



ANTIGONE & CILD

Joint Submission to the UN Human Rights Committee Concerning Italy

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INTRODUCTION

This report is realized by Antigone.

Founded in 1991, Antigone is a NGO dealing with human right protection in penal and penitentiary system. It carries on a cultural work on public opinion through campaigns, education, media, publications and its self-titled academic review. An Observatory on Italian prisons, involving around 50 people, is also active since 1998, when Antigone received from the Ministry of Justice special authorizations to visit prisons with the same power that the law gives to parliamentarians. Antigone's observers can enter into prisons also with video-cameras. Every year Antigone's Observatory publishes a Report on Italian penitentiary system. Since 2009, Antigone is allowed to enter also in all Italian juvenile prison facilities. Through a prison Ombudsman to which it gave birth, Antigone also collects complaints from prisons and police stations and mediates with the Administration in order to solve specific problems. Furthermore, Antigone's lawyers and physicians operate in some Italian prisons giving suggestions and monitoring life conditions. Antigone also carries on investigations about ill-treatments and sometimes is formally involved in the related trials and leads a European Observatory on prisons involving nine European Countries and funded by the European Union.

Founded in 2014, the Coalizione Italiana Libertà e Diritti Civili (Cild) is currently composed by 34 civil society groups working in addressing some of the most pressing human rights issues faced by Italy today - such as anti-discrimination and rights of minorities, criminal justice and prisoners rights, the right to asylum and international protection, freedom of expression and right to privacy. It supports and empowers civil society organisations through a combination of capacity building on policy analysis, advocacy, media strategy and public education.

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RIDH is a non-governmental organisation that contributes to capacity building by providing information, analysis and technical assistance to entities involved in promoting and protecting human rights. RIDH, which is based in Geneva, has ECOSOC consultative status at the United Nations and carries out an intermediary role in dialogue and advocacy processes relating to specific human rights contexts, working in particular with Latin American organisations.

IMPLEMENTATION OF ICCPR AND RELATED ISSUES

In consideration of the periodic report submitted by Italy to the UN Human Rights Committee at its 119th session Antigone concentrates its attention on the concluding observations adopted by the Human Rights Committee in the 85th session at its 2335th meeting on 2 November 2005, in relation to the fifth periodic report of Italy. Following the Human Rights Committee's request for a Country Report Task Forces for the adoption of lists of issues during the 117th session and considering the Replies to the List of Issues in relation to the sixth periodic report of Italy, Antigone shares concerns of the Human Rights Committee and draws specific attention to the following Issues:

Accountability for excessive use of force and torture (art. 6, 7 and 26)

Excessive use of force. The use of excessive force by law enforcement officials remains a critical issue, especially in the context of migrant identification procedures under the so-called hotspot approach. Prior to 2015 Italy had limited success in getting fingerprints from people who refused because they wanted to claim asylum in other countries and thus the EU implemented a new approach, imposing a 100% fingerprinting target on Italy and recommending the use of force where necessary to obtain them. As argued by a recent Amnesty report¹, "meeting this target has pushed Italian authorities to the limits – and beyond – of what is permissible under international human rights law". The "hotspot approach" - included in the 2015 European Agenda for Migration and firstly implemented in Italy and Greece - regulates identification, fingerprinting and registration of migrants by EU officers in collaboration with national authorities. NGO reports have denounced a significant

¹ Amnesty UK, *Hotspot Italy* (2016).

number of episodes of violence and intimidation - and also some allegations of torture² - during fingerprinting operations³.

Accountability is a vital element of policing and is still not yet fully ensured in Italy. In fact, not enough measures have been taken to put an end to impunity for police and law enforcement officials involved in excessive use of force, torture and ill-treatment. No specific code of conduct has been adopted and the government failed to introduce identification tags on the uniforms of law enforcement officers that would facilitate accountability for abuse⁴.

Concerns remain about lack of accountability for deaths in custody, as highlighted by many notable cases in the last years and most recently by new developments in the case of Stefano Cucchi⁵. In the last years, several cases of excessive use of force by law enforcement officials have been drawn to the attention of the public opinion, as the violent death of Mr. Riccardo Magherini occurred in March 2014 in a "carabinieri" station in Florence.

Torture criminalization. Torture is still not a crime under Italian law, despite the fact that the duty to criminally sanction torture is unequivocally stated in various international treaties which Italy has signed and ratified (most notably the 1984 UN Convention Against Torture and the 1953 European Convention on Human Rights). This state of affairs has been condemned repeatedly by international human rights bodies and courts - most lately in 2015 by the ECtHR which, in its judgment on the [Cestaro v. Italy](#) case⁶, condemned Italy for police brutality amounting to torture committed during the infamous raid at the Diaz school in the context of the 2001 Genoa G8 summit. The court condemned Italy both on substantive and procedural grounds: not only for the violences perpetrated on the demonstrators, but also because Italy lacks appropriate legislation to punish the crime of torture - a situation which *de facto* ensured impunity for the police officers responsible for the violence. After the judgement the Italian government pledged to finally fill the vacuum as a matter of priority but the [draft law](#) has been stuck for months before the Senate and is not likely to pass through at this point. Furthermore, the proposed text would still not comply with international law obligations as it asks for "reiterated acts" for a conduct to be deemed as torture and makes the offense a common crime, rather than one specific of public officials.

The unwillingness of the Italian State to comply with the CAT and the ECtHR judgements to introduce the crime of torture in the penal code is also evident from the tentative of friendly settlement proposed in relation to the Asti case, which is now at the ECtHR⁷. The government, in order to avoid another negative sentence, instead of waiting for the ECtHR judgment, offered a monetary compensation to the two detainees who had been victims of torture; however the proposal was rejected by the ECtHR, which will proceed to issuing a judgement for this case.

² Amnesty UK, *Hotspot Italy* (2016).

³ Oxfam Italia, *Hotspots, Rights Denied* (2016); ECRE and others, *The implementation of hotspots in Italy and Greece*. (2016).

⁴ Italy has been recommended to introduce such identification tags many times, most lately with regard to the specific context of a foreign nationals joint removal operation by the Committee for the Prevention of Torture (CPT). See: CPT/Inf (2016) 33 - §40.

⁵ Stefano Cucchi died while in custody in 2009 and his case is now to be reopened thanks to his sister struggle for justice. Prosecutors [declared](#) in January they concluded a second investigation into the death in custody of Stefano Cucchi on October 22, 2009 and that the three Carabinieri police who first arrested Cucchi on are probed for involuntary manslaughter. Two other Carabinieri are also suspected of the crimes of calumny and making false declarations. The case is ongoing.

⁶ *Cestaro v. Italy* (App 6884/11) (2015) ECHR.

⁷ In December 2004 two men detained in the Italian prison of Asti were put in solitary confinement, stripped of their clothes, denied food and sleep, insulted and beaten for days by the penitentiary police. The case was taken to the Italian court only thanks to some information uncovered in the course of another investigation; however, because of the absence in the criminal code of a specific crime of torture, the judges - despite recognizing that the mistreatment of the two men amounted to torture - were unable to condemn anyone for what happened. Antigone's lawyers took part to the proceedings as plaintiff at the internal trial and later, along with Amnesty International Italia, helped the two detainees in the preparation and submission of the appeal to the ECtHR and at the end of November 2015, the Strasbourg judges admitted the case for violation of Article 3 of the Convention.

More recently a case of violence in the prison of Ivrea was signalled to Antigone, which [called for an investigation](#)⁸ of the authorities. The National Authority carried out a visit in the prison and [confirmed the presence of two “smooth cells” in the prison](#)⁹ As a result the DAP ordered the immediate closing of the two cells. In addition the CPT made a [visit](#)¹⁰ to the prison of Ivrea.

The lack of a crime of torture also puts Italy at risk of becoming a safe haven for torturers, as demonstrated by the recent Reverberi case¹¹. Moreover, it endangers the outcome of trials regarding crimes against humanity, as in the Plan Condor trial¹².

Recommendations

- Take all steps necessary to ensure that migrant identification and registration procedures fully respect human rights;
- Forbid the use of coercive measures - violence, intimidation, prolonged detention - to force migrants to comply with photo-identification and fingerprinting procedures;
- Abrogate the hateful crime of illegal immigration;
- Adopt the Code of Conduct for Law Enforcement Officials as demanded by the UN General Assembly in A/RES/34/169;
- Introduce identification tags on the uniform of law enforcement officers;
- Incorporate the crime of torture into the Italian Criminal Code, in line with art. 1 of the UN Convention Against Torture.

Right to liberty and security of persons, treatment of persons deprived of liberty, fair trial (art. 9, 10)

Prison overcrowding. In July 2009 Italy was convicted by the ECtHR for the violation of Article 3 in the [Sulejmanovic case](#)¹³, which revealed for the first time the grave overcrowding conditions in Italian prisons. After the Sulejmanovic sentence, thousands of actions were filed by detainees who were in the same conditions of detention. The total number of the prisoners who filed complaints to the European Court was about 4,000, more than one quarter of which has been directly helped by Antigone’s lawyers.

In January 2010 the Italian Government declared a state of emergency in relation to the penitentiary system. In fact the number of detainees was around 68,000 and, according to the Ministry of Justice, Italian prisons could accommodate around 44,500 prisoners. The official overcrowding rate was of around 153%. However, as it was ascertained by Antigone’s Observatory on Italian prisons¹⁴, the really available space was for a much lower number of prisoners, since the official accommodation

⁸ Antigone, *Denunce di violenze nel carcere di Ivrea. Antigone chiede si indaghi*.

⁹ National Authority, *Rapporto sulla visita alla Casa Circondariale di Ivrea (22 novembre 2016)*.

¹⁰ CPT, *Council of Europe anti-torture Committee visits Italy (2016)*

¹¹ Franco Reverberi is a catholic priest subject to an Interpol international warrant under the accuse of having committed torture during Videla dictatorship in Argentina. He could not be extradited from Italy as the imprescriptible crime of torture is not recognized by Italian criminal law and all the other charges against him are prescribed (Cassazione Penale, sez. VI, sentenza 4/11/2014, n° 46634).

¹² Corte d’Assise di Roma, sez. III, sentenza 17/01/2017.

The Plan Condor was an agreement established during the 1970s and 80s among the governments and intelligence services of the South American military dictatorships, which aimed to annihilate their political opponents. Their security operatives orchestrated a campaign of persecution, abduction, kidnapping, torture and murder. It was possible to hold the trial in Italy because some of the victims were Italian citizens. The Plan Condor trial shows the limitations that Italian justice encounters because of the lack of the crime of torture in the Penal Code. In fact eight of the accused could be prosecuted and sentenced only for the murder of the Italian citizens, but not for the acts of torture they subjected them.

¹³ *Sulejmanovic v. Italy*, Appl n° 22635/03 (2009). The detainee of Bosniak origin Mr. Sulejmanovic had to share his cell with six other prisoners for two and a half months in the Rebibbia Jail in Rome. Each of them had about 2.7 square meters at his disposal.

¹⁴ In 1998 Antigone received from the Ministry of Justice a special authorization to visit prisons with the same power that the law gives to parliamentarians. Every year Antigone publishes a Report on the Italian penitentiary system.

capacity included also the jail sections which were closed because of the lack of funds for their maintenance. The real overcrowding rate, as later recognized by the Ministry itself, has reached 175%. Italy had the highest overcrowding rate among the EU countries.

After some first normative interventions – primarily the possibility of serving the last part of the sentence at home confinement – the number of prisoners started to slowly decreasing. They were around 65.900 when, in January 2013, Italy was sentenced by the ECtHR for having violated Article 3 of the Strasbourg Convention in the well-known [Torreggiani case](#)¹⁵, the first of the 4,000 complaints filed after the Sulejmanovic judgement.

It was a pilot-judgment, which recognizes the systemic and non-occasional character of the degrading life conditions in the Italian jails and imposed Italy to solve the problem of overcrowding within one year, thus suspending for the moment the examination of the other pending cases. Furthermore, the sentence imposed Italy to introduce both a mechanism apt to suspend the inhuman and degrading treatment while underway and a mechanism of compensation for prisoners who have suffered it.

In order to tackle the issue of conditions of detention, the Ministry of Justice instituted three special committees on penitentiary issues: two of them had the task to elaborate legislative measures against prison overcrowding and the third one had the task of effectively intervene with non-normative measures on the prison quality of life. The measures developed by the third committee consisted primarily in:

1. Closing the cells only during the nights for the whole medium security circuit, with at least eight hours per day spent with the bars of the cells open.
2. Creating spaces where the prisoners can spend the daytime together, with the prisons organized like small town where all the services are available in common places different from the jail sections and where the daily life is much similar as possible to the external life.
3. Facilitating the contacts between prisoners and their relatives through a flexible management of visits and phone calls and the use of new technologies.

These reforms in the prison life are gradually – but not everywhere – taking hold and are at the core of that reorganization of the prison system that the Government has in mind in order to make the prison life conditions comply with the European standards. The provision of the open cells is nowadays implemented for almost all of the medium security prisoners. The second measure, requiring structural interventions, is much harder to be implemented.

On the normative side, two significant Decree Laws have been issued during 2013 by the Italian Government, in June and December. They contained the following provisions:

1. The recourse to pre-trial detention was limited;
2. The alternative measures to detention were strengthened;
3. The reduction of penalty to which prisoners who behave correctly can have access was raised from 45 to 75 days for semester;
4. For foreign prisoners, the last two years of detention were replaced with compulsory expulsion;
5. The penal effects of the normative on drugs were reduced in case of small quantities of drug;
6. Judicial mechanisms of protection of prisoners' human rights were provided for, as requested by the Strasbourg Court who asked for a mechanism appropriate to suspend the inhuman and degrading treatment while underway;
7. The national Ombudsman of people deprived of their freedom was instituted.

In February 2014 another very significant normative event occurred: the Constitutional Court declared unconstitutional the strongly repressive normative on drug in force since February 2006. Moreover the increasing use of alternative measures contributed to the decrease of the number of people entering

¹⁵ Torreggiani and others v. Italy, Appl n° 43517/09, 46882/09, 55400/09 et al (2013)

the prison. Another provision to be introduced with the aim of diminishing the number of prisoners has been the so-called “messa alla prova”, introduced by the law n. 67 (April 28th, 2014). According to “messa alla prova”, in case of crimes punishable with no more than four years of detention the defendant has the possibility of requiring the suspension of the criminal proceeding. If the suspension is conceded, the person is put on probation under the control of the social services and with a program to be followed. The program involves actions directed to the restoration of the damage caused by the offence. The suspension of the criminal proceeding on probation cannot be conceded more than once. The positive ending of the probation extinguishes the crime.

Indeed, if the increasing of the access to alternative to detention should be evaluated positively, it should also be noted how:

- in 2010 for the first time since at least the beginning of the Millennium the increasing of the number of people serving an alternative to detention has corresponded to a decreasing of the number of prisoners. Since that moment, the area of alternatives has been increasing in parallel to that of detention, thus merely augmenting the area of penal control;
- in 2010 this trend changed only thanks to the introduction of the possibility of serving at home the last part of the sentence. Among the alternative measures, the Italian Government relies at first on home detention, the one in which the preeminence of control on assistance and social reintegration is to the utmost.

Alternative measures have been proved to have a much better impact than prison in terms of recidivism and to be much less costly. However, the Prison Administration still keeps investing the most part of its resources on detention, the resources being devoted to the area of alternatives being around 3% of the total amount.

For what concerns pre-trial detention, the provisions of law adopted are, in more details, the following ones: in 2014 Law 117/2014 ratified decree no. 92/2014 and introduced significant changes in the rules governing the application of the pre-trial detention. According to Art. 275 c.c.p. para. 2a part one, pre-trial detention or house arrest cannot be used if the judge believes that a suspended sentence will be applied at the end of the trial (which is the case of sentences of less than 2 years, if the judge believes there is no risk of re-offending).

A new period has been added to Art. 275 c.c.p. par. 2-bis, relevant only for pre-trial detention in prison: pre-trial detention cannot be applied if the judge believes that in the actual case (not in the abstract according to the statutory maximum) the final sentence will be less than three years. This provision will not apply in proceedings for offences under Articles 423-bis, 572, 612-bis and 624 bis of the Criminal Code (crimes sensationalised by the media such as breaking and entering or forest arson) and under Article 4 bis of the penitentiary law (serious crimes such as organised crime or sex offences) and when, assuming the inadequacy of any other measure, house arrest cannot be applied due to lack of fixed abode. But nevertheless these provisions contributed to a significant reduction of the number of pre-trial detainees in Italian prison.

However, there are still serious concerns regarding the percentage of detainees who are not serving a [final sentence](#)¹⁶, which at the end of 2016 is of 34.61%. In 2014 the percentage was of 33.8%, which means almost 10% over the average of the other States of the Council of Europe¹⁷.

It seems however that the effects of the reforms accomplished after the Torreggiani judgment are ending their effects. In fact, notwithstanding the measures adopted after the judgment, between the December 31, 2015 and December 31, 2016 the [number of detainees](#)¹⁸ raised from 52,164 to 54,653 and the official overcrowding rate augmented to almost 109%, showing the need of a deeper reform of

¹⁶ Ministry of Justice, *Number of detainees per legal position: 2008 - 2016*.

¹⁷ Council of Europe, [SPACE I 2014](#).5.1, the CoE mean of detainees not serving a final sentence in 2014 was of 25.7%.

¹⁸ Ministry of Justice, *Number of Italian and foreign detainees: 1991 - 2016*.

the penitentiary law. Within the prison system, the situation of [each institution](#)¹⁹ varies consistently, some presenting very low overcrowding rates and a few of more than 150%.

As to the other requests of the Torreggiani judgment, Act No. 117/2014 provides also for a system of judicial remedies to stop situations of violation of article 3 of the Convention due to prison conditions, and a system of compensation in case of such violations. Both measures were not available before. The system is quite articulated, depending in particular on whether the recurring person is still detained or has been released in the meanwhile, and can grant either an early release or a financial compensation. But the outcomes so far are not entirely satisfactory. Judges are very reluctant to decide in favour of the recurrent, and in the case or the remedy in front of civil courts the system proved to be lengthy and expensive, discouraging people to use it.

According to the Ministry of Justice in 2016, 256 complaints have been filed for unjust detention²⁰.

Foreigners. Foreigners represent the [34% of the prison population](#). They are usually detained for minor offences (drug or prostitution related crimes, as well as violation of the immigration laws), however, they receive on average harsher sentences than Italians for those same crimes and encounter difficulties to access non custodial preventive measures and external alternative justice measures. A 2015 research²¹ showed that this is due to mainly to the prejudices of Italian judges, in fact on average they tend to trust foreigners less than Italians, therefore they are more prone to inflict them a prison sentence instead of granting them alternative measures. The issue of alternative measures is also linked to factual problems, such as the lack of residence appropriate for home-detention sentencing.

Once they enter the prison, foreigners face even more discriminations, in fact the Italian prison system doesn't take into consideration the needs of non-italian detainees (e.g. food habits, clothing, religion). A very grave issue is the lack of cultural mediators, who could facilitate the dialogue between the penitentiary police and foreigner detainees.

Religious minorities. Serious concerns arise in relation to the issue of religious minorities, and especially with the Islamic faith. In fact only [47 Imams](#)²² have been authorized to enter prisons and lead the Friday prayer, despite the presence of more than 6,000 detainees, who declared themselves as muslims. Moreover it has been observed that the simple declaration to belong to the Islamic faith automatically poses the inmate under a special supervision. This constitutes a clear discrimination and a violation of freedom of religion. The Catholic chaplain is paid by the State while Imams and pastors are volunteers.

The DAP affirmed that there are 375 radicalized prisoners in Italian prisons, but it is not clear which are the parameters to define them as radicalized. There are no deradicalization programs to be carried out in prisons. Radicalized muslim detainees are usually held in separate sections, and Imams are not granted the authorization to meet with them. Even in these sections the penitentiary administration is not organized to have translators or cultural mediators²³ always available to communicate with the inmates. However it is significant the decision of the DAP to entrust the vice president of the Union of the Italian Islamic Communities (UCOII) with the organization of some courses for the penitentiary police personnel.

Health. Prisoner health is administered by the national sanitary service via regional branches since 2008. The overall prison health-care suffers from lack of personnel, equipment and resources. In some cases, sick detainees are cared for by fellow inmates who are rewarded by the penitentiary administration with a small compensation (a so-called "piantone"). Prison doctors are also members of

¹⁹ Ministry of Justice, *Number of Italian and foreign detainees and institutions' capacities*.

²⁰ Ministry of Justice, [Relazione del Ministero sull'amministrazione della giustizia 2016](#), p. 343.

²¹ P. Gonnella, *Detenuti stranieri in Italia. Norme, numeri e diritti*, (2015)

²² Ministry of Justice, *Religions*

²³ In the whole Italian prison system there are only 39 cultural mediators and 28 assistant-volunteers, who are entrusted to deal with detainees of Islamic faith.

disciplinary boards, thus creating conflicts of interest and confidentiality problems. Medical records are generally difficult to access and poorly kept; for this reason the third reform committee [has encouraged the adoption of digital medical records](#)²⁴. The health condition of most seriously ill prisoners may be acknowledged as incompatible with life in prison and, as a consequence, they can be released.

The state of health of inmates and the rate of infectious diseases in prison are alarming. In 2015 according to data by [Società Italiana Medicina e Sanità Penitenziaria](#)²⁵, 60% to 80% of detainees were ill with one or more diseases. 48% of them suffered of infectious illnesses in prison and 32% had mental health problems. 17% of them had osteoarticular problems, 16% cardiovascular diseases, 11% metabolic problems, 10% dermatologic diseases. One third of the prison population was affected by hepatitis. A recent [research](#) carried out in 2015 by Agenzia regionale di sanità della Toscana shows that among the detainees with mental health issues, [half](#) of them has a pathology related to substance dependency, the 27.6% suffers from nevrotic disturbs and adaptation reaction, and the 9% from alcohol-related mental issues²⁶. The data regarding the medicines used in penitentiary institutions is reveals that the 46% of the prescriptions are related to psychiatric pathologies. Prevailing is the prescription of medicines for anxiety (37.8%), psychosis (17.6%), seizures (13.8%) and depression (13%)²⁷.

After the progressive closure of the Judicial Psychiatric Hospitals (OPG), in many prisons it has been observed the opening of “psychiatric sections” (*articolazioni per la salute mentale*) and their [excessive use](#)²⁸ made by the prison administration. In fact at times detainees who are perceived as “difficult” are transferred to the “psychiatric section”, notwithstanding the absence of any diagnosed mental health issue. There also concerns on the effective quality of the health services guaranteed in these sections: the systematic lack of psychiatrics, psychologists and medical staff often corresponds to a massive use of psychiatric drugs. In some of these sections the remnants techniques are still used daily.

Suicides in detention. According to [data collected by Antigone and Ristretti Orizzonti](#), in 2016 there have been 39 suicides in Italian prisons²⁹. In 2015 there had been 43 and, according to the [data of the Department of Penitentiary Administration elaborated by Ristretti Orizzonti](#)³⁰, the attempted suicides had been 956. Slightly more than half of them took place among detainees with a final sentence. Also episodes of self-harm are reported every year: in 2015 there have been 7,029 episodes of self-harm among the total prison population. More than half of the episodes took place among the inmates with a definitive judgement. Between 2000 and 2015 the [rate of self-harm episodes](#)³¹ passed from 12.7% in 2000 to 8.3% in 2007 and increased to 13.3% in 2015. In order to diminish suicides and self-harm acts, in 2012 took place a conference between State and Regions on the reduction of self harm and suicidal acts among the detainees. The conference elaborated a prevention system that follows the guidelines of the World Health Organization. However this system is based on agreements between the Regional "Provveditorati" of Penitentiary Administration and each Region and other agreements between each Penitentiary Institute and the local health institutes. These agreements vary in content and only sometimes adhere to the WHO guidelines. In May 2016 the Minister of Justice issued a directive in order to draw a National Plan for the Prevention of Suicides in Detention, which will take in consideration the WHO guidelines.

²⁴ Commissione Ministeriale per le Questioni Penitenziarie, *Relazione al Ministero di Giustizia sugli Interventi in Atto e gli Interventi da Programmare a breve e medio termine*. (2013)

²⁵ SIMSP, *L'Agorà Penitenziaria 2016. XVII Congresso Nazionale SIMSPe-ONLUS*.

²⁶ Agenzia regionale di sanità della Toscana, *La Salute dei Detenuti in Italia: i risultati di uno studio multicentrico* (2015), p.76.

²⁷ Agenzia regionale di sanità della Toscana, p.89.

²⁸ Associazione Antigone, *GALERE D'ITALIA. XII Rapporto di Antigone sulle condizioni di detenzione*.

²⁹ Ristretti, *Morire di carcere: dossier 2000 - 2017*

³⁰ Ministry of Justice, *Eventi critici negli Istituti Penitenziari* (2015).

³¹ Ristretti Orizzonti on data of the Ministry of Justice, *Suicides and attempted suicides among the prison population between 1990 and 2014*.

National Authority for the Rights of Persons Detained or Deprived of Personal Liberty

The National Authority (Garante nazionale) for the Rights of Persons Detained or Deprived of Personal Liberty was created in 2013³². It is a collegial body composed by three members, who can't be employers of the public administration. The current president is Mauro Palma. The board has been designated in 2016 and it has the aim to visit places of detention (prisons, migrant centers, REMS etc.) in order to prevent any risk of torture and of inhuman and degrading treatment. It also monitors the repatriation flights that take place under the 2008 EU Directive. The National Authority is reliant on the Ministry of Justice for financial resources and staff, which may pose significant obstacles to its future independence.

Article 41-bis regime. The special regime regulated by Article 41 bis of penitentiary law was introduced in 1992 in order to impede the perpetration of organized crime's activities (especially related to mafia and terrorism) inside prisons and to cut all links between mafia offenders and their criminal organizations. The law has a temporary and emergency nature, in fact its application can be authorized by the Minister of Justice himself or by the Minister of the Interior. The conditions of 41 bis regime are very harsh and have been criticized by the CPT^{33 34} and the ECHR³⁵. These conditions are: 22 hours per day spent in isolation and the other two hours are spent either outside or in "sociality rooms" in small groups (3 to 4 people). Correspondence is not confidential and censored, moreover contacts with the family are constrained (no more than four visits per month) and exchangeable with a 10-minute phone call per month. On December 31, 2016 there were 726 detainees subjected to 41 bis regime.

In April 2016 the Extraordinary Commission for the Protection and Promotion of Human Rights of the Senate carried out a fact-finding investigation on Article 41 bis regime. The investigation resulted in a [report](#)³⁶ stating the points of concern of this special regime and recommending some improvements to the legislator, such as: to avoid the automatic extension of the regime and the routinary perquisitions of cells, which are carried out before and after visits with their families (even if the visits are done without physical contact). Another serious concern raised by the Commission and shared by [Antigone](#)³⁷ regards the presence of many restrictions, whose ratio seems to be purely oppressive without a real link to the necessity to prevent and eradicate any relationship with the criminal organization; these restrictions have also the grave effect to compress the right to a fair trial. Moreover, an alarming fact is the denial of the penitentiary administration to let the [Regional Authority for Persons under Restrictive Measures or Deprived of Personal Liberty](#)³⁸ of the Region Umbria visit in a private way the detainees in 41 bis regime. Moreover the said administration stated that such visits had to be counted out of family visits, thus violating the right to be protected by an independent authority and the right to affectivity.

Closure of Judicial Psychiatric Hospitals. The process for the closure of Judicial Psychiatric Hospitals (OPG) is still ongoing, and seems to be almost completed. The closure of OPGs was consequential to the opening of Centers for the Enforcement of Security Measures (REMS)³⁹, which are institutions where each patient has a personal path that aims to a recovery. REMS are smaller than the OPG (they hold no more than 20 patients each), well distributed (at least two per each

³² Law decree 146/2013.

³³ CPT, [Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 14 to 26 September 2008](#)

³⁴ CPT, [Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 13 to 25 May 2012](#)

³⁵ Among the others *Enea v. Italy* Application n° 74912/01 (2009); *Ospina-Vargas v. Italy* n° 40750/98 (2004).

³⁶ Extraordinary Commission for the Protection and Promotion of Human Rights, *Rapporto sul regime detentivo speciale. Indagine conoscitiva sul 41 bis*, (2016)

³⁷ Galere d'Italia, XII Rapporto di Antigone sulle condizioni di detenzione (2016)

³⁸ Each Regional Authority is established by each Regional Government and can visit places of detention, can receive complaints on the conditions of detention and can demand for explanations from the penitentiary administration for any issue related to his mandate.

³⁹ Decided by law n. 81/2014.

region) and "health-oriented" (only medics and paramedics can work inside the facilities, security staff must stay outside and enter only in case of emergency).

A National Commissioner of the Government for the overcoming of Judicial Psychiatric Hospitals was appointed by the Council of Ministers in February 2016. During 2016 he released two reports^{40 41} on the state of the process of closure of OPGs and on the opening of REMS (Barcellona Pozzo di Gotto and Montelupo Fiorentino) hosting as many as 16 patients with severe mental issues; these structures are due to be closed at the first semester of 2017. On the same date the functioning REMS were 28 and 3 more were ready to be opened. The concerns raised by the reports regard the lack of available places in some regions and the consequent transfer of some patients to structures located out of their region of residence; this is especially problematic in relation to women, as many structures are not equipped to host them. Another concern regards the presence in REMS of patients with non-definitive security measures, which could cause a collapse of the newly-instituted system. This is symptomatic of a certain difficulty for judges and prosecutors to accept a new approach set by law to mentally-ill offenders. In fact inside the judicial culture there are still strong resistances to approach mental illness in a "health-oriented" rather than in a "security-oriented" way. Finally, an additional remark should be made in relation to the differences that exist among the regulations of REMS, and the consequent lack of uniformity in treatment of patients. Indeed most of them are still organized as penal-institutions and not as hospitals open to the community as set by law.

LGBT prisoners. LGBT prisoners face discriminations while in detention. Discriminations are caused by the remedies that the prison administrations puts in place to protect them. Homosexuality in prisons is not acknowledged by existing penitentiary laws or referenced in any official capacity, therefore no specific conditions of detention are envisaged and no official data on LGBT prisoners exists. The establishment of unofficial sections to host LGBT detainees (so that they are not subjected to violences from other inmates) is at the discretion of each prison administration. However, because of the lack of personnel, many of them risk to be unable to participate to activities inside prison, transforming this protective measure to a discriminatory treatment. This is precisely what happened in the prison of Gorizia in May 2016: the prison administration officially opened a section for homosexuals bearing in mind the goal to protect them from the risk of violence (which is very high in Gorizia); instead they were isolated from the other inmates and were denied the access to prison activities. For this reason and for the risk of further isolation and stigmatization, the National Ombudsman recommended in a [report](#)⁴² that such sections be closed and that the inmates be transferred elsewhere. Another serious concern is represented by the presence of transgender detainees in male prisons, who cannot access the activities for the other inmates, therefore living in a *de-facto* segregated regime.

Solitary confinement. Solitary confinement is another very serious issue. The Italian penitentiary law⁴³ allows three types of solitary confinement: for disciplinary reasons (the law calls it "exclusion from common activities"), which can't exceed 15 days; for health reasons (as prescribed by the physician); for judiciary reasons (as decided by the judge when the trial makes it necessary). The law states that disciplinary solitary confinement should take place in the prisoner's cell but this does not always happen. In fact there still exist confinement sections, sometimes underground and soundproof, and "smooth cells"⁴⁴ are also used for disciplinary solitary confinement.

⁴⁰ F. Corleone, [Relazione semestrale sull'attività svolta dal Commissario unico per il superamento degli Ospedali Psichiatrici Giudiziari](#).

⁴¹ F. Corleone, [Seconda relazione trimestrale sull'attività svolta dal Commissario unico per il superamento degli Ospedali Psichiatrici Giudiziari](#).

⁴² National Authority, [Rapporto sulla visita alla Casa Circondariale di Gorizia \(CC14\) \(7 maggio 2016\)](#)

⁴³ Art.33 L. 354/1975

⁴⁴ Cells lacking all pieces furniture. Acts of violence perpetrated by the penitentiary police often take place in such places.

The use of solitary confinement as a disciplinary measure is widespread. In 2015 it was inflicted 7,307 times, which amounted to the 29.6% of the disciplinary measures⁴⁵. There is no available data on the average length inflicted, but it has been observed that it often amounts to the maximum: 15 days. Moreover, the law doesn't hinder to inflict of more solitary confinement orders in a row; therefore, there have been cases where, after the expiration of first period of solitary confinement, a detainee was sent back to his section and, after a few hours, inflicted again a period of solitary confinement. This practice is clearly used to bypass the 15-day limitation to solitary confinement and poses serious threats to the mental health of the detainees, it should, therefore, be prohibited by law. There is no data available on isolation inflicted to pre-trial detainees and the law fails to indicate a specific limit of time that they can spend in this conditions of solitude, as it is up to the judge to set it, as required by the trial. Solitary confinement as a discipline measure may also be inflicted to minors detained in juveniles, notwithstanding the terrible consequences that this can have on their mental health.

Furthermore, the Criminal Code⁴⁶ gives to the Criminal Court the power to impose (as part of the sentence) daily confinement for a fixed period between six months and three years as an additional punishment for prisoners with more than one life sentence. In this case detainees can work and participate to educational activities, but are not allowed to have contacts with other prisoners. This measure clearly violates the principle that detainees are sent to prison as a punishment, not to receive punishment, as stated by the CPT in more than a report⁴⁷.

As documented by [Antigone](#)⁴⁸, solitary confinement is a very dangerous practice because of the psychological damages that could cause to the inmate, and also because it favours mistreatment by the penitentiary police.

Female detention. Like in the rest of Europe, the percentage of women detainees is very low, in fact they represent the 4% of the total prison population⁴⁹. In the majority of cases women are condemned for minor crimes and are characterized by a high recidivism rate. The 37% of women is foreigner⁵⁰. There are only five female prison facilities in Italy. Much more (around 60) are the women sections existing within male prisons, some of them being very small and hosting sometime only two or three women, who lay in the complete abandonment and inactivity.

It is necessary to take care of female detention with instruments, that can respond to the specific needs of women so that their reintegration into society can have lasting effects thus lowering the recidivism rate. For this reason a specific office for the administrative management of female detention was created, however its birth was characterized by a lack of autonomy (the office exists within the regular management office of the prison administration) and a lack of funding. It is necessary to improve the administrative specific attention and resources devoted to feminine detention. In 2008 a specific internal regulation for female prisons and sections has been approved, but it is not implemented as it should be.

A second aspect of female detention is related to the necessity to safeguard the relationship between mother and child. A step towards this direction was represented in 2001 by the so called "Finocchiaro Law"⁵¹, which allowed women to serve a part of the sentence in home detention provided that they had children below 10 years of age. However, because of the excessive restrictions provided by the

⁴⁵ Antigone, [Non isoliamo i diritti](#) (2015)

⁴⁶ Art.72 CP

⁴⁷ CPT, [CPT/Inf \(2006\) 16](#) and CPT, [CPT/Inf \(2013\) 32](#)

⁴⁸ Antigone, [Ecco perché l'isolamento fa male](#) (2016). More recently a case of violence in the prison of Ivrea was signalled to Antigone, which [called for an investigation](#) of the authorities. The National Authority carried out a visit in the prison and [confirmed the presence of two "smooth cells" in the prison](#). The DAP ordered the immediate closing of the two cells. In addition the CPT made a [visit](#) to the prison of Ivrea.

⁴⁹ Ministry of Justice, [Number of detainees as of December 31, 2016](#)

⁵⁰ Ministry of Justice, [Number of foreign detainees as of December 31, 2016](#)

⁵¹ L. 40/2001

law, a very small number of women were able to take advantage of it. In 2011 a second law⁵² created the institution of the protected family house (“casa famiglia protetta”) that allowed those women lacking a house to serve home detention. The issue concerning this provision is related to the funding and the construction of the family houses, which, by law, is completely delegated to the local authorities, which often lack funds to comply with these provisions. Only one family house is nowadays being established in the all Italy, in particular in Rome.

Independence of the judiciary, excessive length to court proceedings, right to a fair trial

So far no measures have been taken to ensure the independence of the judiciary from the executive power.

Regarding the right to a fair trial in the Italian criminal procedure and practice, it is important to point out the following shortcomings.

One issue concerns the first hearing after the arrest, when the first decision is made in regard of deprivation of liberty. An unfair hearing can lead to unjustified deprivation of liberty and even putting at risk the ability of the defendant, when deprived of liberty, to participate effectively to his trial.

The fairness of the first hearing is jeopardized by the inequality of the means available to the parties (lawyers have little time to prepare for the first pre-trial detention hearing and reasoning of decisions appear formalistic and relying excessively on the evidence provided by the prosecutor) and the lack of instruments for the judge to overcome this inequality. This is true, in particular, with regard to the absence of a legal provision requiring that, together with the notification of the date of the hearing, the lawyer should also receive the prosecutor case file to have adequate time to prepare the defence.

As regards the procedure, it is also relevant the absence in court, at the first hearing for the application of the measure and for the entire trial, of social services that could bridge the gap between the prosecution and the defence and support the judge in his/her decision. The presence of social services could prevent the detention of a vulnerable defendant that, with the support of these professionals, could access other alternatives to imprisonment from the first hearing.

Also, looking at the demographic profile of the recipients of pre-trial detention orders and of detention sentences, a strong disparity between EU and non-EU citizens clearly emerges. In these specific cases the role played by the defender is not enough to guarantee the effective participation of the defendant who doesn't speak Italian, also because of the partial implementation of Directive 64/2010/EU⁵³. Until this Directive will not be fully implemented, it can be said that the right to a fair trial for defendants who don't speak Italian is often at risk.

The second issue concerns the right to access to a lawyer, in particular, legal aid and ex officio lawyer are far from satisfactory.

Legal aid is governed by Decree 115/2002 and article 98 of c.p.p. It enables the “indigents” to qualify for free legal assistance to promote or defend themselves in civil or criminal proceedings. With legal aid the lawyer fees are paid for by the State. However, the financial threshold for indigence is very low, and as a consequence many defendants who do not qualify for legal aid are nevertheless unable to pay for an effective and qualified defence. Besides, legal aid lawyer are paid by the State with huge delays, many years after the beginning of the proceedings, and this discourages many lawyers to take cases under the legal aid scheme.

The ex officio lawyer, on the contrary, is a lawyer appointed by the state to defend the accused that has not appointed a lawyer of choice yet, in order to ensure the right to technical defence in any criminal trial. The ex officio lawyer must be paid by the accused, and not by the State, but the accused

⁵² L. 62/2011

⁵³ This Directive regards the possibility of appointing an interpreter to allow the defence to better organise the defensive strategy, the setup of a register of interpreters, the legal training of experts and interpreters, and a specific training for lawyers and judges on the roadmap directives, are all necessary elements for addressing the said concerns.

can instruct a lawyer of choice at all times. The issue with ex officio lawyer regards quality of the defence. Although the problem is rarely denounced, in fact it is well known to experts and practitioners in the field that ex officio lawyers can provide a legal defence that is not always up to the professional standards. Controls about this are very limited and besides, in particular in the case of vulnerable defendants, they tend to confuse the two systems. They might accept an inadequate defence by ex officio lawyer because they believe this is in fact legal aid, and that therefore the lawyer will be paid for by the state.

Recommendations

- Reform the penitentiary law, which dates back to 1975 and was written in order to deal with a prison model very different from the current one. A bill of law which would delegate the Government to carry on such a reform is now pending at the Senate and its discussion should be encouraged. In particular consider to:
 - Apply the recommendations of the third committee on penitentiary issues in particular regarding dynamic surveillance and open prison life;
 - Extend the use of alternative measures and provide them with adequate personnel and funding to the Offices for Alternative Measures so that they carry out their mandate;
 - Review contents, criteria and procedures to access alternative measures without restriction for anybody;
 - Insure the rights of foreign detainees with regard to every-day basic needs and set up specific activities for them;
 - Guarantee specific rules and rights for female prisoners;
 - Guarantee specific rules and rights for juvenile prisoners and ban solitary confinement for them;
 - Limit the use of solitary confinement for adults;
- Reform the legislation on drugs, which is one of the main sources of prison overcrowding;
- Make sure that enough cultural mediators and translators are employed by DAP to facilitate the communication between the prison authorities and the inmates;
- Guarantee religious rights to everybody and not only to catholic prisoners;
- Make prisons more accessible to entrusted Imams, so that muslim detainees can have a reference person that they trust and the prison authorities can better communicate with those belonging to the Islamic faith;
- Avoid the segregation, victimization and stigmatization of radicalized muslims and organize social programs of deradicalization involving translators, cultural mediators and Imams;
- Improve penitentiary health system by increasing medical facilities and staff numbers;
- Take further steps to close down all OPGs promptly as required by law;
- Consider to destine REMS only to patients with a definitive security measure;
- Review the Article 41-bis regime to eliminate those oppressive restrictions, which negatively impact on the right to a fair trial and which don't have a real link to the necessity to prevent and eradicate any relationship with the criminal organization;
- Make sure that the extension of the 41-bis regime is carefully reviewed in each case with a special regard to older detainees;
- Put in place a functioning mechanism of suicide and self-harm prevention;
- Give to the National Authority appropriate personnel and economic means to carry out its mandate as a fully independent body;
- Acknowledge the presence of LGBT prisoners and make sure that they are not excluded from the activities or discriminated in treatment;
- The State administration should provide the funding for the construction and the management of family houses for women prisoners with children, that are now delegated to local administrations;
- Take all necessary steps to make sure that the first hearing after arrest are more fair and that the EU Directives on the rights of suspects and accused people are entirely implemented;

- Review the conditions to access legal aid and reduce the length of time that lawyers have to wait to be paid for their work;
- Address the problem of the quality of *ex officio* lawyers.