Research project EUPRETRIALRIGHTS

Improving the protection of fundamental rights and access to legal aid for remand prisoners in the European Union

EMPIRICAL STUDY

The actors of legal protection, their professional practices and the use of law in detention.

Report on ITALY

Sofia Ciuffoletti

University of Florence

April 2019

This report is part of the research project EUPRETRIALRIGHTS from the consortium of partners :

Centre National de la Recherche Scientifique
Laboratoire SAGE, Université de Strasbourg
CESDIP, Université de Saint Quentin en Yvelines/Ministère de la Justice
European Prison Litigation Network
University of Utrecht, Montaigne Centre for Rule of Law and Administration of Justice
Helsinki Foundation for Human Rights, Poland
Dortmund University of Applied Sciences and Arts
University of Florence, L'Altro diritto - Inter-university Centre
Bulgarian Helsinki Committee
Ghent University, Institute for International Research on Criminal Policy
General Council of Spanish Bars
Pontifical University of Comillas

This project was funded by the European Union’s Justice Programme (2014-2020).

The content of this publication represents the views of its authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains

ABSTRACT

Introduction:

The Italian field research was conducted through semi-structured interviews (conducted in Italian) to relevant actors of the prison field in Italy.

The choice was to include lawyers, NGO activists, Surveillance judges, prison administration and both male, female and transgender prisoners. As suggested in the WP3 Methodological Guidelines I have chosen an additional sampling strategy, by selecting an individual facility, the Prison of Sollicciano, Florence, which is a so-called *casa circondariale*, one of the main prison in Italy in terms of population. Sollicciano is both a male and female prison (with a transgender section) and includes sentenced prisoners (in the criminal sector, *reparto penale*) and pre-trial detainees (in the judiciary sector, *reparto giudiziario*).

I have therefore interview all of the actors involved in prisoners' rights protection in Sollicciano:

1. Lawyers active in prison litigation
2. NGO activists
3. The Regional Ombudsmen;
4. The president of the Surveillance Court of Florence
5. Prison administration official: the Head of the regional Prison Administration Department
6. Female, male and transgender prisoners in the Sollicciano prison

As a further step, and in order to enrich and give a national relevance to the report, I have included some interviews with national actors, like National Bar lawyers, the National Ombudsman, the Coordinator of the Local Ombudsmen, NGOs operating in the main Italian prisons and Prominent Surveillance Judges who have shaped the case law concerning prison and penitentiary issues. The National Ombudsman has been particularly important for the information on police custody unit, since these places of deprivation of liberty are expressly included in his mandate.

As described in the Guidelines, the analysis aimed at providing informations on:
- the **performance of national and local systems of legal aid** available to prisoners
- Description of **actors involved in the access to rights and their organisation**
- Conditions of intervention of **bars**, including modes of organisation of **lawyer attendance** in prison facilities
- Conditions of **mechanisms** facilitating the access to rights, including **institutional, NGO, universities and legal clinics.**
- Possible procedures put in place in **jurisdictions** to deal with litigation coming from facilities of detention.
- **Conditions** of access of prisoners to court (and preliminary review procedure before an administrative authority when this procedure is compulsory prior to taking court action) and impacts of **mechanisms facilitating or obstructing access to court**
- Mechanisms put in place at national/local level aiming at compensating for the shortage of **juridical and economical capital** of prisoners.
- Study on the **non use of legal remedies** and its determinants.

In this summary I will try to touch briefly some of these issues in order to highlight the main results of the study.
One of the main issue concerning the effectiveness of access to justice in prison and the system of legal aid in Italy is related to the fact that the law, which in theory include all the matters concerning criminal proceedings, in practice leave the prison litigation in a sort of ambiguous situation.
This is an issue strongly underlined by many actors (lawyers in the first place, but also the surveillance judiciary and NGO's representatives).
As a matter of facts, the obstacles to an effective protection of the right to legal aid are to be found both in the text and in the interpretation of the Italian legislation and in the practical application of the law.

The law and its (in)effectiveness:
As to the first profile: the law (Presidential Decree n. 115/2005, article 75) expressly include in the legal aid scheme each degree and each stage of the process and all any procedures, "derived and accidental, however connected". Subsequently, though, it is established that the discipline of legal aid "applies" even in the "execution phase", in the review process, as well as in the processes related to the application of security and preventive measures under the jurisdiction of the **Surveillance court**.

It seems that any other procedure under the jurisdiction of the Surveillance judge (first instance jurisdiction) is excluded by the legal aid.
This is a first serious impediment to the effectiveness of access to justice in prison litigation, since many important applications are lodged in front of the Surveillance judge (monocratic body), such as the request of early release, a special typology of home detention, which is a very broad one, and the compensatory and preventive remedies adopted after the *Torreggiani* pilot judgment against Italy.
The Italian Judiciary (Constitutional Court and Court of Cassazione) have repeatedly affirmed that single Surveillance judge procedures are included in the legal aid scheme, since the law refer to the "execution phase" which necessarily include all the litigation procedure concerning the execution of a sentence. Nevertheless, periodically, this interpretation is contested for different kind of proceedings which are considered as excluded by the legal aid scheme, since they lack a clear jurisdictional nature. This was evident for the application for early release, which was considered as a "non litigant" procedure, a sort of administrative, not jurisdictional procedure. Finally, the Court of Cassazione underlined the need for the protection of the right to defence in the execution phase and included the procedure for early release in the legal aid scheme (judgment n. 27757/2011).
But lawyers affirms that similar issues are likely to arise any time, since the legislator has never reformed the law so far.
Surveillance judges, on the contrary, affirm that the Constitutional Court and Court of Cassazione case law are able to provide a clear interpretation able to include all procedure in front of the Surveillance judge or Court in the legal aid scheme.
Another critical issue, again concerning the performance of the system of legal aid, as underlined by many lawyers, is the need to present a specific and distinct application for admission to legal aid in relation to each surveillance procedure initiated by or against the prisoner. This provision (art. 109 of the d.p.r. 115/2002) risks to sacrifice the institute of legal aid in Surveillance proceedings. According to this last article, in fact, the defender's fees are admissible only after the lodging of an application, so all the preliminary activities (such as meetings with the client, interviews in prison, contacts with consultants or social workers, in order to lodge an application) are excluded.
In fact, it seems that only the hearing activity would be included in the legal aid.
This situation could be improved by including surveillance proceedings within those "derived and accidental procedures" mentioned in the first paragraph of art. 75 of the d.p.r. 115/2002 or, admitting the possibility of a single admission to legal aid for the entire execution phase.
A more extensive interpretation of the aforementioned article of law would allow, in fact, full protection of the right of defence as provided for by Article 24 of the Constitution.

The implementation of the law: actors involved, criticalities and possible mechanisms facilitating access to rights:
As for the criticalities in the implementation of the law, the lawyers, Ombudsperson and NGOs' litigants include the difficult access to the client, the reductive interpretation of the law concerning contacts with the lawyers (phone calls were included in the number of general family phone calls allowed to the prisoners), the length and complexity of proceeding in order to get the refund and payment from the State, the low fees provided for in the legal aid scheme. NGOs also highlight the scarce knowledge of the complex penitentiary law by lawyers working in prison and the absence of courses and formation provided by the local and national Bars on this subject. Prisoners argued that the contact with the lawyers are always difficult and the prison administration does not guarantee an open possibility of communicating by phone call with the lawyer.
Another important hindrance to the quality of legal aid in prison provided for by lawyers (and to the potentiality of the legal reasoning in this matter), according to NGOs' members, is the scarce knowledge of the ECHR Convention law and ECtHR's case law, also due to the poor knowledge of the English and French language by Italian lawyers and judges alike.
According to the newly appointed Head of the National Department of Prison Administration, on the contrary, the law is sufficient and the eventual ineffectiveness of the system derives from the inadequate knowledge of their rights by the same prisoners. This is due to the insufficient legal formation and information provided in prison. In order to solve this issue, the Head of the National Department of Prison Administration declared that a 4 pages leaflets could be distributed among Italian prisoners.
All the other actors challenged this perception, firstly by affirming the role of Italian NGOs and legal clinics in order to provide legal counselling and legal information in prison, and to start legal proceeding and prison litigation.
NGOs and legal clinics operating in the Italian prison institutions appears to be one of the most dynamic tools for the implementation of the right to defence and legal aid. First of all they are able to provide basic information concerning the detention status, the right to access to court and the right to defence since the beginning of the imprisonment, specifically providing information and legal counselling on the legal aid scheme, criteria and accessibility. This is also due to the fact that usually the most active organizations enter the prison facilities periodically (once a week, twice per month) and are therefore able to intercept the new prisoners who get to know about the legal services provided for by the NGOs through their fellow inmates or the prison staff.
Secondly, they can elaborate a legal strategy and initiate litigations in many fields, from the simplest

proceedings, like the early release request, to the compensatory and preventive remedy applications. This is due to the facts that all the proceeding concerning prison litigation can be lodged personally by the prisoners and can therefore be drafted by the NGOs legal operator, lawyers and legal clinician. Whenever the proceeding is a trial one and a hearing is foreseen (chamber procedure), the Surveillance Court provide the name of an *ex officio* lawyer[1]. This is a very delicate and complex step, since it requires a coordination between prison staff, NGOs legal operators or legal clinicians and the *ex officio* lawyers in order to assure the access to the legal aid scheme anytime the economic and personal conditions of the prisoner so require.
Usually this means that the NGOs operator or legal clinician have already analysed the prisoner's position and have provided the list of lawyers working with legal aid in the local bar. The *ex officio* lawyer is usually included in those list and can therefore be activated since the first meeting with the client in order to prepare the request for admission to the legal aid scheme to be lodged during the first hearing or filed in the Surveillance Court office before the first hearing.
The fact that every new application requires a new appointment of an *ex officio* lawyers and the consequent request for admissibility to the legal aid scheme mean that a lot of time is lost, preparing a new legal aid request and coordinating the *ex officio* lawyer. This also means that a lot of the prisoner's legal history is lost, specifically for the most vulnerable prisoners (i.e. socially marginal person with no external network, foreign nationals, prisoners with mental health issues). This part of the prison population, if not supported, is not able to keep contact with the lawyer, especially once out of the prison and in case of recidivism.
Also, whenever this coordination does not work, NGOs' members and legal clinicians affirms that in many cases the lawyer does not meet with the defendant at all prior to the hearing. This is due to many reasons, namely the fact that prison litigation is not considered a profitable activity (because of the above-mentioned normative limitations), prison law is complex and time-consuming compared to the legal aid fees.
Also, some interviewed argued that in Italy we are still immersed in a normative ideology (mainly shared by the Surveillance Judiciary, but also, and by consequence, by lawyers and by the prison administration) which consider prison law, penitentiary litigation and prison related applications as a sort of non-jurisdictional field (worthy is to remember that we have achieved a full jurisdictionaliztion of this matter very recently and only thanks to the European stimulus and ECtHR case law). The result has been so far a very loose trial procedure and a very limited defence activity.
This situation led to NGOs in prison, legal clinic devoted to the study of prison law and prisoners' right defence and ombudperson to achieve a prominent and essential role in protecting and enhancing the effectiveness of the right to legal information, defence, access to justice and access to legal aid for Italian prisoners also organizing litigation campaign and strategic campaign for the promotion and effectiveness of prisoners' rights.
This has been particularly evident after the introduction of the preventive and compensatory remedy after the *Torreggiani* pilot judgment procedure. Some NGOs and legal clinics have started a wide litigation campaign in this field promoting and challenging an evolutive interpretation of the law by the Surveillance Judiciary, as underlined by the same Surveillance judges interviewed.
As already mentioned, another aspect underlined by many interviewed is the lack of knowledge of foreign language by lawyers and judges and the lack of proper language education provided for by Bars or *Scuola Superiore della* Magistratura (Judiciary Education School). This is highly problematic in order to get access to ECtHR case law (which seems to be scarcely known and used by lawyers and judges alike), but also in order to communicate with clients. Since cultural mediator are almost untraceable in prison (due to spending review reason, but also cultural backwardness in this respect), lawyers need to be supported whenever they speak with foreign national or foreign language speakers. This is another area in which legal clinic students and NGO members are a precious resource in order to overcome the communicative and language barriers.

Actually, **the most vulnerable prisoners** are the ones who need more support in order to achieve an effective right to defence and access to legal aid. This paradoxical situation is the result of a normative and practical situation. On one side, the norm contains a discriminatory provision for foreign prisoners which constitute an overrepresented prison population in Italy and are usually victims of multi-layered discrimination. As a matter of facts, in order to be admitted to legal aid, prisoners need to demonstrate the absence of estate property. **Foreign prisoners** (i.e. third countries nationals) are required to produce the consulate certification of absence of estate property in the country of origin, while Italian nationals and EU citizens only need to produce an auto-certification. This norm is sometime loosely interpreted by Surveillance judges in order to mitigate the severity and

[1] Legal aid is governed by Decree 115/2002 and article 98 of c.p.p. It enables those who lack financial resources to qualify for free legal assistance to promote or defend themselves in civil or criminal proceedings. With legal aid the lawyer fees are paid for by the state.
The *ex officio* lawyer, on the contrary, is a lawyer appointed by the state to defend the accused that has not appointed a lawyer of choice yet, in order to ensure the right to technical defence in any criminal trial. The ex officio lawyer must be paid by the accused, and not by the State, but the accused can instruct a lawyer of choice at all times. The rules concerning legal aid and *ex officio* lawyers apply at all stages, including the proceedings regarding pre-trial measures.

the possible discriminatory content of the norm (specifically concerning countries which are not able to provide a list of estate property, since they lack a real estate registry office or a cadastre), while in other case, the norm is strictly applied and constitute a *de iure* and *de facto* discrimination. A very recent judgment by the Court of Cassazione has specified that whenever there is an impossibility to provide the foreign country certification due to the lack of response by the consulate authority (which is often the case for Morocco, Egypt etc…) the person shall be admitted to legal aid and an auto-certification is sufficient, since the opposite interpretation would mean the ineffectiveness of Article 24 of the Italian Consitution (Cass. Pen., judgment 22 February 2018, n. 8617).
Other level of critical aspects concerning the most vulnerable prison population consists in the more difficult access of lawyers in the Transgender section of the prison (being more secluded and difficult to access) have been denounced by transgender prisoners.

Another aspect, strongly denounced by the National Ombudsmen is the lack of legal information and increased exposure to ill-treatment in **police custody unit**, due to the absence of any kind of social operator, NGO's member or legal clinic action. The only monitoring body is the National Ombudsmen itself. A possible action that the National Ombudsmen is trying to activate, in its role as NPM (National Preventive Mechanism) is to include all the local Ombudsmen in the monitoring activities inside police custody units.
The distinction between police custody and pre-trial detention is particularly meaningful in Italy in relation to the right to defence, since, on paper the suspect in custody, under arrest or under other measure, can talk immediately with a lawyer (Art. 104 c.c.p.); for this purpose a lawyer has to be immediately informed (Art. 293 and 386 c.p.p.). Nevertheless, this right can be suspended for a maximum of 5 days for "specific and exceptional precautionary reasons" when the meeting with the lawyer can jeopardise the investigations (see *infra*).
Three main case scenarios have to be considered. 1) If the suspect has been caught in the act of committing a crime the prosecutor, after informing the lawyer, questions the suspect, explaining to him/her why he/she has been arrested, what is the evidence against him/her and, if this poses no threat for the investigations, the sources of this evidence. At the hearing for the validation, immediately after the decision on validating the arrest, the judge decides on the application of the pre-trial measure. The lawyer can see the file at the hearing or shortly before the hearing and in that occasion can shortly discuss the case confidentially with the suspect. 2) If the measure is requested by the prosecutor and applied by the judge later during the investigations, but before the beginning of the trial, the file is made available to the lawyer after the execution of the measure, but before the validation hearing. 3) when the measure is applied during the trial, the defender has already been able to see the file. During the entire trial the presence of legal defence is required. If the suspect or accused person does not have a lawyer of choice, a lawyer is instructed *ex officio*.
However, as noted by NGOs' members, the inequality of the means available to the parties (lawyers have little time to prepare for the hearing) and the lack of instruments for the judge to overcome this inequality are the main hindrances to the right of defence for pre-trial inmates and person under *fermo* or *arresto*. I refer, in particular, to the absence of a legal prevision requiring that, together with the notification of date of the hearing, the lawyer should also receive the prosecutor case file to have adequate time to prepare the defence.

As to the access to digital tool, Italy is very backward, since no access to digital tools is provided for by the law. Prisoners are only able to go to the prison libraries where they can consult legislative text, such as criminal code and penitentiary law (sometime very old and not up-to-date version and only few copies of these texts) on paper.
In Prison University Unit (*poli penitenziari*), prisoners are able to consult some database, but on a very limited scale and with no digital training and legal information technology education.
Very recently the use of telecommunication application software for video-chat and voice calls have been included in a Prison Administration order (*circolare*) addressing the need to put in place this kind of communication with family members. Unfortunately this reform is of very limited application and does not include communication with the lawyer or with legal operators. It shall be observed that many interviewed warned about the use of skype communication with the legal assistant or lawyer, because of the monitoring role that the lawyers play in the prison environment and also due to the lack of privacy of this communication, usually witnessed by a member of the prison staff.
The newly introduced legislative decree 123/2018 has also foreseen the possibility to participate to the Surveillance hearing through a videoconference. This seems to be more dictated by the necessity to cut the budget for prison transfer, than to the need to guarantee the personal participation. As many interviewed underlined, the presence of the prisoner in front of the Court is pivotal in order to guarantee the right to a fair trial and is important to reduce the prison seclusion and the material distance between the detained person and the Court.

1. THE NATIONAL CONTEXT

1.1 Spaces of pre-trial detention

Briefly; organisation, variety of spaces of pre-trial detention, including police custody, remand centers and prisons, with a focus on the latter

In the Italian prison system, the separation of sentenced prisoners by pre-trial detainees is considered a fundamental condition for the protection of the presumption of innocence (Article 1 of the Italian Penitentiary law[2]). Article 6 and 14 of the same law affirm that pre-trial detainees must be guaranteed accommodation in single room cell and that the separation of the convicted prisoners from pre-trial detainees is guaranteed. Pursuant to Article 59 of the Penitentiary law, prison institutions are divided into remand prisons (so-called *case circondariali*), prison for the execution of sentences (so-called *case di reclusione*), institutions for the implementation of security measures and observation centers.

Historically in Italy this differentiated regime and the separation principle have never been implemented. As a matter of facts, convicted and pre-trial detainees are assigned to the same kind of institutions. As a general rule, the only separation consists in the different sectors devoted to host the sentenced prisoners (criminal sector, *reparto penale*) or the pre-trial detainees (judiciary sector, *reparto giudiziario*). Sometime even this minimum level of separation is not respected due to the endemic level of overcrowding in Italy and it is not infrequent to find pre-trial detainees in the criminal sector or convicted prisoners in the judiciary sector.

Usually and due to the fact that pre-trial detainees are not convicted and are not afforded the right to treatment and social rehabilitation, the living conditions in the judiciary sector are sensibly worse, more deprived and overcrowded, making the non punitive principle of pre-trial detention paradoxically untrue. This hybrid situation (presumption of innocence coupled with incarceration) makes the right not to be presumed guilty a double edged weapon whenever the person is deprived of her/his liberty. As a matter of facts, access to any kind of activities is theoretically impossible, since no right to rehabilitation exists, even if Article 1 of the Prison Regulatory Act[3] states that the treatment of prisoners awaiting trial consists in the provision of interventions aimed at supporting their human, cultural and professional interests. Excluding *a priori* the possibility of interventions related to the logic of the "re-education" (interventions that would be in contrast with the principle of presumption of not guilty), the situation of the pre-trial detainees related to prison treatment can be outlined as a right to take advantage of offers aimed at supporting their "human, cultural and professional interests" and, if they so request, in the right to be admitted to participate in educational, cultural and work carried out and organs.

1.2 Main social characteristics of the general detained population in country

(*Please mention sources of statistical data)*

The large availability of statistical data on the prison population in Italy derives from the penitentiary administration statistical system. These data allow for periodic analysis on the number of prisoners and it is possible to investigate some aspects of detention and some salient features of the detained population.

We will follow here the most recent analysis on the detained population in Italy, provided by the Penitentiary Administration (F. Tagliaferro, "Analisi dei dati sulla popolazione detenuta", in

[2] Law n. 354, 26 July 1975.

[3] Presidential Decree n. 309/90.

Rassegna Penitenziaria, n.3/2014) along with data provided by NGOs such as L'Altro diritto and Antigone (Antigone, *Un anno in carcere, XIV rapporto sulle condizioni di detenzione*, 2018, available at http://www.antigone.it/quattordicesimo-rapporto-sulle-condizioni-di-detenzione/wp content/uploads/2018/06/AntigoneXIVrapporto.pdf).

Personal data (-Age, gender, nationality (general difference nationals/foreigners), class, minorities, mentally ill persons, disabled persons)

Age:

Prisoners present for age classes
As of 31 December 2018

	18-20	21-24	25-29	30-34	35-39	40-44	45-49	50-59	60-69	70-	not detected	Total
Detenuti Italiani + Stranieri												
Italian and foreign prisoners	925	3.550	7.283	8.469	8.855	8.255	7.639	9.962	3.824	881	12	59.655
Detenuti Stranieri												
Only foreign prisoners	615	2.028	3.740	4.218	3.590	2.474	1.725	1.539	286	28	12	20.255

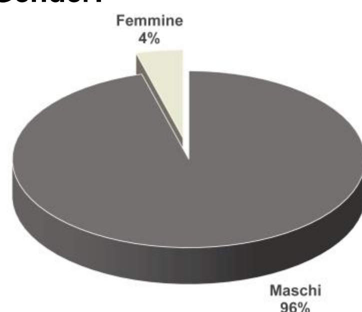
Present inmates and ordinary capacity of prisons
As of 31 January 2019

	Number of prison institutes	Ordinary capacity	Prisoners present Italian+foreigners		Foreign prisoners	
			Total	Women	Total	Women
Total	190	50.550	60.125	2.580	20.309	942

Source: Dipartimento dell'amministrazione penitenziaria - Ufficio per lo sviluppo e la gestione del sistema informativo automatizzato - sezione statistica

The average age of the detained population is included in the class from 35 to 39 years and 50-59. This data should be considered disaggregated, since for foreigners it is placed in the range from 30 to 34 years, while for Italians it is placed between 50 and 59 years.

Gender:



source: Tagliefierri, cit.
Femmine: women
Maschi: male

The prison population results in large majority composed of males (96%), while only 4% is female.
52 is the number of children living with their mothers within the penitentiary institutions with 46 mothers (of whom 27 were foreign mothers with 28 children). The only institute entirely dedicated to mothers (ICAM) is the one of Lauro, which was at first intended for the treatment of drug-addicted prisoners, and was converted in October 2016 into an ICAM (Penitentiary institute for mother imprisoned with children). It has a capacity of 35 places and at the end of March it hosted 13 women (4 of whom were foreigners) and 14 children.

Transgender and Transsexual prisoners constitutes a minority of prisoners and are not detected. No official public data exist on the number of transgender inmates in the Italian prison system. According to data of L'Altro diritto[4] we can consider that currently the facilities housing transgender inmates are the prison of Ivrea, Belluno, Bergamo, Bollate, Firenze Sollicciano, Milano S. Vittore, Napoli Poggioreale, Rimini, Roma, and Rebibbia NC, for a total of 80 inmates as of October 2009.
This composition appears stable over time and it is not influenced by exogenous factors: only a slight discrepancy can be observed in the distribution by gender between Italians and foreigners.

Religion:
The most widespread religion among the inmates is the Catholic faith, professed by 77% of Italians, but only by 15% of the foreigners. Following is the Islamic religion, practiced by 32% of foreigners and by 0,2% of the Italian, and the Orthodox religion (13% of foreigners). 24% of the Italian prisoners and 32% of the foreign prisoners do not professes (or declare to profess) any faith (Tagliafierri, cit., p. 19), probably due to the fear to be discriminated.
According to data of Antigone, in 189 Italian prisons there is at least one chapel, and they have in total 314 ministers. Meanwhile muslims represent a number of 7,194 detainees and they have only 17 ministers of faith. The prisoners that belong to the orthodox faith are 2,481 and they have 34 ministers of cult. The non-catholics lack a space to celebrate their faith: 77% of the prisons visited in 2017 did not have spaces for non catholic celebration of faith.

[4] See also, S.Ciuffoletti – A. Dias Vieira, "Reparto D: un *tertium genus* di detenzione? *Case-study* sull'incarceramento di persone transgender nel carcere di Sollicciano", in *Rassegna Penitenziaria*, n. 1/2015 and *Idd.*, Section D: "A *Tertium Genus* of Incarceration? Case-study on the Transgender Inmates of Sollicciano Prison", in *Journal of Law and Criminal Justice*, December 2014, Vol. 2, No. 2, pp. 209-249.

Mentally ill persons:
According to data collected by "Progetto Insieme", conducted by Società Italiana di Medicina e Sanità Penitenziaria, Società Italiana di Psichiatria e Società Italiana di Psichiatria delle Dipendenze (http://www.sanitapenitenziaria.org/simspe/nazionali-regionali), the psychiatric pathology affects one out of seven prisoners, the drug abuse affects 10-50% of prisoners, suicide remains one of the first causes of death in prison. Data indicate that 4% of prisoners are affected by psychotic disorders against 1% of the general population; depression, on the other hand, affects 10% of inmates against 2-4% of the general population. Prisoners with personality disorders are 65% of the inmates, a percentage that is 6 to 13 times higher than what is normally found in the general population (5-10%).

Disabled prisoners:
Historically the category of the "physically handicapped" prisoners (*minorati fisici*) was considered relevant for the assignment to the Criminal Asylum. After the enactment of the Italian Constitution which expressly affirm the absolute individual right to health (Article 32 of the Italian Constitution11) and the reform of 1975, so called Penitentiary Law (law 354/1975), the prison system systematized the treatment of the "minorati fisici" in Article 65, establishing that "physically or mentally handicapped prisoners should be assigned to special institute or special section for an appropriate treatment." According to the Penitentiary Execution Guidelines (Presidential Decree n. 230/2000) Article 111, the physically handicapped prisoners should be assigned to special section within the prison. Those sections are to be directed by trained medical and prison staff. The specific legal awareness toward the issue of prisoners with disabilities has developed along with the general issue of the elimination of the architectural barriers in public spaces12 as well as with the United Nation Convention on the Rights of Persons with Disabilities of 200613.

The Italian Penitentiary Administration has acknowledged the need for the elimination of the architectural barriers in the Prison system with the Administrative Order n. GDAP-0405351-2012, recognizing the same architectural and accessibility standard required for general public spaces. Unfortunately this legislation has never been effectively implemented in Italy, due to a number of cases in which the Administrative Courts have decided a waiver to exempt prisons from the obligation to follow the general legislation concerning the elimination of architectural barriers due to the need of preventing a damage to the general architectural configuration .

The one and only monitoring of the number of prisoners with functional limitations conducted from the Directorate General of Prisoners and Treatment in August 2015 highlighted the presence in the penitentiary institutions of 628 people with disability who require specific interventions.

Drug addiction in prison:
According to data of the Prison administration, the percentage of drug addicts currently in prison is 25% of the total population: these are prisoners with drug-related problems, not to be confused with the inmates with a diagnosis of addiction. In its original formulation, the data collection allowed to establish the relationship between the state of drug addiction and the violation of the legislation on drugs. With the reform of the Prison health care (see below) these data are no more available and the phenomenon is less intelligible its entirety.

Health care in Italy. A general perspective:

A brief account of the situation of Italian prison healthcare is useful in order to understand the condition of people with disabilities in prison.

As a matter of facts, traditionally, health care services inside the prison systems where governed by the Ministry of Justice and separated from the general health service managed by the Italian Ministry of Health. This state of affairs resulted in a detrimental health service, with the lack of independence and autonomy of the healthcare staff within the prison system.

This situation has been aknowledged by the Italian legislator and a reform procedure was started in 2008. In 2008, the prison health care system has been moved from the Ministry of Justice to the Ministry of Health. This reform was based on the principle of the equivalence of care: prison health services has to provide to prisoners a services' quality equivalent to the one provided to the general population. The law also affirms the non-discrimination principle: non-European prisoners have same rights of European prisoners and shall receive the same health services.

In order to outline some major issues concerning health care provided in prison, reports of some the main NGOs working in prison in Italy (Antigone, Osservatorio carcere and L'Altro Diritto) may help outlining the main issues and concerns related to prisoners' healthcare services:

1) There is a general complaint reporting the poor level of health services in prison;

2) All the reports confirms a general trend to medicalize the treatment of prisoners, at least the 50% of prisoners receives psychiatric medication, but only 1/3 of them has psychic diseases or mental illness[5];

3) Ill individuals are generally overrepresented within the prison propulation: according to Antigone's report 1 prisoner out of 2 suffers of infectious diseases and 1 out of 3 suffers of psychic diseases;

4) In most prisons there is a general complaint about the lack of medical specialties;

5) There are complaints about the difficulties to access to civil hospital due to long waiting lists and to the slowness of the transfers. In addition prisoners often complaint that they are never warned, for security reasons, about the scheduled medical treatments and transfers;

6) Prison doctor are not considered truly independent by the prison administration. This is true even after the reform. Prisoner's right to health is often bent to the needs of custody and security. One of the effects of the transfer of prison health services had to be the independence of medical staff from custodial staff, but after the reform the medical staff remained the same, and no training for the staff have been provided;

7) Death in prison. *Ristretti orizzonti* is monitoring all the deaths in prison (not only those classified as suicide but all deaths of prisoners)[6]. According to Ristretti there are cases in which the cause of death is not clear, where the death is generically described as " cardiac arrest" or cases in which the official versions seem unreliable and inconsistent, possibly even to hide ill treatment perpetrated by police officers or other inmates.

8) Suicide prevention. According to Ristretti Orizzonti suicide monitoring observatory, prisoners' suicide rate is 19 times higher the suicide rate in general population. Most of suicide

[5] In literature we have only one study at national level (V. De Donatis, O. Sagulo*, Il divenire della medicina penitenziaria attraverso la conoscenza dello stato di salute della popolazione detenuta*, M. Esposito (a cura di), *Malati in carcere*, Franco Angeli, Milano, 2007, pp. 124-159), while at local level the only region that has published a comprehensive epidemiologic study is Tuscan Region (ARS Toscana, *La salute dei detenuti in Toscana*, 2012, www.ars.toscana.it). Emilia Romagna Region is the only region that has almost completed a program of digitalization of all the medical-files of prisoners, but there not yet public data.

[6] Ristretti Orizzonti, *Morire di carcere: dossier 2000 – 2015. Suicidi, assistenza sanitaria disastrata, morti per cause non chiare, overdose*, http://www.ristretti.it/areestudio/disagio/ricerca/

happen in prison with the worst living conditions, where there are few social and educational programs and where there's a limited presence of NGO. In 2014 there were 44 suicides and 933 attempts. Suicide prevention strategies of penitentiary administration seems to be inadequate. Usually prisoners at risk of suicide are treated with drugs and controlled by penitentiary police with a "suicide watch" order.

9) Self-harm is very common in Italian prisons: according to official data[7] between 1992 and 2010 the 8-9% of prisoners self-harmed. Only in 2014 there were 6.919 inmates self-harmed10.

10) No digital records of health of prisoner. With the reform Regions had to start to use digital files in order to guarantee the continuity of treatment in case of release or transfer and to guarantee to prisoners a simplified access to their health records. According to Antigone only in Emilia Romagna and, partially, in Lombardia this improvement has been adopted, while other Regions keep using paper files.

11) Prisoners have difficulties to access to their files containing health status and treatment records and when they get the access they discover it contains poor records often unreadable.

12) Unlike free citizens, prisoners haven't the right to choose their doctor or the civil hospital, but they have to accept the one imposed by healthcare services.

General level of education:

Prisoners present by educational qualification As of 31 December 2018									
	University degree	High school	Professional institutes	Secondary school	Elementary school	No educ. titles	Illiterate	Not detected	Total
Detenuti Italiani + Stranieri									
Italian + foreigners	607	4.648	677	18.978	6.601	924	1.019	26.201	59.655
Only foreigners	181	1.187	190	3.553	1.059	680	603	12.802	20.255

Data shows a general lack of higher education for Italian and foreign prisoners alike and a general higher percentage of illiterate or person with no educational titles among foreign prisoners.

General statistics of pre-trial detention and convicted prisoners (in stocks, for the last year available).

Year	Awaiting first trial	Remand prisoners (not finally condemned)	Condemned prisoners	Total
2008	14.671	15.165	26.587	58.127
2009	14.367	15.368	33.145	64.791
2010	14.112	14.580	37.432	67.961
2011	13.625	13.626	38.023	66.897
2012	12.484	13.212	38.656	65.701
2013	11.108	11.723	38.471	62.536
2014	9.549	8.926	34.033	53.623
2015	8.523	9.262	33.896	52.164

[7] Dipartimento Amministrazione Penitenziaria, Eventi critici negli Istituti penitenziari, Anno 2010, http://www.ristretti.it/commenti/2013/luglio/pdf3/eventi_critici_2010.pdf

2016	9.337	9.586	35.400	54.653
2017	9.634	10.181	37.451	57.608
2018	9.838	9.727	39.738	59.655

Italy is one of the European countries with the highest number of prisoners in pre-trial detention: in 2010, 42% of Italian prisoners were waiting for a final sentence (in 2008 the rate was 51,3%!), and 20.8% were waiting for the first sentence (Source: Ministry of Justice). Today the situation has slightly improved (34.4% and 16.5%) but the numbers of prisoners waiting for a final sentence are still alarming. This very slight decrease is mainly due to the execution procedure after the *Torreggiani* pilot judgment[8] against Italy for the endemic and persistent overcrowding and inhuman and degrading prison condition. As a matter of fact, Italy has recently passed two laws (Law 117/2014 and 47/2015, see Chapter 4.3) that have certainly outlined a more liberal system, theoretically able to reduce significantly the number of suspected or defendants in pre-trial detention and the infringements of Article 5 of the ECHR. Unfortunately the data showed only a slight decrease and the historical data shows a trend toward the increasing of the general prison population[9] and a fluctuating trend in the numbers of pre trial detention[10]. Despite the positive legislative changes, the use of detention before the final sentence is increasing. Unfortunately, it is the effect of police and jurisdictional practices, which in turn are the result of the pressure of public opinion.

According to data of Antigone, 37.7% of pre-trial detainees are foreigners. Foreigners with a final sentence are the 31.4% of the total of the condemned. Therefore, as we get closer to the conviction, the percentage of foreigners decreases. The 53.4% of detained mothers are foreigners. The 31.16% of those sentenced to house arrest are foreigners.

Types of convictions/motives for pre-trial detention

The most common type of crime is represented by crimes against property (56 prisoners out of 100), followed by crimes against the person (41 prisoners out of 100) and violations of the legislation on drugs (35 prisoners out of 100).

Analyzing the categories in detail, it appears that the most widespread crimes, after the production, illicit distribution and possession of drugs and association for the illicit trafficking of drugs, are: robbery (31 inmates out of 100) and theft (22 inmates out of 100). The receiving stolen goods follows (21 prisoners out of 100), violations of the legislation on weapons (19 inmates out of 100), personal injuries (18 inmates out of 100), homicide (17 inmates out of 100).

Prison labour and retribution:

The employment rate among the free population of working age (15-64 years), calculated by ISTAT (National Institute of Statistics) in 2017 was 58.2% (60.6% among foreigners, 57.7% between Italians). The employment rate in prison drops to 30%. Half of the percentage among the free population. In 2017, 18,404 people worked in prison (31.95%of the total), with

[8] *Torreggiani and Others v Italy*, n. 43517/09.

[9] As overtly shown by the statistics provided by the Department of Prison Administration. See the historical series at the Ministry of Justice website, which reveals that since 2015 the prison population is constantly increasing. The last survey of March 31st 2018 reveals a number of prisoners currently held in the Italian prisons of 58.223, while the prison capacity is of 50.613. An assessment of these data can be found in A. Dellla Bella, Tl carcere oggi: tra diritti negati e promesse di rieducazione, Diritto Penale Contemporaneo Riv. Trim. 4/2017. As affirmed by the author: "Statistics show that prison population has significantly decreased since 2010. In the last two years, though, it has started rising again. Now is the time to think about the short and long term effects of the reforms following the judgment Torreggiani v. Italy, that has recognized a violation of ECHR Article 3. Tt seems to me that, regardless of the forthcoming reform of the penitentiary systems, there is no political will to implement changes that would be necessary to create sanctionary system in line with constitutional principles.".

[10] Notwithstanding an initial significant decrease in the percentage of persons held in custody in 2015 (33.8% as of June 30th of 2015),in 2017 the percentage started incresing again (34.6%). Source Ministry of Justice.

homogeneous percentages in the various geographical areas (32.5% North, 33.1% Center and 31% South and Islands).
Unfortunately this data are not referred to "true" work and therefore paid and contracted as requested from the law. Antigone calculates that just 2.2% of prisoners work for different employers from the penitentiary administration. Some of these are in semi-liberty (766), e others in an alternative measure called “external work”, Article 21 of the Penitentiary law (765) and therefore go out during the working hours to go to work.
Those who work for external employers, but remain inside of the prison are 949, of which 246 are employed by companies (195 in the North) and 703 by cooperatives (of which 195 in the North). Less than a thousand people (1.7% of the total of the penitentiary population). An overwhelming minority. The other 17 thousand people surveyed by the prison administration are employed by the administration itself and for the most part (82%) involved in the services of the institute (the cleaning of the sections, the distribution of food, some secretarial duties, writing complaints and documents for other inmates as *scrivani*). These tasks are performed in turns and without any training or experience expendability in the world of external work.

1.3 Recent evolutions of initiatives to compensate juridical inequalities among detainees/prisoners

Recent evolutions of mechanisms put in place (or withdrawn e.g. due to austerity measures) at national/local level and aiming at compensating juridical and economical inequalities among prisoners.

The only mechanism effectively put in place by the Italian legislation, aiming at compensating juridical and economical inequalities among prisoners in the access to defence right is the system of legal aid.
All the other systems (detailed *infra*) constitutes an informal system, created by the third sector (NGOs, UCP, legal clinic, Ombudsperson) and eventually, only later, institutionalized.

History of legal aid in Italy

The right to legal aid has traditionally been achieved according to two models, one based on the establishment of public legal offices and characterized by the intervention of the State for the payment of legal fees, the other, on the contrary, resting exclusively on the shoulder of the bar. Historically, in Italy, legal aid was granted by force of R.D. December 30, 1923 n. 3282, which operates the transition from a system of public assistance to one based exclusively on the services of lawyers paid by the state.

In criminal matters, legal aid was available as of right to anyone who is in a "state of poverty" ("stato di povertà"; Article 15), which phrase is to be interpreted as meaning inability to meet the expenses involved (Article 16). The decision affording legal aid was taken by the president of the trial court (Article 15; see also Article 3 of Royal Decree no. 602 of 28 May 1931). Once granted, it is the judicial authority seised of the case which nominated the lawyer who was to act for the person concerned (Article 29 of the 1923 Decree). The prosecuting authorities or the court president could cause a substitute lawyer to be designated either on their own initiative, where there are serious reasons, or if the original lawyer "establishes legitimate grounds which oblige him to abstain, or entitle him to be excused, from acting" (Article 32). Similarly, Article 128 of the Code of Criminal Procedure provides that an officially appointed lawyer may be replaced "for a justified reason". Article 5 of Royal Decree no. 602 of 28 May 1931 stipulated that any defence lawyer who is unable to act must supply a written statement of the reasons therefore; even after such a declaration has been made and for so long as he has not been replaced, the lawyer must fulfil the obligations of his office.

An assisted party loses the benefit of legal aid if s/he instructs a lawyer of her/his own choice (Article 128 of the Code of Criminal Procedure).
In general, legal aid came under the supervision of the prosecuting authorities; they could take such measures as may be necessary to ensure that the case of an assisted person was properly attended to and, without prejudice to the latter's action for damages, could request the imposition of disciplinary penalties on lawyers who neglect their duties (Article 4 of the 1923 Decree).

However, following the entry into force of the Italian Constitution, this legislation was subject to harsh criticism, since it had proved unsuitable to guarantee an effective recognition of the right provided for by Article 24.3 of the Constitution.

As a matter of facts, Article 24 of the Constitution affirms that: Anyone may bring cases before a court of law in order to protect their rights. Defence is an inviolable right at every stage and instance of legal proceedings. The poor are entitled by law to proper means for action or defence in all courts. The law shall define the conditions and forms of reparation in case of judicial errors." Article 24.3, therefore, is ambiguous in that it does not specify the body in charge of the protection of the right to defence of the economically disadvantage persons. Also due to this uncertainty, the discipline of the R.D. of 1923 remained in force for many years and only with the Law n. 217 of 1990 a system of legal aid in the criminal field was introduced.

The inclusion of penitentiary proceedings and prison disputes in the system of the Italian legal aid was provided in the first legal text which reformed legal aid in Italy, introducing an actual system of aid provided for by the State in criminal matters. Article 15 of Law n. 217/1990 expressly including penitentiary proceedings ("proceeding in which competent is the Surveillance judiciary") within the scope of legal aid in criminal matters.

The law and its (in)effectiveness:
The new reform law (Presidential Decree n. 115/2005, article 75) expressly include in the legal aid scheme each degree and each stage of the process and all any procedures, "derived and accidental, however connected". Subsequently, though, it is established that the discipline of legal aid "applies" even in the "execution phase", in the review process, as well as in the processes related to the application of security and preventive measures under the jurisdiction of the **Surveillance court**.

It seems that any other procedure under the jurisdiction of the Surveillance judge (first instance jurisdiction) is excluded by the legal aid.
This is a first serious impediment to the effectiveness of access to justice in prison litigation, since many important applications are lodged in front of the Surveillance judge (monocratic body), such as the request of early release, a special typology of home detention, which is a very broad one, and the compensatory and preventive remedies adopted after the *Torreggiani* pilot judgment against Italy.

The Italian Judiciary (Constitutional Court and Court of Cassazione) have repeatedly affirmed that single Surveillance judge procedures are included in the legal aid scheme, since the law refer to the "execution phase" which necessarily include all the litigation procedure concerning the execution of a sentence. Nevertheless, periodically, this interpretation is contested for different kind of proceedings which are considered as excluded by the legal aid scheme, since they lack a clear jurisdictional nature. This was evident for the application for early release, which was considered as a "non litigant" procedure, a sort of administrative, not jurisdictional procedure. Finally, the Court of Cassazione underlined the need for the protection of the right to defence in the execution phase and included the procedure for early release in the legal aid scheme (judgment n. 27757/2011).

But lawyers affirms that similar issues are likely to arise any time, since the legislator has never reformed the law so far.

Surveillance judges, on the contrary, affirm that the Constitutional Court and Court of Cassazione case law are able to provide a clear interpretation able to include all procedure in front of the Surveillance judge or Court in the legal aid scheme.

Another critical issue, again concerning the performance of the system of legal aid, as underlined by many lawyers, is the need to present a specific and distinct application for admission to legal aid in relation to each surveillance procedure initiated by or against the prisoner. This provision (art. 109 of the d.p.r. 115/2002) risks to sacrifice the institute of legal aid in Surveillance proceedings. According to this last article, in fact, the defender's fees are admissible only after the lodging of an application, so all the preliminary activities (such as meetings with the client, interviews in prison, contacts with consultants or social workers, in order to lodge an application) are excluded.
In fact, it seems that only the hearing activity would be included in the legal aid.

This situation could be improved by including surveillance proceedings within those "derived and accidental procedures" mentioned in the first paragraph of art. 75 of the d.p.r. 115/2002 or, admitting the possibility of a single admission to legal aid for the entire execution phase.
A more extensive interpretation of the aforementioned article of law would allow, in fact, full protection of the right of defence as provided for by Article 24 of the Constitution.

1.4 Litigant information *(please provide statistics if they exist)*

General litigant information

- Age, sex, nationality (ratio nationals/foreigners), class, minorities
- Diplomas and general level of education.
- Types of convictions/grounds for pre-trial detention
- Position inside facility: social position within the prison hierarchy, kind of convictions/motives for pre-trial detention, prison past.

No statistics on litigants do exist in Italy and data are very hard to retrieve.
Since one of the main strategic tool in order to implement prisoners' rights through prison litigation is the legal advice and legal counselling work done by NGO's in prison (mainly L'Altro diritto and Antigone) we can rest on these organizations' data in order to draw a picture of the litigants information.

Cases followed by these NGOs and NGOs' members involved in this research affirms that, generally, the more indigent and marginalized person within the prison community, specifically the ones who are not followed by a lawyer, become involved in litigation, mainly due to the contacts that they get to establish with NGOs providing legal information in prison, Ombudsperson and legal clinicians. This means that, counterintuitively, it occurs the case that the most socially and economically deprived person in prison can become the most active litigants.

It is also affirmed, nonetheless, that traditional prison hierarchy can still play a role. Mafia prisoners, for example, whose defence was assured by a committee of paid lawyers can still represent an important category of actively engaged prison litigants. But, especially with the creation of special Unit for mafia related crimes and criminal associations' crimes (so called section 41 bis), the traditional prison hierarchy has been shattered and more complex phenomenon in terms of prisoners involved in prison litigation occur. As a matter of facts, the

prison community in Italy was structured in a pattern of powers linked with the hierarchies of the organized crimes (mafia, camorra, sacra corona unita etc…).
After the reforms of the 90's, resulting from the emergency of the mafia massacres, the introduction of article 41 bis of the Penitentiary Law created a separate prison regime, the so called *carcere duro*, served in special prisons or prison sectors. This separate regime unhinged the traditional power structure in the Italian prison community.

Cases

- Number of cases per year, known outcome of those cases
- Substantiation of cases, if this data exists:
  - Issues connected to criminal proceedings
  - Issues related to everyday life and rights inside the facility
  - Other information available relevant to this stud

These data are potentially non-retrievable, since no data base, no other resources or archive exist on prison litigation. Each NGOs involved in the research presented their own scenario on prison litigation cases.

Altro diritto shares its own data concerning the prison litigation on preventive and compensatory remedy[11].
L'Altro diritto initiated a litigation campaign on material conditions of detention, drafting a form (see http://www.altrodiritto.unifi.it/sportell/cedu/index.htm) that takes into account all the parameters that the case-law of the ECHR has set as relevant for the assessment of a violation of Article 3. This form potentially enables all the prisoners who are suffering violations of their rights in the context of Article 3 of the European Convention on Human Rights to demand compensation for damages. The forms have been distributed (and continue to be) directly by the volunteers of L'Altro Diritto in Bologna's prison and in all prisons of Tuscany. In these premises volunteers meet the inmates individually and help them to complete the forms.
This same litigation campaign is ongoing for preventive remedy applications.

Decisions of the Surveillance Court of Tuscany on compensatory remedy		
Number of applications (only 35 ter) decided (2014-2018)	accepted	182
	rejected	206
	non suit	158
	inadmissible	151
	non competent	5
TOTAL		**702**

Data on 35 bis are still not available, since Altro diritto encountered issues in retrieving data about 35 bis in the method of archiving and electronic storage of the Surveillance Court. WE can say that, at the beginning the remedial tool of article 35 bis was superseded by 35 ter

[11] On December 23, 2013 a new general judicial remedy for the protection of prisoner's rights was enacted. Under the pressure of the ECtHR (See the Torreggiani pilot judgment, Torreggiani and Others v. Italy, application n. 43517/09), the Italian legislator adopted a bill aiming at enforcing the right of prisoners to appeal to a Court in case of violations of their rights, thus covering the issue of prison overcrowding. Following a decision of the Committee of Ministers of the Council of Europe - that appreciated the new preventive remedies (art. 35bis) but had also asked to the Italian Government to carry forward the reform's process - a new bill has introduced a specific remedy (art. 35ter) to be used in cases of violation of Article 3 of the European Convention.

remedy (compensatory) due to the urgent issue of overcrowding. Now and mainly due to the strategic litigation of Altro diritto, a high number of 35 bis have been lodged, sometime successfully by prisoners held in Tuscan institutes.

Practical means of litigation

- Recourse to lawyers
- Legal help from (privately/state financed) NGO representatives
- University legal clinics
- Other means

If we consider prison litigation *stricto sensu*, meaning all the prison execution procedure, complaints against violation of rights or access to alternative measure request, complaints against disciplinary sanctions of the refusal of basic request, such as visits, permits, phone call and so on, the main mean of litigation in prison is constituted by legal help from privately financed NGO representative and self-help litigation, for the most basic request and complaints.

Recourse to lawyer is an essential mean for litigation, but due to the complexity of the prison procedure along with the low remuneration of this kind of litigation, it is not always the first choice for prisoners.
Aldo criticalities of the systems are due to the low financial ceiling[12], coupled with the fact that those who do qualify are often unaware that they can apply, results in a very small percentage of defendants accessing legal aid. Although statistics are not collected on the rate of legal aid, it is estimated that just over 2-3 per cent of defendants, not including juveniles, receive legal aid. When a person earns above this financial threshold, even slightly, they are not entitled to any legal aid but they cannot choose to defend themselves. They must accept the lawyer appointed ex officio to them and they must pay that lawyer's fees. This puts a strain on both the defendant and the lawyer. Defendants may have to go into debt to pay for a lawyer that they did not choose or want appointed to them, and lawyers may have to take timeconsuming steps such as having to sue their clients for payment.

The ineffectiveness of the system of legal aid and legal information to prisoners have been historically denounced by NGOs, mainly by two NGOs, historically focused on the protection of prisoners' rights from a legal perspective, Antigone and L'Altro diritto, which have started to provide a service of legal counselling.
L'Altro diritto and Antigone in particular provide a comprehensive and inclusive legal service, consisting in legal information and counselling and in the drafting of the application for the access to benefits, alternative measures, execution proceeding, preventive and compensatory remedy.
NGOs do not have a general and all-encompassing legal standing to bring legal action in court, except in cases of anti-discrimination cases, in which it can operates on as a legal actor for the public interests. Nevertheless, it is an actor of the ECtHR's litigation on prisoners' rights as a third party intervener and following the *Valentin Câmpeanu*[13] case, it is possible to imagine a new trend and a new challenge for the recognition of legal standing for NGOs working in prison in particularly sensitive cases, not only at a European, but also at a national level,

[12] People who earn under €11.493,82 per year are eligible for legal aid (Minsiterial Decree of 16 January 2018).
If the individual lives with his spouse or other family members, the income, for the purpose of granting the benefit, is made up of the sum of the income of all the members of the family. Only in the criminal field the income limit is high of € 1,032.91 for each cohabiting family member.
Only personal income is taken into account when the rights of the personality are the object of the case, or in the processes in which the interests of the applicant are in conflict with those of the other members of the family unit living with him.
[13] Centre for Legal Resources on behalf of *Valentin Câmpeanu v. Romania*¸ no. 47848/08.

starting from the principle that prisoners' rights are human rights and following the same path of the anti-discrimination legal procedural protection.

The regional and local Ombudsmen, in coordination with the newly appointed National Ombudmsan and with the main NGOs operating in prison, are another lever for the effectiveness of legal information in prison and constitutes and a monitoring body able to share relevant information and work at a negotiation and political level for the effectiveness of access to legal information, to lawyers and to legal aid in prison.

Legal clinics are starting to constitute a mean of litigation in specific strategic field, such as the new compensatory and preventive remedy, introduced in Italy after the *Torreggiani* pilot judgment. This is the case of the legal clinic offered by the Law department of the University of Florence alongside with L'Altro diritto, which is combining the work of an NGO with the academic study and preparation of cases[14]. Another specific feature of the Florence legal clinic is that the learning by doing phase of the legal clinic on the protection of prisoners' rights, a group of students support the operators of L'Altro diritto and participate in the legal counselling service in prison, while another group collaborate with the Surveillance Court of Florence, supporting the judges in carrying out the ordinary activities, in particular in proceedings relating to the jurisdictional protection of rights and the decision-making process on alternative measures to detention and permits. This allow the students to understand the specific normative ideology of Surveillance judges. The two group discuss their mutual experience in weekly meetings of problem solving, under the supervision of the tutors, analysing the issues and cases followed in the course of the activities held in prison and at the Court.

2. LEGAL PRACTITIONERS - LAWYERS

Lawyers: defined according to the National Council of lawyers

2.1 Lawyers and litigation work

General policy of the Bar (and of unions of lawyers) on legal counsel for prisoners

- Does the Bar organize dedicated workshops or education on penitentiary law? Precise frequency, size of audience.

Interestingly enough, almost all the interviewed lawyers complain about the lack of specific workshop or formation on penitentiary law. It is seen as a "marginalized issue" (L2) and a "neglected one" (L1). This is perceived as a misunderstanding of the potential value of this kind of litigation, not only in economic sense (L1), but also on the more technical relationship between the trial itself and the execution phase (L1). All the lawyers interviewed agree on the need for an in depth knowledge of prison law in order to perform a strategic and effective litigation in this field. Also, all the lawyers agree on the necessary experiential path needed in order to understand the complexity of the prison environment, not only in strictly legal terms, but also in terms of relationship with all of the institutional and non institutional staff involved in building a case and a line of reasoning in prison law issues.
One lawyer (L3, who perform an institutional role in the *Camere Penali*) appears much more optimistic on this issue, affirming that the *Camere Penali* and *Scuole di formazione* (body in charge of the professional training of lawyers within the local bars) offers "seminars, conference and meeting dedicated to this issue".

[14] See: https://www.giurisprudenza.unifi.it/upload/sub/scdidattica/cliniche-legali/Cliniche%202019/Clinica3_2019.pdf

- Are there dedicated networks of lawyers? Are they generalists or dedicated to specific categories of detainees/prisoners or for specific legal fields? (for incarcerated foreigners, for prisoners with certain types of conviction, …)

Most of the interviewed lawyers appears sceptical on the possibility of such networks and affirms that they do not exist. Some (L3 notably), while saying that no network of lawyers as such exist, affirms that Unione Camere Penali is a forum for the discussion on prison matters.

The only dedicated network appears to be the Unione Camere Penali (http://www.camerepenali.it/), founded in 1982. UCP is an association of criminal lawyers with 131 territorial Penal Chambers. More than 8,000 criminal lawyers are registered with them. The President of the UCO and the Council, composed of 12 members, form the governing body of the Union and are elected every two years by the Congress in which the delegates appointed by each Criminal Chamber participate, in proportion to their subscribers.
According to their website, the Union promotes the knowledge, the diffusion, the concrete realization and the protection of the fundamental values of criminal law and of fair and equitable criminal process, elaborating studies and organizing cultural and political initiatives aimed at improving the penal system and penal procedure. It also works to ensure the correct application of the law and to support the reforms of the judiciary consistent with the values of independence, autonomy and impartiality of the judge.
It also protects, also through the drafting of legislative reform proposals, the prestige and respect of the function of the lawyer, so that the rights and prerogatives of the advocacy and the right of defence are guaranteed in accordance with constitutional and international norms.
The UCP works specifically in the field of prison, with the: Osservatorio Carcere (Prison Observatory, http://www.camerepenali.it/cat/70/osservatorio_carcere.html), established in 2006.

The Osservatorio Carcere is structured in decentralized bodies (represented by local representatives of the Criminal Chambers), operating along shared guidelines for the pursuit of the purposes assigned to the body: study the regulatory and practical problems of the prison system and prison reality, the legislative process and production in prison matters, organize and implement the monitoring of the prison situation through visits of the prisons.
The Osservatorio has established in recent years close relation and collaboration with the NGO's that deal with prison, in order to consolidate its political role through the exchange of experience and knowledge in the sector and to promote debates and conferences.
Among the objectives of the Observatory is to bring public opinion closer to the issues related to detention, for a great cultural challenge of modifying the concept of execution of the sentence.

- Does the Bar edit information booklets/digital tools on penitentiary law, access to legal counsel, practical problems faced by lawyers providing legal aid in police custody and prison? Who designs and promotes such tools? To what extent are they relevant with regard to major prison litigation issues? To what extent are they used by practioners? Which importance do they give to these tools?

Penitentiary law does not appears to be one of the main issues delat with through formation, booklets or digital tools. All the lawyers involved in the research underline the neglected status of prison law, not only within general and traditional branches of law, but also in the same criminal law sector. All the lawyers denounce this as a problem for the development of a

network of professional in the field of prison law. One lawyer (L4) affirms that the situation can vary a lot depending on different local bar. For example the Bar of Prato (a town with a quite large penitentiary institute, second largest institute in Tuscany) seems to be quite sensitive to prison law issues.

- Relations between the Bar and national Penitentiary administration (at different hierarchical levels). Tensions, cooperation?

No real relationship exists between the Bar and the national prison administration. Some lawyers referred about conventions or agreements, but without further consequences and possible evidence or documents. Many lawyers consider this situation as a *status quo*, while other suggest a possible collaboration by introducing a “prison representative” in the Bar who could have a direct contact with the penitentiary administration.

General profile of lawyers active on litigation

- Level of legal education, average age, power position within the Bar and capacity to bring problems to the bar encountered during legal practice in prison.
- Professional profile of lawyers acting in the field of prison litigation (larger firms, smaller offices, members of NGOs or professional interest organisations).
- Which proportion of litigation case work within their everyday practise?
- Connections between lawyers and NGOs / Human Rights organisations / Legal Clinics/ Universities / …:
    - Are most dedicated lawyers either members of or close to such organisations?
    - Are there situations of competition/tensions between the two?
    - Relationship with the judiciary?

Lawyers who are active in prison litigation appear to belong to different professional profile. There is, though, an interesting relationship between prison litigation and legal aid that results from almost all the narratives of the interviewed.
Interestingly enough, almost all the lawyers involved in the research affirm that the general profile of the legal aid lawyers id “young, inexperienced and longing to gain some clientele” (L1, L2, L3, L4), some specify that prisoners constitute a potentially interesting target market for young lawyers working with legal aid. Some rejects the same fact of consider an “anthropological profile” of the lawyers working on prison litigation with legal aid, since “there is no ‘lawer who work with legal aid” since all lawyers should and can work with this kind remuneration scheme, since our Constitution include legal aid as an implementation of the right to defence” (L5). On the contrary, one lawyer considers his/her own choice not to work with legal aid essential in order to keep “working at best and not being confused” and declares devoting their spare time for other social activities such as promoting human rights through formation and awareness raising, avoiding to make confusion between the profession, the entrepreneurial dimension of the lawyer’s cabinet and the social responsibility.

As a matter of facts, more experienced penitentiary lawyers affirms that while prison litigation occupy a major part of their everyday practice, legal aid constitutes a very small portion of this everyday practice. Some other lawyers, experts in prison law issues, declares not to work with legal aid scheme. Some, younger lawyers affirms that the percentage of clients declaring to be indigent and able to apply for legal aid is growing, due to economic crisis and austerity. Some other lawyer affirms that it is difficult for indigent people to obtain legal aid, because of the extremely low amount of financial ceiling required and many person in theory eligible can’t obtain legal aid and therefore they simply can’t afford a technical defence. These lawyers declare to be ‘forced’ to work pro bono by a system which seems to be completely ineffective to protect the person it is supposed to protect.

Relationship with NGOs and Universities seems to be quite strong for some lawyers, namely the one who work mainly on prison litigation (both within legal aid scheme or not). Other lawyers admit to have no contact with NGOs, legal clinics or Universities.
Real competition or tension have not been reported. Actually some NGO's member affirms that there is no conflict possible, since the defensive needs of prisoners do not constitute a real area of potential of economic gain, even with legal aid scheme for criminal lawyers. Other NGO's member (supported by some lawyers) affirms that, instead of conflict, there is a real potential collaboration between NGOs, legal clinics, Universities and Ombudsperson, since these actors allows prisoners to be aware of their rights, of the possibility to implement them, widening the scope and quantity of prison litigation and creating a market for criminal and prison lawyers.

Some NGOs' members discuss form a critical perspective the specific demographic population of prison institutions, composed essentially by indigent persons, socially marginalized, suffering various degrees of vulnerability, mainly foreigners, drug addicts and person with psychiatric issues. These people simply do not represent a target market, not even for lawyers working within the legal aid scheme, since the quantity of work and study in order to build an efficient and successful strategic litigation does not compares with the amount of compensation afforded by legal aid funding (NG1). The result being the lack of a proper and effective right to defence in prison and an ample space available for the work of other legal practitioners. The same NG1 goes on by proposing a reform of the legal aid system, creating a special list of legal aid lawyers experts in penitentiary law along with a training program formulated by local Bars, legal clinics and Universities.

The question on the relationship with the judiciary creates mixed feeling. Almost all the lawyers affirms that the judge underestimate the work of prison lawyers and consider the Surveillance procedure to be essentially inquisitorial, neglecting the strategic litigation as a tool and the necessity of the protection of prisoners' rights through an accurate and expert technical defence.

Interestingly enough, all the surveillance judge answer to the connected question (relationship with lawyers working in prison litigation) by affirming that "prison law is a very difficult and complex matter. It is therefore not really studied and known by lawyers, except for the few specialist of penitentiary law. Therefore no real difference exists between legal aid and ordinary lawyers, since both of them are generally inexpert" (J2).
Some judge, in particular, by sticking to this interpretative paradigm confirm the lawyers' thesis on the inquisitorial nature of the surveillance procedure by affirming that: "the first guarantor of prisoners' rights is the judge. A riabilitative jurisdiction able to proceed *ex officio*, *motu proprio* and the peculiar guarantee of the correct function of the penalty makes the role of Surveillance judiciary able to protect a prisoners even without a lawyer".

Legal relief specialization

> Selection of cases - according to which legal or social/political criteria (is there a dedication to specific populations of detainees/prisoners or specific issues – i.e. disciplinary, security measures, relationship with the family, etc.)?

Selection of prison cases is not really an option for prison lawyers. All of the lawyers involved in the research affirms that a selection of cases is not a viable option and is contrary to the same professional deontology of legal aid lawyers and prison law.

According to prisoners, some lawyers are considered as dedicated to specific category of clients in prison. This is the case with transgender and transsexual prisoner (held in a specific

section of the prison) or mother with child and women in prison, but the lawyers never mentioned to this kind of specialization. It seems more possible that this particular 'dedication' is due on one side to the so-called "radio carcere", the word of mouth between prisoners belonging to the same sections, on the other side, to the fact that it is useful to have more client in the same section in order to be able to have meetings with them in the same room.

2.2 **How is litigation case work financed?**

- What is understood by "pro-bono" in the country?

No real concept of pro bono exists in Italy. As a matter of facts, in Italy, the U.S. notion of *pro bono* public legal services does not exist. Moreover, *pro bono* work is not a common practice. It appears that *pro bono* work simply is not part of the legal culture or framework in Italy. Pro bono activities are instead primarily restricted to legal assistance given to non-profit entities or individuals who cannot pay for legal services based on ethical and social motivations.

Notwithstanding the above, certain professional organizations (e.g. local bar associations or notaries' associations) sometimes provide very basic legal information to guide citizens before they wish to contact a lawyer. Such services, which do not include legal advice, are aimed at providing a general overview of the citizens' rights and obligations in the case of the appointment of a legal professional or participation in a legal act.
Recently, In April 2014, PILnet started the Italian Pro Bono Roundtable to create new public space where lawyers, law firms, and companies can interact and cooperate with Italian NGOs and civil society. We have held 27 Roundtable meetings to date. The Roundtable has provided space for 41 Italian NGOs to present their work, discuss strategies and engage lawyers and law firms in cooperation on pro bono basis. The roundtable project will continue with meetings in 2019.

L'Altro diritto participated to the first meetings of the Pro Bono Round table where a definition of the Italian versione of Pro bono concept has been developed. As found on the Pilnet Italy webpage: https://www.pilnet.org/italy :
"The following definition of pro bono has been drafted and adopted by the Italian Pro Bono Roundtable to clarify what pro bono means in the local context and to guide the work of the Roundtable:

> *Premise*
> *The term 'Pro Bono' originates from the Latin phrase "pro bono publico" which means, activity carried out for the public good.*
> *There are different definitions of Pro Bono, depending on each country's history and legal system and the bar rules applicable to the members of the legal profession, as well as the aims of the organizations that are promoting public interest legal work for those in need.*
> *While it is not our scope to find a definition of Pro Bono that can be universally accepted, we deemed helpful to describe the purpose and boundaries of certain legal activity which Italian lawyers, members of the local Bars, may voluntarily decide to carry out, as a sole practitioner or in associated form, for the benefit of entities worth receiving legal support or individuals that cannot afford paying for their legal assistance or may not be eligible receiving legal aid.*
> *This activity, which we will consider falling under the definition of Pro Bono supported by PILnet, is to be intended to exclude any legal assistance provided by a lawyer for profit, any activity already regulated by applicable laws and falling under a governmental system of "legal aid" granting access to justice, and shall not be confused with any generic charitable service, sponsorship, funding or financial support to organizations that provide legal services to persons of limited means.*

Definition
Pro Bono activity shall mean the strictly voluntary, not for profit and gratuitous professional activity that a lawyer undertakes resorting on his/her legal skills, on a non discriminatory basis, but under his/her personal judgment and responsibility, and in compliance with, inter alia, the applicable laws, regulations and bar rules governing the performance of legal advice, assistance and/or representation, in favor of:
A. Non-profit organizations, charitable entities, non-governmental organizations, community centers and private or public entities having as purpose:
• the pursue of health, social, environmental or cultural assistance to the people; or
• ensuring access to justice; or
• the benefit of the public good in general; and
B. Disadvantaged individuals that:
• have no sufficient economic means to pay the customary fees for independent and uncompromised quality legal assistance they may be in need of; or
• have no access to legal aid or to the courts and the legal system.
The gratuitous character of the Pro Bono activity means that clients are not charged the lawyers' fees, as well as the ordinary expenses (e.g., photocopying, fax, telephone and mail) incurred for the performance of the professional activity required, except for any extraordinary costs (e.g., travel expenses, express couriers and legal investigation or search tools), which are incurred by the lawyers with the prior consent of the client.

- Is there state-funded pre-trial aid?
    - If yes, is it sufficient to cover expenses?
    - If not what are the consequences? (selection of specific cases, insufficient time, coverage of expenses through other sources than pre-trial aid?)

Legal aid is governed by Decree 115/2002 and article 98 of c.p.p. It enables those who lack financial resources to qualify for free legal assistance to promote or defend themselves in civil or criminal proceedings. With legal aid the lawyer fees are paid for by the state (the *ex officio* lawyer, on the contrary, is a lawyer appointed by the state to defend the accused that has not appointed a lawyer of choice yet, in order to ensure the right to technical defence in any criminal trial. The *ex officio* lawyer must be paid by the accused, and not by the State, but the accused can instruct a lawyer of choice at all times.).
The rules concerning legal aid and *ex officio* lawyers apply at all stages, including the proceedings regarding pre-trial measures. The only issue reported by all the lawyers involved in the research is that the application for legal aid is excluded by the funding, therefore for clients in prison, the meeting and the preparation of the application is not reimboursed.

The amount of legal aid funding is a debated issue. While on criminal matters, the law leave ample discretionary to the judge to decide between a minimum and a maximum possible retribution. This results in a variety of different situation. Even when local protocols exist (evening out the compensation system) the national situation appears to be strongly unequal. Consequently the Consiglio Nazionale Forense (National Bar) has provided a draft Protocol in order to uniform the different kind of compensation, including in pre-trial proceedings and proceedings in front the Surveillance courts (in monocratis and collegial formations).
All the lawyers involved in the research agrees on the fact that the amount of legal aid funding is insufficient to build a proper strategic litigation and to draft and follow a potentially successful case.
The narrative on the consequences of this critical issue (assumed by all the interviewed involved in this research) depends on the kind of actor interviewed. While lawyers almost unanimously affirms that the consequence lies not really on the quality of the defence, but

rather on the *pro bono* nature of the lawyer's involvement in the case, prisoners and NGOs' members affirm the contrary. The insufficient consistency of legal aid funding results (inevitably for someone, due to scarce involvement for others) in a poor quality legal and defensive service.

- Other? (e.g. private funding, coverage through other case work, legal insurance…)
- Legal aid:
  - Amount of aid?
  - What type of costs may it cover, which costs does it rule out?
  - Forms of payment?
  - How is the aid provided? Directly to the lawyer or to the applicant? Can the aid be directed to the applicant's family?
  - Are there any delays for reimbursement?

Lawyers' fees are determined by a decree from the Ministry of Justice which provides for a minimum and maximum fee for every professional act a counsel may perform. The fee for legal aid is low; a legal aid lawyer can expect to earn €1,000-1,500 for a simple case of three to five hearings whereas a private lawyer could expect to earn €4,000-5,000 for the same case. Legal aid lawyers also complain that judges can cut the fees presented at the end of each stage of criminal proceeding. Remuneration is so low that many lawyers refuse appointment, and those who do accept appointment may lack the funds or motivation to conduct a thorough investigation of the case.

The Ministry of Justice finances the provision of legal aid to indigent defendants. The total criminal legal aid budget is €87 million per year, or €1.45 per capita.

What are the known consequences of the origin of funds (e.g. state-funded lawyer vs. paid lawyer) in terms of quality of service?

All the lawyers working with legal aid specify that no consequences derives from the origin of funds, on the contrary some add that lawyers working with legal aid may result more dedicated that ordinary lawyers. Specifically, a lawyers voluntarily not working with legal aid (L4) specifies that "I have seen lawyers working pro bono with an immense passion and lawyers working for money doing their job superficially. Passion for what you do makes the difference". The critical point here is that this affirmation makes express reference to the pro bono work which is a completely different paradigm than legal aid, which is compensated for with special public funding.

While prisoners underlined the difficult relationship with legal aid lawyers, in terms of meeting, communication of the details of the case and procedure and updating. Some prisoners are referring of cases in which legal aid lawyers ask for the payment of certain acts. While this can be true, this is a high amount of confusion between the ex officio lawyer and the free legal aid funded lawyer.

On the other hand, prisoners and NGOs' members involved in the research affirm that the quality of legal services provided for by legal aid lawyers is comparatively and necessarily worse than services provided for by paid lawyers. This seems to be due to the fact that the amount and kind of work and study necessary in order to prepare a good and effective strategic litigation require proper funding. This is true because of the complex and interrelated web of social contacts that a proper defence need to build and maintain (for example in order to apply for alternative measure) or the work of evidence collecting (in order to draft an application for a preventive or compensatory remedy for a violation of fundamental rights). The cost of the different experts needed is also a huge issue for legal aid lawyer. One of them affirmed that

"you simply can't find an expert who will work for the prospective amount of money of an average legal aid compensation scheme" (L2).
Finally it appears that the common narrative and ideology among lawyers is that "no difference exists between legal aid lawyers and paid lawyers" (L1, L2 and almost all the others, with slightly different nuances), while prisoners and NGO's members tell a different story, affirming that the kind of effective litigation and contacts of a paid lawyers are generally impossible with the kind of legal aid system available in Italy.

2.3 Access of lawyers to their clients

- How does a lawyer access a potential client, that is, make his or her existence known to a prisoner? How is lawyer attendance organized within detention facilities?
- Material problems related to access (e.g. remote prisons, costs of transportation)
- Administrative problems related to access (e.g. security measures, searches)
- Problems within detention facilities (e.g. mobility between wards, waiting times, existence of a dedicated space to meet detainees? Issues of confidentiality? Relations with staff: with officers, medical staff, social workers etc., on legal issues connected with their specific fields).
- Access to detainees and prisoners' files?
- How are cases initiated, through initiative of the lawyer/the prisoner?

The access to the lawyer to a potential client usually results from the appointment as *ex officio* lawyer during the pre-trial phase. The ex officio lawyer verify the prerequisites for the access to legal aid and prepare the application for legal aid.
Interviewed lawyers affirms that attendance is organized and generally speaking, access is not a critical issue. Usually a simple phone call in order to set the date of the meeting is sufficient. The relationship with penitentiary administration officers and medical staff, instead requires "the usual patience needed with public administration in Italy" (L2) and all the bureaucratic procedures can take a little time.

Some lawyers experienced difficult access to remote prison, such as the case of San Gimignano prison in Tuscany, which is not covered by public transport and is very far away from the town of San Gimignano or the other towns.

Waiting time and confidentiality do not appear as problems, but an issue of confidentiality arose for a specific category of prisoner, i.e. transgender prisoners.

A relevant issue, underlined by all the actors involved in this research, is the critical and ambiguous interpretation of the number of phone call to the lawyers. Since the law is not specific in this respect, different prison institutes' directors acted according to different interpretation, most of the time including the phone call to the lawyer in the total (limited) number of monthly phone call that a prisoner is allowed to make to maintain contact with the family and outside social world (according to a restrictive reading of Article 37 of the Execution Rules to the Penitentiary Law (Presidential Decree 230/2000).
Actually, Surveillance judges, lawyers and NGOs' members involved in the research underlined that the reform of the Penitentiary law (d.lgs. 123/2018), even if it is a totally incomplete text, modified Article 18 of the Penitentiary law affirming that: "Prisoners are allowed to have meetings and correspondence with relatives and other persons, also for the purpose of carrying out legal acts. The prisoners are entitled to talk to the lawyer, without prejudice to the provisions of article 104 of the criminal procedure code, from the beginning of

the execution of the measure or sentence". This provision needs to be understood, according to a Surveillance judge: "as intended to affirm the protection of the right of defence, the faculty of the prisoners to conduct interviews with his lawyer without limits from the beginning of the execution of the penalty or of the precautionary custody". Therefore, in view of this change and in order to guarantee the effective exercise of the right of defence (and at the same time guarantee the maintenance of contacts with family members and the fullness of the right to affectivity) "art. 37 of the Implementing Regulations, must be interpreted in such a way as to guarantee that the interviews with the defender do not affect in any way the number of the same and of the phone calls with their family members".

3. LEGAL PRACTITIONERS - NGOs (e.g. NGOs / Human Rights organisations / Legal Clinics/ Universities / monitoring bodies that provide legal advice and/or may start litigation)

3.1 Description of dedicated networks (NGOs/ Human Rights organisations / Legal Clinics/ Universities / monitoring bodies (that provide legal advice and/or may start litigation).

- Brief history of each relevant body.
- Staff (number, permanent or temporary staff, professional experience)
- Internal relations between departments (policy, law, finance, HR…); and notably with the policy department: e.g. modes of cooperation, cases of conflict, strains and hierarchy between these departments and how they collide or not.
- Legal relief policy
  Selection of cases - according to which legal or social/political criteria (is there a dedication to specific populations of prisoners or specific disciplinary cases)?

The universe of the relevant actors, acting in the prison space in order to implement the right to defence and the protection of human rights in prison is composed of NGOs, legal clinics within Law Universities and different level of monitoring bodies.

NGOs and legal clinics operating in the Italian prison institutions, in particular, appears to be the most dynamic tools for the implementation of the right to defence and legal aid. First of all they are able to provide basic information concerning the detention status, the right to access to court and the right to defence since the beginning of the imprisonment, specifically providing information and legal counselling on the legal aid scheme, criteria and accessibility. This is also due to the fact that usually the most active organizations enter the prison facilities periodically (once a week, twice per month) and are therefore able to intercept the new prisoners who get to know about the legal services provided for by the NGOs through their fellow inmates or the prison staff.
Secondly, they can elaborate a legal strategy and initiate litigations in many fields, from the simplest proceedings, like the early release request, to the compensatory and preventive remedy applications. This is due to the facts that all the proceeding concerning prison litigation can be lodged personally by the prisoners and can therefore be drafted by the NGOs legal operator, lawyers and legal clinician.
Whenever the proceeding is a trial one and a hearing is foreseen (chamber procedure), the Surveillance Court provide the name of an *ex officio* lawyer[15]. This is a very delicate and

[15] Legal aid is governed by Decree 115/2002 and article 98 of c.p.p. It enables those who lack financial resources to qualify for free legal assistance to promote or defend themselves in civil or criminal proceedings. With legal aid the lawyer fees are paid for by the state.
The *ex officio* lawyer, on the contrary, is a lawyer appointed by the state to defend the accused that has not appointed a lawyer of choice yet, in order to ensure the right to technical defence in any criminal trial. The ex officio lawyer must be paid by the

complex step, since it requires a coordination between prison staff, NGOs legal operators or legal clinicians and the *ex officio* lawyers in order to assure the access to the legal aid scheme anytime the economic and personal conditions of the prisoner so require.

Usually this means that the NGOs operator or legal clinician have already analysed the prisoner's position and have provided the list of lawyers working with legal aid in the local bar. The *ex officio* lawyer is usually included in those list and can therefore be activated since the first meeting with the client in order to prepare the request for admission to the legal aid scheme to be lodged during the first hearing or filed in the Surveillance Court office before the first hearing.

The fact that every new application requires a new appointment of an *ex officio* lawyers and the consequent request for admissibility to the legal aid scheme mean that a lot of time is lost, preparing a new legal aid request and coordinating the *ex officio* lawyer. This also means that a lot of the prisoner's legal history is lost, specifically for the most vulnerable prisoners (i.e. socially marginal person with no external network, foreign nationals, prisoners with mental health issues). This part of the prison population, if not supported, is not able to keep contact with the lawyer, especially once out of the prison and in case of recidivism.
Also, whenever this coordination does not work, NGOs' members and legal clinicians affirms that in many cases the lawyer does not meet with the defendant at all prior to the hearing. This is due to many reasons, namely the fact that prison litigation is not considered a profitable activity (because of the above-mentioned normative limitations), prison law is complex and time-consuming compared to the legal aid fees.

Also, some interviewed argued that in Italy we are still immersed in a normative ideology (mainly shared by the Surveillance Judiciary, but also, and by consequence, by lawyers and by the prison administration) which consider prison law, penitentiary litigation and prison related applications as a sort of non-jurisdictional field (worthy is to remember that we have achieved a full jurisdictionaliztion of this matter very recently and only thanks to the European stimulus and ECtHR case law). The result has been so far a very loose trial procedure and a very limited defence activity.

This situation led NGOs in prison, legal clinic devoted to the study of prison law and prisoners' right defence and ombudperson to achieve a prominent and essential role in protecting and enhancing the effectiveness of the right to legal information, defence, access to justice and access to legal aid for Italian prisoners also organizing litigation campaign and strategic campaign for the promotion and effectiveness of prisoners' rights.
This has been particularly evident after the introduction of the preventive and compensatory remedy after the *Torreggiani* pilot judgment procedure. Some NGOs and legal clinics have started a wide litigation campaign in this field promoting and challenging an evolutive interpretation of the law by the Surveillance Judiciary, as underlined by the same Surveillance judges interviewed.

NGO's

Traditionally NGOs have always had a limited role in protection of prisoners' rights. Penitentiary law recognizes that NGOs can take part of treatment and/or resocialization program. Italian penitentiary model has been designed firstly on the basis of United Nations' Standard Mininum rules that propose the principle of rehabilitation and individualized treatment of prisoners and, secondly, on the basis of 1987's European prison rules that emphasize the role of penitentiary welfare as a tool for resocialization. Consequently, the article 17 of penitentiary law (n. 354/1975) frames the role of NGO as a tool for social reintegration, not directly for promoting rights:

---

accused, and not by the State, but the accused can instruct a lawyer of choice at all times. The rules concerning legal aid and *ex officio* lawyers apply at all stages, including the proceedings regarding pre-trial measures.

shall be admitted to prisons, with authorization and in accordance with the directives of the Surveillance Judge, on approval of the director, everyone having real interest in re-socialization of inmates and useful to promote contacts between the prison community and free society.

In another norm penitentiary law explicitly refers to the role of civil volunteers in treatment activities, art. 78 of penitentiary law states that volunteers may be involved in treatment programs and recreational activities inside prisons and, secondly, in probation and alternative measure's programs. According to this legal framework most of NGOs, mostly catholic, have always been involved only in educational or work programs inside prisons or have been asked to provide material or moral support to prisoners.
The judicial system for prisoners' rights protection neither before nor after the reform followed to Torregiani's case has recognized any role to NGO in litigation. So NGO aren't entitled to seize the surveillance court and cannot be called to testify. Also if there's any legal impediment, reports provided by NGO have never been used by Courts in any case. But in a penal trial where inmates are victim of a crime (for instance in police abuses cases), NGO involved in prisoners' rights protection (Altro Diritto and Antigone) have been allowed to submit a civil action against the perpetrator .
In spite of this poor legal framework, some NGOs have started, in second half of 90s, to have a role also in judicial protection of prisoners' rights. Indeed, thanks to the facts that the litigation is mainly written and that most of the claims to Surveillance Court may be submitted directly from prisoners without any attorney, some NGOs (mainly Altro Diritto and partly Antigone) have developed expertises in extra-judicial legal counseling and in assisting prisoners to fill the claims. Once that these claims are submitted they are discussed in court hearing according to the chamber procedure, by an *ex officio* lawyer, appointed for the case, without the participation of any NGO member or representative.

Antigone (public campaigns, observatory on prison condition)
http://www.associazioneantigone.it/

Antigone is an Italian Ngo born in 1991 and dealing with human right protection in penal and penitentiary system. Antigone in not involved in litigation but it's mainly focused on public campaigns and cultural movement on prison issues (through education, media, publications and the academic review «Antigone»). Antigone runs an Observatory on Italian prisons, involving around 50 people, 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.

Every year Antigone's Observatory publishes a Report on Italian penitentiary system . Online version of the report describes the situation of each prison involved in the project, while the paper version is mainly based on essays describing the general situation of Italian prison system. Antigone leads also a European Observatory on prisons involving nine European Countries and funded by the European Union.

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.

The last report (XIV Report) of Antigone[16] refers to their latest **litigation campaigns**:

● ASTI (Cirino-Renne case) On 27th October 2011, Antigone acted a as plaintiff in the criminal proceedings that saw five police officers accused of using violence against two detainees, Renne and Cirino. These abuses were committed in the prison of Asti, in December 2004. The

[16] http://www.antigone.it/quattordicesimo-rapporto-sulle-condizioni-di-detenzione/

proceeding was concluded on January 30th 2012 because it exceeded the time limitation. On October 26th 2017, the European Court of Human Rights has condemned Italy for the violation of art. 3 of the European Convention on Human Rights that prohibits torture, and inhuman or degrading treatment or punishment. ● LUCERA (Rotundo case) On 13th January 2011 Giuseppe Rotundo sends a letter from the jail to his lawyer where he reports having been victim of a beating inflicted by three prison officers. Antigone followed the case supported by its team of lawyers. The trial is currently underway at the Foggia Court and it is the result of the unification of two lawsuits; in fact the three officers have also denounced the assault by the convict. During the debate, several witnesses have been questioned. The prison psychologist reported the interview she had with Rotundo the day that followed the event: “it was the first time I had seen a person so brutally roughed up” and she reminded Rotundo’s words: “he had been brought in a cell, presumably in solitary confinement, and asked to get undressed and then the beating had begun (…).” (Hearing of 29th November 2016). The next hearing is scheduled on 25th October 2018 and the time limitation is getting closer.

● SIRACUSA (Liotta case) It was the 9th of March 2013 when Antigone received an email from Mr. Liotta’s sister, who was reporting the death of her convicted brother: “(…) I am asking your intervention in defence of the case of Alfredo Liotta who has died without any medical aid. Last time I saw him it was April 2012 and he was already very run-down, he weighed no more than 55 kg. Then from April until July the psychophysical decay has brought him to death.” On 6th June 2013 Antigone filed a petition to the Public Prosecutor’s office of Siracusa in order to ask to identify the individuals responsible for Alfredo’s death, that took place on26th July 2016 in a cell of Cavadonna’s prison in Siracusa. On 29th November 2013 the Public Prosecutor’s office of Siracusa informed that nine physicians that had examined Liotta had been put under investigation along with the expert of the Court of Assizes of Appeal and the then prison director. The collective technical opinion registered on 23rd June 2014 judges heavily the behaviour of the medical staff in the period 21-25 of July 202: Alfredo dies in the bed of his prison cell due to a cardiac circulatory collapse: “related to a rectorrhagia caused by a haemorrhoidal lesion”. Three years after Alfredo’s death –25th April 2015 – Antigone has filed a motion in order to urge the Public Prosecutor’s office to close the investigation. On 14th December 2016 the Prosecutor asked for a judgment for manslaughter of nine out of ten indicted. The director had been deleted from the accused. The Prosecutor indicated Antigone among the offended parties. During the preliminary hearing held on 6th April 2017 the Judge approved the request of Antigone to take part as plaintiff. The next hearing for the definition of the preliminary phase of the trial is scheduled on 17th May 2018.

● IVREA In March 2016, Antigone denounced an incident of violence that occurred against an African prisoner. The incident was reported by another detainee: "On Saturday, November 7th, I witnessed the mistreatment of a young prisoner, probably from North Africa whose name I do not know. At about 8.15 am I heard screams of pain and requests for help and I came out of my cell in the corridor that allows you to see the roundabout on the ground floor. Indeed, I am detained in the section where there are the cells of people in semi-liberty and in art.21. Then, I I saw three police officers that I could recognize even if I do not know their names, beating with slaps and punches the young man who kept shouting asking for help and trying to protect himself without reacting. On the scene there were other agents and a health worker who remained passive to observe. The young man was dragged to the infirmary while he kept shouting. Currently, four criminal proceedings are pending before the Public Prosecutor's Office of Ivrea, two against known and two against unknown people. Antigone will deposit a formal request to encourage the closure of the investigations.

● PORDENONE (Borriello case) On 8th April 2016, Antigone lodged a complaint before the Public Prosecutor of Pordenone to denounce various inconsistencies on the death of the young Stefano Borriello (who was merely 29 years old), which occurred, on 7th August 2015, in the prison of Pordenone. According to the report of the death written by the Director, at 8:15 pm a

police officer saw Borriello in his cell (number 2), lose consciousness and fall to the ground; he was carried to the emergency room of the Pordenone Hospital where his death was recorded. The preliminary investigations developed into two phases with similar outcomes, namely the request of dismissal by the Public Prosecutor. The mother of the young man opposed to the dismissal of the case, so the judge of the preliminary investigation considered necessary an integration to the preliminary investigations. It was the 28th of September 2016. In the second phase of the investigation, the Public Prosecutor, after having arranged a medical consultation, on 17th July 2017, advanced a second request for the dismissal of the case. Antigone presented a notice of opposition to the dismissal that was discussed during the hearing of 18th of December 2017: according to the specialist in infectious disease appointed by our association, a visit to the patient (even the day before his death) would have allowed the beginning of a therapy that would have increased his possibility to survive. In the outcome of the hearing, the judge provided for a measure of coercive imputation that brought the Public Prosecutor to formalize the charge of manslaughter for the doctor of the prison. The preliminary hearing, in which Antigone asked to take part as a plaintiff, will take place on 8th May 2018, in the Court of Pordenone.

● REGINA COELI (Guerrieri case) Valerio Guerrieri committed suicide on 24th February 2017 in the bathroom of his cell in Regina Coeli: he had just turned 22 and he had sevear psychic disorders. According to the last specialist who visited him, Valerio was suffering from “personality disorder” with a "sort of chronic discontrol and manipulative attitudes" and the suicidal risk of the young man was "rather significant" and "not negligible”. Valerio had spoken in that hearing saying that he was sick but not dangerous for other people because he didn’t harm anyone. He also said that at Regina Coeli there was not even an officer every floor and that the psychiatrist who was supposed to visit him had never done so. At the end of that hearing, ten days before Valerio’s death, the judge declared Valerio partially non compos mentis and he condemned him to four month of prison withdrawing the pre-trial detention in prison and providing for the security measure in Residence for the Execution of Security Measures. The security measure was not disposed provisionally and so it had to be carried out only after serving the sentence. Immediately after his death, the Public Prosecutor's Office opened proceedings against unknown for manslaughter. Antigone did not take part in this proceeding but it lodged a complaint to shed a light on the legal ground of Valerio’s detention. In fact, when someone is deprived of legal capacity, he/she should be held in REMS instead of in prison; however, due to the lack of available places in REMS several people are now detained in penitential institutions. The investigations on this proceeding have been concluded on 20th February with a request of dismissal. Antigone, with Valerio’s mum, have lodged an objection to the request of dismissal.

● VELLETRI (Prato case) On 25th January 2018, Antigone has lodged a complaint to shed a light on the death of Marco Prato, who committed suicide on 20th June 2017 in the bathroom of a cell in the prison of Velletri. On 13th February 2017, Mr. Prato was moved from Regina Coeli to the Velletri prison against his will and with unreasonable motivations. In Rome, he was under strict surveillance and he was subjected to an important therapy. In the next months, he made sporadic interviews with the psychiatrist and despite the obvious signs of detachment and isolation - he left the cell only few times and he had interrupted the correspondence with his friends- no particular actions were taken to help him. Antigone has lodged two complaints to the Public Prosecutor’s Office of Rome and Velletri: to the first one for the violation of law on privacy (some clinical data were disclosed by a television broadcasting) and the second one for Marco’s suicide. From October 2017, reports of violence have come from the following prisons: Regina Coeli (one detainee), Viterbo (three detainees), Foggia, Ascoli Piceno and La Spezia. The national Guarantor of people deprived of liberty or the local Guarantor have been promptly informed.

● Solliciano The NGOs l'Altro diritto and Antigone acted as a plaintiff before court in the proceeding against four officers guilty of ill-treatment of some inmates in the Sollicciano prison in Florence. The facts go back to the period between September and December 2005. Three incidents were reported involving the agents accused of having applied "severe measures not allowed by law", in violation of article 608 of the Criminal Code, launching slaps against prisoners or hitting them with objects blunt. The most serious incident occurred on October 26, 2005, when, according to the prosecution, one of them repeatedly hit an inmate with the handle of a broom "until he broke it in several parts". The first instance sentence arrived on the June 21th 2013 and convicted the three officers, with sentences ranging from eight months to a year and six months of imprisonment plus compensation for damages in favor of the civil parties. On April 17, 2018, five years after the first decision, the second instance judgement is delivered. This one absolves partially the three officers but the sentence remains for multiple injuries and compensation for the victims. On the other hand, the charges for the violation of Article 608 fall, according to an interpretation of the law, requires, in order for the fact to exist, the further limitation of personal freedom already compressed. The three officers benefited from the time limitation. Two of them have chosen to renounce to it while the officer who has not renounced yet is still in service. Alongside the criminal proceedings, the disciplinary hearing (which was held before the appeal) has also ended because the facts have been considered as not having caused "disturbance". The sentence delivered by the second instance was sent to the penitentiary administration.

Altro Diritto (litigation, legal counseling, documentation centre)
http://www.altrodiritto.unifi.it/

The Documentation Centre L'altro Diritto, established in 1996 at the Department of Theory and history of law of Florence University, is actively engaged in theoretical reflection and sociological research in the fields of social marginality, deviance, prison and detention institutions, and makes the most relevant and accomplished results of this activity available to social operators and scholars through its Web site. Born as a documentation Center l'Altro Diritto has become an important NGO actively involved in prisoners' rights protection, through litigation and mediation with penitentiary administration, thanks to its Extrajudicial Counselling Service. In 2010 Altro Diritto has signed an agreement with the Ministry of Justice that formalizes the role of the centre in promoting prisoners' rights and giving them free legal counseling.

Altro Diritto is active in most of Tuscany's prisons and in Bologna, Palermo and Brescia's prisons. The 160 members of Altro Diritto are students, researchers and professors of the faculty of law. They give legal advices, help prisoners to fill claims and to seize the Court. At the same time they mediate with prison administration to solve cases and to effectively allow prisoners to access their rights.

In 2012 Altro Diritto has been named Ombudsman of San Gimignano's prison. It's the first time in which the role of ombudsman in recognized to an NGO and not to an individual.

Since 2014 the association has been empowered by the UNAR (National Office for the Racial Antidiscrimination) as an association able to act in name and on behalf of discriminated individuals and groups in front of the Courts. Furthermore, since 2015, L'Altro diritto is engaged in the University of Florence legal clinics, which provide students with training and expertise in the field of the protection of the rights of asylum seekers and the Strasbourg System of Human Rights' protection, specifically on prisoners' rights, anti-discrimination, minority rights, forced labour, slavery and trafficking.

L'Altro Diritto is in the list of NGOs with which GRETA held consultations, during their visit in Italy in January 2018, on the features of contemporary trafficking and exploitation, and actions adopted by Italian authorities to ensure the implementation of the Council of Europe Convention on Trafficking, especially in the context of increased migration movements. Furthermore, the 2018 report of l'Altro Diritto on labour exploitation is quoted as a source in the GRETA second report on Italy, which was published in January 2019.

Recently Altro Diritto has been deeply involved in supporting prisoners to apply to Italian surveillance Courts for compensatory remedy (art. 35 ter of Penitentiary Law) for violation of art. 3 of European convention. Altro Diritto has directly assisted inmates detained in Tuscany and in Bologna's prison. The application form and a guide have been made public on the website and, thanks to the network of Ombudsmen, have been made available in all Italian prisons.

Altro diritto litigation campaign:

Altro diritto litigation campaign is twofold.

At a European level, Altro diritto is engaged as NGO providing information and litigating for prisoners' rights in front of the ECtHR:
L'Altro Diritto has been authorized as a third party intervener in the Grand Chamber cases: *Muršić v. Croatia* (no. 7334/13) and *Viola v. Italy* (no. 77633/16) and is part of the European Prison Litigation Network, which has filed a third party intervention in the Grand Chamber case *Hutchinson v. UK* (no. 57592/08), *Mursic v. Croatia* (no. 7334/13), *Sokolow v. Germany* (no. 11642/11), *A.M. and other v. Russia* (nos. 78224/16 and 78399/16), *Ilnseher v. Germany* (nos. 10211/12 and 27505/14) and *Viola v. Italy* (no. 77633/16).
L'Altro diritto has also filed a Communication in the case of *Torreggiani and Others v. Italy* during the execution procedure in front of the Committee of Ministers of the Council of Europe.

On a national level it is focused on penitentiary execution law with strategic campaign of litigation on applications for compensatory and preventive remedies on one side and on application for prison benefits (such as permits, early release and so on) and access to alternative measure on the other.
Specifically on the compensatory and preventive remedy, Altro diritto has filed complaints on different issues relating to inhuman and degrading conditions of detention and violation of prisoner fundamental rights on various grounds.

- 35 ter (compensatory remedy):

L'Altro diritto has initiated a litigation campaign on material conditions of detention, drafting a form (see http://www.altrodiritto.unifi.it/sportell/cedu/index.htm) that takes into account all the parameters that the case-law of the ECHR has set as relevant for the assessment of a violation of Article 3. This form potentially enables all the prisoners who are suffering violations of their rights in the context of Article 3 of the European Convention on Human Rights to demand compensation for damages. The forms have been distributed (and continues to be distributed) directly by members of L'Altro Diritto in Bologna's prison and in all prisons of Tuscany. In these premises legal operators meet the inmates individually and help them to complete the forms.

This model was spread all over Italy through the mediation of the local Ombudspersons. This fact allowed an high percentage of prisoners to have knowledge of the remedy and to concretely apply for the compensation. Unfortunately the personalization of the application form was only possible in prisons and cases in which NGO's members were able to assist the prisoners in completing the application. Very rarely the prisoners were assisted by a lawyer with legal aid in drafting applications under Article 35 ter. Only later on, during the proceeding

in front of the Surveillance Judge, a lawyer is appointed and legal aid is eventually provided. The problem is that the lawyer only knows the case on the first hearing with a clear infringement of the right to the technical defence.

Particularly from the most deprived and remote prisons of Italy, prisoners can also write to Altro diritto in order to receive a form and a summary evaluation of their case (this happens regularly from prisons in Sicily and Sardinia). Altro diritto, then, get in contact with the local or regional ombudsperson (when existent) in order to ask their collaboration in helping the person (and other potentially interested) drafting the application.
This strategic litigation pays continuous attention to jurisprudential trends and new argumentative strategies at a national and European level in order to adjust the model and adapt it to the most protective legal reasoning and the most dynamic and evolutionary interpretation.

As a matter of facts, the example of the calculation of space can be illustrative of the necessity of this ongoing adjustment. The approach adopted by the Grand Chamber of the ECtHR in the *Muršić v. Croatia* case pushed the Italian judiciary toward an overall relativization of the protection offered by the new compensatory remedy. It is suggestive to note that for a long time, since the knowledge of the referral to the Grand Chamber under Article 43 of the *Muršić v. Croatia* case[17], the Italian Surveillance Judges claimed to be waiting for the solution of the "3 square meters dilemma" therefore adopting a sort of cautious and relativistic attitude[18] toward the Strasbourg case law and the findings in *Ananyev[19], Sulejmanovic* and *Torreggiani*. As a result, the turning point, clearly showing the real attitude of the Italian Surveillance Judiciary, has been the Grand Chamber decision in *Muršić.* Since this decision, the Italian case law has recognized its own constraint towards the "interpretative criteria" of the Strasbourg Court on the evaluation of the violation of Article 3 ECHR, focusing on a specific and reductionist reading of the *Muršić.* The Grand Chamber's decision has been read[20] not only as a clear endorsement for a relativisation of the minimum standard for multi-occupancy accommodation in prisons[21] and of the "absolute nature" of Article 3 of the Convention, but also as a clear norm of conduct toward the inclusion of the furniture in the calculation of the available surface area[22].

Interestingly, the Italian Corte di Cassazione decided a case declaring the following principle: "to calculate the minimum space available in multi-occupancy cells, the surface of the cell must

---

[17] *Muršić*, cited On 10 June 2015 Mr Muršić requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 6 July 2015 the panel of the Grand Chamber accepted that request. The case was, then, decided on the 20th of October 2016.

[18] The reductionist approach of the Italian judiciary on the compensatory remedy has been variously exposed in literature, see, A. Della Bella, "Il risarcimento per i detenuti vittime di sovraffollamento: prima lettura del nuovo rimedio introdotto dal d.l. 92/2014", in *Diritto Penale Contemporaneo*, 13 October 2014; G. Malavasi, "Nota a commento alle ordinanze dell'Ufficio di Sorveglianza di Bologna in ordine alla concessione del rimedio di cui all'art.35 ter O.P.", in *Diritto Penale Contemporaneo*, 20 November 2014; E. Santoro, op.cited; G. Giostra, "Un pregiudizio grave e, attuale? A proposito delle prime applicazioni del nuovo art. 35 ter Ord. Pen.", in *Diritto Penale Contemporaneo*, 24 January 2015; M. Bortolato, "Torreggiani e rimedi "preventivi": il nuovo reclamo giurisdizionale", in Archivio Penale, 2 – May-August 2014; R. Braccialini, op.cited; C. Masieri, "La natura dei rimedi di cui all'art.35 ter. Ord. Pen.", in *Diritto Penale Contemporaneo*, 22 July 2015; A. Pugiotto, "La parabola del sovraffollamento carcerario e i suoi insegnamenti costituzionalistici", in *Riv. it. dir. proc. pen.*, Anno LIX, Fasc.3/2016; A. Pugiotto, "Nuove (incostituzionali) asimmetrie tra ergastolo e pene temporanee: il rebus dei rimedi ex art.35 ter O.P. per inumana detenzione", in *Rivista AIC*, 12 November 2016; M. Passione, op.cited; A. Della Bela, "La Corte Costituzionale si pronuncia nuovamente sull'art. 35 ter o.p.: anche gli internati, oltre agli ergastolani, hanno diritto ai rimedi risarcitori in caso di detenzione inumana, in Diritto Penale Contemporano, fasc. 5/2017, p. 318 ss.

[19] *Ananyev and Others v. Russia*, n. 42525/07 and 60800/08.

[20] For an example of this trends, see, *inter alia*, Surveillance judge of Pisa, decision 28 June 2017, n. 1952/2017 SIUS, and decision 22 September 2017, n. 4855/2016. Contra Surveillance judge of Venice, decision 27 June 2017, n. 2016/1961 SIUS.

[21] See paragraphs 137 and 138 of the *Muršić v. Croatia*.

[22] See §114: "Lastly, the Court finds it important to clarify the methodology for the calculation of the minimum personal space allocated to a detainee in multi-occupancy accommodation for its assessment under Article 3. The Court considers, drawing from the CPT's methodology on the matter, that the in-cell sanitary facility should not be counted in the overall surface area of the cell (see paragraph 51 above). On the other hand, calculation of the available surface area in the cell should include space occupied by furniture. What is important in this assessment is whether detainees had a possibility to move around within the cell normally (see, for instance, Ananyev and Others, cited above, §§ 147-148; and Vladimir Belyayev, cited above, § 34)".

be understood as a space that can be used by the prisoner and is suitable for the movement, which means that the space allocated to the toilets and the area occupied by the fixed furniture, comprised [by?] the one occupied by the bed, must be deducted from the overall area"[23]. The ruling took into account the then released decision of the Grand Chamber in *Muršić* and tried to blend the *ratio decidendi* and the *dicta* of the European Court with its own judgment, highlighting, on one hand, the fact that the Grand Chamber never employs the word "bed", on the other hand enhancing the "functional interpretation" of the "living space" criterion, by stressing the affirmation in *Muršić*: "What is important in this assessment is whether detainees had a possibility to **move around within the cell normally**" [24]. Unfortunately many Surveillance judges are still using *Muršič* in an attempt to water down the principle expressed by the Italian Cassazione in *Sciuto*, claiming that their loyalty derives from a systematic obligation[25]. The obligation to follow Strasbourg is in fact, imposed, *expressis verbis*, by the legislator in the text of Article 35 ter. It seems clear that the Italian standard of protection of rights, deriving from a stable case law, clearly states the need for the deduction of the bed and fixed furniture from the calculation of the minimum available space in cell. This result can be achieved, at the level of argumentation, through the enhancement of the principle of effectiveness expressed at a European level and therefore with a direct reference to the case law of Strasbourg, from a position of awareness (instead of subjection) of the domestic judiciary's role within the system of "complementary subsidiarity". This has been recently made clear by a subsequent judgment of the Corte di Cassazione[26] which takes into account and answers to the many recalcitrant positions of the Surveillance judiciary. By clearly stating that the indications provided by the Grand Chamber in *Muršić* are supported by a ground that "is not free from ambiguity", the Cassazione declares that, "with a choice inspired by the expansion of the prisoners' rights", its case law has conformed to the Grand Chamber's interpretation of individual minimum space available, in deference to the "specific novelty, at least from the formal point of view, constituted by the inclusion of the ECtHR's interpretation of Article 3 of the aforementioned Convention among the primary sources of law"[27].

L'Altro diritto is trying to use the Italian Cassazione and the argument of the principle of subsidiarity and complementary subsidiarity in order to cause a change in the interpretative attitude of the Surveillance judges and to obtain a judgment by the *Sezioni Unite* (United Sections, sort of Grand Chamber of the Cassazione, able to produce a 'more persuasive' case law) of the Cassazione.
In this context, ALtro diritto is starting to challenge any reject of compensation based on space calculation including the bed. This specific litigation is a very dififcult one, since the applicant prisoner only have 10 days from the notification of the act to impugn the decision of first instance and the speed of action of the NGO is vital.

Another relevant issues is the question of the burden of proof. Recently this trend has been reaffirmed a judgment on the burden of proof in the proceeding of the compensatory remedy (Article 35 ter p.I.)[28] has affirmed that, in order to safeguard the effectiveness of the remedy, the Italian judiciary needs to adopt "an interpretative technique which, due to the asymmetry of conditions between the prisoner and the administration regarding the access to information, verifies the possibility of softening the rigidity of the principle of the burden of proof, incumbent upon the plaintiff"[29]. What is relevant is that the judge-rapporteur engages in a comprehensive analysis of the ECtHR's principles concerning the burden of proof in cases of violation of Article

[23] Cass. pen., sez. I, 09/09/2016, *Sciuto*: "*per spazio minimo individuabile in cella collettiva va intesa la superficie della camera detentiva fruibile dal singolo detenuto ed idonea al movimento, il che comporta la necessità di detrarre dalla complessiva superficie non solo lo spazio destinato ai servizi igienici e quello occupato dagli arredi fissi, ma anche quello occupato dal letto*".
[24] Cass. pen., sez. I, 09/09/2016.
[25] See, *inter alia*, Surveillance judge of Pisa, decision 28 June 2017, n. 1952/2017 SIUS, and decision 22 September 2017, n. 4855/2016. Contra Surveillance judge of Venice, decision 27 June 2017, n. 2016/1961 SIUS.
[26] Cass., sez I, n. 49793/2017.
[27] Ibidem.
[28] Cass., sez. I, 23362/2018.
[29] Ivi, p. 5.

3 in prison. From this case law emerges a trend toward reversing the burden of proof[30]: "The point of interest - common to such decisions - is represented by the affirmation of the existence of a reasonable presumption of truthfulness of the statements made by the prisoner, in consideration of the need to balance the asymmetry deriving from the condition [of imprisonment]. The administration is the sole holder of that complex of information essential to appreciate the lawfulness of the treatment"[31].
Along with this principle, the Cassazione clearly affirms that, in situation of evidentiary uncertainty, the Surveillance judge needs to employ *ex officio* inspection and verification powers on the actual conditions of detention[32].
Altrodiritto is using this precedent in order to challenge situations in which the Surveillance Judiciary is prone to avoid the reverse burden of proof principle asking a full evidenced case to the prisoners, therefore rejecting the applications on this point.

- 35 bis (preventive remedy):

Altro diritto has lodged applications challenging the ongoing violations of rights on many issues:

Female detention: One of the first cases of application on the basis of Article 35 bis filed by L'Altro diritto concerns the inhuman and degrading situation of the female section of the Sollicciano Prison. As a matter of facts the female section traditionally enjoyed an open regime. Nevertheless, due to a number of thefts in the same section, the open regime was revoked and a stricter regime was imposed (the confinement in the cell with a reduction of out of the cell activities). One of the main issue of this new situation resulted in a rationing of the access to the shower (the result being that an everyday access to the shower was no more guaranteed). This, combined with the structural critical issues of the section (i.e. poor hygienic condition at the level of the cell, the sanitary and the showers, the presence of rats, bugs and pigeons and bird droppings in the cell, the absence of available hot water, cleanliness of bedding, sheet and blankets, water infiltrations with consequent flooding and creation of mould, inadequate ventilation, lighting and heating, access to minimum medical care, restricted access to social and educational activities) resulted in a serious ongoing violation. In March 2015 a number of Article 35 bis applications were filed to the Surveillance Court claiming a reinstatement of the open regime and the ending of the structural critical hygienic conditions.

Criminal Psychiatric Hospital: Another relevant case concerns the Article 35bis applications followed by L'Altro diritto in order to ask for the closure of the criminal psychiatric hospital (Ospedali Psichiatrici Giudiziari, OPG) in Italy as stated by Law n. 81/2014. As a matter of facts, the mentioned Italian Law declared the closure of the said institutions and stated the transfer of the inmates in special hospitals (REMS) under the control of the Ministry of Health. According to the law each Italian region had to built the REMS, but the majority of the Regions didn't respect the deadline of March 31st, 2015 . L'Altro diritto drafted a model of Article 35 bis application in order to denounce the violation of the Italian Law and of the Italian Constitution (Article 13 of the Italian Constitution, Personal Liberty). The application asked the competent Surveillance Judge to declare the ongoing violation and to order the closure of the OPGs.
- 58 applications were filed in July 2015 from the OPG of Tuscany, Montelupo Fiorentino to the Surveillance Judge of Florence;
- 28 applications from the OPG of Barcellona Pozzo di Gotto on September 2015 to the Surveillance Judge of Messina;

[30] Ivi, pp. 6-9. The judge-rapporteur, Raffaello Magi, cites, *inter alia*, *Torreggiani*, cited, §72, *Khoudoyorov v. Russia*, n. 6847/2002, §113; *Benediktov c. Russia*, n. 106/2002, §34, *Brânduşe v. Romania*, n. 6586/2003, §48, *Ananyev*, cited, §123; *Ogică c. Roumanie*, n. 24708/2003, §43; *Koureas et autres c. Grèce*, n. 30030/15, §77; *Creangă v. Romania*, n. 29226/03, §§88-89.
[31] Ivi, p. 9.
[32] Significantly, this powers have never been employed by the Surveillance Judiciary, except for the decision of the Surveillance judge of Bologna, 26 Septmeber 2014.

- 24 applications from the OPG of Reggio Emilia on October 2015 to the Surveillance Judge of Reggio Emilia.

Even though this application concerned a preventive remedy, the length of the procedure frustrated the need for a speedy judgment and the urgency of the case.

Discrimination against women and transgender: Secondary school used to be one of the very few mixed gender activities in the prison of Sollicciano. Mixed class have been shut down, starting from September 2018 due to the fact that a woman student got pregnant. This 'scandal' caused a reaction by the Direction of the prison which terminated the mixed classes and reactivated the secondary school solely for the male prisoners (due to the small number of women and trangender prisoners who could attend the school).

Altro diritto has filed preventive remedy applications for all the female students, referring specifically to the newly introduced principle of antidiscrimination in prison[33].

Various other cases of discrimination against LGBTQ prisoners have been lodged or are in the process of being lodged by Altro diritto. Some refer to the issue of 'protective' solitary confinement for protected categories of prisoners, some others to gender identity issues and antidiscrimination laws.

San Gimignano prison: Altro diritto, as Ombudsperson for the High Security prison of San Gimignano has launched a litigation campaign against the multiple violations of fundamental rights perpetrated by the recently appointed new Director of the prison.

The applications concern: violation of health related rights, violation of the right to contact with family, particularly with children, violations of the decision of the Surveillance Judge in matter of permits, contact and phone call with lawyers, ill treatment in prison and so on.

This litigation campaign brought together various actor, such as medical staff, surveillance judiciary, the president of the Surveillance Court of Tuscany and the same local and national Penitentiary administration, which has recently sent an Inspection committee to the prison. The committee has asked to consult with Altro diritto in order to substantiate its report, which is due at the end of the month of February 2019.

Other:

Ill treatment in the Sollicciano prison: (See above, p. 25) The NGOs l'Altro diritto and Antigone acted as a plaintiff before court in the proceeding against four officers guilty of ill-treatment of some inmates in the Sollicciano prison in Florence. The facts go back to the period between September and December 2005. Three incidents were reported involving the agents accused of having applied "severe measures not allowed by law", in violation of article 608 of the Criminal Code, launching slaps against prisoners or hitting them with objects blunt. The most serious incident occurred on October 26, 2005, when, according to the prosecution, one of them repeatedly hit an inmate with the handle of a broom "until he broke it in several parts". The first instance sentence arrived on the June 21th 2013 and convicted the three officers, with sentences ranging from eight months to a year and six months of imprisonment plus compensation for damages in favor of the civil parties. On April 17, 2018, five years after the first decision, the second instance judgement is delivered. This one absolves partially the three officers but the sentence remains for multiple injuries and compensation for the victims. Civil compensation to Altrodiritto and Antigone have been confirmed.

[33] In particular, the newly introduced delegated decrees (Legislative Decree 123 and 124 of 2018, the aborted reform of the Italian penitenairy law, which has been stopped by the newly appointed government in Italy, which has left only some provisions of the old reform project) have introduced, probably unintentionally, important provisions related to the prohibition of discrimination into the prison system. Specifically, Legislative Decree 123/2018 amended the art. 1 of the l. 354/1975, expressly introducing the prohibition of discrimination: "Treatment ... is based on absolute impartiality, without discrimination in terms of sex, gender identity, sexual orientation, race, nationality, economic and social conditions, political opinions and religious beliefs" . Furthermore, it complements art. 19 with the rule that: "Through the planning of specific initiatives, equal access for women prisoners and internships to cultural and professional training is guaranteed".

- Other NGOs active on prison law and legal information to prisoners and to the outside world:

Osservatorio Camere Penali (observatory on prison condition)
http://www.camerepenali.it/banner/43/Osservatorio-Carcere.html

Osservatorio Camere Penali is the Prison observatory of Bar association-Criminal justice section. It's an interesting source of qualitative data about the prison conditions. It was established in 2006 and it's organized in regional observatory centers, one for each district. Members of the Observatory contribute, with documents and proposals, to the debate in the field of criminal justice. Regularly they visit prisons for monitoring the respect fundamental rights of prisoners. Reports of the visits are published on their website and have been used for compiling this report.

Ristretti Orizzonti (documentation centre, public campaigns)
http://www.ristretti.it/

Ristretti Orizzonti is one of the main source of data and information about Italian prison system. It's an NGO active in Padova's prison, involving in its activities more than 80 inmates, and collects, elaborates and publishes all kind of data related to the penitentiary world, together with a daily newsletter with press reviews and a newspaper written by the inmates.

Legal clinics:

According to a comprehensive study[34] it is not more than 8 years since legal clinics were founded in Italian Universities: a very recent history indeed and similar to that of other Western European countries. But this recent movement has been anticipated by the work of L'Altro diritto, which acted, since the beginning of its work, in 1996, as an informal legal clinic.
Recently, Altro diritto has created an Inter-departmental centre with the goal of creating a legal clinic in any associated department, and developing a synergy among all the members. This Centre connects the Universities of Bari, Turin, Salerno, Naples, Cosenza, Palermo, Pisa, Rome, Genua, Milan, Ferrara and Florence and is specialized in human rights, migration,marginality and detention[35].

The experience of L'Altro diritto as a pioneering case of informal legal clinic in Italy has shown the potentiality of the justiciability of marginalized, excluded or vulnerable persons' rights as a way of transforming "private troubles into public issues" (C. Wright Mills). The practices of access to the protection of rights based on the experience of the legal clinics operating within the University of Florence are peculiar. The Altro diritto clinical paradigm is grounded on a methodology that invert the classic involvement of the Bar and work instead with the judiciary (ECtHR judge and lawyers as well as Italian Surveillance judges and civil judges of the specialized migration section) in order to contribute to the development of a legal culture founded on the evolutive interpretation and the principle of effectiveness of rights. The specific teaching methods include training, case study, peer feedback, problem-solving and moot courts methods. Legal analysis is complemented with sociological investigation of the cases. Legal research and factual investigation are coupled with advising skills, negotiation and knowledge of litigation procedures and alternative dispute resolution. Special attention is paid in developing legal reasoning and argumentative skills in the perspective of the law as a language and a social practice within an interpretative community.

[34] C. Bartoli, « The Italian legal clinics movement, Data and Prospects », 22, *International Journal of Clinical Legal Education*, 1 (2015), available at :
https://www.researchgate.net/publication/314550209_The_Italian_legal_clinics_movement_Data_and_prospects/fulltext/58c79ebc458515478dca5185/314550209_The_Italian_legal_clinics_movement_Data_and_prospects.pdf?origin=publication_detail.
[35] http://www.adir.unifi.it/

Both the twenty-year work of L'Altro diritto as an informal legal clinic and the new clinics on the European Court of Human Rights' system of protection of human rights within the Council of Europe, on the Penitentiary law and prisoners' access to rights and on the protection of refugees and asylum seekers' rights originate from the idea that through the tools of sociological imagination and the argumentative forces of the law it is possible to orientate culturally the practice and the common normative ideology of legal actors, shaping the new semantics of rights in our contemporary society.

Specifically, students working in the Clinic on the protection of prisoners' rights in Florence participate in an education and training program with Surveillance judges and academic researchers. After this phase, students are divided in two groups, one group of students support the operators of L'Altro diritto and participate in the legal counselling service in prison, while another group collaborate with the Surveillance Court of Florence, supporting the judges in carrying out the ordinary activities, in particular in proceedings relating to the jurisdictional protection of rights and the decision-making process on alternative measures to detention and permits. This allow the students to understand the specific normative ideology of Surveillance judges. The two group discuss their mutual experience in weekly meetings of problem solving, under the supervision of the tutors, analysing the issues and cases followed in the course of the activities held in prison and at the Court.
This model is unique in Italy.

Map of legal clinics working with prisoners' rights:
Legal clinics on prisoners' rights protection exist in Florence, Turin, Milan, Perugia, Rome.

The role of Ombudsperson in Italian legal system

The Ombudsperson for the rights of detainees was formally introduced only in 2008 in the Italian legal system. Before that, few experiences of local Obudsperson only existed thanks to local political government's action.

Since 2003, Italian Regions, Provinces and Municipalities started experimenting a new figure in the protection and promotion of the rights of persons deprived of their liberty, which refers to the tradition of 'civic defence' (*difensore civico*) and to the experience of the CPT as a monitoring body against torture and inhuman and degrading treatment. An Ombudseperson was initially introduced by the municipality of Rome in 2003 for the promotion of rights of detainees in the prison institutes of the Capital, soon after a similar Ombudsperson was introduced, at regional level, by the Government of Lazio. They have been followed by the Ombudsperson of Milan, Bologna, Firenze, Nuoro and Torino's municipalities. These first Ombudespersons had no effective power, since they were not recognized by the law, still they were political institutions with the aim of promoting public debate about prison issues and the respect of prisoners' rights.

During the last fifteen years, 18 Regions and Autonomous Provinces, 9 Provinces and Metropolitan Areas, 50 Municipalities have set up Ombudsperson for prisoners or persons deprived of their liberty.

According to the most recent data [36], from 2003 to the present time the following Ombudsperson have been appointed by local governments: Regional ombudsman: Toscana,

[36] A. Meo, *Il Garante dei diritti dei detenuti: aspetti normativi e sociologici*, Tesi di Laurea, Dipartimento di Scienze Giuridiche, Unversità degli Studi di Firenze, a/a 2017/2018.

Lombardia, Veneto, Campania, Piemonte, Emilia Romagna, Lazio, Puglia, Marche, Molise, Umbria, Valle d'Aosta, Sardegna, Abruzzo, Sicilia, Friuli Venezia Giulia, Provincia Autonoma di Trento;

Only in 2008 the Ombudsmen have been recognized in Italian legal system. They still haven't any real and effective power but now they have the right to enter into prisons without any authorization (art. 68 of penitentiary law) and the prisoners have the right to ask meeting and to send letters (art. 18) or to file a claim to ombudsmen (art. 35). But they haven't any power to promote investigations or inspections, they have no access to the prisoners' files and they cannot appeal to the Court. Many Ombudsperson use these limited powers to sensitize public opinion and to publicly denounce rights violations. They can have a role in urging and mediating with penitentiary administration to solve cases.

The national legislation has recognized the contribution of the territorial guarantors of persons deprived of their liberty in the implementation of articles 2, 3, 13, 27 and 32 of the Constitution, recognizing them some important prerogatives even in areas of exclusive competence of the State, as in the penitentiary system, police custody and migration law.

The law n. 14 of 27 February 2009 recognized to the Ombudsperson "anyway named" the right to visit the penitentiary institutions without authorization, subsequently extended to the security chambers of the police forces (Article 2bis, paragraph 1, letter b, decree 22nd December 2011, No. 211, converted, with amendments, into the law of February 17, 2012, No. 9) and to the Centers of stay for the repatriation of foreigners without a regular residence permit (Article 19, paragraph 3, Decree-Law 17 February 2017, No. 13, as amended by the conversion law April 13, 2017, No. 46).
Article. 12bis, paragraph 1, lett. to, of the decree-law 30 December 2008, n. 207, as converted by the law February 27, 2009, n. 14, has recognized to the detainees and the internees the faculty of "to have talks and correspondence ... with the guarantor of the rights of the detainees, also in order to carry out juridical acts".
Article. 3, paragraph 1, lett. a, of the decree-law of 23rd December 2013, n. 146, converted, with amendments, in the law 21 February 2014, n. 10, has allowed the prisoners and interns the right to "address oral or written requests or complaints, even in a sealed envelope ... to regional or local guarantors of the rights of prisoners"

With the reform that has introduced the new preventive remedy for protection of prisoners' rights (art. 35bis of the penitentiary law), it has been created the national Ombudsmen for prisoners' rights, for the implementation of obligations deriving from Torregiani's case and from the Opcat Protocol ratified on April 2013. The National Ombudsman is a collegiate body, composed by one chairman and two members, that remain in office once for 5 years without any remuneration but with a reimbursement. Ombudsmen are chosen by the President of Republic, but the proposal comes from the Council of Ministers. The office of Ombudsman is inside the department of ministry of justice and its staff is composed by personnel of this department.

According to the art. 7 of the Decree NO. 146 23.12.2013, National Ombudsmen has the following powers:

a) monitoring that any form of detention or custody, both penal or administrative, respect the rules and principles established in the Constitution, the international conventions on human rights ratified by Italy, the State laws and regulations;
b) vising all kind of detention or custodial facilities, without any preventive authorization, it's necessary to inform in advance only for visiting local police's jail, for not interfering with police investigations;

c) accessing to the files of any person under custody, with the consent of the person: if the administration doesn't give access to the files within 30 days, Ombudsmen apply for a Surveillance Court's order to release the file;
d) giving recommendations to the administration responsible of a violation: the administration may refuse to follow the recommendation notifying a dissenting opionion within 30 days
e) reporting every year to the Parliament.

National ombudsperson:
With the same decree-law of 23 December 2013, n. 146, the National Ombudsperson was established for the rights of persons detained or deprived of personal liberty, to which art. 7, paragraph 5, entrusts the responsibility of "promoting and favoring collaborative relationships with the territorial guarantors, or with other institutional figures, however named, who have competence in the same subjects".

With the Minutes of 28 April 2014, the Italian Permanent Representation to the International Organizations based in Geneva indicated the National Guarantor and the Network of Territorial Guarantors as a National Prevention Mechanism under the Optional Protocol to the UN Convention against Torture, ratified with law 9 November 2012, n. 195. To this end, the National Ombudsperson should coordinate the territorial OPs belonging to the National Preventive Mechanism.

All the regional and local OPs are organized into the Conference of the Guarantors of the rights of prisoners as an institution representing the territorial OPs as a place for comparison and sharing of their experiences.

Mauro Palma, former president of the CPT, has been appointed as the first President of the National Ombudsperson[37], while the board is composed by the President along with 2 members (Daniela de Robert, Emilia Rossi).

Each year, the National Ombudsperson publish a report on its activities, presented to the Italian Assembly. In the 2018 report, the Ombudsperson presented a Protocol established with the National Bar in order to promote action of information on prisoners' rights and dedicated training activities for lawyers expert in the penitentiary execution law and procedure[38].

3.2 How is litigation work financed?

- Source of funding (public funds, funds stemming from private sectors such as private foundations)
- assessments of possible impacts of funding notably on the selection of cases and their publicity (press, reports, …)

All of these actors of the prison litigation, except the Ombudsperson who are totally publicly funded, are funded partly with public funds and private sector funds.

Due to the dimension and complexity of the phenomenon of the prison population in need of free legal aid, all the interviewed operators affirms that a selection of cases is not at all an option, and that conventions, protocols and even private financed projects are assumed according to the antidiscrimination policy.

Some of the NGO are also active in Antidiscrimination law and litigation (See Altro diritto, which is also an NGO with *locus standi* in antidiscrimination cases, according to d.lgs. 215/2003) and the intersectionality of their work is therefore a primary concern.

[37] http://www.garantenazionaleprivatiliberta.it/gnpl/
[38] 2018 Report, p. 364, available at :
http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/29e40afbf6be5b608916cad716836dfe.pdf

3.3 Within detention facilities

- Where are these actors located? Possibility to use a permanent office/desk?
- How do they access a potential client, that is, make their existence known to a detainee/prisoner?
- Modes of organisation of attendance in prison facilities
- Material problems related to access (e.g. remote prisons, costs of transportation)
- Legal problems related to access (e.g. security measures, searches)
- Problems within police custody/prisons (e.g. mobility between wards, waiting times, existence of a dedicated space to meet prisoners? Issues of confidentiality? Relations with prison staff: with wardens, medical staff, social workers etc., on legal issues connected with their specific fields? Other aspects of work conditions?).
- Access to case files? (also in police custody). Is there more specifically access to digital tools for defenders: how, what are the known obstacles?

These actors are located and active at a national and local level, outside of the prison facilities. No experiences of NGOs or other entities with a permanent office within prisons exist. Usually, these actors work inside the facilities on a regular basis (Altrodiritto, for example, visits prisoners twice a week) or with unannounced visits (local and national Ombudsperson) and they are provided with a room and a desk for private meeting with prisoners.

NGOs' members refer to some criticalities in specific section of the prison, e.g. in transgender/transsexual units or in specific units, such as the "first entry" section, where usually a meeting room is not available for operators.
They meet prisoners according to different kind of access methods. While NGOs receive meeting requests from prisoners directly in prison and receive reports of cases in need of legal information and counselling from other professionals or operators of the prison (prison agents, staff, medical staff, social operators, ombudsperson, family members, priest or religious chief of communities, sometime lawyers and so on), ombudsperson visits prison and meet prisoners according to the letters they receive directly from prisoners or with a casuistic approach, in order to monitor the situation of the prison.
The presence of the third sector is essential in Italian prisons and is signalled and known by prisoners since their very first entry into the institution.

In some remote prisons, like Ranza prison in San Gimignano, problems of inexistent public means of transportation and the remoteness of the places are reported. This means that the prison enjoys a less tight contact with the community. At the same time, NGOs' members and ombudsperson involved in the research affirm that the most 'vulnerable' contextual situation are to be followed with major attention.

Problems of access are not reported, except the issue of computer. Altrodiritto for example, is allowed to enter the prison facility with portable computers (not connected to internet) in order to record the meeting and use their database. They always need to bring a copy of the authorization document from the national prison administration, since they are sometime stopped and the authorization is required.

Cases of major criticalities in terms of access can arise in specific situation, as is the case of San Gimignagno prison, due to the problems with the new Direction (see above, litigation cases of Altro diritto). This issues can be reported to the local penitentiary administration.

Sometime NGOs' members report that prisoners are not available for the meeting and the prison agents do not specify the reason or affirm that "the prisoner refuse the meeting". This can be true, but in some NGOs' operators experience this can also be a form of retaliation against the prisoner or can happen when it is considered that the prisoner could should not have contact with the outside world (this has been the case, in the past, for cases of ill treatment in prison or for prisoners considered 'problematic').

Access to prisoners' data and legal documents and files is not immediately available for NGOs members and other actors. It is therefore necessary to request the collaboration of the *Matricola* officers (prison register), who can allow operators the access to their database, under express request and mandate of the prisoner.

All this data are referred to prison institutions, since NGO members do not enter police custody Unit.

4. PRISONERS AS LITIGANTS

4.1 Assessment of shortage of juridical and economical capital of remand prisoners

- Impact of recent austerity measures/budget cuts on access to legal information?
- Obstacles or facilitations of remedies within facilities through other actors than lawyers, and formal legal practitioners (NGOs, human rights organisations, legal clinics, universities), e.g.: Police officers/wardens; Social workers; Families; Prison priests/imams; Volunteers from non-legal NGOs (e.g. Prison visitor organisations, educational support, cultural organisations, …); social networks of former detainees/prisoners; …

All prisoners affirms that the legal information in Italian prison is traditionally lacking, therefore not real changes have been experimented after the economic crisis and austerity measures in Italy.

Access to legal information in prison is one of the main criticalities of the Italian system of detention. Article 32 of the Penitentiary Law affirms that the prisoner shall be informed oft he general regulations and his/her rights and duties, on disciplin and prison treatment. Article 69 of thePresidential Decree n. 230/200 (ExecutiveRegulation on Penitentiary Law) substantiate this rights to legal information stating that " in every prison intitute, the texts of the penitentiary law, of the executive regulation, of the internal regulations and of the other provisions concerning the rights and duties of prisoners and inmates, along with informations on discipline and treatment, must be kept in the library or other premises to which prisoners can access. Upon entry, each prisoner is given an extract of the main rules referred to above, with an indication of the place where it is possible to consult the complete texts. The above extract is provided in the most widespread languages among prisoners and foreign internees. Prisoners are finally informed of every subsequent disposition in the matters indicated above". Moreover, the same Article 69 affirms that the Administration cannot be satisfied with a formal knowledge of these rights and duties but is obliged to clarify and motivates any disposition to the prisoner.

All the prisoners affirms that they get to know their rights in prison and the possibility to implement them mainly through NGOs member and Ombudsperson. The first level of knowledge and a possible bridge between those actors and the prisoners appears to be mainly prison agents, sometime social workers and volunteers from non-legal NGOs which often

collaborate with NGOs' members and Ombudsperson. Finally, Prison priests/imams and families. A special reference has been made to the psychologist and psychiatric staff who appear to be an essential tool and medium in ill-treatment case and health realted issues.

4.2 <u>Access to legal information</u>

- What is the quality/relevance/accessibility of written/oral legal information on rights and duties in police custody/ prison?
- Where/through which members of staff is information made available?
- Is its availability mentioned to prisoners during intake?
- Is this legal information provided and circulated by incoming lawyers; NGO/ Human rights organizations/universities/legal clinics; or by other outsiders (prison priests/imams, volunteers from cultural or educational support groups, social networks of former detainees/prisoners; …etc.)?
- Are there issues related to written and language proficiency: possible access to public writers/ interpreters when conversing with lawyers or others, access to translated documents on legal information. Who are the public writers/interpreters, how reliable are they? Official interpreters, members of prison staff, other prisoners? Any related privacy issues?
- Is access to printed forms and other material enabling prisoners to file a motion on their own required by law / effectively provided?

Oral or written information are totally inexistent in police custody, according to the experience of the prisoners interviewed.
In few law enforcement establishment, detainees are provided with forms containing some relevant information on their rights. However, the distributed form are only available in Italian and do not contain information on the right to notify a close relative or third person and the right to access to a doctor.

According to the newly appointed Head of the National Department of Prison Administration, on the contrary, the law is sufficient and the eventual ineffectiveness of the system derives from the inadequate knowledge of their rights by the same prisoners. This is due to the insufficient legal formation and information provided in prison. In order to solve this issue, the Head of the National Department of Prison Administration declared that a 4 pages leaflets could be distributed among Italian prisoners.

All the other actors challenged this perception, firstly by affirming the role of Italian NGOs and legal clinics in order to provide legal counselling and legal information in prison, and to start legal proceeding and prison litigation.

Interpreters are non-existent in Italian prisons, they are only provided during the hearings and the trial phase. Usually this major shortcoming is 'overcome' by allowing the prisoners to be accompanied by a co-inmate, who act as interpreter or translator, with all the criticalities in terms of breach of confidentiality, possible retaliation, professionality etc.... The personal experience of some NGOs' members interviewed show that social reality is able to adapt and sometime perform a better duty than the administration itself. One NGO's member tells about a Chinese prisoners being usually accompanied by his "official translator", a fellow prisoner from Naples, speaking not a single word of Chinese, but overcoming the language barriers and allowing the NGO's member to perform his role in drafting many successful application for the said Chinese citizen.

Not only official interpreters are missing, but also and foremost, Italian prisons are lacking cultural mediators, who are an essential figure in a prison composed of a highly cultural pluralistic and multi-cultural population in an essentially culturally monolithic (white, male, catholic) society as Italy. An NGO member refers of the case of a Chinese female prisoner who was denied prison benefits (*i.e.* early release) due to her behaviour toward her co-inmates (she told some of them a swear word "*vaffanculo*". Thanks to the NGO member, she was able

to appeal the denial of benefit by arguing that she was not speaking Italian when she entered the prison and she was always harassed by a group of prisoners from another community, who always repeated to her the same word, *vaffanculo*. Not knowing the exact meaning, but wanting to try and stop the harassment she used the only word she had learnt in prison. The Surveillance court reverted the denial and allowed the prisoner to the early release.
Cultural mediators in Italian prisons are 223, namely 1.13 every one hundred foreigners detainees. In the case of detainees from Maghreb, the ratio percentage is of 0.88. In many cases, they are not full-time workers, they are underpaid and they are not ministerial employees.
Paradoxically, recently the Prison Administration has presents a public call for the selection of 15 (!) cultural mediators for all national prison institutes…A part from the number of mediators to be selected, the call was open only for Italian and EU citizens, excluding application from all third party citizens. Altrodiritto and ASGI (an association for the rifghts of migrants) has challenged the lawfulness of the call, according to antidiscrimination law and the judge of first instance has declared the discriminatory nature of the call, thus suspending it. The administration has failed so far to present a new non discriminatory call.

The translation of the eventual leaflets of booklets on prisoners' rights are almost non-existent. Many NGOs' members affirms that the only leaflets circulating and translated have been financed by the same NGOs.

4.3 **Organisational and practical issues related to legal aid**

Formalities for filing a claim for legal aid:

- Are pre-printed forms available in prisons and where? Are they provided to incoming lawyers; are they provided and circulated through NGO/ Human rights organizations/universities/legal clinics; are they provided through other outsiders (prison priests/imams, volunteers from cultural organizations or educational support groups, etc.), other…?
- What is the quality/relevance/complexity of these forms? Is the information to be provided easily available to prisoners? what are the concrete consequences of missing information? How long does it usually take to fill the form?
- What is the complexity of the appeal proceedings on refusals? Does it require a legal practitioner?

Pre-printed forms exist only when provided for by NGOs, legal clinics or other associations in prison. It is anyway very difficult to fill in the form and to draft a proper application.

The procedure, according to all the interviewed actors, need to be filled or draft by a lawyer or by a legal practitioner (NGOs' member, legal clinicians or lawyers), even if the law does not require the technical assistance (and, as all lawyers declare, this activity can't be included in the compensation with legal aid).

The application for admission to legal aid in criminal matters is presented at the court's office before which the trial is pending and therefore:

to the GIP chancellery if the procedure is in the preliminary investigation stage;
to the chancellor of the judge who proceeds, if the proceedings are in the next stage;
to the registry of the judge who issued the contested provision, if the proceedings are before the Court of Cassation;

The application, signed by the interested party, must indicate:
the request for admission to the legal aid
the personal details and tax code of the applicant and of the members of his family unit
proof of income received the year before the application (self-certification)
the commitment to communicate any significant changes in income for the purpose of admission to the benefit.

When the applicant is detained, the application can be presented to the director of the prison institute who is responsible for its transmission to the proceeding judge.
If the applicant is a foreigner (non-EU) the application must be accompanied by a certification (for income produced abroad) of the competent consular authority attesting the truth of what was stated in the application.

If the applicant is a foreigner and is detained, interned for security measure execution, under arrest or home detention, the consular certification may be produced within twenty days from the date of the submission of the application by the lawyer or a member of the family of the applicant (or can be replaced by self-certification).

According to one of the Surveillance judge interviewed, this norm needs to be loosely interpreted by Surveillance judges in order to mitigate the severity and the possible discriminatory content of the norm (specifically concerning countries which are not able to provide a list of estate property, since they lack a real estate registry office or a cadastre), while in other case, the norm is strictly applied and constitute a *de iure* and *de facto* discrimination. A very recent judgment by the Court of Cassazione has specified that whenever there is an impossibility to provide the foreign country certification due to the lack of response by the consulate authority (which is often the case for Morocco, Egypt etc…) the person shall be admitted to legal aid and an auto-certification is sufficient, since the opposite interpretation would mean the ineffectiveness of Article 24 of the Italian Consitution (Cass. Pen., judgment 22 February 2018, n. 8617).

This interpretation is shared by all the judges involved in the research, but specifically one of them affirms that the procedure is still very long and muddled compared to Italian and EU citizens, and thinks that the NGOs and the third sector in general could do more to help in this respect (J1). He/she doesn't specify, even when requested, what role could be played by the volunteers in order to ease the procedure.

<u>Organisation of financial aid for litigation and its concrete implementation</u>

- Existence of dedicated staff/department to centralize and transmit claims for financial aid?
- When provision of legal aid is not automatic, is there a policy towards claims made by prisoners? What is the composition of the body which makes the decision and to what extent it is aware of prison issues/ situation?
- What is the length of the processing time to get an decision on the grant of legal aid?
- In countries where the law provides that the money flows to the applicants, are there practical aspects for prisoners whose access to banking services are limited?
- Are detainees expected to reimburse legal fees through their salary? Is their family expected to contribute? As a consequence, are there differences between the financial situation of prisoners before their incarceration and after their release?

<u>4.4 Prisoners belonging to various minorities, under-represented or isolated groups within prisons</u> (e.g. LGBT, foreign-nationals, women, minors, disabled persons, persons suffering from chronic diseases, mental illness, …) or <u>Prisoners facing special security measures, particular disciplinary sanctions, restrictions or isolation</u> (e.g. individuals detained/convicted for terrorism, sexual assault, aggravated murder, gang-related violence, financial crimes, corruption, white-collar criminals, former law enforcement agents …)

- Status inside the facility / prison: access to social relief, financial aid.
- Limited attention from prison staff or heightened attention to them (e.g. prisoners deemed particularly dangerous or to be protected against other prisoners)
- Are there concentrations of specific categories of prisoners in designated wards/ or on the opposite a dispersion policy, and related obstacles (or facilitations) to the activation of certain types of legal relief, due to:

- Mobility within the facility / the penitentiary system
- The impossibility for lawyers, NGOs or other key actors to access disciplinary wards (e.g. “terrorism wings”, …)
- Intimidation/restrictions by wardens, social workers, other
- Psychological effects of disciplinary measures and confinement, (e.g. mental health issues/depression).
- Other

Actually, **the most vulnerable prisoners** are the ones who need more support in order to achieve an effective right to defence and access to legal aid. This paradoxical situation is the result of a normative and practical situation. On one side, the norm contains a discriminatory provision for foreign prisoners which constitute an overrepresented prison population in Italy and are usually victims of multi-layered discrimination. As a matter of facts, in order to be admitted to legal aid, prisoners need to demonstrate the absence of estate property.

Foreign prisoners (i.e. third countries nationals) are required to produce the consulate certification of absence of estate property in the country of origin, while Italian nationals and EU citizens only need to produce an auto-certification. This norm is sometime loosely interpreted by Surveillance judges in order to mitigate the severity and the possible discriminatory content of the norm (specifically concerning countries which are not able to provide a list of estate property, since they lack a real estate registry office or a cadastre), while in other case, the norm is strictly applied and constitute a *de iure* and *de facto* discrimination. A very recent judgment by the Court of Cassazione has specified that whenever there is an impossibility to provide the foreign country certification due to the lack of response by the consulate authority (which is often the case for Morocco, Egypt etc…) the person shall be admitted to legal aid and an auto-certification is sufficient, since the opposite interpretation would mean the ineffectiveness of Article 24 of the Italian Consitution (Cass. Pen., judgment 22 February 2018, n. 8617).
Other level of critical aspects concerning the most vulnerable prison population consists in the more difficult access of lawyers in the Transgender section of the prison (being more secluded and difficult to access) have been denounced by transgender prisoners.

Focus on **transgender prisoners** and access to rights:
In Italy, the structural problem of managing the inmate population has been tackled by separating prisoners according to sex, following a strict male/female normative binarism. This binary opposition adhered to the existing legal categories and, at the same time, indirectly solved the problem known in penitentiary jargon as “promiscuity” (i.e. sexual or affectionate liaisons) through a strategy of “risk avoidance”.
No legislation or policies have been developed for the mode of incarceration of transgender persons. Consequentially, for many years, the mode of incarceration of transgender people was informally defined by the procedures adopted in individual correctional facilities. The question of the space and the treatment lies at the core of the problematic issues related to transgender detention.
Traditionally, two model of informal incarceration have been adopted:
1. to house transgender prisoners according with their birth gender (genitalia based placement);
2. to impose protective measures which almost always involve punitive isolation and deprivation of rights (administrative segregation, “protective” segregation, solitary confinement for protective purposes, the so called “pod-model”);
In Italy, solutions to the issue of “transsexual incarceration” varied, with a prevalence of the pod-model , involving coping with gender diversity through protective custody units , situated in the male wing . This procedure was made official through a 2001 departmental

memorandum entitled "The so-called 'protected' sections. Inmate placement criteria," stating that protected sections were "established to meet the need to protect specific categories of inmates due to objective reasons, even if these are at times based on the subjective characteristics of the inmates in question (for instance, transsexualism.)".
This general model, which was based on a strong discriminatory paradigm, albeit for precautionary reasons, has been superseded in a few cases, on a merely practical level, by a different model which radically disrupts the classification of inmates according to their genital identity. As a matter of fact, some correctional facilities have introduced an alternative form of incarceration for transsexual inmates by assigning them to as autonomous spaces as possible. The case of Florence-Sollicciano prison perfectly exemplifies this trend and can be used in order to illustrate the problematic issues that, this informal mode of detention, involves. Since the end of 2005, following a reorganization of the facility , the selected space for transgender persons' incarceration has been transferred in the female section, above the unit where inmates with partial mental illness are housed. The section in question is detached from the female compound, which occupies a whole wing. Originally, this space was not meant to function autonomously; as a consequence, significant flaws and structural shortcomings can be detected, first and foremost the absence of a room devoted to socialization, as well as the lack of rooms specifically devoted to meetings with lawyers and other professionals such as social and health workers.
Right to defence is particularly undermined in this situation since meetings with NGO's operator, legal clinicians and lawyers must now be improvised in the duty officer's office. This solution entails a number of problems, notably with respect to the protection of the right to privacy. This problem is currently tackled by resorting to an alternative and informal solution: the officers agree to leave the room for the duration of the interview, thus protecting—though only as a result of negotiation—the right to privacy.

Prisoners subjected to the "41-bis" regime

The special detention regime under Article "41-bis" of the Penitentiary Law is a provision that allows the Minister of Justice or the Minister of the Interior to suspend the ordinary prison regime.
The "41-bis" regime was introduced in 1992 as a temporary emergency measure and became institutionalised on a permanent basis in 2002, following an amendment to the Penitentiary Act. The regime exclusively applies to prisoners who have been convicted of or are suspected of having committed an offence in connection with mafia-type, terrorist or subversive organisations, and who are considered to maintain links with such organisations.
Since the 2008 visit, the relevant legal framework has undergone significant changes with the adoption of an amendment to Section 41-bis of the Penitentiary Law and the subsequent issuance of new circulars by the Department of Prison Administration[39].
In summary, the "41-bis" regime consists of segregation in small groups of inmates (up to a maximum of four persons), who can associate for two hours per day (one hour of outdoor exercise and one hour in a communal room). The possibilities to maintain contact with the outside world consist of one one-hour visit per month with a family member, under closed conditions and with audio surveillance and video-recording or, alternatively, a ten-minute telephone call per month if a visit cannot take place during the same period.

[39] See, among others, Circular No. 592/6042 of 9 October 2003, Circular dated 4 August 2009, Circular No. 8845/2011 of 16 November 2011 and Circular dated 12 March 2003

The possibilities for prisoners to maintain contact with the outside world had been further curtailed by the circulars. They were only allowed to make one ten-minute telephone call per month if they do not receive a visit from a family member during the same month (the entitlement of one one-hour visit per month, under closed conditions and with audio-surveillance and video-recording, as well as the prohibition of accumulation of unused visit entitlements remain unchanged).
In addition, the frequency of contacts with a lawyer was limited to a maximum of three contacts per week (one-hour visits or ten-minute telephone calls).
NGOs, UCP, CPT in its last visit[40] and Ombudperson (National and local) denounced this situation and brought some cases in front of national and European court (e.g. the *Viola v. Italy case*, ongoing). The previous government and its Minister of justice drafted a circular in order to mitigate the severity of the regime[41].
As for the contacts with lawyers, the circular now prescribes that: Art. 16.3 “Meeting with the lawyers. Visual meeting with lawyers are carried out without glass partition and have no limits In duration and frequency. In order to avoid possible overlaps, the Director receives the request from the detained person and communicate to the lawyer, the day and time of the phone call. In order to guarantee the exact identity of the interlocutor, the lawyer who intends to receive the phone call from a client, shall go to a penitentiary institute next to the domicile or to the place where the forensic activity is exercised in the same way as for family members.”

4.5 Organisation of remedies inside prison facilities among prisoners

- Are there detainee committees? Are they self-organized or organized by the prison administration? Are they allowed to provide legal advice to other prisoners or not?
- Are there ‘Jail-house lawyers’ who help other prisoners (with practical information/ translation/ education/help in writing documents or making contacts lawyers/NGOs): Profile (e.g. type and length of conviction).
- Centralization (e.g. one or several prisoners are the key litigants and centralize complaints, serving as go-betweens for prisoners, barristers and NGOs) or
- Dispatching? (individualism and absence of organisation)?

In Italy detainee committees exist, but they bear little to no relevance to report violations of rights and therefore to constitute an effective remedy as to the definition of Article 13 of ECHR. They are mainly representative committee organized by the prison administration. They do not provide legal information to prisoners. NGOs members and Ombudsperson are invited and participate. The persons involved in the research agree on the irrelevance of this tool, which is totally institutionalized and formally administration-driven.

No jail-house lawyer exist. The only service which can be found in Italian prison is the role of ‘scrivano’, a prisoner for each section who can draft simple request letter for fellow inmates. This role is included in the prison labour paid by the administration. No real training is required, only the knowledge of Italian language is considered as a prerequisite. NGOs’ members refer of past experience of training provided and paid for by the same third sector. Sustainability of these kind of projects lied on the transfer of knowledge prisoner by prisoner.

Untreated mental diseases in the Italian prison system

This issue affects not only the increase number of potentially vulnerable prisoners, but also the increase in the number of the potential offenders.

[40] CPT/Inf (2017) 23
[41] Circular 3676/6126 of 2 October 2017.

Mentally disabled people in Italian prisons are not provided with the most basic treatment and facilities. There are two ways in which the Italian penitentiary administration takes care of people with mental problems: there is a special circuit for person who have been considered mentally ill durin the trial and therefore are interned in the so-called *Residenze per l'Escuzione di Misure di Sicurezza*, REMS, Residences for the execution of security measures, and then there are the Centri Clinici, clinical centers, in virtually all 195 penitentiaries, for prisoners with 'health issue.
REMS, whose actual number is not clear, are staffed with medical personnel and a minimum number of agents of the penitentiary police.
The unsolved problem is how to treat person who become mentally ill while in prison. The law does not specify this and at the moment they are (un)treated in Clinical Centers inside the ordinary prisons.
Clinical centers are sections of a prison dedicated to people with all sorts of health conditions; very rarely they are sections built specifically for that purpose. Bathrooms can be extremely small and include a cooking area, showers are rarely inside the cell. This being the case, it is very rare that the so-called "architectural barriers" are absent in the cells, corridors, bathrooms or "communal spaces" of those areas. Moreover, access to open-air spaces usually happens through stairs, it is very rare to find an elevators and also where they are present they are usually out of order.
It can be said, that the main treatment for mentally disabled prisoners in Italy is the use of the so called Piantone. This slang expression, "piantone" (literally sentinel), means a prisoner with no special education, training or particular competence that is employed by the administration to assist other prisoners with special needs. He or she is usually paid a little sum rarely for more than a six hour shift, and note necessarily everyday. If one can say that the disabled person relies heavily on the assistance provided by the "care-giver" for all vital functions, one could also say that the disabled person is at the mercy of that person.
"As regards the role of piantoni in general, the CPT calls for caution when involving fellow inmates in the care of disabled prisoners, all the more so when the prisoners concerned require more specialised care (such as bed-ridden or paraplegic inmates). [omissis] However, in none of the establishments visited had piantoni received any training for the specific tasks they were supposed to perform as a caretaker. The CPT recommends that steps be taken by the relevant authorities to ensure that piantoni employed at Bari Prison as well as in other prisons in Italy receive appropriate training. Further, the Committee wishes to stress that any involvement of piantoni in the care of disabled prisoners should never lead to a total delegation of staff responsibilities and that the work of piantoni should always be adequately supervised by a qualified member of staff." (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).

In this situation, it is often the case that mentally disabled prisoners fall victims of ill treatment by the same piantone or the fellow inmates in the same sector.

At the same time, untreated mental diseases can lead to a manifest violent behaviour towards the fellow inmates. This seems to be the case of a tragic event, happened yesterday in the prison of San Gimignano, Tuscany. San Gimignano prisons is a high security prisons. L'Altro diritto onlus has been appointed Ombudsman of this institute. We have been reported that yesterday night a prisoner with psychiatric issues killed a fellow inmate by throwing a stool on him. We are investigating the event at this very moment, therefore we can't add any further details, except that we have been denouncing the degrading conditions of the San Gimignano prison for ages. As a matter of facts the San Gimignano prison (a prison where almost all detainees are executing a long sentence) is an isolated prison, very difficult to reach (for family, operators, etc…), lacking a full-time director for ages now, in bad structural condition, with an endemic of drinking water that has never been fully solved and with no rehabilitative activities and job opportunities due to the difficult position and distance from the socio-cultural and

productive community. A mentally disabled prisoners lacking any contact with the outside world can't be properly treated in this context.

5. **ACCESS TO THE INTERNET/DIGITAL TOOLS FOR PRISONERS**

Experimentation with or implementation of digital legal tools for prisoners and for defenders.

- Who designs and promotes such tools? To what extent are they relevant with regard to main prison litigation issues? Are they useful and understandable for those who need and use the information?
- Are they provided? If so how? What are the known obstacles?
- Are digital tools for communication between courts and applicants (in the framework of proceedings) available in prison? Under which conditions? To what extend is the confidentiality respected when using the computer equipment provided? In case IT tools are deployed at a large scale within the judicial system, how do courts deal with non digital applications? Is there a difference of treatment between the two kinds of applications (in terms of quality of the examination on the merits)?

- Italy is very backward, since no access to digital tools is provided for by the law. Prisoners are only able to go to the prison libraries where they can consult legislative text, such as criminal code and penitentiary law (sometime very old and not up-to-date version and only few copies of these texts) on paper.
- In Prison University Unit (*poli penitenziari*), prisoners are able to consult some database, but on a very limited scale and with no digital training and legal information technology education.
- Very recently the use of telecommunication application software for video-chat and voice calls have been included in a Prison Administration order (*circolare*) addressing the need to put in place this kind of communication with family members. Unfortunately this reform is of very limited application and does not include communication with the lawyer or with legal operators. It shall be observed that many interviewed warned about the use of skype communication with the legal assistant or lawyer, because of the monitoring role that the lawyers play in the prison environment and also due to the lack of privacy of this communication, usually witnessed by a member of the prison staff.
- The newly introduced legislative decree 123/2018 has also foreseen the possibility to participate to the Surveillance hearing through a videoconference. This seems to be more dictated by the necessity to cut the budget for prison transfer, than to the need to guarantee the personal participation. As many interviewed underlined, the presence of the prisoner in front of the Court is pivotal in order to guarantee the right to a fair trial and is important to reduce the prison seclusion and the material distance between the detained person and the Court.

6. RELEVANT LITERATURE

Please include references and web-links to relevant written material (e.g. reports by the Bar, NGOs, State; press articles; case work, …)

On Access to Rights and Defence Rights (focus on legal aid during pre-trial detention)

Problemi irrisolti e nuove prospettive per il diritto alla difesa: dalla registrazione delle notizie di reato alle indagini difensive
Giostra, Glauco
Politica del diritto no. 2 (giugno 1997), 147-192
Società Editrice Il Mulino ; 1997

The article discusses the main Italian reform on right to defence

Modifiche al codice di procedura penale : nuovi diritti della difesa e riforma della custodia cautelare / G. Giostra ...[et. al.]
Giostra, Glauco
Padova : CEDAM ; 1995

Misure cautelari e diritto di difesa nella L. 8 agosto 1995, n. 332
Caselli, Giancarlo ; Grevi, Vittorio (Eds.)
Milano : Giuffrè ; 1996
Disponibile in UniFI - Scienze sociali

Regime carcerario differenziato e tutela del diritto di difesa
Fiorio, Carlo
Processo penale e giustizia, 2014, Issue 1, pp.42-47

Evoluzione ed involuzione del diritto di difesa
Scaparone, Metello
Milano : Giuffrè ; 1980
Il diritto di difesa tra effettività e necessità: le garanzie prevalgono nella lettura delle Sezioni Unite
Scaccianoce, Caterina
Processo penale e giustizia, 2015, Issue 6, pp.56-61

Il diritto di difesa dell'imputato
Carulli, Nicola
Napoli : Jovene ; 1967

Nuovi orizzonti del diritto alla difesa tecnica: Un itinerario tra questioni
D. Negri, P. Renon (Eds.)
Giappichelli
2017

On Legal Aid (focus on legal aid in prison)

Povertà e giustizia
Cappelletti
Foro it., 1969, V, 48

Sulla effettività del sistema di difesa per i non abbienti
De Rosa,
Giur. it., 2003, 1216

Patrocinio a spese dello Stato e difesa d'ufficio
De Simone, Del Medico, Scialla,
Giappichelli, 2004

Il gratuito patrocinio
Buzzoni, Alessandro
Assago : Fag; 2010

Il gratuito patrocinio
Sassano, Francesca
Torino : Giappichelli ; 2004

Rassegna di giurisprudenza e di dottrina sul patrocinio gratuito
Veneri, Giuseppe (Ed.)
Milano : Giuffrè ; 1962

Il patrocinio a spese dello Stato : criteri di liquidazione del compenso del difensore dopo la riforma parametri, presupposti per la revoca del provvedimento di ammissione, patrocinio a spese dello Stato e mediazione, criteri di liquidazione del compenso per CTU e CTP, patrocinio a spese dello Stato nei procedimenti con cittadini stranieri e in quelli speciali
Vaccari, Massimo
Milano : Giuffrè ; 2015
Disponibile in UniFI - Scienze sociali

I patrocinio a spese dello Stato nel processo penale : aspetti teorici e profili pratici
Aragona, Raffaele funzionario di cancelleria ; Degl'Innocenti, Leonardo ; Antonuccio, Eleonora
Roma : Dike giuridica ; 2012

La direttiva 2016/1919/UE sul gratuito patrocinio completa il quadro europeo delle garanzie difensive nei procedimenti penali
Lucio Camaldo
Diritto Penale Contemporaneo
13 dicembre 2016

http://www.penalecontemporaneo.it/d/5105-la-direttiva-20161919ue-sul-gratuito-patrocinio-completa-il-quadro-europeo-delle-garanzie-difensive

La Corte costituzionale sul patrocinio a spese dello Stato per i detenuti extracomunitari
Guglielmo Leo
Diritto Penale Contemporaneo
24 aprile 2012
https://www.penalecontemporaneo.it/d/1445-la-corte-costituzionale-sul-patrocinio-a-spese-dello-stato-per-i-detenuti-extracomunitari

La Corte costituzionale sul divieto di accesso al patrocinio a spese dello Stato per i reati tributari
Guglielmo Leo
Diritto Penale Contemporaneo
19 aprile 2012
https://www.penalecontemporaneo.it/d/1432-la-corte-costituzionale-sul-divieto-di-accesso-al-patrocinio-a-spese-dello-stato-per-i-reati-tribut

Il gratuito patrocinio si applica anche alle richieste di liberazione anticipata
Donato Sandro Putignano
Diritto Penale Contemporaneo
29 settembre 2011
https://www.penalecontemporaneo.it/d/878-il-gratuito-patrocinio-si-applica-anche-alle-richieste-di-liberazione-anticipata

Prosegue inarrestabile il percorso verso il rafforzamento dei diritti processuali dei cittadini dell'Unione Europea
Martina Cagossi
Diritto Penale Contemporaneo
20 dicembre 2013
https://www.penalecontemporaneo.it/d/2718-prosegue-inarrestabile-il-percorso-verso-il-rafforzamento-dei-diritti-processuali-dei-cittadini-del

La Direttiva 2013/48/UE sul diritto al difensore e a comunicare con terzi e autorità consolari in caso di privazione della libertà personale
Fabio Augusto Bubula
29 novembre 2013
https://www.penalecontemporaneo.it/d/2669-la-direttiva-201348ue-sul-diritto-al-difensore-e-a-comunicare-con-terzi-e-autorita-consolari-in-cas

Reports by Ngo's

Prison conditions in Italy
Susanna Marietti
Antigone - European Prison Observatory. *Detention conditions in the European Union*

The socioeconomic impact of pretrial detention
Open Society Foundations & United Nations Development Program.

The practice of pre-trial detention in Italy
Research report
Grazia Parisi, Gennaro Santoro, Alessio Scandurra
Antigone – with coordination by Fair Trials - Co-funded by Criminal Justice Programme of the European Commission
September 2015

Norme europee e internazionali sul diritto al gratuito patrocinio
Open Society
Justice Initiative, December 2014

Public International Agencies Reports (Including Italy as a research field)

Le droit à la défense et à des procédures légales équitables dans les pays membres et les pays candidats / [European public law center, Athènes]
European public law center
Luxembourg : Office des publications officielles des Communautés européennes ; 2001

L'accès à la justice en Europe : présentation des défis à relever et des opportunités à saisir
FRA – Agence des droits fondamentaux de l'Union européenne
2012

http://fra.europa.eu/fr/publication/2012/laccs-la-justice-en-europe-prsentation-des-dfis-relever-et-des-opportunits-saisir