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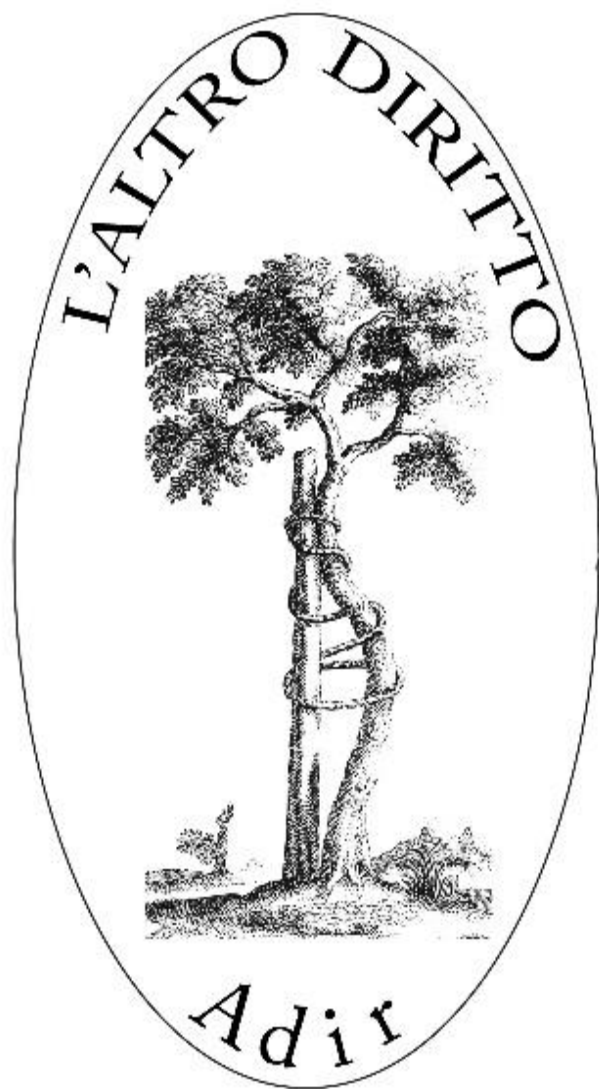
STRUCTURAL
PROBLEMS IN PRISONS:
Prospects for European
Intervention

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The Italian example,
or the limit of the procedural
approach to problem solving

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The Committee of Ministers, closing the examination of two cases against Italy (Sulemanovic and Torregiani), justification:

- **“Having noted the other measures adopted in order to improve the material conditions of detention and expressing its confidence that the Italian authorities will continue their efforts in order to ensure conditions of detention in conformity with the requirements of the Convention and the standards of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment”.**

First section

- **Overcrowding data and failure of the “alternative measures solution”**

Overcrowding figures

- **31 October 2024: 62,110 prisoners in Italy**
- **In 2013, at the time of the Torreggiani ruling, they were around 65,000**
- **Theoretically, the regular capacity of Italian prisons is 51,196, while in fact there are 4,445 unavailable places due to prison sections closed because they are unfit for use.**

Failure of compensatory remedy

- In 23 of the 73 prisons visited by Antigone in the last year, cells were found that did not respect the minimum parameter of 3 square meters per person in multi-prisoners cell.
- The Italian Surveillance Courts are constantly recognizing both overcrowding and bad prison condition in violation of Art. 3: in 2023, out of 9,574 complaints 35 ter O.p. (compensatory remedy) to obtain a sentence discount, 8,234 were decided and of these 4,731 (57.5%) were granted.
- But the overcrowding is going on.

Prisoners Trend

- **The number of prisoners is constantly increasing, in the last year they have increased by almost 3,000.**
- **This growth is not due to an increase of persons who enter in prison but to an increase in the length of sentences.**
- **According to the increasing rate of last year (and taking in account the measures going to be approved by the parliamentary majority the so called “security” draft law), the number of prisoners in 2025 will exceed the number of prisoners at the beginning of January 2013.**

Court indication on general measures

- In § 95 of the Torregiani Judgment, the Court, giving indications to Italy on how to solve the structural problem, recalled ‘the recommendations of the Committee of Ministers of the Council of Europe, which call on States to urge prosecutors and judges to make as much use as possible of alternative measures to detention and to reorient their penal policy towards the minimum use of imprisonment in order, inter alia, to solve the problem of the growth of the prison population (see, in particular, the Committee of Ministers’ recommendations Rec(99)22 and Rec(2006)13)’.

Alternative measures trend

- **At the beginning of 2013 there were approximately 38,000 persons in external penal enforcement in Italy.**
- **As of 15 October 2024, there were 140,774 persons in external execution (alternative measures, probation, etc.)**
- **11 years later, it can be said that the dramatic increase in alternative measures has not reduced the number of inmates**
- **It has only greatly expanded the number of persons subject to criminal measures: from about 100,000, to more than double that number.**

Stanley Cohen: no surprises!

- The phenomenon is not surprising:

at the end of the 1990s it has been studied by Stanley Cohen in the USA. In the book ‘Visions of social control’: the author spoke of the “iatrogenesis of control” in which the adoption of less severe control measures was accompanied by a phenomenon that he calls “net widening”.

Suicides in jail

- **The increase of alternative measures can probably also explain the increase of suicides in prison, the record of which was reached in 2022 with 84 cases, in 2024 we are already at 81 (to which 7 prison guards must be added).**
- **The great increase of alternative measures means that with short to medium sentences (under 4 years), only “socially abandoned persons” spend their time in prisons: those who do not even have the minimum of social resources to organize an alternative or community measure. The most socially fragile subjects.**

The moral of Italian case

- *If the Italian case tells us anything, it is that the only serious policy to reduce imprisonment is the ‘decriminalisation’ of many forms of behaviour, starting with those related to drugs.*
- *Italy is going in the opposite direction: for instance, we are transforming the refusal to leave the house for which you cannot pay the rent from a civil offence to a criminal offence.*
- *We will see how the introduction of “substitute penalties (sanzioni sostitutive)” will change this situation: that is, non-custodial sentences imposed by the judges of merit. Point is: whether they will reduce alternative measures, detention in prison or increase net widening?*

Second section

- **The failure of 'compensatory' and 'preventive' remedies toward the resolution of overcrowding and terrible material prison conditions**

The "cadastral" jurisprudence

- The remedies introduced after Torregiani have been minimized in their impact by what I usually call a 'cadastral' jurisprudence.
- Surveillance judges have focused on the square meters available to the detainee, on the surface area of the cell as a whole or only on that which can be walked on, on deducting the bed (or bunk beds), including or excluding furniture (movable or not), while no importance has been attached, except in very rare cases, to the actual living conditions of the detainees (Mursic).

Overcoming the "cadastral" jurisprudence

- Thus, a cell, in which the prisoner has more than 3 square meters of space, is considered in decent condition, even if the prisoner spends 20 hours out of 24 in that cell, there are rats, bedbugs, high humidity, it rains inside and there is no hot water in the cell (in Florence, a judge wrote in a ruling that this essential feature was comparable to a hotel service).
- As L'Altro diritto, we have fought a hard battle against this case law, filing dozens of complaints about the conditions of detention, without any reference to square meters of the cell. At the end of last year, we began to receive positive decisions on requests of a compensatory remedy and only a few months ago on the requests of a preventive remedy.

Ineffectiveness

- **However, the figures reported above on the decisions of the Surveillance judges on 'compensatory' remedies show that they are not a tool to solve the structural problems of the prisons: for the prison administration it is now clear that many prisoners will receive a reduction in their sentence because of the conditions of detention, and this is not a reason to restore 'decent' conditions of detention. And even prisoners expect a reduction in their sentence, not a change in the conditions of their imprisonment.**
- **So, these measures, introduced to solve a structural problem of overcrowding, have not done so; they have become a superstructure of that problem, not something that affects it.**

The paradox of the preventive remedy on the degrading conditions of detention

- **When the Surveillance Court accepted our complaints asking to put an end to degrading prisoners' detention conditions, they ordered the prison administration to start renovating the cells within three months and, if this did not happen, to transfer the prisoner to another prison where s/he could serve his/her sentence in a decent manner.**

Incredible

The decision to leave a prisoner for three months in conditions that the decision itself deems inhuman and degrading is incredible and unacceptable: it suspends for three months *ad personam* the right not to be subjected to inhuman and degrading treatment.

We have challenged the measures in the Cassazione Court ... we shall see its decision...

The most serious problem

- **These ruling are not forcing the administration to set up a non-degrading place of detention: it simply encourage the transfer of prisoners.**
- **In the same way, the prison administration accepts the reduction of sentences, instead of renovating prisons, it systematically orders the transfer of the prisoner after three months and puts another prisoner in the inhuman and degrading conditions in his/her place.**

The detainees view

- **On the one hand, not even the preventive measure is able to change the structural conditions of Italian prisons.**
- **On the other hand, its positive result is perceived as punitive by the detainees. For them it is better to live with humidity, rats and bedbugs than to be separated from their family, than starting life all over again in a new prison where one does not know the social workers and agents, without knowing for how long the path to a prospective alternative measure will be interrupted.**

Our defeat

- **So, paradoxically, the inmates are “happy” with the magistrate's orders rejecting their complaints because “hot water is a hotel service”, while they “fear us” as those who proposed and drafted the complaints which cause the transfer order for them (if no renovation work is started within the 3 months time-limit).**
- **We have created a paradoxical situation where the administration can abuse the vulnerable situation of the prisoners with the consent of the same vulnerable person to inhuman conditions.**