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COMMITTEE AGAINST TORTURE

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

Second periodic reports of States parties due in 1994

Addendum

ITALY*

[20 July 1994]

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* The initial report submitted by the Government of Italy is contained in document CAT/C/9/Add.9; for its consideration by the Committee, see documents CAT/C/SR.109 and 110/Add.1 and the Official Records of the General Assembly, forty-seventh session, supplement No. 44 (A/47/44), paragraphs 310-338.

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Introduction

1. The present report covers the years 1991 to 1993.

2. The report has been elaborated in cooperation with the ministries most closely concerned with the subject dealt with by the Convention, within the framework of the institutional activities carried out by the Inter-Ministerial Committee on Human Rights, which was set up within the Ministry for Foreign Affairs in 1978.

3. The first report illustrated the main principles underpinning the Italian legal system in respect of the subject dealt with by the Convention. Therefore, as a result of the fact that no changes have been introduced since, there are no references in the present report to some articles, namely articles 5 to 10 and 12 to 16.

4. It should be noted that in the more general context of international rules and regulations on torture and other cruel, inhuman or degrading treatment or punishment, Italy is also a party to the European Convention of 26 November 1987. With a view to underlining the importance attached, in the Italian legal system, to the respect of the rules and principles relating to the subject under consideration, it should be mentioned that a most important and significant event took place from 15 to 27 March 1992, namely the visit to Italy of the European Committee on the Prevention of Torture. Although this is a monitoring system provided under article 7 of the European Convention, one should bear in mind that the European rules and regulations fully correspond with those contained in the United Nations Convention. The report on the visit of the Committee, dated 25 February 1993, widely recognizes the adherence of the Italian legislation and the conditions of prisons and of police and carabinieri stations to the existing international provisions. The Committee has made a series of recommendations and requested information on some specific aspects.

Article 1

5. The first report by the Italian Government widely explained the reasons why the Government and the Parliament have so far decided not to refer to "torture" as an ad hoc offence in the Italian legislation. As specified in articles 1 and 4 of the previous report, the Italian legal system provides that such acts as beating (Penal Code, art. 581), bodily harm (Penal Code arts. 582-583), criminal coercion (Penal Code, art. 610), threatening (Penal Code, art. 612) and kidnapping (Penal Code, art. 605) are criminal offences; in this way "all acts of torture" are considered as infringements of the Italian criminal law.

Article 2

Arrest and detention for questioning

6. As a supplement to the information already provided in the previous report, it seems appropriate to refer to the principles contained in article 386 of the Code of Criminal Procedure pertaining to the duties of the judicial police in case of arrest or detention. These duties, which must be fulfilled by all persons performing judicial police functions, consist of:

(a) Giving prompt notice of the arrest or detention to the Public Prosecutor of the place where this measure occurred;

(b) Requesting the Public Prosecutor to appoint ex officio a legal defence counsel should the person under arrest or being detained, although aware of his/her rights, fail to appoint one of his/her choice;

(c) Giving this legal defence counsel prompt notice of arrest or detention;

(d) Putting the person that is under arrest or is detained at the disposal of the Public Prosecutor as soon as possible, and in any case within 24 hours of the arrest or detention, by submitting the relevant report unless "immediate release" has not taken place meanwhile;

(e) Transferring as soon as possible, and in any case within 24 hours, the person under arrest or detention to the prison or district prison of the place where he/she has been arrested, and giving the Public Prosecutor the authority to prescribe confinement of the said person in his/her own residence or in a hospital, in case of health problems. The above-mentioned 24-hour deadline starts from the moment the person is stopped by the police. The exact time and modalities of arrest will be indicated in the relevant report which the competent official is required to draft.

7. It should be pointed out that under article 566, paragraph II, of the Code of Criminal Procedure, only persons stopped by the police or under arrest for committing an offence falling under the competence of a magistrate may be temporarily detained - in any case not beyond 48 hours - in the police or carabinieri station lock-up, until the judge has fixed the date of the hearing.

8. As for persons arrested or detained for committing an offence falling under the competence of tribunals or assize courts, they have to be promptly put at the disposal of the Public Prosecutor and transferred to the prison or district prison of the place where they had been arrested or are detained.

Interrogation of a person under investigation

9. Article 64 of the Code of Criminal Procedure provides that, during the interrogation, the person under investigation, whether detained or under provisional arrest, should not be subjected to any kind of physical constraint. No means whatsoever may be used which affect the person's freedom of self-determination or the person's ability to remember or assess facts.

10. Before the interrogation begins, the person must be informed of his/her right not to answer questions and, if applicable, of the fact that despite his/her not answering, proceedings shall be initiated all the same.

Summary information from a person under investigation

11. Under article 350 of the Code of Criminal Procedure, the judicial police may, with the assistance of the legal defence counsel, obtain summary information from a person under investigation, provided he/she is not under arrest or detained, if this is believed to help carry out the inquiry. Before the questioning, the judicial police will ask the person under investigation

to appoint his/her own legal defence counsel and should he/she be unable to do so, will then inform a legal defence counsel proposed by the Bar Council.

12. The judicial police shall give prompt notice to the legal defence counsel of the time and place of the questioning, which shall take place with the assistance of the same counsel who has the obligation to attend.

13. The information obtained through the questioning may be used during the trial and in the prosecution and defence statements. Reliable information is guaranteed by the suspect's right to make spontaneous statements, right to silence and right to legal aid. The general rules provided for in article 64, relating to the interrogation of the accused, shall apply to the procedure concerning summary information.

14. In case of flagrant délit, the judicial police, even if the legal defence counsel is absent, is allowed to question a person under investigation, even if arrested or detained, in order to allow for the immediate continuation of the inquiry. The information thus obtained shall not be put on record or used or given to other parties.

15. The judicial police may collect spontaneous statements from the person under investigation, which cannot be used for the purposes of the trial. The use of this kind of information by the Public Prosecutor or the legal defence counsel was previously allowed in order to contest, whether partly or completely, such statement. This was declared to be an unlawful action by the Constitutional Court, by sentence No. 259 of 12 June 1991.

16. The judicial police is entitled, without recourse to any special procedure, to hear a person likely to provide useful information for the purposes of the inquiry, with the obligation to report subsequently to the judge. Should that person make any statement implying his/her involvement in an illegal act, the judicial police will not ignore it nor will they omit mentioning it in their report.

17. The main difference between the previous system and the present one is that, in the past, both interrogation by the Criminal Investigation Department and spontaneous statements by the person under interrogation (put on record and included in the police report) would be considered as supporting material for the judge in his decision. This possibility is now precluded.

Organized crime and changes introduced to the modalities of carrying out inquiries

18. In the last few years the need has arisen in Italy to fight organized crime by more effective means and procedures. In other words, it has been felt necessary to make the legal mechanisms actually operative in the face of crime, without in any way failing to meet constitutional obligations, in terms of response from the competent judicial institutions, according to the principles of democracy. As a result, by law No. 356 of 7 August 1992, urgent changes were introduced in the new Code of Criminal Procedure and specific measures taken to oppose the activities of organized crime.

19. Besides taking into account the need to adapt both the length of the judicial process and the relevant investigative procedure to the difficulties experienced with the criminal investigation - which often paralyse the work of

the judicial police and that of the examining magistrates - and the need to promote new forms of cooperation as well as to strengthen serious crime prevention measures and interventions, the new law, originates from the need to revise certain aspects of the criminal justice procedure in terms of obtaining and examining evidence, following recent decisions by the Constitutional Court.

20. This Court has declared the following articles to be constitutionally unlawful:

(a) Article 500, paragraph 3, of the Code of Criminal Procedure, relating to the validity of statements for the prosecution (sentence No. 255 of 18 May-3 June 1992);

(b) Article 500, paragraph 4, namely the part relating to the non-insertion in the files of the proceedings of the statement made by a witness, which is contained in the Public Prosecutor's file, if it has been contested on the basis of paragraphs 1 and 2 of the same article (sentence No. 255 of 18 May-3 June 1992);

(c) Article 513, paragraph 2, namely the part relating to the fact that, after hearing the parties concerned, the judge could allow the reading of statements made by persons accused in separate but connected trials, on the grounds that they might decide to make use of their right to silence (sentence No. 254 of 18 May-3 June 1992).

21. The decisions made by the Constitutional Court touch upon important stages of the trial, as referred to in the 1988 Code, and play an essential role, in terms of obtaining and examining evidence, in several aspects of the legal system. Therefore, these decisions require essential adjustment of other legal provisions for the purpose of maintaining the homogeneity of the legal structure. More specifically, they entitle the judge to have access, before sentencing, to the Public Prosecutor's and judicial police files concerning the inquiry, which allows, de facto, for the "reclaiming" of the preliminary investigation, avoiding any possible retraction of statement by "intimidated" witnesses.

22. The new law has brought about fundamental changes in the rules provided for by the Code of Criminal Procedure. The main changes are briefly illustrated below.

23. In the course of a particular trial, it is now possible to question a defendant accused in a separate but connected trial. In this instance, the defendant is bound to appear before the judge, who may adopt coercive measures to compel him to appear in court, and the same rules are observed as apply to the summons of witnesses.

24. The judge's authority is extended to allow him to intercept telephone conversations or other communications between the persons cited, with a view to facilitating the pursuit of a fugitive or whenever criminal activities are believed to be carried out.

25. The Public Prosecutor is also entitled to the assistance of the Criminal Investigation Department when a free person who is under investigation by the police has to be interrogated or confronted with other witnesses, provided he/she is assisted by his/her defender.

26. Under article 9 of the law No. 8 of 15 March 1991, measures could already be taken aimed at protecting and guaranteeing the safety of persons exposed to real and serious danger owing to their statements or to statements made in the course of an inquiry relating to major crimes. According to the new law, the judge, or, in case of urgency, the president of the court, may, also ex officio, prescribe that the hearing take place after making sure that all necessary precautions have been taken to ensure protection of the persons under interrogation. In case special devices are available to allow for audio-visual connection for the purpose of the hearing, the interrogation may also take place elsewhere than at the trial.

27. At the request of one of the parties concerned and taking into account other evidence obtained, the judge may prescribe the reading of the minutes containing the statement made by a foreign citizen resident abroad, who has not been summoned or, though summoned, has not appeared before the Court.

28. In addition, according to law 356/1992, prisoners will not be allowed to take any leave as a reward for good conduct or to benefit from any alternative measures to conventional detention if, while they are undergoing their term of punishment, they commit an offence in connection with organized criminal activities or terrorism; members of the organized criminal organizations will not be entitled to any such benefits.

29. The Anti-Mafia Investigation Department staff and the judicial police officers appointed by the Department have the authority to visit prisons and meet prisoners with a view to obtaining useful information for the prevention and the repression of organized crime.

30. For serious reasons of public order or of security, the Minister of Justice, also at the request of the Minister of the Interior, is entitled to suspend, whether fully or partly, the application of the rules concerning the treatment of prisoners, with respect to those who are detained for offences connected with organized crime or kidnapping.

31. In relation to persons accused of belonging to organized crime networks, the Director of Anti-Mafia Public Prosecution, the District Attorney or the local head of Police Administration may request the competent tribunal, for purposes of protection and safety of the persons concerned, to take specific preventive measures such as police supervision and mandatory residence. Any breach of the obligations inherent in the said preventive measures will entail a three-month to five-year term of imprisonment. Moreover, in relation to organized crime activities, law 356/1992 provides that other preventive measures may be applied relating to property, house search, communications interception and preventive custody, if they are connected with organized crime.

Case law with regard to the subject considered by the Convention

32. Some of the latest decisions by the Constitutional Court have reasserted the full applicability in Italy of the principles embodied in the Convention.

Inhuman treatment banned during the term of punishment

33. By decision No. 349 of 24 June 1993, the Constitutional Court has reaffirmed a deep-rooted tenet of the Italian legal system, namely that no form of detention "will imply treatment contrary to the sense of humanity". In addition, the Court mentions that "another principle of civilization stems from this tenet, which involves recognizing that, even though sentenced to imprisonment, a person is entitled to fundamental freedoms and the maintenance of human dignity that is compatible to the status of detainee".

34. The Court confirms therefore that it is possible for the administration in charge of a prison to take measures relating to the forms of execution of the judicial sentence. These measures - the Court adds - should in no way go beyond "the sacrifice of one's own liberty already imposed on the prisoner by the sentence of imprisonment" and their adoption shall always be subject to the limits and guarantees provided by the Constitution with regard to the forbidding of any act of physical or moral violence (art. 13, para. 4) or of any inhuman treatment (art. 27, para. 3).

35. Also, it is asserted in the above-mentioned decision that imprisonment shall not imply a total and absolute loss of liberty; this means that, despite being deprived of most of it, the prisoner will none the less be entitled to preserve what is left of his liberty, which is "all the more precious in so far as it constitutes the last space in which one's own personality may still be exerted".

36. What is more, the Constitutional Court provides by its decision that "inviolable human rights, such as one's liberty, constitute fundamental principles having general application"; the restriction or abolition of these rights shall be considered as derogating from a general rule and, as such, as exceptional measures.

37. It is worth mentioning that in decision No. 410 of 5 November 1993, the Constitutional Court, referring to the same principles illustrated in its decision No. 349, mentioned above, stipulates that the administration in charge of a prison may take measures "relating to the forms of execution of the judicial sentence, which should in no way go beyond the limitation of one's own liberty already imposed on the prisoner by the sentence to imprisonment".

38. The aforesaid decision is essential, also in so far as it provides that "although the modalities of the treatment of prisoners, not having direct implication on their personal liberty, could be taken at the discretion of the administration in charge of a prison, this could not exclude the possibility for prisoners undergoing their term of punishment to exercise their right of defence with respect to those decisions which, having as object the execution of the sentence, have a direct impact on the enjoyment of inviolable human rights that are explicitly guaranteed by constitutional provisions".

Alleged violations of the principles of the Convention

39. General public opinion, the Italian Government and the judiciary attach special attention to all reported cases of ill-treatment of persons whilst under arrest or detained for questioning. Amnesty International has also denounced a few incidents on which information will be provided at a later

stage, during the discussion of the present report, in accordance with the practice adopted so far. Considering the great importance attached to the case of Mr. Marino, we wish to indicate that the Court of Appeal of Caltanissetta has decided that the new trial should take place on 21 April 1994.

Article 3

40. As referred to in the first report, the new Code of Criminal Procedure, which came into force on 24 October 1989, contains specific provisions on extradition, in accordance with the principles embodied in the Convention, laying stress on the defence of fundamental human rights.

Extradition treaty between Italy and Argentina

41. A practical example of the application of the principles pertaining to both the Convention and Italian legislation (specifically art. 698 of the Code of Criminal Procedure) with regard to extradition is constituted by the recent ratification and enforcement of the extradition treaty between the Italian Republic and the Republic of Argentina, signed in Rome on 9 December 1987.

42. In particular, the treaty stipulates that:

(a) Extradition will not be allowed in case the offence for which it is requested is considered as a political crime by the party receiving the request for extradition (art. 5.1);

(b) In addition, extradition will not be allowed if in the view of the requested party there are grounds for believing that such request, based on a non-political crime, has been submitted for the purpose of prosecuting or punishing a person because of his race, religion, nationality or political opinions (art. 5.2); or, in any case, that one of these elements could constitute the ground for unfair treatment of any such person;

(c) Extradition also will not be allowed if the offence for which it has been requested is an offence under military law and is not an offence according to the common law (art. 6);

(d) Extradition will not be allowed if the person concerned is a minor according to the law of the country requested while the law of the requesting State does not consider the person as a minor or does not provide for specific procedural and substantial treatment for minors in line with the fundamental principles of the requested State (art. 7 (d));

(e) Finally, in case of a request for extradition for an offence liable to capital punishment in accordance with the law of the requesting country, a decision to extradite shall not be passed or, if passed, shall not be executed (art. 9).

Article 4

Proceedings against police officers

43. It is worth pointing out that, in the past 5 years, 148 cases have been filed involving legal proceedings instituted against police officers for offences based upon acts of bodily harm.

44. Where disciplinary measures have been used to punish offences, formal reprimands or fines have been administered.

45. In 1992, in particular, 79 police officers, up to the rank of Chief Superintendent, were involved in criminal suits for acts of bodily harm. In the same year two persons were issued with formal reprimands and one was fined.

Article 11

Latest provisions on the treatment of prisoners

46. Law No. 296 of 12 August 1993 (confirming decree No. 187 of 14 June 1993) contains new provisions pertaining to the treatment of prisoners and the expulsion of foreign citizens.

Prisoners' work

47. The 1993 law provides, inter alia, that prisoners and internees should be allowed to work and to participate in professional training courses. For this purpose specific professional activities or professional training courses may be organized by State-owned companies or by private companies which have made a special agreement with the relevant regional authority.

48. According to the new law the criteria used for the selection of prisoners suitable for work should depend on how long they have not worked since their imprisonment or internment, on their family responsibilities, on their professionalism and on the kind of work they have already done or are likely to do after their release; persons detained or interned requiring special supervision are excluded from such benefits.

House arrest

49. Overcrowding in prisons is one of the main reasons why acts of violence occurred in places of detention in the past. The ad hoc Committee of the Council of Europe has confirmed this opinion. As a result, new and more liberal provisions have been introduced by the 1993 law, with regard to alternative measures to detention.

50. These legal provisions complement the deeply rooted Italian legal system principle of the rehabilitating function of punishment, and stress the aspect of crime deterrence.

51. In order to achieve its aims, the law has revised the procedure relating to alternative measures of detention which also apply to persons convicted of serious crimes, with the exception of those committed in connection with organized crime or subversive conspiracy. In this respect, the application of such a measure as house arrest has been increased in scope, thus entitling specific categories of persons convicted to serve a sentence, provided it does not exceed a term of three years, in their own residence, even in the case of a sentence coming to the end of its term.

52. The provisions pertaining to house arrest have been modified as follows. A prison sentence not exceeding three years, whether coming to the end of its

term or not, as well as detention prior to arrest, may, unless a probation order has been issued, be served in one's own residence or in a public nursing home or in a welfare centre in the case of:

(a) A pregnant woman or a woman breast-feeding her child(ren) or a woman with children under five years of age living with her;

(b) A person having serious health problems which require regular contacts with local hospitals;

(c) A person over 60 years of age, even if only partially disabled;

(d) A person under 21 years of age, provided there is evidence of health, school, work or family problems.

53. The law provides that all prisoners not convicted of offences in connection with the Mafia's criminal activities can be granted either full or partial release before the end of the term of their prison sentence. In addition, pursuant to law 296/1993, the concession of alternative measures is subject to the prisoners' good conduct, in this way contributing to the general improvement of prison life.

Expulsion of non-E.U. country citizens

54. The said law of 12 August 1993 provides, under article 8, that foreign citizens under preventive detention for offences not considered as serious crimes and who have been sentenced, beyond recall, to up to three years' imprisonment shall be immediately expelled (at their own request or at the legal defence counsel's request) and sent back to their country of origin or to the country they came from. Expulsion shall not be allowed in case of serious procedural requirements for such expulsion, or if the individual has serious health problems or finds himself in danger because of security problems owing to the outbreak of war or epidemics.

55. The scope of the new law is to avoid overcrowding in prisons and at the same time to introduce an innovative judicial procedure in the case of offences being committed by foreign citizens. This procedure, though respectful of the rights of the defence and of the correct exercise of judicial power, should still allow effective use of such a measure as the expulsion of a foreign citizen.

Rules on the transfer of prisoners

56. By law No. 492 of 12 December 1992, which has brought about changes in law No. 354 of 26 July 1975, the rules on the transfer of persons whose liberty has been restrained have been modified. The new rules relating to the transfer of persons imprisoned, interned, detained for questioning or under arrest aim at granting each individual, in a more effective fashion, the right to the respect of their dignity and the right to privacy.

57. Under article 2 of law No. 492, it is, inter alia, provided that:

(a) Adult prisoners and interned persons should be transferred without delay and women should be entitled to the assistance of female staff while they are being transferred;

(b) During the transfer, all necessary precautions are taken with a view to protecting the persons being transferred from the curiosity of the public and from every kind of publicity, and to spare them unnecessary discomforts;

(c) In the case of an individual prisoner being transferred, the use of handcuffs or of every other form of physical compulsion shall be forbidden, unless their use is made necessary by the fact that he/she is a dangerous criminal, by the risk of a possible flight, or by special considerations of a local nature;

(d) Prisoners being transferred are allowed to wear plain clothes.

58. The main purpose of the rules referred to above is that greater importance should be attached to the respect of human rights in the case of the transfer of prisoners.

59. The scope of the new provisions is that the transfer of prisoners shall in no way imply any degrading treatment or any other treatment likely to be detrimental to human dignity. The authorities responsible for the supervision of prisoners shall be called upon to comply scrupulously with paragraph 4 of article 42 bis of law 354/1975, in order to avoid incurring liability for wrongful conduct, and to take all necessary precautions to protect prisoners being transferred from the curiosity of the public and from any kind of publicity.

60. The need to spare persons to be transferred unnecessary discomfort is related to the general principle, granted by the Constitution, according to which the use of unjustified or unnecessary means of coercion towards persons whose liberty is restrained shall be prohibited.

61. The judicial authority prescribing the transfer of prisoners will make sure that the procedure agreed upon with the officers in charge is such so as to avoid that during the transfer to the courtroom incidents may occur which are likely to be prejudicial to the dignity of the person being transferred or to bias the judgement of the court (see Memorandum of the Ministry of Justice, dated 8 April 1993).

Release of acquitted defendants

62. The above-mentioned law of 12 December 1992 contains a provision of particular relevance with regard to the release of acquitted defendants. By modifying the rules of application of the Code of Criminal Procedure, article 4 provides that immediately after the reading in court of the verdict of acquittal, the defendant shall be released, unless also detained for another reason.

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