



NONVIOLENT RADICAL PARTY  
TRANSNATIONAL & TRANSPARTY

and

HANDS OFF CAIN

Written Contribution  
for the review of  
the sixth periodic report of Italy

to the

Human Rights Committee

119<sup>th</sup> Session

6 – 29 March 2017

The **Nonviolent Radical Party, Transnational & Transparty** (NRPTT) enjoys general category consultative status with the United Nations Economic and Social Council (ECOSOC) since 1995.

In its campaigns NRPTT seeks to enhance awareness of and compliance with international human rights and democratic standards on both a national, regional and international scale. The NRPTT and its affiliate organizations have mounted a series of global campaigns to improve the effective enjoyment of international human rights worldwide. Such campaigns range from the campaign against starvation in the world (aimed at redirecting military funds to civil means), over the establishment of the special International Criminal Tribunals for the Former Yugoslavia and Rwanda and the International Criminal Court, to the UN moratorium on the death penalty, the UN ban on Female Genital Mutilation, the participation in the initiative for a Community of Democracies launched in 2000.

The above-stated campaigns have led to numerous initiatives at the heart of the United Nations bodies, aimed at the promotion and affirmation of human rights by the United Nations General Assembly. Over the course of its existence, the NRPTT has created a number of affiliated thematic organizations to focus on specific issues, such as Hands Off Cain.

**Hands Off Cain** is a league of citizens and parliamentarians for the abolition of the death penalty worldwide. It was founded in Brussels in 1993. Hands Off Cain (HOC) is a non-profit organisation, constituent member of the Nonviolent Radical Party, Transnational & Transparty and recognised in 2005 by the Italian Minister for Foreign Affairs.

**The name “Hands Off Cain” is inspired by the Genesis.** The first book of the Bible includes not only the phrase “an eye for an eye” but also “And the Lord set a sign for Cain, lest any finding him should smite him”. Hands off Cain stands for justice without vengeance.

**A UN moratorium on executions is its main goal,** for which parliaments, governments and public opinions worldwide have been mobilized. The abolition of the death penalty cannot be imposed by decree. The moratorium can be viewed as a meeting point between abolitionists and retentionists. It allows retentionist states to take a step towards abolition, and the abolitionists to help spare the lives of thousands of people.

**The UN moratorium campaign** was launched in Italy on Hand Off Cain’s urging. In 1994 a resolution for a moratorium was presented for the first time at the United Nations General Assembly (UNGA) by the Italian government. It lost by eight votes. Since 1997, through Italy’s initiative, and since 1999 through the EU’s endeavour, the United Nations Commission on Human Rights (UNCHR) has been approving a resolution calling for a moratorium on executions with a view to completely abolishing the death penalty, every year.

The Resolution for the Universal Moratorium on Executions was approved by the General Assembly of the United Nations for the first time in December 2007. This first approval was a milestone on the path not only of the death penalty, but also the development of human rights in general. Since then, the actual effects of the UN Resolution continued to manifest in many countries and Hands off Cain continues to act for increasing the number of countries supporting the Resolution and for its implementation all over the world, starting from **Africa**.

Hands off Cain re-launches, within the project "*Spes contra Spem*", for the overcoming of the so-called **ergastolo ostativo (life without parole)** and **art. 41-bis (solitary confinement in the Italian prison system)**. These are the same goals that Pope Francis has made clear in his speech of extraordinarily humanistic, political and legal value, addressed the delegates of the International Criminal Law and in which, among other things, has called for life imprisonment as "a sentence of masked death", which should be abolished along with the death penalty, and considered the isolation in the so-called "maximum security prisons" as "a form of torture."

---

---

---

The Committee for Human Rights in Geneva will examine the report on Italy and the compliance with the International Covenant on Civil and Political Rights (the Covenant).

Among the issues addressed by the Committee in relation to the sixth periodic report of Italy there is (at point 24 of the List of issues) "information on the measures taken to bring the special regime for persons involved in organized crime (mafia offenders) under article 41 bis of the penitentiary system law, in accordance with the provisions of the Covenant."

The answer transmitted by the Government is: "Concerning Article 41-bis regime, as well as the so-called "ordinary" regime, they are in line with ICCPR. Moreover, the Italian Constitutional Court recently confirmed it by judgment 190/2010, by which it states that the restrictions provided for by the law do not lead to inhuman or degrading treatment."

On the contrary, the **Nonviolent Radical Party , Transnational & Transparty**, as well its constitutive association **Hands off Cain**, highlight clear incompatibility between the special detention regime of art. 41-bis and the provisions of the Covenant for the reasons expressed in this document.

The relevant articles of the Covenant in relation to which we highlight the above mentioned incompatibility are the following:

## **Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### **Article 10**

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;  
(b) accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### **Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  - (c) To be tried without undue delay;
  - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the

interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

### **Article 18**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

### **Article 19**

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order, or of public health or morals.

### **Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

-----  
-----  
-----

The special detention regime under Section “41-bis” of the Penitentiary Act was introduced in 1992 as a temporary emergency measure <sup>(1)</sup> to be exclusively applied to prisoners who have been convicted of or are suspected of having committed an

1

The numbers of prisoners subject to the “41-bis” regime since 1992 is increased, with a minimum of 422 prisoners in 1997 and a maximum of 729 as of December 2015 and some prisoners have been subject to this regime since its inception.

offence in connection with mafia-type, terrorist or subversive organisations, and who are considered to maintain links with such organisations. Such a decision is actually adopted by the Minister of Justice upon request of the Ministry of Interior and on the basis of information received by the competent prosecutor for an initial period of four years and renewable every two years.

The adoption of Act No. 279/2002 of 23 December 2002 made the temporary emergency measure a permanent provision <sup>(2)</sup> and Act No. 94/2009 <sup>(3)</sup> with the Prison Administration Circular of 4 August 2009, has imposed a number of additional restrictions on “41-bis” prisoners <sup>(4)</sup> as well done with Circular no. 8845/2011.

In summary, the “41-bis” regime consists of a small-group isolation (up to a maximum of four persons), who can associate for two hours per day (one hour of outdoor exercise and one hour in a communal room). What is more, according to Section 32 of Presidential Decree No. 230 of 30 June 2000, prisoners may be further segregated from other prisoners by being held in a “reserved area”. In that case, inmate is allowed to associate with only other inmate during the two hours of out-of-cell time granted to “41-bis” prisoners and is strictly separated from all other “41-bis” prisoners.

If we consider that, according to the Nelson Mandela Rules (Rule 44), the solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact we can say that 41-bis is a practice which amount to indefinite solitary confinement that shall be prohibited according Rule 43 (a)<sup>(5)</sup>.

2

This legislative amendment was, inter alia, reflected in Prison Administration Circular No. 3592/6042 of 9 October 2003.

3

As of 2009 the Rome Court for the Execution of Criminal Sanction is the only organ at the national level which is competent to decide on the appeals filed by prisoners against the application of the ministerial decree.

4

The possibilities to maintain contact with the outside world consist of one one-hour visit per month with a family member, under closed conditions and with audio surveillance and video-recording or, alternatively, a ten-minute telephone call per month if a visit cannot take place during the same period. In addition, the frequency of contacts with a lawyer has been limited to a maximum of three contacts per week (one-hour visits or ten-minute telephone calls). The only positive change in terms of prisoners’ regime is that they are now allowed to meet not only their children but also their grandchildren below the age of twelve under open conditions (i.e. without a glass partition) for ten minutes per visit.

5

#### Rule 43

1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:

- (a) Indefinite solitary confinement;
- (b) Prolonged solitary confinement;

This special prison regime, that even in its wording (suspension of the ordinary prison treatment) shows premise of a lesion of fundamental rights of prisoners, takes in its concrete application, as explained below, the character of an instrument of harassment and compression of the personality of the individual in all its aspects, mental and physical. It appears very often completely undocked from the needs of security and public order posed to legitimizing it and its concrete application often creates a de facto situation of psychological pressure which can influence the pre-trial prisoner to plead guilty or the sentenced prisoner to offer “useful testimony” to prosecutors.

When the element of psychological pressure is used on purpose as part of isolation regimes such practices become coercive and can amount to torture which is, with cruel, inhuman or degrading treatment or punishment, absolutely prohibited under international law (Article 7 of the UN convention on Civil and Political Rights (ICCPR), for example) and the UN Human Rights Committee has already stipulated that use of prolonged solitary confinement may amount to a breach of Article 7 of the ICCPR (General comment 20/44, 3. April 1992).

On January 18, 2017, the Italian Minister of Justice, in the end-year report of 2016 on the state of prisons and on the Department of Penitentiary Administration, focused on the criteria used in the implementation of measures pursuant to Art. 41-bis. The Minister specified that "it was drawn up a special circular that ranks as the Consolidated on this topic. It aims to achieve full functionality of the system in the proper balance of interests related to prison security and the dignity of the prisoner, who is the holder of rights which must not be lost as a result of being subject to special arrangements, thus excluding any provision that could be interpreted as unnecessarily punitive".

The wording of the note from the Minister clearly shows that it is merely programmatic to state the goal of providing adequate expansion to the individual rights of persons restricted in regime 41-bis and how, in the same way, the regime's capabilities in a balancing between security needs and the dignity of the prisoner, is a goal to be pursued (and thus, to date, not met).

The regime has also been source of grave concern to those bodies involved with the international protection of human rights. For almost two decades, the Committee for the Prevention of Torture (CPT) of the Council of Europe has paid particular attention to the situation of prisoners subjected to the special detention regime under

- 
- (c) Placement of a prisoner in a dark or constantly lit cell;
  - (d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
  - (e) Collective punishment.
2. Instruments of restraint shall never be applied as a sanction for disciplinary offences.
  3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

Section “41-bis” of the Penitentiary Act and has made a number of specific recommendations in this regard which have never implemented by the Italian Government. In his last report, in November 2013, the CPT called upon Italian authorities to take the necessary steps to ensure that all prisoners subjected to the “41-bis” regime are: provided with a wider range of purposeful activities and are able to spend at least four hours per day outside their cells together with the other inmates of the same living unit; granted the right to accumulate unused visit entitlements; allowed to make telephone calls more frequently, irrespective of whether they receive a visit during the same month.

Still, the CPT had criticized the frequent use of permanent video-surveillance; the existence of additional restrictions in the so-called “reserved area sections”, restrictions on the possibility of meeting with other prisoners; the lack of adequate light and air due to the shielding of the windows with plates of plexiglass.

If, as said, the recommendations of the CPT have not been implemented, most of its previous recommendations were recently reiterated by the Extraordinary Committee for the Protection and Promotion of Human Rights of the Italian Senate, in particular in relation to improving visit entitlements, treatment activities and legal safeguards surrounding the placement procedures of the “41-bis” regime. <sup>(6)</sup>

What is more, the CPT stressed <sup>(7)</sup> that “the argument frequently put forward by the Italian authorities, that the additional restrictions which had been introduced in 2009 were necessary in order to combat more effectively the phenomenon of organised crime and thus to enhance the protection of society is scarcely convincing.

.....Against this background, there are reasons to believe that the underlying goal of the most recent legislative changes is rather to use additional restrictions as a tool to increase the pressure on the prisoners concerned in order to induce them to co-operate with the justice system. As already mentioned by the Committee in the reports on the 2004 and 2008 visits, such a state of affairs would be highly questionable and also raise issues under Article 27, paragraph 3, of the Italian Constitution <sup>(8)</sup> and various international human rights instruments to which Italy is a Party.” To demonstrate that the problem persists, the CPT payed particular attention to the situation of prisoners

---

6

See “Rapporto sul Regime Detentivo Speciale: Indagine sul 41-bis” published by the Extraordinary Committee for the Protection and Promotion of Human Rights of the Italian Senate in April 2016, pages 62-68.

7

CPT/Inf (2013) 32 par 58

8

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



subjected to the special detention regime under Section “41-bis” also in its last visit to Italy in April 2016 with the related report to be expected in 2017.

From what follows, it shows fully how imprisonment in this special regime is in every respect a form of torture, inhuman and degrading treatment (art. 7 of ICCPR) that affects the dignity of the person (art. 10 ICCPR).

It must also be emphasized that this special regime is applied without distinction, as a prevention measure justified by the existence of security reasons, to persons held in custody to whom is given the same treatment and detention regime of persons already reached by the final judgment (art. 10, n. 2 ICCPR). This means that it is applied an extremely rigorous and punitive type of incarceration to people still suspected or accused, however, still *sub judice* and therefore presumed innocent.

In each of the aspects and restrictions highlighted here is found, moreover, the damage to specific interests protected by the provisions of the Covenant.

**1) Presumption of innocence and reversal of the burden of proof** (art 14.2 ICCPR) The regime of 41-bis, in its concrete application, implies that is the prisoner who must prove the interruption of his links with the criminal organisation and not the prosecuting authority. This is a clear violation not only of international principles but also of the Italian Constitution (art 27).

It is true that the Constitutional Court, in its judgment 376/1997, fully confirmed by the judgment 417/2004 made it clear (as, indeed, already in its judgment 349/1993) "... that any decision about the extension of the measures under Article 41-bis must bear an independent, adequately reasoned, motivation. The motivation must cover the current permanence of hazards to the order and security that the same measures are intended to prevent. They cannot be admitted unjustified extensions of the special detention regime, nor summary or stereotyped motivations, unfit to justify in terms of timeliness of the measures ordered." Within the limits imposed on the application of the special regime, therefore, the Court has repeatedly stressed that the vagueness of the wording of art. 41-bis, paragraph 2, that speaks of "reasons" and "needs" of public order and security must be interpreted as due respect of the constitutional constraints which aims to deal with the current, specific and specifically identified, order and security needs.

The procedure of renewing the regime of 41-bis, however, is continuously anchored to the elements of dangerousness placed in legitimization of the first application of the regime.

The CPT during its visits to Italy made detailed examinations of the decisions taken by the Italian authorities initiating or renewing the application of the “41-bis” regime and said that “it was evident that, for a considerable number of “41-bis” prisoners – if not for virtually all of them – application of this detention regime had been renewed automatically; consequently, the prisoners concerned had for years been subject to a prison regime characterised by an

accumulation of restrictions, a situation which could even be tantamount to a denial of the concept of penitentiary treatment (*trattamento penitenziario*), which is an essential factor in rehabilitation. In addition, appeals lodged against renewal decisions (initially to the responsible supervisory court, and in the last instance to the court of cassation) were, with few exceptions, rejected, with the prisoner furthermore being ordered to bear the costs of the proceedings.<sup>(9)</sup> In the same report, the CPT expressed its concern on the Bill passed in the Senate – and that should still be debated in the Deputies' Chamber <sup>(10)</sup> - providing, inter alia for “reversal of the burden of proof, the onus being placed on the prisoner to prove that he has severed all links with the organisation to which he belongs”<sup>(11)</sup>

2) **The aim of social rehabilitation** (art 10.3 ICCPR). As already explained the regime of 41-bis suspend the purposeful activities of the penitentiary treatment aimed at the reformation and the social rehabilitation. There are many situations in which detainees are under the regime of 41-bis (also in “area riservata”) since the time of its entry into force which date back to 1992, and have since then been removed from purposeful activities of re-socialization which make the prison consistent with the Constitution (art 27) and, indeed, they are placed in a condition of substantial isolation from loved ones and from any intermingling with society.

In this sense, the application of 41-bis stands in stark contrast to the art. 10, n. 3 (Prison Act) where it states that "the penitentiary system shall comprise treatment of prisoners the essential aim of their reformation and social rehabilitation." It seems clear, in fact, as the suspension of any societal reintegration path for years and years inevitably implies the suppression of rehabilitative tension inherent to the penalty as demanded by the Constitution.

Nor can it be invoked, with regard to the aspect of the unremitting subjection to the regime of special detention, to overcome the serious impairment of the primary rights, the ECHR judgment in the case Paoletto v. Italy, no. 37648/2002 (issued on 09/24/2015).

The European Court has anchored its judgment on 41-bis and the hardships emanating from it, to a rating of dangerousness of the person detained. However, it cannot be kept silent the matter of fundamental importance that the ruling is received thirteen years after the application was lodged, years during which the plaintiff maintained his condition of isolation and suspension from ordinary intramural treatment.

---

9

CPT/Inf (2010) 12 par 82

10

The reference is to the draft which become Act No. 94/2009

11

More specifically, proof needs to be given that something is not happening (*probatio diabolica*)

Moreover, in the aforementioned end-year report of the Minister of Justice, it is contained a numerical data that fully represents the true purpose of the detention exceptional arrangements. It is in fact used as a tool to conduct criminal investigations, and in this context, its main purpose seems to be to induce the prisoner, deprived of affections and fundamental freedoms, as well deprivation of any social contact also inside the prison, to collaborate with the justice system. During 2016, in fact, only six ministerial orders have been canceled, while the decrees revoked as a result of collaboration with justice were eleven.

The figure is alarming when you consider that the state of emotional suffering of the person detained under the special regime of 41-bis often which amount to solitary confinement adds to the condition of “ergastolano ostativo” (a person serving a life without parole (LWOP) sentence). The sentence of “ergastolo ostativo” can have no end unless he cooperates with the law, or prove that his collaboration has become impossible or unnecessary (because long time has passed since the offense, for a minor role in the commission of the offense, or because the offense has since been already made clear in all its aspects and participants). And it is absurd. Not to say that in Italy still exist the possibility to condemn in sentence a person to life imprisonment with a time to be spent in solitary confinement (the so called “*ergastolo diurno*”).

3) **The right to silence** (art 14.3(g) ICCPR) As explained before, the regime of 41-bis is absurd. A legal absurdity even before a human absurdity, because the Italian as the international system of rules allows all persons accused or indicted for any offense the right to silence. No one may be compelled to accuse himself, it is a natural corollary of the right of defence. Everyone has the sacred right to plead innocent, so that the Supreme Court with constant address states that "the granting of alternative measures to detention does not presuppose the confession." So the refusal to cooperate should not even be motivated. The motivation is simply inherent in the exercise of a right, the right to remain silent, to the fact that there can be no obligation to self-accusation. A right that is the result of an assessment the legislator made between opposing constitutional values, and in that assessment has apparently given the prevalence of freedom and honour of the individual in spite of the need for crime prevention. Even he went so far as to offer to the suspect or accused the right to lie, because, to avoid admitting its own responsibility, the suspect may also lie and is not liable to charge. It is clear that this rule is to be overcome, because it is also evident at first sight, for the topics mentioned above, it is unconstitutional and in violation of principles of art 10.3. A conviction, any conviction for any crime, it must keep the doors open to the recovery. It is unacceptable that there is a penalty which is only toil, merely retributive and punitive, it has no prospect of change.

According to the UN Convention, torture is "any act by which is intentionally inflicted on a person severe pain or suffering, whether physical or mental, in order to obtain from him or some other person information or a confession."

It seems a sort of paraphrase of articles 4-bis and 58-ter (Prison Act). What are these rules? Do they inflict physical or mental suffering? Yes of course. Just think of the suppression of hope, just think of a life that is always repeated equal to itself, in a circular time that has no prospects, does not have the organization of tomorrow, does not have the management of the future. It's a missing link in the mind of a detainee on LWOP under 41-bis regime which has no time limit in itself.

**4) The right of defence and the video conference system** (art. 14, n. 3, letter D). The detainee serving 41-bis does not attend effectively the trial in which he is the defendant. At the pre-trial stage, this fact brings the impossibility for the detainee to take part actively in the most delicate moments of the forming of evidence.

Anyone who has attended a hearing from a video conference cell, side by side with the detainee, has been able to verify how the interaction of the subject, or of his lawyer if present on site, with what happens in the courtroom is almost impossible.

Think of the normal course of the examination of a witness. The inmate perceives the courtroom voice with a slight delay. If he need to intervene, urging a defending opposition, or a verification in the cross-examination, he has to ask for permission to call.

Not to mention that the most frequent circumstance is that the phone line is not immediately available. The inmate telephones from a glass cabin inside the videoconference cell and while he is inside the cabin waiting for the connection, the preliminary hearing goes on in his absence.

The most disturbing aspect is that such blatant disablement of guarantee, legitimized by Act No. 146/1992 on the grounds that the need for security is overriding, falls precisely on those who, by the nature of the trial that he has to undergo, can risk the life sentence. Here, therefore, the paradox that to greater risks there are fewer guarantees.

The situation is of particular alarm because of the increase in the number of people subjected to 41-bis regime from the stage of pre-trial detention. In this stage, as we have seen, the defendant's opportunity to defend the case in court is, at least, "compressed".

It should be highlighted that the prison regime 41 bis contradicts in essence the freedom of every person to proclaim his innocence or, however, the prohibition to induce any person accused or condemned to self-accusation (article 14, no. 3, letter f).

The multiple harassment, deprivation of affection, compression of individual rights that derive from these special arrangements are characterized, in fact, as an investigation tool, and induction of the prisoner to the collaboration with justice whose essence whose essence is to accuse themselves and others.

5) **Visits with family** (affectivity, territoriality). The regime of 41-bis substantial disruptions affective relationships. The inmates in the 41-bis regime are always placed in distant places from their original context (preferably in insular areas, according the norm). They meet their relatives for an hour a month, behind a bulletproof glass partition to ceiling, in small and confined spaces. They can replace the visit with a phone call of ten minutes, a call that family members can only get by going to a fixed prison.

The regime is particularly harsh with their children because within the one hour a month they are allowed to meet their imprisoned parent, they have 10 minutes of physical contact with the parent. To have physical contact, the rest of the family must leave the room. These are times of severe emotional trauma for the child who lives with horror and fear an encounter with a parent in prison. At the age of twelve the child loses the right to have this physical contact with the parent. All the ordinary rules on visits with children are de facto suspended for sons of prisoners in 41-bis so that their vulnerability that deserves specific attention and protection is not taken into consideration (art. 24 ICCPR).

6) **Ability to read, study, stay informed** (art. 19, n. 2 ICCPR). It is substantially impossible for the detainee in 41-bis to have access to reading, information, culture because different restrictions, whose security link was not evident, are imposed on inmates by different circulars of the prison administration on issues such as the size of personal photos and the number and type of books (including those in use for university courses) admitted into the cell.

The Circular no. 8845/2011, banned the possibility to receive books, magazines or typewritten documents from the family or by mail. Such items can only be bought from the prison store so that, not only the inmate should use the strictly limited amount of money he is allowed to have in prison, but also the reading material he asks for very often cannot be found at the prison store. It even happened that a paperback (only paperback book are allowed) edition of the Bible was impossible to find!!!

The same circular also forbade the possibility to give such items back to the family. Books, magazines, correspondence, court documents cannot be given back to the family, nor can they be passed to other prisoners not belonging to the authorized socialization group. Finally, the circular forbade the accumulation of books and other printed material with the stated purpose of making the routine search operations easier.

Many detainees, especially those who had specific needs of study, challenged the circular before the Giudice di Sorveglianza (Surveillance Magistrate/Magistracy). Several times the Surveillance Magistracy has accepted the complaint. Such measures were never challenged by the prosecution, and therefore they are now final.

The Supreme Court, with the sentence no. 46783 of 2013, granting the motion of the Prosecutor of Reggio Emilia, and set aside the order of the Surveillance Magistracy of Reggio Emilia who had allowed exceptions to the circular DAP 8845/2011 for an inmate confined in Parma.

The decision could exert its effect only on the single case decided by the Court, but the Prison Administration (DAP, Office III Section II) issued the note 0051771-2014 dated 02/10/14 ordering "that the regulations issued by the circular n. 8845/2011 must be understood fully restored". Essentially with an administrative act the Prison Administration has voided the sentences of Surveillance Magistracy on individual rights.

7) **Restrictions on correspondence** of 41-bis (Art. 18-ter O.P.) - Any form of interruption of correspondence; any limitation to it should be carried out strictly according to the standard specification. This rule provides that the correspondence is checked, and eventually blocked, if it is to prevent crime, if there are investigative needs, or for reasons related to a pending criminal proceedings or for reasons related to the order and security of the prison. Often there has been abuse of the censorship of correspondence that extends to totally legitimate communications (sacred images, writings of religious content, handwriting if not immediately intelligible, texts or parts of text written in English or in another languages, informative content related to cultural associations, also issues of specific interest for restricted persons – the magazine “Ristretti Orizzonti” (Restricted Horizons) or “Liberarsi” (Get Oneself Free), forms to subscribe to Hands Off Cain, etc ...).

8) **Natural light, air.** Material conditions of detentions in such regime is characterized by a lack of visual perspective with a consequent deterioration of eyesight as recently documented also in the book “*Gli ergastolani senza scampo*” by Prof. Andrea Pugiotto<sup>(12)</sup>. The eyes of the 41-bis detainees never range more than few meters long, and with few exceptions they never see the sky. Many people find themselves in 41-bis since the time of the introduction of the scheme: it means 25 years without a perspective vision.

Also the CPT focused<sup>(13)</sup> on the windows of the cells in “area riservata”, that are covered with a layer of opaque plexiglass, thus reducing the access of the

---

12

**Gli ergastolani senza scampo. Fenomenologia e criticità costituzionali dell'ergastolo ostativo,** Preface by G. Silvestri, with an Appendix by Prof Davide Galliani, Editoriale Scientifica, Napoli, 2015

13

natural light, and impeding the prisoners to look outside and recommended that these layers are removed without delay.

9) With constant address, the Constitutional Court reiterated that the limitations and/or suspension of purposeful activities within prison walls are eligible only if aimed specifically at the control and prevention of crime. As we have seen, this is not the case in the application of the regime of 41-bis. **The ruling 190 of 2010** (cited by the Italian Government in its reply), relied on in the response of the Italian State, is not concerned with the question of whether the subjection to 41-bis determines inhuman or degrading incarceration.

That ruling is only liable to the specific question formulated by the court that has been contested the judgment, namely the Surveillance Court of Rome. The Surveillance Court, had raised the question of legitimacy of art. 41-bis paragraphs 2.5 and 2.6 of the Prison Act, as amended in 2009, condemning the fact that it was introduced the impossibility for the plaintiff (detainee), to challenge the fairness of the ministerial decree content.

The Constitutional Court, with interpretative ruling, merely represent that within the code there are instruments to control the power of public administration, that always allow recourse to the ordinary courts in the presence of situations of violations of individual rights.

However, the aforementioned ruling does not provide any answer as to whether the system of 41-bis in no case expresses a detention that have as their purpose the reformation of prisoners and their social rehabilitation (art 27 of the Italian Constitution and art. 10, n. 3 of the ICCPR).