnel that he needed no assistance, refused to be examined and covered himself in a blanket.

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

¹ Also see paragraphs 25 to 42 of the 14th General Report on the Activities of the CPT.

² By what appears to be a clerical error, the arrest form refers to the hour of 3.20 p.m.

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

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

At 7.45 p.m. on 17 October, Mr X was admitted to the Sandro Pertini Prison Health Care Unit, a facility which is, however, not designed for patients in an acute condition requiring intensive care³. The doctor registering his admission noted, inter alia, his “good” general condition and muscle apparatus (tonic-trophic), “fairly good” nutrition and “normal” decubitus⁴ and urogenital apparatus. Mr X’s medical file (drawn up at the Sandro Pertini Prison Health Care Unit) shows that, during the following four days, he refused to undergo several medical interventions, including intravenous rehydration, and repeatedly asked to speak to his lawyer and a drug rehabilitation worker. This request, however, was not granted, the procedure relating to such requests not having been complied with. Finally, weighing 10 kg less than at the time of his arrest, he died in the early hours of 22 October as a result of kidney failure induced mainly by his dehydrated state⁵.

Both the criminal investigation and the administrative investigation reports stated that, on several occasions, on his readmission to Regina Coeli Prison and his transfers to hospital, Mr X had given the prison staff to understand that the episode of the fall down the stairs had been imaginary and that he had been beaten, particularly during the night prior to his arrival in prison, and again during his time spent in the basement of the Rome courthouse. His appearance and physical condition on arrival at the Rome court, as observed by the *Carabinieri* in charge of his transfer and by other detainees, are consistent with the assumption that he had been hit even before his arrival at the court. Furthermore, a detainee placed in a neighbouring cell in the basement stated that he had heard the prison staff beating Mr X⁶.

³ This Unit offered secure detention conditions for prisoners requiring hospital treatment and care of a routine, non-emergency, nature. In particular, hospitalisation on the Unit did not require additional custodial staff to be mobilised. On 26 October 2010, the prison administration official responsible for Mr X’s extraordinary placement in the Unit was convicted of making a false statement (by a public official) and abuse of power.

⁴ ‘Decubitus’ is Latin for the horizontal position of the body. A ‘normal’ decubitus means no medical problem is observed when the subject is lying horizontally.

⁵ It should be noted that the extensive autopsy reports point mainly to the negligence of medical personnel at the Unit.

⁶ The competent prosecutor’s investigations into the responsibility of medical personnel at the Unit and penitentiary staff at the court house cells had been concluded at the time of the visit; their trial was due to commence on 24 March 2011.

b. case B

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

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

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

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

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

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

On 12 May the prosecutor filed for and was granted the provisional release of Mr Y, on the basis of the aforementioned video and a preliminary reconstruction of the facts which enabled Mr Y to be dissociated from the clashes between the police and the football fans⁷.

⁷ See paragraph 14.

c. case C

8. In a short audio recording – transcribed in print media and widely broadcast on television and via the Internet as of 29 October 2009 – a prison staff member (senior officer) at Teramo Prison expressed concern that an unruly inmate had been beaten within the sight and earshot of other inmates, which in his opinion could have led to a riot. In the recording, he admonishes another staff member, mentioning that recent incident, while acknowledging that the prisoner in question should not have misbehaved as he had. He also insists that, when it is in fact necessary, prisoners should be beaten downstairs⁸ and not in the detention unit itself in front of other prisoners. Finally, he says that one inmate⁹ saw the whole beating. He adds that, fortunately, it was possible to resolve the situation by laying the blame on the unruly prisoner.

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

The investigation file specifies that the incident referred to in the recording occurred on 22 September 2009, the date on which the disciplinary registers show that the unruly inmate concerned assaulted the staff member, for which a disciplinary sanction of 10 days' exclusion from communal activities was imposed¹⁰.

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

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

⁸ The case documentation shows that the room referred to was room 516, a staff room close to the infirmary.

⁹ This inmate died on 18 December 2009 as a result of an undiagnosed brain tumour.

¹⁰ Decision taken on 28 September, notified to the prisoner on 13 October; sanction served 16-26 October 2009.

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

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

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

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

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

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

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

13. In case A, for which the criminal investigation concluded in April 2010, the public prosecutor's department focused more on the responsibility of the prison staff on duty at the Rome court and that of the medical staff at the Sandro Pertini Prison Health Care Unit in Rome. At the end of its investigations, it excluded any involvement of *Carabinieri* in the ill-treatment to which the deceased prisoner was subjected. However, several elements in the judicial file nonetheless suggest possible involvement of the *Carabinieri*, particularly the very divergent evidence given by *Carabinieri* as to the physical condition of the prisoner and, more specifically, his ability to walk¹¹. **The CPT wishes to be informed of the reasons for which the possibility that ill-treatment was inflicted before the prisoner in case A arrived at the Rome court was dismissed during this investigation.**

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

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

The CPT recommends that the Italian authorities reinforce their concrete initiatives, through training and the setting of good examples, so as to promote a working environment within which it is regarded as unprofessional to resort to ill-treatment and as correct and professionally rewarding to be a member of a team which abstains from such acts. An atmosphere must be created in which the right thing to do is to report ill-treatment by colleagues¹². This implies the existence of a clear reporting line as well as the adoption of whistle-blower protective measures.

16. In the three specific cases examined by the delegation, there were no suspensions from duty¹³. Further, according to the information supplied by the Italian authorities, it would appear that law enforcement and prison officials are rarely suspended during criminal proceedings opened in respect of alleged ill-treatment. The CPT considers that the use of a suspension measure is sometimes necessary, particularly to send out a clear message of "zero tolerance" of ill-treatment. **The CPT wishes to receive the Italian authorities' comments on this subject, particularly on the criteria for applying provisional suspension in the event of criminal proceedings for ill-treatment.**

¹¹ See the judicial investigation file, for instance document 2850906.

¹² See also paragraph 30.

¹³ In case A, the three prison staff who were the subject of an investigation for aggravated intentional homicide

The Committee also wishes to be informed of the disciplinary measures taken following any conviction for ill-treatment in cases A and B¹⁴.

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

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

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

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

In both cases A and B, *Carabinieri* officials notified the detention to the lawyer by fax sent to the lawyer's office late at night, which would appear to be common and accepted practice¹⁵. In the CPT's view, notification by fax to a lawyer's office outside working hours can hardly afford the protection against ill-treatment which effective and prompt access to a lawyer should provide. The lawyer chosen by the person deprived of his liberty not being contactable or available, the effectiveness of this safeguard requires that, in the context of an on-call service, the duty lawyer or his or her deputy are able to be contacted directly by telephone.

were placed on leave for six days in November 2009, after which they were assigned to other duties. Provisional assignment to other duties was also ordered for the hierarchical superior in case C, as well as for the main member of the police identified on the video recording in case B.

¹⁴ The delegation was informed that the prison officers involved in case C, which was dropped, were also not subject to any disciplinary measures.

¹⁵ Notification of the lawyer by fax is acceptable according to the Italian Supreme Court (see *Corte di Cassazione - Sezioni Unite 30 October 2002*).

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

19. In practice, the presence of the lawyer is effective only once the person concerned appears in court for validation of the arrest, and possibly for an order for placement in pre-trial detention¹⁶. Before the actual hearing, the lawyer is not usually allowed time to hold a discussion with the detainee, either confidentially or otherwise. Thus the inmate concerned in case A did not have an opportunity to have a confidential consultation with the lawyer before appearing in court.

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

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

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

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

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

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

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

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

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

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

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

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

5. Prevention of ill-treatment in prisons

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

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

25. In its main report on the visit in June 2010, the CPT made certain recommendations concerning medical examinations, medical confidentiality, and the relationship of trust between doctors and patients in custody¹⁷; these will not be reiterated in this supplementary report. However, the examination of the above-mentioned three specific cases during the visit highlighted certain shortcomings, which no doubt increase the necessity to implement the Committee's recommendations in this respect.

As for the recording of injuries during medical examinations, in case A, the detained person's statement about the origin of his injuries was meticulously noted down. However, the same was not true for the prisoner concerned in case C, whose medical file contained no explanation of the injuries noted. Furthermore, in none of the medical files examined during the visit was the doctor's opinion recorded as to the consistency between the injuries noted and the prisoner's explanations on the subject. Lastly, and even more importantly, the delegation's findings and the examination of cases A, B and C show that prison doctors are not required to make systematic reports when they come across detained persons with injuries. On the contrary, the delegation, once again¹⁸, noted the practice of systematically reporting to the judicial authorities only those injuries from which recovery would take 20 days or more.

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

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

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

¹⁷ See document CPT(2010)84, paragraphs 35, 37 and 38.

¹⁸ See, for example, the previous periodic visit report (CPT/Inf(2010)12, paragraph 91).

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

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

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

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

The need for independent monitoring of prisons and the handling of complaints more effectively was already noted by the Committee during past visits¹⁹. In particular, the inspecting judges have a role and a field of action which are too broad in scope to be effective: their workload makes it impossible for them to oversee prisons in a thorough and proactive manner. As their time is typically monopolised by the processing of written procedures, they often lack the time to meet prisoners and staff in detention facilities and carry out spot checks of practice and conditions.

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

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

¹⁹ See, for example, the previous periodic visit report (CPT/Inf (2010)12, paragraphs 85 and 118).

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

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

6. Final observations

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

The CPT recommends that the Italian authorities ensure that whenever a person is injured while under the supervision of public officials, the case is considered by the relevant authorities as one indicative of ill-treatment, until such time as a plausible alternative explanation for the injuries can be provided²⁰.

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

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

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

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

²⁰ In this respect, according to the well-established case-law of the European Court of Human Rights (see, for example, *Ribitsch v. Austria*, 42/1994/989/571 of 4 December 1995), whenever a person is injured while under the supervision of officials, there is a strong presumption that the person concerned has been ill-treated, and the authorities have a duty to supply a satisfactory and convincing explanation of the way in which the injuries were caused.

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

An analysis of the accountability system in Italy would not be complete without mentioning, in this context, the so-called “Bolzaneto Barracks” and “Diaz School” cases, in which egregious acts were proven to have been committed by police, *Carabinieri* and prison officers during the Genoa G8 Summit in 2001. These events have been the subject of dialogue between the Committee and the Italian authorities²¹. In March and May 2010, almost 9 years after the facts, 69 officials – members of prison staff, the *Carabinieri*, the national police force and the medical service – were convicted by the Court of Appeal in Genoa of various acts of violence, some of which were classified as inhuman and degrading treatment, as well as of false statements and accusations. The combined effect of the statute of limitations and an amnesty law²² has meant that criminal sanctions have been imposed on only a small proportion of the persons involved in these acts.

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

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

The Committee reiterates²³ its invitation to the Italian authorities to increase their efforts to introduce the crime of torture into the Criminal Code, in accordance with the country's obligations under international law.

²¹ See *inter alia* the reports on the previous two periodic visits, in November 2004 (CPT/Inf(2006)16, paragraph 14) and in September 2008 (CPT/Inf(2010)12, paragraph 11).

²² Law 241/06 provides for three years' reduction in sentence for any crime committed before 2 May 2006, with the exception of certain violent crimes, but not including those for which persons were convicted following the events during the Genoa G8 Summit in July 2001.

²³ See, for example, the previous periodic visit report (CPT/Inf(2010)12), paragraph 12.

APPENDIX

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

Accountability for ill-treatment of persons in custody

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

recommendations

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

requests for information

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

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

recommendations

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

Prevention of ill-treatment in prisons

recommendations

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

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

requests for information

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

Final observations

recommendations

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

comments

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