

SPACE, TIME AND INTERACTIONS IN THE DAILY LIFE OF THE ITALIAN PRISONS

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On the 8th of January 2013, the European Courts for Human Rights condemned Italy for the violation of Art. 3 of the ECHR. The structural conditions of the Italian prisons (overcrowding, high rates of pre-trial prisoners, etc.) represent a case of “State-torture”. How was it possible to come to such a disturbing scenario? How can we situate the ECHR sentence within the last challenges in European society? Which are the connections between these structural ill-treatments and the everyday life in prison? The Antigone Association conducts a prison observatory activity since the end of the 90’s, visiting prisons and collecting a great amount of qualitative and quantitative data. The paper (presented by some of the coordinators of such activity) aims to present a phenomenological description of what observed during the visits. The authors will focus on the evolutions in the organization of spaces, the recurring irrationalities in the use of time, the raising individualism among prisoners and the sense of powerlessness expressed by many prison officers. They will also underline the impact of some important reforms, about health, mentally ill offenders’ treatment and recidivism.

INTRODUCTION.....	1150
I. SPACE. A FOCUS ON STRUCTURAL CONDITIONS OF PRISONS	1152
A. <i>Structural Conditions and Overcrowding</i>	1152
B. <i>The Impact of the Prison Spaces on the Prisoners’ Health Conditions</i>	1154
II. INTERACTION: A FOCUS ON FOREIGN PRISONERS AND PRISON STAFF ..	1156
A. <i>The Italian New Ghetto for Migrants</i>	1156
B. <i>What Changes?</i>	1157
C. <i>A Special Penal Law for Migrants</i>	1160

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III. TIME: A FOCUS ON MENTALLY ILL OFFENDERS.....	1163
A. <i>The Historical Background</i>	1163
CONCLUSION.....	1167

INTRODUCTION

The Italian Constitution states that punishment can't be inhuman and must be oriented to the re-education of the convicted (Art. 27). In order to put into effect that principle, the penitentiary law (law No. 354/1975) has prescribed a new regulation as for the penal execution. The key point of the reform was the individualization of the re-educational treatment of the convicted, for whom it is drawn up a specific program that can be integrated or modified in progress and according to specific needs. The aim of re-education is the reason behind the introduction of alternatives to imprisonment (in particular ordinary and special assignment of offenders to the probation service, home detention and semi-liberty¹).

Despite that, on February 8, 2013, the European Court on Human Rights condemned Italy for inhuman and degrading treatment inside prisons.² Mr. Torreggiani and other six applicants claimed they were subject to the violation of Article 3 of the European Chart on Human Rights while they served their sentences in Busto Arsizio and Piacenza prisons. Each of the applicants alleged that he had shared a nine square metres cell with two other prisoners, giving them three square metres of personal space each³. Moreover, they complained of a lack of hot water and, in some cases, inadequate lighting in the cells.

The Torreggiani sentence is a pilot verdict, because several hundreds of applications against Italy were received from different Italian prisons on similar grounds, confirming the systematic problem of overcrowding in the Italian prison system. After its complaint, the Court has allowed to the Italian government a year to adapt its prison system to the principles of humanity and human rights safeguard, temporarily suspending all the

¹ For a general description of the alteranatives to prison in the specific Italian system, also compared to the other European systems, *see* Luisa Gandini, Sebastiano Zinna, *Italy*, PROBATION IN EUROPE 487-522 (Anton M. van Kalmthout, Ioan Durnescu, ed., Nijmegen, Wolf Legal Publishers 2008).

² Torreggiani et al. vs Italy, <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx#%22fulltext%22:%22torreggiani%22>

³ 4 square metre per person was the standard recommended by the Committee for the Prevention of Torture in terms of living space in cells. The 4 square metre criteria as the minimum living space was already used in a previous case, in which Italy was found guilty of contravening article 3 of the ECHR in prisons on July 16, 2009. Sulejmanovic vs. Italy, <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2802468-3069791#%22itemid%22:%22003-2802468-3069791%22>}.

complaints received in the meantime. In the absence of adaptations, the Italian government will have likely to refund all those people being inhumanely treated.

The Torreggiani sentence is to be considered pivotal, because it finally highlighted the very poor and oppressive conditions of the Italian prison system. In the following pages, we are going to present the daily life conditions inside prisons which run to the pass judgement. In particular, we'll describe the main anomalies of the Italian prison system compared with the general European situation (overcrowding rate, pre-trial detention numbers, foreigner prisoners, temporal open-endedness of penalties). The official data by the Ministry of Justice will be analysed in parallel to the presentation of the results of the Observatory on prison conditions carried out by Antigone Association⁴ coordinated by the authors and achieved through visits to all the Italian prisons and direct observation of the detention conditions. The description of the daily life in prison, in particular, will be done using three sociological dimensions of space, time and interaction.

Many "classics" of the sociology of prison introduced some fundamental theoretical constructs to understand the impact of living in prison on the human being and the interactions among individuals. The prison sub-culture⁵, the prisonization⁶, the stigmatization and infantilization⁷ may still be considered the background for the participant or direct observation of a total institution.

Berger and Luckmann⁸ theorized the predominance of the daily life sphere, among various dimensions of reality. This is particularly and dramatically true inside a total institution, where time and space are structured in a strongly coercive way. Equally, the face to face interaction is preponderant, because of the poverty of social relationship and global interactions which are typical of the contemporary world⁹. Therefore, the

⁴ For a description of the Observatory carried out by Antigone Association and an overview of the data collected, see <http://www.osservatorioantigone.it/new/english>.

⁵ The definition of *prison sub-culture* is given for the first time by GRESHAM SYKES, *THE SOCIETY OF CAPTIVES. A STUDY OF A MAXIMUM SECURITY PRISON* (Princeton, Princeton University Press 1958).

⁶ The concept of *prisonization* is introduced by DONALD CLEMMER, *THE PRISON COMMUNITY* (Boston, The Christopher Publishing House 1941).

⁷ See ERVING GOFFMAN, *ASYLUMS: ESSAYS ON THE SOCIAL SITUATION OF MENTAL PATIENTS AND OTHER INMATES* (Random House, Broadway 1961).

⁸ See PETER BERGER and THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY* (New York, Doubleday 1966).

⁹ The transformations of the social interaction related to the process of globalization have been highlighted in particular by ZYGMUNT BAUMAN, *GLOBALIZATION: THE HUMAN CONSEQUENCES* (Oxford, Polity Press-Blackwell Publishers 1998).

attention is put especially on the temporal, spatial and relational dimensions of life in prison.

I. SPACE. A FOCUS ON STRUCTURAL CONDITIONS OF PRISONS

A. *Structural Conditions and Overcrowding*

The first data we have to take into consideration is the total number of prisoners in Italy, compared to the total capacity of penal institutions. The total detained people on February 28, 2014, according to the official data by the Ministry of Justice, were 60.828, whereas the total capacity of penal institutions was 47.857¹⁰. The overcrowding rate, therefore, was 127%. According to the last European survey, as for the overcrowding rate, Italy was at the third place within all the European countries, only after Serbia and Greece¹¹.

Talking of spaces, the first consideration, therefore, concerns the existing gap between the above-mentioned official capacity of penal institutions, on the one hand, and the *de facto* available places, on the other hand. During many visits to prisons realised within the Observatory on prison conditions carried out by Antigone Association, indeed, we could certify that often the official total capacity is in fact reduced by the more or less temporary unavailability of some branches or cells. Such situation has been determined mainly by a progressive reduction of those financial sums addressed to the facilities maintenance. As a consequence, in the case of structural problems (concerning heating, water losses, electricity dysfunctions, dangerous cracks in the walls, etc.), the solution adopted by the Prison Administration is more and more the closure of the faulty branch and the consequent movement of prisoners towards other sections of the prison. In this way, a general worsening of the living conditions occurs. The phenomenon is so much widespread that we could estimate the reduction of the available places in about 10.000 units less than those officially recorded. Moreover, such situation has been officially acknowledged by the former Ministry of Justice, Anna Maria Cancellieri, during the conference “Prisons, immigration, human rights in the European constitutional framework”, organised by the University Roma Tre, Antigone Association and Progetto Diritti on October 15, 2013¹².

¹⁰ Source: Ministry of Justice. www.giustizia.it.

¹¹ See Space I, available at http://www3.unil.ch/wpmu/space/files/2013/05/SPACE-1_2011_English.pdf, at 58.

¹² See http://www.corriere.it/cronache/13_ottobre_17/carceri-cancellieri-posti-letto-sono-meno-problema-sottovalutato-30-anni-9b581c92-370f-11e3-ab57-6b6fcd48eb87.shtml.

Furthermore, if we analyse the data about the pre-trial detainees, we come across one of the most serious anomaly of the Italian situation in the European framework, in a legal *Garantismo* perspective¹³. On February 28, 2014, the pre-trial detainees were 22.240, which is the 36.56% of the total prison population. Also in this case, the comparison with the European framework is particularly unhappy: against a European mean of 28.1%, the Italian percentage of pre-trial detainees have been moving from 35% to 40% in the last years¹⁴.

But which are the consequences of those numbers on the daily life in prison? A first general picture is given by the voice of a prisoner:

Life inside cells is hard: we are in three and we do not have the space to walk, in the morning I have to lie in my bed because there is no space, to go to the toilet I have to wait an hour because we are three people in the cell. It's worst than death, we came back to the Holocaust era. Please, help us for our rights, we are not animals. (prisoner)

More in general, a criterion to evaluate the prison spaces is given by the gap between what the law prescribes¹⁵ and the observed situation, according to a law in the books—law in action perspective¹⁶. To this end, just to make some examples, we can notice the following gaps:

1. The law imposes one person or two person cells, while one person cells may host up to three people and in some prisons there are dormitories;
2. The law imposes a separate bathroom with a shower in the cell, but very rarely we have found it. In some prisons, there is no running water in the cells during the summer and hot water is not always available;
3. The law imposes a certain amount of natural light, while in some prisons artificial light is always on because the meshes on the granting at the windows are very narrow. In some jails, there are unheated sections and air conditioning is nowhere.

A factor affecting significantly the quality of life in prison is the age of the facilities. The Italian prisons may be divided in two main categories: the old facilities (ancient monasteries or similar, then converted in prisons) and

¹³ The term “*garantismo*” does not translate into English smoothly. It does not refer to a mere legalism or formalism, whereas it refers to those core values whose protection justify the existence of the State. For an accurate description of the theory, see LUIGI FERRAJOLI, *DIRITTO E RAGIONE: TEORIA DEL GARANTISMO PENALE* (Bari, Laterza 1990).

¹⁴ See Space I, at 91.

¹⁵ See the Penitentiary Law (*Penitentiary Act* n 354 dated July 17, 1975) and the Rules of Execution (Decree n 230 dated June 30, 2000).

¹⁶ For a general description of the law in the books-law in action perspective, associated with the legal realism movement, see Roscoe Pound, *Law in the Books and Law in the Action*, No. 44 *AMERICAN LAW REVIEW* 12-36 (1910).

more recent buildings. The older ones present typically many problems related for example to cracks in the walls, mould in the showers and toilets, old and dirty beds and mattresses, etc. The more recent facilities, on the other hand, may have less structural problems¹⁷, but often involve a higher level of de-humanization, depersonalization and lack of interpersonal communication. From this point of view, the Italian situation is rather similar to the European one. Hancock and Jewkes describe the spaces of the prison modernity in the following terms:

Vast expanses of brick, few (small) windows and no unnecessary ornamentation or decoration are the typical hallmarks of prison exteriors built in the last 20 years. Inside, however, the restrictions of cellular confinement remain unchanged, as many prisoners are accommodated in cells which, while able to hold two single beds, are no bigger than cells with sole occupancy¹⁸.

The authors, in particular, present the potential mistake in assuming that “modern” means “better”. If it is undeniable that an environment which is structurally clean and functional is preferable by all those who live or work inside a prison, the compensation to pay often concerns a higher amount of control and poverty of human relationships. Such situation contributes to increase the punitive dimension of the prison.

B. The Impact of the Prison Spaces on the Prisoners' Health Conditions

The healthcare issues are one of the most relevant (and often problematic) matters during detention. They affect, directly or indirectly, many aspects of the daily life in prison and they are closely related to the human rights safeguard.¹⁹ That is why the European Prison Rules (Recommendation Rec 2006-2) pay a great attention to the safeguard of health in prison.

As is common knowledge, the World Health Organisation defines health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. What we observe about the everyday life in prison is very different. If we consider, for example, the time spent inside or outside the cells, we notice that often a prisoner spend

¹⁷ Even though this is not the case as for the prisons built during the Eighties of the twentieth-century, the age of the so-called “*carceri d'oro*” (*golden prisons*), because of the abusive urban speculation that has been associated to the building of a great number of prisons in those years.

¹⁸ Philip Hancock, Yvonne Jewkes, *Architectures of Incarceration: The Spatial Pains of Imprisonment*, 13 No.5 PUNISHMENT & SOCIETY 617, 611-629 (2011).

¹⁹ See J. M. Mann, L. Gostin, S. Gruskin, T. Brennan, Z. Lazzarini, H. Fineberg, *Health and Human Rights*, No. 1 HEALTH AND HUMAN RIGHTS 6-23 (1994).

22 hours per day inside the cell (especially in the so-called “case circondariali”, that is to say those housing the pre-trial or short sentenced detainees). Moreover, in many cases there is a lack of activities outside the cells (i.e. work, education, cultural and training activities, sport, etc.). As for the out-of-cell time, often it is spent in very tight courtyard, above all in the case of solitary confined people or special regimen “41 bis” (defined highly dangerous people). Those prisoners have commonly no opportunity of doing activities outside the cells.

Recent researches highlighted that the structural conditions of the overcrowded spaces impact on many aspects of the personal well-being.²⁰ Indeed, overcrowding influences the quality, quantity and variety of food consumed and often prevents from performing a suitable physical activity in appropriate areas. Moreover, the structural conditions also impact on the health risk factors: transmission of infectious diseases, lack of hygiene, etc. In such situation, the continuity in the relationship doctor/inmate is seriously compromised, as for the access to visits or check-ups. Furthermore, healthcare education and prevention programs are sporadic, both for the prisoners and the prison staff. Privacy is another delicate issue: If commonly the security needs predominate on the care needs inside prison²¹, this is particularly true in a situation of overcrowding and unsuitable facilities.

The relationship of many healthcare matters and the structural conditions are confirmed by the prisoners’ viewpoint:

If you get sick in prison, that’s a real risk!

I believe that if they do not find first of all a solution for overcrowding problems, they will not be able to solve any other issue, being it related to sanitation or health.

We are treated like dirt, we don’t have enough space, we don’t have a gym, we don’t have heating, toilet facilities are terrible, showers are always dirt, and water is often cold. Our situation is critical, but we do not have the means to complain our situation. Cells are overcrowded, do something please.

Prisons cause mental and psychiatric disorders before causing viral and infectious diseases; without new training and job reinsertion, several chronic diseases appear, and these are the disorders that we will suffer from for the rest of our lives. (prisoners)

Unfortunately, it is commonly not easy to define if the denial/delay of

²⁰ See Daniela Ronco, *Health Perception in Prison*, ALL OUTS ALL IN FREE 55-124 (National Institute for Health, Migration and Poverty ed., Rome, Inmp 2013).

²¹ As for the controversial dual loyalty, towards security and care, see Jorg Pont, *Dual Loyalty in Prison Health Care*, 102 No.3 AMERICAN JOURNAL OF PUBLIC HEALTH 475-480 (2012).

treatment, medical care or diagnosis is caused by gross incompetence or intentional wrongdoing because the line between the two is often indistinct²².

From a legal point of view, the remarkable prison health reform, entered into force with the Prime Ministerial Decree April 1, 2008 and transferring the responsibility from the Ministry of Justice to the Ministry of Health, has answered to various international pressures. The World Health Organisation strongly recommend that closer links be made between prison and public healthcare²³. The common objective is to make prison health services as similar as possible to the external ones, following the Article 40.3 of the European Prison Rules (“Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation”) and reaffirmed by Health 2020 program²⁴.

Unfortunately, as a matter of fact, the prisoners’ health safeguard is still far away from being as similar as possible than outside. Organisational problems and widespread cultural resistances (both from prison and medical staff) contribute to make difficult the fulfilment of the principles underlying the reform.

Moreover, the reform came into force together with the main impact of the still ongoing economic crisis, even if, because of limited resources, meeting the healthcare needs of all the prisoners has always been problematic. But we have to stress that this is a specific violation of prisoners’ human rights, according to the Article 4 of the European Prison Rules (“Prison conditions that infringe prisoners’ human rights are not justified by lack of resources”).

II. INTERACTION: A FOCUS ON FOREIGN PRISONERS AND PRISON STAFF

A. *The Italian New Ghetto for Migrants*

The data collected by the Council of Europe (Table 1) show how Italy is the country with the largest number of immigrant detainees in Europe. Among the countries of the European Union, the percentage of foreigners in

²² See Michael S. Vaughn, *Penal Harm Medicine: State Tort Remedies for Delaying and Denying Health Care to Prisoners*, No. 31 CRIME LAW AND SOCIAL CHANGE 273-302 (1999).

²³ See Paul Hayton, Alex Gatherer and Andrew Fraser, *Patient or Prisoner: Does It Matter Which Government Ministry is Responsible for the Health of Prisoners?* World Health Organisation, Copenhagen (2010), available at http://www.euro.who.int/__data/assets/pdf_file/0014/126410/e94423.pdf.

²⁴ See Ilona Kickbusch and Thorsten Behrendt, *Implementing a Health 2020 Vision: Governance for Health in the 21st Century. Making it Happen*, World Health Organisation (2013), available at http://www.euro.who.int/__data/assets/pdf_file/0018/215820/Implementing-a-Health-2020-Vision-Governance-for-Health-in-the-21st-Century-Eng.pdf.

the total prison population is among the highest in Italy, remaining below Greek and Austria only.

Table 1 Foreign prisoners on September 1, 2011

Country	Number of foreign prisoners	% of foreign prisoners in the total number of prisoners
Austria	4,027	45.09
Denmark	838	21.2
France	12,452	17.2
Germany	19,253	27.1
Greece	7,887	63.2
Italy	24,155	36
Netherlands	2,410	20.8
Norway	3,535	30.5
Poland	550	0.7
Portugal	2,548	20.01
Spain	20,592	33.6
England and Wales	10,779	12.6

Reference: Council of Europe, SPACE I 2011.

The increase in the number of foreign prisoners in the Italian penal institutions started from the early 90's, following a structural change that saw Italy passing from a country of emigration to a country of immigration. In particular, from those years, also thanks to its geographical location, Italy became the destination of a large number of immigrants from Eastern Europe and the south of the world. The impact of this turning point largely affected the penitentiary system.

The data shown in Table 2 reveal how percentage of foreign detainees in a few years shifted from 15% (in early 90's) to more than 30% (in 2002) and reached 37% (in 2007).

B. What Changes?

The progressive increase in the number of foreign detainees has been followed by a debate inside the country on its reasons. Within the political field and media, for a long time has prevailed the argument that immigrants, due to their social status, cultural reasons or alleged inclination to crime, would be perpetrators with greater frequency compared to the Italian citizens.

This view was also endorsed by some criminologists²⁵, who tried to

²⁵ See for example M. BARBAGLI, IMMIGRAZIONE E CRIMINALITÀ IN ITALIA (II Mulino, Bologna 1998) and M. BARBAGLI, IMMIGRAZIONE E REATI IN ITALIA (II Mulino, Bologna 2002).

develop their arguments using statistics. These researches have been criticized on both the methodological²⁶ and interpretative level²⁷.

Table 2 Foreign prisoners in Italy 1991-2012

Year	Foreign prisoners	% of foreign prisoners in the total number of prisoners
1991	5.365	15.13%
1992	7.237	15.30%
1993	7.892	15.67%
1994	8.481	16.58%
1995	8.334	17.77%
1996	9.373	19.65%
1997	10.825	22.32%
1998	11.973	25.04%
1999	14.057	27.13%
2000	15.582	29.31%
2001	16.294	29.48%
2002	16.788	30.16%
2003	17.007	31.36%
2004	17.819	31.78%
2005	19.836	33.32%
2006	13.152	33.72%
2007	18.252	37.48%
2008	21.562	37.09%
2009	24.067	37.15%
2010	24.954	36.72%
2011	24.174	36.14%
2012	23.492	35.75%

Reference: Italian Prison Administration.

On the contrary, several other analysis tried to consider the increasing of the migrant population detainee within those processes of criminalization of the underclass which characterized criminal policies of the Western world over the past 30 years²⁸.

²⁶ See for example V. FERRARIS, *IMMIGRAZIONE E CRIMINALITÀ* (Carocci Editore, Roma 2012) and D. Melossi, *I soliti noti*, No. 3 *ETNOGRAFIA E RICERCA QUALITATIVA* 449-458 (2010).

²⁷ From this point of view see A. Dal Lago, *Ma quando mai? Alcune considerazioni sulla sociologia embedded in Italia*, No. 1 *ETNOGRAFIA E RICERCA QUALITATIVA* 109-118 (2010) and A. SBRACCIA, *MIGRANTI TRA MOBILITÀ E CARCERE. STORIE DI VITA E PROCESSI DI CRIMINALIZZAZIONE* (Franco Angeli Editore, Milano 2007).

²⁸ We have a wide literature on the subject. Here we mention the classic studies of M. Feely and J. Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and its Implications*, No. 30 *CRIMINOLOGY* 449-474 (1992). J. SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* (Oxford University Press 2007). L. WACQUANT, *THE PLACE OF THE PRISON IN THE NEW GOVERNMENT OF POVERTY, IN AFTER THE WAR ON CRIME* (New York University Press 2008).

Following the latter interpretation, the image of the migrant in Italy in these years has gone through a process of degradation and dehumanization²⁹ over several plans: media, political, communicative and, finally, the legislative one.

This process of criminalization was implemented in the legislative plan after the approval of a very restrictive regulatory regime of immigration, besides other criminal offences such as the crime of illegal immigration, specifically addressed to migrant populations. Some authors defined these policies as “democratic racism”³⁰.

Within prison, the variation in the composition of the population has produced many consequences. From a relational point of view, researches implemented up to date revealed how in the last years a profound crisis occurred within the prison community³¹. It regarded both relations between Italian and new foreign prisoners, with a redefinition of rules of cohabitation within sections and relations between prison staff and detainees.

In particular, under this second perspective has been underlined that the increasing number of foreign detainees produced a profound crisis of the penitentiary model in force since the reform of the Penitentiary Act of 1975. The latter pursued the explicit aim of implementing Art. 27 of the Italian Constitution, states the rehabilitation role of punishment.³²

How do this objective of the law reconcile with the legal position of the migrant? How do prison workers have changed their routine practices? Our observation has sought to address these questions by investigating the changes in collective agency of prison workers in jail with a high population of foreign detainees.

In this paragraph are shown prevailing bias, in the light of what has been observed in our monitoring. These tendencies are not entirely generalizable because there are exceptions. However, we found practices of action that appear sufficiently established in several Italian institutions that exemplify structural change of action for operators and detained.

²⁹ In Italy this process has been studied by A. DAL LAGO, *NON-PERSONE. L'ESCLUSIONE DEI MIGRANTI IN UNA SOCIETÀ GLOBALE* (Feltrinelli Editore, Milano 1999).

³⁰ See RAZZISMO DEMOCRATICO (S. Palidda eds., Agenzia X, Milano 2009).

³¹ We report some of the few Italian ethnographic studies in prison: D. Ronco, *Spazio, tempo e relazioni nella quotidianità detentiva in Piemonte*, No. 1 ANTIGONE 28-36 (2012). A. Sbraccia, *Schegge etnografiche dai penitenziari dell'Emilia-Romagna*, No. 1 ANTIGONE 48-58 (2012). F. Vianello, *In carcere nel Triveneto*, No. 1 ANTIGONE 37-47 (2012).

³² For the implementation of Italian Penitentiary Act, see C. Sarzotti, *Il campo giuridico del penitenziario: appunti per una ricostruzione*, DIRITTO COME QUESTIONE SOCIALE (F. Belvisi, A. Facchi, T. Pitch, E. Santoro, C. Sarzotti ed., Giappichelli Editore, Torino 2010).

C. *A Special Penal Law for Migrants*

Italian penitentiary system provides detainees possibilities to access to several measures alternative to detention. Some of them can be applied soon after the sentence, according to a scheme similar to the Anglo-Saxon Probation. Others may be granted after a period of observation in prison, as a measure of rewards similar to the institution of Parole. In view of the numerous possibilities offered by the law, in fact in Italy the number of convicts who succeed in obtaining an alternative measure is quite low. In front of more than 60,000 detainees, in fact, the number of convicts admitted to an alternative measure is around 20,000 units.

Foreigners, for a long time, have been effectively excluded from such benefits (Table 3). The data presented show that, until 2008, the number of non-Italians admitted to alternatives to prison was less than 1,000 units. Only starting from 2010, with the introduction of a new version of Home Detention aimed at tackling the serious problems of overcrowding in Italian prisons, this figure improved. In 2012 then, almost one in four people admitted to alternative forms of punishment was not Italian.

In spite of this increase, the share of foreign access to an alternative measure remains much lower than the total of detained foreigners. We should ask therefore what reasons explains the poor implementation of alternative measures towards migrants.

Table 3 Foreigners admitted to an alternative to detention 2006-2012

Year	Total number of foreigners admitted to an alternative to detention	% on the total amount of alternatives applied
2006	358	6.03%
2007	618	8.61%
2008	1.069	10.46%
2009	1.521	11.34%
2010	2.120	11.5%
2011	3.509	17.27%
2012	5.462	22.65%

Reference: Italian Prison Administration.

In fact, the Italian penal law does not exclude foreigners from the benefits provided to all prisoners. Indeed, judgments of the Italian Supreme Court confirmed the right of foreigners to have access to alternative forms of punishment.

The reason for this lack of admission to the benefits must rather be found in a vicious circle that includes three steps: the Italian legislation on immigration; the case law of courts and the consequent practices within prisons.

The Italian law on immigration provides that the offender cannot subsequently obtain a residence permit or its renewal.

This determines that any foreign person convicted, once the sentence is served, is destined to expulsion. This provision of law has resulted, in the practice of the courts and prison practices, identifying foreigners of non-EU countries as unreliable subjects.

Inside courts, such unreliability is considered both during preliminary investigations and following the conviction. During the investigations, the stranger is frequently referred to the precautionary measure of imprisonment while, after the conviction, measures alternatives to detention rarely are granted.

In both cases, the prison is justified as a means to prevent the escape of the offender. The fear of escape depends on the fact that the migrant will be subject to an expulsion order. Then, if not under the control of the prison, the migrant will want to flee to avoid expulsion. In addition, the main features related to the illegal status (absence of a certain residence, no demonstrable jobs, nor relations with subjects well integrated in the society) contribute to producing a negative prognosis on the future behavior of the offender. The same considerations lead then to consider the stranger as a subject at high risk of recidivism.

For their part, practices in prison have adapted to this process of exclusion. Prison workers (educators, social workers, psychologists) must in fact produce opinions on the merits that a detainee accesses to an alternative measure. With regard to the foreign prisoner, those opinions are generally negative.

Reasons adopted by prison workers for such a negative opinion reproduce faithfully those reasons adopted by the judiciary, that is: the existence of an expulsion; the absence of a reliable domicile, a demonstrable job and other solid external references.

During the interviews conducted as part of the observatory on detention conditions, prison workers adopted a strategy of irresponsibility, and they usually say: "the law that provides the expulsion: We cannot do anything".

In fact, during the observatory has been possible to observe how the exclusion of foreigners from alternative measures for operators plays an effective function in the organization of work. The overcrowding in Italian prisons in fact determines, among other things, an excess of work for prison workers, who are overworked because of many practices that must be implemented for the convicted.

In connection with the admission to the alternative measure, for

example, prison workers must put in place a number of activities such as interviews, observations and meetings, in order to verify the suitability of the subject to the alternative measure. From this point of view, the exclusion of the category “foreign migrants” from the possibility to access to alternative measures has an effective function for reducing workloads. In a large number of institutions, which has been observed that, in front of those doomed to expulsion, operators do not even start the procedures necessary for the assessment of the person, taking for granted the lack of access to such measures.

From the perspective of the socio-legal analysis of penal institutions is therefore possible to detect a significant use of membership categorization³³ as tools to organize work. Researches conducted within courts³⁴ allowed us to detect how the production of typical categories of authors and events allows court workers to organize and better manage their workloads, as well as make their own decisions accountable.

At the same time, these studies have shown that membership categorization transcends from a deep knowledge of the facts and of individuals, whereas are based on reasoning of common sense, or mundane reason³⁵ that allows to classify individual cases within categories and find solution for similar situations semi-automatically.

The creation of the category “foreign detained without residence permit” within the Italian penitentiary seems to work exactly in this way.

On the one hand, the construction of the category has allowed operators to identify a universe of unreliable subjects for which there is no sense wasting too much time, since in any case they would not access to any alternative measure. Moreover, the decision of the operators appears perfectly accountable, as they can claim the risk of recidivism and the fear of escape of the offender, in accordance with what is stated by the judges.

On the other hand, the social construction of this category led to a bureaucratization in the relations between workers and foreign prisoners, who eventually ceased to even apply for benefits that were not granted. More generally, these practices contributed to removing any hope to migrant

³³ As known the concept has been developed by H. Sacks, *On the Analyzability of Stories by Children*, ETHNOMETHODOLOGY: SELECTED READINGS (R. Turner eds., Harmondsworth, Penguin 1974). H. GARFINKEL, *STUDIES IN ETHNOMETHODOLOGY* (Englewood Cliffs, NJ, Prentice-Hall 1967).

³⁴ See A. S. Blumberg, *The Practice of Law as Confidence Game: Organizational Cooptation of a Profession*, No. 1 LAW AND SOCIETY REVIEW 15-39 (1967). D. N. Sudnow, *Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*, No. 12 SOCIAL PROBLEMS 255-276 (1965).

³⁵ See M. POLLNER, *MUNDANE REASON: REALITY IN EVERYDAY AND SOCIOLOGICAL DISCOURSE* (Cambridge University Press 1987).

detainees, who saw imprisonment as the end of any possibility of integration in the Italian territory. This loss of hope has been one of the factors that have accompanied the criminalization of migrants that has been one of the hallmarks of the criminal policies in Italy for a long time.

III. TIME: A FOCUS ON MENTALLY ILL OFFENDERS

A. *The Historical Background*

“Hours in prison are not only long lasting, but they are always the same”³⁶.

This is a common thought within inmates from every latitude. Since the Age of Enlightenment indeed the influence of Time in punishment became a core question, a newborn correlation between the length of the punishment and the seriousness of the crime committed helped to overtake the Foucault’s concept of *suplice*³⁷.

In this sense, a very interesting case study that helps to better understand the relationship between time and punishment in the Italian prison system is the treatment reserved for Mentally III Offenders and, particularly, the analysis of the debate about the institutions of punishment and rehabilitation for these people, what the Italian criminal code calls *Ospedali Psichiatrici Giudiziari* (the Italian name for High Security Hospitals or Criminal Asylums or Forensic Psychiatric Hospitals). In the next few pages, we discover how a “local” question could become “global”.

In Italy, Forensic Psychiatric Hospitals were established around 1890 as wards of civil psychiatric hospitals. In 1925, the five facilities in Aversa, Napoli Sant’Eframo, Reggio Emilia, Montelupo Fiorentino and Barcellona Pozzo di Gotto were set-up; the sixth FPH is located in Castiglione delle Stiviere and also hosts the only women’s ward.

As we know, the fundamental neo-classical principle of criminal justice is that the seriousness of the crime has to be proportional to the length of the sentence. Thus, for our society time is the main parameter of fair punishment and helps to define the punishment itself.

The Italian Criminal Code of 1930 defined their legal basis with the so-called dual track system: besides the punishments for indictable offenders, security measures were also adopted against non-indictable offenders, that is to say those who were non-compos mentis at the moment of perpetrating the

³⁶ Interview by the author to A.M., young italian inmate, during his probation.

³⁷ *Suplice* is the original french lemma used by MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (first english version, New York, Random House 1975).

offence, but socially dangerous.

Indeed the legislator since 1930 responded to crime in two ways: on the one side, there is the “punishment” based on somebody’s “individual responsibility” and “personal guilt”. It has a controversial goal, set by the Constitution (Art. 27): the Rehabilitation of a condemned person. On the other side we find the safety measures based on incapability and social dangerousness and with a latent goal: the incapacitation of a dangerous class of individuals so as to preserve social security.

The categories of incapacity are directly established by the criminal code, such as minor under 14 years old, the chronic alcoholic, the deaf and the mentally ill, if those characteristics have been the cause of the crime.

Until 2003, these subjects (known as not guilty by reason of insanity) had to be hospitalised in FPHs; the judgement No. 253/2003 of the Constitutional Court introduced the possibility of imposing measure complying with treatment needs, including probation in a health care facility or within a community.

Their FPHs’ “being in-between”, a little bit hospitals and a little bit prisons, caused inefficiencies and deferments of liability.

Annex C of the Decree of the President of the Council of Ministers dated April 1, 2008 set out for FPHs as well as the transfer of competences to LHUs, while establishing at the same time their shutdown on March 31, 2013: The nearly 1,100 internees had to go back to their territories of origin.

Some regions launched the procedures to reorganise the services and identify suitable facilities for the new health units (maximum 20 people each, differentiated according to their degree severity); however, the conditions for the real overcoming of FPHs could not be created, and their closure is continually postponed³⁸. The different Institutions (Prison Administration, Regional Governments, LHUs, Mental Health Departments) are called to dialogue, strengthening the network of intermediate territorial services: Without an overall view, and an attention to the entire cycle of care of psychiatric patients perpetrating crimes, without a constructive dialogue between health operators and justice operators, there is the concrete risk of multiplying the negative effects of FPHs and inexorably depart from a constitutionally-oriented perspective of security measures.

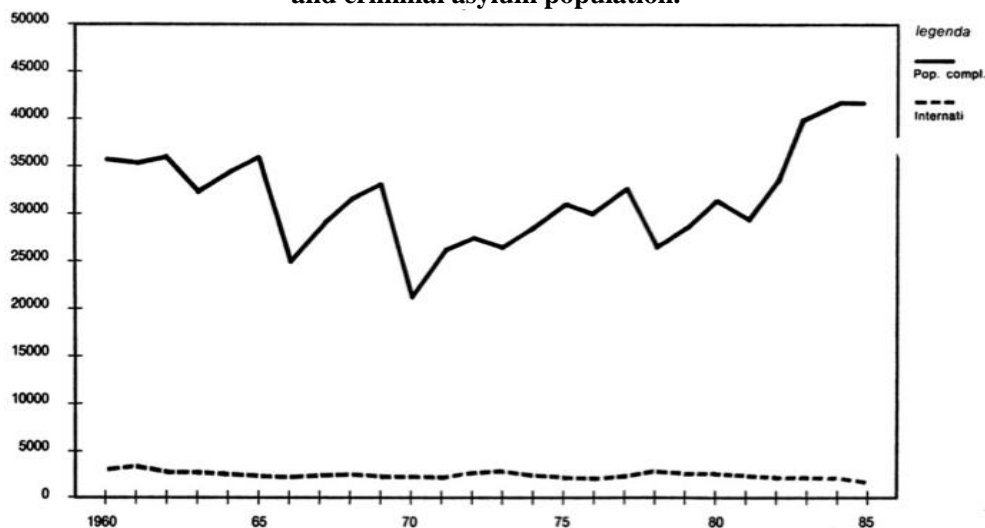
In order to understand the phenomenon also from a quantitative point of view, the latest data estimate 1,090 inmates into five criminal asylums and 1,050 employees (50% of them with security functions).

The historical comparison between prison population and criminal

³⁸ On the April 1, 2014, the Italian Government postponed again the FPHs closure until April 2015.

asylum population is also very fascinating. The general prison population is a rough line, always increasing, the criminal asylum population is nearly flat, this probably underlines the incapacitation function of high security hospitals.

Table 4 Historical comparison (1960-1985) between common prison population and criminal asylum population.³⁹



Safety Measures, a Socio-Legal Problem⁴⁰.

The main problems concerning the safety measures are:

(a) The definition of the criteria to decide if a person is “socially dangerous” or not. We didn’t know those criteria in 1930, we do not know them today; indeed the Italian criminal code stipulates that the judge must decide about dangerousness using the same parameters he would use to determine the sentence for those who are taken to be capable (Art. 133 criminal code): a sort of legal paradox.

(b) Another problematic characteristic of the safety measures concerns their length. On passing the verdict of “not guilty by reason of insanity” a judge orders the admission to a criminal asylum. The law lays down the minimum duration for this measure, but not its maximum, which has to be determined every six months, by a psychiatrist.

So the Dual Tracks System, from a legal point of view, is a critical choice, but still a choice. Let assume that it could work.

But after 80 years and some limited reforms, we are bound to admit

³⁹ Reference, Italian Prison Administration.

⁴⁰ For a general worldwide overview about Mentally III Offenders, see PERLIN L. MICHEL, A PRESCRIPTION FOR DIGNITY (England, Ashgate 2013).

that Italy is deluding itself, above all if we look at the “law in the facts”: The Dual Tracks System slowly became an empty box.

Safety measures and in particular criminal asylums simply became the “flip side” of punishment or actually a punishment without time limits. What are the official answers?

In 2011, after a few decades of silence, the Healthcare Parliament Commission inspected the five Italian criminal asylums, and this was the result: “torture”, “pharmacological and physical abuse”, “violence”, “lack of specialized workers”, “overcrowding” are some of the recurrent words in the final report.

After a strong debate, a new general reform was passed, but it has to be implemented.

Basically the Italian legislator, without changing the criminal code, and following his moralistic pathos, is going to shut down the five hospitals, but he gave money (around 180 million Euro) to the regions to build new structures, modern, smaller, better organized, with a new name, but still total institutions. In a couple of years we will have not five, but at least 20 high-security hospitals, plus a few sections of normal prisons, set aside for mentally disordered inmates.

The reader can remark that it is not unusual; after all, in most countries there are asylums to neutralize the mentally ill.

But Italy has been the Franco Basaglia’s⁴¹ country, the founder of the anti-psychiatric movement, pioneer of the modern concept of mental health and principal proponent of Law 180/1978 which abolished civilian mental hospitals. Italy is considered as a progressive country.

It’s time to ask ourselves where have our abolishment pathos gone lost.

The Italian system seems to adopt two strategies, which should encourage the criminological debate.

1. The humanization⁴² of punishment, in order to ensure the respect of all inmates’ basic human rights, even in the case of mentally ill offenders. Well, is humanization a goal, or a principle of a modern system?

2. The medicalization of the safety measures. The mentally ill offender has been somewhere between justice and medicine, both displayed their dark side. Nowadays, justice admitted its inadequacy and it cares only about

⁴¹ For a description of Franco Basaglia’s theory (1924-1980), see DONNELLY, MICHAEL, *THE POLITICS OF MENTAL HEALTH IN ITALY* 65 (London, Routledge 1992). Russo G., Carelli F., *Dismantling Asylums: The Italian Job* (May 2009). LONDON JOURNAL OF PRIMARY CARE, *Gijswijt-Hofstra, Marijke; Oosterhuis, Harry; Vijselaar, Joost (editors) (2005). PSYCHIATRIC CULTURES COMPARED: PSYCHIATRY AND MENTAL HEALTH CARE IN THE TWENTIETH CENTURY: COMPARISONS AND APPROACHES* 213 (Amsterdam, Amsterdam University Press).

⁴² See part 1 of this essay.

social control.

Medicine, losing the Basaglia's teaching, forgetting the therapeutic mission and hiding itself behind practical excuses (i.e. example the lack of funds) approves the new total institutions.

A forensic psychiatrist during an interview for the Antigone Prison Observatory notes "When any branch of knowledge is not able to answer to a problem, the answer is up to the community".

So the question is what kind of policy the global community (and not only the Italian one) is pursuing.

CONCLUSION

Through this article we tried to provide an overview of the Italian prison system and to understand the reasons that led the ECHR to condemn Italy for infringement of Art. 3 of the European Convention on Human Rights.

Just during the writing of this essay Italy approved new legislative measures with the aim of reaching the deadline imposed by the Court and decreasing the number of detainees,⁴³ thus to avoid penalties provided. Those actions should be considered then as emergency measures, taken with the anxiety of the approaching deadline.

The same emergency response that was taken in the last 20 years to justify interventions on criminal law against various alleged dangers, now is used to repair damages caused by penal populism.

What is still lacking in Italy is a reflection on the role played by criminal law over the past 20 years of crime policies. During this time frame, far from addressing effectively the serious crime issues that afflict the country, crime law has been used as an effective tool for mass incarceration of the underclass.

In fact, thanks to norms approved by the Italian Parliament, which made prosecution of such crimes more difficult, on the one hand, more and more difficulties were encountered in fighting issues associated with political corruption and white-collar crime; on the other hand, the criminal law has functioned effectively as a tool of repression of the behaviors of those who have been identified as new dangerous classes.

Prison, for his part, reflects the impact of these policies. Today, the composition of the prison population in Italy is represented in three main

⁴³ In particular we refer to the law No. 1 of the February 21, 2014 that provide, amongst other measures, a reduction of sentence of 75 days every 6 months for the detainees behaved correctly in prison.

categories: migrants; drug addicts; and subjects suffering from relational and mental distress. Those categories—to which certainly belong people with problems in need of intervention by the State—have been subject to a process of criminalization whose impact is widely visible visiting the Italian prisons.

The observatory on detention conditions of Antigone association is committed to depict such a scenario. Reform momentum in the Italian society and in European legal culture will be responsible for taking action for a change of course in the criminal policies and for the role of the state in society.