



*Ministero degli Affari Esteri
e della Cooperazione Internazionale*

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

**The First Periodic Report of Italy
Relating to the International Convention for the Protection
of All Persons from Enforced Disappearance,
(UN Committee on Enforced Disappearances)**

Rome, December 21, 2017

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Annex No. 1 – Relevant Constitutional Provisions

List of Abbreviations

| | |
|--------------|--|
| CC | Criminal code |
| CCP | Code of criminal procedure |
| CIDU | Inter-ministerial Committee for Human Rights |
| DPR | Decree of the President of the Republic |
| ECHR | European Convention for the Protection of Human Rights and Fundamental Freedoms |
| ECtHR | European Court of Human Rights |
| FAMI | Fund on Asylum, Migration and Integration |
| HRE | Human Rights Education |
| ICC | International Criminal Court |
| Lgs. | Legislative |
| MPO | Military Penitentiary Organization |
| NMRF | National Mechanism for Reporting and Follow-up |
| NPM | National Preventive Mechanism |
| OPG | Judicial Psychiatric Hospitals |
| PRC | Permanent Repatriation Centres |
| RD | Royal Decree |
| REMS | Residences for the Execution of Measures of Security |
| SPRAR | System for the Protection of Refugees and Asylum-seekers |
| THB | Trafficking in Human Beings |
| UAMS | (foreign) Unaccompanied minors |

I. Introduction

1. The first periodic report of Italy to the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter the Convention) is hereby submitted, in accordance with Article 29, paragraph 1 of the Convention.

2. The report has been drawn up and structured in keeping with the guidelines relating to the form and content of reports under article 29 of the Convention and with the guidelines (dated 8 June 2012) adopted by the Committee at its second session (UN Doc. CED/C/2).

3. The Convention was ratified by Act No.131/2015 (dated July 3, 2015), which entered into force on August 21, 2015. The instrument of ratification was deposited on October 8, 2015.

4. Where persons are deprived of their liberty by the State, this is based on Italian law and is subject to procedural safeguards. In line with the Italian Constitution, the lawfulness of deprivation of liberty is always assessable by an independent court.

5. It is fully acknowledged that, after considering the report, the Committee may issue comments and observations to be communicated to the State party in accordance with article 29 (3) and request it to provide additional information according to article 29 (4).

7. The present report, the first submitted by Italy pursuant to Article 29 of the Convention, was drafted by an inter-ministerial approach, within the Inter-ministerial Committee for Human Rights (acronym in Italian, CIDU) at the Ministry of Foreign Affairs and International Cooperation of Italy.

8. CIDU was established in 1978 and may be considered as the National Mechanism of Reporting and Follow-up (NMRF).

9. While considering Italy's compliance with the Convention, in addition to the present report, and as an integral part of it, the Common Core Document of Italy submitted in June 2016 should be fully taken into account¹.

II. General Legal Framework

10. The Italian (rigid) Constitution adopted in 1948 determines the legal and political framework of Italy (For further information, please refer to Italy's Common Core Document (HRI/CORE/ITA/2016)).

11. The Basic Law determines the political framework for action and organization of the State. The fundamental elements or structural principles of the constitutional law governing the organization of the State are as follows: Democracy, as laid down in Article 1; the so-called *personalistic* principle, as laid down in Article 2, which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Arts. 2 and 5); the importance of labour as a central value of the Italian community (Arts. 1 and 4); the principle of solidarity (Art. 2); the principle of equality, as laid down in Article 3 (it is also the fundamental criterion applied in the judiciary system when bringing in a verdict); the principles of unity and territorial integrity (Article 5); and above all, the relevant principles, including the social state, the rule of law and the respect for human rights and fundamental freedoms, such as freedom of correspondence, freedom of movement, freedom of religion or belief, and freedom of opinion and expression (for additional principles and relevant provisions, please refer to Annex No. 1 below).

- The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. Indeed, we rely on a solid framework of rules, primarily of a constitutional nature, by which the respect for human rights is one of the main pillars.

¹http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fCORE%2fITA%2016&Lang=en

12. Within the domestic system of protection of human rights, mention has to be made, among others, of the Italian Constitutional Court that deals only with infringements of constitutional level².

13. The Constitutional Court exercises its duty as one of the highest guardian of the Constitution in various ways. It becomes active when it is called on. For example, it supervises the preliminary stages of referenda and is competent in case of presidential impeachment.

14. Central and local Authorities, claiming that a state or a regional act might be unconstitutional, may lodge complaints of unconstitutionality with the Italian Constitutional Court. Therefore, the Court monitors authorities to see whether they have observed the Constitution in their actions. It also arbitrates in cases of disagreements between the highest State's organs and decides in proceedings between central and local Authorities.

15. Procedurally, the Court must examine *ex officio* (the prosecutor) or upon request of the plaintiff/defendant whether the provisions to be applied are in compliance with the Basic Law.

16. When the Court considers that an act is unconstitutional, such evaluation brings to a suspension of the *a quo* proceeding and a decision is made by the Court, pursuant to Art.134 of the Italian Constitution.

17. The Constitutional Court decides (and its decisions cannot be appealed): 1. disputes concerning the constitutionality of laws and acts with the force of law adopted by State or Regions; 2. arising over the allocation of powers between branches of government, within the State, between the State and the Regions, and between Regions; 3. on accusations raised against the Head of State in accordance with the Constitution.

18. This Court decides on the validity of legislation, its interpretation and if its implementation, in form and substance, is in line with the Basic Law. Thus, when the

² It consists of fifteen judges; one-third being appointed by the Head of State, one-third by the Parliament in joint session, and one-third by ordinary and administrative supreme courts.

Court declares a law or an act with the force of law unconstitutional, the norm ceases its force by the day after the publication of the decision.

19. The Italian Republic, founded in 1946, guarantees individual freedoms and defensive rights against the State's powers through *inter alia*: the exercise of the right to address petition (Article 50); the possibility of presenting draft legislation (Articles 70(1) and 71(2)); the specific role, among others, of the Constitutional Court (Article 134 et ff.); and the right to call for referendum.

A. Relevant Provisions of Italian Legislation

20. As reported below, following the ratification and entry into force of the Convention, most of its provisions are already reflected in Italy's legislation.

21. Enforced disappearance is a crime offending the human dignity besides violating a whole set of fundamental rights, including the right to life, the right to liberty and security, the right to a fair trial and/or the right not to be subjected to torture or other cruel, inhuman or degrading treatment.

22. Under the Italian Constitution, Article 13 is to be reported entirely, as follows: *Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the judiciary stating a reason and only in such cases and in such manner as provided by the law. In exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law, the Police may take provisional measures that shall be referred within 48 hours to the judiciary for validation and which, in default of such validation in the following 48 hours, shall be revoked and considered null and void. Any act of physical and moral violence against a person subjected to restriction of personal liberty shall be punished. The law shall establish the maximum duration of preventive detention.*

23. Act No. 237/2012 introduced adjustment to the International Criminal Court (ICC)'s Statute (the latter being promptly ratified by Italy, by means of Act

No.232/1999). In this regard, Act No.237/2012 provides for *inter alia* a specific cooperation-related obligation with the ICC (Article 1), in line with ICC Statute. The Ministry of Justice is the competent organ for relations with the ICC (Art. 2). Act No. 237 also provides for that ICC's requests must be submitted to the General Public Prosecutor's Office at the Court of Appeal of Rome and that the competent judicial authority is the Court of Appeal of Rome. The legislation under reference further considers relevant procedures, including pre-trial detention and modality to serve penalties, by expressly recalling the Italian criminal procedural code (Art.3)³.

24. Against this background, the domestic legislative framework includes a number of international instruments to which Italy is party and which by virtue of their subject directly contribute to the prevention of enforced disappearances, as follows: (i) European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 4 November 1950, the protection mechanism of which - the European Court of Human Rights - has declared itself competent to hear cases of enforced disappearance on the grounds of Article 2 (on the right to life) of ECHR; (ii) International Covenant on Civil and Political Rights of 16 December 1966; (iii) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987, establishing the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), entitled to unlimited access to places of detention and having to date carried out 13 visits to Italy; (iv) United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the Optional Protocol thereto of 18 December 2002, under which the National Authority for the protection of persons deprived of liberty has been set up as the national mechanism for the prevention of torture (NPM); (v) Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977, insofar as they empower the International Committee of the Red Cross (ICRC) to visit prisoners of war; (vi) Rome Statute of 17 July 1998 on the creation of the International Criminal Court (ICC), Article 7 of which characterizes enforced disappearances, when committed as part of a widespread or systematic attack directed against any civilian population and with knowledge of the attack, as a crime against humanity.

³ For further information, please refer to information under Article 9 below.

25. On the domestic level, the Italian Constitution is fully translated into ordinary legislation, including criminal law and criminal procedural law as explained in more detail below.

III. Information Relating to the Implementation of the Convention in Italy

Article 1

26. No domestic legislative measure authorizes any enforced disappearance. Indeed, enforced disappearance constitutes a manifestly unlawful act, which no excuses admits, in line with Constitutional provisions, in particular Article 13.

27. In addition, Article 51 C.C. relieves from the obligation to carry out instructions of a superior official in the event that the order given is manifestly unlawful⁴.

28. The ratification of the Convention was made by Act No. 131/2015, through the so-called “dry ratification (*ratifica secca*)”, which does not require any specific amendment to the existing legislative system in force.

29. Presently, enforced disappearance falls within the following criminal regime: Under Art.605 C.C., the crime of kidnapping (*sequestro di persona*) does not provide specific exonerating circumstances or cases of non-punishment.

30. Likewise, Art.184-b of the military criminal code provides for “The military serviceman who violates the prohibition to capture hostages as provided for by the rules on international armed conflicts is punished with military detention penalty from two to ten years (*Il militare che viola i divieti della cattura di ostaggi previsti dalle norme sui conflitti armati internazionali e' punito con la reclusione militare da due a dieci anni*)”.

⁴ Court of Cassation, Section IV (Penal), No.888, dated December 5, 2007.

31. Art.185-b of the military criminal code also provides for, as follows: “Except if the fact constitutes a more serious offense, the military serviceman who, for reasons not unrelated to the war, performs acts of torture or other inhumane treatment, illegal transfers, or other conduct prohibited by international conventions, including biological experiments or unjustified medical treatment from the health standpoint, to the detriment of prisoners of war or civilians or other persons protected by the same international conventions, is punished with military imprisonment from one to five years⁵”.

32. There are no exonerating provisions; and, therefore, no exceptions to the system of punishment of the crime of kidnapping pursuant to Art.605 C.C. are allowed, including with regard to the fight against terrorism or for national security purposes or for whatsoever other reasons.

Article 2

33. In our legislative system there are therefore a number of legal provisions that punish some of the conducts falling within the crime under reference: kidnapping of persons (Art.605 C.C.) for terrorism or subversion purposes (Art.289-b C.C.P.); unlawful arrest (Art.606 C.C.), undue limitation of personal liberty (Art.607 C.C.); abuse of authority against person put under arrest or detained (Art.608 C.C.). These offenses can be integrated by other crimes, such as personal injury (Art.582 C.C.) or battery (Article 581 C.C.).

34. Recently, Article 1 of Act No.110/2017 introduced into the ordinary criminal code, under Title XII (Crimes against the person), the crimes of torture (Art.613-b) and instigation to torture (Art.613-ter).

⁵ “Salvo che il fatto costituisca piu' grave reato, il militare che, per cause non estranee alla guerra, compie atti di tortura o altri trattamenti inumani, trasferimenti illegali, ovvero altre condotte vietategli dalle convenzioni internazionali, inclusi gli esperimenti biologici o i trattamenti medici non giustificati dallo stato di salute, in danno di prigionieri di guerra o di civili o di altre persone protette dalle convenzioni internazionali medesime, e' punito con la reclusione militare da uno a cinque anni”.

35. In particular, Art.605 C.C. provides for the crime of kidnapping. The military staff and law enforcement agencies can be accused and convicted of kidnapping; a specific aggravating circumstance is provided for when the crime of kidnapping is committed by a public official (and the military and law enforcement officers are public officials, to the effects of internal legislation). In this regard, the penalty for the military and law enforcement officers is imprisonment from one to ten years.

36. More serious penalties are foreseen if the victim of the kidnapping is a child.

37. The provision that incriminates the "forced disappearance" is the one referred to in Art.605 C.C.: any arrest, detention, seizure or any other form of deprivation of personal liberty by agents of the State or of persons or groups of persons acting with the authorization, support or acquiescence of the State would be devoid of the legal requirement, constituted by the measure released by the judicial authority, and they would therefore cause and fall within an illegal form of restriction/deprivation of personal liberty.

38. The crime of kidnapping also emerges when the victim is subjected to deprivation of liberty for a few hours and then released.

39. Pursuant to Art.110 C.C., is guilty of the crime of kidnapping in person not only who materially subjects one or more persons to deprivation of liberty, but also whoever orders, instigates or leads to the perpetration or attempt to perpetrate the crime; is also responsible anyone who knowingly omits to take all necessary and reasonable measures in his/her power to prevent or repress kidnapping or to report the matter to the competent authorities for the launch of an investigation or prosecution.

40. Also paragraph 2 of Article 7 of the Convention is observed, as long as only the judicial authority, i.e. the criminal judge (and in cases of urgency the public prosecutor with detention order (*fermo*) to be validated by a criminal judge) can legally submit a restricted person in prison or under house arrest, in the presence of a criminal

proceeding and with the guarantees provided by the Constitution and by the procedural rules.

- Every prison and any other type of relevant facility is obliged to keep a register of persons restricted therein.
- The release ordered by the judge must be carried out immediately, as soon as the officers of the prison receive the order of release from the judicial Authority.

41. By virtue of the specific aggravating circumstance, the crime of kidnapping of a person perpetrated by public officials is punished with a high penalty: up to ten years of imprisonment; up to twelve years if the victim is a minor and up to fifteen if the minor is infra-fourteen years old or is taken or held abroad.

- If the victim dies as a consequence of the kidnapping, the discipline concerning the concurrence of crimes (voluntary homicide in concurrence with the kidnapping) is applied; and the sentence to imprisonment is determined starting from the detention penalty to be decided for the most serious offense (homicide, Art.575 C.C.: imprisonment for not less than twenty-one years), increased due to the continuation nature of the crime of kidnapping.
- If the perpetrators of the kidnapping cause the death of the victim, who is a child, a life detention sentence applies.

42. The aggravating circumstance of role of public official is extended and applies to the co-author of the crime of kidnapping, when the role of the former is known or ignored by fault; with the consequence that in the event of conviction for the crime of kidnapping, even non-military personnel, meaning "civilians" who are not members of law enforcement agencies are condemned to the same punishment applied to public officials (See Court of Cassation, Judgment No.43460/2012).

43. As earlier reported, the military criminal code – as modified by Act No. 6/2002 – explicitly provides that a soldier who, for reasons which are not unrelated to war, commits acts of torture or other inhuman treatments, illegal transfers and other conducts

which are prohibited by international conventions “to the detriment of war prisoners or civilians or other individuals protected by the above-captioned international conventions”, is punishable with military imprisonment, from one to five years (Article 185-b of the military criminal code of war, R.D. No.303/1941).

44. In this regard, it is worthy of mention that the said provision is applied unless the fact constitutes a more serious offence: a conduct could therefore fall within the definition of offences, such as bodily injury (Article 582 C.C.), sexual assaults (Article 609 bis C.C.), torture (Article 613 bis C.C.) and instigation to torture (Article 613 ter C.C.) - which are punished with a more serious penalty.

45. Moreover, Article 184-b of the criminal military code provides for the offence of capturing hostages, which is punishable with military imprisonment from two to ten years. The same penalty is inflicted upon a soldier who threatens to harm or kill a person who is unarmed or has not a hostile attitude, and who was captured or arrested for reasons which are not unrelated to war, in order to force her/him to surrender other persons or things.

46. If violence is committed, the provisions set forth in Article 185 apply. Article 185 provides that: “The soldier who, without it being necessary or, in any case, without any just cause, uses violence against private enemies, who are not taking part in the military operations, is punishable with military imprisonment for up to two years. If the violence consists in manslaughter, even attempted or involuntary, or in a serious or very serious personal injury, penalties provided for by the criminal code are applied. However, the period of temporary imprisonment may be increased. The same penalties are inflicted upon the inhabitants of the territory of the enemy State occupied by Italian armed forces when such inhabitants use violence against any individual belonging to said forces”.

47. The above regime contains each of the following relevant elements: (i) Deprivation of liberty; (ii) The involvement of a State or representatives of the State; (iii) The refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person; and (iv) The person concerned is thus placed outside the protection of the law.

Article 3

48. Under this provision, the States Parties are obliged to investigate enforced disappearances committed without the authorisation, support or acquiescence of the State and to bring those responsible to justice. This provision also requires State Parties to take action against forms of deprivation of liberty in which the State is not involved.

49. By recalling Art.112 of the Italian Constitution, which provides for that “The public prosecutor has the obligation to initiate criminal proceedings (*Obbligatorietà azione penale*), to the crime of kidnapping apply the normal rules of the code of criminal procedure as regards the direction of investigations by the Public Prosecutor and the means of searching the evidence, i.e. searches, seizures, interrogation of people informed of the facts, inspections and delegation of investigation to the judicial police. There are therefore no exceptions to the normal systems for initiating criminal proceedings and methods of investigations by the Public Prosecutor.

50. As any criminal offence, the above conducts are subject to investigative measures provided for in the code of criminal procedure (C.C.P.).

Articles 4 and 5

51. By recalling above information, it is worth-stressing that enforced disappearance was already punishable in Italy as an offence being based as far as possible on the existing provisions.

Article 6

52. Criminal responsibility is thus regulated in Italian legislation under various provisions: The superior is liable to the same penalties as the perpetrator if s/he “(a) intentionally permits the commission of such an offence by a subordinate”; or “(b) intentionally fails to take measures, in so far as these are necessary and can be expected

of him/her, if one of his/her subordinates has committed or intends to commit such an offence”.

53. More generally, the criminal code regulates the limits to the exonerating circumstances under Art.51 and therefore the limits to exclusion of a defence based on an order or instruction.

54. Moreover, as earlier reported the definition of an accomplice is quite broad, encompassing any person who knowingly, by aiding and abetting, facilitates the preparation or commission of an offence or who, by means of a gift, promise, threat, order or abuse of authority or power, incites the commission of an offence or gives instructions to commit it.

55. No specific provision is therefore required in the case of the crime of enforced disappearance.

56. Lastly, as to the impossibility of invoking any order to justify a crime of enforced disappearance, reference is made to the provisions of Article 51 of the criminal code and Article 4 of Act No.382/1978, which apply to Military staff, State Police and Penitentiary Police.

Article 7

57. In light of remarks earlier provided, the offence of kidnapping – aside from other specific circumstances and additional crimes in connection to the crime under reference – if committed by public officials automatically carries a maximum sentence of ten years’ imprisonment (Art.605, para.2, C.C.).

58. Under Italian legislation, the Court may take into account aggravating circumstances when passing sentence. These circumstances include *inter alia* and occur where an offence as defined in Art.605 C.C.:

(a) Causes the death of the person concerned;

- (b) Concerns a minor;
- (c) The minor is brought abroad.
- (d) And more generally, when it is committed against, among others, a sick or injured person; a person with disabilities or other particularly vulnerable person (i.e. Art.61 C.C. and Art.90 quater, C.C.P.).

Article 8

59. Article 8, paragraph 2 of the Convention guarantees the right of victims of enforced disappearance to an effective remedy during the term of limitation. Within the above framework, with regard to statute of limitation, as a general domestic rule differing statutes of limitations apply in accordance with the crimes committed: In this regard, it is necessary to consider and calculate them in proportion with the maximum detention penalty to be served – and as prescribed by law.

60. Moreover, within the limitation period (statute of limitation), the periods of suspension of the prescription introduced by Article 1, paragraph 11 of Act No.103/2017, containing amendments to the criminal code, the code of criminal procedure and the judiciary, are to be considered:

«The course of the statute of limitation is also suspended in the following cases:

1) by the deadline set by Article 544 CCP for the deposit of the motivation to the conviction verdict of first instance, even if issued at the time of referral, until the pronouncement of the operative part of the verdict that defines the subsequent instance, for a time not exceeding one year and six months; 2) From the deadline set by Article 544 of the code of criminal procedure for the deposit of the motivation to the conviction verdict of second instance, even if issued at the time of referral, until the decision of the final sentence, for a time not exceeding a year and six months. The periods of suspension referred to in the second paragraph are counted for the purpose of determining the time necessary to prescribe after the verdict of the next instance acquitting the defendant or annulling the conviction verdict in the part relating to the ascertainment of responsibility or when the nullity has been declared pursuant to Article 604, paragraphs 1, 4 and 5-bis, CCP. If, during the period of suspension

referred to in the second paragraph, there is a further cause of suspension referred to in the first paragraph, the time limits shall be extended for the corresponding period⁶».

Articles 9 and 10

61. Jurisdiction is established in accordance with general rules set forth in the criminal code of Italy, including Arts. 6 et ff..

62. The measures aimed at establishing jurisdictions in national territory and in military theatres are those provided by the criminal code and the military criminal code. As of now, events indicated under Article 9 of the Convention have not been registered in the theatres operating where Italian military staff has been deployed.

63. As for adjustment to ICC Statute, mention has to be made of Act No. 237/2012, Article 3 of which considers relevant procedures, including pre-trial detention and modalities to serve penalties by expressly recalling the Italian criminal code of procedure, in particular Book 11, Title II, III, and IV.

64. In general terms, with regard to pre-trial detention, a person indicted for one or more criminal conducts may be remanded in custody within the framework of national, surrender or extradition proceedings, in accordance with the legislation in force, pursuant to a decision of the competent judicial authority.

65. Anyone remanded in custody is entitled to consular protection guaranteed by Article 36 of the Vienna Convention on Consular Relations of 24 April 1963, as ratified by Italy by means of Act No. 804/1967.

⁶“*Il corso della prescrizione rimane altresì sospeso nei seguenti casi: 1) dal termine previsto dall'articolo 544 del codice di procedura penale per il deposito della motivazione della sentenza di condanna di primo grado, anche se emessa in sede di rinvio, sino alla pronuncia del dispositivo della sentenza che definisce il grado successivo di giudizio, per un tempo comunque non superiore a un anno e sei mesi; 2) dal termine previsto dall'articolo 544 del codice di procedura penale per il deposito della motivazione della sentenza di condanna di secondo grado, anche se emessa in sede di rinvio, sino alla pronuncia del dispositivo della sentenza definitiva, per un tempo comunque non superiore a un anno e sei mesi. I periodi di sospensione di cui al secondo comma sono computati ai fini della determinazione del tempo necessario a prescrivere dopo che la sentenza del grado successivo ha prosciolto l'imputato ovvero ha annullato la sentenza di condanna nella parte relativa all'accertamento della responsabilità o ne ha dichiarato la nullità ai sensi dell'articolo 604, commi 1, 4 e 5-bis, del codice di procedura penale. Se durante i termini di sospensione di cui al secondo comma si verifica un'ulteriore causa di sospensione di cui al primo comma, i termini sono prolungati per il periodo corrispondente”.*

Article 11

66. Article 11 of the Convention lays down the principle “*aut dedere aut judicare*”. This means that should Italy have jurisdiction in accordance with the above and does not extradite an alleged offender, the public prosecutor will investigate the case with a view to prosecution. The fundamental procedural rights of the suspect are observed in this connection.

67. This section of the Convention establishes universal jurisdiction, albeit subject to certain conditions. These conditions are that the suspect must be an Italian national or be in Italy or that the offence must have been committed against an Italian national (Art.6 et ff. C.C.).

68. In accordance with the “*aut dedere aut judicare*” principle set forth under Article 11 of the Convention, Italy will, in such circumstances: 1. either itself prosecute and try the person concerned; or 2. extradite him/her to another State that has requested his/him extradition for the same offences; or 3. surrender him/him to an international criminal tribunal that has requested his/her surrender. In such a case all the usual conditions for extradition and surrender should be fulfilled, in accordance with Act No. 237/2012 and Italian criminal procedural code.

69. As for the extradition procedure, the domestic system provides for a "mixed" model, consisting of two phases, whereby the former, judicial-wise, focuses on the protection of rights and on safeguards (left to the Court of Appeal decision), and the latter of an administrative nature, falls within the competence of the Minister of Justice: this stage, in turn, can undergo the control of the administrative court.

70. Beyond the profiles included in the criminal code and in the criminal procedural code, the Italian Constitution establishes, in this field, specific limits: it establishes, on the one hand, that the extradition of a citizen is to be allowed "only in cases expressly provided for in international conventions"; and, on the other hand, that "extradition may not, under any circumstances, be allowed for political crimes, with regard to both the citizen and the foreigner". Art. 26 of the Italian Constitution stipulates as follows:

*Extradition of a citizen may be granted only if it is expressly envisaged by international conventions. In any case, extradition may not be permitted for political offences*⁷
(Please also refer to Art. 697 CCP et ff.).

71. Italian judicial procedure provides that the assessment of whether the conditions for granting extradition are met (Articles 703 et ff. CCP.) is to be made by judicial proceedings.

72. The extradition order is thus the concluding act of a complex procedure composed by a judicial phase followed by an administrative one, where both phases are regulated specifically and in detail by the provisions of the code of criminal procedure (CCP).

- The relevant provisions provide that the person concerned shall participate fully in the procedure, so that s/he has full knowledge of the proceedings and of all its phases and thus can interact with it either personally or through its defence counsel.
- The person benefits from the broadest possible guarantees of defence and right of reply [*in contraddittorio*] and is in a position of true “equality of arms”, as established, among others, by the European system for the protection of a person’s fundamental rights.

73. In practice, the extradition order issued by the Ministry of Justice is to be regarded as the due and finalizing act of a complex and structured judicial and administrative procedure, which closes with the acknowledgement that the conditions for surrendering the person sought are met.

74. As a matter of fact, the cases under which the Ministry of Justice has the faculty to deny extradition, even when the relevant judicial Authority has given a favourable decision, are specified and detailed in Article 698, paragraph 1, CCP, and are essentially

⁷ In addition, and although only at the criminal code level (Art.13, second paragraph, C.C.), it is the subject of a specific provision also the so-called principle of double jeopardy, according to which the fact for which extradition is requested must be considered a crime both under the law of the requesting State and the law of the requested State.

the cases of persecutory or discriminatory acts against the person sought for extradition or of penalties or treatments that are cruel, inhuman or degrading, or that breach the fundamental rights of the person.

Article 12

75. Also in light of Act No.237/2012, this section is governed by Italian criminal law and criminal procedural law.

76. As for Act No. 237/2012, the Public Prosecutors' Office at the Court of Appeal of Rome has been designated as the prosecuting authority responsible for considering complaints concerning international crimes envisaged under the Rome Statute.

77. Against this background, Art.112 of the Italian Constitution must be recalled, jointly with Art.50 C.C.P., which sets forth as follows: *1. The prosecutor initiates prosecution when the conditions for dismissal are not met. 2. When the complaint, the request, the application or the authorization to proceed is not necessary, the prosecution is initiated ex officio.3. The prosecution can be suspended or interrupted only in cases expressly provided for by law.*

Article 13

78. Italy may surrender a person suspected to another Member State of the European Union on the basis of a European arrest warrant.

79. Under Italian legislation, the extradition of persons to Non-EU countries requires a treaty. Italy has concluded extradition-related treaties with a large number of countries (Please also refer to information above provided for under Article 11).

Article 14

80. This article does not require changes to Italian legislation since Italian legislation makes the granting of requests for mutual legal assistance conditional upon the existence of a treaty basis.

Article 15

81. Italy implements the obligation to cooperate and afford mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

Article 16

82. Article 16 does not necessitate additional legislation. This obligation already arises from Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment. Article 16 also has similarities to the *non-refoulement* principle contained in Article 33 of the Convention relating to the Status of Refugees (done at Geneva, on 28 July 1951).

83. More specifically, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as interpreted by the European Court of Human Rights in its Decision, dated 7 July 1989, in the case of *Soering v. the United Kingdom* and, subsequently, by the national Courts, prohibits in an absolute manner the deportation of aliens exposed to risks of torture or inhuman or degrading treatment in their country of origin, regardless of the legal basis or form of such deportation (removal, expulsion, extradition or surrender).

84. In accordance with the Court's rulings, protection under Article 3 applies when there are "serious and verified grounds for holding that the person concerned would be exposed to a real risk" of abuse and if it is shown that he or she is personally and specifically exposed to such risks. Such protection is required regardless of the seriousness of the accusations. In its judgment of 28 February 2008 in the case of *Saadi*

v. Italy, the Court firmly rejected the possibility of weighing the gravity of the threat represented by the alien concerned against the risks of abuse that he would incur if he went back. The Court noted that Article 3 affirms a fundamental value of democratic societies; is, contrary to most of the normative provisions of ECHR, subject to no restrictions; and admits no derogation under Article 15 of ECHR, even in the event of a public emergency threatening the life of the nation.

85. Accordingly, domestic Authorities do not deport aliens who claim exposure to risks if they were to return, without first examining the situation of such persons, on a case-by-case basis. In so doing, they consider the overall conditions prevailing in the country concerned according to all available relevant information; and, in detail, the applicant's personal circumstances (*inter alia*, his or her past activities and relations with the authorities of the country of origin) based on the information supplied by the applicant, including within the framework of a request for asylum.

- It is worth-reiterating that expulsion procedures of foreigners not entitled to stay in Italy are based upon evaluation of each individual case – on a case-by-case basis -, in accordance with Article 13 of Legislative Decree No. 286/1998.

86. The above basic guarantees are enhanced by safeguards through quasi-judicial proceedings. In this regard, it must be recalled that Law-Decree No.13/2017 provides for the establishment at each Tribunal, of specialized judicial sections on Immigration, Asylum and Statelessness.

Article 17

87. Article 17 contains a large number of rules designed to ensure the lawfulness of the detention and prevent unlawful detention and enforced disappearance. In accordance with the Basic Law, no one may be deprived of liberty otherwise than through a lawful decision and by an authority empowered by the law, in accordance with the provisions of Article 5 of ECHR. Along these lines, no provision within Italian legislation authorizes secret detention.

88. Depending on the grounds for the relevant decision and on whether it is taken by a judicial or administrative authority, deprivation of liberty is governed by different sets of rules. Italian criminal procedure and prison legislation provide for the application of the criminal law in accordance with these rules.

89. An important safeguard in ensuring the protection of persons deprived of their liberty is the obligation in Article 17, paragraph 3, to compile and maintain official registers and records of deprivations of liberty and persons in custody.

90. Computerised registers containing these data are also kept within the Penitentiary Administration Department framework.

91. The Italian legal provisions on the deprivation of liberty are very rigorous.

92. Execution of pre-trial and criminal detention, as well as enforcement of measures are governed by CCP and the Penitentiary Act. The obligations contained in Article 17 (2)(a) through (c) of the Convention are fulfilled by the provisions of CCP. This prescribes under which conditions and how long a person may be detained and which authority is responsible for ordering and authorizing such detention.

93. In general terms, in accordance with Art. 277 CCP, the modalities of the execution of pre-trial detention must protect the rights of the persons concerned, the enjoyment of which shall not be incompatible with concrete precautionary needs

94. The Constitution prohibits arbitrary arrest and detention (Art. 13). The Italian legal system provides for that a person may be placed under police custody when s/he is arrested in the act (*flagrante delicto*) or apprehended (Arts. 380 et ff. of the code of criminal procedure) or under enforcement of an order of pre-trial detention, as issued by the judge, upon request of the Public Prosecutor (Art. 272 et ff. Art. 285 et ff. CCP).

95. Art. 13 of the Italian Constitution sets forth that the inviolability of personal liberty may be restricted by the judicial authority, only on motivated grounds and only for the cases and with the modalities provided for by the Law. Moreover, under

exceptional circumstances of necessity and urgency, strictly defined by law, said Article provides that the authority for public security might adopt provisional measures to be submitted to the judicial authority's approval within the peremptory deadline of 96 hours, after which it will immediately lose its effects.

96. As preliminary remarks, it has to be stressed that: 1. Warrants are required for arrest (Art. 386 CCP) unless there is a specific and immediate danger to which the police must respond; 2. Prisoners are allowed prompt and regular access to lawyers of their choosing and to family members; 3. The State provides a lawyer to indigents (Art. 97 CCP). For being admitted to legal aid, no particular conditions or formalities are required: a mere self-certification is sufficient.

97. Article 606 and other provisions, contained in the same section of the criminal code (CC), safeguard the individual against illegal arrest, as undue restriction of personal liberty, abuse of office against detainees and prisoners, illegal inspections and personal searches. These safeguards are supplemented by provisions under Article 581 (battery), Article 582 (bodily injury), Article 610 (duress, in cases where violence or threat being not considered as a different crime), Article 612 (Threat), Article 613 bis (Torture) and Article 613 ter (Incitement to Torture) of the criminal code. Even more so, the provisions under Article 575 (Homicide) and Article 605 (Kidnapping), to which general aggravating circumstances apply, including with regard to brutality and cruelty against individuals and the fact of having committed these crimes by abusing of power and violating the duties of a public office or public service, respectively (Article 61, paragraph 1, number 4 and 9, CC).

98. Moreover, the code of criminal procedure contains principles aiming at safeguarding the moral liberty of individuals: its Article 64, paragraph 2, and Article 188 set out that, "during interrogation and while collecting evidence, methods or techniques to influence the liberty of self-determination or to alter the ability to remember and to value facts cannot be used, not even with the consent of the person involved".

99. On a more specific note, when executing the arrest measure or guarding the person arrested, Police must promptly inform the competent public prosecutor,

accordingly. They also inform the person under arrest about the right to choose a legal counsel (In implementing such constitutional rules, Art.386 CCP provides for that “the judicial Police officers and agents who have carried out the arrest or the apprehension, or to whom the arrested person has been surrendered, expeditiously inform the Public Prosecutor of the place where the arrest or the apprehension took place. They must also inform the person put under arrest or apprehended of his/her right to appoint a defence counsel. The Judicial Police must promptly inform the private defence counsel or the Court-appointed defence counsel, as designated by the Public Prosecutor about the occurred arrest or apprehension pursuant to Art.97”).

100. Persons deprived of their liberty shall be fully informed of their rights. All cases in which a person is deprived of his/her own liberty are recorded by the police custody, and the Registers are updated accordingly. The ministerial Memos, dated 4 January 2007 and 19 July 2007 respectively, set out the requirements for the proper use of the "Register of the rights of the person arrested or apprehended" and of the "Register of the persons restricted in security rooms". The Code of Criminal Procedure states unequivocally the procedures and deadlines, which must comply with the police officers who carried out the arrest or the apprehension.

101. With specific regard to Carabinieri Corps, as a way of example, ad hoc orders are regularly issued for all Stations, with the aim, inter alia, of drawing the attention to the correct use and constant update of "the so-called Register of persons detained in the security rooms" and of "the so-called Sheet of rights", available in several languages. It is also worth-recalling that the person detained or apprehended shall declare and confirm in writing that she/he received a copy of such a Sheet.

- Moreover, on the basis of the internal practice, the access to medical services for persons under arrest must be reported in the ad hoc register devoted to record individuals who are placed in security rooms, the so-called “*Registro delle persone ristrette*”, under the item “AOB”.

102. Pursuant to Art.111 of the Italian Constitution, as amended by Constitutional Law No. 2/1999, the law guarantees that a person, who has been accused of an offence, must be promptly informed, in a confidential manner, of the nature and the grounds of

the charges moved against him/her, and be placed in the condition necessary for preparing his/her defence, as well as his/her right to be assisted by an interpreter should s/he does not understand or speak the language used during the trial.

103. Pursuant to Art.143 CCP, the defendant has the right to be assisted by an interpreter, free of charge.

104. Art. 387 CCP provides for that the judicial Police, with the consent of the person arrested or apprehended, must inform without any delay the family of said person put under arrest or apprehended.

105. Moreover, the Italian legal system includes a general provision on the basis of which no waiver of legal defence is allowed to those who are put under arrest.

106. Art. 24 of the Italian Constitution stipulates that the right of defence is a fundamental right; and Art.27 lays down the principle of the assumption of innocence, up to the final judgment. In this context, the Italian legal system considers the right of being assisted by a defence counsel as an inalienable right, from the very outset (the technical-legal defence is mandatory, see Art. 97 and 98 CCP). Thus, meetings with the defence counsel cannot be limited in any way and are possible since the very beginning of the imprisonment.^[11]^[SEP]The visual meetings with duly entitled family members also take place at fixed time and days, after having ascertained the actual family relationship – even by means of a self-declaration.

107. Along these lines, the Penitentiary Act/Prison Rules [*Ordinamento Penitenziario*] (Act No.354/1975) and the relating Implementing Regulation [*Regolamento di esecuzione*] (Decree of the President of the Republic, DPR No. 230/2000) contain specific provisions aimed at ensuring that every person, as from his/her first contact with the prison, is granted the recognition of fundamental rights.

108. It is therefore provided that upon his/her first arrival (Art. 23, para.3, of the above Regulation), the prisoner undergoes a medical examination and meet an expert in prison treatment, in order to “verify whether, and should it be the case with what precautions, s/he can adequately cope with the state of restriction”, and also in order to

ascertain whether there are any situations of risk or other type of problems. Art.23, para.5, also provides that the Prison Governor, or his/her delegate, have a further talk with the prisoner “in order to give him/her the information provided for in Art.32, para.1 of the (cited) Act”, and to also give him/her a copy of the regulations governing life in prison (Article 69 of the Regulation expressly provides that the regulations be made available in several languages).

109. Art. 388 of the code of criminal procedure sets out the rules governing the questioning of the person arrested or apprehended by the public prosecutor who shall proceed with the questioning, in compliance with Art. 64 of the code of criminal procedure, and timely inform of said questioning the person’s private or Court-appointed defence counsel (Arts. 96 and 97 CCP). S/he shall also inform the person arrested or apprehended of the acts under investigation, the grounds on which the measure is based, the evidence gathered against him/her and – provided that this does not cause any prejudice to the investigations – the sources of said evidence.

110. Specifically, Art.391 CCP entails the obligatory participation of the defence counsel in the validation hearing of provisional arrest or the arrest.

111. Art.294 CCP rules the questioning of the arrested person or the person under provisional arrest on behalf of the judge, who, generally speaking, has to proceed immediately to the questioning, or, in any case, no more than five days after the start of the custody measure, if s/he did not do so during the validation hearing (para.1). The pre-trial detention order loses immediately its effect in case the judge does not proceed with the questioning by said deadline (Art. 302, para.1, CCP).

112. The questioning before the judge shall take place with the mandatory participation of the defence counsel (para.4), in terms of Articles 64 and 65 CCP, which contain the general provisions on questioning, in compliance with the constitutional writs mentioned above.

113. Art. 104 CCP, with regard to the person who has been arrested while in the act of committing an offence or subject to provisional arrest (in terms of Art. 384 CCP) and the accused person under pre-trial detention, sets the right to talk to the defense

counsel immediately after their arrest, or provisional arrest or the starting of the execution of the pre-trial detention in prison.

114. Art. 104, para.3, CCP provides for an exception to said general rule: the possibility that the judicial authorities, by means of a motivated decree, defer the accused person's interview with the defence counsel for a period of time not exceeding five days. Said postponement is allowed, as specified under the same Article, only in the presence of precise assumptions on which the measure is grounded, i.e. "the existence of specific and exceptional reasons for precaution".

115. The only case under which there could be a temporary limitation of meetings, even with the defence counsels, occurs when the prisoner is subject to a measure of judicial isolation (Art.22 of the Regulation of enforcement of the Penitentiary Act). Such a condition stems from an act of the prosecuting judicial authority and is connected with precautionary and investigative requirements when there is the risk of tampering with evidence. In this case, the decree imposing such measure shall indicate in detail the length and modalities thereof.

116. In any case, if there is an order of deferral of the interview with the defence counsel, such deferral shall not last more than five days (Art.104 CCP).

117. Even during the period of judicial isolation, the prisoner may have contacts with the prison staff, the supervisory judge, and the medical staff.

118. In case of arrest or police custody, the same power is exercised by the Public Prosecutor until the arrested person or the person subject to police custody is put at the disposal of the judge for the validation hearing (Art.104, para.4). The jurisprudential enforcement of said rule is very strict, meaning that as results from the jurisprudence of the Supreme Court (Court of Cassation), the rule has been considered of narrow interpretation (Judgment No. 3025/1992; judgment No. 1507/96; judgment No. 1758/95; judgment No. 2157/1994), with reference to the risk of tampering with evidence (Judgment Division VI - 06/10/03 Vinci). In particular, mention was made of the fact that the measure of the judicial authorities which does not contain a detailed indication of the specific and exceptional reasons foreseen by the ruling, gives rise also

to the nullity of the further questioning of the person under pre-trial detention, before the judge, according to Article 294 CCP, in case the arrested person was not in a position to talk to his/her defense counsel before said questioning.

- According to the Supreme Court, “the illegitimate postponement of the hearing with the defense counsel and hence the infringement of the right provided for under Art.104, paras.1 and 2 of the code of criminal procedure, entails the infringement of the right to defense, to be considered within the framework of general nullity provided for under Art. 178, letter c, of the code of criminal procedure - nullity which according to Art.185 para.1 of the code of criminal procedure, makes invalid the questioning rendered by the arrested person, who has been illegally denied the right to talk beforehand to the defense counsel, with the consequences provided for under Art.302 of the code of criminal procedure, namely the loss of efficacy of pre-trial detention (Judgment No. 3025/1992, confirmed by judgment Division VI- 04/20/2000 Memushi Refat).

119. Hence, there is no doubt that the exceptional provision contained in Art.104, paras.3 and 4 of the code of criminal procedure does not affect the right of the arrested person to be questioned in the presence of the defence counsel: it should be stressed that the above-mentioned Articles 391 and 294 of the code of criminal procedure expressly provide for the obligatory participation of the defence counsel in the validation hearing and the questioning before the judge.

120. As for the right of access to medical care, this is always guaranteed when the person under arrest or in prison needs medical assistance or when s/he explicitly requests it: The State Police underlines that the person deprived of his/her freedom has the right to request a physician who, even without such a request, shall examine said individual when the Police officer deems it necessary. Such indication emanates *inter alia* from memos and internal regulations of the Carabinieri Corps.

121. In light of relevant constitutional principles, admission to legal aid in accordance with Art.16, paragraph 2 of Legislative Decree No. 25/2008 is ensured to

the following persons: Foreigners and stateless persons residing in the State's territory; the offender; the defendant; the convicted person; the victim of the crime; the injured party who intends to bring civil action (*parte civile*); the person that is liable from a civil law standpoint or civilly obligated for the fine; the person who (offended by the offense - damaged) intends to pursue civil action for compensation for damages and restitution. Admission is valid for each stage of the trial and for any possible incidental related procedures⁸.

122. The asylum-seeker, in order to be eligible for legal aid, must prove that s/he has an income below the threshold in accordance with DPR No. 115/2002 (11,528.41 Euros). In this respect, a self-certification can be produced.

123. More specifically, the relevant topics falling within the competence of the Penitentiary Administration are governed by Articles 11 Act No. 354/1975 and Articles 17 and 23 DPR 230/2000; upon arrival, prisoners are submitted to a general medical visit, within the following day, in order to assess possible physical or psychological diseases. During imprisonment, periodical and frequent checking of health conditions of all the prisoners are guaranteed.

124. Article 11 of the Act under reference and Art.17 of the relating Regulation provide for that medical and pharmaceutical assistance be constantly provided through the presence in prison of specialist doctors and the possibility of being hospitalized either in the prison administration's medical centres (Centres for diagnosis and treatment/*Centri Diagnostici e Terapeutici*) or in external health-care facilities.

125. Specifically, as per Art.11, para.11 of Act No. 354/1975, prisoners and internees can request to be visited at their own expenses by a physician of their own choice. For accused persons the authorization of the proceeding Judicial Authority is necessary; after the first instance judgment, the authorization is given by the Prison Governor.

⁸ In the execution phase, in the review procedure, in the revocation and the application initiating third party procedures, in the trial concerning security or prevention measures or for those under the jurisdiction of the oversight Tribunal (should the person concerned be in need to be assisted by a lawyer), it is necessary to submit application for admission to legal aid.

126. With particular reference to the newly arrived prisoners, it is useful to mention Circular No. 0181045 of 6 June 2007, by which the “reception service” was established, for persons coming from liberty, with particular attention to the persons having a suicide risk and psychiatric pathologies. That service, composed of a multidisciplinary staff (governor, physician, psychiatrist, psychologist, trained nurse, educator, penitentiary police staff), in close connection with social workers, cultural mediators and the local social-health services, aims at obtaining a first contact with the prisoner in order to mitigate the traumatic effects of imprisonment and to plan interventions protecting physical and psychic safety consequent to the entry into prison.

127. Against this background, it is worthy of mention that the Unified State-Region Conference approved the Plan to Prevent Suicide in Prisons in July 2017. The above Conference also approved, on 26 October 2017, the Plan To Prevent Self-harm and Suicide Prevention at Juvenile Detention Facilities.

128. In this context, it is also worth mentioning Art. 582 of the criminal code on the ill-treatment of persons deprived of their liberty. The conduct of law enforcement officials is often pursued *ex officio*, even in cases of minor injuries, as the above provision entails acts which constitute offences that may be prosecuted *ex officio*, such as the offence of *Abuso di autorità contro arrestati o detenuti* [Abuse of authority over arrested or detained persons] (Art. 608 of the criminal code), *Violenza privata* [Private violence] (Art. 610 of the criminal code), *Abuso di ufficio* [Abuse of office] (Art. 323 of the criminal code) or the offence of *Falso in atto pubblico* [Forgery of documents].

129. With regard to migratory flow and reception Centres for migrants, the above-mentioned recent Law-Decree 13/2017, as converted into law, by Act No. 46/2017, to speed up proceedings in the field of international protection must be mentioned. It aims at, inter alia: (i) Closing down Expulsion and Identification Centres; (ii) Setting up small PRCs (standing for Permanent Repatriation Centres) across the country (in this regard asylum-seekers can be housed in PRCs under strict circumstances, only (in accordance with Art.6 of Legislative Decree No. 142/2015). Currently, PRCs are located at: Brindisi, Caltanissetta, Roma and Turin); (iii) Ensuring full access to the newly-established National Authority for the protection of the persons deprived of their liberty (NPM); (iv) Reducing the duration of the asylum-related proceedings; (v) Closer

links between the territorial Commissions and the judicial authorities by establishing in each District tribunal, highly specialized judicial sections - to this end, specific training for judges will be carried out by EASO and members of the National Commission for the Right of Asylum.

130. Moreover, the above Act expressly provides for the establishment of the Hotspots in line with the EU rules, and regulates all operations and activities to be carried out therein (identification; health-related screening; vulnerability assessment; photo fingerprinting; information provided by UNHCR, IOM and Save the Children on asylum, relocation and voluntary return procedures, and so forth).

131. From 2015 onwards, the overall reception system has been re-designed by Legislative Decree No.142/2015, by which we have transposed the main provisions of the common European system on Asylum. Within this framework, mention has to be made of the following: (i) The strengthening of the SPRAR system (standing for System of Protection of Asylum-Seekers and Refugees), namely the so-called second level of reception - with the full cooperation of local Authorities; (ii) The establishment of the reception system for unaccompanied foreign minors (acronym UAMs), thanks to dedicated programs and a structure at the Ministry of the Interior; (iii) Awareness of the need for structural interventions to address specific vulnerabilities, in particular victims of trafficking in human beings (THB), with particular attention to women and children; (iv) Testing initiatives with the involvement of those people waiting for the recognition of international protection, in volunteering projects across the national territory; (v) The launch of the new planning, including the themes of Asylum, Migration and Integration and relating to European Relevant Fund (acronym in Italian, FAMI); (vi) The adoption, between 2016-late September 2017, of a National Scattered Reception Plan (*Accoglienza diffusa*) and of the first National Integration Plan. The latter, currently being tested, aims to cover 200.000 units. It results in a "window of opportunity for the future of our country", and indicates a "quantum leap" in terms of quality with tools and services devoted to the social inclusion of regular migrants, in particular refugees and international protection holders; (vii) At the same time, the guarantees for asylum-seekers have been strengthened in terms of the material reception conditions and the principle that reception begins with the manifestation of the will to seek international protection, irrespective of the verbalisation of the

application through compilation of the so-called “Model C3”, and with specific attention paid to vulnerable groups.

132. In light of the novelties introduced by Legislative Decree No.142/2015, the system of reception, coordinated by the Ministry of the Interior, is now organized in the following three phases: the first two phases - rescue and first reception - are managed by the State through government Centres; and reception is ensured at the Centres, provided for under Arts. 9 and 11 of Legislative Decree No.142/2015; the third phase - second reception level - is managed by SPRAR, in line with Art.14 of the aforementioned Lgs. Decree No. 142/2015.

133. Lastly, we recall that the penitentiary healthcare service has been transferred under the Ministry of Health’s competence and that the Judicial Psychiatric Hospitals (in Italian, OPG) have been closed down and replaced by REMS – standing for Facilities for the Execution of Measures of Security.

134. More specifically, in light of Act No. 9/2012 and Act No. 81/2014, it is worth-recalling, as follows: Since April 1, 2015, both the custodial measures of hospital admission to the judicial psychiatric hospitals (in Italian, OPG) and the assignment to the House of Care and Custody must be carried out at the new facilities called Residences for the Execution of Measures of Security (in Italian, REMS) where people subjected to judicial authority’s measures are entitled to exclusively healthcare measures by the Regional Health-care Service. In these facilities there is no Penitentiary Police staff, or any forms of custody other than exclusively medical treatment.

- The General Directorate for Prisoners and Treatment of Ministry of Justice started from April 1, 2015, to arrange the transfers of the inmates from the OPGs to REMSs. As of March 31, 2015, OPG internees were 618 men and 71 women: all moved to the new residential facilities.
- At the beginning of the year 2017, all OPGs have been closed down; and the system of regional health residences (REMS) is fully in place.

135. With specific regard to the role of the supervisory judge, s/he is required to conduct periodic verifications of the current social dangerousness of the person

concerned. This assessment relies on the free appreciation of facts and all evidence, which s/he deems to be useful in addition to those ones, which are submitted to him/her. Moreover, from a procedural law standpoint, this proceeding is based upon an adversarial system, including hearings and legal defence. The lawyer can always request the magistrate for the appointment of an expert (*perito*).

136. Since March 2015, the National Preventive Mechanism (NPM) pursuant to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is fully functional. Through regular visits to places where persons are deprived of their liberty and recommendations, if necessary, to the competent superior authority, the mechanism plays a key role to strengthening human rights safeguards. This covers all places of deprivation of liberty: not only prisons, including juvenile detention facilities and police stations, but also military barracks, psychiatric Institutions, the elderly's and nursing homes, Hotspots, and so forth⁹.

⁹ The National Authority for the Rights of Persons Detained or Deprived of Liberty (hereinafter referred to as the national Guarantor) has been set up.

- The National Guarantor was established in Italy as an independent National Authority by Act No.10 of 21 February 2014. It is a collegial body composed of a Chairman and two Members, namely the national Guarantor Board.

Following OPCAT's ratification and implementation by law (Law No. 195 of 9 November 2012, n. 195), the National Guarantor was designated as National Preventive Mechanism under OPCAT, in April 2014. The Chairman and one of the two Members were appointed by the President of the Italian Republic in February 2016; the remaining Member in March 2016, again through a presidential decree. The President issued each decree, after consulting the relevant Parliamentary Commissions.

At present, the Board of the monitoring body is complete and well balanced under the gender perspective. The law establishing this Authority clearly enshrines the independence of the Board, due to: a) the appointment of the Members by the President of Republic, after consulting the Parliament; b) the provision of just one term for the mandate (five years long); c) the impossibility of their removal by any authority, unless criminally sentenced. The Board reports to the Parliament on an annual basis.

- The Office of the National Authority is the technical body assisting the Board in its activity. It has been operational since March 2016 after recruitment of its members by an independent selection made by the Board from the permanent staff of Justice and Interior Ministries. They are dedicated professionals and have been identified in full autonomy and independence by the Authority, in the different areas of professional expertise (legal, educational, administrative, IT and security). As they are exclusively employed by the Authority, they take orders and report only to it. It entails that they cannot be deployed to other offices unless so decided by the Chairman of the Authority (Article 4, para.2 of Minister of Justice Decree No. 36 of 11 March 2015). Indeed, such a legal provision is the basis for the functional independence of the Office's staff.

- The Authority adopted the Self-regulatory Code (SRC), on May 31, 2016, as amended. Article 2 SRC underlines that the Authority's functions shall be carried out in compliance with the powers conferred by the 2014 Act setting up the body and by the regulation in the already mentioned Decree; so, in accordance with the principles set out in Part IV, Articles 17 to 23, of the OPCAT.

In listing the functions of the Authority, the SRC specifies, inter alia, that it shall examine – on a regular basis – the conditions (legal as well as material) of persons deprived of their liberty in any place where they are accommodated, including mobile places (i.e. in all places of deprivation of liberty, however described and whatever are the responsible authorities in charge for them, as enshrined by Article 4 OPCAT). It shall actively work in order to improve their treatment and conditions, so preventing inhuman or degrading treatment and even torture, by strengthening the safeguards through recommendations to be addressed to the relevant authorities. For such a purpose, the national Guarantor delegations visiting the places should identify shortcomings possibly leading to a violation of fundamental rights of the persons concerned.

Article 3 SRC explicitly states that the national Guarantor freely exercises its mandate carrying out unannounced visits to any place, following its own program without any interference by the governmental (national or local) authorities.

Articles 18-20

137. A person kept in pre-trial detention, one family member, or his/her representative, or his/her defense counsel may gain knowledge of this information by inspecting the relevant files. Relatives who are no legal representatives generally have no right to inspect the files, but in case of a legitimate legal interest they may obtain insight at the public prosecutor's office or at the court.

- In line with Article 20 (1), this right to information shall be restricted if the purpose of the investigations would thereby be endangered. If such information is withheld during investigation proceedings, any person so affected may lodge a complaint for violation of rights.

138. In the scope of migration law, the right to inform a lawyer and a relative of the detention, including consular and diplomatic Authorities, is foreseen and ensured. As a way of example, Carabinieri Corps transmits an ad hoc document to the foreign countries concerned.

Exchanging views with the authorities, having full access to documents as well as free and private access to persons are crucial in exercising the national Guarantor mandate. In addition, the exchange of information and the cooperation with the Subcommittee on prevention of torture (SPT) and with the NPMs of other States party to OPCAT, is decisive for the coordination of the system provided for by the Protocol and the adoption of similar standards in different countries. The outcome should be a strong protection from torture and inhuman or degrading treatment or punishment at the national, regional and global levels.

- The National Guarantor is legally requested to report to the Parliament on annual basis. Through its Annual Report, the national Guarantor makes observations and recommendations that can directly guideline the legislative activity. In particular, the Authority is requested to formulate opinions about the draft legislation concerning the areas of its mission.
- The National Guarantor makes use of facilities and resources made available by the Ministry of Justice, other State Administrations, as well as EU and international Organizations operating in line with the objectives of the law establishing the Authority and in full compliance with the principles of the UN Protocol.
- The National Authority uses the resources explicitly allocated by the annual national budget for its specific functioning and not available for any other use. It is not included in any Ministry's hierarchical structure and it is fully independent from each governmental body involved in exercising its mandate.
- Therefore, in line with OPCAT Articles 17 et seq. (in particular with Article 20), the SRC (Articles 2-3) highlights the power to have access to places, persons and documents without restrictions (except for the need to obtain the consent of the person deprived of his/her liberty, in order to examine documents contained in his/her personal file, in particular health documents). Monitoring visits are unannounced.

Moreover, the SRC (Article 4) lays down the guiding principles of the activity: first, its independence in compliance with OPCAT principles; second, its financial autonomy as the Italian budget law makes available the "necessary resources for [its] operation", on the basis of the national Guarantor request and it is up to the national Guarantor any decision concerning their use; third, the obligation to protect the confidential information obtained; fourth, the obligation of confidentiality about what has been acquired during the institutional visits and, in general, the obligation of confidentiality about the outcome of the visits, until the Report on the visit and possible Response by the authorities are published; fifth, the obligation to timely forward any *notitia criminis* committed against persons deprived of their liberty to the prosecutorial authorities; and, sixth (last, but not least) the protection from possible reprisals. About the latter, the national Guarantor is actively committed to ensuring that no one (public authorities or public officials) orders, applies, permits or tolerates any sanction against any person or organization for having communicated any true or false information to the Authority and, more generally, that no kind of prejudice is suffered.

- Furthermore, the National Guarantor has started a large-scale activity in the various fields of deprivation of liberty, in a totally independent and remarkably effective way considering its recent launch.

139. Consular and diplomatic authorities have the right to be informed about a person's imprisonment and detention if they adhere to the 1963 Convention on Consular Relations - as ratified by Italy by means of Act No. 804/1967.

140. If there is not any bilateral agreement between the two countries about the obligation of notifying the arrest/imprisonment of citizens of two parties, the prisoner must give his/her consent to communicate his/her detention.

141. As indicated in the observations relating to Article 17 of the Convention, any person placed in police custody enjoys the specific right of information. Moreover, any person remanded in custody may receive visits under certain conditions. Further, where a person is housed in reception centres or in a psychiatric establishment, his or her right to communication is subject to no restriction whatsoever.

Article 19

142. Italy, by ratification of the Prum Convention (Act No. 85/2009), has regulated *inter alia* the establishment of the DNA database. By Presidential Decree No. 87/2016, the implementing Regulation was issued and published in Official Bulletin No. 122/2016. Article 6 provides for that in cases of denunciation of the disappearance/missing of a person or of the discovery of an unidentified body, the judicial Police acquires, where necessary, information about the missing person and his/her belongings, in order to obtain DNA profile.

143. To increase DNA's identifying power, it is expected that the relatives voluntarily submit themselves to the biological sampling. By ad hoc Circulars, the Police forces, including Carabinieri Corps, have issued the operating procedures to be adopted for the collection of biological samples, including indications about the persons to undergo biological sampling, the methods of custody of sampling samples, and privacy protection.

Article 21

144. Given information provided under Article 17, when persons deprived of liberty are released, this can be immediately verifiable.

145. The rather general obligation in this provision is fulfilled by the rules for terminating pre-trial detention and by the provisions concerning the release from prison. The physical integrity is guaranteed, on the one hand, by prohibiting mistreatment during deprivation of liberty (Italy ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 1989. Subject matter of this Convention is the infringement by State organs. It obliges the Contracting States to effectively prevent, resolve and prosecute such crimes) and, on the other hand, by the obligation to provide medical care during the term to be served.

146. The Italian Penitentiary Act contains several relevant provisions concerning the physical (and mental) integrity of detained persons. Prisoners' data is collected in their respective personal files and is therefore adequately documented. The rights of the released person will not be restricted.

Article 22

147. Pursuant to Article 22, obstructing or delaying the remedies referred to in Article 17 (2)(f), and Article 20 (2), failure to record the deprivation of liberty, or the recording of any information which the official responsible for the official register knew or should have known to be inaccurate¹⁰ and the refusal to provide information on the deprivation of liberty, or the provision of inaccurate information, even though the legal requirements for providing such information have been met¹¹, shall be prevented and prosecuted. These obligations are met by Italian legislation, which subjects such action to penalties.

¹⁰ See Article 22 (b).

¹¹ See Article 22 (c).

148. The prevention of obstructing or delaying legal remedies mentioned in paragraph (a)¹² corresponds to the crime of deliberate misuse of official authority. In any case, official duties are thereby infringed upon, which would have to be punished by appropriate disciplinary measures.

149. In the same manner, maintaining personal files of inmates and the relating entry of data in the electronically managed Penitentiary Administration Department System serving the function of an inmate register constitutes an official duty, violation of which shall be punished by disciplinary measures and/or under criminal law. The same applies for the Police database for persons in detention concerning detention by authorities under the umbrella of the Ministry of the Interior.

Article 23

150. Pursuant to Article 23 (1), it must be ensured that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information. This obligation is met by the on-going training of judges and public prosecutors on issues of protecting fundamental rights. Furthermore, all personnel active in the penitentiary system is comprehensively trained for their work in terms of compliance with the law and of carefully maintaining the relevant registers.

151. Specifically, the Prison Administration through its newly established Directorate General for Training extensively provides prisons' staff with basic training and continuous training, including courses on the respect for the dignity and for the rights of the person, as well as on the management and treatment of the various types of people restricted (i.e. collaborators of justice, minors, "41-bis" interned).

152. More generally, training activities, including HRE-related courses, have been introduced for all law enforcement agencies, including *Guardia di Finanza* and

¹² See Article 22 (a).

Carabinieri.

153. As for *Guardia di Finanza*, it should be noted that in the "Training Plan for the year 2018", under ongoing preparation, it will:

- include specific courses, aimed at raising awareness, education and training in the field of human rights and the protection of the rights of migrants and of persons belonging to minorities, upon proposal by relevant Offices of General Staff;
- design new educational pathways within the basic and post-training courses according to the common training standards provided for by FRONTEX (Common Core Curriculum - EU Border Guard Basic Training), to ensure training of all Corps' personnel employed in border surveillance, on European and international legislation, the right to asylum, the law of the sea, and fundamental rights.

154. Along these lines, all Italian Forces pay the utmost attention to international humanitarian and human rights law, within the framework of the ad hoc training and educational curricula.

155. The Department of Public Security underlines that the Police staff is periodically trained on human rights law, in order to ensure full compliance with legal/judicial safeguards, especially in the event of those people put under arrest or detention.

156. Following recent introduction of the crime of torture (July 2017), law enforcement agencies will devote specific training modules to the above issue.

157. Following ratification of the Convention, as a way of example, the Ministry of Defence stresses the following actions concerning the existing training programs - as aimed at providing knowledge of the Convention and its relevant implications for the military personnel (including medical one), who may be involved in the custody or treatment of persons deprived of liberty (referring to paragraph 1):

- *The Military Penitentiary Organization (MPO) is going to include the Convention as specific subject in its training and education programs for all military personnel assigned to the MPO or to military prisons;*
- *The Military Health-Care General Inspectorate is doing likewise for all military medical personnel;*
- *The Carabinieri Corps, considering its dual nature as Police Force and Armed Force, has already included the Convention as part of the training for Officers, WOs and Carabinieri;*
- *The Centre for Higher Defence Studies has already included the Convention in the course program as specific subject for the Legal Advisor Course and, starting from the next edition, for the Joint Services Staff College Course.*

158. Furthermore, in order to enhance education and share information regarding the relevant implications of the Convention and to fully respect the rules introduced by the present article, The IDGS - 1st Department - Personnel will request the Armed Forces to include the Convention as subject in the educational programs of their respective Military Academies, Institutes and Schools.

- The recent parliamentary ratification of the Convention (Act No.131/2015) has determined its inclusion into the Italian legislation, meaning that every violation of the Convention would be considered a crime. Consequently (referring to paragraphs 2 and 3), current Laws in terms of Military Regulations deal already with military personnel who clearly refuse to obey illegal orders.

159. In particular Carabinieri Corps will further focus its courses on the Convention.

Article 24

160. Article 24 does not necessitate additional legislation. The position of victims is regulated in the code of criminal procedure; and the EU Directive on Victims of Crime is to be mentioned as well. In this regard, mention has to be made of Legislative Decree

No.212/2015 transposing EU Directive 2012/29/EU on minimum standards on the rights, assistance and protection of the victims.

161. In implementing EU Directive on Victims of Crime, Legislative Decree No. 212/2015, in force since 20 January 2016, has in fact put in place an adequate defence system for all victims of crime, especially the most vulnerable ones, given the awareness of adequate adjustment to relevant standards and of the need to ensure equality, including the right to courteous and, where necessary, personal treatment and the right to information about the course of the proceedings against the suspect, the possibilities to obtain compensation and how to make maximum use of a compensation scheme in the course of criminal proceedings as translated into Italian criminal procedural code (Arts. 90, 90-b et ff.).

162. In terms of compensation, in addition to existing framework, mention has to be made of the recent Act No. 122/2016, which provides for compensation for the victims of international violent crimes. It transposes EU Directive 2004/80.

163. Specifically, Article 11 of Act No. 122/2016 stipulates that without any prejudice to the provisions in favour of victims of specific offenses provided for by other provisions of law if more favourable, the right to compensation by the State is recognized to them when they are victim of an intentional offense committed with violence and in any case when the offense referred to in Article 603-bis CC has occurred, and also for the crime of aggravated bodily harm.

164. Compensation is granted for the reimbursement of medical and support expenses, except for acts of sexual violence and homicide for which victims or those entitled to claim compensation must be granted in any case - even in the absence of medical and support/welfare-related services.

165. The protection system was thus further reviewed by Legislative Decree No.122/2016, which establishes a Fund for Victims of Intentional Violent Crime, by which to provide compensation to cover medical and welfare/support-related expenses in favour of victims of: serious or very serious bodily harm; sexual violence; and homicide if the victim does not receive redress or when it is not possible to identify the

perpetrator because s/he is not punishable or chargeable.

166. To strengthen the protection of victims of intentional violent crimes, upon Ministry of Justice's proposal, the 2018 Budget Bill provides for further financial integration to the Solidarity Fund from the year 2018, for an amount of € 7.4 million (other than € 2.6 million already envisaged), so as to increase compensation allocation for the victims.

Article 25

167. Children have the right to protection by society and by the State from all forms of abandonment, discrimination, and oppression and from the improper exercise of authority in the family or any other Institution.

168. The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Council Regulation (EC) No. 2201/2003 of 27 November 2003, concerning jurisdiction and the recognition and enforcement of judgments in marriage-related matters and the matters of parental responsibility that contribute for the child protection in case of wrongful removal or retention of the child, are worthy of mention.

169. Italy may provide the broadest mutual legal assistance, particularly in the search, identification, and tracking of children subjected to enforced disappearance or whose parents or legal guardian have been subjected to enforced disappearance, or of children born during the captivity of a mother who has been subjected to enforced disappearance. Police authorities run a database of missing persons, which includes personal information, such as age and information on physical features.

170. The best interests of the child principle is enshrined in multiple legal texts and through the work of the National Authority on Children's Rights.

171. In accordance with domestic legislation, children enjoy the right to express their views in a wide range of matters that concern them. For instance, in the context of the adoption procedure (if the child is more than 12 years old), children must be heard in

the respective procedures.

172. The option pursuant to Article 25 (4) to review, and where appropriate, to annul adoptions, is guaranteed in accordance with Article 21 of Act No.184/1983: Abandonment of the minor is a prerequisite of the declaration of adoptability. Should adoptability be declared in the presence of a kidnapping (the child forcibly introduced in Italy, victim of a forced disappearance from the country of origin), it would be revoked.

173. As a general rule, Italian legislation fully guarantees consideration of the best interests of the child and, where appropriate, of the child's views, in accordance with the Convention on the Rights of the Child of 20 November 1989, to which Italy is party.

174. Against this background, mention shall be made of the situation of unaccompanied minors (UAMs). They are at the core of the current reception system given the steady increase in their arrivals after undertaking a perilous journey, often experiencing violence, threats, and death: 12.360 in 2015; 25.846 in 2016; 13,867 as of 30 September 2017.

175. Articles 18 and 19 of Legislative Decree No. 142/2015 provide for principles and pathways for the reception of minors. In this context, a new reception system for the UAMs has been implemented also by enhancing the existing Centres run by local Municipalities within the SPRAR network.

176. In accordance with domestic legislation, including the very recent Act No. 47/2017 of April 2017, an unaccompanied minor is a foreigner under the age of 18 who is for whatsoever reason within the territory of the State without assistance or legal representation.

177. The forced return of a foreigner under the age of eighteen is forbidden. Identification procedures are to be carried out within 10 days since their arrival, by qualified personnel, by means of, inter alia, an interview.

178. To ensure specific protection to unaccompanied minors who are victims of

trafficking (THB), the above Act provides for, inter alia, an ad hoc support program, which will ensure long-term solutions, beyond the coming of age.

179. With regard to the identification and age assessment procedure for foreign unaccompanied minors, to harmonize the relevant procedural rules nationwide a draft protocol is currently being finalized.

180. The procedure provides for a multidisciplinary approach for the age assessment, in line with European law.

ANNEX No. 1

Relevant constitutional provisions

(Excerpt from the Italian Constitution)

Art. 3

All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature, which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country.

Art. 10

The Italian legal system conforms to the generally recognised principles of international law. The law regulates the legal status of foreigners, in conformity with international provisions and treaties. A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian Constitution shall be entitled to the right of asylum under the conditions established by law. A foreigner may not be extradited for a political offence.

Art. 13

Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law. In exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law, the police may take provisional measures that shall be referred within 48 hours to the Judiciary for validation and which, in default of such validation in the following 48 hours, shall be revoked and considered

null and void. Any act of physical and moral violence against a person subjected to restriction of personal liberty shall be punished. The law shall establish the maximum duration of preventive detention.

Art. 24

Anyone may bring cases before a court of law in order to protect their rights under civil and administrative law. Defence is an inviolable right at every stage and instance of legal proceedings. The poor are entitled by law to proper means for action or defence in all courts. The law shall define the conditions and forms of reparation in case of judicial errors.

Art. 25

No case may be removed from the court seized with it as established by law. No punishment may be inflicted except by virtue of a law in force at the time when the offence was committed. No restriction may be placed on a person's liberty save for as provided by law.

Art. 26

Extradition of a citizen may be granted only if it is expressly envisaged by international conventions. In any case, extradition may not be permitted for political offences.

Art. 27

Criminal responsibility is personal. A defendant shall be considered not guilty until a final sentence has been passed. Punishments may not be inhuman and shall aim at re-educating the convicted. Death penalty is prohibited.

Art. 111

Jurisdiction is implemented through due process regulated by law. All court trials are conducted with adversary proceedings and the parties are entitled to equal conditions before an impartial judge in third party position. The law provides for the reasonable duration of trials. In criminal law trials, the law provides that the alleged offender shall be promptly informed confidentially of the nature and reasons for the charges that are

brought and shall have adequate time and conditions to prepare a defence. The defendant shall have the right to cross-examine or to have cross-examined before a judge the persons making accusations and to summon and examine persons for the defence in the same conditions as the prosecution, as well as the right to produce all other evidence in favour of the defense. The defendant is entitled to the assistance of an interpreter in the case that he or she does not speak or understand the language in which the court proceedings are conducted. In criminal law proceedings, the formation of evidence is based on the principle of adversary hearings. The guilt of the defendant cannot be established on the basis of statements by persons who, out of their own free choice, have always voluntarily avoided undergoing cross-examination by the defendant or the defence counsel. The law regulates the cases in which the formation of evidence does not occur in an adversary proceeding with the consent of the defendant or owing to reasons of ascertained objective impossibility or proven illicit conduct. All judicial decisions shall include a statement of reasons. Appeals to the Court of Cassation in cases of violations of the law are always allowed against sentences and against measures affecting personal freedom pronounced by ordinary and special courts. This rule can only be waived in cases of sentences by military tribunals in time of war. Appeals to the Court of Cassation against decisions of the Council of State and the Court of Accounts are permitted only for reasons of jurisdiction.

Art. 112

The public prosecutor has the obligation to institute criminal proceedings.

Art. 113

The judicial safeguarding of rights and legitimate interests before the bodies of ordinary or administrative justice is always permitted against acts of the public administration. Such judicial protection may not be excluded or limited to particular kinds of appeal or for particular categories of acts. The law determines which judicial bodies are empowered to annul acts of public administration in the cases and with the consequences provided for by the law itself.