



Submission to the UN Committee Against Torture Concerning Italy

71st Session

9 November- 4 December 2020

*With the support of the **World Organisation Against Torture (OMCT)***



Associazione Antigone Onlus – www.antigone.it
via Monti di Pietralata, 16 – 00157 ROMA
segreteria@antigone.it

World Organisation Against Torture (OMCT)
Rue du Vieux-Billard 8 - 1205 Genève
omct@omct.org

ANTIGONE

Founded in 1991, Antigone is an NGO focusing on the protection of human rights in the penal and penitentiary system. It carries out a cultural work on public opinion through campaigns, education, media, publications and its self-titled academic review. An Observatory on Italian prisons, involving around 80 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 access prisons with video-cameras. Every year Antigone's Observatory publishes a Report on the Italian penitentiary system. Since 2009, Antigone is also allowed to access 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 several Italian prisons providing legal advice on and monitoring detention conditions. Antigone also carries out investigations and litigations of cases of torture and ill-treatment. It further leads an European Observatory on prisons involving nine European Countries and funded by the European Union.

World Organisation Against Torture (OMCT)

The OMCT works with around 200 member organisations which constitute its SOS-Torture Network, to end torture, fight impunity and protect human rights defenders worldwide. Together, we make up the largest global group actively standing up to torture. Helping local voices be heard, we support our vital partners in the field and provide direct assistance to victims. Our international secretariat is based in Geneva, with offices in Brussels and Tunis.

Article 1

Law against torture

In 2017, Italy introduced the crime of torture into its domestic legal framework with Law N. 110, July 14th 2017.¹ However the **definition of torture contained in Law 110 diverges from the one provided by the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “the Convention against Torture”**.

Indeed, Article 1(1) of the Law 110 states as follows: *“Anyone who, using serious violence or grave threats, or acting with cruelty, causes acute physical suffering or a verifiable psychological trauma to a person who is deprived of personal liberty or is entrusted to the person’s custody, parental authority, supervision, control, care, or assistance, or who is in a situation of diminished defense, is punished with four to ten years of imprisonment if the offense is committed by more than one action or if it causes an inhuman and degrading treatment for the dignity of a human being”*.²

The law considers being a State agent as an aggravating factor and punishes with five to 12 years of imprisonment those public officers who have committed acts of torture.³ Penalties are increased by one-third if the facts referred to in the first paragraph result in a severe personal injury⁴, by half if they result in a very serious personal injury⁵. When death results as an unintended consequence, the penalty is increased to 30 years of imprisonment. If the convicted felon intentionally caused the death of the victim, life imprisonment applies⁶.

In the past two years we have seen the first applications of the law (since the crime is very new, trials are still in progress) and several interesting facts can be pointed out.

First of all, since this is a common offence that can be committed by anyone, there are cases⁷ in which the accused is a private citizen; however, as far as Antigone is aware, in the majority of the cases the accused are members of law enforcement.

The law also contains the plural forms of “violence” and “threats”, which would narrow the application of the law, since it would require “multiple acts” for torture to occur. Up until now the judicial documents frame the acts referring in a cumulative way to both possibilities (violence and threats and acting with cruelty) and point out also in a cumulative way the possible outcomes (physical/psychological suffering and inhuman and degrading treatment).

¹ Antigone had already [reported](#) on this and other issues for the 62nd Session of the Committee against Torture.

² Legge 14 luglio 2017, n. 110. Introduzione degli articoli 613-bis e 613-ter del codice penale, concernenti i reati di tortura e di istigazione del pubblico ufficiale alla tortura.

“Chiunque, con violenze o minacce gravi, ovvero agendo con crudeltà, cagiona acute sofferenze fisiche o un verificabile trauma psichico a una persona privata della libertà personale o affidata alla sua custodia, potestà, vigilanza, controllo, cura o assistenza, ovvero che si trovi in condizioni di minorata difesa, e' punito con la pena della reclusione da quattro a dieci anni se il fatto e' commesso mediante più condotte ovvero se comporta un trattamento inumano e degradante per la dignità della persona.”

³ “Se i fatti di cui al primo comma sono commessi da un pubblico ufficiale o da un incaricato di un pubblico servizio, con abuso dei poteri o in violazione dei doveri inerenti alla funzione o al servizio, la pena è della reclusione da cinque a dodici anni.”

⁴ Lesione personale grave.

⁵ Lesione personale gravissima.

⁶ “Se dai fatti di cui al primo comma deriva una lesione personale le pene di cui ai commi precedenti sono aumentate; se ne deriva una lesione personale grave sono aumentate di un terzo e se ne deriva una lesione personale gravissima sono aumentate della metà. Se dai fatti di cui al primo comma deriva la morte quale conseguenza non voluta, la pena è della reclusione di anni trenta. Se il colpevole cagiona volontariamente la morte, la pena è dell'ergastolo.”

⁷ Antigone is aware of at least two of them.

The Court of Cassation, with sentence [n. 47079 of 8 July 2019](#), has also interpreted the meaning of terminology “*verifiable* psychological trauma”. The Court stated that the verifiability of the psychological trauma can be ascertained via the ordinary means to obtain evidence without the need for a nosographic or expert opinion, since it might not be possible to frame a temporary trauma into a specific category.

Finally, it is interesting to note that the Judges for the Preliminary Investigations⁸ (GIP) dealing with two cases of torture in San Gimignano and in Turin (see below), in the reconstruction of the cases widely refer to international human rights bodies dealing with the prohibition of torture. In particular, they both refer to the ECtHR article 3 jurisprudence and the Siena Tribunal (competent for the San Gimignano case) also refers to the CAT.⁹

Torture is still subject to the statute of limitations and is subject to the ordinary terms of limitation, which depends on the penalty provided by the Penal Code. This is clearly an element of concern about the law. However, despite not being fully compliant with international standards, Law N. 110, July 14th 2017 has so far proven to be applicable and useful in the prosecution of torture.

Article 2

National and territorial mechanisms for the prevention of torture

The National Guarantor for the Rights of Persons Detained or Deprived of Personal Liberty, which constitutes the National Preventive Mechanism (NPM), was established by Art. 7 of Law No 10 of 21 February 2014. The National Guarantor is a fully independent mechanism with legal and effective power to carry out unannounced monitoring visits to all places of deprivation of liberty in compliance with OPCAT requirements. Since his appointment, the Guarantor has carried out an outstanding monitoring and prevention work. He plays an active role in the penal proceedings investigating the deaths in prisons and cooperates with the civil society on various issues. In addition, he extended his mandate to cases of de-facto deprivation of liberty (such as NGO ships carrying migrants, that were forbidden from docking) and during the Covid-19 emergency was the only authority informing the public on the situation of places of deprivation of liberty. After all visits, it publishes a report which includes recommendations, and engages in a constructive dialogue with the concerned administrations.

In the [2019 Report to the Parliament](#), the National Guarantor included a section on the recommendations issued and on the replies of the other administrations. Under the heading of migration, the National Guarantor issued seven recommendations and received feedback for all seven of them. In the field of penal detention, the Guarantor issued 20 recommendations and the feedback received is as follows: in 2 cases the issues are under discussion in the framework of a roundtable that engages the Department of the Penitentiary Administration and the National Guarantor; in 12 cases the Penitentiary Administration has answered to the recommendations; and in 6 cases no feedback was received. In the field of health, the monitoring of the Guarantor started at a later time as opposed to the other areas of interest of the Guarantor; therefore, for the 5 recommendations that were issued the Guarantor had not received an answer yet. Regarding the deprivation of liberty that can be carried out by police forces, the Guarantor issued 6 recommendations and received a form of feedback for 4 of them.

According to the legal framework, the Regional, Provincial and local Guarantors are coordinated by the National Guarantor. Since the laws that institute and regulate these territorial Guarantors do not give them the same authority that the National Guarantor has, they are customarily considered as separate from the National Guarantor structure. Nevertheless, they are important actors in the protection of the rights of the people detained in their territories and they cooperate with the National Guarantor on specific issues; one very good example is the strengthening of the cooperation between the territorial Guarantors and the National Guarantor during the Covid-19 pandemic, when the multiple emergencies

⁸ Giudice per le indagini preliminari.

⁹ Ordinanze di applicazione della misura cautelare rese dal Trib. di Torino, sez. GIP, 30.9.2019 e dal Trib. di Siena, sez. GIP, il 28.8.2019.

that occurred at the same time would have made it difficult for the National Guarantor to effectively intervene without the help of the territorial Guarantors.

National Human Rights Institution

On 30 October 2018, [law proposal n. 1323](#) was presented to the Parliament for the institution of the National Commission for the Promotion and the Protection of Fundamental Human Rights. One element of great concern is represented by article 3, par. 6, that states that “*the Commission may be entrusted with tasks arising from international commitments under laws implementing international human rights convention*”. In the case of the prevention of torture, the National Guarantor, a fully independent authority, could be incorporated into a Commission which might not be given the same powers that it has now, in accordance with the OPCAT requirements. Moreover, Italy’s system of protection and promotion of human rights is entrusted with sectorial Guarantors who have demonstrated through the years to be valid and outspoken authorities. This law risks to undermine a system that has a long history and that has shown to work.

On the other hand, Antigone welcomes [law proposal n. 1794](#), which transforms the National Office Against Racial Discrimination (UNAR) into an Authority against all types of discriminations. The law proposal aims at creating a fully independent authority (UNAR was a governmental body) whose members are appointed by the President of the Republic and remain in office for five years (renewable once). The mandate of this new Authority would be to address all kinds of discriminations (while UNAR was limited to racial and ethnic origin discrimination): sex, race, language, religion, political opinion, and personal and social conditions (which would also include discriminations based on sexual orientation). The Authority will: assist people who have been allegedly discriminated in administrative or jurisdictional proceedings, start inquiries to assess the presence of a discrimination, promote the elimination of all forms of discriminations, raise awareness on the topic of discrimination, issue recommendations, write an annual report, and promote studies on the topic.

Access to legal aid

The right to receive legal aid is provided by the Italian judicial system, but it features some problematic points. An individual must satisfy several requirements to receive legal aid. One of these is an income requirement: the applicant must demonstrate to have an annual income lower than € 11.493,82 to be granted access to legal aid. The request to benefit from legal aid has to be granted by the judge. In case of non-EU foreigners, the Consulate must certify that the applicant's income is insufficient even in the country of origin, but it often happens that consular authorities fail to timely proceed with the certification.

In 2019, lawyers have [noticed](#) that judges are often denying the request of free legal aid because they evaluate that the income of the requesting person would be too low to ensure his/her survival and this might be an indicator of illicit activities and illicit revenues. However, according to lawyers, judges don’t always verify whether the allegations are true and simply proceed with the denial of the request. These actions clash with sentence n.54830/2018 in which the Court of Cassation has stated that the simple declaration of having no income is not in itself a potential deception and that judges must always use their “power of investigation” to carry out a check on the requesting person. Furthermore, this year, in sentence n. 12191/2020 the Court of Cassation stated that once the legal aid request has been accepted, the beneficiary doesn’t need to submit any declaration regarding income changes.

Lawyers who are in the legal aid lists have complained about several issues in the functioning of the legal aid framework. They lament a low remuneration, that only partially covers the expenses they had, and that is paid after a long period of time that is in most cases two years after the end of the trial. This condition frequently undermines motivation and reduces the means by which to carry out a strong defensive strategy (for example by preventing the use of expert opinions or translations / interpretation of good quality). It also encourages bad practices: for example, there have been cases where lawyers have asked for payments to their clients even if they had filed a request for legal aid; in other cases, clients, who are aware of the dysfunctions of the legal aid framework, offer money to their lawyers as an incentive. In the past year, the National Lawyers’ Council (Consiglio Nazionale Forense) with disciplinary proceeding sentence 136/2019, [has recalled](#) that it is illegal for lawyers to ask fees to clients

who have been admitted to legal aid. That would be a violation of article 11 of the code of ethics (duty of defense).

Last year a new draft bill on legal aid that is still under consideration by the Justice Commission of the Chamber of Deputies was presented by Minister of Justice Alfonso Bonafede. This decree aims at enlarging the scope of legal aid by allowing the recourse to legal aid also in case of assisted negotiation procedures where an agreement has been reached, and by introducing the possibility for the victims of crime to benefit from free legal aid even without meeting the income requirements in cases concerning specific crimes¹⁰, among which there is the crime of torture (art 613 bis p.c.).

Rights of suspects and accused persons in police custody

Several problems can be highlighted regarding the rights of suspects and accused in police custody. Firstly, not all arrested people are made aware of their rights and often don't receive a copy of the Letter of Rights, which according to the 2012/2013 European directive has to be given to all arrested people. Furthermore, the model of Letter of Rights prepared by the Ministry of Interior fails to provide comprehensive information. Antigone has prepared a new template with a clearer and more accessible language and has proposed its adoption to the Government. Moreover, suspects/accused who don't speak Italian are at disadvantage as in most cases they are not provided with translated documents or qualified interpreters who can communicate them their rights and assist them during both the communications with the lawyer and the trial. The lack of a registry for qualified translators and interpreters is a cause of great concern as it renders it difficult for the Court which employs their services to check their credentials and the quality of their work.

Another problem is represented by the access to a lawyer and, in particular, the very limited time provided to the attorney to speak with his client during their first meeting before the validation hearing, which can be as short as five minutes. When a person is arrested in *flagrante delicto*, the crime committed can be judged with a fast-track trial (*giudizio direttissimo*) that will likely take place in the morning after the arrest, in most cases happening at night. The lawyer, often an *ex-officio* lawyer, is notified of both the validation hearing and the trial usually right after the arrest. These circumstances often lead to a situation where the attorney and his client meet for the first time in the morning after the arrest and right before the start of the validation hearing and the fast-track trial. Furthermore, since in courts there is usually no space dedicated to private consultations between lawyers and clients, those consultations take place in corridors, where their confidentiality may be compromised by the presence of police officers.

Articles 5 to 9

Universal jurisdiction

According to the Italian legislation, it is possible to charge and/or prosecute a person for the crime of torture only if the facts are committed in Italy or if the victim is an Italian citizen. In the law, **nothing has changed with respect to the non-application of the principle of universal jurisdiction.**

However, it would be possible to derogate the principle of territoriality thanks to article 10 of the Italian penal code that grants the Ministry of Justice the possibility to request the Tribunal to proceed for crimes committed by foreign citizens against foreign citizens outside Italy.

It is interesting to note that in [September 2019](#) three foreign citizens were arrested and accused of having committed serious crimes, including torture, in the Libyan detention center of Zawiya. The investigation, carried out by the Prosecution of Agrigento and later handed over to the Palermo District

¹⁰ Breach of family care obligations when the violation is against minor or a family member unable to work (art 570.2 penal code), breach of family care obligations during the divorce that damages minor or a family member unable to work (art 570 bis p.c.), and the crime of torture (art 613 bis p.c.).

Antimafia Branch, started after the three men were recognized in Lampedusa by migrants who had been rescued by the ship *Alex* of the NGO *Mediterranea*.

Thanks to article 10, in two other cases, the [Tribunal of Milan](#) (in 2017) and the [Tribunal of Agrigento](#) (in 2019) sentenced foreign citizens for crimes committed against migrants in Libyan detention centers; unfortunately the events took place before the introduction of the crime of torture, hence the perpetrators were not sentenced for torture.

Article 10

Training of medical personnel

In many of the criminal proceedings for violence against detainees by penitentiary police, the medical documentation by prison doctors detailing signs of physical violence was inadequate or lacked accuracy. Generally, prison doctors don't play a particularly active role in reporting cases of violence and ill-treatment. In many occasions, victims are taken to the doctor by the perpetrators themselves or by officers who were present during the abuse; the perpetrators are often present during medical examinations and doctors often report that the injuries are accidental. In some cases, the visit is not even carried out but the doctor reports that the detainee refused to be visited. In other cases, the report does not give any explanation of the causes of the injuries. Finally, more rarely, the inmate is not visited at all if not after several days after that the abuse took place.

Prison doctors are by law public officials and are bound by the obligation to report any alleged crime to the public prosecutor's office (ex art. 334 of the Code of Criminal Procedure and art. 365 of the Criminal Code). Also, art. 11 of the Penitentiary Code gives them the obligation to visit all detainees entering the prison and to report any sign or indicator that the inmate was the victim of an act of violence. However, Antigone has received several allegations of prison doctors who would not abide by the normative framework. The following cases are either allegations received by Antigone or cases under investigation in which the behaviour of the medical staff would not have helped the discovery of the ill-treatment.

The San Gimignano case

On 11 October 2018, 15 police officers of the Penitentiary Institute of San Gimignano, with the excuse of having to move one detainee from a cell located to the isolation ward to another, allegedly pulled him out of the cell, threw him on the floor and beat him with kicks and punches while insulting him. The judicial file reports that during the events, one detainee hosted in the isolation ward witnessed what happened and reported that one police officer punched him to make him get away from the steel door of the cell. The detainee states that he later asked to see a doctor, who visited him in his cell and reported a light injury on the eye. When he asked the doctor to write down that the injury was the result of a punch from a police officer, the doctor allegedly made him understand that he preferred not to write it down because he feared the consequences of this action. According to the judicial file, the medical report states that the inmate did not indicate how the injury had happened. The same detainee reports that he expressed concerns for the state of the other inmate but that the doctor did not visit him. The Judge of the Preliminary Investigation points out that the prison doctor did not wish to contribute to the discovery of the crimes committed by police officers.

The Monza case

On 3 August 2019, a detainee of the penitentiary institute of Monza, was allegedly beaten up by several penitentiary police officers with punches and kicks while he was hosed in the isolation ward. Before the medical visit, the police officers allegedly forced him to sign a document in which he declared that he had injured himself. The doctor who visited him would not have reported any injury. After ten days from the events, he was transferred to another prison where the medical visit reported all the injuries that were still visible.

The Palermo case

According to the victim's account, on 18 January 2020, he was taken to the Palermo-Pagliarelli prison where he was allegedly beaten up with kicks and punches for 20 minutes by two penitentiary officers in a room of the prison without video surveillance. During the hearing of the Court of Appeal, the detainee gave an account of the facts and the Court sent the acts to the prosecutor's office. The Court decided to immediately transfer the detainee to the Messina prison at first and to the Paola prison afterwards. It is important to underline that after the detainee was allegedly subjected to violence by the two penitentiary police officers, the prison doctor visited him and would not have reported any injury. The following day, he would have been visited two other times and only the second time the doctor would have reported the presence of injuries; however, the latter would have stated that they could have been compatible with the force needed to restrain the detainee. Finally, the doctor who visited him upon entering the Messina prison would have reported no injuries, while the doctor who visited him upon entering the Paola prison would have reported the injuries.

The Ferrara case

Three police officers serving in the prison of Ferrara are under investigation for the crime of torture for allegedly beating a detainee, making him partially undress and threatening him with a knife. One nurse is also under investigation for having allegedly tried to cover up the crime by falsely reporting that she had seen the detainee hurting himself by hitting the head against the steel door of the cell.

Article 11

Overcrowding

In the [Sulejmanovic case](#) (July 2009) the ECHR condemned Italy for the violation of Article 3 and after the [Torreggiani and others v. Italy](#) pilot-judgement (2013) Italy undertook several reforms to decongest its prisons. Between 2010 and 2015 the number of detainees decreased from [68,258](#) (153% occupancy rate) to [52,164](#) (105% occupancy rate). However, afterwards numbers started to rise again. As of February 29th, there were [61,230](#) detainees for 50,931 available places (120.2% occupancy rate). Antigone has estimated a rate of 130%, keeping into account unavailable places in some prisons because of closed sections or renovation works. This means that within the last three years, there has been an increase in the prison population of almost 10,000 people, which corresponds to a 17.3% augmentation while the official capacity of the penitentiary institutes has merely been increased of 1,339 places (+2.7%).

At the beginning of the Covid-19 pandemic, the necessity to reduce the number of detainees was clearly understood by the authorities, since there were concerns that the already overcrowded Italian prisons would turn into powder kegs for infections, weighting on the Territorial Health Systems. By mid-May they were 52,600 detainees against the 61,000 detained by the end of February: 8,551 fewer detainees (-13.9%). Also, before the Covid-19 emergency, detainees without a final sentence were [18,952](#) (31% of the total prison population); at the end of May they were [16,900](#) (-10.83%). The decrease in numbers is due partially to a lower number of people who entered prison and to a higher number of people that accessed home detention - also thanks to some measures introduced to lower the number of detainees.

The work of Surveillance Judges was a key element to lower the number of the prison population and to keep the numbers of infected people low - the National Guarantor stated that between the end of February and mid-May, a total of 300 detainees had been infected; unfortunately, four inmates and four prison staff died.

The [latest available numbers](#) show that **the reduction in the prison population is already slowing down**. It is of the utmost importance that the prison population is further lowered so to reach the number of available places and that the authorities enforce all necessary measures to **avoid a new increase in prison numbers** and overcrowding.

Art. 41-bis of the penitentiary law

Special regime 41-bis of the Penitentiary Law was introduced in 1992 (and modified in 2003 and 2009) to avoid major offenders linked to organized crime groups, especially mafia and terrorist groups, from being able to control criminal activities from inside penal institutions and to isolate them from the rest of the criminal organization. The measure applies both to prisoners with a final sentence and to detainees with pending trials for crimes related to organized crime activities (e.g. mafia), terrorism or subversion of the democratic order. The regime can be authorized by the Minister of Justice for an initial term of four years that can be extended every two years if there are still elements that indicate that the inmate could maintain contacts with the criminal organization. This often results in an **automatic renewal** as when no elements are found, it is presumed that the ties still exist.

The conditions imposed by the 41-bis regime are very harsh and have been criticized by the European Committee for the Prevention of Torture (CPT)¹¹ and the ECtHR¹². Measures entail 22 hours per day of solitary confinement with the remaining two hours spent either outside or in common rooms in small “sociality groups” (3 to 4 detainees undergoing the same regime chosen by the Penitentiary Administration); restriction on family visits, which are limited to four visits per month and can be replaced with a 10-minute phone call per month. Family visits take place through a glass partition, but children under the age of 12 can cross the glass partition and spend the visit on the side of the detainee. Moreover, correspondence is not confidential and censored. Meetings and correspondence with the lawyer are not subjected to any limitation. The measures listed in Article 41-bis are not exhaustive and the penitentiary administration can decide to impose further restrictions.

Through the years, the Constitutional Court has addressed several problems posed by the regime. Here are included only the latest judgements. With [sentence n. 186 of 26 September 2018](#), the Constitutional Court has declared unconstitutional the part of article 41-bis of the Penitentiary Law that prohibits detainees to cook foods. This means that now inmates detained under the special regime can prepare their meals by cooking them instead of only being able to heat them up. Also, with [sentence n. 97 of 5 May 2020](#), the Constitutional Court has declared unconstitutional the prohibition to exchange goods (such as food) among the same “sociality group”.

At the beginning of 2019, after visiting all 41-bis sections, the National Guarantor has published a thematic report (available in [English](#)) on 41-bis. Also the CPT, in its [report on the ad-hoc visit carried out in Italy between 12 and 22 March 2019](#), has addressed this special regime.

One of the issues of serious concern relates to the many restrictive measures (such as limitations on the number of books or pictures that detainees can keep inside their cells) which ratio seems to be purely repressive. Also, material conditions are not always in compliance with the standards (e.g. windows are often covered with several layers of nets and bars that hinder the passage of air and light), detainees have access to very small outdoors areas, which are also closed by a net covering the sky and lacking any equipment. Furthermore, the National Guarantor has reported the presence of prison officers during medical examinations, the presence of security cameras in the toilet of the cell, and the use of strip searches as a routine practice instead of being used exceptionally. Moreover, the regime is very poor and lacks purposeful activities; the re-educational purpose of the sentence seems to have been set completely aside.

Another issue of great concern there is the fact that detainees undergoing the 41-bis regime can be held in so-called “aree riservate” (reserved areas), particular areas inside maximum-security sections, where the conditions are even stricter than under the special regime. In particular, “reserved areas” accommodate only two people of the same “sociality group”, which means that in the case of a possible disciplinary measure of solitary confinement on one of the two, the isolation of the other is inevitably determined.

¹¹ 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 12 to 22 March 2019,

¹² Among others *Enea v. Italy* Application n° 74912/01 (2009); *Ospina-Vargas v. Italy* n° 40750/98 (2004).

According to the Annual Report on the Administration of Justice¹³, as of 6 November 2019, a total of 754 prisoners were detained under the 41-bis regime (735 men and 12 women).

Suicides in prisons

After years of increase in the number of suicides (39 in 2016, 48 in 2017 and 61 in 2018), in 2019 [suicides have decreased to 53](#). According to the [National Guarantor](#), from the beginning of 2020 to 29 March, 21 suicides were reported in Italian prisons. Thanks to the data published in the [2019 Report to the Parliament](#) of the National Guarantor, it is possible to point out that a very delicate moment of detention seems to be the first entry (when the first screening should be carried out precisely to evaluate the suicidal risk) as well as all times when a prisoner is separated from the rest of the prisoners or does not have access to activities (such as isolation or protected sections). The lack of contact with their families (as in the case of foreigners), their legal position (prisoners awaiting trial have higher levels of stress linked to uncertainty than the final sentence) and the approaching end of their sentence (sometimes prisoners have no prospects outside of prison and the approaching end of their sentence places them in a great deal of uncertainty) are also very influential.

Foreign prisoners

As of 31 December 2019, 19,888 [foreign inmates](#) were detained in Italian prisons, representing the 0.4% of the total foreign population in Italy in 2019 (it was the 0.6% in 2008), the 35.6% of prisoners with pending trials and the 30.8% of inmates with a final sentence.

The most represented foreign countries among prisoners are: Morocco (18.4% of the foreigner inmates), Albania (12.1%), Romania (12%), Tunisia (10.2%) and Nigeria. It is possible to concretely see in the “Romanian case” how as the integration progress grows, the rate of deviance decreases. Indeed, in 2009 the detention rate of Romanians was 0.33%, while 10 years later is 0.19%.

The data on crimes and penalties tell us that foreigners generally commit less serious crimes and are sentenced to less severe penalties. The most commonly committed crimes concern the violation of drug law (35.8%). The next share is represented by crimes against the person (30.97%) while it is only 2.4% for mafia-related crimes. Foreigners account for 44.5% of the total number of those sentenced to serve less than one year. However, Italian judges are still more prone to condemn foreigners to prison sentences instead of granting them alternative measures because alternative measures generally require a fixed residence (e.g. in the case of home detention). To face the lack of adequate residences in order to receive an alternative measure penalty, in April, the “Cassa delle Ammende” has allocated 5 million euros to local authorities and third sector organizations that could offer alternative housing solutions. Foreigners face several types of discrimination in prison, their needs related to food habits, clothing, culture and religion aren't taken enough in consideration and the dialogue between inmates is often difficult because of the lack of cultural mediators.

Foreign minors

If at the beginning of 2019 the Italian Penal Institutes for Juvenile Offenders hosted 440 minors, a year later in the 17 IPMs there were 375 people (of which 23 women), compared to 12,836 under the care of the Juvenile Justice Services. Foreign minors (who are more than 40% of the total juvenile prison population) are overrepresented in IPMs, in fact only one minor out of four under the care of the Juvenile Social Service is a foreigner. Foreign minors are often at disadvantage because they don't master the Italian language and don't have ties with a community and a net of social support. Foreigners represent just a quarter of the total of young people in charge to social service offices for minors. With the Coronavirus emergency, the number of admissions in prisons has decreased further. While it had remained substantially unchanged until March 15, in the following month it fell by 74 units to 298 inmates.

¹³ See Antigone's latest [annual report](#) for the allocation of detainees in the different prisons.

Solitary confinement of life sentenced detainees

Solitary confinement of life-sentenced detainees (also called day-time solitary confinement) is a penal sanction prescribed by Article 72 of the Penal Code. It is inflicted in the case of the imposition of more than one life sentence or in the case of a combination of a life sentence and one or more other penal sanctions. In the first case the time span of solitary confinement that the judge can apply varies between six months and three years, while in the second case the time span is between two and eighteen months. The detainee has one hour of outdoor exercise on his/her own and should be allowed to participate in communal life (e.g. work, educational etc.); however, since he would be allowed only if he had no contact with other detainees, the common interpretation of this type of isolation is the total exclusion of the inmate from all communal activities. At times, this kind of isolation is applied even after years of imprisonment, when the inmate is already successfully following his treatment and re-socialization path, that has to be interrupted. In its latest [report on Italy](#), the CPT observed that “the prolonged and punitive measure of “isolamento diurno” observed by the delegation is, in the CPT’s view, an anachronistic measure which does not have any penological justification”.

Disciplinary solitary confinement

Disciplinary solitary confinement is regulated by Article 33 of the penitentiary law. There are several issues related to disciplinary solitary confinement. First of all, the [National Guarantor reported](#) that in some cases there is an established custom consisting in the holding of people in disciplinary isolation in so-called “smooth cells”, which are cells lacking all furniture except from a bed that is usually nailed to the floor and in full sight from the door hatch at the expense of the privacy of the detainee. Placement in separate sections favors mistreatment by the penitentiary police and enhances the risk of suicide among inmates (see the paragraphs on suicides and on ill-treatments). The current law allows up to 15-day isolation as a disciplinary measure; however, the **imposition of subsequent orders of 15-day disciplinary solitary confinement** is not prohibited by law and it has been documented by the National Guarantor as a practice that led to **months-long solitary confinement**. It is also important to note that in the last 5 years disciplinary offences have increased from 974 in 2013 to 8577 in 2018; meanwhile disciplinary isolations increased exponentially from 207 in 2013 to 2367 in 2018.

With the modification of the Penitentiary Law (delegated legislative decree n.124 of October 2nd 2018) the disciplinary council that makes the decision on the application of disciplinary confinement has been modified by taking out the prison doctor from the disciplinary council and adding “a professional expert appointed ex art. 80” of the Penitentiary Law. Unfortunately, this provision does not entirely solve the problem of the building of trust between detainees and professions because among experts listed under art. 80 of the Penitentiary Law there are also the psychologist and the cultural mediator.

The 14-bis regime - Sorveglianza particolare

The special regime 14-bis, “sorveglianza particolare” (particular surveillance) is a regime of preventive nature, that can be imposed by the penitentiary administration for six months, renewable every three months. Detainees under the 14-bis regime are not allowed to work, and restrictions can be imposed on their participation to educational programs, sports, cultural and recreational activities. The imposition of all these prohibitions can create a **de facto solitary confinement regime**. Moreover, the 14 bis-regime is often combined with the 41-bis regime and is sometimes also used in combination with solitary confinement for sentenced inmates. In these cases, [it has been observed](#) that the final result is a *de facto* total isolation of the inmate, sometimes for prolonged periods of time.

Articles 2, 12, 13, 16

Cases related to torture and ill-treatment

In this section are reported all most recent cases of violence that have allegedly occurred in Italian prisons and that could fall under the definition of torture or inhuman and degrading treatment. Some of them were only recently reported to Antigone and are still at the very early stages of the proceeding. In all the cases the officers involved acted in a group, their ages vary from case to case but in some, they

are under 30 years of age. The victims of the acts are often detainees held in isolation or particularly vulnerable inmates (e.g. sex offenders).

The most recent cases concern events that took place during the Covid-19 pandemic; between 7 and 9 March, several riots and protests took place in 49 Italian prisons. In some cases, police officers retaliated with violent actions.

The Ivrea case

There are currently 3 pending criminal proceedings for three different violent episodes that occurred in the Ivrea prison. The public prosecutors have requested the dismissal of all three cases and Antigone has formally opposed them. In one particular case, after rejecting the prosecution's request for a dismissal, the Judge ordered the prosecutor to write in the "register of suspects" (registro degli indagati) the presumed perpetrators who can be identified and to check the compatibility of the injuries reported with the alleged accidental falls. The prosecutor once again asked the dismissal of the case and once again Antigone opposed it. The next hearing will be in October 2020.

In these cases, the law against torture does not apply, since the events took place before the entry into force of the law.

The Viterbo case

In the last few years, Antigone has received several allegations of ill-treatment occurring in the Viterbo prison thanks to several letters sent by detainees.¹⁴ The delegation of the CPT, which visited the Viterbo prison in 2019 spoke with several detainees and [reported](#) that:

"at Viterbo Prison a considerable number of allegations of physical ill-treatment of inmates by staff were received by the delegation. The allegations consisted primarily of slaps, punches and kicks to various parts of the body as well as a specific allegation of blows with the metal cell keys to an inmate's head. The alleged ill-treatment mainly took place in the D1 Pavilion on the stairs leading to ordinary sections not covered by CCTV and in the isolation section and was inflicted on prisoners displaying challenging behaviour (e.g. committing acts of self-harm), during cell searches or following a verbal altercation between an inmate and custodial staff. Several prisoners told the delegation that it was not uncommon for custodial staff to verbally provoke inmates including through racist slurs. A number of prisoners, interviewed separately, identified particular prison officers and inspectors as being behind numerous episodes of alleged ill-treatment, and they referred to the existence of an informal punitive intervention group of the penitentiary police or "squadretta". In a number of cases, the CPT's delegation found entries in the medical files of the inmates which were compatible with the allegations of ill-treatment it had received".

In 2019, Antigone has reported some of the cases it received to the authorities. Unfortunately, the public prosecutor has filed to the Judge of the Preliminary Investigations a request for the dismissal of the case.

The San Gimignano case

On 11 October 2018, 15 police officers of the Penitentiary Institute of San Gimignano, with the excuse of having to move a detainee from a cell located to the isolation ward to another, allegedly pulled the detainee out of the cell, threw him on the floor and beaten him with kicks and punches while insulting him. The inmate was allegedly made to stand up, pushed to make him walk and thrown again on the floor, where he was immobilized by two police officers while one of them laid with his weight on him by putting his knee on the detainee's chest. Then, the officers allegedly made him stand again, took his pants off, and dragged him to the new cell; meanwhile the detainee had almost lost consciousness.

The penitentiary officers allegedly threatened the other detainees of the isolation ward if they told anyone what had happened and one of them filed a false report stating that the use of force had been necessary

¹⁴ In particular, the media [Fanpage](#) published the content of some of the letters, which were duly anonymized.

to make the detainee comply with the change of cell. The tapes of the security camera located in the isolation ward show otherwise.

All 15 police officers are in home detention and under investigation for the crime of torture. The preliminary hearing is scheduled on 10 September 2020 at the Siena Tribunal.

The Turin case

On 29 November 2018, the Guarantor of people deprived of personal liberty of the City of Turin, after receiving several reports of a possible violation of rights from the Penitentiary institute of Turin, decided to privately meet the concerned detainee, who reported that on 17 November 2018 three penitentiary officers beat him up with punches and slaps and forced him to stand still with his face turned towards to wall for some time. He also reported other episodes in which the same officers allegedly insulted and humiliated him for the crime he committed and searched his cell in such a way to destroy his personal property. On 3 December 2018, the Turin Guarantor filed a report to the public prosecutor on these events. the National Guarantor also reported that during the interviews with detainees, carried out over several monitoring visits, several episodes of violence and humiliation had emerged. The investigation of the prosecution identified several other episodes of violence. 11 of the involved penitentiary officers are now under investigation for the crime of torture and 6 of them are held in home detention.

The Monza case

On 3 August 2019, an inmate detained in the penitentiary institute of Monza, was allegedly beaten up by some penitentiary police officers with punches and kicks while he was hosed in the isolation ward. The victim was able to communicate the violence that he allegedly underwent during a phone call with his partner, who went to visit him on 7 August and who confirmed that he had black eyes, a swollen face and acute pain in a shoulder. Before the medical visit, the police officers would have forced him to sign a document in which he declared that he had injured himself. The doctor who visited him would not have reported any injury. After the episode, the detainee was given the disciplinary sanction of solitary confinement. After ten days from the events, he was transferred to another prison where the medical visit reported all the injuries that were still visible. He also decided to denounce the violence. The case is still under investigation.

The Ferrara case

According to the documentation collected by the prosecution, on 30 September 2019, three penitentiary officers serving in the prison of Ferrara allegedly arbitrarily searched the cell of one isolated inmate, made him take off his shirt and undershirt, kneeled down, and kicked him on his stomach. Then, they allegedly handcuffed him and beat him on his stomach, shoulders and face with a stick normally used to check the integrity of the cell bars. The victim would have reacted by hitting the officer with his head and breaking his glasses. The officer would have then threatened him and hit him with the result of breaking one tooth. The detainee reported to have called for help but the officer allegedly threatened him with a rudimentary knife at his throat. After the alleged beating, the inmate said to have been left handcuffed in his cell until the prison doctor went to section for the visiting tour. In the official reports the three officers tried to cover up the aggression by stating that the inmate had attacked them.

The three police officers are under investigation for the crime of torture and the preliminary hearing will take place on 9 July 2020.

The Palermo-Pagliarelli case

According to the victim's account, on 18 January 2020, he was taken to the Palermo-Pagliarelli prison where he was allegedly beaten up with kicks and punches for 20 minutes by two penitentiary officers in a room of the prison without video surveillance. After the inmate was allegedly subjected to violence by the two penitentiary police officers, the prison doctor would have visited him without reporting any injury.

The inmate would have been then taken to a cell in the "psychiatry" ward and deprived of all personal effects and his clothes (aside from his underwear) until the evening of the following day. He was allegedly visited two other times and only the second time the doctor would have reported the presence

of injuries; however, the latter would have stated that they could have been compatible with the force needed to restrain the detainee. The detainee also stated that he was not allowed to take a shower, was not given a blanket even upon request and he did not eat.

On 20 January, a doctor would have come to his cell and told him that the following day there would have been a hearing. During the hearing of the Court of Appeal, the victim gave an account of the facts and the Court sent the acts to the prosecutor's office. The Court decided to immediately transfer the detainee to the Messina prison at first and to the Paola prison afterwards. The doctor who visited him upon entering the Messina prison would have reported no injuries, while the doctor who visited him upon entering the Paola prison would have reported the injuries.

The Milan-Opera case (Covid-19 case)

According to the accounts received by Antigone from some detainees housed in the Milan-Opera prison, on 9 March 2020, following a Coronavirus-related protest of a group of detainees, several police forces (State Police, Penitentiary Police and Carabinieri) entered in the institute in two different moments. The first intervention took place around 6:00 pm and its scope would have been to stop the protest and take detainees back to their cells. The second intervention took place after 8:30 pm, when the lights were allegedly cut, and police forces would have entered in the cells to beat the detainees who had taken part into the revolt (but also those who had not). According to the accounts, one of the victims is a 70-year-old detainee.

The Pavia case (Covid-19 case)

According to the accounts received by Antigone from some detainees housed in the Pavia prison, on 9 March 2020, after a Coronavirus-related protest on 8 March 2020, some penitentiary police officers allegedly took the detainees out of their cells, took them on the lower floors of the building, where there are some cells separated from the other sections, made them undress and made them stand with their faces towards the wall. Then, the police officers were reported to have beaten them with the truncheon on the head and the whole body. The violence allegedly left evident signs on their bodies; according to the accounts, some of them speak with difficulty and others would have urinated blood. Afterwards some detainees were immediately transferred to other penitentiary institutes without clothes nor personal effects.

The Melfi case (Covid-19 case)

According to the accounts received by Antigone from inmates housed in the Melfi prison, in the night between 16 and 17 March 2020, members of the Penitentiary Police perpetrated acts of violence against detainees. It is important to underline that a Coronavirus-related protest had taken place on 9 March 2020 and that it had been reported that some staff members had been allegedly kidnapped by the detainees; one of them, a member of the medical staff reported different circumstances and added that detainees were never violent against people during the protests.

In the night between 16 and 17 March, around 3:30 am, several members of the Penitentiary Police allegedly entered in the cells in the high security section, handcuffed the detainees, beat them up with truncheons, insulted and spat on them. According to the accounts, some detainees would have been taken to the isolation section, beaten up and left in their underwear; some of them allegedly could not walk because of the beatings. After the events, several detainees said to have been forced to sign a declaration in which they stated that the injuries were the result of an accidental fall.

Afterwards at least 70 of them were transferred to another institute without the possibility to get dressed or to take any personal effects. Violent acts have also allegedly taken place also during the transfers, during which detainees were not granted bathroom breaks and were not given any food or water.

Some family members have already reported the facts to the authorities.

The Santa Maria Capua Vetere case (Covid-19 case)

According to the accounts received by Antigone from some detainees housed in the S. M. Capua Vetere prison, on 6 April 2020, members of the Penitentiary Police perpetrated acts of violence against some of the detainees.

It is important to underline that a Coronavirus-related protest had taken place on 5 April 2020 in the “Nilo” section of the Penitentiary Institute of S. M. Capua Vetere, when detainees found out that one inmate had been found positive to Coronavirus. Around 150 inmates started to beat the bars of their cells as a form of protest and those housed in the “Nilo” section occupied the section, built barricades and asked personal protective equipment against the virus (masks, gloves, hand sanitizer). No violence was carried out against people and no objects were destroyed. The end of the protest was negotiated, and detainees were promised that they would meet the Surveillance Judge the following day. Indeed, the meeting took place.

However, afterwards, between 3:00 pm and 4:00 pm, around 400 penitentiary officers allegedly entered the “Nilo” section and the cells in riot control gear (wearing helmets covering their faces and gloves), and beat up detainees with kicks, punches and truncheons. Inmates reported being taken out of the cells and forced to run to avoid the beatings until the outdoor area. Some inmates have allegedly undergone other kinds of humiliations. Some of them were allegedly isolated after the beatings and others were transferred. Some inmates also reported threats against telling anyone what had happened. The medical staff would have also avoided to report the injuries and to give the proper therapies.

Accounts of these events were received by Antigone, the Regional Guarantor of detainees of Campania, the Guarantor of the City of Naples and the lawyer’s association of S. M. Capua Vetere. All were very outspoken on the issue.

44 penitentiary police officers are currently under investigation for several crimes (including torture).

Statistical data

Data on all cases of complaints, appeals, disciplinary proceedings against security staff, and criminal proceedings or convictions for offences against persons in State custody were disclosed by the State to the Committee Against Torture as an addendum to the report. Otherwise such a data is not generally published by the Ministry of Justice, the Ministry of Defense and the Ministry of the Interior.

Ethical code of conduct for police officials

Italy has never approved an ethical code of conduct for police officials or policemen at any level. Antigone has drafted a proposal aiming at incorporating in the Italian legislation the Code of Conduct for Law Enforcement Officials contained in the UN General Assembly Resolution 34/169 of 17 December 1979, but this never happened.

Identification badges

Policemen are not identifiable. The strong opposition by law enforcements to the possibility to introduce identification badges has shut down all debate on their introduction before it got started.

Article 14

The new law on torture does not provide for any budget for the compensation and rehabilitation of torture victims. Victims can only be compensated in a civil lawsuit after the end of the criminal trial and the ascertainment of the responsibilities. All rehabilitation programs are managed by NGOs and not by the State.

Recommendations

- Which training courses for prison staff aiming at the prevention of torture have been organized? Has their impact been evaluated?
- How is the government of Italy making sure that all allegations of torture or ill-treatment of persons in custody are being thoroughly investigated and prosecuted both from an administrative and criminal point of view?
- Is the government of Italy considering to adopt a more informative Letter of Rights model? How is it planning to ensure that it is effectively handed to all arrested persons?
- How is the government of Italy making sure that all allegations of torture or ill-treatment of persons in custody are being thoroughly documented according to the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?
- What measures have been taken, or are foreseen, to tackle the issue of prison overcrowding? In particular, is the government of Italy considering implementing measures aimed at reducing the impact of drug laws, decriminalizing the status of migrants and extending the use of non custodial sanctions and measures?
- What measures have been taken, or are foreseen, to improve detention conditions in prisons? In particular, is the government of Italy planning to keep implementing the system of dynamic surveillance experienced in recent years, offer multiple activities in prisons, and provide an empowering prison life, which should be as close as possible to that of the free world?
- How is the government of Italy planning to provide interpretation, translation, cultural mediation, psychological and psychiatric support (ethnopsychiatry) for foreign prisoners, while strengthening their external support network in order to make use of alternatives to detention?
- Is the government of Italy taking steps to abolish day-time solitary confinement for life-sentenced detainees as provided for by art. 72 of the penal code?
- Is the government of Italy considering to introduce an ethical code of conduct for law enforcement agencies?
- What steps have been taken in order to introduce identification badges for police officers?
- How is the government of Italy planning to introduce a fund for torture victims?