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Response

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

from 16 to 18 December 2015

The Italian Government has requested the publication of this response. The CPT's report on the December 2015 visit to Italy is set out in document CPT/Inf (2016) 33.

Strasbourg, 15 December 2016

ITALY

MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION

Comitato Interministeriale per i Diritti Umani
Inter-ministerial Committee for Human Rights

Italy's Preliminary Remarks, following ad hoc mission to Italy (December 16 - 18, 2015), by a delegation of the Committee on Prevention of Torture (Council of Europe)

June 30, 2016

Italy's Preliminary Remarks

Following your letter, CPT/MG/31/2016, dated March 31, 2016, Italian Authorities are in a position to provide the following information:

Point 13: The CPT notes that no information concerning the pending appeal proceedings had been annotated in the files (it is not clear whether they were computer files or also paper documents), relevant to the removal of each of the Nigerian women. Apparently, they were not isolated cases. The CPT recommended that all the files relevant to individuals detained in Ponte Galeria be updated, so as to provide information on pending judicial proceedings relevant to applications for international protection.

The judicial system provides all relevant information on the orders issued by judges. However, there is need to identify specific staff operating in CIE (Identification and Removal Centres) to act as focal points with regard to all orders issued by judicial authorities.

Point 14: After the visit to the CIE in Ponte Galeria, late at night, the Italian "leader of the escort" received an e-mail from the counsel of some of the Nigerian women. In that e-mail the counsel confirmed that he had filed an appeal with the Court of Rome, as per Article 35 of Legislative Decree 25/2008.Therefore, the Italian authorities decided to discontinue the operation of removal of the seven Nigerian women, which were also released. The delegation of the CPT was informed that the Nigerian women were able to wait for the decision of the court at large.

Judicial authorities may suspend the enforceability of order rejecting applications of international protection. It is, therefore, possible that an order suspending the return is issued when the operation is on the verge of being concluded, namely when the return flight has already been planned. In the case examined by the CPT, the competent bodies of the Ministry of Interior could stop the return order of the seven Nigerian women, for whom the Court of Rome had issued orders suspending the return.

Point 15: The CPT has been informed that the return of the 13 Nigerian women held in the CIE had taken place pursuant to the Italian laws, because an appeal against a decision rejecting international protection has no suspensive effect.

Article 19, paragraph 4, of Legislative Decree No.150/2011 envisages that orders issued by the Territorial Commission, rejecting applications for international protection, are automatically suspended. Suspension is not automatic and has to be requested to the Court, when the following circumstances apply:

(a) Appeals filed by individuals detained in a Detention Centre;
(b) Appeals filed against an order declaring that an application for international protection is inadmissible;
(c) Appeals against orders rejecting an application for asylum because it is manifestly ill-founded;
(d) Appeals filed by individuals submitting an application for international protection, after having been intercepted because they had avoided or had attempted to avoid border controls, or after having been intercepted for irregular

stay, for the only purpose of delaying or preventing the adoption or the enforcement of an order for removal or *refoulement.*

In the above cases, the asylum seeker's counsel has to file a separate application, which has a precautionary nature, and on which the Court issues a decision within five days. It might be useful to remind that Article 19, paragraph 4, was recently amended, following the entry into force of Legislative Decree No. 142 /2015 (in force since 30 September 2015), "Implementing Directive 2013/33/EU laying down standards for the reception of applicants for international protection, as well as of Directive 2013/32/UE, on common procedures for granting or withdrawing international protection". Therefore the provision under examination, which formed the object of the remarks of CTP, has been introduced in order to transpose an EU Directive, and in particular Directive 2013/32/EU. Also in this case, Italian legislation is in line with the law of the European Union.

Point 16: The CPT noted then that, in many cases concerning Nigerians who applied for asylum in 2014 and 2015, the decision of the Territorial Commission, which had rejected the application for international protection, was quashed by the Court of Rome. Thus, the Territorial Commission considered that Nigeria was sufficiently safe and could receive irregular migrants, with the exception of the territories occupied by Boko Haram, whereas the Court of Rome held, in many cases, that Nigerians coming from Southern regions of Nigeria were also entitled to obtain international protection, even if the geographic areas from which they carne were not those controlled by Boko Haram; and this on account of a widespread climate of conflict, the territorial boundaries of which may not be clearly defined.

Procedures to appeal against orders rejecting applications for protection have been introduced to ensure jurisdictional protection to those individuals who were refused asylum, on the assumption that such refusal may have been unfair

Point 17: In cases of Nigerians whose application for asylum has been rejected, the possibility that the Court of Rome will not authorize the Italian authorities to carry out the return does not seem rare, namely the return operation may be the object of an urgent measure ordered by the ECHR. In this context it is worthwhile mentioning the case of a Nigerian woman, returned to Nigeria on 17 December 2015, who had been granted the suspension of the return order, but that decision had been communicated to the Police after the airplane used for the operation had already left the airport of Rome. The CPT would like to know the comments of the Italian authorities on this matter, and intends to know the measures that will be adopted.

We acknowledge that relevant mechanisms should be improved in order to avoid such cases.

Point 18: In order to avoid possible violations of article 3 of the European Convention on Human Rights, the return of an asylum seeker must not take place when an application for the suspension of an order issued by the Territorial Commission has been lodged with the competent Court; nor should the return be enforced where the deadline for applying tor the suspension of an order of the Territorial Commission has not expired yet. Moreover, the fast cali procedure should be activated, namely a request aimed at obtaining the most recent information concerning possible judicial orders issued in favor of the individual who has to be returned, just before the beginning of flight operations. Therefore the CPT recommends that the Italian authorities do not return a foreigner when:

(i) a Court has suspended the order for return;
(ii) *the Court still has to examine an application for suspension of the order for return (the application is pending and has not been examined yet);*
(iii) *the deadline for applying for a suspension of the order has not expired yet.*

As regards this point, the considerations expressed in connection with point 15 apply. As explained above, disputes relevant to the recognition of international protection are governed by Article 19 of Legislative Decree No.150/2011, as amended by Article 27, paragraph 1, subparagraph a), Nos. 1), 2) and 3), of Legislative Decree No. 142/2015, which provides for the application of a special judicial procedure, by which the Court delivers an order, instead of a judgment. The object of this procedure is the subjective right to international protection and not the lawfulness of the decision of the Territorial Commission for the recognition of international protection (an administrative body).

The Court is called to deal with such disputes, following an appeal against a decision of the Territorial Commission for the recognition of international protection, or against a decision of the national Commission, withdrawing or terminating the status of refugee or of a person granted subsidiary protection

An appeal may be lodged also when the person concerned has applied for the status of refugee and has subsequently been granted only subsidiary protection.

In order to reinforce the protection of the individual applying for international protection, the laws in force provide that the filing of a jurisdictional appeal suspends automatically the enforceability of the administrative order, except in a few cases specifically envisaged by law. In this respect, it should be mentioned that the Supreme Court (Court of Cassation, No 16221/2012) specified that such proceedings are characterized by a strong mitigation of the ordinary rules governing the distribution of the burden of proof, with the consequence that in several cases protection is granted on the sole basis of the contingent political situations in the Countries of origin, without any further investigation.

Finally, the laws in force do not envisage the possibility of suspension of an order rejecting an application for protection where the deadline to file an appeal against the order issued by the Territorial Commission has not expired. In this respect, according to an interpretation of Article 19 of Legislative Decree No. 150/2011 consistent with general principles, it could be held that a decision delivered by the Territorial Commission may not be enforced until it has become final, namely after the expiration of the deadline provided for to file an appeal.

Proposals are currently under evaluation on a procedural reform in order to reduce the time to examine asylum applications and to reduce the cases of exception to the automatic suspension of an administrative order.

Point 32. The doctor and nurse on board were both formally employed by the State Police and had participated in a number of previous removal operations. While the services of neither were called upon during this flight, the delegation's doctor gained a positive impression in respect of their experience and professionalism. Notwithstanding the above, the Committee believes that in order to reduce the potential for any conflict of dual obligations and to best assure the clinical

independence of healthcare staff, it would be preferable if the medical staff participating in a removal operation were to be engaged by an authority distinct from the agency responsible for the operation itself, (in this case the State Police).

The recruitment of medical staff from the Police requires that they are members of the medical Association (*Ordine dei Medici*). The latter requires that all physicians take the Hippocratic oath, which is essential for this profession and as a guarantee of impartiality. Needless to say, this binding oath applies also to the health-care services to be provided under the specific framework under reference.

Punto 42. It is undisputable that overseas escort duties are stressful, intensive and tiring. The CPT considers that the recruitment procedure of escorts should include some form of psychological assessment. Furthermore, once recruited, it is essential that measures be taken in order to avoid professional exhaustion syndrome and the risks related to routine, and to ensure that staff maintain a certain emotional distance from the operational activities in which they are involved. In this context, the CPT was pleased to note that care was taken to rotate escorts regularly between escort and regular police duties, limiting the escort duties to two or three removal operations a month. The CPT recommends that due attention is being given to the psychological aspects of escort duty, including during selection, training and after return from an escort assignment. Further, the CPT would like to receive additional information as to the training curriculum for escorts.

The personnel engaged in the escort and return process undertakes specific training courses focused on both relevant operational and legal aspects. They are admitted to the above courses upon preventive psychosocial and physical examinations. Staff of the Psycho-technical Centre of the Central Directorate for Human Resources of the Ministry of Interior also attends these courses, as observers. To keep pace with the situation on the ground, the Central Directorate for Immigration and the Borders Police of the Ministry of Interior collaborates with the Psycho-Technical Centre, to ensure both adequate services and specific personnel selection.

So far, four meetings of the so-called "focus group" have been held: two in Milan and two more in Rome, with the participation of 120 staff members of the State Police, being already deployed to the escort sector; specific questionnaires have been submitted to them: this exercise will enable the experts from the Psycho-Technical Centre, to define more effectively the most adequate professional profiles, to ensure an even more focused escort personnel selection – also in view of next training courses.

As for Section No. 3, devoted to “Complaints and monitoring”, Law-Decree No.146/2013 converted into Law No.10/2014 has instituted the National Ombudsman for Individuals in Detentions or Persons Deprived of Personal Freedom (Garante Nazionale).

The *Garante Nazionale* is entitled to carry out, without any authorization, visits to every place where persons are deprived of their liberty by a public authority, such as prisons (for convicts and persons detained on remand); residences for persons under a psychiatric security measure; establishments for persons under probation; penal institutions for juveniles; closed communities for juveniles and for adults serving a penal measure; police custody facilities; centers for the administrative detention of irregular migrants; newly established hot spots for migrants irregularly entering the country; waiting rooms in transit areas of airports; social care homes.

Visits aim at monitoring places, examining the implemented procedures, interviewing persons in private. In so doing, the Garante can assess the situation under scrutiny. The outcome of this assessment is a list of recommendations to be sent to the relevant Authorities, with deadlines for their implementation.

The *Garante Nazionale* does not report to any ministerial authority and in accordance with the provisions of the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment (OPCAT) the *Garante Nazionale* was designated as the National Preventive Mechanism (NPM). The *Garante Nazionale* cooperates with a network of regional and local bodies (*Garante Regionale* and *Garanti locali*) having similar structure and composition.

The *Garante Nazionale* is operational since March 2016. On April 27, 2016, *Garante*'s Board held a press conference, presenting role, composition, activity and working methods, explaining *Garante*'s powers and duties and mapping out a preliminary assessment of relevant monitoring activities.

The *Garante Nazionale* adopted its Rules of Procedure and the Self-regulatory code, where principles guiding its activity are outlined on the basis of principles independence, transparency, professional experience, effectiveness. As part of its functions and in the strength of its independence and impartiality, the National Ombudsman is the national authority for the monitoring of forced returns under Art.8, para.6 of Directive No. 115 of the European Commission. It has already carried out a number of monitoring visits to prisons and police custody facilities; it also monitored a charter flight for a forced return to Tunisia of irregular migrants.