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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 12 to 22 March 2019

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 (2020) 3.

Strasbourg, 21 January 2020

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EXECUTIVE SUMMARY

The purpose of the CPT's 2019 ad hoc visit was to review the situation of inmates placed in medium- and high-security regimes, the special "41-bis" regime and prisoners subjected to various measures of isolation and segregation such as court-imposed isolation of life-sentenced prisoners ("*isolamento diurno*"). To this end, the CPT's delegation visited Biella, Milan Opera, Saluzzo and Viterbo Prisons. The co-operation provided by the Italian authorities was generally excellent, with the exception of Viterbo Prison where it appeared that the management of the establishment was unaware of the Committee's mandate.

The CPT notes positively the adoption of the amendments to the Prison Law in October 2018. At the same time, the CPT is concerned by the steady increase in the prison population since the 2016 periodic visit, and by the fact that a large number of prisoners are not provided with the minimum standard of 4 m² of living space in multiple-occupancy cells. A further noteworthy development is the recent European Court of Human Rights (ECtHR) judgment in the case of *Marcello Viola v. Italy* (No. 2) regarding life imprisonment in accordance with Article 4-bis of the Prison Law in which the ECtHR found that the current system focuses solely on the lack of co-operation with justice by the concerned life sentenced prisoners without paying due consideration to their resocialization path.

In the prisons visited, the great majority of prisoners met by the delegation stated that they were treated correctly by staff. However, a few allegations of excessive use of force and physical ill-treatment were received at Biella, Milan Opera and Saluzzo Prisons. Further, at Viterbo Prison, a considerable number of allegations of physical ill-treatment were received and the CPT's delegation identified a pattern of deliberate infliction of ill-treatment by staff. The report describes several cases where the injuries observed and the medical evidence recorded were compatible with the allegations of ill-treatment made by the inmates. The Italian authorities should exert increased vigilance on staff, effectively investigate complaints made by prisoners and improve staff training, notably on the professional application of control and restraint and de-escalation techniques.

The conditions of detention for inmates under the medium-security regime varied at the prison establishments visited. In general, cells offered sufficient living space and adequate conditions of detention in terms of access to natural light, ventilation and state of repair. That said, material deficiencies were still visible, in particular in relation to the dilapidated and unhygienic common shower facilities, the austere design of the courtyards and in some cases the poor quality of food in terms of lack of variety and low protein content. The authorities are recommended to remedy these deficiencies. In terms of regime, the CPT observed that both the out-of-cell and outdoor exercise entitlements offered to inmates were generous, but prison staff still did not engage in constructive relations with prisoners. Staff still misunderstood the concept of dynamic security. There is also the necessity to improve the programme of activities and vocational training opportunities at Biella and Saluzzo Prisons and to fill the vacant positions of educators.

The report describes the situation of 28 internees subject to a court-imposed security measure who were accommodated in an ordinary section of Biella Prison in poor material conditions and provided with an impoverished regime. The CPT requests further information on the announced transfer of the internees to another establishment in order to provide them with adequate care and treatment in view of their specific legal status.

As regards inmates subject to the high-security regime, the CPT found certain material deficiencies such as absence of ventilation in the sanitary annexes and persistent problems with the provision of heating and hot water. The regime on offer was similar to the one in force for the medium-security population except that the range of work, vocational and educational activities and the visiting and telephone call entitlements were more limited. The CPT considers that more needs to be done to expand the range of activities on offer to high-security prisoners. The CPT also recommends that the

Italian authorities review the classification and declassification criteria for the placement of prisoners into the high-security regime, given the lack of a clearly defined procedure and legal certainty.

Turning to the various forms of isolation and segregation of prisoners, the CPT considers that the accessory punishment of court-imposed solitary confinement pursuant to Article 72 of the Criminal Code (“*isolamento diurno*”) is anachronistic and should be abolished. Such an additional punishment of prolonged solitary confinement can have harmful effects and is contrary to the principle of re-socialisation of prisoners, particularly as it is usually imposed several years after the commencement of imprisonment. As regards the regime of special surveillance (“*sorveglianza particolare*”) pursuant to Article 14-bis of the Prison Law, the Committee found that prisoners subjected to this regime were *de facto* held in conditions of solitary confinement for prolonged periods. Given the potentially harmful effects of subjecting inmates to prolonged solitary confinement, the Committee calls upon the authorities to provide such prisoners with an appropriate regime (i.e. at least two hours of meaningful human contact per day).

The report also describes other separation measures of inmates for reasons of good order and criticises the lack of a regular review of such measures and the impossibility to appeal against them. Further, the report also includes concrete recommendations in order to improve material conditions in the isolation and segregation units of the establishments visited.

The CPT again examined the extensive restrictions imposed on inmates subjected to Article 41-bis of the Prison Law at the detention units of Milan Opera and Viterbo Prisons. The CPT calls upon the Italian authorities to engage in a serious reflection on the current configuration of the “41-bis” regime by providing inmates throughout the prison system with a wider range of activities and increasing visiting and telephone entitlements, as well as remedying the observed deficiencies. It also considers that placement in the so-called “*aree riservate*” should be limited in time in light of their very restrictive conditions.

As to prison health-care, the CPT gained a generally positive impression of the quality of primary health-care provided to prisoners in the establishments visited. However, once again, regional disparities were found. The Committee recommends that vacant health-care posts at Biella and Saluzzo Prisons be filled, and that access to specialised and dental care in these prisons be improved. Further, the deficiencies concerning dental care and the conditions at the infirmary of Viterbo Prison should be remedied. It is also essential that measures be taken to ensure that confidentiality of medical examinations of inmates is respected.

The report also criticises the prolonged accommodation of mentally ill persons in a prison setting due to the absence of places in appropriate facilities (such as the so-called Residences for the Execution of Security Measures or REMS and the specialised psychiatric sections in prisons or ATSM). Measures should be taken to ensure that mentally ill prisoners are transferred to a health-care facility without delay. From the official statistics on suicide provided to the CPT and from the findings of its delegation, it appeared that persons who were placed in *de facto* solitary confinement were at much greater risk of committing suicide. Even persons who were assessed as being suicidal were often isolated from other prisoners, rather than being placed under direct staff supervision and offered both meaningful contact with other staff members and prisoners and access to activities, as appropriate.

The report also addresses the essential role of staff in prisons, and the necessity for staff to be better allocated throughout the prisons to ensure an effective presence on every section. The notion of dynamic security needs to be better promoted, and the training of staff enhanced, notably as concerns inter-personal skills. Finally, recommendations are made to increase telephone entitlements and family contacts for high-security prisoners, and to reinforce legal safeguards surrounding disciplinary proceedings for inmates.

I. INTRODUCTION

A. The visit, the report and follow-up

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 12 to 22 March 2019. The purpose of the visit was to examine the situation of prisoners placed in regimes of high and maximum security (the so-called “41-bis regime”) and of prisoners subjected to various measures of isolation and segregation, including court-imposed isolation of life-sentenced prisoners. The delegation also reviewed the treatment of persons (“*internati*”) subject to a security detention measure (“*misura di sicurezza detentiva*”). The visit was one which appeared to the CPT “to be required in the circumstances” (see Article 7, paragraph 1, of the Convention).

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

- Julia Kozma (Head of Delegation)
- Régis Bergonzi
- Philippe Mary
- Maria Rita Morganti
- Olivera Vulić

They were supported by Christian Loda of the Committee's Secretariat, and assisted by an expert, Jurgen Van Poecke, Prison Director (Belgium), as well as Maria Fitzgibbon Alari, Paula Bruno and Enrico Varesco (interpreters).

3. In the course of the visit, the CPT's delegation visited the following prison establishments: Milan Opera Prison, Biella Prison, Saluzzo Prison and Viterbo Prison.

4. The report on the visit was adopted by the CPT at its 99th meeting, held from 1 to 5 July 2019, and transmitted to the Italian authorities on 2 August 2019. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests that the Italian authorities provide within three months, a response containing a full account of action taken by them to implement the Committee's recommendations and their response to the comments and requests for information formulated in this report.

B. Consultations held by the delegation and co-operation encountered

5. In the course of the visit, the delegation held consultations with Vittorio Ferraresi, Under-Secretary of State of the Ministry of Justice, Francesco Basentini, Head of the Department of Prison Administration (DAP) and other senior officials from the Ministry of Justice and the DAP. It also met representatives of the different law enforcement authorities (“*Carabinieri*”, “*Guardia di Finanza*” and “*Polizia di Stato*”). In addition, meetings were held with Mauro Palma, Head of the national authority for the rights of persons deprived of their liberty (“*Garante Nazionale dei diritti delle persone detenute o private della libertà personale*”) and Head of the National Preventive Mechanism (NPM) established under the Optional Protocol to the United Nations Convention Against Torture (OPCAT), as well as with representatives of civil society active in areas of concern to the CPT.

A list of the national and regional authorities and non-governmental organisations met by the delegation is set out in the Appendix to this report.

6. The co-operation received during the visit from the Italian authorities was, with one exception, generally excellent at all levels. The delegation enjoyed rapid access to all establishments visited, was provided with the information necessary to carry out its tasks and was able to speak in private with persons deprived of their liberty.

The delegation wishes to express its appreciation for the assistance provided before and during the visit by Minister Gianfranco Petri and his staff from the Ministry of Foreign Affairs and the other members of the Inter-ministerial Committee on Human Rights. Further, it welcomes the Italian authorities’ decision to invite the “*Garante Nazionale*” to the preliminary observations delivered by the delegation at the end of the visit.

The one exception refers to Viterbo Prison where staff initially denied members of the delegation the right to interview inmates in private in their cells during the period of out-of-cell entitlement. Interviews with inmates were interrupted by custodial staff, the names of the inmates interviewed by the delegation were recorded and the request for relevant documentation to carry out the visit was not provided in a timely manner. The delegation had the distinct impression that the management of Viterbo Prison was unaware of the Committee’s mandate although, once they had been informed by various interlocutors, co-operation improved.

The CPT trusts that the Italian authorities will take the necessary steps to ensure that in future that the management and staff of all prisons are clearly aware of the CPT’s mandate.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Prison establishments

1. Preliminary remarks

7. At the time of the visit in March 2019, the prison estate was operating over capacity with a prison population of 60,611 for 50,514 places. This represents a significant increase in the number of prisoners since the April 2016 periodic visit when the prison population stood at 54,072 for a capacity of 49,545 places. Interlocutors of the CPT's delegation concurred that the increase in the prison population was not linked to specific trends in the field of criminal policy¹ and increased incarceration rates, but rather to fewer persons being released from prison.² The background to this lies in the longer sentences imposed by the courts since 2008,³ combined with the many socially vulnerable prisoners with short sentences who, despite being eligible for alternative sanctions, remain in prison due to the lack of staff to provide timely reports to the judicial authorities for the application of such alternative sanctions.

These explanations appear to be plausible in light of the observations of the CPT's delegation during the visit given that other indicators such as the rate of pre-trial and foreign national prisoners have remained stable over the last few years.⁴ At the outset of the visit, the CPT's delegation was informed by the Director of the Prison Administration (DAP) about various measures introduced to cope with the increasing prison population and subsequent overcrowding, such as the refurbishment of empty military barracks with a view to their transformation into prison establishments,⁵ and the installation of prefabricated modular units to increase the capacity of existing prison establishments. Further, negotiations were at an advanced stage with the Albanian, Moroccan and Romanian authorities on bilateral agreements to repatriate or accelerate the transfer of prisoners from these countries to their respective country of origin.

¹ According to the Italian National Institute for Statistics (ISTAT) the overall number of crimes committed per year has seen a constant decrease in the 2013-2018 timeframe from 2,892,155 to 2,429,795.

² The increase of the prison population cannot be ascribed to a growth of the incarceration as the number of admissions to prison was lower in 2018 than in the two previous years (47,257 entries were registered in 2018, 48,144 in 2017 and 47,342 in 2016).

³ In the last decade, short sentences (below five years of imprisonment) have decreased by 30%, whereas longer ones have increased by a rate of 53%.

⁴ The percentage of remand prisoners has decreased from 34.1 to 32.8 of the overall prison population between 2015 and 2019. Further, the number of foreign national prisoners has actually decreased by around 1,000 to 20,412 (March 2019) over the past five years despite the prison population increasing by 10,000 persons since 2016.

⁵ A Memorandum of Understanding between the Ministries of Justice and Defence was signed on 23 May 2019 which stipulated that the Ministry of Defence should identify appropriate unused property which could be converted into prison establishments.

8. In terms of prison overcrowding, the CPT recalls that the official capacity of the Italian prison estate is calculated on the basis of a minimum living space of 9 m² per person in a single-occupancy cell and 5 m² per inmate in multiple-occupancy cells.⁶ The system of real time monitoring of living space, as well as the preventive mechanism introduced after the pilot judgment of the European Court of Human Rights (ECtHR) in the case of *Torreggiani v. Italy*, should in principle ensure that no inmate is provided with less than 3 m² of living space in a multiple occupancy cell.⁷ At the time of the 2019 visit approximately 13,800 inmates were accommodated in cells which provided between 3 and 4 m² of living space per inmate (see paragraph 22). It is to be recalled that in the CPT's view the minimum living space offered to inmates should amount to at least 4 m² in multiple-occupancy cells, excluding the sanitary annex.⁸

The CPT recommends that the Italian authorities take action to ensure that all prisoners are provided with at least 4 m² in multiple-occupancy cells; the Italian authorities should nonetheless strive to comply with the national minimum standard set forth in its legislation. Further, rigorous action is required to bring the prison population down below the number of places available within the prison estate and to put an end to overcrowding.⁹ In this respect, emphasis should be placed on the full range of non-custodial measures capable of providing judicial supervision during the period preceding the imposition of a sentence, as well as on measures to accelerate a prisoner's release, including through supervisory means tailored, *inter alia*, to the prisoner's personality and the nature of the sentence.

9. In October 2018, the Italian Parliament adopted long-awaited amendments to the 1975 Prison Law ("*Ordinamento Penitenziario*" or O.P.) consisting of three separate decrees. Regrettably, the intended scope of the reform had been progressively watered down during the Parliamentary procedure.¹⁰ Nevertheless, the decrees introduce important modifications to the legal framework for prisons such as:

- the adoption of a separate regulation for juvenile offenders;
- the obligation of doctors to accurately record and report to judicial authorities any injuries observed on inmates (both upon admission to prison and during incarceration);
- the increase of an entitlement to prisoners' daily outdoor exercise from two to four hours;
- the exclusion of health-care staff from disciplinary proceedings against detainees;
- the obligation to provide an individualised treatment programme for inmates and targeted activities for remand prisoners;
- a reform of work to be provided in prison with an emphasis on public utility activities;
- the amelioration of poor material conditions within cells in terms of heating and sanitary facilities (with the installation of showers in cells), and quality of food (see paragraphs 21 and 24).
- the enforcement of the concept of dynamic surveillance in all medium-security sections as of 2021.

⁶ This is a criterion adopted for assessing the habitability of civil dwellings in Italy and is stipulated by a decree of the Ministry of Health passed on 5 July 1975.

⁷ The Cassation Court in its ruling No. 22929 of 21 April 2017 ruled that the requirement of 3 m² of minimum living space in a multi-occupancy cell should not include the surface covered by fixed furniture (such as e.g. bunk beds and closets) and the sanitary annex.

⁸ See the CPT document "Living space per prisoner in prison establishments: CPT standards" CPT/Inf/2015 44.

⁹ See Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe and Recommendation No. R (99)22 regarding overcrowding and the prison population inflation.

¹⁰ Important aspects removed during the adoption of the legislation include a wide array of alternative measures to detention, the principle of equivalence of health care provided to inmates and the concept of dynamic security in closed sections.

Further, Article 1, paragraph 3 of the O.P. now explicitly introduces a ban on “*every form of physical and psychological violence inflicted against inmates*”.

The CPT welcomes the reforms adopted and would like to be informed about the time frame for the introduction of the different elements of the reform which remain outstanding, such as the installation of in-cell showers.

10. The Committee takes note of the recent European Court of Human Rights decision in the case of *Marcello Viola v. Italy (No. 2)*¹¹ regarding life imprisonment in accordance with Article 4-bis of the Prison Law (“*ergastolo ostativo*”). The Court found that the current system focuses solely on the lack of co-operation with justice and does not consider the reintegration process nor any progress made of prisoners sentenced to this form of life sentence when deciding on conditional release. It held that the irrefutable presumption of dangerousness has the effect of depriving the applicant of any realistic prospect of release and was thus in breach of Article 3 of the European Convention of Human Rights.

The Committee would like to be informed of the measures envisaged by the Italian authorities in light of the above-mentioned judgment.

11. In the course of the March 2019 visit, the CPT’s delegation visited the following prison establishments:

Biella Prison, located close of the centre of the town, was accommodating 510 male prisoners (including 288 foreigners) for an official capacity of 395 places at the time of the visit. The establishment consisted of two separate pavilions connected through a corridor system (the original three-storey pavilion was inaugurated in 1984 and the adjacent four-storey one in 2016). The prison also included a “*Casa di Lavoro*”, located in Section 1B of the old pavilion, which held 28 internees subject to a security measure due to their recidivist and socially dangerous profile.¹² Finally, the establishment included a drug-free rehabilitation unit accommodating 7 inmates.

Milan Opera Prison, located south of Milan, was accommodating 1,312 male prisoners (including 316 on remand and 329 foreigners) at the time of the visit for an official capacity of 918 places. The prison establishment consisted of two identical four-storey pavilions accommodating inmates under medium- and high-security regimes (AS1 and AS3 circuits). Further, 94 inmates were accommodated in a separate two-storey L-shaped “41-bis” detention unit, and the dedicated Service for Enhanced Health-care Assistance (“*Servizio d’Assistenza Integrata*” or SAI) held 98 prisoners in need of continuous and specialised health-care assistance.

¹¹ See <http://hudoc.echr.coe.int/eng?i=001-194036>.

¹² The internment in a “*Casa di Lavoro*” is regulated by Article 216 of the Criminal Code (CC) pursuant to which a security measure of a maximum duration not exceeding the one provided for the original criminal offence may be imposed on persons who have shown a recidivist, habitual and professional tendency to commit a certain crime after they have served their sentence. The security measure in question might also be imposed by a judge in the case of violation of the terms of parole.

Saluzzo Prison, located in the Po river valley around 70 kilometres south of Turin, was accommodating 376 prisoners (including 13 on remand and 125 foreigners) for an overall capacity of 468 places. The prison establishment consisted of a new four-storey pavilion which had been inaugurated in 2016 and accommodated medium-security prisoners. The adjacent four-storey pavilion, dating back to 1984, had been recently renovated and accommodated high-security inmates across six sections. At the time of the visit, 37 prisoners were serving a life sentence in a dedicated section of the first floor of the new pavilion.

Viterbo Prison, located in the northern part of the town, was holding 615 male prisoners (including 117 on remand and 326 foreigners) for an overall capacity of 432 places at the time of the CPT's visit. The establishment consisted of two four-storey pavilions (i.e. in principle, D1 for remand and D2 for sentenced prisoners) as well as a separate two-storey "41-bis" detention unit which accommodated 47 prisoners. The prison had recently received 84 inmates from Cassino Prison following a flood at that establishment. Further, the director informed the delegation that the prison was regularly admitting "difficult" inmates transferred for reasons of good order and security from other prison establishments in the area of the "*Provveditorato*"¹³ of the *Lazio*, *Abruzzo* and *Molise* Regions.¹⁴ For this reason, the establishment was perceived as being a punitive prison by both inmates and local media outlets.

2. Ill-treatment

12. At the outset of the visit, the delegation had been informed by the authorities as well as by other interlocutors (such as the "*Garante Nazionale*" and the NGO "*Antigone*"¹⁵) about the worrying increase in the number of critical events ("*eventi critici*") recorded by the DAP. The increase referred notably to the number of aggressive incidents against prison staff by inmates, episodes of self-harming and inter-prisoner violence.¹⁶ This trend was attributed by the authorities to the increased number of inmates with a mental health problem caused *inter alia* by the closure of the Judicial Psychiatric Hospitals – ("*Ospedali Psichiatrici Giudiziari*" or OPGs) in 2015¹⁷ and the limited number of available places in the Residences for the Execution of Security Measures ("*Residenze per l'esecuzione delle misure di sicurezza*" – REMS), as well as by inter-ethnic tensions in those sections accommodating prisoners of different nationalities.

¹³ The "*Provveditorato*" is the regional office of the Prison Administration (DAP) and is headed by a "*Provveditore*".

¹⁴ In light of the increase of critical events, the DAP had issued a Circular No. GDAP 101018 0316870 U on 9 October 2018 recommending the transfer of inmates who had been protagonists of physical aggression against staff as well as serious incidents involving the destruction of furniture and other instances of extremely violent behaviour. The transfer had to be executed by the *Provveditore*.

¹⁵ See also paragraph 86.

¹⁶ For example, the registered episodes of aggression of inmates against staff during the 2014-2018 timeframe had increased from 387 to 680 cases, self-harming from 6,889 to 10,368 and inter-prisoner violence from 2,039 to 3,821 cases.

¹⁷ See in particular paragraph 83 of the CPT's report on its 2016 periodic visit to Italy (CPT/Inf (2017) 23).

13. The situation in respect of alleged physical ill-treatment of inmates by staff varied at the different prison establishments visited. The great majority of prisoners met by the delegation at the four prison establishments visited stated that they were treated correctly by prison officers. However, at Biella, Milan Opera and Saluzzo Prisons the delegation received a number of allegations of physical ill-treatment of inmates by staff and the situation appeared to be particularly problematic at Viterbo Prison where many prisoners alleged to have been physically ill-treated by custodial staff. The allegations received in all prison establishments visited can be categorised as follows:

- i) excessive use of force in reaction to the recalcitrant behaviour of an inmate;
- ii) extraction of inmates from cells following a critical event and the infliction of deliberate ill-treatment by a group of custodial officers normally in places not covered by CCTV (i.e. stairways and offices of the penitentiary police);
- iii) infliction of serious injuries on inmates due to the unprofessional application of means of restraint by prison staff.

A few allegations of physical ill-treatment, consisting mainly of excessive use of force by staff on inmates, were received at Biella and Milan Opera Prisons. For example, an inmate met at Biella Prison alleged that after having hit a prison officer with a shoe in the course of a verbal altercation, six prison staff members restrained him and while he was lying prone on the floor delivered several punches to his back and sides.

Further, at Saluzzo Prison, a couple of allegations of physical ill-treatment of inmates by staff were received consisting of punches and kicks by a group of officers wearing black gloves in a specific corridor not covered by CCTV, following episodes of inter-prisoner violence or self-harm. For example, the delegation met a prisoner who alleged that on 9 July 2018, while he was attempting to separate two inmates fighting in the courtyard, he was taken by a group of prison officers to a corridor leading from the chapel to the infirmary was not covered by CCTV. He claimed that thereafter these same officers proceeded to punch him several times with their black glove-covered fists. The officers allegedly intimidated him not to complain, threatening him with a counterclaim for physical aggression. When seen by the prison doctor later that same day the following entry was recorded in his personal medical file: *“received blows on the left arm and left side of the body and on the back and head; he has bruises”*. Another inmate met at Milan Opera Prison alleged to have received several slaps on his face by an identified inspector of the penitentiary police after having been caught with drugs during a cell search. The slaps had allegedly damaged his dental prosthesis.

By contrast, at Viterbo Prison a considerable number of allegations of physical ill-treatment of inmates by staff were received by the delegation. The allegations consisted primarily of slaps, punches and kicks to various parts of the body as well as a specific allegation of blows with the metal cell keys to an inmate's head. The alleged ill-treatment mainly took place in the D1 Pavilion on the stairs leading to ordinary sections not covered by CCTV and in the isolation section and was inflicted on prisoners displaying challenging behaviour (e.g. committing acts of self-harm), during cell searches or following a verbal altercation between an inmate and custodial staff. Several prisoners told the delegation that it was not uncommon for custodial staff to verbally provoke inmates including through racist slurs. A number of prisoners, interviewed separately, identified particular prison officers and inspectors as being behind numerous episodes of alleged ill-treatment, and they referred to the existence of an informal punitive intervention group of the penitentiary police or "*squadretta*". In a number of cases, the CPT's delegation found entries in the medical files of the inmates which were compatible with the allegations of ill-treatment it had received. One specific allegation concerned staff of the "*Gruppi Operativi Mobili*" (G.O.M.)¹⁸ operating at the separate "41-bis" detention unit.

14. The following represent a sample of the credible allegations of ill-treatment by staff of inmates received by the CPT's delegation at Viterbo Prison. The cases below are for the purposes of illustration:

- i) An inmate subject to the "41-bis" regime met by the CPT's delegation alleged that, on 16 January 2019, a female inspector had entered his cell and allegedly burned his toes with a lighter in order to ascertain whether he was faking a catatonic state. Further, he alleged that, on 26 January 2019, a group of seven G.O.M. officers had entered his cell in full anti-riot protective equipment and delivered several truncheon blows to his legs. The inmate in question was visited by an external doctor on 2 February 2019 who recorded the following entry in a medical certificate attached to his medical file: "*scars and re-epithelization after burn-related injury, 2 cm wide; bruises on both feet and legs; no bruises on the upper part of the body. Injuries on toes could also be connected to self-harm action, especially taking into account the inmate's previous life.*"
- ii) An inmate alleged that on 30 December 2018 after a verbal altercation with a guard who deliberately made him stumble upon his return from outdoor exercise, the same guard inflicted blows on his face with a door metal key and kicked him. The inmate was visited by the prison doctor on the same day who included the following entry in his medical record: "*small excoriation in the left zygomatic region and a slight swelling on the lateral region of distal third of his right arm; reportedly happened during a struggle with a penitentiary police agent.*"

¹⁸ The G.O.M. are a dedicated special corps of the Italian penitentiary police serving exclusively in "41-bis" detention units for periods of eight months on a rotational basis and placed directly under the authority of a general commander at the headquarters of the DAP in Rome.

- iii) Another inmate alleged that, on 1 February 2019, following a cell search in which a mobile phone had been detected in his cell, he was extracted by a group of prison officers wearing black leather gloves who allegedly punched various parts of his body for an extended period. The reason for the beating was apparently to get the inmate to explain how the mobile phone had been smuggled into the establishment. The inmate told the delegation that he was afraid to raise any allegations of ill-treatment when he was brought by the same prison guards to see the doctor due the lack of confidentiality of the examination and the doctor's intimidating tone. Hence, the medical entry merely states that: *"The inmate in question was examined upon request of members of penitentiary police, he refuses to lift his t-shirt and drop his trousers which renders the visit impossible. He displays a non-cooperative attitude."*
- iv) An inmate who had been involved in the same cell search operation as the prisoner in case iii) and who separately confirmed the allegations, claimed that he had also been allegedly subjected to several punches and kicks to various parts of the body by a group of prison officers on 1 February 2019 on the stairs leading to Section 2C of the D1 Pavilion. He was seen by the prison doctor on the same day at 10 p.m. who recorded the following entry in his medical file: *"the inmate in question is examined at the request of the prison staff and displays excoriated bruises on his thorax, left arm and left ear. He refers that he does not hear properly and a lesion of the tympanic membrane is suspected."*
- v) An inmate alleged that on 1 February 2018, while descending the stairs leading to the courtyard, he was allegedly set upon by a group of eight prison officers who shoved him in the back causing him to fall to the ground. Subsequently, they inflicted a number of kicks and punches to various parts of his body. The inmate was later returned to his cell by the same members of the staff and told to "behave like a man". Later, on the same day, the inmate requested to be examined by the prison doctor but he was seen in the presence of custodial staff who told the doctor that the inmate had fallen on the stairs and the following entry was recorded in his medical file: *"Following a fall in the stairways (referred by a prison officer) the objective examination shows an ecchymotic contusion of the right orbital and temporal region, equal and reactive pupils, excoriated contusion of the left hand, pain to palpation of the right knee."* Since the inmate complained about blurred vision from his right eye he was referred for an ophthalmological examination on 3 February 2018 which resulted in the following entry in his file: *"...haematoma of the lower and upper right eyebrow and conjunctival hyperaemia."*

15. Further, the CPT's delegation also examined two recent cases in which inmates alleged an improper application of force and restraint measures by prison officers in other prison establishments which had resulted in them sustaining serious physical injuries. The allegations were supported by the entries in their medical files. For example:

- i) an inmate at Biella Prison alleged that at Novara Prison, following a verbal altercation with a prison guard over insistent requests to see a health-care assistant, on 19 January 2019 a group of prison officers had subsequently extracted him from his cell and kicked and punched him notably around the head on the stairway leading to the isolation section. The inmate was allegedly accommodated for one day in a cell deprived of furniture in the isolation section before being transferred to Biella Prison. Further to his admission to Biella Prison, he was examined by the prison doctor on 23 January 2019 who noted the following injuries in his medical file: *"mild swelling on the right side of the face; resolving haematoma around the left eye; wound on the left leg around 5 cm long; multiple dental fractures; he reported a recent fight at Novara Prison."*¹⁹
- ii) An inmate at Saluzzo Prison alleged that on 31 October 2018, while he was accommodated at the Sestante Psychiatric Observation Unit of Turin Prison in an observation cell following an episode of psychotic agitation, had engaged in a verbal altercation with a group of prison guards. When the guards tried to transfer him to the infirmary, he slammed closed the reinforced door (*"blindo"*) of a cell crushing two of the fingers of his right hand resulting in the traumatic amputation of the distal phalanges of these fingers. His medical file contained the following entry: *"On 31 October 2018, the prisoner was taken to the psychiatric observation unit after the incident that took place on the same day. During the management of his psychotic crisis, a serious injury of his fingers occurred. He was holding his fingers on the "blindo" and sustained injury of the 3th and 4th fingers of his right hand."* Further, while at Saluzzo Prison the inmate was referred on 20 November 2018 to the hospital on account of necrosis and infection of his two injured fingers.

16. The CPT has serious concerns about these cases of alleged ill-treatment, which suggest a pattern of deliberate and disproportionate use of force applied by prison officers, often as a punitive reaction to the behaviour of certain inmates.

The CPT recalls that any form of ill-treatment is illegal and totally unacceptable and must be subject to appropriate sanctions. The Committee recommends that the DAP reiterate to custodial staff the clear message that physical ill-treatment, excessive use of force and verbal abuse of inmates, as well as other forms of disrespectful or provocative behaviour vis-à-vis prisoners, are not acceptable and will be dealt with severely. Further, the management of Viterbo Prison should demonstrate increased vigilance in this area, by ensuring the regular presence of prison managers in the detention areas, their direct contact with prisoners, the investigation of complaints made by prisoners, and improved prison staff training including in de-escalation techniques.

¹⁹ According to the relevant report drawn up by the Head of Security of Novara Prison, two members of the penitentiary police also sustained injuries. They were referred to the emergency department of the local civil hospital and were discharged with a prognosis of five days of recovery.

In particular, the CPT recommends that appropriate measures be taken to upgrade the skills of prison staff in handling high-risk situations without using unnecessary force, by providing training in ways of averting crises and defusing tension and in the use of safe methods of control and restraint, particularly of inmates with a tendency to self-harm.

Moreover, the CPT recommends that the DAP review the systems in place at all prisons to ensure that there is a better oversight of incidents of the use of force by prison officers and that prisoners have clear avenues of complaint concerning any alleged ill-treatment by staff. In this respect, the Committee considers that Viterbo Prison is certainly in need of greater managerial oversight in light of the apparent pattern of deliberate physical ill-treatment described above. Further, the DAP should also reflect on the necessity to extend CCTV coverage to all those blind-spot areas such as the stairways leading to the detention sections in which most of the allegations occurred.

17. As mentioned in paragraph 12 all prison establishments are under instructions to record every critical event in a dedicated electronic log, which should also be reported to the DAP situation room in Rome. The delegation was able to note that some episodes in which inmates sustained physical injuries, which could be suggestive of physical ill-treatment by staff, had been reported to the DAP under different tags such as accidental injury ("*infortunio accidentale*") or with no description about the origin of the injury in question. For example, the logbook of critical events at Saluzzo Prison recorded the transfer of an inmate to Savigliano Hospital on 18 June 2018 at 12h00 for a suspected fracture of the right hand without adducing any possible origin of the injury in question. However, the inmate in question, whom the delegation met, alleged that he had sustained the fracture when he was hit with fists and kicks by a group of prison officers while lying on the floor in a certain corridor of Saluzzo Prison, and that he had had to be hospitalised due to the nature of the injury inflicted.

The CPT has in the past commented positively on the advanced and detailed reporting and recording system of critical events developed by the DAP. It is an important tool for efficient prison management and adequate supervision. However, without an accurate and timely recording of incidents, it is not possible to obtain a clear picture of the overall situation and to draw appropriate conclusions. It is the duty of the head of security ("*comandante*") at each prison establishment to ensure that the description of critical events is as accurate as possible and reflects the exact succession of facts as well as their timing. Any complaints and allegations raised by an inmate in relation to the circumstances surrounding a critical event should be adequately recorded.

The CPT recommends that the Italian authorities ensure that due diligence is exercised in guaranteeing that the electronic logbook of critical events reflects an accurate description of incidents and of any allegations made by prisoners. Cases suggestive of physical ill-treatment by staff should be promptly reported to the relevant prison doctor and the DAP, and an independent investigation initiated and carried out at both the administrative and prosecutorial levels.

18. The CPT's delegation learned that both the "*Garante Nazionale*" and the Regional "*Garante*" of the *Lazio* Region had referred several cases of alleged physical ill-treatment of inmates by staff at Viterbo Prison to the local prosecutor in the course of the previous two years.²⁰ The delegation examined one case where the Prosecutor of Viterbo had issued a decision on 19 October 2018 concerning an episode of alleged ill-treatment by custodial staff at Viterbo Prison on 11 February 2018. The prosecutor had appeared to base his conclusions only on the reports and testimonies provided by prison staff, without speaking to the alleged victim or taking into consideration the supporting medical documentation. The decision recommended that the competent investigative judge reject the criminal proceedings stating that: "*the alleged documented injuries were beyond doubt the product of the physical containment of the prisoner by custodial staff and that the simple allegation of the inmate does not constitute per se an objective and impartial source of truth.*"

In this regard the CPT wishes to recall that whenever a prosecutor is informed of a case of alleged physical ill-treatment of an inmate by custodial staff a comprehensive and prompt investigation should be carried out. In particular, the prosecutorial authorities should not satisfy themselves simply with the version of events provided by prison staff but should actively order a forensic medical examination in case an alleged victim of ill-treatment displays injuries, collect relevant evidence (such as e.g. CCTV recordings of detention facilities), interview a wide range of witnesses and challenge contradictory statements by prison officers.

Further, the CPT would like to receive information from the DAP as to the number of disciplinary proceedings initiated and their outcome concerning cases of alleged ill-treatment and abusive behaviour by prison staff for the period January 2017 to June 2019. It would also like to be informed of any criminal proceedings initiated during this period, as well as their outcome.

19. The CPT's delegation also examined cases of inter-prisoner violence at the prison establishments visited and in particular at Biella, Saluzzo and Viterbo Prisons.²¹ The testimonies of prisoners, as well as the consultation of logbooks, indicated that staff reacted promptly to such incidents and health-care was also provided in a timely manner to the persons involved. That said, however, the prison authorities must act in a proactive manner to prevent violence by inmates against other inmates.

Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of dynamic security 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 intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Both initial and on-going training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

The CPT recommends that the Italian authorities put in place a comprehensive strategy for preventing inter-prisoner violence and intimidation in light of the above remarks.

²⁰ I.e. "*notizia di reato*".

²¹ In the course of 2018 the registered cases of inter-prisoner violence at Biella, Saluzzo and Viterbo Prisons amounted respectively to 26, 39 and 56.

3. Conditions of detention in the medium security regime

20. As mentioned in paragraph 9, the October 2018 reform of the Prison Law introduced changes to both the conditions of detention and the regime within prisons. These consisted namely of longstanding corrections of in-cell design (i.e. the mandatory full partitioning of sanitary annexes and the installation of in-cell showers) and heating of cells “as required by the weather conditions”²² as well as minimum requirements for outdoor courtyard facilities.²³ In terms of regime, the minimum requirement of outdoor exercise was increased from two to four hours per day.²⁴ Remand prisoners are given the right to purposeful activities and sentenced prisoners should now receive more thorough attention in terms of re-socialisation activities of a formative and vocational nature. Individual treatment plans should be more detailed and subject to more frequent and timely reviews.²⁵ This is positive.

a. material conditions

21. Material conditions of detention in the sections accommodating inmates under a medium-security regime varied from prison to prison and even within the same prison establishment depending on its year of construction and the level of refurbishment.

At Biella Prison, cells in the new pavilion were equipped with bunk beds, table, chairs, wardrobes, shelving units, a cooking platform and possessed a fully partitioned sanitary annex including a toilet, wash hand basin and shower. They offered good conditions of detention in terms of ventilation, access to natural light and state of hygiene. That said, conditions in the six sections of the old pavilion were less favourable; double-occupancy cells showed signs of wear and tear (i.e. walls un-plastered and impregnated with mould) and were cold and humid as the heating system functioned for only a few hours during the day. Further, the common shower facilities were in a state of disrepair, with showerheads missing or damaged and walls impregnated with moisture. Conditions of detention in Section 1B accommodating internees under a security measure (see paragraph 11) were even less favourable; the common room was only equipped with a plastic table²⁶ and the cells were in a poor state of hygiene.

At Milan Opera Prison, cells in the medium-security regime sections of Pavilions I and II offered adequate conditions of detention in terms of access to natural light, ventilation and state of hygiene. Every cell possessed a fully-partitioned sanitary annex equipped with a toilet, shower and wash hand basin as well as a small kitchenette. That said, the ventilation system in the sanitary annex was not functioning and inmates complained that the heating was only turned on for limited periods of time during the day.

At Saluzzo Prison, the new pavilion accommodating inmates under a medium-security regime (including 37 lifers on the first floor) offered good conditions of detention, cells were adequately equipped, spacious, well-lit and ventilated and the sanitary annex was fully partitioned, well equipped (toilet, wash hand basin and shower) and generous in size (measuring some 3 m²). Every section possessed a spacious common room equipped with tables and chairs, table-tennis, snooker and TV.

²² Heating was provided in Italian prisons in accordance with geographic and territorial criteria.

²³ The revised point of Article 10 of the O.P. stipulates that “*courtyards should be adequate in size and design and equipped with shelters against inclement weather*”.

²⁴ It can nonetheless be restricted to two hours by the prison director for “*justified reasons*”.

²⁵ In addition, targeted activities are provided for female prisoners as well as foreigners in terms of re-socialisation and reparative justice.

²⁶ Common rooms in the rest of the establishment possessed a table-tennis and snooker tables.

At Viterbo Prison, the standard double cells in both D1 and D2 Pavilions offered acceptable conditions of detention. Cells were equipped with a bunk bed, table, stools and wardrobes and were adequately lit and ventilated and the sanitary annex fully partitioned. That said, in several sections of the D1 Pavilion, walls were showing signs of wear and tear (signs of mould and often un-plastered) and cells were cold on a particularly windy day and not adequately insulated. Further, the common showers of the same pavilion were damaged (showerheads missing and wooden floor dilapidated) and the walls were heavily impregnated with moisture.

22. All establishments visited offered sufficient living space for inmates in multiple-occupancy cells. The available living space ranged from 4 m² at Milan Opera Prison to 6.5 m² in the new pavilion of Saluzzo Prison. A generous amount of out-of-cell entitlements enforced in the medium-security regime (see paragraph 26) contributed to improving conditions of detention. That said, as mentioned in paragraph 8, in other establishments prisoners were still being provided with 3 to 4 m² of living space in multiple-occupancy cells at the time of the CPT's visit.

23. In the past, the CPT has been often critical of the material deficiencies displayed by outdoor facilities in prison establishments in Italy. The Committee therefore welcomes the fact that the recent amendments to the Prison Law have introduced specific provisions to address this problem (see paragraph 9). However, such ameliorations were yet to materialise. The establishments visited by the CPT's delegation often lacked a shelter against inclement weather (e.g. at Milan Opera Prison), means of rest were insufficient (at Saluzzo, Viterbo and Biella Prisons) and toilets were often malfunctioning (e.g. at Biella, Saluzzo and Viterbo Prisons). In addition, the design of courtyards (surrounded by 4.5 metres-high walls, covered with metal mesh and devoid of decoration and vegetation) did not offer any horizontal view or adequate visual *stimuli*. The Committee fully agrees with the observations made by the "Garante Nazionale" in his recent annual report to the Italian Parliament regarding minimum requirements for outdoor facilities in prison establishments.²⁷

24. Inmates in Italian prisons are normally offered the possibility to prepare for themselves hot beverages and to cook simple meals with food purchased from the prison canteen.²⁸

That said, the delegation received complaints regarding the quality of food provided to inmates at Biella and Saluzzo Prisons in terms of the lack of variety and seasoning, low protein content and dinners consisting only of cold cuts. The delegation was informed that the number of staff working in the kitchen of Saluzzo Prison had recently been reduced (i.e. from 14 to 7 kitchen assistants) which had repercussions on the quality and the variety of the meals. The director had already alerted the central authorities that the facilities and the equipment of the kitchen were inadequate for the prison population accommodated at the establishment. At Pavilion 1 of Milan Opera Prison, meals were being served with extensive delays due to the fact that the lift was out of order. Further, several foreign national prisoners of Muslim religion at Biella and Viterbo Prisons complained that their religious requirement were not adequately taken into account in the provision of food and the inability to buy special food products.

²⁷ See page 60 of the document "Relazione al Parlamento 2019 Garante Nazionale dei diritti delle persone detenute o private della libertà personale".

²⁸ Known in the penitentiary jargon as "angolo cottura", these corners are normally equipped with a "camping" gas cooker and kitchen sink.

25. The CPT recommends that the Italian authorities remedy the deficiencies highlighted above and, in particular ensure that:

- at all prison establishments, the standard on living space enshrined in the national legislation is attained; and that as a minimum, the requirement of 4m² per prisoner in multiple-occupancy cells is respected;
- at the old pavilion of Biella Prison, the cells are refurbished and adequately heated and the common shower facilities repaired and hygiene maintained;
- the common room of Section 1B at Biella Prison is appropriately equipped and the cells kept in acceptable hygienic conditions (if necessary, through the provision of additional cleaning products to inmates);
- at Pavilion 1 of Milan Opera Prison, the in-cell ventilation system in the sanitary annex is repaired and heating is provided for extended periods of time and in accordance with the weather conditions;
- at Pavilions D1 and D2 of Viterbo Prison:
 - o the cells are refurbished and heating is provided for extended periods of time in accordance with the weather conditions;
 - o the common shower facilities are repaired and maintained in a hygienic state, pending the introduction of in-cell showers as a matter of urgency;
- courtyards at all prison establishments visited (as well as at other prison establishments where necessary) comply with the requirements of the national applicable legislation in terms of provision of shelter against inclement weather and appropriate means of rest. Further, steps should be taken to decorate courtyards and provide appropriate visual stimuli (e.g. with vegetation);
- the preparation and variety of food at Saluzzo Prison be improved. This will also require recruiting an adequate number of kitchen workers and the renovation of the kitchen area and its equipment;
- the religious requirements and dietary habits of foreign prisoners be fully taken into account in the provision of food and the supply of food items to be purchased;
- the lift of Pavilion I at Milan Opera Prison be repaired in order to ensure the distribution of food at an adequate temperature.

b. regime

26. The generous eight-hour out-of-cell entitlement in force in the Italian prison system following the *Torreggiani v. Italy* ECHR pilot judgment of 2013 in respect of medium-security prisoners was generally applied in each of the medium-security sections of the prisons visited. In principle, cells would be open from 9h00 to 19h00 almost without interruption (cells would be closed with the “*blindo*” open from 12h00 to 13h00 and 15h00 to 16h00). During the out-of-cell periods, inmates would be twice a day offered two hours of access to a courtyard, and for the remaining time would be allowed to circulate in the corridor of the section and have access to a common room normally equipped with tables, chairs, snooker, TV and a cooking corner. Further, under the “post-*Torreggiani* reform package”, inmates subject to the medium security regime were, in principle, free to circulate within the prison establishment without being accompanied by security staff.²⁹

27. The Italian authorities referred to this regime as dynamic security (“*sorveglianza dinamica*”). However, the officers were not in continuous interaction with prisoners or involved in any offender management programmes; instead, they performed static security duties by way of observing prisoners and unlocking doors as required. There was also a misunderstanding by prison staff unions about the concept of dynamic security as they appeared to attribute the increased levels of violence and increased out-of-cell time to the imposition of “*sorveglianza dinamica*”.

The Committee notes that the Director of the DAP has acknowledged the existence of a confused notion between the concepts of “open cell regime” and “dynamic security” within the penitentiary system and has tasked the Directorate General for Detained Persons and Treatment of the DAP to clarify this issue.³⁰ The development of constructive relations between staff and inmates, based on the notions of dynamic security³¹ and care, would not only help the prison authorities to combat ill-treatment of prisoners by staff or other inmates, but would also enhance control and security and render the work of prison officers more rewarding. Therefore, the time is ripe to develop the role of prison officers as integrated players in the provision of purposeful activities, linked to an individualised sentence plan.

The CPT recommends that the Italian authorities promote the notion of dynamic security among prison staff by organising appropriate in-service training courses which focus in particular on inter-personal skills.

²⁹ At Milan Opera Prison, inmates from Pavilion 2 were provided with an electronic badge in order to grant them free circulation.

³⁰ See in particular the document “*Linee programmatiche del Capo Dipartimento*” of 5 December 2018, GDAP 06/12/2018.381497.U.

³¹ Dynamic security is the development by staff of positive relationships with prisoners based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners (see Rule 51 of the European Prison Rules and paragraph 18.a of the Recommendation Rec (2003) 23 of the Committee of Ministers of the Council of Europe to member states on the management by prison administrations of life sentence and other long-term prisoners).

28. At the time of the CPT's visit around 30 percent of inmates were being offered work in the Italian prison system. The proportion of inmates involved in work varied from prison to prison and reflected the regional disparities in the socio-economic situation in the community.

At Milan Opera Prison, 600 inmates out of 1,312 were being offered a remunerated activity either in one of the existing workshops and production facilities for external co-operatives and contractors (i.e. digitalisation of documents, handicrafts, food production and mechanical repair activities), or in maintenance work funded by the DAP. Further, a total of 1,000 inmates were attending educational courses (from primary to university education), 63 inmates attended vocational courses and, in addition, the offer of cultural and recreational activities was very satisfactory. The CPT's delegation was also positively impressed by the admission school ("*scuola dell'accoglienza*") which consisted of a 30-day admission and evaluation period during which inmates would acquaint themselves with a wide range of aspects of prison life.

At Biella Prison, for a population of 510 inmates only 40 working places were on offer to inmates on a rotational basis for generic tasks (kitchen assistants, cleaners, barbers and maintenance works). There was a plan to open a textile factory for the production of uniforms for prison staff. Meanwhile, five inmates were following vocational courses for the above-mentioned workshop. The offer of educational activities (primary and secondary school), vocational (gardening courses) and sports activities (access to the gym and football pitch twice a week) was sufficient.

At Saluzzo Prison, out of 468 prisoners, 89 were involved in a remunerated activity (of which 50 were funded by the DAP on generic maintenance tasks and 39 by external co-operatives such as a brewery, involving repair of coffee machines and biscuit production). Further, a total of 100 inmates were attending school courses (primary and secondary school). This was enhanced by an acceptable range of recreational and cultural activities (various drama, creative writing and music workshops).

At Viterbo Prison, out of 615 prisoners, 118 were offered work at the time of the CPT's visit (88 in generic tasks within their sections on a rotational basis, and 30 in specific tasks such as carpentry, tailoring and blacksmith workshops). Further, 111 inmates were attending educational courses from the primary to university level (through specific protocols with two academic institutions). A range of vocational, recreational and cultural activities were reaching out to a total of 98 inmates on a regular basis (e.g. gardening, logging, tattooing, chess and guitar).

The CPT's delegation noted that in all establishments visited, inmates were often not remunerated for the exact amount of hours they effectively worked.

The CPT calls upon the Italian authorities to redouble their efforts to improve the programme of activities, including work and vocational training opportunities, for prisoners at Biella, Saluzzo and Viterbo Prisons. Further, the Committee would like to receive clarification from the Italian authorities on the method of calculating working hours for prisoners at the establishments visited.

29. The CPT has in the past expressed its appreciation for the work performed by educators in devising individual treatment plans (“*piani individuali di trattamento*”) for inmates³² and in striving to attain the goals enshrined in Article 27 of the Italian Constitution. Unfortunately, with the exception of Milan Opera Prison, the number of educators was low at the prison establishments visited. At Saluzzo Prison, only two educators were present out of eight budgeted posts, with a similar situation evident at Biella and Viterbo Prisons.³³ As a result, the educators at those prison establishments were entrusted with an average of 120 to 150 inmates (against a national average of around 70 inmates) which precluded almost any treatment activities being developed as the educators were overwhelmed with the mandatory task of drafting observation reports for the multidisciplinary treatment commissions (“*Gruppi di Osservazione e Trattamento*” or G.O.T.) and maintaining correspondence with the relevant supervisory judges. At the outset of the visit, the Director of the DAP informed the delegation that a national competition was underway to recruit more civilian prison staff in order to address these shortcomings.

The CPT recommends that the vacant positions of educators at Biella, Saluzzo and Viterbo Prison be filled as a matter of urgency. Further, it would like to receive information on the number of educators that will be recruited through the above-mentioned national competition as well as the expected date of their effective deployment.

30. The situation of the 28 internees (“*internati*”) subject to a court-imposed security measure for reasons of recidivism and a socially dangerous profile, who were accommodated in Section 1B of Biella Prison, was notably deleterious. Section 1B was officially called a “*Casa di Lavoro*” but in reality consisted of an ordinary prison section in which material conditions were particularly poor and no activities were offered (with the exceptions of four working posts of maintenance on a rotational basis). As a result, internees spent the entire day in their section either in their cells or the empty common room with no purposeful activity or even recreational games on offer. Further, they did not receive any psychological support nor were they proactively followed by an educator. In addition, the open cell regime in place in the section allowed contact between “*internati*” and the ordinary medium security prison population of Section 1A which resulted in episodes of inter-prisoner violence between the two groups. The “*internati*” met by the delegation expressed their frustration with their impoverished regime, which clearly contributed to the frequent number of acts of self-harm, attempted suicide and cases of inter-prisoner violence. By letter received on 10 June 2019, the Italian authorities informed the Committee that a decision had been issued by the “*Provveditore*” of the *Piemonte*, *Val d’Aosta* and *Liguria* Regions to relocate the 28 internees accommodated at Biella Prison to Alessandria Prison where better conditions of detention would be available to them.

³² See in particular the tasks to be fulfilled by educators listed in Article 13, paragraph 4, of the Prison Law.

³³ Four educators present out of seven budgeted posts and four out of eight budgeted posts, respectively.

The CPT has already stated that persons subject to a security measure for preventive detention are in particular need of psychological care and support.³⁴ The achievement of the objective of crime prevention requires a high level of care involving a team of multi-disciplinary staff, intensive work with inmates on an individual basis (via promptly-prepared individualised plans), within a coherent framework for progression towards release; this being a realistic option. The Committee also considers that persons subject to preventive detention orders must be afforded such support and care as part of a genuine attempt to reduce the risk that they will reoffend, thus serving the purpose of crime prevention and making their release possible.

The CPT acknowledges the decision of the “*Provveditore*” of the *Piemonte, Val d’Aosta and Liguria* Regions to transfer the 28 internees accommodated at Biella Prison to Alessandria Prison. In the CPT’s view internees should be offered a set of targeted activities such as public utility work, adequate psychological support, individualised treatment and engagement plans from multidisciplinary staff as well as appropriate material conditions of detention in a less carceral environment. **The CPT would like to receive information from the Italian authorities on the extent to which Alessandria Prison can provide appropriate conditions of detention and support to internees, in light of the above remarks.**

4. Conditions of detention in the high-security regime

31. The detention regime of high-security (“*alta sicurezza*”) inmates who are suspected of or sentenced for criminal offences related to various facets of organised crime is divided into three sub-circuits.³⁵ Under high-security one (AS1) those inmates are placed in respect of whom the “41-bis” regime has been revoked; high-security two (AS2) encompasses prisoners suspected or convicted of crimes related to international terrorism or destabilisation of the democratic order; high-security three (AS3) includes those inmates who are suspected or convicted of organised crime, kidnapping, extortion and drug trafficking. In the course of the 2019 ad hoc visit to Italy, the delegation visited the high-security sections of Milan Opera (267 inmates at the time of the visit)³⁶ and Saluzzo Prisons (accommodating 196 AS3 inmates).³⁷

³⁴ In the case of *M. v. Germany*, where the ECtHR has found a violation of Articles 5 and 7 of the Convention, the Court held that, “it is striking that persons subject to preventive detention are detained in ordinary prisons, albeit in separate wings. Minor alterations to the detention regime compared to that of an ordinary prisoner serving his sentence, including privileges such as detainees’ right to wear their own clothes and to further equip their more comfortable prison cells, cannot mask the fact that there is no substantial difference between the execution of a prison sentence and that of a preventive detention order. [...]”.

³⁵ DAP Circular No. 3619/6069 of 21 April 2009.

³⁶ Respectively: 53 AS1 and 214 AS3 prisoners.

³⁷ There were a total of 9,186 inmates under the high-security regime at the national level as of March 2019.

a. material conditions

32. At Milan Opera Prison, inmates in high security were accommodated in the same standard cells as those described above (see paragraph 21). In principle, inmates belonging to the AS1 sub-circuit were accommodated in single cells while AS3 prisoners were held in double-occupancy cells of the same size. That said, access to natural light was limited and inmates complained about the malfunctioning of the ventilation system in the sanitary annex (which included a cooking corner), the absence of hot water in cells, inadequate heating in winter and the fact that food was distributed cold due to the persistent malfunctioning of the lift.

At Saluzzo Prison, AS3 inmates had recently been transferred to the old pavilion which was still in the process of being refurbished and which did not provide the same standard of conditions as that in the new pavilion. Consequently, the prisoners opposed the transfer, which had led to an increase in incidents where force had to be used. The delegation found that the transition process had been carried out precipitously as the cells displayed deficiencies such as limited access to natural light, an absence of ventilation in the sanitary annex, persistent problems with the heating system and hot water supply in the common showers, and excessive delays in accessing the prison laundry due to its structural problems.³⁸ In addition, the common room remained poorly equipped with no television or recreational games available.

The CPT recommends that the deficiencies in the material conditions in the high-security sections of Milan Opera and Saluzzo Prisons be remedied, in light of the above remarks.

b. regime and placement

33. The “*alta sicurezza*” is considered as an administrative tool (“*circuito*”) to separate inmates with a specific criminal profile from the ordinary inmate population. There are no specific rules to regulate the regime. In practice, with the exception of visiting and telephone entitlements (see paragraph 79), the regime applied to high-security prisoners did not differ substantially from that of medium-security in the sections visited at Milan Opera and Saluzzo Prisons. Inmates were granted access to a dedicated courtyard for at least four hours per day and were allowed to stay out of their cells for eight hours per day (either circulating in the section corridor or in a common room). The delegation was able to ascertain that every inmate subject to the high-security regime was provided with a detailed, reasoned and structured individual treatment plan. That said, only a limited number of working places were on offer for this category of inmates and access to vocational or educational courses and artistic workshops was more restricted than in the medium security regime.³⁹ Access to educators was only upon request and subject to long delays.

³⁸ Inmates had staged several collective protests in relation to the absence of hot water in the showers. The issue of the inadequate equipment of the prison laundry to address the needs of the prison population had already been signalled by the prison director to the “*Provveditorato*”.

³⁹ E.g. at Milan Opera and Saluzzo Prisons, high-security inmates were only offered basic maintenance work in their sections on a rotational basis.

The CPT calls upon the Italian authorities to redouble their efforts to improve the programme of activities, including work and vocational training opportunities, for high-security prisoners at Milan Opera and Saluzzo Prisons and, where appropriate, at other prisons in Italy.

34. The placement and classification of high-security inmates is, in principle, decided by the DAP based upon their criminal profile and the information provided by the investigative authorities including their criminal gang affiliation. A high-security prisoner may file a request to be declassified to the director of the prison establishment who may decide, based on the assessment of the G.O.T., to address such a request to the DAP for its opinion. The DAP's decision is also based on information provided by investigative and judicial authorities on the prominence of the inmate within the criminal organisation and the current activity associated with the said organisation.⁴⁰ Decisions by a prison director or the DAP are considered final and cannot be appealed to a supervisory judge. The decisions examined by the CPT's delegation appeared not to be reasoned and did not take into account the behaviour or treatment path of the inmate in question. The reason for rejection simply stated that it was based upon information from the investigative judicial authorities regarding on-going criminal gang activities.

35. The CPT acknowledges that in every country there will be a certain number of prisoners considered to present a particularly high-security risk and hence to require special conditions of detention. The perceived high-security risk of such prisoners may result from the nature of the offences they have committed, the manner in which they react to the constraints of life in prison, or their psychological/psycho-social profile. This group of prisoners will (or at least should, if the classification system is operating satisfactorily) represent a very small proportion of the overall prison population. However, it is a group that is of particular concern to the CPT.

The Committee is not fully convinced by the argument of the Italian authorities that the high-security regime does not imply a different set of regulations, as *de facto* both in terms of conditions of detention, access to treatment activities as well as contact with the outside world (see paragraph 79) the situation of high-security prisoners differs from that of the mainstream population (i.e. medium-security).

In the CPT's view, reviews of placement should be objective and meaningful, and should form part of a positive process designed to address the prisoner's problems and permit his (re)integration into the mainstream prison population. In addition, it is essential for the management of prisoners whose personality or behaviour is likely to mean that they will spend considerable periods of time in conditions of high security or control, that decisions made about their management are not only fair but can be seen to be fair. The absence of such an approach is likely to result in an increased sense of grievance and descent into a vortex of deteriorating behaviour.

⁴⁰ I.e. convictions, repentance and collaboration with the judicial authorities.

Therefore, the procedure for allocating a prisoner to high-security status should be refined to ensure that only those who pose an on-going high risk if accommodated in the mainstream of the prison population are accorded this status. Reviews of high-security status should specify clearly what measures should be implemented to assist a prisoner to progress out of high security and they should be based upon clear criteria for assessing any progress. Prisoners should be fully involved in all review processes.

The CPT recommends that the Italian authorities review the classification and declassification criteria of high-security prisoners accordingly and establish a separate high-security regime in law with all the appropriate legal safeguards, including the right to appeal to a supervisory judge and periodic *ex officio* reviews of their placement.

5. Various forms of isolation and segregation

a. introduction

36. In the course of the visit, the delegation looked into the various measures of isolation and segregation of prisoners in the Italian prison system. These measures are in principle enforced in the segregation units of every prison.⁴¹

The CPT wishes to recall that a solitary confinement-type regime, which includes the various security measures such as the regime of special surveillance or a court-ordered full isolation, can have an extremely damaging effect on the mental, somatic and social health of those concerned, and can, in certain circumstances, lead to inhuman and degrading treatment. Therefore, it should only be imposed in exceptional cases and as a last resort, and for the shortest possible period of time.

b. court-imposed solitary confinement under Article 72 of the CC (*“isolamento diurno”*)

37. The CPT has, in the past, expressed its misgivings that a criminal court, pursuant to the provisions of Article 72 of the Penal Code, may order a prisoner responsible for the commission of multiple crimes which are punishable with life imprisonment, to serve part of the sentence in solitary confinement (*“isolamento diurno”*) for periods ranging from two months to three years (see also paragraph 54 on the prolonged periods of *“isolamento diurno”* under the “41-bis” regime).⁴² At the time of the 2019 visit, there were 272 life sentenced prisoners who were serving a period of court-imposed solitary confinement as part of their sentence.

⁴¹ These sections are normally known as *“reparto nuovi giunti e isolamento”* and may also accommodate inmates under a disciplinary sanction of solitary confinement.

⁴² In paragraph 77 of the 25th report on its activities (CPT/Inf (2016) 10), the CPT has stressed that *“the imposition of the detention regime of life-sentenced prisoners should lie with the prison authorities and always be based on an individual assessment of the prisoner’s situation, and not be the automatic result of the type of sentence imposed (i.e. the sentencing judge should not determine the regime)”*.

The delegation met eight inmates who were subject to the “*isolamento diurno*” measure at Milan Opera, Saluzzo and Viterbo Prisons, three of whom were subject to the “41-bis” regime, while the others were held in their cells on the main accommodation wings. The regime consisted of one hour of outdoor exercise per day alone, with no possibility of socialising with other inmates. That said, custodial staff often tolerated conversations with other prisoners from the same section when the “*blindo*” of their cell was open. Access to work and educational activities was possible as long as there was no contact with other prisoners. Further, they could receive visits from educators and psychologists upon request. The delegation noted that the prison directors whom they met with (in particular at Milan Opera Prison) were requesting the interruption of the measure to the supervisory judge if a prisoner showed signs of not being able to cope with the regime, and that such requests were in principle granted. Nevertheless, the delegation met a “41-bis” prisoner at Milan Opera Prison who had previously served without interruption an accessory punishment of court-imposed solitary confinement of six years.⁴³

38. Further, the delegation once again met inmates who had been required to interrupt a successful treatment and re-socialisation path in the mainstream population after a period of many years to serve a court-imposed period of “*isolamento diurno*”. For example, one inmate met at Viterbo Prison had been considered eligible to work in the prison laundry before his final sentence imposing a period of “*isolamento diurno*”. At Milan Opera Prison, there was a waiting list of 17 prisoners who were waiting to serve periods of “*isolamento diurno*” (ranging from four months to three years). Two of the persons on the waiting list were already working outside the prison under Article 21 of the Prison Law. The prison management was delaying the measure until the prisoners had completed their educational courses or their work contracts. Prison directors in the various establishments noted the disruptive nature of the measure.

It might be useful in this context to recall the generally accepted principle that offenders are sent to prison as a punishment, not to receive punishment. Imprisonment is a punishment in its own right and potentially harmful aggravations of a prison sentence as part of the punishment are not acceptable. Given the potentially harmful effects of long-term isolation for the prisoners concerned, the principle of proportionality requires that any solitary confinement-type regime is only imposed on the basis of an individual risk assessment and only for the shortest possible time. The prolonged and punitive measure of “*isolamento diurno*” observed by the delegation is, in the CPT’s view, an anachronistic measure which does not have any penological justification.

The CPT calls upon the Italian authorities to abolish without further delay the measure of court-imposed solitary confinement under Article 72 of the Criminal Code known as “*isolamento diurno*”.

⁴³ I.e. from 9 April 2008 to 16 April 2014.

c. regime of special surveillance (“14-bis” regime)

39. Pursuant to Article 14-bis of the Prison Law, inmates who are considered likely to endanger the good order of a prison may be placed under a special surveillance regime (“*sorveglianza particolare*”). Such persons are held in the single cells of a segregation unit for a period of up to six months which may be extended for one or more periods of an additional three months. The decision to apply the regime is issued by the DAP upon a motivated opinion issued by the disciplinary commission of the relevant prison establishment.⁴⁴ The DAP issues a reasoned decision stating the minimum duration of the measure as well as the specific restrictions which are to be imposed on the inmate (e.g. deprivation of treatment-related activities, TV and gas cooker). The decision can be appealed to the competent supervisory judge.

At the time of the 2019 visit, a total of 20 inmates were subject to such a regime throughout the prison system for periods ranging from 2 to 15 months. The delegation met four such prisoners at Milan Opera and one at Viterbo Prison, all of whom were accommodated in individual cells in the segregation unit. Contact with other inmates was not permitted and no treatment activities were provided, and they were only allowed a portable radio and some reading material in the cell. Further, the inmates met stated that the oppressive design of the courtyard, as described above, resulted in them not wanting to go outside every day. One inmate who had spent 14 months in such conditions at Milan Opera Prison for having twice attempted to escape during court hearings, was sluggish in his speech and told the delegation that he was feeling confused due to the prolonged social isolation and lack of *stimuli*.

The delegation also notes that certain syndicates of the penitentiary police had openly called for a more extensive resort to the regime of special surveillance in order to address the recent increase of physical aggression by inmates against staff and the DAP was in fact considering such a possibility.⁴⁵

The CPT acknowledges that the regime of special surveillance is infrequently applied and that it is surrounded by adequate legal safeguards. Nevertheless, the Committee has serious misgivings regarding its practical implementation, notably the lack of social contact and the harsh restrictions imposed on inmates (i.e. no TV, no treatment activities, etc.) and the lack of proactive and regular psychological support. Moreover, the potentially indefinite duration of such a measure means that these inmates are subjected to prolonged periods of solitary confinement.

⁴⁴ When issuing such an opinion the commission is integrated by two additional experts.

⁴⁵ See in particular the document of the DAP “*Linee programmatiche del Capo Dipartimento*” of 5 December 2018, GDAP 06/12/2018.381497.U.

40. **Given the potentially harmful effects of solitary confinement, the CPT recommends that the Italian authorities take the necessary steps to ensure that prisoners subject to solitary confinement under the so-called “14-bis” regime:**

- **benefit from a structured programme of purposeful and preferably out-of-cell activities;**
- **are provided – on a daily basis – with meaningful human contact. The aim should be that the prisoners concerned benefit from such contact for at least two hours every day and preferably more.**

The longer the solitary confinement continues, the more resources should be made available to attempt to (re)integrate the prisoner into the main prison community.

d. other forms of segregation of inmates

41. Article 32 of the Prison Regulations provides for the separation and assignment to special sections of those prisoners who display particularly challenging behaviour.⁴⁶ The recent increase in critical events recorded by the DAP has prompted the Italian authorities to regroup inmates who have disturbed the good order of a prison and to place them in a separate section of the prison until they can be re-integrated into the mainstream prison population.⁴⁷ Their placement should be reviewed every six months by the prison management.

In the course of the 2019 visit, the delegation visited one specific section at Milan Opera Prison (i.e. Section I 3 C of Pavilion I) which was accommodating 52 inmates separated under Article 32 of the Prison Regulations. In terms of conditions of detention, the section did not differ from the rest of the establishment. The regime in force offered five hours per day of outdoor exercise and inmates were granted access to educational and vocational courses and working activities on general maintenance work, as well as the possibility to go to the gym and indoor football field.

However, the procedures regulating their initial placement and review remained unclear to the CPT’s delegation, as the formal decision on the placement was missing in the reviewed files. Further, the re-evaluation of placement was often not in evidence in the files. On the other hand, two of the inmates met by the delegation seemed to have been evaluated on a monthly basis and were found to be “*calm and co-operative*”; nevertheless, they remained placed in this section almost one and a half years after their initial, non-violent infraction (possession of drugs). Several inmates with whom the delegation spoke were frustrated by the fact that despite their good behaviour and positive treatment path there appeared to be no prospect for them to re-integrate into a mainstream accommodation section in the near future.

⁴⁶ Article 32 of the Prison Regulations stipulates as follows: “*Inmates and internees who display a particularly challenging behaviour shall be assigned to specific establishments and sections for the prevention of possible acts of intimidation and inter-prisoner violence. Further, specific sections may be created for that purpose but the placement of an inmate must be subject to individual regular reviews in order to assess the persistence of the reasons of his/her separation from the mainstream population.*”

⁴⁷ See in particular the DAP Circular on “*Circuiti detentivi*” No. 0357380 of 13 October 2014.

42. At the time of the visit, eight detained persons (six inmates and two interneess) were accommodated in the segregation unit of Biella Prison under a separation measure issued by the prison director (i.e. “*divieto di contatti*”).⁴⁸ The persons in question told the delegation that they had requested the separation measure as they felt unsafe in the main accommodation blocks. Two of them (one inmate and one interneess) suffered from a mental health disorder and were the object of a security measure of mandatory psychiatric treatment in a “Residence for the Execution of Security Measures” (“*Residenza per l’esecuzione delle misure di sicurezza*” – REMS). However, due to a lack of available places in the REMS they remained segregated in prison. The mentally ill inmate had been subject to a regime akin to solitary confinement in the segregation unit for more than two years and, not surprisingly, he appeared confused and disorientated at the time when he met the delegation.

The regime consisted of two hours of daily access to a courtyard, which most inmates declined due to the poor material conditions, and occasionally some work such as cleaning and rubbish collection.

43. At the infirmary of Biella Prison, the delegation met a transgender interneess who was accommodated in separate single-occupancy cells as a form of protection from the rest of the prison population. The transgender person was subject to a security measure for recidivism and a socially dangerous profile and had been accommodated for more than three months in conditions akin to solitary confinement. Her request to be transferred to the dedicated transgender section in the nearby Ivrea Prison had been rejected due to her legal status. She was emotionally fragile requiring close attention and care, borne out by the fact that she had attempted to commit suicide on two occasions since the beginning of 2019.

Finally, another interneess diagnosed with a bipolar disorder who was met by the delegation at Biella Prison had been in (voluntary) isolation for fourteen months in a cell of Section I B. The interneess in question had access to one hour of outdoor exercise per day which he took alone and was separated from the rest of the prison population with whom he was occasionally communicating through a hatch. He was receiving psychological assistance upon request as well as regular visits by a psychiatrist.

44. The Committee wishes to stress that the imposition of a segregation measure of protection on an inmate should be reviewed on a regular basis by the prison management while the possibility to appeal the measure to a judicial authority should exist. Further, the lack of a regime is not an effective response to disruptive behaviour in prison nor does it help inmates to prepare for release or reduce the risk of re-offending post release. As outlined above, long periods of solitary confinement can seriously affect mental health and greatly reduce the possibility of re-socialisation.

⁴⁸ The prison management of Biella Prison told the delegation that such individual measures had been issued *ad personam* and were not related to Article 32 of the Prison Regulations, and no official decision on such placement could be found in their files. However, in their response to the initial findings, the Italian authorities indicated that these individuals had indeed been segregated based on Article 32 of the Prison Regulations.

Therefore, the objective should be to seek to compensate for these effects in a positive and proactive way. It is crucial that prisoners held in special security conditions are provided with tailored activity programmes comprising purposeful activities of a varied nature (including work, education, association and targeted rehabilitation programmes). This programme should be drawn up and reviewed on the basis of an individualised needs/risk assessment by a multi-disciplinary team (involving, for example, a psychologist and an educator), in consultation with the inmates concerned. Interaction/association between prisoners should be the norm; conditions akin to solitary confinement should only be used when absolutely unavoidable in order to deal with a person who is assessed to pose a danger to others and for the shortest period necessary.

The CPT recommends that the Italian authorities put in place the necessary safeguards for all prisoners separated from the mainstream prison population under Article 32 of the Prison Regulations. The Committee also recommends that the Italian authorities carry out a review of all the *ad personam* segregation measures in force at Biella Prison, in light of the above remarks. Further, measures to expedite the transfer of mentally ill prisoners must be put in place, for example by the adoption of a national standard requiring such transfers to take place within a period of 14 days (see also paragraph 67).

e. material conditions

45. At Milan Opera Prison, the material conditions of detention in the 23-cell segregation unit were the same as those found in the standard cells of the establishment and could be considered adequate (see paragraph 21).

At Biella Prison, the 17-cell segregation unit located on the ground floor of the old pavilion offered poor conditions of detention: the artificial lighting in the sanitary annexes was malfunctioning, walls were covered in stains, possibly of body fluids, high humidity levels were present, cells were dirty with rotting rubbish evident on the window sills. Some of the inmates met by the delegation had spent months and even as long as 2.5 years in these cells under a segregation measure (see paragraph 66). This is totally unacceptable.

At Saluzzo Prison, the 18-cell segregation unit consisted of three sub-sections of six cells allocated respectively for the accommodation of high, medium-security prisoners and transiting inmates. The six isolation cells in use for the inmates under a high-security regime had recently been renovated and offered adequate conditions similar to those observed in the old pavilion of the establishment (see paragraph 32). That said, the remaining 12 cells⁴⁹ were in an advanced state of dilapidation (damaged toilets, wash hand basins and furniture, and broken or completely missing window glass, missing beds and mattresses and malfunctioning lights) and appalling hygienic conditions (presence of rubbish and rotten food, walls covered in vomit and numerous spots of dark liquid on the floor and walls) which rendered them clearly unfit for human habitation. At the end of the visit, the prison director assured the delegation that they would be taken out of use immediately pending their refurbishment.

⁴⁹ One of the cells was still sealed by the judicial authorities after an inmate committed suicide in it in the course of July 2018 (see paragraph 69).

The 24 cells of the segregation unit of Viterbo Prison, which had the same design as cells in the rest of D1 Pavilion (see paragraph 21), were humid with poor access to natural light and the artificial lighting was malfunctioning. At the time of the visit, common rooms were being created to improve the regime available for prisoners in transit who were accommodated on the unit.

46. The courtyards attached to the segregation units all the establishments visited were in a state of dilapidation and filthy (damaged toilets and piles of uncollected rubbish). Further, the yards were encircled by high concrete walls and a metal mesh cover and were long and narrow with no means of rest. Several inmates who had been in segregation units for extended periods were refusing to go to the courtyards as they considered them as degrading.

47. **The CPT recommends that the conditions of detention within the segregation units at Biella, Saluzzo and Viterbo Prisons be improved in light of the above remarks.**

The CPT would also like to receive confirmation that the 12 cells at Saluzzo Prison have been taken out of service pending their refurbishment.

Further, the courtyards attached to the isolation departments of the visited establishments should comply with the same requirement outlined in paragraph 25.

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

48. The special detention regime under Article “41-bis” of the Prison Law applies to prisoners who have been convicted for or are suspected of having committed an offence in connection with mafia-type, terrorist or subversive organisations, and who are considered to maintain links with such organisations.⁵⁰ The special regime consists of the segregation in small groups of up to a maximum of four persons, who can associate together for two hours per day (generally one hour of outdoor exercise and one hour in a community room). Serious limitations are imposed on prisoners’ contact with the outside world: one one-hour visit per month with a family member, under closed conditions and with audio surveillance and video-recording or, alternatively, a ten-minute telephone call per month if a visit cannot take place during the same period. Placement in the regime is based upon an individual decree of the Minister of Justice for an initial period of four years, subject to further reviews every two years, which can be appealed to the Rome Supervisory Court.⁵¹

⁵⁰ This special regime was introduced in 1992 as a temporary emergency measure by which the Minister of Justice had been empowered to suspend, on his/her own initiative or at the request of the Minister of the Interior, the application of the prison rules to sentenced and specially selected remand prisoners. With the adoption of Law No. 279/2002, the temporary provisions governing the “41-bis” regime were given a permanent character and the legal foundations for its renewal and extension were laid down. Subsequently, Law 15/07/2009 No. 15 stipulated more stringent restrictions for persons subject to the “41-bis” regime.

⁵¹ The decree in question is based upon information provided by the competent investigative authorities such as the anti-mafia investigation district office (“*Direzione Distrettuale Antimafia*” or DDA) as well as law enforcement agencies on the profile and status of the inmate in question within a given criminal gang.

49. On 4 February 2019 the “*Garante Nazionale*” published a thematic report on its visits to all “41-bis” detention units in the country between 2016 and 2018 which, in sum, came to similar conclusions as those reached by the CPT in the past. Further, the thematic report in question highlighted the necessity for the Italian authorities to comply with the relevant decisions of the Constitutional Court on the “41-bis” regime especially in respect of the requirement that such a regime “cannot consist of measures which are different from those which are relevant and proportionate to the requirement of public order and security at the heart of the ministerial decree (imposing the regime) and....cannot in any way violate the prohibition of inhuman and degrading treatment nor undermine the rehabilitative purpose of the sentence”.⁵²

50. In the course of the 2019 visit, the CPT’s delegation examined the situation of prisoners held in the “41-bis” detention units at Milan Opera and Viterbo Prisons, which were accommodating 94 and 47 inmates, respectively. A total of 748 prisoners were subject to the “41-bis” regime in Italy at the time of the 2019 visit.

51. The material conditions of detention at Milan Opera Prison for the twelve “41-bis” prisoners accommodated at the “*Servizio d’Assistenza Intensiva*” (SAI) were satisfactory. Cells were suitably equipped (bed, wardrobe, TV, table and chair), spacious, well-lit and ventilated. However, the 91 cells of the L-shaped “41-bis” unit which were accommodating 82 prisoners, displayed several deficiencies, notably signs of mould and moisture on the cell walls from rain, leaking showers and wash hand basins in the sanitary annex, lack of access to hot water due to the boiler system malfunctioning, and the exercise bike in the community room being damaged. Further, an opaque Plexiglas screen was placed in front of the window restricting access to natural light and preventing prisoners from looking outside. The ten courtyards were equipped with a shelter, toilet and benches but were covered with a metal mesh and offered only a restricted vertical view.

At Viterbo Prison, the 50 cells (each measuring 10 m²) in the separate 41-bis detention unit were suitably equipped (bed, table and chairs, wardrobe, TV) and had a fully partitioned sanitary annex (sink and toilet). Ventilation was sufficient in cells but access to natural light remained impaired by the presence of metal shutters placed in front of the windows.⁵³ However, the ventilation system in the sanitary annexes was not functioning and the common shower facilities were damaged, with four out of the six showerheads missing and, in the two community rooms, the artificial lighting was malfunctioning, and several chairs were broken. The six courtyards were similar to those described above at Milan Opera Prison.

⁵² See the Constitutional Court decision No. 376 of 1997.

⁵³ Despite the removal of five of the top slats of the metal shutters placed in front of the windows.

52. In 2017, the DAP had issued a circular to ensure the more homogeneous application of the “41-bis” regime throughout the country to address the various interpretations of the regime applied by the competent supervisory judges and prison directors.⁵⁴ At the time of the 2019 visit, “41-bis” inmates at both establishments visited were provided with two hours of out-of-cell time each day which was spent in the courtyard and in the community room (“*saletta*”) or alternatively in a recreational painting room (“*sala pittura*”)⁵⁵ or a gym (“*palestra*”). Some inmates benefitted from an additional period of one hour out-of-cell time due to the less rigid interpretation of the legislation by the competent supervisory judge.⁵⁶ Inmates at both establishments spent the rest of the day in their cells, mainly watching TV, cooking,⁵⁷ reading or listening to the radio. The “*blindo*” of the cell remained open during the day. At Milan Opera Prison, two cleaners’ posts were available on a rotational basis.⁵⁸

Specific criteria govern the composition of each social group (of up to four prisoners),⁵⁹ which the prison management at both establishments was struggling to observe. Therefore, groups each consisting of three members had to be formed, and as many of the prisoners were older, they rarely took part in any outdoor activity, thus limiting further the actual size of the social groups.

With the exception of some prisoners enrolled in distance learning programmes, no purposeful activity was on offer to “41-bis” prisoners. Contacts with the prison educators were extremely sporadic at Milan Opera Prison or non-existent at Viterbo Prison. Indeed, the prison directors at these prisons both mentioned a “*suspension of treatment*” when referring to this category of prisoners.

53. Visits and telephone calls with family members and lawyers took place in dedicated areas at the two establishments, in rooms equipped with a glass screen and an intercom. Inmates were allowed to meet their children or grandchildren below the age of 12 for ten minutes under open conditions once a month. Personal searches of inmates were mainly performed with a metal detector and only exceptionally would a progressive strip-search be performed based on a security assessment. In the CPT’s view, these entitlements could be increased without jeopardizing legitimate security considerations.

⁵⁴ See the DAP Circular 3676/6126 of 2 October 2017.

⁵⁵ Only at Viterbo Prison.

⁵⁶ At Viterbo Prison, two supervisory judges were responsible for processing complaints by “41-bis” prisoners. Their positions diverged over the interpretation of the legislation as over to whether the hour spent in the common room should be subtracted from the two hours of outdoor entitlement. Consequently, about half of the inmates in this section were granted an additional hour of out-of-cell time, while the other half were granted only the minimum of two hours.

⁵⁷ A recent decision of the Constitutional Court had granted the possibility to “41-bis” prisoners to cook in their cells. Previously they were only allowed to prepare hot beverages and re-heat precooked meals.

⁵⁸ At Viterbo Prison, the ordinary cleaning and maintenance of the “41-bis” detention unit was ensured by ordinary inmates.

⁵⁹ These relate in particular to the geographic origin of an inmate in order to ensure that a social group is composed by inmates affiliated to different criminal organisations but also to the hierarchical status of an inmate within a given organisation and his/her potential for intimidation as well as issues of incompatibility linked to their prison life.

54. Those prisoners for whom the authorities intended to ensure an “*absolute impossibility*”⁶⁰ of communicating with other “41-bis” prisoners were held in a separate sub-section (“*area riservata*”) and restricted to a social group with only one other person.⁶¹ At the time of the CPT’s visit approximately 50 inmates were accommodated in an “*area riservata*” at the national level.

The CPT’s delegation visited three “*aree riservate*” at Milan Opera Prison and one at Viterbo Prison.⁶² With the exception of the “*area riservata*” of the SAI, where conditions of detention were adequate, the remaining two “*aree riservate*” at the “41-bis” unit at Milan Opera Prison and the one at Viterbo Prison were notably oppressive. Access to natural light was minimal due to three or four metal grilles of various designs placed in front of the windows, and any privacy was compromised by the presence of CCTV in the cell and sanitary annex in addition to observation holes (both into the cell and sanitary annex). The common room was small and poorly equipped, and the courtyards concrete boxes.

Placement in the “*area riservata*” is based on an assessment by the DAP and justified under Article 32 of the Prison Regulations which prisoners cannot challenge (see also paragraph 41). One inmate accommodated in the “*area riservata rossa*” of Milan Opera Prison was being detained alone upon his request.⁶³ His personal file contained a recording from the prison protocol office stating his wish to be accommodated alone. That said, the prison staff could not provide the delegation with the written statement of the inmate in question concerning his request to be accommodated alone in an “*area riservata*”. Further, the second person designated to join an “*area riservata*” was chosen from among the ordinary “41-bis” prisoners by decision of the DAP without the prisoner being consulted or having the possibility to object. Given the implications on the quality of his detention conditions, such a placement should be on a voluntary basis.

The CPT recommends that the placement of any prisoner in an “*area riservata*” should be limited in time and subject to monthly reviews. Further, whenever Article 32 of the Prison Regulations is applied to confine “41-bis” prisoners in social groups of two under harsher conditions in the so-called “*aree riservate*”, the prisoners concerned should have the right to challenge the measure before the competent supervisory court. The choice of the second “ordinary” inmate to complete an “*area riservata*” should be made exclusively on a voluntary basis. Further, steps should be taken to ensure that prisoners subject to CCTV surveillance are guaranteed reasonable privacy when using the toilet, washbasin and shower through, for example, the pixilation of the toilet area on the CCTV monitor screen being pixelated.

⁶⁰ See the response of the DAP to the February 2019 thematic report of the “*Garante Nazionale*” available at <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/65a6bd77ab4c90f8fc6ef8c80e256a05.pdf>.

⁶¹ Normally, the social group consisted of a prominent member of a criminal organisation and an ordinary “41-bis” prisoner selected by the DAP.

⁶² This “*area riservata*” accommodated two prisoners until the week prior to the CPT’s visit when they had been transferred to Sassari Prison.

⁶³ The inmate had told the delegation that he did not want to cause undue suffering to another inmate by forcing him to join a dual sociality group. According to his personal file he had been accommodated in an “*area riservata*” continuously since 1992 during which time he had only enjoyed the company of a second inmate for a two-year interval of time.

55. A detailed examination of the decisions taken by the Minister of Justice initiating or renewing the application of the “41-bis” regime⁶⁴ showed that renewal was automatic unless the prisoner could prove he had severed all contacts with the relevant criminal organisation. Therefore, the reasoning of the relevant renewal decrees contained double-negative formulations, with a certain automatism and redundancy such as: “...it does not appear that the inmate is not in a position to maintain contacts with the members of his criminal organisation who are still at large”.

The CPT recommends that the renewal of “41-bis” applications be based on an individual risk assessment that provides objective reasons for the continuation of the measure and not merely an absence of information to show that the person in question is no longer linked to a particular organisation. Further, each time an inmate is subject to a renewal or first-time imposition of the “41-bis” regime, he/she should be given the possibility to be heard in person by the competent ministerial authority (possibly through a video-conference system).

56. The provision of health-care to “41-bis” prisoners at both establishments was adequate in terms of access to a doctor (including their personal doctors) and transfer to external hospital facilities for diagnostic and therapeutic purposes. That said, the confidentiality of medical examinations was not respected and one or more G.O.M. officers were systematically present in the medical room during the examination of inmates, which contravenes Article 23 of the 2017 Instruction stipulating that custodial staff should safeguard the privacy of medical examinations of “41-bis” inmates.

The delegation met at least two “41-bis” inmates affected by serious mental health disorders accommodated at the SAI of Milan Opera Prison and at Viterbo Prison. The first one displayed delusions and disorganised speech and maintained a poor state of personal hygiene. The second prisoner was diagnosed with a bipolar disorder and showed clear signs of depression and emotional instability and expressed difficulties in coping with such a harsh regime. Further, a terminally ill prisoner, accommodated at the “*area riservata*” of the SAI of Milan Opera Prison, was refusing treatment for his lung cancer and his request for compassionate release had been rejected by the competent supervisory court in November 2018. **The CPT would like to receive information from the Italian authorities on their assessment of the capacity of the above-mentioned inmates to prove that they no longer maintain effective control of their respective criminal gangs (i.e. whether it is necessary for them to continue to be held in “41-bis” rather than to be held in a secure environment more appropriate to their needs).**

⁶⁴ The criteria upon which the renewal of the “41-bis” decree is assessed refer to: 1) the criminal profile of the prisoner; 2) his/her position within the hierarchical status in the respective criminal organisation; 3) the on-going activity of the criminal organisation; 4) any development of a judicial and investigative relevance not previously known by the authorities; 5) the conduct of the prisoner’s treatment path and 6) the socio-economic status of his family members.

57. **The CPT calls upon the Italian authorities to engage in a serious reflection on the current configuration and execution of the “41-bis” detention regime throughout the prison system, also taking into consideration Article 27, paragraph 3, of the Italian Constitution.**⁶⁵ The Committee has already expressed its misgivings about the fact that the serious limitations of the regime and contact with the outside world pose a threat to the subtle balance between the fight against organised crime and the preservation of a tenuous sense of the concept of rehabilitation. The findings of the 2019 ad hoc visit, including the serious ill-treatment allegations of a “41-bis” inmate, the suspension of treatment of prisoners, and persistent material deficiencies and breach of privacy, the forced dual sociality groups and the automatism in the prolongation of the measure for decades indicate the necessity for such a reflection.

In order to render a more humane aspect to this regime, **the Committee recommends that steps be taken to ensure that all prisoners subjected to the “41-bis” regime are:**

- **provided with a wider range of purposeful activities and able to spend at least four hours per day outside their cells together with the other inmates of the same social group;**
- **granted increased visit entitlements per month as well as the possibility to accumulate visit entitlements in case of non-use;**
- **allowed to make at least one telephone call every month, irrespective of whether they receive a visit during the same month.**

Further, the Italian authorities should ensure that:

- **material deficiencies at the “41-bis” detention unit of Milan Opera Prison are remedied through the removal of the opaque Plexiglas layers on windows, the elimination of water infiltration, the painting of cells with anti-mould paint and repair of the boiler system, as well as the exercise bikes;**
- **material deficiencies at the “41-bis” detention unit of Viterbo Prison is remedied through the removal of the metal slats in front of windows, the repair of both damaged equipment (i.e. chairs) and artificial lighting in common rooms. Further, the recently renovated shower room should be kept in an adequate state of repair;**
- **the courtyards at the “41-bis” detention units of Milan Opera and Viterbo Prisons be rendered more pleasant and welcoming through adequate visual stimuli (e.g. paint decoration) and the metal grilles covering them be removed;**
- **medical examinations of “41-bis” prisoners are conducted confidentially in accordance with the recommendation set out in paragraph 75.**

⁶⁵ Article 27, paragraph 3, reads as follows: “Punishments may not be inhuman and shall aim at re-educating the convicted” (“*Le pene non possono consistere in trattamenti contrari al senso di umanità e devono tendere alla rieducazione del condannato*”).

7. Health-care services

a. introduction

58. The Prison Law reform further consolidates the transfer of responsibility for prison health-care to the “*Aziende Sanitarie Locali*” (“ASLs”), the regional entities responsible for providing health-care services to the general population.⁶⁶ Article 11 of the Prison Law now stipulates more stringent criteria for the medical examination of inmates upon admission, the right of inmates to be visited and treated by a doctor of their choice at their own expense, the exclusion of health-care staff from disciplinary commissions and a more prompt transfer of inmates to external hospital facilities. That said, the reform did not endorse important elements included in its draft proposal which in the CPT’s view could have enhanced the quality of health-care provided and the prevention of ill-treatment.⁶⁷

During the visit the delegation visited the SAI of Milan Opera Prison which was a facility providing enhanced clinical attention for inmates requiring specialised care.⁶⁸ The three-storey building accommodated 98 inmates (“41-bis”, AS and medium-security inmates were accommodated on different floors). The prison establishments of Biella, Saluzzo and Viterbo each had a dedicated infirmary with a number of cells.⁶⁹

b. health-care facilities

59. The SAI of Milan Opera Prison stood out due to the very good conditions of its facilities (i.e. cells, examination rooms, etc.) and the quality of its equipment. At the other prison establishments visited conditions varied.

At Biella Prison, conditions in the examination rooms and cells were in principle adequate and the equipment satisfactory but call bells were absent in the cells.

At Saluzzo Prison, the six cells of the infirmary had not been used for some months and were left in a state of abandonment and decay (broken window glass, malfunctioning artificial lighting while registers and logbooks were not appropriately stored). Further, in terms of equipment there was no dental X-ray machine, this obliged inmates to travel to external facilities which were beset with frequent delays by escorting staff.

⁶⁶ This process was officially completed in October 2015 following the adoption of Legislative Decree No. 222 of 15 December 2015 certifying the transfer of competence to the ASLs of Sicily.

⁶⁷ Such as e.g. the requirement of each prison establishment to recruit one full-time psychiatrist, the possibility for inmates who have developed a mental health disorder during incarceration to access alternative sanctions as well as the obligation of doctors to produce photographic evidence of injuries observed on inmates either upon admission or during incarceration.

⁶⁸ Together with a similar facility located at Parma Prison it was the only clinical centre providing specialised care to “41-bis” prisoners at the national level.

⁶⁹ Viterbo Prison additionally possessed a six-room secured-unit at the local hospital of Belcolle.

At Viterbo Prison, the examination rooms, offices and archives were found to be in an adequate condition. That said, the six cells which were accommodating eight prisoners⁷⁰ displayed several deficiencies in terms of their state of repair (damaged sanitary facilities, malfunctioning artificial lighting) and hygiene. Further, all cells were lacking a call bell and the common shower facilities had damaged showerheads and were mouldy and dirty.

The supply and storage of medicines was adequate at all the prison establishments visited.

The CPT recommends that the Italian authorities ensure that the deficiencies outlined above are remedied.

c. health-care staff

60. The resources in terms of general practitioners were satisfactory at all prisons. That said, regional disparities were once again visible in the organisation of the health-care staff of the establishments visited.

At Milan Opera Prison nine duty GPs (“*medici di guardia*”) and 15 treating GPs (“*medici di reparto*”) were replicating the structure of a community health-care service performing respectively the tasks of emergency doctors and family doctors in the community.

At Saluzzo Prison, a pool of eight doctors was ensuring the presence of one GP during each of the three shifts per day. That said, the doctors were not directly employed by the ASL of the *Piemonte* Region but rather by a co-operative and did not enjoy the same social benefits as their national health-care counterparts. This resulted in a high turnover of contracted GPs. Further, a health-care co-ordinator was present 15 hours per week and was responsible for two additional prison health-care services in the region.

At Viterbo Prison, a pool of 11 doctors from the ASL of the *Lazio* Region were regularly visiting the prison, ensuring a presence of two GPs during the morning shift and one during the afternoon and night shifts. A health-care co-ordinator was present 24 hours a week.

At Biella Prison, a pool of ten doctors belonging to the ASL of the *Piemonte* Region was visiting the establishment ensuring a presence of one GP for each of the three shifts. That said, there was no health-care co-ordinator in place and the post had been vacant for several months.

The nursing component also appeared to be adequate at the SAI of Milan Opera and Viterbo Prisons but a 24-hour nursing presence was not assured at Biella and Saluzzo Prisons; two nurses were present at Biella Prison and three at Saluzzo Prison until 10 p.m. on a daily basis.

⁷⁰ Most of the inmates in question had been transferred to the infirmary from ordinary sections upon recommendation of a psychiatrist in light of their suicidal risk.

61. **The CPT recommends that the health-care staffing complement at the visited prison establishments be reinforced and invites the competent ASL authorities to ensure that:**

- **a health-care co-ordinator is recruited at Biella Prison and arrangements are in place for ensuring a nursing presence at night;**
- **steps be taken to stop the high turnover of GPs at Saluzzo Prison in order to guarantee better continuity of care for prisoners, and to ensure a nursing presence at night;**
- **nursing presence should be ensured at Biella and Saluzzo Prisons during the night shift.**

d. primary health-care

62. Overall, the delegation gained a generally positive impression of the quality of primary health-care provided to prisoners at the establishments visited. This was notably evident at Milan Opera Prison where different pools of doctors (*“medici di guardia e di reparto”*) were delivering good medical practice to attain the equivalence of care standard. *“Medici di reparto”* were not involved in any prison management or security decisions and strived to ensure a positive doctor-patient relationship with prisoners. Indeed, prisoners were told only to approach health-care staff in order to request an examination rather than via custodial staff as a means to reinforce the independence of the health-care service and to avoid any triage of requests.

At all the prisons visited, with the exception of Saluzzo Prison where requests for medical consultations had to be addressed by inmates to custodial staff, requests to see a doctor were made in a confidential manner (i.e. either through a nurse or a sealed envelope in a locked box). **The CPT recommends that the arrangements for accessing the health-care service at Saluzzo Prison be reviewed in order to guarantee confidentiality and to avoid custodial staff acting as intermediaries.**

63. Access to specialist care was good at the SAI of Milan Opera Prison, where a range of specialists paid regular visits⁷¹ and a dentist and physiotherapist were employed on a full-time basis, and adequate at Viterbo Prison.⁷² That said, at Saluzzo and Biella Prisons, access to specialized care was problematic: for example, at Biella Prison visits from a cardiologist and a specialist on infectious diseases were sporadic while at Saluzzo Prison it was particularly difficult for inmates to obtain specialist consultations with a cardiologist and ophthalmologist due to a lack of financial resources. **The CPT recommends that the provision of specialised care at Biella and Saluzzo Prisons be increased, in light of the above remarks.**

⁷¹ For example, an ophthalmologist, an ENT specialist, a dermatologist, an urologist, a radiologist, a surgeon and a lung specialist.

⁷² For example, a specialist in infectious diseases was present for 18 hours a week, a radiologist visited once a week and a general surgeon twice a month. Other specialists visited the prison upon request.

64. With the exception of Milan Opera Prison, the provision of dental care was problematic. The presence of a dentist was insufficient at Biella (four hours a week), Saluzzo and Viterbo Prisons (five hours a week) given their populations, and the delegation received numerous complaints from inmates in respect of delays of several months for a consultation. The situation at Saluzzo Prison was further compounded by the absence of a dental X-ray machine resulting in inmates being referred to external facilities which led to additional delays. **The CPT recommends that the presence of a dentist be increased at Saluzzo, Biella and Viterbo Prisons and that a dental X-ray machine be purchased at Saluzzo Prison.**

65. Medical records were detailed and well-kept at all prison establishments visited, notably at the SAI of Milan Opera Prison where prisoners' medical files were completely integrated into the electronic record system of the ASL of the Lombardy Region. Further, access to emergency hospital care was prompt and adequate at all visited establishments. At Milan and Viterbo Prisons, this was facilitated by the presence of secured rooms ("*sezioni di medicina protetta*") at the Milan *San Paolo* and Viterbo *Belcolle* Hospitals.

The distribution of medication was performed by members of the health-care staff at all establishments visited and does not call for particular comments.

e. psychiatric health-care

66. The offer of psychiatric care at the visited establishments was adequate, with the daily or almost daily presence of a psychiatrist at all prison establishments.⁷³ The delegation gained a positive impression of the continuous oversight and care exercised by psychiatrists in respect of those inmates subject to a form of solitary confinement. As mentioned in paragraph 37 it was not uncommon that psychiatrists would address reasoned requests to supervisory judges asking for the interruption of the measure of "*isolamento diurno*" in light of the mental health status of an inmate. Also, access to clinical psychologists appeared to be at an acceptable level, with the exception of Biella Prison where the presence of clinical psychologists was limited to ten hours a month.

⁷³ On a daily basis, from Monday to Friday in Milan Opera and Saluzzo Prisons; from Monday to Saturday at Viterbo Prisons and three times per week at Biella Prison.

As regards the transfer of inmates affected by a serious mental health disorder developed during their incarceration (pursuant to Article 118 of the CC) in an appropriate medical facility, the delegation found that this was problematic, notably at Biella and Viterbo Prisons. The delegation met a number of prisoners whose state of mental health required treatment in an appropriate mental health facility but as there were no places available at the REMS⁷⁴ or at any of the specialised psychiatric sections in the prisons (“*Articolazioni per la Tutela della Salute Mentale*” or ATSM),⁷⁵ they were being held for prolonged periods in the segregation unit of Biella Prison or in poor conditions at the infirmary of Viterbo Prison. For example, a mentally ill prisoner classified under Article 118 of the CC met by the CPT’s delegation at the infirmary of Viterbo Prison had been waiting to be transferred to an ATSM for more than two years and his medical file recorded that his mental health was progressively deteriorating.

67. The proposed amendments to the Prison Law to alleviate the situation of mentally ill prisoners have not been adopted by the Italian Parliament⁷⁶ and the debate on how best to manage such prisoners continues. A recent report of the National Bioethics Committee recommends that the Ministry of Health develop an efficient and functioning web of facilities which could provide a therapeutic and rehabilitative programme for inmates with a mental health problem who cannot be accommodated in a REMS. Further, the Constitutional Court decided recently⁷⁷ that failing to provide mentally ill prisoners with similar access to alternative measures of detention (such as house arrest and probation) as those suffering from a somatic disease (pursuant to Article 147 of the CC) was unconstitutional. The Court confirmed that the competent supervisory judges may decide that a mentally ill prisoner be treated in a proper health-care setting outside of prison.

In the CPT’s view, a mentally ill prisoner should be cared for in a hospital facility which is appropriately equipped with trained mental health staff. Such a facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system.

It is however important that sufficient accommodation capacity exists within the psychiatric facility to ensure that mentally ill prisoners do not have to wait for prolonged periods before a transfer is arranged for them. The transfer of the person concerned to a psychiatric facility should be treated as a matter of the highest priority.

⁷⁴ In 2018, the 30 REMS operating at the national level were accommodating 629 patients. They belonged to different categories such as patients declared criminally irresponsible and placed involuntarily in an O.P.G. under Article 222 of the Italian Penal Code, patients declared partially criminally irresponsible and placed under Article 219 of the Penal Code, and eleven patients placed provisionally under Article 206 of the Penal Code.

⁷⁵ At the time of the visit there were 37 ATSM operating within prison establishments at the national level. Their legal basis resides in Article 65 of the Prison Law which provides for the creation of specialised health-care units within prison establishments.

⁷⁶ The draft amendments in question stipulated that inmates suffering from a mental health disorder could access a set of alternative measures of detention (such as probation) which are normally offered to inmates suffering from drug addiction.

⁷⁷ See Decision No. 99 of 19 April 2019 of the Constitutional Court:
<http://www.giurisprudenzapenale.com/wp-content/uploads/2019/04/Corte-Costituzionale-99-2019.pdf>.

The CPT recommends that the Italian authorities further develop the concept of “*Articolazioni per la Tutela della Salute Mentale*” in order to accommodate all mentally ill inmates who have developed a psychiatric disorder during imprisonment. To this end, a national standard should be set for the time period within which such persons should be transferred to an appropriate psychiatric setting - for example - within 14 days). Further, the CPT would like to be informed about the steps being taken by the competent prison and health authorities to execute the recent judgment of the Constitutional Court and the recommendations put forward by the National Bioethics Committee.

68. The CPT’s delegation gained a very positive impression of the services offered to drug users by the Drug Addiction Services (“*Servizi per le Tossicodipendenze*” or SerTs) operating in the prisons. The SerT teams generally consisted of multidisciplinary staff visiting prisons on a regular basis and offering integrated treatment to inmates with a drug addiction (including those who had not been affiliated to a community service prior to imprisonment) through pharmacological and psychosocial treatment. Prisoners praised the professionalism of the visiting SerT teams, composed of psychologists, social assistants, educators, a GP and a psychiatrist, in the prisons visited. This is an example of good practice for the treatment of drug addiction in prison.

f. suicide prevention

69. The number of suicides in Italian prisons is on the rise and in 2018 surpassed 60 suicides per year for the first time since 2010, when the CPT had specifically examined the issue of suicide prevention in prisons.⁷⁸ In the course of 2018, there were 63 suicides and more than 9,000 cases of self-harm, as well as reportedly 1,178 interventions to prevent suicide from being carried out. A 2016 directive of the Minister of Justice (“*Direttiva del Ministero della Giustizia del 3 Maggio 2016*”) called for enhanced efforts in suicide prevention, including through the establishment of a National Action Plan for the Prevention of Suicides in Prison (“*Piano nazionale di intervento per la prevenzione dei suicidi in carcere*”).⁷⁹ The plan, adopted in 2017, establishes a three-tier system of suicide prevention (at the level of the DAP, regional prison authorities and the individual prisons) with a strong emphasis on early warning signs, enhanced supervision, lessons learned and debriefing and training of supervisory staff. Its implementation in practice at all levels remains to be assessed.

With the exception of Saluzzo Prison, all the other establishments visited had a protocol on suicide prevention in place, the most comprehensive one being at Milan Opera Prison which stressed the “social needs” of those considered to be at suicide risk, advocating increased family contacts (visits and telephone calls) and subject to an individual risk assessment and the consent of the prisoner.

⁷⁸ CPT/Inf (2013) 30 [Part 1], paragraphs 8 to 28.

⁷⁹ See DAP Circular No. GDAP PU-0322214 of 11 October 2017.

The delegation examined the relevant documentation pertaining to the four suicides at Saluzzo and Viterbo Prisons in 2017 and 2018. A common finding was that all four prisoners who had committed suicide in a cell in the segregation unit had been placed there for different reasons (i.e. disciplinary, preventive isolation and voluntary segregation). None of the four had been assessed as being at risk of committing suicide by prison staff but they had been considered difficult to manage due to their challenging behaviour. At Viterbo Prison, following the recent suicides, all inmates who are to serve a disciplinary sanction of solitary confinement are now seen by a psychiatrist prior to placement in the segregation unit.

70. Prisoners assessed as being at risk of committing suicide could be placed under increased levels of supervision and greater engagement by different staff profiles (i.e. under intensive or maximum surveillance measure or “*misura di grande*” or “*massima sorveglianza*”). Such prisoners would normally be accommodated in the infirmary cells upon the decision of a prison doctor, with a standard set of objects removed from the cell and placed under supervision by staff directly or via CCTV. The cessation of the measure would be ordered by health-care staff. However, the delegation found that the application of the measure of placing a person deemed to be at risk of suicide alone in a cell in the infirmary did not serve to reassure the prisoner but was rather perceived as a punishment more likely to exacerbate their situation.

For example, a remand prisoner at Viterbo Prison who was considered as being at risk of committing suicide was transferred to the infirmary and placed under visual supervision (“*sorveglianza a vista*”). However, the visual staff supervision was replaced with CCTV observation and the prisoner was kept in isolation in the cell, with no purposeful activities offered (even access to outdoor exercise was forbidden), and no association with other prisoners and hardly any contact with staff. Such treatment is the polar opposite of the care required for a vulnerable prisoner. Prisoners identified as being at risk of committing suicide should never be placed in a situation of *de facto* isolation and should, as far as possible, be offered the opportunity to spend a reasonable part of the day outside their cell engaged in purposeful activities of a varied nature.

Further, rip-proof clothing and bedding were only available at the SAI of Milan Opera Prison. Dedicated registers were in place and duly filled out at all prison establishments visited.

In terms of lessons learned, every suicide in a prison was the subject of an autopsy ordered by the prosecutor, as well as a report addressed by the prison director to the DAP regional office (“*Provveditorato*”).

71. The CPT recommends that prisoners identified as being at risk of committing suicide be placed under direct staff supervision and offered both meaningful contact with other staff members and prisoners and access to activities, as appropriate. Further, all prisons should possess rip-proof clothing and bedding. In particular, inmates who are *de facto* isolated and segregated from the mainstream population are at a higher risk of suicide.

The overall findings of the CPT’s delegation during the 2019 visit indicate that a large number of inmates were subject to various isolation and segregation measures due to their challenging behaviour. **The Italian authorities should ensure that all persons placed on an isolation or segregation measure are systematically assessed as to whether they present signs of being at risk of suicide.**

g. medical screening and recording of injuries

72. All newly arrived prisoners were examined within 24 hours by a duty doctor. They were systematically offered blood tests to detect transmissible diseases and underwent screening for self-harm and suicide risk and a tuberculosis risk assessment form was filled out. Further, a Mini International Neuropsychiatric Interview (MINI) was conducted and prisoners in need were referred to a psychiatrist and to the SerT in cases where drug misuse was a problem.

73. As noted in 2016, the dedicated register for all injuries observed by medical staff on prisoners (*“Registro 99”*) was no longer in use. In the course of the 2019 visit, the delegation found that the quality of reports of injuries found in the inmates’ personal files were generally of a cursory nature (e.g. *“injury on the left side of body”*). The reference made to the circumstances of their origin was missing or incomplete (e.g. *“the inmate had a fight”*) or appeared to be deliberately vague (*“the inmate accompanied by a group of police officers suffered injuries from an accidental fall”*). The doctor’s conclusion on the consistency between any allegations made and the objective medical findings was always missing, and several prison doctors told the delegation that they did not consider it as their duty to express any conclusion on the compatibility of injuries as they were not forensic doctors.

As regards the reporting of information indicative of ill-treatment by law enforcement officials or prison officers to the relevant judicial authorities, the delegation noted that in the establishments visited, health-care staff would send a written certificate to the chief of security who was under a legal obligation to forward the information to the competent prosecutorial authorities.

74. The CPT reiterates its recommendation that steps be taken in all establishments to ensure that the record drawn up after the medical examination of a prisoner – whether newly arrived or following a violent incident in the prison – contains:

- i) an account of statements made by the person concerned which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);**
- ii) a full account of objective medical findings based on a thorough examination;**
- iii) the doctor's observations in light of i) and ii) indicating the consistency between any allegations made and the objective medical findings.**

Recording of the medical examination in cases of injuries should be made on a special form provided for this purpose, with “body charts” for marking injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the person concerned. In addition, documents should be compiled systematically in the existing special trauma register.

The results of every examination, including the above-mentioned statements and the doctor’s opinions/observations, should be made available to the prisoner and, upon request, to his/her lawyer.

Further, the existing procedures should be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately and systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned. Health-care staff should advise detained persons of the existence of the reporting obligation and also that the forwarding of the report to the competent prosecutor is not a substitute for the lodging of a complaint in a proper form. The results of the examination should also be made available to the prisoner concerned and his or her lawyer. Health-care professionals (and the inmates concerned) should not be exposed to any form of undue pressure or reprisals from management staff when they fulfil that duty.

h. medical confidentiality

75. Once again, the CPT's delegation found that there was a total lack of confidentiality of medical consultations of prisoners in all the establishments visited. As mentioned in paragraph 14, several inmates who had been victims of alleged ill-treatment told the delegation that the presence of prison officers during their medical examinations discouraged them from recounting what had actually happened. At the same time, several prison officers told the delegation that they believed that it was an integral part of their work to protect health-care staff from potential aggression by inmates.

In their response to the 2016 periodic report, the Italian authorities had provided the CPT with information on possible measures being proposed such as the instalment of an alarm system in examination rooms to alert custodial staff promptly if an inmate became aggressive. No such measures were in place at the time of the 2019 visit.

The CPT recommends that steps be taken to ensure that medical examinations of prisoners are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff. Further, the fundamental principle of medical confidentiality should be explained to all prison officers.

8. Other issues

a. prison staff

76. At time of the visit, the Italian prison system employed 31,610 custodial prison officers who were responsible for the supervision of 60,611 inmates (i.e. a ratio of 1.9 prisoners per custodial staff number). However, some 5,500 budgeted posts were unfilled, and the delegation observed that these unfilled posts had an impact within the prisons visited. For example, at Biella Prison, there were 188 prison officers and 19 budgeted but unfilled posts for a prison population of 510; at Milan Opera Prison, there were 543 prison officers for a prison population of 1,312 with 110 budgeted posts unfilled; at Saluzzo Prison, 178 prison officers were in post with 43 vacancies for a prison population of 476 places; and at Viterbo Prison, out of 540 budgeted posts, 415 prison officers were employed with 125 unfilled posts for a prison population of 615. **The CPT recommends that the Italian authorities pursue their efforts as a matter of priority to fill the vacant prison officers' posts at Biella, Milan Opera, Saluzzo and Viterbo Prisons.**

77. In terms of training for prison staff, it varied from prison to prison. For example, at Milan Opera Prison, the prison director informed the delegation that custodial staff had been trained on conflict management, inter-cultural skills and dynamic security, while at Biella Prison no such training had been offered to prison staff. At Viterbo Prison, training activities for staff on communication skills and inter-cultural relations (with a focus on Islamic culture) were planned for 2019. **The CPT would like to receive information on the induction and follow-up of in-service training activities provided to custodial staff on conflict management, manual control techniques, dynamic security and intercultural skills. It would also like to be informed whether all prison staff have to undertake training each year and, if so, whether certain skills for prison officers are the subject of mandatory refresher courses.**

78. The CPT has in the past recognised the important role that cultural mediators can play in prison and yet none of the prisons visited in 2019 had any cultural mediators on their staff despite the high numbers of foreign national prisoners.⁸⁰ Further, as mentioned in paragraph 29, there was an insufficient number of educators physically present, particularly at Saluzzo, Biella and Viterbo Prisons, which impacted negatively on the number of treatment activities offered. **The CPT recommends that the vacant educator posts at Biella, Saluzzo and Viterbo Prisons be filled and that efforts be made to employ cultural mediators in all the prisons visited. Further, the Committee would also like to receive information on the status of the on-going recruitment of civilian staff by the DAP mentioned in paragraph 29.**

⁸⁰ A national competition for the recruitment of 15 cultural mediators by the DAP is currently on-going and should be finalised by the end of 2019.

b. contact with the outside world

79. The applicable legal provisions for inmates subjected to a medium-security regime (i.e. six one-hour visits and four ten-minute telephone calls per month) and to a high-security regime (four one-hour visits and two ten-minute telephone calls per month) were being complied with in practice at the establishments visited. Further, it is positive that all screens and physical barriers had been removed to permit “open” visits with family members. The DAP had recently introduced the possibility for medium-security prisoners to use Voice over Internet Protocol (VoIP) to maintain closer family ties.⁸¹ In addition, play areas for children visiting a parent in prison⁸² and outdoor visiting areas existed at Biella, Milan Opera and Viterbo Prisons.

Regrettably, the children’s indoor playroom and outdoor areas (“*aree verdi*”) at Biella Prison were not in use due to the lack of educators available to care for the children during visits and the delays by the municipality in issuing the necessary certificate of use. At Milan Opera Prison, an internal order decreed that high-security inmates could no longer meet their families in the children’s playground and “*aree verdi*” due to undefined security concerns.

Further, the CPT considers that the quota of two ten-minute phone calls per month for high-security prisoners, especially for those prisoners whose families live a long distance from the prison, should be increased. It is also necessary to increase the number of telephones at Milan Opera Prison as one telephone for 150 prisoners is not sufficient.

The CPT recommends that the Italian authorities increase the telephone entitlements of high-security prisoners to four ten-minute telephone calls per month. Further, steps should be taken to ensure that the outdoor visiting facility and children’s playroom at Biella Prison be made available for the entire eligible prison population, that high-security inmates at Milan Opera Prison once again be entitled to receive their families in the existing outdoor facility and children’s playground, and the number of telephone booths be increased.

80. Foreign national prisoners had to wait a long time for the procedure to certify their lists of contacts through the relevant consular authorities and during this period they could only make one phone call upon their arrival in the establishment. Further, they complained to the delegation that they could not afford the costs of phone calls abroad and that they could not make telephone calls to a designated mobile phone number. **The CPT recommends that the prison administration modernise their approach to this issue, including by examining the possibility for foreign national prisoners to maintain contact with their families through using Voice over Internet Protocol (VoIP) and by being able to make calls to mobile phones from prison.**

⁸¹ The VoIP communications are considered in legal terms as an alternative to family visits and their entitlement amounts to a maximum of six communications per month of a duration of one hour.

⁸² Present in 182 out of a total of 227 prison establishments.

c. discipline

81. The resort to disciplinary sanctions (ranging from reprimand to solitary confinement for a maximum of 15 days) appeared generally to be proportionate. The delegation was able to observe that disciplinary commissions often handed down decisions imposing a conditional sanction or a reprimand (i.e. “*ammonizione*” which meant that prisoners were still able to benefit from the 45-day sentence reduction which applies for every six months served). The incentive for prisoners not to forfeit the reduction in their sentence encouraged good behaviour in the eyes of the prison management.

That said, at Saluzzo Prison, the delegation noted that several prisoners had received extensive periods of up to two months of solitary confinement due to their refusal to move to another cell/section/prison (see paragraph 32). Registers showed that in some cases sequential periods of 15 days of solitary confinement were separated by an informal decision of “circumstantial isolation”⁸³ of a few days with no clear legal basis. The director justified this measure in light of the specificity of the transfer situation and the staging of collective protests.

The CPT recommends that urgent steps be taken to ensure that no prisoner is held continuously in solitary confinement as a punishment for longer than 14 days. The Committee also considers that it would be preferable to lower the maximum possible period of solitary confinement as a punishment for a given disciplinary offence.

Further, the CPT recalls that it is in the interests of both prisoners and prison staff that clear disciplinary procedures⁸⁴ be both formally established and applied in practice; any grey zones in this area involve the risk of seeing unofficial (and uncontrolled) systems developing. If other procedures exist - alongside the formal disciplinary procedure - under which a prisoner may be involuntarily separated from other inmates for discipline-related/security reasons (e.g. in the interests of “good order” within an establishment), these procedures should also be accompanied by effective safeguards.

82. At Biella Prison, due to the frequent periods of absence of the prison director who is the only person mandated to initiate disciplinary proceedings in the case of a serious disciplinary offence, inmates suspected of having committed such an offence would normally serve periods of preventive isolation of up to ten days⁸⁵ which were subsequently confirmed in their disciplinary decision. This was particularly problematic as following cases of inter-prisoner violence all those involved would be systematically isolated as a precautionary measure without consideration of any presumption of innocence.

⁸³ I.e. “*isolamento d’opportunità*”. The inmates in question were permitted to socialise with the mainstream population during the day but continued to spend the night in the isolation section during the intervals of “circumstantial isolation”.

⁸⁴ Notably, the requirement that proceedings be served on prisoners in writing; the possibility to be assisted by a third party, including a lawyer; the possibility to present evidence and the requirement that a decision declaring evidence inadmissible be motivated; and the possibility to appeal.

⁸⁵ Pursuant to Article 78 of the Penitentiary Regulation in the case of particular gravity for the security of the establishment, the director may impose preventive isolation of an inmate for disciplinary purposes for a maximum period of ten days.

In the CPT's opinion, the placing of prisoners in provisional disciplinary isolation following a suspicion that they may have committed a disciplinary offence, and prior to a formal charge being brought, should not last longer than a few hours, which should be sufficient time for a prisoner to "cool down" after a violent incident. Confinement to a cell for longer than a few hours, in relation to an incident giving rise to a disciplinary procedure, should not occur without the prisoner being charged and being given an opportunity to be heard on the matter and to explain his behaviour to a senior prison officer reporting to the director.

The CPT recommends that the Italian authorities adapt their practice in light of the above remarks, and the relevant provisions of Article 78 of the Prison Regulations should be amended accordingly.

83. The conditions of detention in segregation units are described in paragraphs 45 and 46 above. Several inmates at Biella Prison complained that they were not offered daily access to a courtyard while serving a disciplinary sanction of solitary confinement. **The CPT recalls that all prisoners placed in solitary confinement as a disciplinary measure must be offered at least one hour of outdoor exercise every day. The CPT recommends that the management at Biella Prison ensures that this requirement is met.**

84. In terms of the operation of disciplinary procedures, the Committee welcomes the recent amendments to the Prison Law to exclude prison doctors from disciplinary proceedings. The new provisions were being applied at all prison establishments visited with the exception of Saluzzo Prison. However, the CPT is concerned that its previous recommendations on safeguards surrounding disciplinary proceedings were not being implemented in practice.

In particular, disciplinary decisions often contained very little reasoning, if any, and prisoners usually did not receive a copy of the decision itself but only a notification of the sanction pronounced by the disciplinary commission. In addition, in some cases prisoners were not allowed to have a lawyer present during disciplinary hearings, and they were often not informed in writing of the avenues to lodge an appeal.

The CPT once again reiterates its recommendation that the current legislation and practice be revised, in order to ensure that prisoners facing disciplinary charges:

- **are allowed to call witnesses on their behalf and to cross-examine evidence given against them;**
- **are allowed to have a lawyer present during hearings before the disciplinary commission;**
- **receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. The prisoners should confirm in writing that they have received a copy of the decision.**

Further, steps should be taken in order to ensure that prison doctors are formally excluded from disciplinary proceedings at Saluzzo Prison, pursuant to the recent amendments to the Prison Law.

d. prisoners with physical disabilities

85. The delegation met a number of physically disabled prisoners at the establishments visited. Disabled prisoners were accommodated in ordinary sections in specially equipped bigger cells⁸⁶ at Biella and Saluzzo Prisons and were assisted by caretakers (“*piantoni*”) who were accommodated in the same cells and who were remunerated for their work. The inmates met complimented the assistance received from the “*piantoni*”. This is in full compliance with a circular of the DAP adopted in 2016 on this specific theme.⁸⁷

That said, two “41-bis” disabled inmates at Viterbo Prison could not benefit from the assistance of the “*piantoni*” due to the limitations of their special regime and had to resort to the assistance of prison G.O.M. guards for their daily needs. Further, one of them had not accessed the courtyard for more than one year due to the absence of a sliding platform in the “41-bis” detention unit. **The CPT recommends that the necessary steps be taken to install a sliding platform in the “41 bis” detention unit at Viterbo Prison.**

e. complaints and inspection procedures

86. According to Article 35 of the Prison Law, an inmate can now lodge an individual written or oral complaint in the case of a perceived violation of his/her rights by the prison administration to the supervisory judge (*i.e.* “*reclamo giurisdizionale*”). Further, an inmate can request that the administration complies with the decisions of the supervisory judge if these are not executed (*i.e.* “*richiesta di ottemperanza*”).⁸⁸ In the course of the visit, the delegation observed that inmates were able to lodge complaints to the supervisory judge as well as to external monitoring bodies such as the offices of the *Garantes* in a confidential manner.

87. In terms of inspections the *Garante Nazionale* continued to pay visits to all prison establishments either directly through his office or via the web of regional and municipal *Garantes*. Visit reports are regularly published together with the response of the relevant authorities. In terms of the activities of civil society, the NGO “*Antigone*” conducts on-site visits to prison establishments through its network of volunteers and maintains an on-line database called “national observatory of detention”.⁸⁹

⁸⁶ The cells in questions provided for a facilitated access of inmates in wheelchairs as well as specially equipped beds, sanitary facilities and showers.

⁸⁷ See DAP Circular: “*La condizione di disabilità motoria nell’ambiente penitenziario – Le limitazioni funzionali.*” GDAP PU-0089149 of 14 March 2016.

⁸⁸ Pursuant to Article 35 of the Prison Law.

⁸⁹ See http://www.associazioneantigone.it/osservatorio_detenzione/.

APPENDIX

List of the national and regional authorities, non-governmental organisations and persons with whom the delegation held consultations

A. National authorities

Ministry of Justice

Vittorio Ferraresi	Undersecretary of State
Francesco Basentini	Head of the Department of Penitentiary Administration
Lina Di Domenico	Deputy Head of the Department of Penitentiary Administration
Carla Ciavarella	Director of the Office of Institutional Co-operation Department of Penitentiary Administration
Giacomina Perna	External Relations Officer at the Department of Penitentiary Administration

Ministry of the Interior

Representatives of the different law enforcement authorities (*Carabinieri, Guardia di Finanza, Polizia di Stato*)

Ministry of Foreign Affairs and European Integration

Fabrizio Petri	Minister Plenipotentiary and President of the Inter-Ministerial Committee on Human Rights (CPT's liaison officer)
Pierfrancesco De Cerchio	Counsellor
Maja Bova	Lawyer, Human Rights Expert

Office of the *Garante Nazionale dei Detenuti e Persone Private di Libertà* (*Garante Nazionale*)

Mauro Palma	Garante Nazionale
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B. Non-governmental organisations

Antigone