UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/44/Add.2
15 December 1998

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1998

Addendum

ITALY*

[22 July 1998]

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* The initial report submitted by the Government of Italy is contained in document CAT/C/9/Add.9; for its consideration by the Committee, see documents CAT/C/SR.109 and 110/Add.1 and Official Records of the General Assembly, Forty-seventh Session, Supplement No. 44 (A/47/44), paragraphs 310-338. For the second periodic report, see CAT/C/25/Add.4 and Official Records of the General Assembly, Fiftieth Session, Supplement No. 44 (A/50/44), paragraphs 146-158.

GE.98-05028 (E)

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Introduction

1. Italy's second periodic report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was presented in 1994 (CAT/C/25/Add.4). This report was examined by the Committee on 27 April 1995. At the beginning of the first meeting on that occasion the Italian delegation participating in the discussion made a far-ranging presentation and subsequently replied to a series of questions put by Committee members. At the end of the discussion, the Committee formulated their conclusions and recommendations. Subsequently, examination of the Committee's conclusions induced the Italian Government to present an additional document entitled “Observations of the Italian Government on the Conclusions of the United Nations Committee on the Convention against Torture on the Occasion of the Discussion of the Second Report”. This document was forwarded to the Committee via the normal channels.

2. Underlying written observations of the Italian Government was not only the desire to clarify a series of problems of considerable importance concerning not only the working methods of the Committee and the conclusions at which it had arrived, but also the need to further clarify some aspects of the application of the Convention in Italy by furnishing extensive illustrations of the relevant regulations of Italian legislation, an overview of the more significant cases of alleged ill-treatment, and statistical data regarding the matters covered by the Convention.

3. On the occasion of the preparation of the third report, the Italian Government took into due consideration both the observations made by the Committee regarding the criteria for the preparation of periodic reports (CAT/C/14 of 18 June 1991) and the concerns and recommendations formulated in 1995.

4. The Italian Government, long since committed to being in the front line when it comes to promoting human rights, both in Italy and the world, is fully aware that at the global level its action ranks among the most advanced and progressive. Notwithstanding this fact, there obviously can occur individual episodes of violation of international norms, but such episodes are promptly reported and prosecuted in full respect of the systems and procedures established by the Italian domestic legal order.

5. Some further comments concerning the conclusions formulated by the Committee in 1995 will be included in the present report.

6. It should be mentioned here that, as on a previous occasion, Law No. 3815 of 3 June 1997 allocated a contribution of Lit 160 million to the United Nations Voluntary Fund for the Victims of Torture.

I. CHANGES IN THE ITALIAN LEGAL SYSTEM AND MEASURES ADOPTED IN VIEW OF THE COMMITTEE'S CONCLUDING OBSERVATIONS ON THE SECOND PERIODIC REPORT

A. The problem of the introduction of the crime of torture into the Italian penal order

7. The two previous reports, as well as the supplementary observations of the Italian Government on the occasion of the discussion of the second

periodic report, gave an ample overview of the principles underlying the Italian penal order concerning the matters with which the Convention against Torture is concerned. Since the Italian Government is interested in developing its collaboration with the Committee and thereby ensuring complete respect of the principles contained in the Convention, faced with the doubts expressed by the Committee regarding full compliance by Italy with the obligations deriving from articles 1 to 4 of the Convention owing to the fact that no specific crime known as "torture" has as yet been introduced into the Italian system, the Government has sought to clarify - after furnishing extensive illustrations of the reasons that have induced Parliament and the various successive Governments not to create a new and autonomous crime covering the conduct that falls under the definition of "torture" as set forth in the Convention - that Italy not only fully complies with all the obligations that derive from its signature of the Convention, but for many years - and certainly already in the days before the Convention - has had a penal system that ranks among the most complete and advanced when it comes to respect of the loftiest principles of law.

8. It would therefore be a purely academic exercise devoid of practical usefulness if the occasion of the submission of the third periodic report were to be used for re-examining the entire manner in which the Italian penal system safeguards the rights and liberties of the person, other than to reiterate that the Italian juridical system provides a sanction for all conduct that can be considered to come under the definition of torture as given in article 1 of the Convention and that this sanction is ensured through the complex system of incriminating facts and aggravating circumstances that was explained in previous reports. As compared with penal systems that provide only a single norm that expressly punishes the crime of torture, it is precisely this completeness and complexity that ensures correct repression of the multiplicity of possible conducts covered by the concept of torture, because it enables the judge, when the accused is found guilty, to modify the punishment so as to make it effectively proportional to the gravity of the crime committed. Indeed, there can be no doubt that the concept of "torture" can comprise an ample range of conducts that differ from each other so widely as to make it practically impossible to list them fully within the bounds of a single incriminating norm, so that, with all possible good will, one would inevitably end up by either - if one wanted to aim at a norm containing an express list of all the conducts to be punished under that heading - not including in the list a whole series of conducts that should theoretically be covered by the concept of torture, or - if one chose the other possible option of indicating in a generic manner what are the conducts that the law requires to be demonstrated before a person can be incriminated under this heading - that the norm would be deemed to be constitutionally illegitimate on account of violation of the principle of legality, and this from the point of view of lack of sufficient specificity within the meaning of article 25 of the Constitution.

9. Bearing the above in mind, it must nevertheless be mentioned here that the competent structures of the Italian Ministry of Justice are currently studying, not least in view of the fact that the fiftieth anniversary of the Universal Declaration of Human Rights is to be celebrated this year, the possibility of arranging for the introduction of some new norms that will make

it possible to give more prominence to the commitments that Italy assumed when signing the Convention against Torture, though without thereby overwhelming the already complete and exhaustive system of incriminating facts and cases in connection with safeguarding the rights and liberties of the person. In this respect the study, undertaken with a view to proposing a bill, is oriented towards the introduction of a special aggravating circumstance in a norm to be called "torture". The said norm should specify in sufficiently specific terms that "torture" has occurred when the guilty party has committed crimes with abuse of the powers or violation of the duties inherent in a public function or a public service (an aggravating circumstance already envisaged among the common aggravating circumstances in article 61, paragraph 1, clause 9 of the Constitution), adopting ill-treatment or acting with cruelty towards persons (aggravating circumstance already envisaged in clause 4 of the above article) or having recourse to other forms of physical or moral torture with a view to obtaining any kind of collaboration from the victim. The increase of the punishment is envisaged as between one third and one half that already provided for by other norms of the Penal Code (see, for example, articles 301, paragraph 2, and 585, paragraph 1, Penal Code).

10. With a view to ensuring effectiveness of punishment in cases where the aggravating circumstance is duly confirmed, the norm should also envisage exclusion of the possibility of nullifying the greater punishment it is proposed to introduce in these cases by means of recourse to a judgement of the equivalence or prevalence of attenuating circumstances and, further, that the punishment to be inflicted in concrete terms cannot be less than one third of the maximum punishment envisaged for the basic crime.

B. Precautionary measures and rights of the defence

11. Law No. 332 of 8 August 1995 introduced a number of modifications in the regime of precautionary measures (detention) and the rights of the defence. In particular, article 2 of the Law introduced into the Code of Penal Procedure the norm of article 141 bis, which disciplines the modalities of documenting the interrogation of persons under detention by requiring that any further questioning outside court has to be documented by sound or audio-visual recordings, failing which it may not be used in evidence. Quite a few people have seen that the reason underlying this provision is precisely to provide a deterrent against possible attempts to coerce the questioned party or evade the rules that govern questioning, first and foremost the rule that requires the prisoner to be informed that he is free not to reply.

12. Mention should also be made of the norm of article 3 of the Law which amended the provisions of article 274, paragraph 1, clause (a), of the Code of Penal Procedure. Article 3 stipulates that the effective danger of evidence being polluted is not to be inferred from a suspect's refusal to make statements or to admit the facts with which he is charged. In this connection, moreover, it is worthwhile to underscore that the prohibition that prevents the judge from turning the accused's silence into an argument against him must be considered to apply also to every other kind of decision, for otherwise the faculty of not replying would be rendered devoid of all significance.

C. New legislative provisions regarding foreigners

13. Following a very thorough debate, Parliament recently passed Law No. 40 of 6 March 1998, which contains a new regime governing immigration and the condition of aliens. These regulatory provisions undoubtedly represent a further step forward in the direction of implementing the principles established by the Universal Declaration of Human Rights. Though the new law confirms that any alien present in the territory of the State enjoys all the fundamental rights of the human person in conformity with the international regulations in force, the principles of international law and the regulations of national law (art. 2), it contains a series of principles that in themselves configure a "foreigner" status. Indeed, the alien enjoys a series of rights and is subject to a series of duties that undoubtedly contribute to improving his conditions of life. In particular, the alien who legally lives in the country is recognized as enjoying civil rights, including participation in local public life, as well as parity of treatment vis-à-vis Italian citizens when it comes to juridical protection of rights and legitimate interests, always within the limits and the modes envisaged by law.

14. In this context, it should also be specified that communication to the alien of the measures relating to his entry into, sojourn in or expulsion from the country must be translated into a language he understands. The Law also establishes his right to get in touch with the diplomatic representation of the country of which he is a citizen and that the judicial authorities, the forces of public order and every other public official have the obligation of informing the said diplomatic or consular representation of any and all measures adopted against its citizens in matters concerning their personal liberties, removal from Italian territory, and in the event of hospitalization or death.

15. Considerable importance also attaches to the dispositions contained in Title IV of the Law, which aim at recognition and protection of the right of families to be united and make it clear that, in all administrative and juridical proceedings that seek to implement this right or concern minors, priority has to be attributed to considering the best interests of children in conformity with the Convention on the Rights of the Child.

16. Equally important are the norms contained in Title V, which lay down the rights and duties of aliens in matters of health assistance, education and housing, as well as their right to participate in local public life and the rights connected with integration and social welfare. Among the latter, particularly innovative are the provisions (arts. 38 and 39) concerning the institution of reception centres intended to provide accommodation for foreigners, including illegal immigrants, whenever there exist special emergency situations in which they find themselves temporarily unable to satisfy their housing or food requirements, and the right to health and social assistance, including the right to particular economic benefits for specific categories of subjects in unfortunate circumstances.

17. The measures in favour of social integration (art. 40) seek to encourage the activities intended to make the insertion of foreigners into the new sociocultural context of the host country more effective and less traumatic and, at the same time, facilitate mutual respect of cultural differences.

18. Inasmuch as it is closely connected with presumed accusations of discriminatory attitudes vis-à-vis foreigners, considerable interest also attaches to the definition of the concept of a discriminatory act (art. 41): it is understood as any activity that implies an exclusion or a preference based on race, colour, ethnic origin or religious convictions and sets out to compromise the recognition or the exercise in conditions of equality of the human rights and fundamental liberties in the political, economic, social and cultural field.

19. Further on, the new law also indicates the principal juridical remedies of a civil nature for the purposes of ensuring cessation of acts of discrimination (art. 42). They consist, in particular, of immediate protection of the offended juridical interests, which may be injured also by illicit behaviour of public officials; the appropriate powers are exercised by the civil magistrate's courts (pretori civili), which are authorized to specify the penal sanctions to be applied if their decisions are not observed.

20. As regards the profile of the regulations specifically concerned with preventive control of the frontiers and the rejection and expulsion of foreigners who have entered the country irregularly, the appropriate norms once again consist of provisions that safeguard the fundamental rights of the person and aim at preventing the possible commission of discriminatory acts against non-Italian citizens. For example, an alien refused entry at the frontier is to be provided with assistance at the frontier post (art. 8, para. 5), while whenever a foreigner cannot be expelled immediately, he is to be granted a temporary stay of not more than 20 days at appropriate centres set up for this purpose by means of a police measure subject to validation by a judge. In the course of this stay he is to enjoy the right to assistance, full respect of his dignity and freedom of correspondence with abroad, including by telephone (art. 12).

21. Notwithstanding its inevitably repressive aspects with respect to frontier control, the recently approved legislation is characterized more by its social nature expressive of a different and new policy of accepting foreigners, to be carried forward with great efforts and restraint both by the State structures, and particularly the police forces, and the local authorities and volunteer associations. A confirmation of the new orientation can be deduced also from the unanimous appreciation, not least by international observers, of the way the Government handled the recent emergency represented by the sudden influx of some 1,000 Kurds who asked for political asylum and the well-known events involving Albanian refugees.

22. In view of the very obvious need to adopt adequate measures vis-à-vis foreign citizens present in Italian territory over and above the previously mentioned Law No. 40 of 6 March 1998, Parliament is considering a bill that accords humanitarian protection and the right of asylum and is intended to institute an organic asylum regime. This instrument, in conformity with article 10 of the Italian Constitution and in keeping with the obligations deriving from the Convention relating to the Status of Refugees of 1951 and the other international agreements signed by Italy, has as its primary goal ensuring complete protection and total respect of individuals who find themselves in this situation.

23. One of the most important aspects of this governmental legislative initiative is the possibility of temporarily accepting persons who, even though they do not satisfy the requirements for obtaining refugee status, nevertheless find themselves in de facto situations that prevent them from returning to their places of origin. People in this category have therefore been granted a whole series of welfare measures, including the right to health assistance, temporary board and lodging, and telephone communications. Other significant innovations of the bill under consideration include greater powers for the Central Commission in the recognition of the right to asylum, the rationalization and simplification of procedures for the recognition of this right, and review of refugee status at five-year intervals. Together with the introduction of assistance and social integration measures that are to be implemented by the local authorities, the bill also recognizes and acknowledges the role of non-governmental organizations in protecting the civil and human rights of such people from the moment they submit their application through to their eventual integration into the new Italian environment.

24. These proposals, when finally approved, together with the law on foreigners in general, will constitute a further step forward. They provide instruments for effective and appropriate interventions to face the many different situations, including emergencies, that may well become more frequent in the future and which therefore call for the harmonization and concordance of the legislation and the administrative practices of the various countries most affected by these problems.

D. Treatment of prisoners

25. The Italian Government is making ever more intensive efforts at the normative and supervisory levels to ensure gradual improvement of the living conditions of the prison population and the protection of their rights, and in this general context particular attention is being paid to prisoners who are citizens of foreign countries.

26. As regards the Italian normative system in this field, mention should be made of article 1, paragraph 2, of the Penitentiary Order and article 33 of the Executive Regulations associated therewith. The first of these provisions states that “Treatment is to be characterized by absolute impartiality, without discrimination according to nationality, race and economic and social condition, political opinions or religious beliefs”. Article 33 of the Executive Regulations says that “When executing measures that deprive foreign citizens of their liberty, due account is to be taken of their language difficulties and cultural differences” and that “they must be given the possibility of contacting the consular authorities of their country”. The order currently in force is, therefore, quite unequivocal in prohibiting any form of discriminatory behaviour to the detriment of foreign prisoners, be they from within or outside the European Community, but also makes it an express duty of the Prison Administration to overcome the difficulties that foreign prisoners experience during their detention on account of language and cultural differences.

27. Other specific norms establish the right of those who belong to a religion other than Roman Catholicism, which is often the case of foreign prisoners, especially when they come from countries outside the Community, to freely practise their own rites.

28. The Ministry of Justice has always made very intensive efforts to ensure full implementation of the normative principles that have just been set forth. In this connection, it should be recalled first of all that any measure connected with the treatment of prisoners is always applied quite impartially to all prisoners, whether Italian or foreigner. In particular, and especially in the institutions where prisoners from other countries are relatively numerous, it has been the practice for a considerable time to organize literacy courses designed to enable such prisoners to acquire a sufficient knowledge of the Italian language. In 1989, the various penitentiary administrations were made aware of the need to remove obstacles preventing non-Catholic prisoners from performing the rites of their particular religion and, more particularly, to assist prisoners whose religious beliefs require them to refrain from consuming particular foods by providing alternative foods permitted by regulations.

29. Instructions have also been circulated with a view to facilitating contacts between foreign prisoners and the consular authorities of their countries of origin, in accordance with the relevant provisions of the Vienna Convention on Consular Relations of 24 April 1963, ratified in Italy by means of Law No. 804 of 9 August 1967.

30. Lastly, with a view to attenuating the undoubtedly greater difficulties that foreign - and especially non-Community - prisoners encounter in being granted measures alternative to imprisonment (due primarily to the lack of a residence permit, which prevents them from obtaining the work permit necessary for being hired by an employer, an essential condition for obtaining an alternative measure), an understanding among the various interested Ministries (Justice, Interior, Foreign Affairs and Labour) has been promoted by the Penitentiary Administration, on the basis of which it has been agreed that foreign prisoners to whom the judicial authorities propose to grant such alternative measures may also be granted temporary work permits for the period of the duration of their sentence.

31. Some time ago, the Ministry of Justice issued various instructions that sought to facilitate telephone contacts between foreign prisoners and their families resident in the countries of origin, not least in view of the fact that, as a general rule, the telephone is the only means by which foreign prisoners can keep in touch with their families, visits to the prison being almost impossible on account of the distances involved. These instructions suggested that the individual penitentiary administrations should avail themselves of the assistance of interpreters, to be chosen from those enrolled in the special registers kept by the courts, in all cases where the prison did not have a staff member capable of correctly understanding the foreign language in which the telephone conversation was to be held. This made it possible to overcome the problem that the call could not be authorized when there was nobody capable of following the conversation, a difficulty that derived from the fact that paragraph 9 of article 37 of the Executive

Regulations, at least in the form in force at the time, required every such call to be overheard (and obviously also understood) by a member of the prison staff, who also had to record it.

32. It should also be noted that this problem has become considerably less acute following the amendment of paragraph 9 of article 37 of the Executive Regulations in June 1993, according to which the requirement that the conversation be overheard and recorded is no longer generalized but obtains only when it is specifically ordered by the competent juridical authority.

33. The Ministry of the Interior has likewise circulated instructions to the various offices of the State Police with a view not only to making them more sensitive to preventive action which could avoid ill-treatment of such prisoners, but also to specifying the manner in which they were required to behave when they had to deal with prison populations. The subjects covered by these directives include problems of a general nature, but also specific situations in which prisoners from outside the Community could come to find themselves. For example, the instructions make explicit reference to the manner in which prisoners are to be transferred, possibly with the use of handcuffs, and on such occasions the prison staff are required to observe special modalities when the person to be transferred is female or not yet 18 years of age. In the same context, it has also been specified - with disciplinary measures to be applied in case of transgression - that members of the police forces performing this activity have to take every possible precaution to safeguard the dignity of the persons concerned, who are to be kept away from every possible form of publicity and other situations that could cause them unjustified embarrassment.

E. Training of members of the police forces

1. State Police

34. In general, it may be said that all the programmes of the training courses for the personnel of the State Police now include lectures on the fundamental rights of the person. This topic, of fundamental interest for a democratic police force at the service of the citizen, is further examined in the light of both the Italian constitutional order and the international juridical order, be it customary or based on a convention. With a view to inculcating a new approach to multi-ethnic culture among policemen and enriching their professional experience in this particular sector, the training programmes envisage, for example, that constitutional law will be taught with constant reference not only to the Universal Declaration of Human Rights but also the Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention against Torture. The basic text used in the training courses contains all the essential elements for acquainting the trainees with both Italian constitutional law and its international counterpart, especially as far as Europe is concerned. Use of this text enables the members of the police forces to obtain in-depth knowledge of the individual aspects of this topic.

35. The teaching programmes covering operational techniques, especially those connected with prevention and intervention actions, accord a great deal of time to professional deontology and the kind of behaviour that police

personnel have to adopt in order to ensure that their actions will be characterized by correctness, common sense and respect for the person.

36. For the purpose of providing professional training and qualification at a higher level, these courses comprise not only lessons and debates intended to illustrate the existing international instruments that seek to prevent discriminatory phenomena and social marginalization, but also specific talks on the theme “Universal human rights safeguards”, generally given by university lecturers specializing in this area and with the precise intention of enlarging the policeman's knowledge of juridical and sociological profiles that are coming increasingly to the fore in connection with the widespread presence of multi-ethnic communities in the country. Furthermore, bearing in mind that police officials are required, among other duties, to give lectures not only at the police training schools but also, as part of professional updating activities, at their own duty stations, intense efforts have been dedicated to informing these officials through the organization of seminars on such topics as Islamic fundamentalism and the new forms of racism, xenophobia and anti-Semitism and an appropriate course for the higher officials of the Frontier Police within the context of the provisions of the Schengen Treaty.

37. Among the requirements now deemed to be essential for entry into the State Police is an aptitude for interpersonal communication, as envisaged by present legislation (articles 4, 5 and 6 of Presidential Decree No. 904 of 23 December 1983). More concretely, following the learning of the basic discipline, not least as far as human rights are concerned, every future member of the police is required to pass a series of individual and collective tests, followed by an interview, to ensure that he/she possesses this quality.

2. Carabinieri

38. The Carabinieri have always dedicated ample time to the study of human rights and humanitarian law in the context of the teaching programmes held at all their training schools. Knowledge of this subject matter has to be seen not only in relation to judicial police and public safety activities, but also in the context of the various peacekeeping missions in which the Carabinieri participate, both alone and jointly with the other armed forces. With a view to creating greater consciousness of these questions at all levels, the Carabinieri have laid down precise lines of training and specialization, which include interaction with the universities.

39. The current academic year has seen the insertion of victimology into the training programmes, a subject that introduces a different approach to the phenomenon of criminality: it can no longer be considered exclusively from the point of view of the author of the crime, but also takes due account of the needs of the persons offended by the crime. Indeed, the treatment of the victims, together with prevention and repression of crime, has to constitute the principal objective of anyone who has responsibility in this domain.

40. At the Officers School there has been established a Chair of Law Applicable to Armed Conflicts. The aim is to transmit to the lieutenants attending the training courses full knowledge of the norms of international and domestic law applicable to armed conflicts, so as to enable them to distinguish licit from illicit behaviour, especially at the practical level,

and to perform correctly the functions of military and military judicial police. In particular, this training seeks to confer greater insight into the juridical regime of subconflictual operations in foreign territory and of humanitarian interventions or assistance. The course programme also provides for study of the Universal Declaration of Human Rights and the principal international human rights conventions.

41. The Carabinieri has made an agreement with the Research and Study Centre on the Rights of Man of the Free University (LUISS) for the proper preparation of its personnel. This course is organized as a series of lectures held at the various training schools. The teaching programme is comprised of cycles of eight lectures given at the Officers School and the School for Sergeants (Marescialli) and Corporals (Brigadieri), and cycles of three lectures at Carabinieri Cadet Schools. The courses are given by LUISS lecturers and concentrate on individual human rights themes and the protection of human rights in the international arena. Every Regional Carabinieri Command, moreover, arranges for periodic lectures on the same themes under the overall guidance of General Command.

3. Penitentiary police (warders)

42. The Penitentiary Administration has come to grips with the problem of the treatment of foreign prisoners also at the level of the training of its own personnel, deeming intervention at the formative moment of penitentiary personnel to be essential for resolving the problems in question, and irrespective of whether they are members of the corps of Penitentiary Police or employees performing administrative or technical tasks. In this connection, we would point out that the training courses (be they basic or concerned with updating and qualification) of the personnel of the corps (at all levels, from the lowest to inspectors) now include the teaching of communication as an instrument for facilitating relations with prisoners, Italian and European constitutional law concerning protection of the rights of prisoners, the United Nations and European rules for the treatment of prisoners.

43. As regards the subject area “The penitentiary system”, knowledge of the rules and regulations in force is now supplemented by an effort to sensitize the staff to all aspects connected with the treatment of foreign prisoners, paying particular attention to the insertion difficulties they experience during detention (in terms of language, relations with their families, work within the prison, etc.) and relating this to the possibility of being granted the benefits envisaged by law (e.g. leave, work outside the prison, measures alternative to imprisonment, etc.) and to the moment when they leave the penitentiary.

44. It should also be noted that, within the context of basic training but with reference to other roles within the Administration, it has become the practice to hold meetings and/or seminars on this theme, which now constitutes an integral part of the teaching programmes. Moreover, training courses and interdisciplinary seminars have been held in areas where the problem of the treatment of foreign and non-Community prisoners is more acute on account of the large number of such prisoners, in collaboration with the Regions and/or associations working in this sector. Nor should it be forgotten that, not

least with a view to avoiding episodes of discrimination or violence against prisoners, penitentiary police personnel are now subjected to a very thorough psychological examination before being accepted into the corps.

F. Prevention and investigation of behaviour contrary to the principles of the Convention

1. Members of the State Police

45. Particular attention has to be paid to the situation of State Police personnel penally prosecuted for crimes of ill-treatment, including hitting and causing personal injuries, committed in abuse of their power or violation of the duties inherent in a public function (article 61, paragraph 9, Penal Code). On the basis of data recently provided by the competent authorities, it has been found that in the last four years 354 such penal proceedings were begun as a result of which 13 disciplinary proceedings were instituted with the following results: 5 written reprimands; 5 monetary fines; 2 suspensions from service; 1 filing of the acts. In this connection, it should be specified that whenever a person performing a role within the Public Safety Administration is subjected to both disciplinary and penal proceeding for the same act, article 11 of Presidential Decree No. 737/1981 requires that disciplinary proceedings be suspended until the penal proceedings have been concluded and the sentence can no longer be appealed against.

46. At the end of 1997, the situation of the said 354 penal proceedings is as follows:

5 cases have been dismissed by a decree that the acts be filed;

147 cases have been sent for trial;

80 cases terminated with a favourable sentence (“not guilty”), of which 18 are not yet definitive (because they have either been appealed against or the deadlines for appeal have not yet expired);

31 cases terminated with an unfavourable sentence (“guilty”), of which 26 are not yet definitive (because they have either been appealed against or the deadlines for appeal have not yet expired);

38 cases terminated with an unfavourable sentence (“guilty”), including 13 cases in which the appeal deadlines have not yet expired; 15 cases are in the appeal stage; 10 cases have become definitive.

All the remaining penal proceedings are still pending before the judiciary authorities in the examination phase.

47. Some proceedings instituted against members of the State Police should be cited here as examples, mainly with a view to underscoring that the action of police personnel must always be inspired by full respect for human rights if for no other reason than to avoid penal and disciplinary proceedings. A Deputy Superintendent of the State Police in service at Foggia police station (the provisions of Law No. 675 of 31 December 1997 on the privacy of personal data prevent his name from being revealed) was arrested in execution of an order of the G.I.P. (Preliminary Examination Judge) because he was being

investigated for the crimes of abuse of office, committing a falsehood in a public act, causing injuries, kidnapping of a person and private violence. In particular, he was said to have repeatedly and violently beaten and threatened a young man who had been taken to his office for questioning by the judicial police. For these acts he was suspended from service pending the result of the penal proceedings. Following a violent quarrel with a non-Community citizen armed with a knife, a former auxiliary policeman (State Police), in service at the Railway Police Training Centre in Bologna, fired a shot from his service pistol, hitting the other man in the face. He was suspended from duty for grave disciplinary infraction and subsequently released from the service because his application to be admitted to the course for enrolment as a regular policeman was refused owing to the conduct he had displayed in the incident.

2. Carabinieri

48. As regards charges brought against members of the Carabinieri, see paragraph 66 below and annex 14.

3. Penitentiary Police

49. With respect to the members of the Penitentiary Police against whom penal and/or disciplinary proceedings were opened for acts committed against prisoners, the situation can be summarized as follows. In the period 1994-1997 18 penal proceedings were instituted, involving a total of 122 warders, for crimes against prisoners that can be comprised in the concept of torture (ill-treatment, inhuman or degrading treatment, etc.). Specifically the charges brought against these men were as follows:

98 for personal injuries (Penal Code, art. 582);

16 for abuse of office (art. 323);

6 for use of violence or threats to force the committing of a crime (art. 611);

25 for beating (art. 581);

77 for abuse of authority against arrested or detained persons (art. 608);

11 for private violence (art. 610);

5 for abuse of the means of discipline or correction (art. 571).

50. At the moment 6 of the said penal proceedings are still pending, while the remaining 12 terminated as follows:

7 with a “not-guilty” verdict at first instance;

1 with a “not-guilty” verdict on appeal;

1 with a decree of dismissal by filing;

2 with a “guilty” verdict at first instance;

1 with a “guilty” verdict at cassation.

51. Lastly, it should be mentioned that 10 disciplinary proceedings were opened in 1997 in connection with episodes of violence against prisoners and which led to five dismissals from the service and five suspensions.

G. Training of medical personnel

52. As far as health aspects are concerned, the Committee recommended the drawing up of teaching and training programmes for medical personnel on how to recognize injuries, ill-treatment and/or degrading treatment attributable to the crime of torture.

53. The crime of torture implies not only the identification of physical lesions, but also of psychological ill-treatment, the effects of which are often permanent. The Italian system, therefore, provides for recognition of the damage done to the person, though without specifying the peculiar term “torture”, and the medical personnel - quite apart from any juridico-penal evaluations - are therefore capable of recognizing all the types of injury or ill-treatment of persons, including those amounting to acts of torture. The degree course in medicine and surgery makes this possible, thanks to the study of some fundamental subjects (chemistry, physics, anatomy, pathological anatomy, medical pathology, clinical medicine, clinical surgery, clinical pharmacology, toxicology, forensic and insurance medicine, clinical neurology, clinical psychiatry, etc.). Doctors have the knowledge and the ability to assess both physical and psychological lesions, and to prescribe the necessary pharmacological, surgical and/or rehabilitation therapy and, lastly, the forensic medicine diagnosis of the damage sustained, which can subsequently be attributed to a possible “crime of torture”.

54. In particular, the study courses leading to a medical degree include the teaching of forensic medicine, “the forensic medical evaluation” of the “damage to the person” in whom there is indicated a “change for the worse of the normal equilibrium of the body or the psyche, or of the anatomic integrity of the organism, either as a whole or only of a part thereof”. In this sense, the sustained damage can be divided into:

(a) Transitory damage (when the organism, either by its own means or with the help of appropriate cures, succeeds in re-establishing its own normal condition);

(b) Permanent damage (when, in the absence of restitutio ad integrum, there is instituted a different morphologico-functional state on a new basis). In some cases the damage may consist of so grave a modification of the person as to ultimately be incompatible with life, that is to say, the death of the subject, possibly by suicide.

55. In clinical practice, before the doctor can arrive at an adequate therapeutic intervention, he has to establish a diagnosis and carry out an etio-pathogenetic study of the case, that is to say, ascertain the existence of a lesion or an illness and determine its nature, though without necessarily

ascertaining its origin; on the contrary, observation of these data represents the point that unites clinical and forensic medicine. It is inherent in this concept that the Italian doctor attaches importance to any kind of lesion and/or illness that can be attributed to causes that are comprised in the crime of torture.

56. Ascertainment of the existence of a lesion or its after-effects and the inquiry into its causes are thus both necessary to arrive at a complete evaluation of the damage; such evaluation can be performed for a corpse as well as for a living person. Nevertheless, when the fact of the lesion cannot be referred to a juridical interest, it is irrelevant from the point of view of forensic medicine.

57. The forensic medical evaluation of the damage to the person therefore comprises the ascertainment of the reality and the nature of the damage, and the ascertainment of the cause of the damage. The causal relationship between the damage and the presumed cause represents one of the most delicate tasks of the medical practitioner in general and, more particularly, the forensic doctor, specialized in forensic medicine and forensic psychiatry.

58. Though what has just been said represents a small part of the teaching of forensic medicine, which constitutes a fundamental subject of the study course that in Italy leads to a degree in medicine and surgery, it also illustrates well the framework of the specific basic preparation of Italian medical practitioners, highlighting their capacity to arrive at a correct diagnosis of all the psycho-physical lesions, including those that can be ascribed to the crime of torture, prescribing and implementing, moreover, a purposeful and adequate pharmacological and rehabilitation therapy.

59. Furthermore, the medical personnel - duly qualified and specialized in medical disciplines that are closely connected with the problems posed by the Convention against Torture - who daily perform their working activities in institutions where they are most likely to encounter injuries and damage to persons acquire a particular professional experience in this matter. Particular reference is made here to the forensic physicians at the forensic and university medical institutes, the penitentiary medical police of the penitentiary institutions, the doctors of the first-aid posts at hospitals and universities, and the military doctors of both the Health Corps (Corpo di sanità) of the Italian Army and the Italian Red Cross - Military Corps.

60. While stressing that the level of specific preparation of the doctors who are called upon to ascertain the damage and its cause is very high, the Italian Government, and especially the Ministry of Health, bearing in mind the comments made by the Committee and article 10 of the Convention, is decidedly in favour of an intervention aimed at sensitizing the medical personnel. It is proposed to organize a seminar for the purpose of examining and discussing the various aspects of recognizing lesions suffered by persons, and this is currently in the planning phase.

H. Situation in the prisons

61. A basic element fundamental for a complete overview of the situation of Italian penitentiary institutions today, especially of the size and the

conditions of the prison population they contain, is the excessive number of prisoners as compared with the effective capacity of the available prison structures, which is on the order of 50,000 persons.

62. The manner in which the overcrowding problem continues to condition the work of the penitentiary personnel is altogether evident, since it creates conditions of promiscuity and makes it difficult for the administrations to implement the treatment programmes prescribed by law. A bill to address measures that will deflate the prison population is being examined by Parliament; if passed, it would enhance the possibility of adopting alternative measures for the existing prison population.

63. A positive feature is the ratio of persons in preventive custody (i.e. who have not yet stood trial or whose sentence is not yet definitive) to prisoners serving a definitive sentence: the percentage of the former decreased from 40.7 to 38.1 per cent in 1997 while that of the latter increased from 56.6 to 59.4 per cent. But the ratio is still very high, not least on account of the principle of the presumption of innocence, so that a person can be officially considered as condemned only when the sentence can no longer be appealed against; an appeal implies three instances of judgement.

64. In this connection the Court of Cassation recently put its views on record, deeming the possibility of immediately executing any charge that has become definitive either in relation to responsibility or the determination of the punishment as an indispensable instrument for the purposes of streamlining the procedural iter. The jurisdictional organs handling both civil and penal cases have adopted this suggestion with a view to accelerating the procedures already in use (in this connection the civil sector has recorded a slight downturn in the number of pending cases, owing to the fact that the Justices of the Peace were able to examine about 242,000 cases in the period under consideration).

I. Final considerations

65. The conclusions drawn by the Committee against Torture after examination of the second periodic report submitted by Italy (A/50/44, paras. 146-158) have been made the object of careful consideration by the Italian Government both on the occasion of the observations sent to the Committee in 1995 and in the present report.

66. The Committee expressed concern in connection with the persistence of cases of ill-treatment in prisons inflicted by warders, with a tendency towards racist attitudes vis-à-vis non-Community foreigners and members of minorities. As already pointed out in the observations, this concern seems to have its origin in the denunciations that have been made to some non-governmental organizations. The Italian Government has sought to make a closer examination of the foundation of the Committee's conclusions. In particular, to give but one example, they asked the Carabinieri to provide a detailed and analytical statement of all the cases of alleged ill-treatment of arrested or controlled persons in the period 1994-1997. Quite independently

of the credibility of the alleged facts, this survey took into consideration all the complaints presented against Carabinieri on these grounds. As can readily be seen from annex 14, the Corps pinpointed 276 such episodes, 37 of which involved foreign citizens either from within the EC (three cases) or from outside (the remainder). The survey highlights a circumstance that is already well known to both the competent authorities and the non-governmental organizations: foreign citizens, especially those from outside the Community who are less familiar with the guarantees offered by the Italian legal order and who sometimes find themselves in Italian territory only for a very brief time, are inclined to turn to NGOs to complain about alleged ill-treatment rather than avail themselves of the ordinary juridical channels. The contrary seems to happen in the cases involving Italian citizens. It thus happens that some organizations, including some of the most qualified in the sector under consideration, receive letters of denunciation almost exclusively from foreign citizens. The picture that these organizations offer to public opinion when they publish the resulting data therefore offers a somewhat distorted version of reality, highlighting almost exclusively episodes of alleged ill-treatment of foreigners, and this quite irrespective of the foundation or credibility of the cases exposed.

67. In connection with the Committee's concern regarding the disproportion between the gravity of some of the episodes and the sentences inflicted upon those responsible for them, some detailed information elements have already been provided in the observations. But there are absolutely no grounds to justify the belief that the humanitarian norms governing the treatment of prisoners have ever been suspended, not even temporarily.

68. As regards the recommendations formulated by the Committee:

(a) Both the observations and the present report contain ample information about the Italian penal system and the general orientation of the Italian Government in favour of inserting the crime of torture in the Italian penal system. Nevertheless, given the ample safeguards already provided by the Italian penal order, which have been extensively illustrated, a change in this sense does not seem necessary. Moreover, as is well known, there are very many juridical systems, especially in the Western countries, in which “torture” does not exist as a crime;

(b) The text of the present report sets forth and documents the guaranteed right of any prisoner to avail himself of the assistance of a medical practitioner enjoying his confidence;

(c) In previous reports, as in the present one, attention has been drawn to various initiatives - either already implemented or now being planned - for training the personnel of the forces of order, including those of the Penitentiary Police (warders). Further, as noted in the present report, the Ministry of Health is now orientated in favour of promoting specialized training courses also for medical personnel, even though this initiative does not seem essential for the purposes of implementing the principles of the Convention.

II. INFORMATION ABOUT SITUATIONS AND INDIVIDUAL CASES OF ALLEGED ILL-TREATMENT

A. General observations

69. A more detailed examination of the penal proceedings still in progress against individuals should preferably be preceded by some considerations of a general character regarding the fundamental principles of the Italian system of justice, some of which are of sufficient importance to be embodied in the Constitution, paying particular attention to the various trial phases.

70. Underlying the Italian order is the principle of the obligatory nature of penal action (article 112, Constitution), the principle of the presumption of innocence (art. 27), the principle of the independence of judges from every other power (art. 104), the principle that judges are subject only to the law (art. 101), the principle of three instances of trial, and the principle of the irrevocability of sentences except in the cases of rehearing expressly envisaged by law (arts. 629-647, Code of Penal Procedure). Under such a system all denunciations, no matter by whom or against whom they may be made, must be investigated by the Public Prosecutor to ascertain the facts and the responsibilities.

71. With a view to guaranteeing the rights of the persons involved, the preliminary phase of the investigations is governed by the principle of secrecy vis-à-vis third parties. This provision may not be violated in any manner or wise, and penal sanctions are envisaged in case of violation. Secrecy is maintained until a person is actually committed for trial, after which there commences the phase characterized by publicity, and this for the specific purpose of guaranteeing generalized control over the correct use of the trial instruments in penal cases.

72. Coming back to the investigation phase, in the event of the Public Prosecutor requesting filing (dismissal) of the case, the Preliminary Examination Judge (G.I.P.) has the power to require further investigations to be carried out whenever he is of the opinion that what has already been done is not sufficient. When determining whether further inquiries should be made, the judge takes due account, inter alia, of the observations and requests that the offended party has the right to submit in opposition to the dismissal request. Indeed, in accordance with article 408 of the Code of Penal Procedure, the offended party may ask to be notified in the event of such a request and lodge opposition thereto. The filing request may be granted when the information alleging the crime is unfounded or when the acquired elements are not sufficient to sustain the charge in judgement (article 125 disp.att.CPP).

73. Effective performance of the investigations by the Public Prosecutor is subject to the control of the Attorney-General (Procuratore generale) (article 127 disp.att.CPP) to whom the Public Prosecutor's secretariat must each week send a list of crimes committed by known persons in respect of which there has neither been a penal action nor a request for dismissal within the

deadline envisaged by law or as extended by the judge for just cause. This control assumes the concrete form of the power enjoyed by the Attorney-General, in accordance with article 412 of the Code, to extend his competence to a particular case.

74. Once a person has been committed for trial, it should be stressed that the case is heard in public and that both the public at large and the information media are therefore in a position to monitor the proceedings. At the end of the public debate, when all the evidence requested by both the prosecution and the defence has been admitted and heard, the judge will pronounce a guilty sentence only when positive proof of guilt has been provided, because the presumption of innocence has to prevail in all cases of doubt. All first-instance sentences may be appealed against, first in the Court of Appeal and then in the Court of Cassation.

75. The system just outlined, albeit somewhat schematically, is one that undoubtedly provides an extremely high level of protection for both the accused and the offended party and, in any case, sufficient so as to ensure that - as a general rule - the end of ascertaining the truth, no matter what it may be, is pursued. Once the guilt of the accused has been determined, the Italian magistrature imposes - with due motivation - such punishments as are deemed appropriate, in accordance with the parameters established by article 133 of the Penal Code.

B. Individual cases

1. Somalia

76. Thorough and complex investigations are currently being carried out by various Italian judicial authorities in connection with the acts of violence committed by Italian soldiers in Somalia. Four such investigations are currently in progress at the Public Prosecutor's Office attached to the Court of Livorno.

77. As regards the proceedings for alleged torture suffered by a Somali man arrested at Jhoar and the alleged rape of a Somali woman by soldiers at a roadblock in Mogadishu, a probatory hearing was arranged so as to have the testimonies of the victims and a witness collected directly by the judge. Expert examinations are being carried out to ascertain the after-effects of the violence on the victims and also to see whether they corresponded to the photographs published by a weekly journal. The expert work is now in progress. Investigations are also being continued in the other two proceedings.

78. The Public Prosecutor's Office attached to the Court of Milan, for its part, is diligently continuing its investigations regarding an alleged case of carnal violence committed by an Italian soldier in Mogadishu.

79. By means of a decree dated 9 February 1997, the Preliminary Examination Judge of the Court of Leghorn ordered that the case based on the facts

denounced by Abdi Hasn Addò be filed. Addò had accused Italian soldiers of having shot and killed three Somalis in a car on 3 June 1993. But the investigations showed that on the day in question the soldiers had been engaged in a military operation known as “Illach 26” that was taking place in another part of Somalia from that indicated by Addò.

2. Italian citizens who have disappeared in Argentina

80. On 28 April 1997 the Public Prosecutor attached to the Court of Rome asked that seven soldiers be put on trial on charges of voluntary homicide and kidnapping numerous Italian citizens resident in Argentina. Since the taking of evidence is still in progress, the preliminary hearing for receiving the expert reports has been fixed for 17 March 1998.

3. Secondigliano prison

81. As previously reported, a case against 55 members of the Penitentiary Police is being heard before the Naples Magistrate's Court. At the last hearing the case was adjourned until 23 March 1998. The warders are accused of the crime, defined by article 608 of the Penal Code, of having repeatedly subjected numerous prisoners to punishment measures not permitted by law, and also of the crimes of hitting (art. 581) and inflicting injuries (art. 582).

4. Marcello Alessi

82. Marcello Alessi, a prisoner at the San Michele Prison, Alessandria, lodged a complaint in December 1992 for alleged ill-treatment he claims to have suffered at the hands of an officer of the Penitentiary Police. Following an examination of the detailed statements made by Alessi and the accused member of the Penitentiary Police, Alessi was found guilty of the crime of violence against a public official (article 336, Penal Code) and was absolved of the crime of insulting (art. 341). Since the accused has not lodged an appeal with the Court of Cassation, the sentence became definitive on 25 February 1997. As already communicated in the note dated 27 February 1998, the proceedings against the warder pending before the Alessandria Magistrate's Court have been adjourned to the hearing on 25 March 1998.

5. Francesco Matteo

83. The Public Prosecutor attached to the Court of Varese asked on 18 March 1997 that the captain of the Customs Corps be committed for trial for the voluntary homicide (article 575, Penal Code) of Francesco Matteo, together with the young man who had accompanied the victim, in the latter's case on a charge of violence against a public official. We have been informed by the judicial authorities that the preliminary hearing has been fixed for 13 May 1998.

6. Salvatore Messina

84. By means of a sentence dated 18 February 1998, the Court of Palermo held the two policemen to be guilty of the crimes of causing bodily and other harm to Salvatore Messina and, with the attenuation provided in article 442 of the Code of Penal Procedure, sentenced one to eight months of imprisonment and the other to six months of imprisonment, and indemnification of the civil party to the case.

7. Grace Patrick Akpan

85. Detailed information on this case has been sent to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Maurice Glélé-Ahanhanzo. On 12 December 1996, the Judge for Preliminary Investigation of the Court of Catanzaro committed the two policemen to stand trial on a charge of causing harm to the detriment of Grace Akpan, while Akpan herself was charged with the crimes defined by articles 337-341-582-651, Penal Code. The trial has been adjourned to the hearing of 26 October 1998.

8. Abdelwahab Ben Moghrem

86. Abdelwahab Ben Moghrem lodged a complaint with the Magistrate's Court of Voghera in September 1995, alleging that he had suffered ill-treatment and had been made the object of insults of a racist type by two Carabinieri who had stopped him for an identity check. The Preliminary Examination Judge of the Court of Voghera filed (dismissed) the proceedings against the two Carabinieri, charged with causing bodily harm, offering a detailed and exhaustive explanation for his decision.

9. Edward Adjei Loundens

87. Detailed information on this case has also been sent to Mr. Glélé-Ahanhanzo. The complaint lodged by Edward Loundens has been transmitted to the Preliminary Examination Judge with a request for filing (dismissal). The Judge's decision is now awaited.

10. Ymbi Nsambi Okoka

88. The Court of Savona found Ymbi Nsambi Okoka guilty of the crime of having calumniated the two Carabinieri and, finding that the attenuations prevailed over the aggravating circumstances of the charge, sentenced him to one year and five months of imprisonment, suspending execution of the sentence. In the absence of an appeal by the accused, this sentence became definitive on 18 April 1997. As shown in the sentence, the doctor, called by the Carabinieri of Finale because Okoka had complained of hematuria, while confirming that the accused was suffering from lumbago on the left side, had not found any sign of the lesions that should have been present if the accused, as stated in his complaint, had recently been beaten while naked. It was also ascertained that the doctor at the Albenga Hospital, where Okoka had gone at 1 p.m. on 6 June 1994, a little while before lodging his complaint,

failed to find any objective signs of injury on the body and the arm, where the accused complained of widespread pain, and attributed the hematuria to a large vesical calculus, probably due to some tropical disease. Okoka had therefore intentionally accused the Carabinieri of acts he knew they had not committed.

11. Giancarlo Malatesta

89. Giancarlo Malatesta was committed to stand trial on a charge of calumny against the policemen. The case has been adjourned to the hearing of 13 October 1998.

List of annexes*

1. Ministry of Justice - Statistics

   1.1 Situation in Italian prisons at 27 January 1998

   1.2 Foreign prisoners

2. Communication of Ministry of Justice dated 9 July 1994

3. Communication of Ministry of Justice dated 16 January 1998

4. Magistrate's Court of Voghera - Filing Decree

5. Court of Varese - Request for committal to trial

6. Court of Savona – Sentence dated 30 January 1997

7. Public Prosecutor's Office, Catanzaro - Request for commitment to trial

8. Public Prosecutor's Office, Leghorn - Request for dismissal by filing

9. Public Prosecutor's Office, Leghorn - Somalia case

10. Public Prosecutor's Office, Milan - Somalia case

11. Public Prosecutor's Office, Leghorn - Somalia case

12. Court of Appeal of Turin - Sentence dated 9 January 1997

13. Court of Palermo - Sentence dated 18 February 1998

14. Survey carried out by the Corps of Carabinieri of cases of ill-treatment complaints

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* The annexes may be consulted in the files of the Office of the High Commissioner for Human Rights.