



Submission to the UN Committee Against Torture Concerning Italy

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ANTIGONE

Founded in 1991, Antigone is a NGO dealing with human rights protection in the 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.

World Organisation Against Torture (OMCT)

OMCT is the main coalition of international nongovernmental organizations fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With over 200 affiliated organisations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world.

Articles 1 and 4

The Law N. 110, July 14th 2017, incorporates into the domestic legal framework the crime of torture. **However, Italy's new law fails to meet international standards. 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** under several aspects.

Indeed, Article 1(1) of the Law 110 runs as follows: *“Anyone who, using serious violence or threats, or acting with cruelty, causes acute physical suffering or a verifiable psychological trauma to a person who is deprived of his freedom 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 upon conviction if the offense is committed by more than one action or if the action or actions involve treatment that is inhuman and degrading to the dignity of a human being”*.

It is of concern that torture is still considered a generic crime that can be committed by anyone. It also must be noted that the legislator uses the words “violence” and “threats” in their plural form, which implies that the new law requires “multiple acts” for torture to occur. Moreover, the notion of cruelty is not clearly defined as neither is the one of “verifiable” psychological trauma. The “inhuman or degrading treatment” of the Convention becomes “inhuman *and* degrading treatment” in the new Italian law.

During the Parliamentary debate, many law experts and civil society organisations, including Antigone, strongly advocated against any changes diverging from the definition provided by the Convention. Several magistrates, including Enrico Zucca, prosecutor in the proceeding for the events occurred during the 2001 G8 in Genoa, have argued that this law is absolutely inapplicable.

Shortly before the law was approved, the Commissioner for Human Rights of the Council of Europe, Mr. Nils Muižnieks, addressed the Italian Parliament expressing similar concerns regarding the text that was pending at the Chamber of Deputies¹.

The law considers being a state agent as an aggravating factor and punishes with five to 12 years of imprisonment those public officers or officers in charge of a public service who have committed acts of torture.

Penalties are increased by one-third if the facts referred to in the first paragraph result in a severe personal injury, of by half if they result in a very serious personal injury (*gravissima*). When death results as an unintended consequence, the penalty is increased to 30 year of imprisonment. If the convicted felon intentionally caused the death of the victim, life imprisonment applies.

Discrimination is not explicitly included as a possible motive for acts of torture and ill-treatment. Indeed, no purpose for inflicting torture is mentioned at all by the law.

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. It is to be noted that Italy never signed The UN Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity nor the European Convention equivalent.

The political debate preceding the final approval of the law by the Italian Senate often showed that a part of the law enforcement was against the incorporation of the crime of torture in the Italian criminal code. The amendment made to the draft law which replaced the word “violenza” with “violenze”, shows a lack of institutional will to end impunity and to prosecute law enforcement agents. Following the adoption of the law, a member of the Justice Committee of the Senate from the Democratic Party stated that finally

¹ <http://www.coe.int/en/web/commissioner/-/commissioner-muiznieks-urges-italian-parliament-to-adopt-a-law-on-torture-which->

“torture is regulated with an eye to what is happening in our Country repeatedly, where this crime is often consumed by those who keep children, the disabled and the elderly in custody”.

Finally, it is worth mentioning that a Parliamentary private hearing has been organized with the heads of all Italian law enforcement agencies, the contents of which have not been published.

Article 2

National Human Rights Institution (NHRI)

Italy still does not have an independent National Human Rights Institution (NHRI) that is in full compliance with the Paris Principles, 20 years after their adoption. This shortcoming has been highlighted by international human rights bodies in several occasions². It is to be noted that at the beginning of the current legislature various draft laws for the establishment of a NHRI were submitted to the Parliament, without success, and that the Inter-ministerial Committee for Human Rights (CIDU) promoted the establishment of the NHRI through meetings at various levels.

While the establishment of national human rights bodies such as the National Observatory on the promotion and protection of persons with disabilities, the National Ombudsman on the Rights of Children, and the National Ombudsman on the Rights of Persons Deprived of Liberty is to be considered a positive step, the lack of a NHRI strongly hampers the possibility to have a more comprehensive and coherent national strategy to promote and protect human rights. A NHRI is key to strengthen Italy’s participation in international and regional human rights fora, to ensure Italy’s compliance with its international obligations and to enhance the promotion and protection of human rights at the national and local level. Furthermore, the legislation proposed so far only provides for a limited cooperation between the Italian NHRI and civil society.

Preventive detention

In recent years, following the European Court for Human Rights (ECtHR) pilot-judgment in the well-known *Torreggiani* case, several legislative provisions have been introduced in order to reduce the impact of preventive detention on prison overcrowding.

In 2014, Law 117/2014 **introduced significant changes** in the provisions related to pre-trial detention. According to Article 275(2) of the Code of Criminal Procedure, pre-trial detention (including pre-trial detention in prison or house arrest) cannot be ordered if the judge considers that with the judgment may be granted suspended sentence (which occurs in case of punishment less than two years, if the judge believes there is no risk of recidivism). A new paragraph 2-bis has been added to Article 275 in relation to pre-trial detention in prison: the measure of pre-trial custody may not apply if the judge considers that, upon trial, the imprisonment sentence imposed shall not exceed three years. Considering statutory maximum penalties, pre-trial detention cannot be applied for crimes that can be punished with a maximum sentence of less than five years.³ For offences under this threshold pre-trial detention is possible in case of violation of house arrest.

These provisions however do not apply in proceedings for offences under Articles 423-bis, 572, 612-bis and 624 bis of the Criminal Code⁴ and under Article 4 bis of the penitentiary law (serious crimes such as organised crime or sex offences) and when house arrest cannot be applied due to lack of fixed abode.

² For example: Human Rights Committee, Concluding observations on the sixth periodic report of Italy, 1 May 2017, CCPR/C/ITA/CO/6, §§6-7.

³ In the past it was less than 4 years. The amendment has a strong impact on drug-related crimes.

⁴ Article 423-bis c.p.: Incendio boschivo
Article 572 c.p.: Maltrattamenti contro familiari o conviventi
Article 612-bis c.p.: Atti persecutori
Article 624 c.p.: Furto

The recently introduced law 47/2015 amended Article 275, paragraph 3: Pre-trial detention can only be ordered if the other coercive or interdictive measures, even if applied cumulatively, are inadequate. Prison, therefore, becomes *extrema ratio* and the other measures, unlike in the past, may now be applied cumulatively to make pre-trial detention further residual.

As per Article 275(3) of the Code of Criminal Procedure, as recently amended by Law 47/2015, all other coercive measures have to be considered and ruled as inadequate before pre-trial detention can be applied. Article 274 (1)(b)(c) of the Code of Criminal Procedure has also been amended. In order to apply pre-trial detention, it is now required that the risk of absconding is not only concrete, but also immediate. Article 274 also stipulates that for the danger to be considered real and present, in addition to the gravity of the offence, indicators such as previous behavior and the personality of the accused should be taken into consideration. Moreover, it is no longer possible for the Court to justify the application of precautionary measures *per relationem*⁵, and the decision needs to take into due consideration the arguments of the defense in addition to the one of the prosecutors. All **the above measures**, collectively considered, not only **reduce the recourse to pre-trial detention**, but also its length, and facilitate the conversion of pre-trial detention into alternative measures.

Rights of suspects and accused persons in police custody

Article 104 of the Code of Criminal Procedure states that the arrested person has the right to see his lawyer right after the arrest, as well as as soon as the pre-trial detention has started. This right can be suspended for up to five days upon specific decision by the judge, if the prosecutor finds that there are exceptional reasons for doing so. The same 5-day term in exceptional cases, for which no measure has been taken from the latest CAT recommendations, is valid for the appearance before a judge validating the arrest.

With regard to the right to legal aid, some **critical points** are to be considered. The applicant must satisfy certain criteria to receive legal aid. The applicant must not earn more than 11,500 Euros to be entitled to appoint a lawyer of his choice or to be assigned one at the expenses of the State. However, the low salaries paid by the State to legal aid lawyers often affect the quality of the legal assistance provided. Furthermore, the applicant has to demonstrate that his income is below 11,500 Euros. In case of non-EU nationals, the Consulate must certify that the applicant's income is insufficient even in the country of origin. The failure by the consular authorities to timely proceed with the certification may constitute an obstacle to the applicant's access to justice.

Article 387 of the Code of Criminal Procedure sets out the right for the arrested person to **inform third parties** about the arrest, namely their relatives and/or consular authorities. However, an ongoing research, carried on by Antigone through interviews to people who had been just arrested, lawyers, and regional prison ombudsmen, shows that **in practice such a right is not always guaranteed**. Before the validation of the arrest, the arrested person has the right to emergency medical care but not to consult his/her own trusted physician.

Art. 41-bis of the penitentiary law

The special regime regulated by Article 41-bis of the penitentiary law was introduced in 1992 as an emergency measure to prevent offenders linked to organized crime groups, especially the mafia and terrorism groups, from being able to control criminal activities from inside the prisons. The system was specifically intended to cut inmates off from their former criminal associates.

The measure applies to individuals who are sentenced, accused or under investigation for crimes related to organized crime activities (e.g. mafia), terrorism or subversion of the democratic order. It can only be authorized by the Minister of Justice or by the Minister of the Interior for an initial term of four years which can be extended every two years when there are no elements that indicate that the ability of the inmate to maintain contacts with the criminal organization has ceased. This often results in an **automatic renewal** as when no elements are found, it is presumed that the ties still exist.

⁵ Art. 292(2)(c)(c bis) of the Code of Civil Procedure

A 2016 report written by the Extraordinary Commission for the Protection and Promotion of Human Rights of the Senate found that in 2014, 321 people had been detained under the 41-bis system for four to 10 years, 161 for 10 to 20 years, and 29 for more than 20 years.⁶

It is possible to file a complaint against the Article 41-bis measure to the Surveillance Court of Rome, which should issue a decision in less than ten days; however, in practice this is never the case and the ECtHR has condemned Italy several times for the violation of the right to an effective remedy and of the right to a fair trial. To this day, the lack of an effective remedy is still an issue of grave concern.

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)⁷ and the ECtHR⁸. Measures entail 22 hours per day of solitary confinement with the remaining two hours spent either outside or in common rooms in small groups (3 to 4 people); restriction on family visits, which are limited to four visits per month and can be replaced with a 10-minute phone call per month. Moreover, correspondence is not confidential and censored. With judgment n. 143 of June 17 2013, the Italian Constitutional Court declared unconstitutional the restrictions imposed by Art. 41-bis on meetings between the inmates and their lawyers, which are now unlimited in terms of duration and frequency. Another important judgment of the Constitutional Court (n.135 of June 7, 2013) established that the decisions of the Surveillance Magistrate addressing complaints filed by 41 bis detainees have to be implemented by the penitentiary administration and cannot be nullified by the administration or any other authorities.

The measures listed in Article 41-bis are not exhaustive and the penitentiary administration can decide to impose further restrictions. It is important to note that at the time of writing, the penitentiary administration had issued an internal regulation (circolare 3676/6126 of October 2, 2017) regulating prison living conditions of detainees under the 41-bis system. Prior to this regulation, correctional institutional had a wide margin of discretion on some aspects of the prison life. In particular, it is important to point out that the new regulation lifted the restrictions on the visits of the Regional Guarantors of the rights deprived of personal liberty, which previously counted as family visit. Moreover, minors of 12 years of age could visit the prisoner without a glass wall separating them, but the minors' family members had to leave the room. Now, the family members are allowed to remain in the room, on the other side of the glass partition.⁹

The 2016 report of the Extraordinary Commission for the Protection and Promotion of Human Rights of the Senate expressed its concern over the Art. 41-bis system and made recommendations, including to avoid the automatic extension of the measure and to end the routinely search of cells, which are carried out before and after any family visits. Another serious concern raised by the Commission and shared by Antigone¹⁰ 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 and that gravely hinder the prisoners' right to a fair trial.

⁶ Extraordinary Commission for the Protection and Promotion of Human Rights, Rapporto sul regime detentivo speciale. Indagine conoscitiva sul 41 bis, (2016)

https://www.senato.it/application/xmanager/projects/leg17/file/repository/commissioni/dirittiumaniXVII/allegati/Rapporto_41bis_aprile_2016.pdf

⁷ 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, <https://rm.coe.int/1680697258>
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, <https://rm.coe.int/168069727a>
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 8 to 21 April 2016, <https://rm.coe.int/pdf/16807412c2>

⁸ Among others Enea v. Italy Application n° 74912/01 (2009); Ospina-Vargas v. Italy n° 40750/98 (2004).

⁹ http://www.ilsole24ore.com/pdf2010/Editrice/ILSOLE24ORE/ILSOLE24ORE/Online/_Oggetti_Embedded/Documenti/2017/10/03/Circolare-41bis.pdf

¹⁰ Galere d'Italia, XII Rapporto di Antigone sulle condizioni di detenzione (2016),

<http://www.associazioneantigone.it/upload2/uploads/docs/Rapporto2016Cartella.pdf>

As of January 24, 2017, there were 729 detainees held under the 41-bis regime.¹¹

Article 3

Article 19 (1) of the Consolidated Immigration Act (Testo Unico Immigrazione) states that: *“Under no circumstances can the expulsion or refoulement be ordered to another State where the alien is subject to persecution for reasons of race, sex, language, nationality, religion, political opinion, personal or social conditions, or it may be at risk of being deported to another state in which he is not protected from persecution”*. Paragraph 1.1, introduced by law 110 of July 5, 2017 (crime of torture), further provides that: *“The rejection or expulsion or extradition of a person to another State is not allowed, when there is reasonable ground to believe that the person will be subjected to torture. In the assessment of reasonable grounds must take into consideration the existence, in that state, of systematic and serious human rights violations”*.

On the other hand, **the introduction of new legislative measures** (first of all Law 46/2017, the so-called “Legge Minniti”) **has weakened** the protection of the rights of asylum seekers, undermining the fulfillment of **the principle of non-refoulement** and weakening the judicial protection of asylum seeker, in particular by greatly limiting their right to be heard and by abolishing their right to appeal against the rejection of the asylum application., The recent legislative reforms also make the in-depth verification of each asylum application, as well as of each measure of expulsion and rejection, extremely difficult.

The violation of the principle of *non-refoulement* by the Italian authorities is evident for example in cases of rejections and expulsions to states such as Sudan or Libya, where gross and systematic human rights violations as well as the systematic use of torture are well-documented.

These rejections are facilitated by bilateral agreements of questionable legitimacy. The **Memorandum of Understanding with Sudan** was signed between the Head of the Italian Police Force and his Sudanese counterpart without any official validation from the Parliament or Government, in violation of Article 80 of the Italian Constitution. This agreement – which became known to the public only after a mass expulsion (described below), which received great media attention – provides for a simplification of the forced repatriation procedures for Sudanese citizens up to allowing the Sudanese authorities to proceed with the identification of the repatriees once they have been transferred on Sudanese territory.

The effects of this agreement are well represented by the case of several Sudanese citizens, who, thanks to the NGOs ASGI and ARCI have filed five complaints now pending before the ECtHR. The applicants allege, in particular, the violation of Articles 3, 13 and 14 of the ECHR and Article 4 of Protocol 4, in relation to facts occurred in August 2016, when the Italian authorities organized a mass arrest of Sudanese citizens in Ventimiglia, at the border between Italy and France.

On August 19, around 60 people were stopped and transferred by bus to the hotspot of Taranto, in southern Italy, where they were notified an expulsion decision with escort to the border. The 60 Sudanese did not comply with the obligation to leave the territory and travelled back to northern Italy. On August 24, they were taken to the Turin airport and boarded on a flight to Khartoum. The mass repatriation involved 48 people: seven had to disembark the plane and were taken to the local former Center of Identification and Expulsion (CIE) for security reasons, which is because they opposed more resistance than the others.¹²

In the hotspot where they were transferred, they were not informed of the possibility to file an asylum application. Even if they expressed their fears to be subjected to torture in their country of origin, their cases were not analyzed and they were forcefully and collectively repatriated.

¹¹ Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale, ‘Relazione al Parlamento 2017’, *Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale*, March 2017, http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bc9d71fe_50adf78f32b68253d1891aae.pdf, p. 248

¹² <http://openmigration.org/analisi/rimpatri-forzati-in-sudan-arriva-il-ricorso-contro-litalia-a-strasburgo/>

Similar **memoranda have been signed with Niger, Nigeria, Libya, Egypt, and other countries** where there is a concrete risk for repatriees to be subjected to torture or where human rights are systematically violated. These memoranda, along with the recent legislative reforms (e.g. the “Legge Minniti”), limit access to information and to the right to a fair trial (with the analysis of the asylum procedure on a case-by-case basis) of those people who are notified an expulsion or rejection decision, and who are entitled to the protection granted by Article 3 of the Convention against Torture.

It is of great concern the practice of police forces to resort to **rounds up based on ethnicity** in order to detain and expell aliens. An example of such practice, is the expulsion of 95 Nigerians on January 26, 2017, when the Ministry of the Interior ordered the CIEs of Brindisi, Caltanissetta, Rome and Turin to make 95 places (45 for men and 50 for women) available – also by using early releases – for Nigerian citizens who had to be repatriated through charter flights. The bilateral agreements with Nigeria allow Italy to increase the number of expulsions to this country, in compliance with the European Commission’s plan of action, which recommends Italy to carry out more expulsions.¹³

The **agreements with the Libyan authorities are also of great concern**. After the agreement with Libya was signed on February 2nd, 2017¹⁴ the Italian Government restored and implemented the operative agreements stipulated in 2007, as well as the 2008 “Treaty of Friendship” which financed them. In the last few months new agreements (whose details are not known, but that most likely include the financing of private military companies) have been concluded with the Tripoli Coast Guard and Libyan mayors in order to prevent departures from Libya and to massively reject migrants in the newly instituted Libyan “search and rescue” (SAR) zone.¹⁵ The Italian Government has announced the intention to send human and material resources to support Libyan authorities, not only in Libyan territorial waters, but also on the Libyan mainland in order to prevent migrants from leaving the country.

These agreements and the reduction of legal safeguards for asylum seekers take place in a context of strong **hostility towards both the migrants and the NGOs which support them**, in particular those which carry out rescues at sea. For example, the public prosecutor of Catania, Carmelo Zuccaro, hinted in several public occasions that NGOs are related to smugglers, at the same time admitting to be unable to provide any evidence to demonstrate the link. The vice-president of the Chamber of Deputies, Luigi di Maio of Movimento 5 Stelle, has also defined the NGOs operating in the Mediterranean sea as “sea taxis”.

Recently, the Government has imposed to the NGOs operating in the Mediterranean Sea to sign a “code of conduct” elaborated by the Ministry of the Interior. After the strong opposition of some NGOs, the text was revised. Before the revision, the document, among others, provided the presence of armed forces on the NGO rescue vessels and the prohibition to transfer migrants from a boat to another, which would have been in violation of international law. As a result of these policies, NGOs were discredited in the eyes of the public opinion and financially weakened as for example private donors reduced their contributions.

Expulsion orders

With regard to the **expulsion proceedings**, it should be noted that the court procedure for the validation of the expulsion and detention in the Repatriation Centers, which takes place before the Judge of the Peace (so-called honorary judge), **cannot in any way be considered fair**. A recent research conducted by the Department of Political Sciences of the University of Bari found that: “in the proceedings against expulsions the applicants are never heard, the deadline for the decision is regularly violated and the suspension of the

¹³ http://europa.eu/rapid/press-release_IP-17-1882_en.htm

¹⁴ <https://www.asgi.it/english/italy-libya-agreement-the-memorandum-text/>

¹⁵ https://www.washingtonpost.com/news/monkey-cage/wp/2017/09/25/italy-claims-its-found-a-solution-to-europes-migrant-problem-heres-why-italys-wrong/?utm_term=.0b4c50544033
<https://www.nytimes.com/2017/09/25/opinion/migrants-italy-europe.html?mcubz=1>
http://abonnes.lemonde.fr/international/article/2017/09/14/entre-la-libye-et-l-italie-petits-arrangements-contre-les-migrants_5185310_3210.html

expulsion decision is often ignored. The migrants reception hearings in the CIEs, now “Centri di permanenza per il rimpatrio” (CPR) - usually last five minute or less and often take place in the absence of the applicant or of the interpreter. Moreover, the motivations for the expulsions are standardised and are adopted using predefined templates or formulas.¹⁶”

This kind of proceedings facilitates expulsions, and does not comply with the guarantees provided by the principle of *non-refoulement*.

In this context, further and specific criticisms arise from the **administrative expulsion for terrorism**, which differs from the expulsion as a security measure for terrorist offences provided by Article 312 of the Criminal Code, as it is ordered by the Administrative Authority and not by the Judicial Authority, in the absence of the guarantees for criminal proceedings.

Expulsions, excluding the one given as a penal sentence, may be of three kinds. The first is provided by Article 13(1) of the Consolidated Immigration Act: “*for reasons connected to public order or the State’s security, the Minister of Interior can order the expulsion of the alien also not resident on the territory*”.. The second, always within the competence of the Minister of the Interior (or of his delegate, the *prefetto*), is provided by Article 3 of Decree Law n. 144/2005 and may be used “*when there are reasonable grounds to believe that the stay of a foreigner in the territory of the State may in any way facilitate (even international) terrorist organizations or activities*”. The third is provided by Article 13(2)(c) of the Consolidated Immigration Act (as amended in 2015) and is ordered by the *prefetto*, case by case, to the alien who “belongs to one of the categories indicated in Articles 1, 4 and 16 of Legislative Decree no. 159 of September 6, 2011”, which include those who carried out preparatory acts for the commission of terrorist offences, also at international level.

Administrative expulsions are, in fact, based on suspicions and presumptions. Of great concern is the broad nature of the assumptions decisions are made on, which adds up to the wide margin of discretion given to the administration. A further problem is the possible violation of the principle of *non-refoulement* in the execution of the expulsions. As the ECtHR has declared, the kind of offence perpetrated by the alien shall in no case whatsoever undermine the protection provided by Article 3 of the ECHR.s In more than one occasion, the Italian State has explicitly violated the provision of the Court, as for example in the case of the repatriation of Tunisian citizens prior to the 2011 revolution, when the Italo-Tunisian bilateral agreements on immigration easily allowed the repatriation of Tunisians. In at least three occasions, the ECtHR adopted interim measures under Article 39 of the Rules of Procedure of the Court and called on the Italian State to suspend the repatriation of a Tunisian terrorist suspect in a case involving Essid Sami Ben Khemais.¹⁷ Despite the interim measures granted by the Court, the Italian authorities proceeded with the repatriation.

Another issue of the **administrative expulsion by the Minister of the Interior** – which is the most frequent one – is the protection of the right of defence of the expelled person against whom an expulsion decision was issued. The ministerial expulsion is usually ordered when there are not enough elements to grant precautionary measures. It is ordered by the Minister with a discretionary act, which reduces the possibilities to appeal to a Court. Because of Article 14 of the Consolidated Immigration Act, the appeal to the competent Administrative Tribunal does not have a suspensive effect on the execution of the expulsion order. This means that the only judicial control over the procedure of repatriation is the compulsory validation by the Judge of the Peace of the order of expulsion prepared by the *questore*, which gives execution to the ministerial order. Another peculiarity of this type of expulsion is that, unlike administrative or judicial expulsions, is the prohibition of expulsion provided by Article 19(2) of the Consolidated Immigration Act: for example, children may also be expelled, but only upon decision of the Juvenile Court; also, the spouse or a relative within the second degree of an Italian citizen may be expelled.

¹⁶ http://www.questionegiustizia.it/articolo/il-rapporto-sui-provvedimenti-di-convalida-e-proroga-del-trattamento-emessi-dal-giudice-di-pace-di-bari_17-06-2017.php

¹⁷ Ben Khemais v. Italia of 24/2/2009, Trabelsi v. Italia of 13/4/2011, Toumi v. Italy of 5/04/2011.

A case different from the expulsions but linked to the "**extraordinary renditions**" is the kidnapping by CIA agents – carried out with the collaboration of Italian intelligence agencies – of Imam Abu Omar. Lengthy proceedings ended with the conviction of 23 CIA agents (later on granted clemency) and the acquittal of the *Military Intelligence and Security Service* (SISMI) agents since the criminal case could not be prosecuted for the existence of the state secret as upheld by a ruling of the Constitutional Court.–.In February 2016 Italy was sentenced by the ECtHR for illegally invoking the State Secrets privilege for the only purpose of preventing those responsible for Abu Omar's ill-treatment and detention from being held accountable

Diplomatic assurances

Diplomatic assurances, do not relate to individual cases of expulsions and rejections but are the general principle underlying the bilateral repatriation agreements. However, assurances **are** often reduced to **mere statements of principle**, like for example in the aforementioned case of the Memorandum of Understanding with Sudan. Assurances that can be found in agreements with countries where there is a systematic violation of human rights and where the death penalty is practiced, should be considered as insufficient. The inadequacy of diplomatic assurances in extradition cases was ruled in 1997 by the Italian Constitutional Court following a strategic litigation initiated by Association Antigone concerning the extradition request by the state of Florida for the Italian citizen Pietro Venice. The Court declared that the extradition to countries where the death penalty is legal is illegitimate.

Articles 5, 7 and 9

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.**

In the case of a person accused and / or convicted for acts of torture committed abroad that do not involve Italian citizens, the recently-approved law introducing torture in the Criminal Code (No. 166 of July 18, 2017) denies all types of immunity in Italy to foreigners subjected to criminal procedures or convicted of the crime of torture in another state or by an international tribunal.; in such cases the foreigner must be extradited to the requesting state where the criminal proceedings are pending, or where the sentence of conviction for the crime of torture has been issued, or, in the case of proceedings before an international court, to the court itself or to the state identified, as provided in the statutes of the same international court. The law is of recent approval and has not yet found concrete application. However, issues will arise because of the **ordinary time limitation of the crime of torture** as extradition is never possible if the crime is status-barred in Italy

For example, between 2013 and 2015, before the entry into force of the new anti-torture law, **Italy did not comply with Argentina request for extradition** for Don Franco Reverberi, an italo-argentinian priest accused of attending torture sessions during the brutal regime of Jorge Videla in the seventies. Don Franco Reverberi was the army chaplain at the "Departmental House" in the city of San Rafael, where the political opponents of the regime were subjected to atrocious acts of torture. In 2014, the Court of Cassation definitively denied the extradition of Don Reverberi because the crime he could have been charged in Italy for (at that time personal injuries) had already become status-barren. Even today, after the introduction of the crime of torture in the penal code, it would not be possible to extradite him, as there is a time-limitation for the crime of torture, which has already expired. This time-limitation is in violation of the "European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes", which Italy has never signed and ratified.

Article 10

In recent years, Antigone has been involved in **training courses** for prison staff held by the Higher Institute of Penitentiary Studies. Antigone's teachers have taught classes composed of prison staff (policemen included) about the national and international rules relating to prisoners' rights. The Higher Institute of Penitentiary Studies has however not been involving Antigone for the past year. Hence, we currently have no information as to whether these human rights training courses have been taught to other bodies of law enforcement.

Article 11

Following the Torregiani case (2013), where the ECtHR called on Italy to resolve the structural problem of **overcrowding in prisons**, Italy undertook several reforms of its penitentiary system. These reforms were approved by the Committee of Ministers of the Council of Europe in 2014 and are deemed to have had a positive impact. At the beginning of 2016 however, in the face of migration-related issues prison overcrowding started to increase again. By the end of August 2017, Italian prisons hosted 57.393 detainees for 50.501 places. Here below an illustration of said increase.

The recent history of the Italian penitentiary system: the events that led to the current situation

In the **Sulejmanovic case** (July 2009) Italy was condemned by the ECtHR for the violation of Article 3,¹⁸ which revealed for the first time the grave state of overcrowding in Italian prisons. After the Sulejmanovic judgment, thousands of claims were filed by detainees who were facing 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 have been directly assisted by Antigone's lawyers.

In January 2010, the Italian Government declared a **state of emergency** in relation to the penitentiary system. The number of detainees was around 68,000 and, according to the Ministry of Justice, Italian prisons could accommodate around 44,500 prisoners, leading to a proclaimed overcrowding rate of 153%.. However, according to Antigone's Observatory on Italian prisons¹⁹, the Italian Government's calculations regarding available space in penitentiary facilities took into account jail sections, which had been closed because of lack of funds for their maintenance. Accordingly, the accurate overcrowding rate was – as the Ministry of Justice later acknowledged – of 175%, making Italy the State with the highest rate of overcrowding within the EU.

After the introduction of regulatory amendments – mainly the possibility for detainees to serve the last part of their sentence through house arrest – the number of prisoners started to progressively decrease.

There were approximately 65.900 prisoners when, in the **Torreggiani case** (January 2013), Italy was condemned by the ECtHR for violation of Article 3 of the Convention. The aforementioned **pilot-judgment** recognized the systemic and non-occasional character of the degrading life conditions in Italian jails and called upon Italy to solve the problem of overcrowding within one year, thus suspending the examination of the other pending cases. Furthermore, the judgment required Italy to put in place a mechanism to put an end to ongoing inhuman and degrading treatment as well as a mechanism to compensate prisoners who have suffered such treatment.

In order to tackle the issue of conditions of detention so that they comply with European standards, the Ministry of Justice instituted three special committees on penitentiary issues, two of which had the task to elaborate legislative measures against prison overcrowding and the third one having the task of effectively improving detention conditions through non-regulatory measures.

The **measures developed** by the third committee consisted primarily in:

1. Closing the cells only during the night for the whole medium security circuit, i.e., leaving the cells open for at least eight hours per day.

¹⁸ ECtHR, <https://hudoc.echr.coe.int/eng#>

¹⁹ 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.

2. Creating spaces where the prisoners can spend the daytime together, and organizing prisons so that they resemble everyday life in small towns where services are made available in common places.
3. Facilitating the contacts between prisoners and their relatives through a flexible management of visits and phone calls and the use of new technologies.

The provision of the open cells has been implemented in almost all of the medium security prisons. Often however, no fruitful activities have been provided for prisoners outside their cells. According to the data²⁰ collected in 2017 by Antigone's Observatory on Italian prisons, in 35 out of 61 visited prisons (the total number of prisons in Italy being 190) the cells are open for at least eight hours per day. The second measure, requiring structural interventions, had a very low rate of implementation.

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

1. A limitation of the recourse to pre-trial detention;
2. A strengthening of alternative measures to detention;
3. The grant of penalty reductions to prisoners who attest of good behavior went from 45 to 75 days per semester.
4. For foreign prisoners, the last two years of detention were replaced with compulsory expulsion;
5. The penalties for drug-related offences were reduced in case of small quantities of drug;
6. Judicial mechanisms of protection of prisoners' human rights were provided for;
7. The national Ombudsman of people deprived of their freedom was instituted.

In February 2014, the Constitutional Court declared unconstitutional the highly repressive **legislation on drugs** in force since February 2006. Moreover the increasing use of alternative measures contributed to the decrease of the number of people entering the prison.

Another provision enacted with the aim of diminishing the number of prisoners has been the so-called "**messa alla prova**", introduced by law n. 67 (April 28th, 2014). According to "messa alla prova", in cases of crimes punishable with no more than four years of detention, the defendant has the possibility to require the suspension of the criminal proceedings. If the suspension is conceded, the person is put on probation under the supervision of social services and required to follow a program, which involves actions directed towards the reparation of the damage caused by the offence. The suspension of the criminal proceedings on probation cannot be conceded more than once. If the rules of probation are complied with, the ending of the probation extinguishes the crime.

If the increasing of the access to **alternative to detention** should be evaluated positively, it should also be noted that:

- in 2010, for the first time since the beginning of the Millennium an increase in the number of people serving an alternative to detention corresponded to the decrease in the number of prisoners. Until that moment, the area of alternatives to detention had 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 for inmates to serve the last part of the sentence at home. As of August 31, 2017, there are 10,372 people in home detention, 13,974 people on probation and required to get involved in social service programs, and only 798 people in semi-liberty²¹.
- Antigone has calculated that, as of July 2017, 15,236 detainees, i.e., 26.8% of the total prison population fulfill the conditions to have access to alternatives to detention, as they are serving the

²⁰ Antigone's Observatory on detention conditions, http://www.associazioneantigone.it/osservatorio_detenzione/schede

²¹ Ministry of Justice, *Alternatives to detention: 31 July 2017*,

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=0_2_2&contentId=SST43287&previousPage=mg_1_14

last three years of their sentence; however, this is hindered by some laws that are particularly harsh with regard to certain crimes and some very strict Surveillance Magistrates.²²

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 alternative measures amounting to less than 3% of the budget.

Concerning **pre-trial detention**, the law provisions adopted are listed under the “Article 2 - Preventive detention” headline of the present report. These provisions contributed to a significant reduction of the number of pre-trial detainees in Italian prisons, which went from 29,691 on June 30, 2010 (43.5% of the total prison population) to 17,883 on June 30, 2015 (33.8% of the total prison population); however since then, this number has increased again. In 2014 the percentage was of 33.8%, which is approximately 10% over the average of the other States of the Council of Europe²³. As of June 30, 2017, there are 19,690 pre-trial detainees in Italian prisons (34.6% of the total prison population).²⁴

The overall number of detainees, after declining from 68,000 in 2010 to 52,000 in 2015, started to increase once again: between December 31, 2015 and December 31, 2016 it went from 52,164 to 54,653²⁵ and continued to rise. As of August 31, 2017 there were 57,393 detainees in Italian prisons.²⁶ The overcrowding rate that can be calculated with official data is currently of 113.5%; however, the data system considers the closed sections undergoing maintenance works as available, thus augmenting the number of available places. Within the prison system, the situation of each institution varies, some presenting very low overcrowding rates, where some have an overcrowding rate exceeding 150%²⁷. According to the data collected by Antigone’s Observatory, in some prisons the available space per detainee is less than 3 square meters.²⁸

With regard to the **renovation and building of prisons**, in 2016, a new prison was opened in Rovigo (with 213 available places); moreover, 4 new sections (with 200 places) were added to the prisons of Vicenza, Trapani, Siracusa and Saluzzo. Two other prisons are under construction.²⁹ Thanks to these actions, around 1,000 new places have been created between December 31, 2015 (when the available places were 49,592)³⁰ and August 31, 2017 (when the available places were 50,501)³¹. However, this number is far too low to meet the overcrowding rate, which increases month after month. Moreover, a recent research³²

²² Associazione Antigone, *Pre-rapporto 2017 sulle carceri*, (2017), p. 4.

²³ Council of Europe, [SPACE I 2014.5.1](#), the CoE mean of detainees not serving a final sentence in 2014 was of 25.7%.

²⁴ Ministry of Justice, *Number of Italian and foreign detainees: 1991-2017*,

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=0_2_10&facetNode_3=0_2_10_2&contentId=SST165666&previousPage=mg_1_14

²⁵ Ministry of Justice, *Number of Italian and foreign detainees: 1991-2017*,

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=0_2_10&facetNode_3=0_2_10_2&contentId=SST165666&previousPage=mg_1_14

²⁶ Ministry of Justice, *Number of detainees: 31 August 2017*,

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=0_2_10&contentId=SST43398&previousPage=mg_1_14

²⁷ Ministry of Justice, *Number of Italian and foreign detainees and institutions’ capacities*,

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&contentId=SST43408&previousPage=mg_1_14

²⁸ Antigone’s Observatory on prison conditions, http://www.associazioneantigone.it/osservatorio_detenzione/schede

²⁹ Ministry of Justice, *Report on the 2016 performance*,

https://www.giustizia.it/resources/cms/documents/performance_dap_relazione_2016.pdf, p. 29.

³⁰ Ministry of Justice, *Number of Italian and foreign detainees: 31 December 2015*,

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=0_2_10&contentId=SST1204500&previousPage=mg_1_14

³¹ Ministry of Justice, *Number of detainees: 31 August 2017*,

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=0_2_10&contentId=SST1204500&previousPage=mg_1_14.

³² Associazione Antigone, *Lo spazio del carcere e per il carcere* (2017), <http://www.antigone.it/tredicesimo-rapporto-sulle-condizioni-di-detenzione/02-architettura/>

shows that 20% of Italian prisons were built before 1900, thus having been built in accordance with old architectural models, which influence the every-day life of detainees. Moreover, half of them are located in remote geographic locations and are, therefore, difficult to reach for the families and volunteers, and which can prevent detainees from engaging in work activities outside the prison.

In line with the ruling of the Torreggiani case, Act No. 117/2014 institutes a system of **judicial remedies**, including a system of financial compensation. The system takes into account whether the individual is still in detention or not, leading to early release in some instances. However, it must be noted that the judicial remedies allocated so far are not entirely satisfactory. In particular, before Italian civil courts, the system proved to be lengthy and expensive, thus discouraging individuals from seeking remedy through such a channel. According to the Ministry of Justice, 256 complaints have been filed for unjust detention in 2016³³.

Foreign prisoners

Foreign prisoners represent 34.4% of the carceral population in Italy³⁴. By the end of 2007, they amounted to 37.48%. This percentage diminished to 32.62% in June 2015, before rising again by the end of 2015.³⁵ These individuals are usually detained for minor offences (drug or prostitution related crimes, as well as violation of immigration laws). They however receive on average **harsher sentences** than Italian nationals for the same offences and encounter difficulties in benefiting from non-custodial preventive measures and external alternative justice measures. In fact, in 2016, only 16.7% of people who were sentenced to serve an alternative measure were foreigners.³⁶ As of August 2017, the rate of **pre-trial detention of foreigners** was of 41.8%, while the rate for Italians was 31.3%.³⁷ This 10% difference appears as a clear form of **discrimination**. A 2015 research³⁸ showed that this is mainly due to the prejudice of Italian judges, i.e. that they tend to distrust foreigners more than Italians and are therefore more prone to condemn foreigners to prison sentences instead of granting them alternative measures. The issue of alternative measures is also linked to factual problems, such as the lack of residences suitable for home-detention sentencing. Once imprisoned, foreigners face even more discrimination. Indeed, the Italian prison system doesn't sufficiently take into consideration the needs of non-Italian detainees (e.g. food habits, clothing, religion). There is also a lack of cultural mediators, who could facilitate the dialogue between the penitentiary police and foreign detainees.

Foreign minors

Foreign minors also face **discrimination** in detention. As of August 2017, detention centers for minors (IPM) accommodated 263 Italians (56.1%) and 203 foreigners (43.3%), indicating a clear overrepresentation of foreign minors in IPMs. This is also confirmed by their underrepresentation with regard to alternative measures. From the beginning of 2017 to August 2017 the offices for social services for minors have been in charge of 13,058 Italians (73.8%) and 4,631 foreigners (26.1%). Community placements show a lesser divide (still particularly wide). From the beginning of 2017 to August 2017, communities have hosted 666 Italians (60.54%) and 434 foreigners (39.45%).³⁹ Reasons for the aforementioned discriminations vary. For instance,

³³ Ministry of Justice, *Relazione del Ministero sull'amministrazione della giustizia 2016*, p. 343.

³⁴ Ministry of Justice, *Number of detainees: 31 August 2017*,

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=0_2_10&contentId=SST43398&previousPage=mg_1_14

³⁵ Ministry of Justice, *Number of Italian and foreign detainees: 1991-2017*,

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=0_2_10&facetNode_3=0_2_10_2&contentId=SST165666&previousPage=mg_1_14

³⁶ Ministry of Justice, *Alternative measures to detention per citizenship: 2016*,

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=0_2_2&contentId=SST1317277&previousPage=mg_1_14

³⁷ Ministry of Justice, *Number of detainees: 31 August 2017*,

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=0_2_10&contentId=SST43398&previousPage=mg_1_14

³⁸ P. Gonnella, *Detenuti stranieri in Italia. Norme, numeri e diritti*, (2015)

³⁹ Ministry of Justice, *I servizi della giustizia minorile: dati statistici*,

https://www.giustizia.it/resources/cms/documents/dgmc_mensile_15.08.2017.pdf

foreigners are at disadvantage because they don't master the Italian language and don't have ties with a community and a net of social support. Moreover, it is possible to note that foreign minors were arrested more than Italians: from the beginning of 2017 to August 2017, 401 Italians (48.4%) and 427 foreigners (51.5%) were arrested. This might indicate a higher attention of police forces to foreign minors than to Italians and presumably a higher tendency of the population to press charges against foreigners than against Italians.

Solitary confinement

Solitary confinement is regulated by Article 33 of the penitentiary law and by Article 72 of the penal code. The first allows three types of solitary confinement: for health reasons, for disciplinary reasons, and for judicial reasons. The second allows the imposition of isolation on life-sentenced inmates. Several issues concerning solitary confinement can be reported. First of all, even if the detainee should undergo the measure of disciplinary solitary confinement in his own cell⁴⁰, this is almost never the case and it has been reported that there was 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.⁴¹ Placement in these cells favors mistreatment by the penitentiary police and enhances the risk of suicide among inmates, as it was widely documented by Antigone.⁴² Another issue concerns the composition of the disciplinary council in prisons, which is formed by the prison director, the prison doctor and an educator. Through a specific delegating law (D.P.R. June 23, 2017, n. 103) the Parliament has delegated to the Government the task to modify some parts of the penitentiary law; the modification of the law is aimed at excluding the prison doctor from the disciplinary council. Moreover, in order to execute the disciplinary council's sanction, **the medical staff will have to certify that the inmate is fit to sustain and** will have the duty to monitor the inmate's health daily.

The current law allows up to 15-day isolation as a disciplinary measure. Furthermore, 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**.⁴³ Several issues regarding the current procedure for disciplinary measures must also be emphasized. First of all, during the hearing in front of the disciplinary council, the inmate does not have the possibility to defend himself by presenting evidence and witnesses. Furthermore, inmates often don't receive a copy of the decision itself but only an oral notification of the sanction, and the possibility to appeal against the measure is often not communicated.⁴⁴

Another critical issue is that solitary confinement **can also be imposed** as a disciplinary measure **on minors** in juvenile institutions.

Solitary confinement for judicial reasons can be applied during the preliminary investigations by the judge of the preliminary investigations; however, the **law fails to establish a specific time limit for pre-trial detainees** to spend in confinement, leaving this determination to the discretion of the judge.

⁴⁰ Circolare DAP 21 April 1998 n. 148339/4 -1, Regime penitenziario - L'isolamento.

⁴¹ Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale, *Relazione al Parlamento 2017*, 2017, http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bc9d71fe50adf78f32b68253d_1891aae.pdf, (2017), p. 70.

⁴² Antigone, *Ecco perché l'isolamento fa male* (2016), <http://www.associazioneantigone.it/upload2/uploads/docs/isolamentofamale.pdf>.

⁴³ Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale, *Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia*, <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/9958ac6c553f6e5037634149b372605b.pdf> (2016), pp. 70-72.

⁴⁴ Garante Nazionale dei Diritti delle Persone Detenute, *Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia*, pp. 70-72.

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*, CPT/Inf (2013) 32, §95.

With regard to **solitary confinement of life-sentenced detainees** it is important to point out that it is a real **penal sanction** that stems from **Article 72 of the Penal Code**. Solitary confinement is applied in this case during the day, and during the night the detainee is housed either alone or with other inmates. The detainee should be allowed to participate to communal life through work and educational activities, practical trainings, and freedom to take part in religious practices. However, the common interpretation of this type of solitary confinement is the total exclusion of the inmate from all kinds of communal activities, especially when the inmate is also detained under the 41-bis regime.⁴⁵

Protective solitary confinement is not prescribed by Italian Law. It is however frequently used informally, in order to protect those detainees who have committed grave crimes (e.g. violence against children) or belong to a particular category (e.g. police forces). LGBTQ detainees are often detained in sections either dedicated to inmates who committed particularly grave crimes, or in dedicated sections, where a single inmate might find himself in a **de-facto solitary confinement** because no other detainee is hosted there. In both cases, they are often excluded from all activities.⁴⁶

The CPT has addressed these issues in more than one report.⁴⁷

Article 14 bis of the penitentiary law

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**, which the Surveillance Tribunal of Bologna declared to be “without any legal basis” in 2011.⁴⁸ 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. Another issue of concern is the fact that detainees under special regimes (including that of 41-bis) or undergoing a combination of measures are often held in so-called “**aree riservate**” (reserved areas), particular areas inside maximum-security sections, where the conditions are stricter than under the normal prison regime. Often, inmates detained in these sections have access to very small outdoors areas, which are also closed by a net covering the sky and lacking any equipment.⁴⁹

Suicides in prison

According to the data collected by the association “Ristretti Orizzonti”, forty-five suicides had been reportedly committed in Italian prisons by the end of 2016, Forty-four cases of suicide were reported from the beginning of January to late September 2017.. Even though, particularly in the last three years, the rate of prison suicides has decreased, it is still a serious phenomenon, which has served to illustrate the inaptitude of the Italian prison regime to deal with the discomfort of the people who live behind bars. Most suicides are committed in the institutions with the worse living conditions, in particularly the ones with old and crumbling structures; with high rates of overcrowding; with few recreational activities and with a low volunteers’ presence. In some cases, the victims were affected by physical or psychiatric conditions. Many suicides happen in solitary confinement cells. These deaths underline the urgency of better detention

⁴⁵ Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale, *Relazione al Parlamento 2017*, p. 71.

⁴⁶ Garante Nazionale dei Diritti delle Persone Detenute, *Relazione al Parlamento 2017*, pp. 76-77.

⁴⁷ CPT, *Rapport au Gouvernement de l’Italie relatif à la visite effectuée par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) en Italie du 15 au 27 mars 1992*, CPT/Inf (95) 1.

CPT, *Rapport au Gouvernement de l’Italie relatif à la visite effectuée en Italie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 21 novembre au 3 décembre 2004*, CPT/Inf (2006) 16.

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*, CPT/Inf (2013) 32.

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 8 to 21 April 2016*, <https://rm.coe.int/pdf/16807412c2>

⁴⁸ Tribunale di sorveglianza di Bologna, Ordinanza, 27/09/2011, 2011/1690.

⁴⁹ Garante Nazionale dei Diritti delle Persone Detenute, *Relazione al Parlamento 2017*, pp. 71, 145.

conditions and the necessity of alternative solutions for those who are incompatible with the prison regime.

Here below two relevant cases are reported.

Valerio Guerrieri: in February 2017, Valerio Guerrieri, a twenty-two year old man detained in the Regina Coeli prison in Rome committed suicide by hanging himself in his cell. In September 2016, the young man was placed in a Rems (Residence for the Execution of Security Measures - institutions that replaced psychiatric hospitals) in Ceccano (Frosinone). After three escape attempts, the judge ordered he be placed under custody in jail, and put under special surveillance for a couple of months. The tribunal's psychiatric expert sustained that Valerio suffered from a serious psychiatric disorder and had clear suicidal tendencies. The judge revoked the measure of pre-trial detention and ruled that Guerrieri was to be transferred to another Rems. However, the structure was full and Valerio was forced to stay in Regina Coeli while awaiting a vacancy. He was detained on an illegal base. Antigone, which closely followed the Guerrieri case, stated that he should not be in prison, that suicide could have been avoided and claimed that you cannot treat a sick person by sending him/her behind bars. In order to properly treat a person, especially if it is a young person, he/she should be afforded the medical, social and psychological supports present on the territory. On October 2017, the Prosecutor of Rome requested the indictment of two prison officers, because, on the day of Valerio Guerrieri's suicide, they had been a few minutes late on their rounds of surveillance of the inmate, a special regime of surveillance having been instituted because of his suicidal tendencies.. Antigone claimed that the officers' delay was not the main problem behind Valerio Guerrieri's demise and that this accusation was just minimizing the real issues of prison suicides. It stated: "the only thing we do not want from this investigation is a mere search for scapegoats and that everything ends with an issue on the lack of surveillance. It is not with a strict supervision, nor depriving prisoners of t-shirts, belts or sheets that the suicides issue can be solved. The risk, indeed, is to make the prisoner's lives even more tiring and difficult than they already are".

Prison of Monza: on 14 September 2017, a 30-year-old prisoner hanged himself while he was in the infirmary of the prison of Monza. It was the second suicide committed in the Lombard structure in a few days and the sixth in less than one year. The situation in the Monza prison is particularly problematic. According to the data collected by Antigone, the detention site is highly overcrowded with 626 prisoners for a capacity of 423 people.

The reform of the Italian penitentiary law

On June 23, 2017, the Italian Parliament passed a law instructing Government to **reform Italian adult and juvenile penitentiary laws**. Italian prison law, although inspired by high valued principles, dates back to 1975, when times were different. Three Committees have been appointed by the Minister of Justice and are currently drafting the reform. This is a great opportunity to ameliorate our penitentiary laws after the season of administrative and sectoral reforms that followed the *Torreggiani v. Italy* decision of the European Court of Human Rights. This can be the chance to turn into law the results of a wide consultation process called the "Stati Generali dell'esecuzione penale" runned by the Government in 2015/16 and involving civil society, academia, experts, workers in the justice field. Antigone presented its suggestions for a new penitentiary law, among which the introduction of provisions aiming at widening the area of alternatives to detention and at improving the protection of fundamental rights in prisons, in particular in delicate areas such as the rights of non-nationals or affective and sexual rights. The expectations are now very high and Antigone expressed the hope that the reformed legislation will meet expectations.

Prison staff

A recent research⁵⁰ carried out using data from the penitentiary administration found that 89.36% of the penitentiary administration's personnel consists of penitentiary police officers and that the ratio of detainee per police officer is of 1.67. Notwithstanding the high percentage of penitentiary police, the

⁵⁰ <http://www.associazioneantigone.it/tredicesimo-rapporto-sulle-condizioni-di-detenzione/04-operatori/>

uniformed personnel is still **chronically understaffed** (of more or less the 20%) and has been so for years. The **educational personnel** represents 2.17% of the penitentiary administration personnel and **is even more understaffed**: there are 894 educators for a total of 1376 staff members, which amounts to a 36% understaffing rate. This also means that every educator is in charge of approximately 64 detainees.⁵¹ The situation is no better with regard **to cultural mediators**⁵²: at the end of 2016 they were 202 taking care of 18,621 foreign detainees, which means approximately 92 detainees per mediator.⁵³

Prison health care system

Prisoners' 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"). Medical records are generally difficult to access and poorly kept; for this reason, the third reform committee has encouraged the adoption of digital medical records⁵⁴. 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 **reforming principle of penitentiary medicine** is rooted in the need to not consider any longer health in prison as something separate from healthcare in general, and therefore to consider it as an issue that needs to be managed, including operationally, through channels and subjects other than the National Health Service.

On April 1st 2008, the Decree of the President of the Council of Ministers established "methods, criteria and procedures for the transfer to the National Health Service of healthcare tasks, financial resources, employment relations, equipment, furniture and capital goods relating to prison healthcare", thus establishing the implementation of the Reform of Penitentiary Healthcare as of June 14, 2008. From that date forward, the two institutions (Ministry of Justice and Ministry of Health care obliged to confront, on an equal footing, the safeguard of prisoners' health. **Healthcare providers** do not enter prisons as single professionals that need to comply with the provisions of the penitentiary system anymore; they are now **figures with a clearly defined and non-subordinated mandate**. The healthcare needs of detainees become independent, and health protection is no longer a duty of the administration, but rather an individual right of the detainee.

Therefore, since 2008 the provision of healthcare services in prisons is under the responsibility of the Ministry of Health and the delivery of medical services has been handed over the SSN (National Healthcare System). The reform was based on the principle of universality and in comparison to the healthcare services made available to people who are not in detention. In 2001 the SSN was regionalized, and, as a consequence, the provision of healthcare varies very much depending on the region where the prison is located.

This is an **important turning point**: the transfer of competences and resources from the Ministry of Justice to the Ministry of Health helps to prevent isolating prisons by considering them as an integral part of society, and contributes to the effective enforcement of the universal right to health protection.

Equal treatment is ensured to non-national prisoners as well: the law establishes that all prisoners, including irregular non-nationals, within the limits of the period of their detention, shall be registered in the National Healthcare System. The 2008 reform has been a milestone for prisoners' health protection and a major breakthrough toward a positive relationship between prison and society. Despite that, arguing that the medical situation in some Italian prisons is out of control is not an overstatement. Medical, surgical and

⁵¹ Associazione Antigone, "Sotto organico": il personale dell'amministrazione penitenziaria (2017).

⁵² https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&facetNode_2=0_2_6&facetNode_3=0_2_6_14&contentId=SST1333219&previousPage=mg_1_14

⁵³ Ministry of Justice, *Cultural mediators*: 2016.

⁵⁴ 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); http://www.ristretti.it/commenti/2014/aprile/pdf4/relazione_ministro.pdf

psychiatric services are often insufficient.

In some institutions, especially the smaller ones, the presence of a doctor over the 24 hours that comprise a day isn't guaranteed. Every region has the competence to **recruit staff**; there is not a national plan on that point. There is a substantial lack of preventive medicine as well as issues of malfunction and deficiency of sanitary tools, and information about infectious diseases is quite scant. A penitentiary rule states that sick prisoners who need special treatments should be moved to specialized institutions or to city hospitals, when the required treatment is not available in prison. However, visits in external hospitals are arranged with great delays, mainly because of the long waiting lists and the lack of police staff for the transfers.

Prisoners also report the **difficulty** they have in **obtaining a visit from an external doctor** they trust and to buy medicines not provided in prison, due to bureaucracy and very long waiting times. The chance for the prisoners to choose a doctor they trust clearly arises from the acknowledgement of the constitutional value of health as a fundamental human right. In this perspective, the national system should actively work to protect the health of everyone, irrespective of the social and economic conditions of each person. This highlights a problem of "denied access" to quality healthcare for inmates, which prevents the full recognition of the principles of universality, equal access to treatments, efficiency, and quality of services.

Mental health

OPGs (the Italian name of high security hospitals) have been overtaken. In place, 30 small facilities, called **REMSs** have been implemented. Each of them hosts no more than 20 patients (at the exception of Castiglione delle Stiviere in Lombardia, which hosts around 120 people). Mental health of detainees is a major ongoing problem, as underlined by the recent CPT report on Italy⁵⁵. Specials *Articolazioni per la salute mentale* (psychiatric observation units) have been created (at least one per Region); there are however too many **differences in terms of services, facilities, and safety amongst units**. In some cases the mechanic and pharmacological restraint is common and it is not an exceptional measure.

Mr. Alfredo Liotta was a prisoner in Siracusa who suffered from eating disorders, epilepsy and other psychiatric conditions. The prison's healthcare staff didn't consider the patient's poor lucidity and interpreted his repeated refusal to eat as a voluntary action. Within a few months, Mr. Liotta lost forty kilograms. In July 2012, he **was found dead** in his cell. Shortly before his death, the Corte di Assise di Appello of Catania appointed a psychiatric expert to see if he was actually ill. In the report sent to the magistrate, the doctor wrote: "The behavior and the attitude of the subject seemed to be artificial and almost theatrical." He was considered a simulator with the goal of getting out of jail and, for this reason; he was never transferred to a hospital. Antigone followed the case from the beginning and acquired the relevant papers on the situation of the detainee. They documented the fact that the medical and nursing staff that had visited Mr. Liotta was not able to identify and understand the symptoms and the clinical course of the inmate and that such negligence caused his death. Therefore, Antigone's lawyers lodged a complaint to the Procura della Repubblica di Siracusa to determine the responsibility for Mr. Liotta's death. Four years later, legal proceedings for manslaughter started against 8 physicians of the prison and the psychiatrist expert appointed by the Corte di Assise di Appello di Catania. The preliminary hearing will take place in November 2017. Antigone will submit the request to act as a plaintiff in the criminal trial.

On the 7th of August 2015, Stefano Borriello, a 29-year-old man, was transported from Pordenone prison to the City Hospital. Upon his arrival, the doctors could only acknowledge his **death**. The cause of death was not apparent, considering that he had always been in good health. It appeared that Mr. Borriello had been sick for a few days prior to his death, but that no one had brought him to the hospital. The prosecutor opened a case against unknown for manslaughter. Antigone followed the case with great determination. From the visit of Antigone's observers, it appeared that within the prison of Pordenone the medical service was not guaranteed h24 but only until 21:00, that there was only one infirmary for the entire prison and that there were no defibrillators in the section. Recently, the Pordenone Public Prosecutor asked for the dismissal of the case. Antigone strongly opposed to the Prosecutor's request and obtained the status of

⁵⁵ <https://www.coe.int/en/web/cpt/-/cpt-publishes-new-report-on-italy?desktop=true>

harmed party in the legal proceedings. The hearing involving Antigone will take place in December 2017, in order to discuss the validity of the request for dismissal.

The **suicide** of Valerio Guerrieri (see above), who was hosted by Regina Coeli prison because of the lack of places in Rems, should also be considered in this context.

Articles 12 and 13

Statistical data

To our knowledge, a **consolidated collection of statistical data** covering all cases of complaints, appeals, disciplinary proceedings against security staff, and criminal proceedings or convictions for offences against persons in State custody, does not exist. The institutions involved are the Ministry of Justice, the Ministry of Defense and the Ministry of the Interior. During the 119th session of the UN Human Rights Committee (6-29 March 2017), the Italian Government provided the following data in its reply to the List of Issues in relation to the country's sixth periodic report : *"(a) As for investigations and disciplinary proceedings against staff of the Penitentiary Administration, the Service for Discipline has been monitoring for 10 years the cases of ill-treatment against inmates, perpetrated by penitentiary police officers. Almost all the disciplinary proceedings against penitentiary officers for those events derive from penal cases, which, on their turn, come either from complaints of inmates or from investigations made by agents of the same Penitentiary Police Corps. The number of disciplinary sanctions inflicted largely overcomes the percentage of 5% of penal sentences, since sanctions may also derive from behaviors which are not criminally prosecutable, but which can be disciplinarily punished of from behaviors which were not criminally prosecuted because of some reasons, e.g. since they were not prosecutable. Currently the Service for Discipline is monitoring 96 penal procedures against Penitentiary police staff for alleged ill-treatment against inmates; such trend puts into evidence that the Penitentiary Administration carefully focuses on abuses events. (b) As for law enforcement staff, including Carabinieri and Guardia di Finanza Corps, between 2012-2016 (first semester): there have been 125 officers reported; 50 trials pending; 82 condemned; 85 subjected to disciplinary sanction; 212 dismissed (this last data also includes cases reported prior to 2012)"*⁵⁶.

War Criminal Code

Article 185-bis of the War Criminal Code introduced by Law no. 6 of January 31, 2002 provides: *"Unless the act constitutes a most serious offense, a military who, for causes connected to the war, commits acts of torture or other inhuman treatment, illegal transfers, or other conducts prohibited by international conventions, including biological experiments or medical treatments not justified by the state of health, against prisoners of war or civilians or other persons protected by the same international conventions, is punished with military imprisonment for one to five years."* We are not aware of any criminal proceeding in progress since the entry into force of the abovementioned law.

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.

It should be appreciated that in July 2017 the head of the Italian Police Franco Gabrielli gave an interview to the newspaper "La Repubblica" where he strongly criticized the Government and the Police itself in relation to the events occurred during the 2001 G8 in Genoa.

Reports of assaults

⁵⁶http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fITA%2fQ%2f6%2fAdd.1&Lang=en

It has been reported to Antigone in several occasions that detainees reporting assaults by law enforcement officials in prison are at most transferred to other prison facilities. **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.

Cases related to torture and ill-treatment

Italy has criminalised torture only in July 2017. There are still no complaints or proceedings filed under the new Law. Prior to July 2017, investigations were entrusted to the judicial police by the magistrates. However, there is no judicial police section within the Public Prosecutor's office specialized in torture or ill-treatment.

Since 2016 the National Guarantor for the rights of persons deprived of personal liberty operates with National Preventive Mechanism(NPM) functions. The Guarantor can access all files and report cases to the judiciary. Suspension from duty of law enforcement officials accused of torture or ill-treatment during the investigative phase is not automatic.

In the case of Stefano Cucchi, a 30 year old man who died in remand in 2009, only in February 2017 three *Carabinieri* were suspended from duty after their referral to Court.. One of the two perpetrators of the that took place in the prison of Asti, who was not condemned because prosecution was statute-barred , is currently on duty in the Roman Prison of Rebibbia Nuovo Complesso. Some of the police officers convicted in the Diaz and Bolzaneto proceedings are currently back on duty. See below for a description of these events.

Mr. Stefano Cucchi's case

The 30-year-old Stefano Cucchi died on 22 October 2009 at the penitentiary section of the hospital Sandro Pertini of Rome following a period of detention at the Regina Coeli prison. His death started a long judicial case to bring clarity to the suspicious circumstances of his death, which resulted in the **acquittal** of all the defendants. In September 2015 the case took a new turn when at the request of the Cucchi's family, the Prosecutor of the Republic of Rome decided to re-open the investigations. On 17 January 2017, at the conclusion of the preliminary investigations, the three *Carabinieri* who arrested Stefano Cucchi were accused of "*omicidio preterintenzionale*" (involuntary manslaughter) and abuse of power.

They were accused of causing the injuries that led to his death due to a subsequent omission of the physicians as well as of imposing on him restrictive measures not allowed by law. The three militaries were accused of having caused Mr. Cucchi's death "with slaps, kicks and punches", causing "a ruinous fall which caused the impact of the sacral region with the ground". One of them, along with the Marshal in charge of the *Carabinieri* station in which Stefano Cucchi was held after his arrest, were also charged with false reporting and slander. A fifth *Carabiniere* was accused of slander. On February 2017, the three *Carabinieri* accused of "*omicidio preterintenzionale*" were suspended from their duties. On 10 July 2017, the Tribunale di Roma decided to trial the five *Carabinieri*. The trial will begin on October 13th before the Third Corte d'Assise.

Mr. Claudio Renne and Mr. Andrea Cirino's case (Asti prison's case)

In 2004, two detainees of the prison of Asti, Claudio Renne and Andrea Cirino, were brutally beaten by agents of the penitentiary police. The facts emerged later on in the framework of a different investigation thanks to audio surveillance recordings, where the agents could be heard talking about the many beatings of some detainees who according to them deserved a punitive treatment. The violence was systematic and occurred especially at night: prisoners were beaten, subjected to sleep deprivation, and left without water or food. During the winter, they were also locked up completely naked in so-called "smooth cells" (*celle lisce*) lacking window glasses and heating system and forced to drink from the toilet several times. Mr. Renne was locked up in such a cell for two months.

In July 2011, five agents of the penitentiary police were committed for trial. Associazione Antigone took part in the proceeding as a plaintiff.

Of the five police officers who had been charged with the offence of ill-treatment, one was acquitted, while the charges for the other four were reduced to injuries and abuse of power. These crimes were declared **status-barred** and were not, therefore, prosecuted.

Despite the fact that the perpetrators walked free, the case was important as the motivations of the first instance judgement, given by Judge Riccardo Crucioli, stated that the facts were beyond "every reasonable doubt" amounting to "real torture" as defined by the CAT. The judge also stated that the Italian penal code, lacking the crime of torture, did not provide him with enough tools to punish torturers.

Antigone and Amnesty International Italia collaborated to file an application to the European Court of Human Rights. When the Asti case was first taken into consideration by the ECtHR, the Italian government proposed a friendly settlement to the case by offering to pay the two victims compensation of 45,000 euros each. In that proposal, however, the Government did not commit to a legal reform to finally introduce the crime of torture, and the Court therefore rejected the deal.

Two of the police officers, responsible for the most serious crimes, were expelled from the police last January. The other two received suspensions of four and six months, they then went back on duty.

The Genoa events of 2001

The Genoa 2001 events have been the object of two different trials: one concerning the storming of the school Diaz during the night of July 21, 2001, and the other concerning the facts which took place in the Bolzaneto barracks.

With regard to the **school Diaz**, in July 2012, the Italian Court of Cassation confirmed the conviction of twenty-five policemen for giving false statements in the reporting of the operation of search and detention of demonstrators, which was found full of unfounded allegations. As an additional penalty, they were also barred from holding public office for five years. However, the offence of grievous personal injuries (punished in first and second instance) was declared **status-barred**. This judgement is of particular importance, as the Court stated that the violence that took place in the school amounted to torture under the definition provided by the European Convention for the Prevention of Torture or under inhuman or degrading treatment under Article 3 of the ECHR. However, it underlined that only the legislator could have introduced this particular crime in the criminal code.

On April 7, 2015, the ECtHR upheld the complaint filed by Arnaldo Cestaro,⁵⁷ a 60-year-old Italian citizen, who was at the Diaz school in Genoa in the night between 20 and 21 July 2001. Mr. Cestaro was brutally beaten and reported a broken arm, a broken leg and ten broken ribs, in addition to several cranial hematomas.

The ECtHR condemned Italy to pay Mr. Cestaro compensation. The crucial point of the ruling was the clear condemnation of the law enforcement authorities' conducts, in violation of Article 3 of the ECHR, which prohibits torture and treatments contrary to human dignity. The Court criticized also the inadequacy of Italian criminal legislation, concerning the punishment of acts of torture..

⁵⁷ Case of Cestaro v. Italy, App 6884/11,

[https://hudoc.echr.coe.int/eng#{"fulltext":\["cestaro"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-153901"\]}](https://hudoc.echr.coe.int/eng#{)

In June 2017, the ECtHR condemned for the second time Italy for the acts of torture perpetrated by law enforcement officers at the Diaz school in Genoa.⁵⁸ In the judgement that essentially builds up on the Cestaro case the Court reiterated its concerns on the lack of law punishing the offence of torture.

In July 2017, the ban from holding public office expired and, while some of the convicted agents are already retired, others can now return on duty.

With regard to “**Bolzaneto barracks**” trial, in June 2013 the Court of Cassation confirmed seven convictions and four acquittals for the abuses committed in the barracks against the protesters arrested during the G8 disorders in Genoa. The seven convicted are both agents and doctors. The Court then acquitted thirty-seven other people, whose offences had become **statute-barren**. Furthermore, the final judgment reduced the compensation to the victims, which had been granted by the previous sentences.

An indulgent treatment was granted also to the doctor in charge of the infirmary of the Bolzaneto barracks, described by several testimonies as one of the cruelest perpetrator of violence. After the Court of Cassation’s sentence, in 2014 he was fired from the Local Sanitary Agency where he used to work but he was not expelled from the medical register. The Italian Medical Association decided to ban him from his offices only for six months.

Currently there are several other applications related to the events occurred in Genoa in 2001 (in particular the ones related to the Bolzaneto barrack’s events) still pending before the ECtHR. In particular, this is the case of those applicants who rejected the friendly settlement proposed by the Italian Government to some of the Bolzaneto's victims in April 2017. In this friendly settlement, the State admitted that the violence took place and that it was committed by uniformed men. Only six of the sixty-five victims accepted the compensation of 45,000 euros for the physical and psychological torture suffered.

The Naples events of 2001

In January 2010 ended the trial against the ten policemen accused of abuses and beatings against participants in the demonstration contesting the Global Forum held in Naples in March 2001. The trial referred to the facts occurred in the Raniero police barracks where the demonstrators were taken to be identified following the clashes with the police. For the prosecution of Naples, the 85 demonstrators who were brought to the 'Raniero' were beaten and 'kept segregated'.

During the proceedings, the court of first instance convicted ten police officers, including two officials charged with abduction. Already in the first instance, the **time limitation** for the prosecution of crimes of violence between private persons, personal injuries, abuse of power and false reporting **had expired**.

On January 2013, the Court of Appeal of Naples ruled that the offences against the ten policemen became statute-barred.

The Val di Susa events

With regard to the events that took place in Val di Susa, it is important to note that there has never been a real political confrontation on the topic of TAV/TVC (high speed rail) Turin-Lyon between the opposition movement and the project sustainers.. That said, it should be stressed that the denunciations of alleged violence perpetrated by the law enforcement on protesters have always been **dismissed**, as documented in the documentary film "Archiviato. L’obbligatorietà dell’azione penale in Val di Susa” (“Dismissed. The Obligation of Criminal Proceedings in Val di Susa”)⁵⁹ realized by Carlo Amblino with the support of Antigone.

⁵⁸ Affaire Bartesaghi Gallo et autres c. Italie, App 12131/13 and 43390/13, [https://hudoc.echr.coe.int/eng#{"fulltext":\["cestaro"\],"respondent":\["ITA"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-174443"\]}](https://hudoc.echr.coe.int/eng#{)

⁵⁹ <https://www.youtube.com/watch?v=uIPMmHrM20M>

Below some examples of violence related to the events of Val di Susa:

- Venaus 05-06/12/05: During the clearing of a stronghold in Venaus of the NO-TAV movement, more than 30 protesters were registered as wounded, 18 of them immediately reach public hospitals. There were 21 complaints for injuries and damages.
- Coldimosso 17-18/2/10: During a demonstration organized by the NO-TAV movement, the violent intervention of law enforcement officials seriously injured two people: one will be diagnosed with a fracture of the facial bones and the other one with serious cerebral hemorrhage.
- La Maddalena 27/06/11 and 03/07/11: During the clearance of "Free Republic of Maddalena" - a large popular stronghold created by the NO-TAV movement - and the following national demonstration (which was organized to denounce the said clearance), the operations of law enforcement officials were particularly violent. The operations to restore public order involved more than 5,000 agents and lasted two days. More than 4,000 "Lacrimogeni CS" ("CS Tear gas", which are forbidden as weapons of war) were launched, many of which were shot at man's height. Hundreds of people among the protesters resulted wounded. During the clashes of July 3, five demonstrators were arrested and three of them were seriously injured during the detention.
- La Maddalena - Chiomonte 08/12/11: During a demonstration, two people were severely wounded by tear gas fired at man's height. One of them suffered a permanent hearing damage and the other almost completely lost his right eye sight..
- Porta Nuova Turin Station 25/02/12: A group of Milanese NO-TAV protesters who were returning from a demonstration, was suddenly charged inside the station by law enforcement officials. Tear gas was also fired in the train carriages, thus also involving other people who had nothing to do with the group.
- La Maddalena - Chiomonte 27/02/12: During the widening of the fencing of the Chiomonte construction site, an activist pursued by a law enforcement official on an electrical trellis fell from a height of 10 meters, reporting serious injuries and remaining in a coma for several days.
- Chianocco 29/02/12: During the motorway blockage organized by the movement following the tragic events of 27/02, law enforcement officials, after several violent charges and a massive use of tear gas (many of which were shot at man's height), started an actual chase of the demonstrators up to entering the town breaking windows and cars. Numerous complaints for personal injuries were filed, the worst wounded person reported a serious injury to the right foot and ankle, with a permanent inability of 14%.
- La Maddalena - Chiomonte 19/20/07/13: During a night demonstration, law enforcement officials stopped nine people, seven of which will be arrested, while a woman and a minor were released but denounced. During the night, three people were subjected to beatings and ill-treatments. One person receives coastal fracture with a prognosis longer than 20 days, and a minor received a prognosis of more than 40 days because of the injuries. However, the most serious episode concerned the woman who was subjected to ill-treatment by the police forces (which resulted in 30 days of prognosis), was harassed and verbally abused.

Mr. Rachid Assarag's case

In 2010, Mr. Rachid Assarag, a Moroccan prisoner in Parma, started recording – through a small recording device given to him by his wife - the conversations he had with the prison officers, where they talked about violence occurred in prison. Sentences like the following, pronounced by a policeman, were recorded: "I've beaten so many people, I do not remember if you were in the middle too". It is claimed that denunciations are useless, and that "in your complaints you can write what you want, I can write what I want, everything it depends on what I write ... ". The tapes were lodged by Mr. Assarag's attorney and eight prison officers were accused for offences ranging from slander, to false and abuse of means of correction. In 2016, the judge for preliminary investigations **dismissed** the case. Some video recordings dated May 2016 show 10 prison policemen in the Piacenza prison - one of them with a fire extinguisher - entering Mr. Assarag's cell

and dragging him off violently after a couple of minutes spent inside. Mr. Assarag maintained to have been beaten also in that occasion. In September 2017 Mr. Assarag has been released after nine years in prison. Notwithstanding his being married to an Italian woman, he has been transferred to a CPR in order to be expelled.

Mr. Mohamed Carlos Gola's case

In 2010, in the prison of Asti (Piedmont, North-West of Italy), a young inmate, Mohamed Carlos Gola, was hit with truncheon by two prison officers while he was waiting to be visited by a doctor inside the prison health unit. Mr. Gola is an Italian citizen, born in Brazil and converted to Islam during his detention. His request to pray, to access to a special diet, to have some religious books were upsetting the prison staff. During the assault, the two officers would have screamed some insults against Muslims and the Prophet Mohamed. They also tried to cut Mr. Gola's beard. The two officers have been **convicted** by the Court of Appeal of Torino. The Court **reduced the sentence** from 2 years and 8 months to 1 year (the sentence has been suspended under conditions).

Mr. Giuseppe Rotundo's case

On January 2011, Giuseppe Rotundo, prisoner in Lucera, claimed to be victim of serious beating committed by prison officers. Through his lawyer, Mr. Rotundo's denounce was submitted to the public prosecutor which decided, exceptionally, to send a photographer in Lucera prison in order to document the physical signs of the violence. The accused police officers denied their involvement in Mr. Rotundo's mistreatment. On the contrary, they stated that they had been beaten by the inmate and filed a complaint against him. An important evidence in support of Mr. Rotundo's version was represented by the testimony made during the preliminary investigations by the prison's psychologist. She said that even if she had already met Mr. Rotundo, she could not recognize him on the day of the aggression because of the terrible conditions of his face. She was upset and she said to the judge: "I have never seen a detainee in that conditions". The next hearing will take place in October 2017.

Sollicciano prison (Florence)

According to the first instance judgement, dated 21 June 2013, some prisoners hosted in the Sollicciano prison were victims of serious violence committed by a group of policemen. Three prison police officers have been convicted by the Court to custodial sentences, ranging from eight months to one year and six months in prison, and to compensation for damages in favour of civilians. Several episodes of violence have been widely contested to the agents, accused of having applied illegal measures against the prisoners, slapping the detainees or hitting them with blunt objects. Some prisoners would have retracted their denounces following the offer of jobs. In this way, they would have left dangerously alone the others prisoners who did not retract the complaints. The investigations started from the reports of the associations L'Altro Diritto and Antigone, which took part to the trial as plaintiffs. The sentence was possible thanks to the brave denounce of the victims, some of whom are still in prison and still exposed to possible retaliation. The trial is **statute-barred** but two defendants renounced to the prescription. On 7 November 2017, the appeal will start.

Ivrea prison

On November 2016, an open letter was written by four inmates of the Ivrea prison in which they reported about alleged serious episodes of violence committed by the prison officers against other six prisoners in the night between 25th and 26th of October 2016. The facts were reported as follows: tension escalated following the protest of some inmates for the poor management, the malfunction, the bad sanitary and hygienic condition of the Ivrea detention facility. The prison officers reacted to these protests beating the inmates and calling for backup the Vercelli prisons officers. From the letter emerged also the existence and use of a particular cell, called "the aquarium", in which the troubled inmates would have been kept in solitary confinement and mistreated. **The Italian NPM visited the Ivrea prison** on Novembre 22th, drafting **a very tough report** and **recommending**, among other things, **to immediately close "the aquarium"**. Antigone lodged a complaint to the Public Prosecutor's Office on the alleged violence occurred in the Ivrea prison. Following the country visit of April 2016, the European Committee for the Prevention of Torture and

Inhuman or Degrading Treatment or Punishment (CPT) reported to the Italian government, besides inadequate hygienic conditions of the cells, that the prisoners' access to doctors was filtered by security staff at Ivrea Prison. The CPT reported also the warning received about mistreatment committed by the police officers against inmates.

Poggioreale prison (Naples)

In June 2017 two prosecutors in Naples, at the end of their investigation on the alleged violence occurred in the so-called "zero cell" in the Poggioreale prison, requested the **commitment to trial for 12 prison policemen**. The offences included abduction, abuse of power against persons detained, personal injuries and ill-treatment. The alleged facts referred to the years 2013 and 2014. The story came to light following a statement by the Regional Prison Ombudsperson. The beatings would have occurred both in the "zero cell" (on the ground floor of the prison, so defined because it is not numbered) and in other sections of the prison.

Article 14

The new law on torture does not provide for any budget. There is no fund for victims of torture, which 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.

Article 16

A brief history of administrative detention in Italy

(1995) The administrative detention of "**illegal immigrants**" is a recent concept, introduced for the first time as an exceptional and temporary measure in 1995 when the Dini Decree made it possible to detain, for up to 30 days, foreigners who had received an expulsion order on an administrative basis. The Dini Decree was never converted into law, but in the same year the Puglia Law instituted the first seed for the current **Accommodation Centers for Asylum Seekers** (Centri di accoglienza per richiedenti asilo - CARA), which allowed the opening of such centers along the Puglia coast between 1995 and 1997 (Puglia was the region, until 2001, with the highest amount of immigrant arrivals). The aforementioned centers were aimed at guaranteeing a better reception of newly arrived immigrants but in the face of the fight against illegal immigration, these centers were built as closed structures from which the foreigners were unable to leave.

1998: With the **Turco-Napolitano law** of 1998 came the first reference in the Italian legal system to **administrative detention** (and to these types of centers). The law included the possibility of detention on an administrative basis, establishing that whenever it was impossible to immediately proceed with deportation or turning a person away at the border (i.e. because of arrival through rescue efforts or lack of identification) the Police Commissioner ("Questore") could request detention for a maximum period of 30 days in a **temporary detention center** ("Centro di permanenza temporanea" or "CPT").

2000-2002: The implementing Act of the Turco-Napolitano law governing the functioning of these CPTs (from which "guests" were absolutely prohibited from leaving) provided an obligation to guarantee respect for the fundamental rights of the detainee. Subsequently, two different circulars of the Ministry of the Interior ("Ministero dell'Interno"), issued in 2000 and in 2002 respectively, set out the first domestic **guidelines for the management of the CPTs**; the first circular allowed the various Central Governmental Institutions at a county level (so called Prefectures or "Prefetture") to outsource management to external bodies, while the second tried to establish uniformity and conformity in center management throughout Italy by introducing a standard with all the ordinary provisions to be supplied by the managing bodies.

2002: The approval in July 2002 of the **Bossi-Fini law** signaled a major change, as it replaced and amended the former law (Turco-Napolitano) by re-defining policies on immigration in Italy, introducing, inter alia the **administrative ability to immediately expel undocumented immigrants** (i.e. those without a permit to stay, a so called "permesso di soggiorno", and appropriate identification), including escorts to the border by law enforcement. The law called for undocumented immigrants to be taken to CPTs, which had been

created by the Turco-Napolitano law, and detained therein for a maximum of 60 days (instead of the previous maximum of 30 days), to first allow identification and then a decision about expulsion. The new law also called for the detainment of asylum seekers in new centers of identification (“Centri di identificazione” or “CDIs”), which was mandatory in cases where the immigrant applied for asylum after being intercepted in an attempt to elude border controls or in any other improper situation anywhere within Italy, and otherwise optional in all other cases in which it was deemed necessary to verify or to determine the identity of the asylum seekers.

2003-2005: A European Community directive, called the **Reception Conditions Directive**, allowed Member States to adopt restrictive measures towards asylum seekers, allowing for the possibility of imposing residence obligations or confinement in a specific place. Additionally, the **Asylum Procedure Directive** was passed, which set forth that the Member States were not to detain foreigners if they were solely seeking asylum and that set conditions for the judicial protection of asylum seekers.

2008: In 2008, the legislative decree which implemented the Asylum Procedure Directive in Italy transformed the CDIs created by the Bossi-Fini law into the current accommodation centers for asylum seekers, while a decree law in relation to urgent provisions about public safety transformed the CPTs into **identification and expulsion centers (CIEs)**. In Europe, the Return Directive was also adopted, which contains different laws connected to the detainment of foreigners subjected to orders of expulsion and confirms that the Member States can use detention only in order to prepare and carry out c out expulsion, highlighting that detention is to be used only as a last resort. It also set forth an alternative measure of **assisted voluntary repatriation** for any citizen from a non-EU country present in the EU to receive aid to voluntarily return to his/her country of origin in safe conditions. At the same time, the term of detention permissible by the EU was increased pursuant to EU directive 2005/85/CE to a maximum of 18 months.

2009-2011: In 2009, the Repatriation **Directive** extended detainment at identification and expulsion centers from 60 days to 180 days at the European level, through the so-called Safety Package, which the Berlusconi cabinet approved. Shortly thereafter, pursuant to article 10-bis of the **Consolidated Act on Immigration**, the crime of illegal immigration was introduced, and minor cases were to be tried by way of summary judgment (“*rito direttissimo*”) before a peace officer (“*giudice di pace*”). In 2011, with Law Decree No. 89/2011, the abovementioned period of detention was extended to 18 months; therefore, ordinary Italian law applied the maximum period provided by the EU Directive for exclusively extraordinary circumstances. Directive 1305 of 1 April 2011 limited outside access to CIEs to some specific humanitarian bodies, and excluded the media.

2014: In October 2014, **EU Law 2013-bis** was approved and – for the first time since the Turco-Napolitano law of 1998 had created administrative detention for foreigners – **detention in CIEs was reduced** from a maximum period of 18 months in 2011 **to 3 months, or only 30 days** when the foreigner was subject to an expulsion procedure after at least 3 months of detention.

2015: **Legislative Decree 142** established the possibility for the detention of asylum seekers as permitted by the EU directives. Therefore, it was authorized to detain asylum seekers who committed serious crimes, who posed a danger to public order or national security, who when filing an asylum application were already detained in a CIE with reasonable grounds to believe that the application was filed only to avoid the execution of an expulsion procedure. In these cases, the maximum term of detainment for the examination of the protection claim is 12 months.

At the administrative detention system’s peak of expansion there were 15 CIEs in Italy with a total capacity of over 2000 detainees.

As these centers were established for emergency reasons, the single centers were and remain extremely **dissimilar from one another** in terms of structure and management: some were built from scratch, others were born from the conversion of existing buildings (former barracks, factories and hospices). The Roman CIE of Ponte Galeria is the only center that has a section for women. These center however share one

common trait: as the LasciateCIEntrare campaign states in summary of the situation, “the CIEs operating as of today are mostly located far from cities, there is an **overwhelming presence of metal bars** and surveillance instruments, the **social-sanitary situation is critical** and there are **frequent complaints of abuse and violence**. They are huge cages surrounded by concrete”. Before the issuing of the Decree Law 13/2017, it appeared that CIEs were being gradually abandoned due to legal, humanitarian and practical problems. The number of the centers gradually decreased until there were only 4 left - Brindisi, Caltanissetta, Rome and Turin - in which around 300 migrants were confined.⁶⁰

2017: Decree Law 13/2017 has increased the number of CIEs (now CPR) in order to cover the whole national territory, envisaging the opening of a center for each Region (from 4 to 20 centers) and with a global capacity of 1600 places.

All places of administrative detention are subject to the inspection powers of the NPM, a body instituted by Decree Law 146 of December 23, 2013 and whose members were appointed in February 2016.

The current situation concerning administrative detention

Consistently with regards to European migration policies, Italy largely resorts to the so-called **hotspot approach**⁶¹. This approach encompasses several structures for the first identification of migrants. These places need to be given the utmost attention, taking into consideration that in most of cases the migrants are identified in these structures, that they are held without a court order that validates their detention and that the functioning of the centers of detention is not regulated by any specific legislation. **The lack of a clear legal framework raises many concerns**. Indeed, the deprivation of liberty during identification procedures relies on a simple internal regulation of the Department for Civil Liberties and Immigration (Prot. No. 14106 of October 6, 2015).

A critical point is the time for which migrants are detained. The aforementioned internal regulation indicates a time span of 24/48 hours as the maximum limit within which the procedures are to be carried out. However, as shown by the statistics provided by the Ministry itself and verified by the NPM, this deadline is not respected, in particular in the case of vulnerable categories such as unaccompanied minors, who, due to the lack of places in the structures that should accommodate them, remain in the hotspots for up to two weeks, outside of any legal framework.⁶²

Once identified in the hotspots, if the migrants are not adequately informed of their right to apply for international protection or if their asylum request is not granted they are subject to expulsion procedures. If they are sent to a CPR (Center for repatriation) - awaiting the execution of a decree of expulsion or of rejection - they may apply for international protection within the CPR itself. However, in that case they may be kept under administrative custody for up to 12 months (while for the other categories of migrants the maximum period is 3 months, except for the possibility of further extension of 15 days due to the change made during the conversion of the Minniti Decree 13/2017, limited to the hypothesis of particular complexity of the case). Detention is prescribed because it is believed that those who submit a request for international protection only after being taken to a center are doing so in an instrumental way in order to avoid expulsion.

The creation of hotspots and the opening of new CPRs, as prescribed in the aforementioned Minniti Decree 13/2017 (which was converted into Law 46/2017), shows how Italy has extended the detention approach to the entire territory in the management of migration flows despite its proven inefficiency (as outlined in the report of the Senate Human Rights Commission, 48% of those who passed through the former CIE in

⁶⁰ <https://cild.eu/wp-content/uploads/2017/01/CIE-what-has-happened-over-the-last-20-years.pdf>

⁶¹ A hotspot approach is when the first identification operations can also take place outside of real facilities, for example on a dock. From these first procedures will depend the journey of the migrant, who can be directly rejected or allowed to file an international protection request.

⁶² <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/6f1e672a7da965c06482090d4dca4f9c.pdf>

2016 were not removed from the territory)⁶³. The previous four Identification and Expulsion Centers have developed into 20 CPRs (Repatriation Centers), with a total capacity of 2000 places.

Law 46/2017 (Legge Minniti) has not only extended to the entire national territory the detention model (raising the number of detention centers from 4 to 20), but has also introduced various measures that severely constrain the procedural guarantees for migrants seeking international protection. In particular, **the right to be heard has been severely limited**: the physical presence of the asylum seeker before the court in order to appeal against a previous rejection of the asylum application by the territorial commission (the first body assessing the asylum application in which no judge is present) is optional and can be replaced by a video recording. **The possibility to appeal was simply abolished.**

CPR (former CIE)

The reports published by the NMP note that material **and hygienic conditions are insufficient**⁶⁴. Structures require urgent renovation, refurbishment and maintenance works, and lack common spaces and places of worship. The proximity between individuals with very different legal positions is also problematic: people from criminal groups, irregular migrants, asylum seekers. For this last group, Legislative Decree N. 142 of August 18, 2015 and the regulation for CIEs of the Ministry of the Interior of October 20, 2014 (Article 4.e) provide for the possibility to host them in a dedicated area. The proximity between people with a criminal past and individuals who do not come from prison may favor the spread of illicit trafficking, considering that not all CPR guests are actually repatriated at the end of their stay in the facility. The NPM reports highlight problems related to the **lack of information given to foreign nationals**, which are few and often not understood. In the CPRs, information papers are prepared in languages such as English, French, Spanish and Arabic (in addition to Italian). However, this is far from enough for the foreigner to reach a sufficient level of understanding regarding his personal situation. The language-related problem arises also with regard to the understanding of the pending procedures: the NPM underlines how some foreigners are completely unaware of their personal and legal status, of their possibilities and of the evolution of their detention in CPRs.

Hotspots

It has already been noted that hotspots are characterized by a **vague and problematic legal framework**, and that within them the deprivation of liberty takes place without any intervention by the judicial authority in times often exceeding the prescribed 24/48h for identification. As highlighted by the NPM, in some cases the identification procedures do not take into account the need for the identified individuals to be physically and psychologically empowered so that they can understand the procedures and the consequences of the answers given and / or the attitude assumed with regards to their legal position. **Communication to migrants is very limited** in the first phase of arrival and takes place alongside the identification procedure. **There are linguistic and cultural mediators, but their presence is not enough** unless there are also tools to verify that the information provided has actually been understood. An unconscious affirmative answer to questions like "did you come to work?" after a long and exhausting journey may result in a classification within the category of economic migrants, thus hindering the access to international protection, even if the person is running from a political persecution.

Charter flights

The ways in which expulsions are made via charter flights also deserve particular attention. A report of the NPM reveals the issues arising out of this mode of expulsion such as that involving 10 Nigerian citizens in January 2017. They were woken up at 3.30 of the night **without any previous notice** that would have allowed them to contact their family or lawyer and were then taken to the airplane by police forces, which had not been trained to carry out this task.⁶⁵

Violence and discriminations by law enforcement agents

⁶³ [https://www.senato.it/application/xmanager/projects/leg17/file/Cie%20rapporto%20aggiornato%20\(2%20gennaio%202017\).pdf](https://www.senato.it/application/xmanager/projects/leg17/file/Cie%20rapporto%20aggiornato%20(2%20gennaio%202017).pdf)

⁶⁴ <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/6f1e672a7da965c06482090d4dca4f9c.pdf>

⁶⁵ <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/f4c1b2a9ceea792ba7888267f03fd1aa.pdf>

Several **cases of ill-treatment, violence and abuse of power against migrants** show how law enforcement officials are not exempt from racism and xenophobia, issues on which it would be necessary to intervene. Here below some of the episodes.

- A recent episode occurred in August 2017, when during a forced evacuation of some Eritrean immigrants established in Rome, in Piazza Indipendenza, the video cameras showed a high-ranking police officer who said to his subordinates to “break the arm” of anyone who had launched something.
- In June 2017, in the context of an investigation on several police stations in Lunigiana, a region between Liguria and Tuscany, some phone recordings were made public which led to the arrest of four Carabinieri and the suspension of four others, following alleged episodes of violence, insults and other offences of a racist nature that had allegedly been perpetrated in the places where the agents operated.
- In March 2015, a municipal police officer was suspended and investigated for abuse and violence. The events concerned a migrant with a regular residence permit who had allegedly been unjustly detained and beaten for five hours at the municipal San Lorenzo police station in Naples.
- In May 2011, Abderrahman Sahli, a Moroccan man, was found dead in a river near Padua. The finding of his body shed light on the cruel practice of some Carabinieri who forced some drunk people, mainly foreigners, to dive into the river as a punishment for their conduct. According to the coroner’s report Abderrahman Sahli did not die in the night in which he was stopped by the Carabinieri and that therefore excluded the charge of murder. Nevertheless, the militaries were accused of abduction, violence between private persons, and omission of public reports. After the investigations, the prosecutor's office in Padua proceeded with the formalization of commitment for trial, claiming to them at least six other episodes of forced dives in the river denounced by foreign citizens.
- Three municipal police officers have been accused of having beaten an Ivorian man in November 2006, both on the street and later at the police station, and of having given false statements in the service report. They accused him of resistance to a public official, accusation from which the man was later acquitted. The police officers have been charged with the offenses of aggravated injuries, abuse of power, racial discrimination and offence against a defenseless victim. They were also charged with slander for the false accusations addressed against young man.

In this context, of particular concern are the **public speeches of senior government officials** such as the Minister of Interior, Minniti, who, in a recent interview spoke of his fears for the Country's democratic solidity. In fact, he justified the government’s actions to reduce the guarantees for migrants seeking international protection by stating that, if the government hadn’t taken a strong position to face the growing arrival of migrants from the African coasts, the public opinion could have decided to express the need for a strong leader.

Discrimination against Roma, Sinti and Caminanti

Routine violent attacks against Roma and Sinti settlements and individuals and occasional episodes of collective fear are exemplificative indicators of the broad diffusion and deep rooting of anti-Roma sentiments in Italian society. A research published in June 2015 by the Pew Research Center reported that 86% of the respondents in Italy hold a negative opinion about Roma⁶⁶. Among the different forms that anti-gypsyism can acquire; **hate speech against Roma** is the most pervasive in the Italian context. These episodes are usually **not promptly and firmly condemned** by Government officials, politicians and relevant head of political parties. The data⁶⁷ collected by Associazione 21 luglio, through the National Observatory on Hate Speech against Roma, confirm that hate speech targeting Roma is a deep-rooted and endemic phenomenon in Italy⁶⁸, mainly fuelled by the political discourse at the local level⁶⁹. Whereas cases of hate

⁶⁶ Pew Research Center, Report: Faith in the European Project Reviving, June 2015

⁶⁷ Associazione 21 luglio, Rapporto annuale, 2016

⁶⁸ In nearly four years of activity, the Observatory recorded a total of 1.296 hate speech episodes against Roma and Sinti, 794 of whom deemed of particular gravity. This results in a daily average of 3,5 episodes, or 2,2 limiting the analysis to the grave episodes. It is too early to assess the decrease in episodes occurred in 2015 and in 2016 as an indicator of a substantial change sustainable in

speech adopting explicit and racist rhetoric may fall within the provisions set forth by the Law No. 205/1993, for cases adopting a more indirect and subtle expression of bias, the current Italian anti-discrimination framework does not provide for effective means to address and discourage them, leaving anti-gypsyism and its promoters enough space to irresponsibly fuel anti-Roma sentiments with blatant dangerous effects. The action of the National Office Against Racial Discrimination (UNAR) is considerably limited due to the lack of sanctionary and/or deterrent measures to address and discourage episodes of this kind. The only direct action UNAR can undertake is in practice limited to sending “moral suasion” letters to the targeted recipients. From the information available to Associazione 21 luglio, resulting from nearly four years of constant engagement with UNAR, when no reply of any kind is received from a recipient of a “moral suasion” letter, the Office proceeds to archive the episode, having exhausted its possible means of intervention, an outcome that could hardly be deemed satisfactory.

Moreover, presently, **UNAR's influence is heavily compromised** due to a scandal that took place in February 2017 and that led to the resignation of the director (which has not yet been replaced). This was followed by a television broadcast showing an association that was expecting to receive UNAR funds and where, according to the journalist, prostitution was taking place. The mass media diffusion greatly weakened the institution.

According to the most recent estimates, approximately 180.000 Roma and Sinti live in Italy, constituting approximately 0,25% of the total population⁷⁰, and approximately 60% of them are minors.⁷¹ A structural factor which complicates the implementation of effective inclusive policies is the substantial lack of disaggregated data regarding the Roma and Sinti communities living in Italy⁷². In 2012 Italy submitted its National Roma Integration Strategy (NRIS) to the European Commission. Despite lacking an effective monitoring and evaluation mechanism and a set of quantifiable objectives and result indicators, the NRIS foresees a set of integrated policies focusing on four key areas - housing, employment, education, health - and recognizes the inadequacy of current policies. Concerns have been expressed with regard to its effective implementation on the ground.

Housing and segregation

The main national housing policies do not present elements in blatant contrast with the NRIS, but within the Italian decentralization context local authorities have a certain degree of autonomy in designing and implementing local policies and therefore they assume a fundamental importance for a concrete implementation of the NRIS through effective measures. Within this framework, and in lack of a mechanism of accountability, local authorities indeed have a degree of discretion, which can lead to the implementation of policies in contrast with the principles of the NRIS. **Housing policies** targeting Roma implemented by some Italian local authorities contrast with the NRIS as they **reiterate housing and social segregation** through the construction or the extraordinary refurbishment of Roma-only “authorised” settlements.

Furthermore, Italian authorities continue with the practice to officially construct and manage “**authorised settlements**”, and to provide Roma and Sinti families with housing units inside them. Even if initially the realization of “authorised” settlements was not intended to be a means of segregation but a way to protect the perceived peculiarities of these minorities, the results have been extremely critical in terms of spatial segregation and social marginalization. The Italian authorities committed to overcome discriminatory segregation and sub-standard housing conditions in “authorised” settlements with the approval of the

time within the Italian society, as during the same period the political and public debate moved much of its attention towards the so-called “migrants issue”, resulting in the scapegoating of other vulnerable groups.

⁶⁹ Associazione 21 luglio considers the responsibility of Italian politicians in fueling anti-gypsyism and discriminatory sentiments as a factor of crucial concern that should be urgently addressed. Hate speech against Roma and Sinti in Italy usually adopts indirect and subtle expressions of bias, rather than explicitly racial remarks, which can also become the substrate and produce ethnic and racial violence.

⁷⁰ CoE, Estimates and official numbers of Roma in Europe, 2012

⁷¹ ECPPHR, Report of the Investigation on the Conditions of Roma, Sinti and Camminanti in Italy (2011)

⁷² The lack of data has also been highlighted by the ECPPHR, by the EU Fundamental Rights Agency and by the Committee on the Elimination of Racial Discrimination

National Roma Integration Strategy. Despite this commitment, the national Government has not implemented any concrete measure to eradicate housing segregation and the persistence of segregated housing policies addressed towards Roma and Sinti throughout Italy continues to attract criticisms from a number of human rights monitoring bodies.⁷³ According to a mapping by Associazione 21 luglio⁷⁴, Italy currently manages 145 “authorised” Roma-only settlements throughout Italy. Housing segregation of Roma communities is a widespread and systematic issue and it is not just limited to the main Italian cities, as many medium-sized municipalities also manage Roma-only settlements.

Forced Evictions

When collectively evicting Roma and Sinti families, the **Italian authorities hardly ever apply all the procedural protections** foreseen by international instruments: in most of the documented cases, evictions are carried out in absence of formal eviction orders and without a formal notice, therefore impeding the access to a legal remedy, and without an adequate advance notification, in absence of any kind of consultation and without taking into consideration the individual circumstances of each family. Often evictions result in the arbitrary loss of private property without compensation and in people being rendered homeless, as no adequate alternative housing solution is provided to those unable to provide for themselves. When alternative housing is offered, either it usually foresees the division of households - with only mothers with children being offered temporary shelter in emergency structures - or it takes the form of a substandard and inadequate housing unit in a segregated Roma-only “authorised” camp or Roma-only reception facility. **Forced evictions thus do not result in restoring housing adequacy**, but in reiterating housing inadequacy in another place while further increasing the vulnerability and exacerbating the living conditions of those affected. Recent examples of forced evictions⁷⁵ highlight the systematic use of forced evictions that have been carried out by Italian authorities throughout Italy and mainly in the cities of Rome, Milan and Florence. From constant monitoring by Associazione 21 luglio in 2016 in Italy there were 250 forced evictions. In the city of Rome alone, from 1 January 2013 to 31 December 2016 a total of 196 documented forced evictions were carried out, affecting roughly 4.890 Roma overall.

Same-sex couples and families

Italy still lags behind European countries when it comes to equality for homosexual people and parental rights for gay couples. A much-awaited **civil unions bill for same-sex couples** was finally adopted in 2016, as a result of the groundbreaking judgment in the case of *Oliari and Others v. Italy*,⁷⁶ in which the ECtHR held that Italy violated the right to privacy and family life in failing to provide sufficient and reliable legal protection for same-sex relationships.

The Italian civil unions bill was a milestone in the struggle toward legal recognition for same sex-couples in Italy but its restrictive adoption provisions for same-sex couples still deny some children the legal protection and security they deserve, as highlighted by LGBTI NGOs Rete Lenford and Associazione Certi Diritti. It is worth noting that in June 2016, the Supreme Court of Cassation⁷⁷ upheld a lower court’s decision to approve a request for a lesbian to adopt her partner’s daughter in light of the superior interest of the minor, setting an important precedent.

⁷³ The following human rights monitoring bodies and mechanisms expressed concern and urged to end housing segregation of Roma communities in Italy in recent years (2012 – 2016): UN CERD (Concluding Observations, 2012); ECRI (4 th and 5 th monitoring cycles, 2012 and 2016); Universal Periodic Review (2 nd Cycle, 2014); UN CESCR (Concluding Observations, 2015); Advisory Committee of the Framework Convention for the Protection of National Minorities (4th Opinion, 2016); Council of Europe Commissioner for Human Rights (various statements)

⁷⁴ The mapping is constantly updated and intended for internal use. It is not publicly available for privacy and security concerns.

⁷⁵ Such as: the forced eviction on 15 March 2016 of 20 families from the via Idro settlement (Milan) who had been living there since 1989; the forced eviction of approximately 500 persons from via Mirri (Rome) on 10 May 2016; the forced eviction of more than 300 Roma from the Masseria del Pozzo settlement (Giugliano) on 21 June 2016; the forced eviction on 10 October 2016 of approximately 350 Roma from via Virginia Wolf informal settlement in the city of Naples. The families relocated themselves in either the via Traversa Cupa Cimitero informal settlement or the Gianturco informal settlement due to the lack of any alternative and adequate housing solution offered by authorities

⁷⁶ *Oliari and Others v. Italy* (2015) ECHR

⁷⁷ Cassazione Civile, sez.I, sentenza 22/06/2016 n°12962

Trafficking in human beings

The most relevant change in Italy's law relevant to the action against Trafficking in Human Beings (THB) has been the adoption of the first **National Action Plan against Trafficking and Serious Exploitation of Human Beings**, which has been finally adopted by the government in February 2016. The Plan implements the 2011/36/EU directive, transposed in the Italian system by a legislative decree 24/2014. Awareness-raising campaigns are a key component of the preventive program, but no data appears to be available on impact evaluation reports regarding such activities. Notwithstanding the great emphasis put by the National Action Plan on the importance of training of relevant professionals as well as sensibilization of the broader public, it remains unclear which types of training are to be compulsory for given categories of relevant professionals and no allocation of dedicated funding has been made so far.

Changes have been determined to the whole structure of assistance and integration programs for THB victims. The Department for Equal Opportunities indeed is responsible for the coordination of assistance and protection of THB victims through two different programmes:

- Article 13 (of Legislative Decree No 286/1998) short-term programme: the Article 13 Programme offers a set of protection and initial support measures for Italian, EU and non-EU victims of slavery, servitude and trafficking. According to the law, THB victims can benefit from a three-month programme that, when applicable, may be extended for a further three months. Victims receive accommodation, social assistance, and healthcare services. Once the programme is over, they can continue to be assisted under the Article 18 Programme.
- Article 18 (of Legislative Decree No 286/1998) long-term programme: "Social Assistance and Integration Programme": the system to protect and assist THB victims currently in place in Italy is based on article 18 of Legislative Decree No 286/1998 and the related Regulation providing for the granting of a "humanitarian residence permit" to victims, the so-called "Article 18 permit". Article 18 of Legislative Decree No 286/1998 establishes that temporary humanitarian residence permits may be issued to foreign citizens needing protection and assistance. This permit applies to foreign citizens in situations of abuse or serious exploitation where their safety is considered to be endangered as a consequence of attempts to escape from the conditioning of a criminal organisation or as a result of pursuing criminal action against traffickers.

Once a victim is identified as such by the competent authorities, there is a "double binary" of protection:

- the 'judicial path', which entails cooperation with law enforcement agencies; or
- the 'social path', which only requires the submission of a statement on behalf of the victim by an accredited non-governmental organisation or by the social services of a local authority.
-

Both procedures can result in the issuance of a six-month **temporary humanitarian residence permit**, which is further renewable for one year and can be converted into a student or work residence permit, if necessary. Through Legislative Decree No 24 of 4 March 2014, the Italian legislator unified the two abovementioned protection programmes into one single programme of emergence, assistance and social integration, with a view to developing a new model more aimed at the active integration of victims of trafficking and serious exploitation.

Art. 18 Legislative Decree 286/98 is still an **important tool of protection for victims of THB**, and is such celebrated in the National Action Plan - which defines "one of the most advanced mechanism of protection of victims of THB within the EU framework on grounds of its aim to move forward from approaches conditioning provision of assistance to victims of THB on their collaboration with judicial authorities for the purpose of criminal proceedings". As already mentioned, Art. 18 envisages two alternative channels for obtaining a temporary permit: a judicial procedure ("judicial path") activated by a public prosecutor which entails cooperation with competent authorities in criminal investigations and a risk assessment of victims' vulnerabilities made by local authorities, accredited CSOs or NGOs ("social path"). **This approach prioritizes victims' rights per se over the interests of prosecutors**, but, although the temporary permit does not depend on victims' capacity or willingness to collaborate with law enforcement authorities, it was reported

that projects under art. 18 help increase victims' cooperation during investigations. Indeed, social assistance projects and long-term residence permits contribute to build trust in law enforcement and local authorities, and strongly encourage judicial cooperation. In practice, though, although victims are not formally required to cooperate with law enforcement to obtain a residence permit and provision of assistance, some NGOs and international organizations reported authorities gave preference in granting residence permits to those who cooperated with criminal proceedings. The UN International Organization on Migration (IOM) also noted that "notwithstanding that the legal framework in force provides the possibility to protect all the victims of THB regardless of whether they provide information about the traffickers, the reality is that there are few facilities hosting migrants who choose not to present a formal complaint" and stressed out the necessity to apply the norms on counter-trafficking in force in a uniform way, ensuring the protection to those fearing retaliations and to those who cannot or do not want to denounce their traffickers.

It was also observed that more restrictive immigration policies as well as the introduction of the Security Package (Law n. 94/2009) – which defines and punishes the crime of illegal entry and stay in the State's territory – have forced several victims to choose between remaining exploited or facing the prospect of being criminalized, put in detention or deported. Further issues observed over the years have been: the incomplete application of the "social path" for the issuing of the residence permit; the narrow interpretation by competent authorities of the requirements for the residence permit granted to victims; the long lapse of time for the issuing of the residence permit; difficulties in the conversion of the residency permit granted to victims into a work permit.

It is necessary to highlight how **THB** in Italy in recent years **has been strictly entwined with the arrival of migrants** via the Central Mediterranean route. Victims of THB pass through the same channels and fall into the same mechanisms used to smuggle migrants into Italy: the arrival of a growing number of foreigners from non-EU countries coming from areas of conflict and places of political unrest and seeking international protection in Italy means that those who manage this type of activities are very likely to end up exploiting this segment of migrants. In most cases, smuggling and trafficking operations, while legally different, are nowadays practically indiscernible. The IOM estimates⁷⁸ that the number of THB victims in Italy has greatly raised in recent years. According to a 2016 IOM report, more than 70% of migrants arrived in Italy by sea from Egypt, Libya and Maghreb countries have suffered treatments similar to trafficking (i.e., arbitrary detention, abduction, forced or unpaid labour, money offered in exchange for blood or organs), which are alarming in frequency and extent. People coming from Nigeria, Senegal, Guinea Conakry, Ivory Coast and Mali are the most exposed to these treatments, which mainly concern sexual exploitation of women.

This is especially evident for people coming from Nigeria, especially women and children: IOM estimates that more of 80% of the 11,009 Nigerian women arrived in Italy from Libya in 2016 were victims of THB. It is to be noted that the number of Nigerian women and minors - which are both especially vulnerable to THB - arriving in Italy has greatly raised over the last years: in 2015, arrived circa 5,000 women and 900 minors; in 2016, 11,009 women and 3,040 minors. Considering this significant rise in the number of Nigerian women and minors it appears evident how the number of potential victims of THB has more than doubled from 2015 to 2016.

The phenomenon of THB is generally hard to quantify with accuracy - as highlighted by Save the Children Italy⁷⁹, official data fail to give an accurate picture as only include the "emerged component" of victims of THB - and even more so with regard to minors. In fact, according to official data, in 2016 only 111 minors were placed in the anti-trafficking system: girls are the overwhelming majority (84%, i.e. 94 girls against 18 boys), and most of them are Nigerians (followed up by Romanians). This data evidently ignores the overwhelming majority of young victims of THB, who are left outside the official anti-trafficking system.

⁷⁸ http://www.italy.iom.int/sites/default/files/news-documents/RAPPORTO_OIM_Vittime_di_tratta_0.pdf

⁷⁹ <https://www.savethechildren.it/sites/default/files/files/uploads/pubblicazioni/piccoli-schiavi-invisibili-2017.pdf>

The first mapping of THB victims conducted at the national level by the National Anti-Trafficking Platform in May 2017 assessed the presence of 3,280 victims of THB, including 167 minors. No data on investigation, prosecutions, sanctions and compensation provided to victims is available.

The Optional Protocol to the Convention Against Torture

Italy ratified the OPCAT in April 2013. In February 2014, Art. 7 of Law No 10 of 21 (amended by Law No 208 of December 2015) established a **National Authority for the Rights of Persons Detained or Deprived of Personal Liberty** (Garante nazionale), which coordinates the Local Authorities for the rights of persons deprived of liberty at regional and city levels and which is designed to assume the role of National Preventive Mechanism (NPM) under the OPCAT. Under article 7, paragraph 5, letters b) and e) of Law no. 10 of February 21, 2014, are listed the types of detention places that the National Authority can visit through unimpeded and unannounced visits. According to such list, all the places provided under the OPCAT are included. In any case, the decree of the Ministry of Justice of March 11, 2015, no. 36, provides, under article 2, that the self-regulatory code adopted by the National Authority shall be in compliance with the principles under Section IV of the OPCAT. The NPM started to be operational in April 2016. It is a collegial body composed by three members, who can't be employers of the public administration.

The current Chairman is Mauro Palma, former President of the European Committee for the Prevention of Torture and of the PC-CP. The Italian NPM fully meets the criteria established by OPCAT, not only in terms of powers granted but also in terms of independence (also economically). The Chairman and the two members of the College are appointed by a measure of the President of the Republic, following a consultation process entailing the active involvement of the Parliament's Committees. In the only case of nomination as of today, the following has happened: the first three names proposed by the Government were Mr. Mauro Palma, Mrs. Emilia Rossi (lawyer) and Mr. Francesco D'Agostino (university lecturer in bioethics). The appointment of Mr. Francesco D'Agostino was not approved by the Senate Justice Committee (*Commissione Giustizia del Senato*) as he had no specific expertise. In his place, the Government then proposed Mrs. Daniela De Robert (Rai journalist and president of a Catholic volunteer association operating in prison), whose appointment was approved along with the other two candidates. This proves that the role of the Parliament's Committees is fundamental and not merely formal. The members of the College may be removed from their office only for criminal reasons, their mandate is not renewable and they are granted with a specific remuneration.

The Italian NPM can carry out unimpeded and unannounced visit to any institutions in which some form of deprivation of liberty occurs. Following any monitoring visits, the NPM drafts and publishes reports freely accessible on its website. Such reports are sometimes ordered in thematic reports. Along with the reports, the answers given by the administrations consulted are also published. On 21 March 2017, the Relation on the first year of work of the NPM, as provided for by law, has been presented to the Parliament. The Relation contains thematic sections on the different areas of deprivation of liberty and constitutes a very powerful and complete instrument for understanding the Italian situation. The presentation took place in the House of Parliament, in the presence of the President of the House of Parliament and the Undersecretary for Justice. Around 300 people participated also in representation of the civil society, and the media attention was high. The NPM is now perceived by the press and the media as one of the main voices when it comes to issues concerning prisons and immigration. In occasion of the tragic events of deportation of immigrants, there have been tens of interviews on the major national tv broadcasters. The authority and respect that Mauro Palma holds at national and international level is very important. He was received by the highest authorities of the State. His role is acknowledged by the academic world as well as the public administration. The NPM would not have been so efficient if his office was held by a less authoritative and respected person. Even though the NPM started to be functional only in March 2016, there are already numerous example of cases in which its observations and recommendations to the Administrations responsible for the structures that were visited have received positive feedbacks.

Recommendations

Migration

- Suspend all bilateral agreements lacking adequate human rights protection and violating the principle of non-refoulement towards a State where acts of torture are known to take place; in particular, Italy should never in any way contribute to increment the system of Libyan reception centers, where grave human rights violations are known to take place;
- Abolish the system of administrative detention of third-country nationals in CPRs and respect their right to defence;
- Ensure that any migrant (including economic migrants):
 - has the right to file an asylum application in practice;
 - has the right have his/her individual case carefully analyzed;
 - is given the right to appeal.

Torture

- Modify Law N. 110, July 14th 2017 introducing the crime of torture into the Italian Criminal Code so that:
 - the definition complies with art. 1 of the UN Convention Against Torture;
 - the time-limitation does not constitute an obstacle for the prosecution of the crime;
 - a fund for victims of torture is created.
- Adopt the Code of Conduct for Law Enforcement Officials, as demanded by the UN General Assembly in A/RES/34/169;
- Introduce identification badges on the uniform of law enforcement officers;
- Create a single register in order to record all data regarding complaints, investigations, prosecutions and convictions of cases of ill-treatment and torture;
- Ensure that the State act as a plaintiff in any proceeding for torture or ill-treatment;
- Update and enforce the training of law enforcement officials with regard to torture, ill-treatment and Italy's international obligations

Penitentiary system

- Carry out decriminalization policies (in particular to reform the legislation on drugs) in order to reduce prison overcrowding;
- Reduce the use of pre-trial detention, extend the use of alternative measures to pre-trial detention, reviewing their contents, criteria and procedures to access them without restriction for anybody;
- Extend the use of alternatives to detention;
- No detainee should start to serve a prison sentence in a prison that does not respect the CPT and ECtHR standards of living space per detainee;
- 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;
- Eliminate the discrimination of foreign detainees in the access to justice and ensure them the access to information;
- Facilitate the communication between foreign detainees and their families living abroad;
- Prohibit the imposition of solitary confinement on juveniles;
- Prohibit the practice of reiterating a disciplinary measure of solitary confinement; include a maximum time limit for the imposition of solitary confinement for judicial reasons;
- Reform the 14 bis regime so to avoid situations of total isolation of the inmate;
- The role of the doctor should be independent from the penitentiary administration in the relationship with the detainee;
- All critical events (e.g. suicides, deaths, injuries) must always be recorded;
- Detainees should enjoy their right to sexuality;

- Review the 41-bis regime so that it respects the dignity of detainees and eliminate those oppressive restrictions 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, always allow the possibility to appeal against the imposition of the regime;
- Inspire detention to the principles of dynamic surveillance, responsabilization of the detainee and human dignity;
- Ensure that people with mental health issues are not placed in detention facilities and that their situation is addressed from a medical perspective instead of a custodial perspective.