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Report

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

from 14 to 26 September 2008

The Italian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2010) 13.

Strasbourg, 20 April 2010

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Copy of the letter transmitting the CPT's report

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

Strasbourg, 9 April 2009

Dear Sir

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I enclose herewith the report to the Italian Government drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Italy from 14 to 26 September 2008. The report was adopted by the CPT at its 68th meeting, held from 2 to 6 March 2009.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Italian authorities to provide **within six months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Italian authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report as well as replies to the requests for information made.

The CPT would ask, in the event of the response being forwarded in Italian, that it be accompanied by an English or French translation. It would also be most helpful if the Italian authorities could provide a copy of the response in a computer-readable form.

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

Yours faithfully

Mauro PALMA
President of the European Committee
for the prevention of torture and inhuman
or degrading treatment or punishment

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Italy from 14 to 26 September 2008. The visit formed part of the CPT’s programme of periodic visits for 2008. It was the seventh¹ visit to Italy to be carried out by the Committee.

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

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

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

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

¹ The CPT has carried out four other periodic visits (1992, 1995, 2000 and 2004), as well as two ad hoc visits (1996 and 2006) to Italy. All visit reports and related Government responses have been published on the CPT’s website: <http://www.cpt.coe.int/en/states/ita.htm>

B. Establishments visited

3. The CPT's delegation visited the following places:

Law enforcement establishments

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

Milan Identification and Expulsion Centre (via Corelli)

Prisons

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

Psychiatric establishments

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

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

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

4. The meetings with the Italian authorities, both at the outset and the end of the visit, took place in a spirit of excellent co-operation. The CPT is very grateful for the time devoted to discussions with the delegation by Angelino ALFANO, Minister of Justice, and Michelino DAVICO, Under-Secretary of State of the Ministry of the Interior. The delegation had also fruitful consultations with senior officials from the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of the Interior and the Ministry of Labour, Health and Social Policies, as well as with representatives of the *Carabinieri* and the *Guardia di Finanza*. Further, it met representatives of non-governmental organisations active in areas of concern to the CPT.

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

6. With two exceptions, the co-operation received by the delegation at local level was very good; it enjoyed rapid access to all the establishments visited (including those which had not been notified in advance), was provided with the information necessary for carrying out its task and was able to speak in private with persons deprived of their liberty.

The above-mentioned exceptions concerned Cagliari-Buoncammino Prison and Poggioreale Police Station (via Stadera) in Naples. At Cagliari, the delegation repeatedly encountered difficulties in interviewing prisoners in private. Prison officers indicated that they had been instructed by the management of the establishment not to let delegation members enter cells. At Naples-Poggioreale, the police officers present were instructed over the telephone by a senior police officer not to provide detailed information to the delegation. In both establishments, the problems were eventually resolved after lengthy explanations to the officers present.

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

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

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

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

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

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

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

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

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

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

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

2. Ill-treatment

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

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

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

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

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

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

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

The CPT recommends that a formal statement emanating from the relevant authorities be delivered to all law enforcement officials (including municipal police officers) in the Brescia area, reminding them that they should be respectful of the rights of persons in their custody and that the physical ill-treatment of such persons will be the subject of severe sanctions.

Further, law enforcement officials throughout Italy should be reminded, at regular intervals, that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are not acceptable and will be the subject of severe sanctions. Police officers should also be reminded that no more force than is strictly necessary is to be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them.

3. Safeguards against ill-treatment

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

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

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

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

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

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

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

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

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

⁶ See page 16 of CPT/Inf (2006) 17.

The CPT acknowledges that it may exceptionally be necessary to delay for a certain period a detained person's access to a particular lawyer chosen by him/her. However, this should not result in the rights to talk to a lawyer in private and have a lawyer present during interrogations being totally denied during the period in question. In such cases, access to another, independent, lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be arranged. **The Committee calls upon the Italian authorities to take all necessary steps – including of a legislative nature – to ensure that every person detained by law enforcement agencies has the right to talk in private with a lawyer, as from the very outset of deprivation of liberty, it being understood that when "exceptional and specific reasons of circumspection" are invoked, the lawyer will be appointed *ex officio*.**

17. As regards the right of access to a doctor, detained persons appeared to be able to consult a doctor if needed in all the establishments visited.

That said, medical consultations were frequently carried out in the presence of law enforcement officials, and medical reports or data were often accessible to such officials. This is not acceptable.

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

The CPT reiterates its recommendation that specific legal provisions be adopted governing the right of persons detained by law enforcement agencies to have access to a doctor – including if they so wish (and at their expense) to one of their own choice. This right should apply as from the very outset of their deprivation of liberty.

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

- **all medical examinations of detained persons are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of law enforcement officials;**
- **medical data are no longer accessible to non-medical staff.**

18. In the establishments visited, custody registers only existed for the recording of persons who were physically placed in a detention cell (*camera di sicurezza*). Thus, in none of the establishments visited were records kept of instances where a person had been deprived of his/her liberty without being formally detained (e.g. for identification purposes), or where a person had been formally detained and transferred to another establishment without being temporarily held in a detention cell. Regrettably, the specific recommendation made in this respect by the Committee after the 2004 visit has not been implemented.

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

The CPT reiterates its recommendation that steps be taken to ensure that, whenever a person is deprived of his/her liberty by a law enforcement agency, for whatever reason, this fact is recorded without delay.

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

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

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

4. Conditions of detention

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

That said, in none of the establishments visited were mattresses provided to detained persons being held overnight¹¹, despite the specific recommendation repeatedly made by the Committee following previous visits. **The CPT calls upon the Italian authorities to take immediate steps to ensure that in all law enforcement establishments, persons detained overnight are provided with a clean mattress and clean blankets.**

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

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

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

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

¹⁰ See CPT/Inf (2006) 16, page 20.

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

B. Milan Identification and Expulsion Centre

1. Preliminary remarks

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

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

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

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

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

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

2. Ill-treatment

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

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

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

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

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

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

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

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

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

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

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

3. Conditions of detention

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

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

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

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

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

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

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

4. Staff

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

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

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

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

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

5. Seclusion

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

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

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

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

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

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

6. Health care

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

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

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

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

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

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

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

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

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

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

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

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

7. Other issues

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

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

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

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

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

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

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

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

C. Prisons

1. Preliminary remarks

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

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

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

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

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

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

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

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

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

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

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

The CPT recommends that the Italian authorities vigorously pursue the adoption and implementation of a coherent strategy designed to combat prison overcrowding, in the light of Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole) and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

2. Ill-treatment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Conditions of detention of the general prison population

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

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

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

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

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

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

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

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

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

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

62. As regards the regime, the CPT appreciates the efforts made by the management in all establishments visited to provide work and other activities (such as vocational training or education) to prisoners within the limited resources available, the number of prisoners able to participate being increased by the sharing of places on a part-time basis.

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

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

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

²⁹ In the past, some vocational training activities had been offered, but these were discontinued some two years ago.

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

a. introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

c. conditions of detention

i. *Novara Prison*

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

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

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

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

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

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

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

72. As already indicated, group activities were greatly affected by the absence of suitable facilities and premises. As a result, the regime of “41-bis” prisoners also remained very restricted. In practice, prisoners were let out of their cells for only four hours a day (two hours in the activities room and two hours of exercise); the rest of the time (20 hours) they were confined to their cells, with the reinforced door open (but the grille closed) from 7 a.m. to 8 p.m. in winter (and to 10 p.m. or even midnight in summer). As already mentioned, group activities took place in small groups consisting of a maximum of five prisoners, either in a room which was far too small (approximately 12 m²), where prisoners had available to them a few games and some fitness equipment, or in one of the four exercise yards (approximately 20 x 15 m), which lacked any equipment and had a very austere appearance³⁶.

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

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

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

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

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

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

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

ii. Rome-Rebibbia Female Prison

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

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

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

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

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

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

³⁹ The same usually applied to visits from lawyers.

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

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

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

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

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

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

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

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

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

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

d. safeguards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. “reserved area” (*area riservata*)

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

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

5. Health care

a. introduction

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

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

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

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

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

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

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

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

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

b. health-care facilities

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

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

c. medical screening

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

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

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

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

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

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

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

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

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

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

92. **The CPT must recommend once again that steps be taken in all the establishments visited – and indeed in the entire prison system in Italy – to ensure that the record drawn up after a medical examination of a prisoner, whether newly-arrived or not, contains:**

- (i) **a full account of statements made by the prisoner concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her;**
- (ii) **a full account of objective medical findings based on a thorough examination;**
- (iii) **the doctor's conclusions in the light of (i) and (ii). In his/her conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings; a copy of the conclusions should be made available on request to the prisoner concerned and his/her lawyer.**

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

d. general health care

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁵³

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

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

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

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

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

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

f. psychiatric care in the other establishments visited

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

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

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

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

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

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

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

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

⁵⁵

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

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

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

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

g. dental care

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

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

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

h. medical confidentiality

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

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

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

The CPT calls upon the Italian authorities to take immediate steps to ensure that the principle of medical confidentiality is fully respected in all Italian prisons. More specifically, steps should be taken to ensure that:

- **all medical examinations of prisoners (whether upon arrival or at a later stage) are conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers;**
- **medical data are no longer accessible to non-medical staff.**

6. Other issues

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. staff

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

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

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

c. discipline

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

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

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

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

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

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

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

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

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

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

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

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

The CPT wishes to stress once again that medical practitioners working in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote that relationship. This point was recognised in the Committee of Ministers' Recommendation (2006) 2 on the European Prison Rules; indeed, the rule in the previous version of the Rules, stipulating that prison doctors must certify that a prisoner is fit to sustain the punishment of disciplinary confinement, has now been removed.

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

⁶⁴ See CPT/Inf (2006) 17, page 46.

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

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

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

⁶⁸ See Sections 39 and 40 of the Penitentiary Law.

d. inspection procedures

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

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

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

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

D. Psychiatric establishments

1. Filippo Saporito Judicial Psychiatric Hospital, Aversa

a. introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. ill-treatment

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

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

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

c. material conditions and regime

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

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

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

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

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

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

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

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

The CPT recommends that the Italian authorities:

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

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

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

⁷⁸

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

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

d. treatment and rehabilitation

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

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

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

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

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

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

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

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

e. staff

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

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

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

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

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

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

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

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

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

⁸²

Plus a co-ordinating nurse in certain residential units.

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

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

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

f. means of restraint and seclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. safeguards

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

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

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

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

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

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

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

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

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

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

⁹² Or a *casa di cura e custodia*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

requests for information

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

Law enforcement agencies**Preliminary remarks**comments

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

requests for information

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

III-treatmentrecommendations

- a formal statement emanating from the relevant authorities to be delivered to all law enforcement officials (including municipal police officers) in the Brescia area, reminding them that they should be respectful of the rights of persons in their custody and that the physical ill-treatment of such persons will be the subject of severe sanctions (paragraph 13);

- law enforcement officials throughout Italy to be reminded, at regular intervals, that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are not acceptable and will be the subject of severe sanctions. Police officers should also be reminded that no more force than is strictly necessary is to be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them (paragraph 13).

Safeguards against ill-treatment

recommendations

- steps to be taken by the relevant authorities to ensure that, in all law enforcement establishments in Italy, persons who have been detained – for whatever reason – are fully informed of their rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a copy of the information sheet referred to in paragraph 14. Further, the persons concerned should be asked to sign a statement certifying that they have been informed of their rights (paragraph 14);
- the Italian authorities to take effective steps to ensure that all persons deprived of their liberty by law enforcement agencies are granted the right to notify a close relative or third party of their choice of their situation and the right of access to a lawyer, as from the very outset of their deprivation of liberty. These rights should be enjoyed not only by criminal suspects, but also by anyone who is under a legal obligation to attend – and stay at – a law enforcement establishment (paragraph 15);
- the Italian authorities to take all necessary steps – including of a legislative nature – to ensure that every person detained by law enforcement agencies has the right to talk in private with a lawyer, as from the very outset of deprivation of liberty, it being understood that when "exceptional and specific reasons of circumspection" are invoked, the lawyer will be appointed *ex officio* (paragraph 16);
- specific legal provisions to be adopted governing the right of persons detained by law enforcement agencies to have access to a doctor – including if they so wish (and at their expense) to one of their own choice. This right should apply as from the very outset of their deprivation of liberty (paragraph 17);
- immediate steps to be taken to ensure that in all law enforcement establishments:
 - all medical examinations of detained persons are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of law enforcement officials;
 - medical data are no longer accessible to non-medical staff (paragraph 17);
- steps to be taken to ensure that, whenever a person is deprived of his/her liberty by a law enforcement agency, for whatever reason, this fact is recorded without delay (paragraph 18).

comments

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

requests for information

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

Conditions of detention

recommendations

- the Italian authorities to take immediate steps to ensure that, in all law enforcement establishments, persons detained overnight are provided with a clean mattress and clean blankets (paragraph 20);
- the metal bars fixed along two concrete platforms in one of the cells at Brescia Municipal Police Headquarters to be removed without delay (paragraph 20).

Milan Identification and Expulsion Centre

Ill-treatment

recommendations

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

requests for information

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

Conditions of detentionrecommendations

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

comments

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

requests for information

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

Staffcomments

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

Seclusionrecommendations

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

comments

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

Health carecomments

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

Other issuesrecommendations

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

comments

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

requests for information

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

Prisons**Preliminary remarks**recommendations

- the Italian authorities to pursue vigorously the adoption and implementation of a coherent strategy designed to combat prison overcrowding, in the light of Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole) and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse (paragraph 55).

Ill-treatmentrecommendations

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

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

requests for information

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

Conditions of detention of the general prison population

recommendations

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

requests for information

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

Prisoners subjected to the “41-bis” regime

recommendations

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

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

comments

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

requests for information

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

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

Health care

recommendations

- the Italian authorities to take the necessary measures to ensure full communication across all levels of management and staff regarding the transfer of responsibility for prison health care from the Ministry of Justice to the Ministry of Health, as well as the careful planning and execution of the practical steps necessary to ensure continuity and quality of care to all prisoners (paragraph 87);
- steps to be taken at Brescia and Naples-Secondigliano Prisons to ensure that all newly-arrived prisoners are subjected to a comprehensive medical examination on admission (including screening for tuberculosis) (paragraph 90);
- steps to be taken in all the establishments visited – and indeed in the entire prison system in Italy – to ensure that the record drawn up after a medical examination of a prisoner, whether newly-arrived or not, contains:
 - (i) a full account of statements made by the prisoner concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her;
 - (ii) a full account of objective medical findings based on a thorough examination;
 - (iii) the doctor's conclusions in the light of (i) and (ii). In his/her conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings; a copy of the conclusions should be made available on request to the prisoner concerned and his/her lawyer (paragraph 92);
- whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record should be immediately brought to the attention of the relevant prosecutor (paragraph 92);
- the shortcomings listed in paragraph 95 concerning the situation of sick prisoners newly-admitted to Naples-Secondigliano Prison to be remedied without delay (paragraph 95);
- nursing staffing levels to be significantly increased in the Diagnostic and Treatment Centre (CDT) at Naples-Secondigliano Prison (paragraph 96);
- steps to be taken at Novara Prison to put an end to the long delays, for “41-bis” prisoners, as regards both the supply of prescribed medicines and the carrying out of medical examinations which have to be performed outside the prison (paragraph 97);

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

comments

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

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

requests for information

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

Other issues

recommendations

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

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

comments

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

Psychiatric establishments

Filippo Saporito Judicial Psychiatric Hospital, Aversa

recommendations

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

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

comments

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

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

requests for information

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

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

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

comments

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

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

APPENDIX II**LIST OF THE NATIONAL AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS****A. National authorities****Ministry of Justice**

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

Ministry of the Interior

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

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

Ministry of Labour, Health and Social Policies

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

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

Colonel Saverio COTTICELLI	Commander of the sanitary inspection task force (<i>Nuclei Antisofisticazioni e Sanita – NAS</i>)
Colonel Marco MINICUCCI	General Headquarters of the <i>Carabinieri</i>
Lt. Colonel Claudio LUNARDO	General Headquarters of the <i>Carabinieri</i>

Ministry of Finance - Revenue Guard Corps (*Guardia di Finanza*)

Colonel Fabrizio CARRARINI	Head of the Economy and Security Affairs Unit
Captain Mauro MARZO	Officer at the Economy and Security Affairs Unit

Ministry of Foreign Affairs

Minister Valentino SIMONETTI	President of the Inter-Ministerial Committee on Human Rights
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B. Non-governmental organisations

Antigone

Consiglio italiano per i rifugiati