

1. Respect of articles 7, 10 and 14 of the ICCPR?

Several of the Recommendations accepted by Italy during its 2014 UPR review regarded the respect of articles 7 and 14 of the ICCPR, and in particular the situation of inhuman and degrading treatment within prisons due to structural overcrowding as sanctioned also by the European Court of Human Rights' pilot sentence "Torreggiani" of January 2013 (in particular: Rec.s 145.100-103). In its sentence, the Court asked the Italian government to adopt a series of legislative remedies to address the systemic violation of article 3 of the ECHR in the national penitentiary institutions. Despite the fact that the recurrences were coming from two penitentiaries, the European Court stated that "inhuman and degrading" treatments are a structural problem throughout the country.

2. Article 3 of the European Convention on Human Rights prohibits inhuman and degrading treatment – as Art. 7 of the International Covenant on Civil and Political Rights (ICCPR) – which are also a violation of art. 27 of the Italian Constitution: "Criminal responsibility is personal. The defendant is not considered guilty until the final judgment is passed. Punishment may not consist in inhuman treatment and must aim at the rehabilitation of the convicted person [...]."

3. Italy reported on the advancement of its commitments to the cited 2014 UPR Recommendations during its 2017 Mid-Term Review. Though less detailed, in substance the answers provided were those provided to the Committee of Ministers of the Council of Europe with regard to the execution of the Torreggiani sentence. The report makes mention of a series of legislative reforms aiming at eliminating the conditions of inhuman and degrading treatment within Italy's penitentiaries. The following remarks on the legislative measures mentioned need to be made:

4. Regarding: "*Law No. 103/2017 entitled "Changes to the Criminal Code, the Code of Criminal Procedure, and the Penitentiary Act" which introduces a large number of novelties, inter alia: [...] (f) reform of the Penitentiary Act by delegation entrusted to the Government by decrees aimed, inter alia, at simplifying procedures before the oversight magistrate, facilitating the use of alternative measures, promoting reparative justice further,*" we must note how this delegation was never exercised to its full extent, notwithstanding declarations to the contrary from the then-Minister of Justice Andrea Orlando in Strasbourg on February 20, 2018. Moreover, within Italy, many civil society organizations operational in the sector warned for the danger of not exercising the government delegation on the matter in time, as elections were approaching, but they would receive continuous reassurances from the Ministry of Justice that the reform of the Penitentiary Act was sure to pass. In reality, a combination of delays and lack of political will in view of national elections on March 4, 2018, forced the Gentiloni Government to postpone the exercise of the delegation to the new Government and the new Parliament. The current Conte Government has only partially exercised the powers inherited from the Gentiloni Government, setting aside those that could have had a positive effect on penitentiary overcrowding (alternative measures to prison and other prison benefits).

5. Important impact was indeed achieved by **Law 199 of 2010**, allowing for home detention for prison sentences not exceeding 12 months (Minister of Justice, Angelino Alfano). Subsequently, Law n. 9 of 2012 raised this measure up to 18 months (Minister of Justice, Paola Severino). The latter law is still in force today. As a result of this Law, data from the Ministry of Justice tell us that from its enactment to November 30, 2018, 24.609 detainees left prison, of which 1.709 women and 7.767 foreigners.¹

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6. The other measure that strongly impacted the decrease of the prison population during the triennial was the introduction of the "special early release" measure, raising days of early release for good conduct from 45 to 75 days (Minister of Justice, Anna Maria Cancellieri)². However, this measure was limited in time to December 31, 2015, ending its deflationary effects on that date.

7. In reality, the most important decrease was not an effect of any law but of a sentence by the Constitutional Court. Sentence n. 32 of February 25, 2014, declared the constitutional illegitimacy of Articles 4-bis and 4-vicies of the Law-Decree n. 272 of December 30, 2005, converted with modifications by art. 1, par 1, of Law n. 49 of February 21, 2006 (so-called Fini Giovanardi Law on Narcotics). The aforementioned law, declared unconstitutional, equated light and hard drugs, with minimum and maximum sentences between 6 and 20 years for any type of substance. Following the ruling by the Court, penalties for crimes related to the production, drug dealing and cultivation of light narcotic substances were reduced. Subsequently, on May 29, 2014, sentence n. 42858 of the United Sections of the Court of Cassation ruled on the re-determination of the sentence following a sentence declaring the constitutional illegitimacy of a substantial criminal law different from the incriminating norm. Thousands of detainees, mostly small drug dealers of hashish and marijuana, were released from prison upon the presentation of an executive act, allowing them to have their sentence revised.

8. Overall, after an initial improvement in the first three years immediately following the Torreggiani sentence (2013-2015), the situation has rapidly deteriorated again, mainly due to the lack of stable measures guaranteeing positive effects over time. From March 2016 to today, there has been a worrying upward trend of penitentiary overcrowding due to the inadequacy of the measures adopted to stabilize the number of detainees. On December 31, 2015, the number stood at 52.164 detainees, but in the already in the immediately following months the numbers went up, arriving at 53.495 on March 31, 2016 (+1.331). In fact, during its last periodic visit to Italy in April 2016, the CPT noted how after an initial decline recorded in the previous years, the problem of overcrowding had resumed. This led to its Recommendation to the Italian State to inform the Committee of *"the measures adopted by Italian authorities to curb the growth of the prison population registered from the beginning of 2016"* (Par. 25 CPT/Inf(2017)23).³

9. Even more alarming is what happened in the following months and years to date. Suffice in this regard to observe the trend of the prison population from the Torreggiani ruling to the present day:

Prison population from Torreggiani judgment (January 8, 2013) to November 30, 2018

On 31 December	Detainees	Increase or decrease
2012	65.704	
2013	62.536	-3.168
2014	53.623	-8.913
2015	52.164	-1.459
2016	54.653	2.489
2017	57.608	2.955
2018*	60.002	2.394
*data on 30 November 2018		

² Decreto-legge 23 dicembre 2013, n. 146, coordinato con la legge di conversione 21 febbraio 2014, n. 10

³ <https://rm.coe.int/pdf/16807412c2>

10. Moreover, According to the "Prison plan" presented at the inauguration of the 2013 judicial year, the Minister of Justice affirmed that, by the end of 2016, there should have been 12.024 more places, passing therefore from the 46.888 regulatory places registered on January 31, 2012, to 57.712 at the end of the year 2016. Instead, as of today, according to the data provided by the same Ministry of Justice on November 30, 2018, the regulatory posts are 50.583, that is 7.129 less than those prospected in the "Prison Plan". Moreover, again on the occasion of the inauguration of the 2013 judicial year, the Ministry declared that the number of regulatory posts, taken at that time at 47.599, "undergoes a quite significant decline (quantifiable in about 4.500 regulatory posts) due to the failure to use spaces due to ordinary building maintenance or renovation".⁴ The number of unusable regulatory posts was recently confirmed by the President of the DAP, Francesco Basentini, who, in October 2018, speaking at the conference organized by the Bar Association of Naples, stated that "the actual available spaces", and therefore the actual reception capacity, are 4.600 less than the approximately 50.000 regulatory declared spaces.⁵

11. We can therefore affirm that, as of November 30, 2018, 60.002 detainees were "placed" in 45.983 spaces, with a national average overcrowding rate of 130,4%, and no current legislative measures are underway to counter this trend.

12. Moreover, as the European Court of Human Rights has affirmed in the **Cirillo vs Italy (No. 36276/10)**, "concerning the inhuman and degrading treatment suffered by the applicant in the Foggia prison due to the insufficiency of medical care provided, in particular the lack of regular physiotherapy sessions requested by applicant due to paralysis of his left arm (violation of Article 3)"⁶, there is a direct link between the absence of regular care and the structural problem of prison overcrowding.

13. In this regard, it is important to note that according to SIMPSE data presented on October 5, 2018, two out of three detainees suffer some form mental illness. Moreover, between 30 and 38% of prisoners have the antibodies of the hepatitis C virus, but of these only 70% have the active virus. Between 25 and 30 thousand inmates - one out of three - would need to be treated with new highly active pharmaceuticals against the hepatitis C virus.⁷

14. Suicides in prison have increased significantly over the past two years and are likely to return to the levels of the period preceding the Torreggiani ruling. In 2018, it was extremely painful to note that among those who "died in prison", there were also two very small children: Faith (six months) and Divine (1,5 years), killed by their mother who had just been imprisoned at the Rebibbia Women's Institute, in a clear state of psychiatric alteration.

Year	DEATHS		
	Suicide	Other causes	Total
2018 (*)	63	77	140
2017	52	71	123
2016	45	70	115

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<https://giustizia.it/giustizia/it/contentview.page;jsessionid=XHQOmunWptj2NexDGtaBRFRF?contentId=ART981238&previousPage=contentview#ra1>

⁵ <http://www.radioradicale.it/scheda/555409/cera-una-voltala-riforma-dellordinamento-penitenziario>.

⁶ <http://hudoc.exec.coe.int/ENG?i=004-28290>

⁷ http://www.quotidianosanita.it/scienza-e-farmaci/articolo.php?articolo_id=66353;

https://www.corriere.it/salute/18_ottobre_04/malattie-croniche-7-detenuiti-10-stare-peggio-sono-donne-a2cc71fa-c7f4-11e8-95ee-ea5556d06e7a.shtml

2015	43	80	123
2014	44	88	132
2013	49	104	153
* to 12 December 2018 - Source: Associazione Ristretti Orizzonti ⁸			

15. The European Court on Human Rights has also repeatedly denounced Italy's violation of article 6 of the HR European Convention on the “unreasonable duration of criminal proceedings” - Art. 14, 1c of the ICCPR. This structural issue regards not only criminal proceedings, but also civil ones.

16. A completely underestimated phenomenon is that of the so-called "suspended freedom". This concerns tens of thousands of people sentenced to prison terms of less than 4 years (or 6 if drug addicts) and who have obtained the "suspension" of the execution of sentence by the prosecutor. These people wait years for a ruling from the Surveillance Court which has to decide on whether to entrust them to social services or to send them to prison. There are no overall official data on the total number of individuals concerned, but it is possible to presume a national figure approaching 100.000 people from the news released by the Milan Surveillance Court and the Naples Judicial Offices. In fact, only in the district of Milan there were 10.971 such cases in 2017, awaiting the Court's ruling. In Naples, the President of the Court of Appeal Giuseppe De Carolis, in a speech during the congress of the National Bar Association on Jun2 10, 2016, spoke of 50.000 final criminal sentences to be executed. Among those 50.000 sentences at least 12.000 concerned the so-called "suspended free" according to the Naples Attorney General, Luigi Riello. The Surveillance Magistrates and Offices for External Criminal Execution fail to cope with the amount of claims they should address and the problem of the freely suspended always ends up at the queue of cases to be addressed.

17. What measures are being discussed to avoid the abuse of pre-trial detention?

Art. 14.2 of the ICCPR recites that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”. With regard to the legal position of individuals currently detained, we can state that on November 30, 2018:

- awaiting first sentence = 10.265
- awaiting appeal = 5.020
- under appeal = 3.404
- mixed = 1.262

Total number of detainees awaiting final sentence = 19.951 (**33,2%**)

Total number with final sentence = 39.658 (66%)

Internees (detainees under security measure) = 328 (0,54%)

Undefined = 65 (0,1%)

18. Will Italy consider a reform of art. 41 bis of its Prison Administration Act

Article 41-bis of the Prison Administration Act allows the Minister of Justice or the Minister of the Interior to suspend certain prison regulations. It is used against people imprisoned for particular crimes: Mafia involvement; drug-trafficking; homicide; aggravated robbery and extortion;

kidnapping; importation, buying, possession or cession of huge amounts of drugs; and crimes committed for terrorism or for subversion of the constitutional system. It is suspended only when a prisoner co-operates with the authorities, when a court annuls it, or when a prisoner dies. The Surveillance Court of Rome is the court competent on nationwide level on appeals against the 41-bis decree. Such a special treatment is in breach of article 7 of the ICCPR as it constitutes treatments in violation of human dignity and certainly is not in line with art. 27 of the Italian Constitution.

19. Will Italy finally abolish life imprisonment in its various forms?

Article 27 of the Italian Constitution envisions a justice system dedicated to the rehabilitation of criminals. Keeping life imprisonment, and denying the right to prisoners – those condemned to the so-called “ergastolo ostativo” (life imprisonment without parole) under art. 4 bis Prisons Administration Act - to enjoy some form of limited liberation after some 20-25 years of life in prison goes against the Constitution and is also in breach of a 2013 sentence of the European Court of Human Rights.

20. When will Italy establish a National Independent Human Rights Institution?

In Spring 2013, Parliament finally ratified the Optional Protocol to the UN Convention on Torture (OPCAT), but it did not proceed to establish an independent Human Rights institution along the lines of the Paris principles.

21. Media freedom and access to information

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression - as well as his colleagues at regional bodies -, Parliaments and Inter-Parliamentary Assemblies, as well as inter-governmental bodies have time and time again affirmed the vital function of public service broadcasters for democratic societies, with a fundamental contribution to rendering freedom of opinion, expression and access to information effective rights. Recent Resolutions and Declarations from such bodies have affirmed the importance of such services in the current digital age, as a fundamental tool against disinformation and the phenomenon of so-called fake news.

22. At the same time, to ensure that the aforementioned rights of citizens are guaranteed, guidelines on public service broadcasting funding unanimously state that such funding must be stable over time, guaranteed for a couple of years in advance in order to allow for programming planning and to ensure independence from political interference, and indexed against inflation. It is not necessary that such services are provided by state-owned entities.

23. In Italy, the public service national radio broadcasting of the institutional life of the country (Parliamentary sessions, Parliamentary Committees, Superior Council of Magistrates, most important and significant trials, congresses of all political parties and many socio-economic-cultural organisations) has been performed and guaranteed for over 40 years by private broadcaster Radio Radicale. The service, which started broadcasting Parliamentary sessions before the Parliamentary regulations provided for its publicity, was auto-financed until 1994, when a public tender was organized and won by Radio Radicale. Since then, notwithstanding repeated requests from Radio Radicale itself, which has seen its “Convenzione” renewed through annual extensions (therefore not allowing for the stable funding required to allow for advance planning, nor for indexation against inflation), no new public tender has been issued.

24. In December 2018, the new budget law was approved, cutting the contract with Radio Radicale in half for the year 2019, and effectively eliminating it all-together from 2020 onwards. No alternative to the service offered by Radio Radicale has been announced, nor has a public tender been opened to allow others to offer an alternative to the one offered by Radio Radicale, thereby

effectively reducing citizen's access to the institutions and political debates in the country. Under current circumstances, Radio Radicale is constrained to ending its activities in May 2019, as the contract it has with the Government until then does not allow it to use advertising revenues.

25. How will the Government ensure continued access to the institutional life as offered by the public service of Radio Radicale, if no public tender has been opened? How will it ensure multiple actors can participate in such a tender if the budgetary measures taken in December 2018 will further decrease the number of actors on the Italian media market, further restricting media pluralism in the country?