

MINISTRY OF JUSTICE

PROGRESS OF THE ACTION PLAN SUBMITTED TO THE DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE ECHR (*Judgment Torreggiani and others v/Italy 43517/09*)

The Plan submitted by the Italian Government comprises four lines of action:

1. Legislative actions aimed at reducing prison entry flows and enabling prisoners to progressively leave the prison system through the adoption of alternative measures accompanying their reintegration in the external community;
2. Managing and organization actions through the implementation of more open prison regimes for prisoners who are classified as requiring "medium or low security measures", focused on limiting the use of cells as a place of prisoners' rest and not a place where spending almost their entire day;
3. Building actions, planned according to the present needs of our prison estate;
4. Provision of modalities and procedures both for the "preventive remedy", which puts an end to the perpetuation of situations of violation found by the Court, and the compensative remedy for those who suffered a treatment in violation of their fundamental right not to be subjected to degrading treatment, according to Court's jurisprudence.

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The requests effected on 6 March 2014 by the Committee for the execution of judgments comprise the following points:

- a) The definition of a domestic compensative remedy both for those who are currently in prison and those who left prison.
- b) The necessity to have a remedy, or a combination of remedies, available to both prisoners who are serving their sanction and those in pre-trial custody.
- c) The necessity to have an overview of:
 - The updated data on overcrowding (presences/capacity ratio),
 - The effects of the adopted measures,
 - The effective capacity of the Italian prison system and the criteria according which it is calculated, the progressive reduction of overcrowding, the updated statistics on detention.

CURRENT SITUATION OF THE MEASURES ANNOUNCED

1. THE ACTIONS AMENDING LEGISLATION AND THE EFFECTS OBTAINED

In line with the actions aimed at reducing the stay in prison – already provided for by Decree Law no. 78/2013, converted into Law no. 94/2013 – it is worth pointing out that the subsequent Decree Law no. 146/2013, converted into Law no. 10/2014, has introduced the following additional measures: the increase of early release from 45 to 75 days per semester; the transformation of the minor illicit conducts connected to the traffic of narcotic substances into an autonomous offence punished by a shorter penalty; the extension of the use of remote control devices such as the “electronic bracelet”; the stabilization of the institution of house detention with the purpose of reducing the phenomenon of overcrowding; the early identification of foreign prisoners reached by an order for expulsion.

The mentioned Decree Law no. 146/2013 also amended the Penitentiary Code, introducing a preventive remedy which allows the detained person to bring an application before the competent Supervisory judge [*magistrato si sorveglianza*] in order to complain about any violation of the applicant’s rights under the penitentiary legislation. Under new Article 35-bis of the Penitentiary Code, the supervisory judge is now empowered to order to the penitentiary administration to remove any violation ascertained. The order given by the Supervisory judge is mandatory for the administration, and legal means are now provided to enforce the order in case of lack of execution by the penitentiary administration.

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The latter legislation follows a recent judgment of the Italian Constitutional court, which stated that the penitentiary administration cannot refuse to give execution to an order given by the Supervisory judge (see Corte costituzionale n. 135/2013).

The first applications for a preventive remedy have been already filed, and the Italian Government is currently monitoring their effectiveness. The number of these applications will certainly increase in the future, also through information campaigns that the Administration wishes to encourage.

Moreover, the Government undertakes to intervene – according to the legislative procedure followed to introduce measures of extraordinary necessity and urgency – to define a domestic system of compensative remedy for those who suffered periods of detention in violation of Article 3 of the Convention: the measure is eminently compensatory, proportionate to the period spent in conditions which, according to the parameters of the Court, can be considered in violation of Article 3 of the ECHR.

The procedure to establish the above will be set out in the provision which is being adopted. The procedure providing that the applications before the Court of Strasbourg may be addressed to the new instrument offered by the domestic law will also be established.

Assessment of the effectiveness of the measures adopted

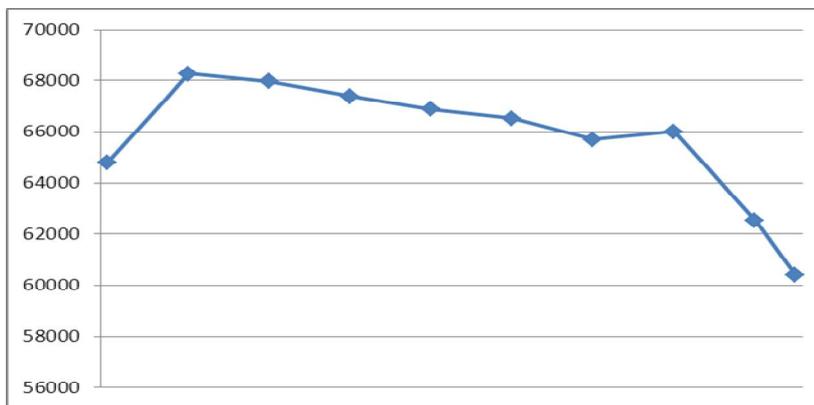
- Trends of prison population during the period from the *Sulejmanović* judgment (2009) to the present date:

As of 31 December 2009 (immediately after the *Sulejmanović* judgment), the prisoners present were 64,791 and became, at the date of 30 June 2010, 68,258 (with a peak, in the semester, close to 70,000 presences). When Italy was sentenced in the case of “*Torreggiani and Others*”, the prisoners present were 66,028 (see table 1).

The prisoners present at the date of 20 March 2014 are 60,419 with a decrease of about 6,000.

Prison population over the last 5 years

	<i>prisoners</i>
31/12/2009	64791
30/06/2010	68258
31/12/2010	67961
30/06/2011	67394
31/12/2011	66897
30/06/2012	66528
31/12/2012	65701
30/06/2013	66008
31/12/2013	62536
21/03/2014	60419



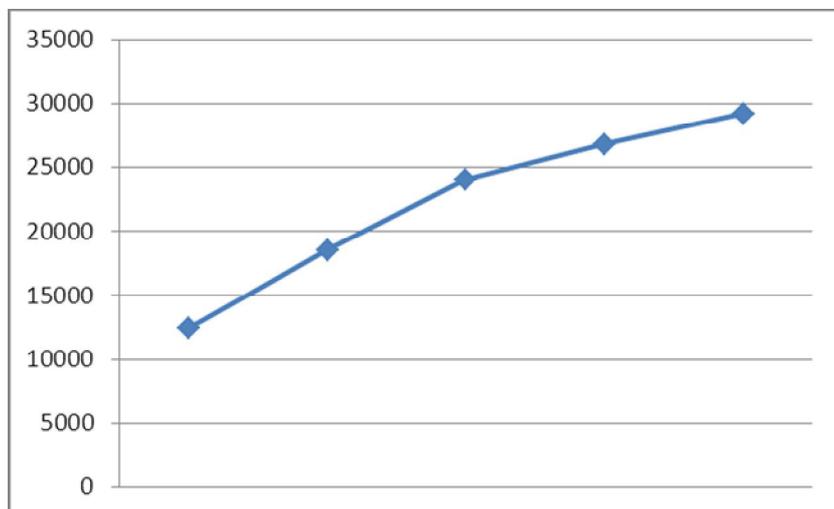
- Expected effects in the next semester of the increase of early release and of the other measures adopted:

The effects of the adopted measures allow expecting a continuous decrease of about 350 prisoners per month.

Some of the provisions adopted will also have effects in the mid-term because they envisage an ongoing coordination between a number of Offices. In particular, those concerning the implementation of the provision relevant to the expulsion of foreigners as an alternative to the last two years of penalty and the launching of the procedure aimed at identifying foreign prisoners as soon as they enter prison, so as to facilitate their return to their country when the remaining penalty to be served becomes less than two years. At the same time, the Government is committed to accelerating the negotiation and conclusion of bilateral agreements for the transfer of sentenced prisoners.

In parallel, an increase of about 17,000 of alternative measures to detention (compared to the datum of 2009) has been recorded. The state of art is as follows: on 31 December 2009 the number of people serving their penalty through an alternative measure was 12,455, whereas on 31 December 2013 (the data are updated every six months) they are 29,223.

<i>date</i>	<i>alternative measures</i>
31/12/2009	12455
31/12/2010	18537
31/12/2011	24027
31/12/2012	26797
31/12/2013	29223



By a recent judgment, the Constitutional Court cancelled, for improper procedure of adoption, the law on sanctions for the traffic or use of narcotic substances. The consequence is that the previous law is in force again. The Government has undertaken to submit in a short time a new act adjusting the sanctions which are currently in execution. The foreseen outcome will have effects for a large number of prisoners: 14,316 prisoners are currently (17 March 2011) charged with the mere offence of illicit

possession of and traffic in narcotic substances, without participation in an association aimed at said traffic, or any specific aggravating circumstances.

Expectations relating to the measures currently being debated in Parliament

- The measure of main interest under the scrutiny of the Parliament concerns the pre-trial custody.

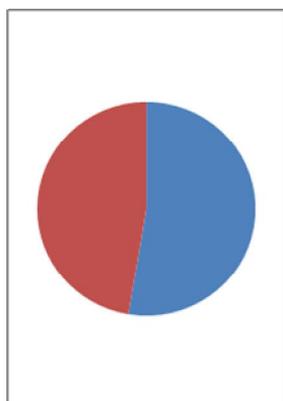
As of 20 March 2014, the prisoners awaiting trial (first instance) are 10,864 (they were more than 14,000 in December 2009) i.e. 17% of the total prisoners.

The Italian law defines "pre-trial detention" the detention of those awaiting trial, those on appeal and those who appealed the Cassation Court. Only prisoners sentenced in the three instances or prisoners who did not appeal are admitted to serve the sentence (being classified as "convicts"). The current total of prisoners in pre-trial custody (as defined above) is 21,942, whereas on 31.12.2009 they were 29,809. Therefore the total of prisoners not serving a final sentence decreased of about 8,000 units, that is 10 percentage points (from 46% to 36%).

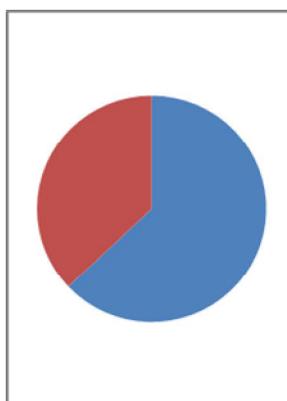
Convicts/Remand detainees

date	total detainees	convicted	% convicted	pre-trial	% pre-trial	not final sentence	% not final sentence
31/12/2009	64791	33145	51,15	14367	22,17	29809	46
30/06/2010	68258	36781	53,88	14697	21,53	29691	43,49
31/12/2010	67961	37432	55,07	14112	20,76	28782	42,35
30/06/2011	67394	37376	55,45	14148	20,99	28363	42,08
31/12/2011	66897	38023	56,83	13625	20,36	27325	40,84
30/06/2012	66528	38771	58,27	12991	19,52	26424	39,71
31/12/2012	65701	38656	58,83	12484	19	25777	39,23
30/06/2013	66008	40301	61,05	12210	18,49	24547	37,18
31/12/2013	62536	38471	61,51	11108	17,76	22877	36,58
21/03/2014	60419	37290	61,71	10864	17,98	21941	36,31

31/12/2009

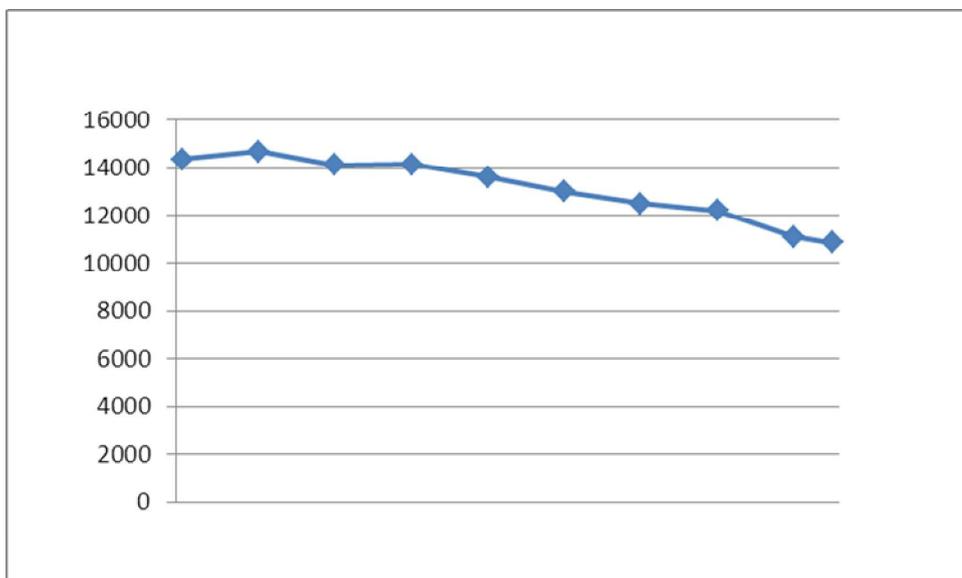


21/03/2014



blue=convicts

red= not final



Prison capacity and overcrowding

At the date of 20 March 2014 the regular capacity of Italian penitentiary facilities is of 48,416 places¹. At the date of 31.12.2009 the prescribed capacity was of 44073 places. Therefore the capacity increased, as from January 2010, by 4,343 places.

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date	occupancy	capacity	occupancy rate	overcrowding
31/12/2009	64791	44073	1,47	47
30/06/2010	68258	44568	1,53	53
31/12/2010	67961	45022	1,5	50
30/06/2011	67394	45732	1,47	47
31/12/2011	66897	45700	1,46	46
30/06/2012	66528	45584	1,45	45
31/12/2012	65701	47040	1,39	39
30/06/2013	66008	47022	1,4	40
31/12/2013	62536	47709	1,31	31
21/03/2014	60419	48416	1,24	24

¹ The parameter through which capacity is calculated is taken from a Ministerial Decree of the Ministry of Health dated 5 July 1975 (*Amendments to ministerial instructions of 20 June 1896 relating to the minimum height and the main hygienic and sanitary requirements of dwelling premises – O. J. No. 190 of 18.07.1975*). According to the criteria set in that provision the capacity is calculated considering that a regular place in a cell corresponds to 9 square meters per person. For multiple cells the parameter requires 5 more square meters for each additional prisoner. The capacity is calculated without considering the sanitary facilities.

Therefore the number of prisoners decreased of about 6,000 during the period from January 2010 to March 2014. During the same period the capacity of the prison system increased by more than 4,000 places.

It should be highlighted that the operational capacity often changes, due to the frequent needs of temporary closures for refurbishment. On average the range of unavailable places is between 4,000 and 5,000. At the date of 20.3.2014 the places unavailable because under refurbishment are 4,762.

The relevant efforts will focus on the recovery of currently unavailable places.

Monitoring and prevention

In addition to the institutional monitoring, a complementary monitoring is carried out by other stakeholders. In particular, by professional or social stakeholders, such as the Unione Camere Penali (Bar Association) and the "Antigone" Association, and by institutional stakeholders such as the Territorial "Garanti". These stakeholders have access, according to agreements set by the Administration: while the "Garanti" have access to all sections and units, the other two subjects have access only to the sections other than those housing prisoners subjected to special regime.

It should be also noted that a large number of associations promoting social engagement ("Arci-Ora d'aria", "Antigone", "Caritas Italiana", "Coordinamento Enti e Associazioni di Volontariato Penitenziario – SEAC", "Fondazione Italiana per il Volontariato", "Libera", "San Vincenzo di Paoli", "Bambini senza sbarre") have access to the institutions in the cities where they operate, both by the adoption of specific projects (under Article 17 of the Prison Law) and by the recognition of their institutional role of subjects operating at national level in support of the rehabilitative treatment (under Article 78 of the Prison Law). All these Agencies and Associations are collectively represented by the National Conference of Voluntary Activities in Justice, that interacts with the political and administrative level of this sector.

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Moreover, the recent Decree Law no. 146/13 (converted into Law no. 10/2014) established the Office of the National "Garante", with the function of Ombudsman for persons deprived of their liberty, monitoring the conditions of detention in order to prevent ill-treatments or situations of degrading or inhuman treatment or punishment. The "Garante Nazionale" will operate in coordination with correspondent bodies operating at local level. The Act regulating the functionality of the Office is in progress. It will consider any specific aspect enabling to configure such new body as the National Preventive Mechanism foreseen by the OPCAT (Optional Protocol to the UN Convention against Torture), ratified by Italy on 3 May 2013.

In this context, it should be pointed out that the Senate approved the Law introducing the crime of torture, in compliance with the obligations under the UN Convention against Torture; the Chamber of Deputies is currently examining this provision that was assigned on 14 January 2014 to the Second Commission, in charge for Justice.

ACTION ON THE DETENTION REGIME

a. Started up actions

The guidelines of these actions (concerning prisoners requiring medium or low security measures) are provided by the European Prison Rules (Recommendation No. 2 of 2006). The system of open wings within the prison was introduced. Prisoners should use their cells as a place to rest and not to spend almost the entire day:

- Prisoners should spend at least 8 hours per day outside their cells and the units where the cells are located, devoting their time to purposeful activities, training or work.

*Currently (10 March 2014) 64% of the potential beneficiaries spend at least 8 hours outside the cells [it is recalled that the prisoners requiring high security measures, those under article 41-bis or under protection are excluded from the total].
We expect to reach the percentage of 88% within May.*

- Extension of the working activity, in line with the mentioned tools provided for by the new rules for access to work outside the prison:

Agreements and institutional arrangements with the Regions and other local agencies including programs of community services are in progress.
Agreements have currently been concluded with the Regions of Tuscany (17 January 2014) and Emilia-Romagna (27 January 2014).

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- Increase and different modalities of visits of beloved ones:

Visits can be effected in the afternoons and on week-ends. Renovations of rooms, foreseeing spaces for children, as well as spaces to socialize outdoors, and to welcome visitors and families and give them information.

Out of a total of 206 Institutions, in 81 Institutions visits are effected six days per week; in 77 Institutions visits can be effected also in the afternoon. In 105 Institutions visits take place also in open spaces.

- Support to and accompanying of children visiting their imprisoned parents. In particular the possibility to benefit of facilities oriented to the psycho-physical well-being of the child

A Joint Actions Protocol has been signed with the "Bambini senza sbarre" Association, supporting the maintenance of the parental relationship of prisoners' children.

- Facilitation of contacts with the outside world and beloved persons:

Introduction of the phone card for prisoners in all institutions.

Starting up of communications via Skype in the Institutions provided with the relevant ICT.

The phone card for prisoners was introduced in 60 Institutions.

Communications via Skype started on an experimental basis in the prisons of Trieste and Venice-Giudecca (female prison); they are also being implemented in Alessandria and Ivrea.

- Arrangement of spaces to deal with the increased number of hours that can be spent outside the sections. Arrangement of poly-functional spaces with outdoor access where the daily activities of each prison section can be gathered, where prison staff can operate and work activities can be performed; and prisoners can socialize and eat their meals together (progressively closing with the past experience in which meals were distributed and eaten in the cell).

The works for creating these spaces already began in two pilot prisons (the Rebibbia Women's prison of Rome and in Bologna) and the evaluation of the adopted model will lead to possible adjustments, if necessary, and to the subsequent extension of this programme to the other Institutions.

- Progressive implementation of dynamic security within all the prisons.

The positive progressive adoption of such system is in progress.

- Cooperation with the National Olympic Committee in order to carry out sport activities within the largest possible number of institutions and the contemporary training of some prisoners as tutors and referees for some of the proposed individual sports.

The program is in an experimental implementation stage in the Rebibbia Women's Institution of Rome and in Bologna.

b . Measures for the overall reorganization of the detention regime in prisons

The aim of the Government Action Plan is not only to review detention spaces in order to ensure the minimum square meters for each prisoner, but also to reshape the detention system as a whole taking into account European standards also on the basis of the recommendations of an ad hoc Ministerial Commission for measures to be adopted in the prison area. The measures currently under examination include:

- Clear and effective separation between the institutions for prisoners serving their sentence and those for persons detained on remand.
- Review of the criteria for accommodation and transfers, in accordance with legislative provisions and the European Prison Rules (a circular was already issued to that end).
- Increase of systematic cooperation with the Italian health authorities which are now responsible for the organization and implementation of health care in prison.
- Progressive adoption of a digital medical file (currently introduced in 37 prison institutions).

- Overall reorganization of prisoners' work, in accordance with the provisions in Rule 26, paragraph 7 of the European Prison Rules. The reorganization concerns the daily routine in prison, the so-called "lavorazioni penitenziarie" [working activities carried out by prisoners inside de prison], the involvement of prisoners in the refurbishment of their spaces, the organization of outdoor work, the vocational training (including work experience grants).
- Overall reorganization of the system of supply by external companies of food, extra food and shopping service, in order to improve their quality, streamline the procedure and ensure transparency.

3. INTERVENTIONS ON PRISON BUILDINGS

Besides action aimed at reducing the recourse to detention and changing the prison regime offered, new spaces have been built and the existing ones have been renovated. In this regard, it must be specified that building works are aimed not only at increasing the space available but also at replacing outdated, costly and sometimes crumbling facilities, in order to allow dignified detention conditions compatible with the provisions of the Prison Rules and in line with the Constitution and the European standards (over the last few years 6 new prison institutions have been built, to replace now totally inadequate old prisons and, as extension works were made, 10 other very old and uneconomic facilities were closed).

Restoration and extension works were substantial and the increase in prison capacity - 4,343 places, mentioned above, shows only in part the importance of the intervention because as new spaces are being built, old and inadequate ones are being closed.

The construction of architecturally adequate spaces firmly continues. It's foreseen the opening of 4 other blocks for a total number of 988 places (also in this case there is a partial closure of inadequate facilities also to optimize the use of staff) and the recovery of 1129 places by May 2014.

Over the last year and, the Department of Prison Administration has devised and developed a computerized mechanism to control living spaces given to each prisoner in all the prisons of the country. The constant monitoring of spaces and number of prisoners is allowing a rapid reorganization and rationalization of the whole system. As of March 21, 2014, the prisoners in overcrowded conditions with a space of less than 3 sq. meters available were 1,972. It must be specified that the number of persons detained in conditions considered by the Court in violation of Article 3 of the Convention, when Italy was sentenced in the *Torreggiani* case, certainly exceeded 10,000 units. In June 2013 they were 7,648 and since January of this year there has been a decrease of about 1,000 units per month. The decrease in the number of prisoners placed in detention spaces below square meters continues to drop rapidly as a result of interventions for the reallocation of prisoners facilitated by the control carried out on such activity by a monitoring group set up at the Department of Prison Administration.

As to the 1,972 prisoners who are still allocated in a space of less than 3 sq. meters, it must be emphasized that it is a temporary situation and these cases are exclusively present in large metropolitan remand prisons. The overall decrease in the number of prisoners allows reallocation according to acceptable parameters (reallocation is always carried out taking into account the needs of prisoners, and in particular the territorial proximity to the place of residence of their families).

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As already mentioned, in a very short time, before the deadline of May 27, there will be no Italian detention institution presenting a situation such as to lead to the automatic violation of Article 3 in terms of unavailability of at least 3 sq. meters of living space per prisoner. In any case, these are not, and will not be, permanent situations (and are quite exceptional compared to the overall picture which covers more than 60,000 prisoners). Moreover, in case of possible occurrence of these situations, a complaint procedure may be started before the Supervisory judge, in accordance with the provisions in Decree Law no. 146/13 (converted into Law no. 10/2014).