1. GLI SVILUPPI DEL PROCESSO DI RIFORMA DEL SISTEMA DI TUTELA DEI DIRITTI GARANTITI DALLA CEDU

1.1. La Dichiarazione di Bruxelles

Nella Relazione al Parlamento per il 2014[102] si è fatto cenno - rinviando, per un seguito, alla Relazione per il 2015 – circa l'avvenuto svolgimento a Bruxelles, nei giorni 26-27 marzo 2015, nell'ambito del semestre di presidenza belga del Consiglio d'Europa, della Conferenza di alto livello degli Stati membri sul tema "*L'applicazione della Convenzione europea sui diritti dell'uomo, una responsabilità condivisa*", al termine della quale i rappresentanti dei governi hanno adottato una dichiarazione finale ("*Dichiarazione di Bruxelles*") e un piano d'azione ad essa annesso (la Dichiarazione ed il relativo allegato sono riportati in Documenti n. 14).

La Conferenza, inserendosi nel solco delle precedenti (Interlaken del 2010, Smirne del 2011 e Brighton del 2012, su cui si è riferito negli anni di competenza), aventi ad oggetto riflessioni degli Stati membri sulle possibili riforme del sistema di tutela dei diritti garantiti dalla Convenzione europea, si è effettivamente posta in continuità con le politiche fissate a Brighton e successivamente, soprattutto quanto ai forti e continui richiami al ruolo del principio di sussidiarietà nell'applicazione della Convenzione e, al di fuori dell'ambito della sussidiarietà, comunque del margine di apprezzamento degli Stati.

In quest'ottica, già attraverso l'intitolazione della conferenza, gli organizzatori hanno inteso riaffermare il concetto di "responsabilità condivisa" nell'applicazione della Convenzione, intesa come necessità che non solo la Corte europea, ma tutti gli attori coinvolti - Stati membri e Comitato dei Ministri innanzitutto - contribuiscano attivamente al pieno ed effettivo funzionamento del sistema di tutela.

Il testo della Dichiarazione di Bruxelles, adottato all'unanimità al termine della Conferenza, porta in tal senso a ulteriori conseguenze il documento adottato nel 2012 a Brighton[103], ribadendo – in positivo -l'importanza della continua ed effettiva cooperazione tra le istituzioni di Strasburgo e le autorità nazionali. In negativo, la Dichiarazione – riflettendo in ciò l'andamento della Conferenza – non fa, invece, segnare innovazioni esplicite quanto al riconoscimento di spazi per l'esecuzione da parte degli Stati delle decisioni della Corte, aspetto particolarmente delicato anche alla luce dell'elevato contenzioso nei confronti dell'Italia.

[102] Relazione al Parlamento per l'anno 2014, p. 169.

[103] La Dichiarazione di Brighton è riportata nella Relazione al Parlamento per l'anno 2012, in documenti n. 1.

L'obiettivo della Dichiarazione è anche quello di ridurre il carico di lavoro e l'arretrato pendente dinanzi alla Corte Edu, anche per consentire alla Corte stessa di decidere, entro un tempo ragionevole, sui casi nuovi che riguardano serie violazioni dei diritti umani, ricercando diversi approcci ai casi meno gravi o ripetitivi.

Così, nella parte della Dichiarazione che si sofferma sull'incidenza dei ricorsi di carattere "ripetitivo" o "a cascata", si invitano i giudici di Strasburgo a intervenire sui tempi di trattazione dei ricorsi non ripetitivi e non manifestamente infondati, nonché a introdurre nuove procedure per i ricorsi ripetitivi.

Il piano d'azione allegato alla dichiarazione sviluppa i temi dell'interpretazione e dell'applicazione della Convenzione da parte della Corte Edu, nonché della supervisione dell'esecuzione delle sentenze da parte del Comitato dei ministri. Vengono anche forniti criteri in tema di attuazione della Convenzione a livello nazionale.

Nel loro complesso - come sottolineato anche nelle conclusioni della presidenza - i lavori della Conferenza hanno affrontato il tema dell'importanza delle interazioni della Corte Edu con le autorità giudiziarie e governative nazionali, nonché l'esigenza che la stessa Corte Edu assicuri una giurisprudenza chiara e coerente per orientare dette autorità; in questa logica i governi hanno espresso apprezzamento per l'intenzione della Corte di incrementare la trasparenza, la prevedibilità e la certezza della propria giurisprudenza, fornendo quanto prima decisioni motivate - per quanto brevi - in tema di pronunce di inammissibilità. Nella direzione di una sempre maggiore comprensibilità delle linee decisionali della Corte, i governi hanno anche richiesto che siano motivate le decisioni in tema di rifiuto di rinvio alla Grande Camera e in tema di misure provvisorie.

Tra i seguiti più rilevanti della Conferenza di Bruxelles deve annoverarsi, in data 11 dicembre 2015, l'adozione di un Rapporto al Comitato dei Ministri sul futuro a lungo termine della sistema della Convenzione europea, redatto dal Comitato direttivo sui diritti umani del Consiglio d'Europa e trasmesso al Comitato dei ministri.[104] I lavori preparatori al Rapporto, già avviati al momento dello svolgimento della Conferenza di Bruxelles, hanno incluso consultazioni e discussioni durate due anni, con la predisposizione di numerosi documenti di base provenienti da esponenti della società civile e del mondo accademico e con audizioni di esperti; ovviamente gli esiti della Conferenza di Bruxelles sono stati ampiamente tenuti in considerazione.

Il Rapporto ha affrontato, quali caratterizzanti le problematiche del sistema Edu, alcuni aspetti che non potranno essere affrontati se non con innovative misure in base a determinazioni

[104] Consiglio d'Europa - Steering Committee for Human Rights CDDH(2015)R84 Addendum I.

degli Stati membri: trattasi delle procedure nazionali di selezione dei candidati per la carica di giudice della Corte, delle questioni relative alle violazioni su ampia scala dei diritti umani in contesti quali i conflitti armati o le dispute territoriali, nonché dell'inserimento delle caratteristiche giuridiche e di prassi della Convenzione nel più vasto ambito del diritto europeo e internazionale.

Alla Dichiarazione di Bruxelles e al Rapporto del Comitato direttivo sui diritti umani è stato dedicato ampio spazio nell'introduzione al già menzionato Rapporto annuale della Corte per il 2015.[105]

Successivamente, con deliberazione del 3 febbraio 2016, il Comitato dei Ministri del Consiglio d'Europa, investito del Rapporto del Comitato direttivo sui diritti umani, ha richiesto alla Corte Edu eventuali commenti.

Con una comunicazione ufficiale[106] – i cui esiti potranno essere meglio trattati nella prossima relazione al Parlamento – la Corte ha fornito alcune risposte alle questioni poste nel Rapporto; su altre – e in particolare in ordine alle esigenze di trasparenza delle decisioni in tema di rinvio alla Grande Camera e di misure provvisorie – la Corte si è riservata di rispondere con successiva informativa circa le misure che adotterà per dare attuazione alla Dichiarazione di Bruxelles.

Sembra significativo sottolineare, per quanto riguarda il punto, contenuto anche nella Dichiarazione di Bruxelles, secondo cui la Corte "***dovrebbe essere più reattiva in ordine all'interpretazione motivata della convenzione da parte dei giudici nazionali***", che la Corte, nella risposta al Comitato dei Ministri, ha fatto valere esservi molti esempi significativi, nelle proprie pronunce, di considerazione della giurisprudenza nazionale (gli esempi forniti riguardano peraltro casi di pertinenza della Francia, della Germania e del Regno Unito).

Sia nella Dichiarazione di Bruxelles che negli altri testi sopra ricordati si auspica, infine, la ripresa e la definizione del processo di accessione dell'Unione Europea alla Convenzione Edu.[107] E' opportuno notare che, nella citata comunicazione al Comitato dei Ministri, la Corte europea, quanto alle preoccupazioni circa l'accessione dell'Unione Europea, ha sottolineato il rischio che, in mancanza, i due principali sistemi giuridici europei vadano *"alla deriva"* l'uno rispetto all'altro, assicurando la ripresa del dialogo con la Corte di giustizia dell'Unione europea nel 2016.

[105] European Court of Human Rights – Annual Report 2015, pp. 9 ss.
[106] Trattasi del Commento, s.d., espresso dalla Corte Edu, su richiesta del Comitato dei Ministri deliberata il 3 febbraio 2016.
[107] Cfr. sul punto Relazione al Parlamento per l'anno 2014, pag. 167 e seguenti.

Indice

III. DOCUMENTI

1. *TORREGGIANI E ALTRI C. ITALIA* (RICORSO N. 43517/09) - BILANCIO D'AZIONE DH-DD (2015) 1251

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Contact: Clare Ovey
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Date 20/11/2015

DH-DD(2015)1251

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting	1243 meeting (8-10 December 2015) (DH)
Item reference	Action report (20/11/2015)

Communication from Italy concerning the case of Torregiani and others against Italy (Application No. 43517/09)

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Réunion	1243 réunion (8-10 décembre 2015) (DH)
Référence du point	Bilan d'action

Communication de l'Italie concernant l'affaire Torregiani et autres contre Italie (Requête n° 43517/09) (***anglais uniquement***)

Indice

Ministero della Giustizia

CONSOLIDATED REPORT ON THE EXECUTION OF THE ECTHR PILOT JUDGEMENT *TORREGGIANI AND OTHERS V/ ITALY*

Following the pilot judgment *Torreggiani and others v/ Italy* the Italian Government presented on November 27, 2013 (6 months after the final judgment) the Action Plan (see Document DH-DD(2013)1368) tailored on the lines indicated by the judgment in order to overcome the identified structural deficiency resulting in a systemic violation of article 3 ECHR. The compliance of the Action Plan with the requirements of the judgment was underlined in the Final Report sent on may 27, 2014 and it was confirmed by the Decisions taken by the Deputies at the Committee of Ministers 1201st Meeting in June 2014 and again in December 2014.

In September 2014 a first group of applications lodged before the Court in Strasburg alleging violation of article 3 ECHR due to bad detention conditions and overcrowding in prison were declared inadmissible and sent back to the national judge by the Court (see judgment *Stella and others v. Italy*) as the Court acknowledged that the Italian system currently provides for remedy, both preventive and compensative to challenge conditions of detention. Subsequently all the similar cases pending before the Court were declared inadmissible.

The Action Plan presented in November 2013 consisted of five lines of action:

1. Legislative actions aimed at: a) reducing prison entry flows by decriminalising minor crimes; and b) improving the access to community sanctions and measures facilitating the positive reintegration of the offenders in the external community and introducing the possible suspension of sentence under a programme of supervised community activity and labour.
2. Building actions, planned according to the present needs of our prison estate, mainly focused on refurbishing the existing prisons or rebuilding (part of) them (making them capable of offering detention conditions as considered in point 2 above) rather than to expand the prison estate.
3. Managing and organization actions through the implementation of of more open prison regimes , in particular for prisoners who are classified as requiring "medium or low security measures", firstly focused on bringing back prison cells to a place to accommodate inmates for their rest and not for spending the day and secondly, on assuring compliance with the European prison rules;
4. Provision of modalities and procedures for an effective "preventive remedy", able to stop the perpetuation of situations leading to a possible violation of article 3 of the Convention, by the provision of four elements: a) a judicial authority in charge of stopping the situation if ascertained (judicial processing of complaints whenever rights are concerned); b) the legal and logistic possibility of giving effectiveness to that judicial decision, as a consequence of the actions taken under points 1, 2 and 3 above; c) the implementation of a computerised system able to give a clear and continuously updated picture of the accommodation of any prisoner in prison establishments, as well as information about positive or problematic events during his/her daily life in prison (visits by relatives, activities etc. and on the contrary lack of contacts, change of behaviour etc.); d) the provision of an internal independent and continuous monitoring of the places of deprivation of liberty (in line with the NPM requirements under the OPCAT).
5. Provision of a "compensative remedy" for those who suffered a treatment in violation of their rights; the compensation should be a measure acknowledging the State's fault in assuring a detention in full compliance with the absolute obligations under article 3 of the Convention. Such a recognition leads not only and not primarily to a financial compensation, but also to possible specific prison benefits in terms of reduction of the sentence, for those who are still detained.

1. Legislative actions and their effects

The legislative measures adopted in the context of the execution of the pilot judgment are in line with the principles set out in the Recommendations of the Committee of Ministers of the Council of Europe in the last decade. In particular: increasing the use of non-custodial sanctions, as per Rec (1999)22; reducing resorting to remand in custody, as per Rec (2006) 13; increasing the opportunities to have access to alternative measures to detention, as per Rec (2000)22.

Moreover a new procedure was introduced allowing, in cases of minor gravity, the suspension of the procedure if the judge considers that the person concerned may be admitted to a supervised programme of social intervention and activity in the community in order to facilitate his/her positive reintegration.

These measures are not exceptional; they permanently amend the system of execution of sentences and, more in general, the limits and the quality of the deprivation of liberty in the context of the penal system. Only one measure (special early release, *see below*) has a temporary effect (it is applied only for five years and its application will end in December 2015).

No pardon, amnesty or other special laws were adopted.

The legislative measures adopted were reported in previous communications and reports. They can be summarized as follows:

(Measures concerning the penal system)

- an update of the list of the less serious offences and new provisions for minor illicit conducts (in particular concerning drugs),
- the distinction between different types of drugs and the subsequent differentiations of the sanctions (this distinction had been abolished in the past with serious consequences on the number of detainees) ;
- the decriminalization of illegal migration as well as the delegation to the government to change a number of minor offences from criminal to administrative ones.

(Measures concerning the provision of community sanctions and measures and access to them)

- possible access to alternative measures without a preliminary period in prison; house detention for sentences and remainder of sentence up to 18 months, on the basis of the decision of the supervisory judge;
- possible immediate house detention for vulnerable people;
- wider use of remote control devices such as the "electronic bracelet";
- no more automatic (or quasi-automatic) exclusion of recidivists from access to community measures (according to a Law adopted in 2005, they were presumed to be dangerous only on the basis of the recurrence of convictions, regardless of the seriousness of the offence committed);
- the already mentioned possibility of having direct access to probation the first offence, if punishable with imprisonment up to 4 years, may be suspended by the judge giving the offender access to probation (community work and engagement in restorative practice) under an approved rehabilitation programme;
- for the period 2010-2015, the increase in the deduction of penalty (special early release) for additional 30 days per semester for prisoners who have shown effective participation in rehabilitation activities (this was the only "special measure" adopted).

The wider set of community sanctions and measures and the increased number of those who are serving them encouraged the decision of establishing the new Department of Probation (formally "Department for Juvenile and Community Justice") as an autonomous body within the Ministry of Justice. So, the previous system that considered the "Direction for alternative measures" as part of the Prison Administration was abandoned. A Decree adopted by the Government in the context of a general re-organization of the Ministry of Justice, introduced two different Departments, respectively for the detention and the community sanctions and measures. They are kept together by the same Training Directorate tasked with study, research and staff training of both Departments.

As regards the monitoring system – able to give early advice about the detention conditions – the computerized system is able to give information about the number of square meters available for each detainee in his/her cell, the state of the sanitary annex of each cell, including the information about the shower and the reason of possible deficiencies, the available spaces for sport or other activities. Moreover it is possible to have access to the individual computerized file of each detainee and take note of personal information like the judicial position, contacts with relatives, visits, correspondence and phone calls, parcels, requests, possible disciplinary measures and other elements characterizing his/her personal life in prison.

The monitoring is ensured by the newly established "Garante" (Ombudsman) of persons deprived of liberty by public authority. This new body introduced by a Law adopted in 2014, is in line with the requirements of the OPCAT – ratified by Italy in 2013 – and it was designated as the Italian NPM (National Preventive Mechanism). It is starting to be operative in these days.

The effects of the adopted legal measures are clear

a) *Prison population*

As of 31 December 2009, immediately after the *Sulejmanovič c. Italy* 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**

The prisoners at present (15 October 2015) are 52.342, including 682 detainees who are serving their sentence in day release, namely returning to the institution only to sleep:

	Women	*Men*	*Total prisoners*
total	*2.141*	*50.201*	*52.342*
% on the total	4,1%	95,9%	100,0%

Prison population over the last 7 years

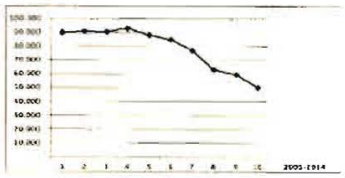
	Prisoners
31/12/2009	64791
30/06/2010	68258
31/12/2010	67961
30/06/2011	67394
31/12/2011	66897
30/06/2012	66528
31/12/2012	65701
30/06/2013	66008
31/12/2013	62536
30/06/2014	58092
31/12/2014	53623
30/06/2015	52754
15/10/2015	52342

As said, the adopted measures have *structural* and not short-term characteristics (with the only exception of the special early release). Therefore these measures will continue to have effects in the mid- and long-term, with a constant reduction of the number of inmates, especially of those that have to serve short sentences.

Is it worth underlining that the number of entries into the prison system significantly decreased over the last five years (at the time of the *Sulejmanović v. Italy* judgment (2009) more than 88.000 people entered prison in a year; in 2014 they were slightly more than 50.000:

Persons entering the prisons from the liberty during a year
years 2005-2014

year	Italians			Foreigners			Total		
	Men	Women	Total	Men	Women	Total	Men	Women	Total
2005	43.786	3.595	46.381	35.202	5.404	40.606	80.987	8.999	89.987
2006	44.225	3.201	47.426	36.516	4.772	41.288	82.741	7.973	90.714
2007	43.328	3.253	46.581	38.943	3.917	42.860	82.271	7.170	89.441
2008	46.078	3.623	49.701	39.451	3.648	43.099	85.529	7.271	92.800
2009	44.564	3.436	47.960	36.719	3.354	40.073	81.273	6.783	88.056
2010	43.967	3.436	47.343	34.308	2.990	37.298	78.275	6.426	84.641
2011	40.458	3.219	43.677	30.571	2.734	33.305	71.029	5.953	76.982
2012	33.364	2.650	36.014	24.765	2.241	27.006	58.129	4.891	63.020
2013	31.198	2.422	33.620	22.706	2.113	25.819	54.905	4.535	59.440
2014	26.511	1.966	27.477	20.981	1.786	22.767	47.492	3.725	50.217



b) Community sanctions and measures

In parallel, the adopted measures resulted in a significant increase in the application of sanctions and measures alternative to detention at different stages of the proceedings and the execution of a sentence: 1) more non-detentive measures at the pre-trial stage, 2) the introduction of diversion from formal criminal proceedings under a supervised programme of community service (the so called "messa alla prova"); 3) the introduction of community sanctions, although still very "timid", 4) a significantly increased access to alternative measures also resorting to electronic monitoring.

In 2009 the number of offenders serving a community sanction or measure was **12.455**; in October 2015 they are **36.709**. In detail:

As regards electronic monitoring, the judicial authorities started adopting this system of remote control and the number of applications significantly increased: from 18 applications of "electronic bracelet" as at 1 January 2013 to 2296 applications at present.

c) Pre-trial detention

In addition to the above mentioned measures, in 2014 Parliament adopted a reform of the pre-trial detention, resorting to remand detention should be properly motivated and not adopted as a first instance measure. These new legal provisions resulted in the decrease of the percentage of detainees awaiting trial and the consequent increase in the percentage of those serving a sentence. The results are reported in the following table:

	number of prisoners	interned (security measure)	total prisoners excluding interned	% waiting for the 1st instance trial	% waiting for the 1st instance trial	% on appeal	pending before the High Court	mixed + more pending trials at different stages	serving the final sentence	% serving at least one final sentence
2015/11	54047	1186	52861	11871	18,9	6191	4192	1666	38858	61,8
2015/12	52636	1188	51448	11108	18,1	6065	4080	1578	33471	67,6
2014/12	53633	1072	52561	9549	18,2	4652	3015	1794	34096	64,8
2013/12	62842	515	61827	9983	17,2	4700	3117	1230	32741	65,1

2. Building actions and their effects

As specified in the Action Plan presented in November 2013, we preferred to take action on the detention system by reviewing the rules which caused an increase in the number of prisoners, reshaping prison as a measure to be used when there is a specific need, rather than building new prisons.

This strategy is in line with the content of Recommendation (1999) 22 on the strategy to reduce prison overcrowding, when it states that "2 The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding." (*Basic principle n. 2*)

Much of the action on prison buildings was subsequently focused on the redevelopment of existing structures bringing them in line with international standards, mentioned in the Prison Rules of 2000 (Presidential Decree 230/2000). The regional bodies (Provveditorati regionali) of the Prison Administration were asked to make a list of the works to be carried out and draw up the relevant projects. In the last year over 700 interventions have been planned for the recovery of 366 detention places, the setting up of showers in the bathrooms of 543 overnight cells, the renovation of 101 rooms used for visits of family members and 197 areas dedicated to rehabilitation-related activities, as well as the construction of 11 sports fields, 23 outdoor areas equipped for visits of family members, 13 canteens and 14 gyms.

Other projects are in progress and other showers are being set up in other overnight cells (784), and equally under way is the renovation of 58 more rooms for visits and of 559 areas for rehabilitation-related activities, and the construction of other sports fields (28), gyms (13) and refectories (6).

As a result, these works have brought and are still bringing detention spaces in line with international standards, which is a priority action rather than building new institutions.

At present (15 October 2015) the effects of these actions are as follows:

a) Prison capacity

The present capacity of Italian penitentiary facilities is of 49.610 places. As at 31.12 2009 the regular capacity was of 44.073 places. When considering these numbers, it is important to take into account that the vastness of the building stock determines over the time a variability of the actually available capacity due to the frequent necessity of temporary closures due to renovation requirements. On average the range of unavailable places was between 4.000 and 5.000. Now the number has decreased and presently the places unavailable because of renovation requirements are 3.970.

So, the distance between the regular capacity – that in Italy is calculated on a basis of 9 square meters for each detainee plus additional 5 square meters for any added detainee put in the same cell – and the present occupancy is evident, although much less dramatic than in the past.

Capacity and occupancy 15 October 2015		men	women
number of institutions	195		
Official capacity	49610	47299	2311
Prisoners at 15.10.2015	53342	50201	2141
Official Rate of overcrowding	105%	106%	92,6%
Operational capacity at 15.10.15	45640		

The present total capacity is slightly lower than in May 2014 (at the time of the presentation of the *Final Report* to the Committee of Ministers it was 49 797). This decrease of the capacity is mainly due to the necessity to convert some rooms, previously used as cells, into common rooms where to develop daily activities, in line with the new model of detention that the Italian Government is committed to implementing. Moreover some small and very old prisons were definitively closed.

b) Compliance with the ECtHR parameters

As already said, the detention system is under continuous monitoring, through two different "tools": the NPM mechanism and a computerized system (a software application) designed to control the living spaces granted to each inmate in all the penitentiary structures of the country.

At present, as was the case in May 2014, **not a single inmate has a living space of less than 3 square meters.** This affirmation is corroborated by the possibility offered by the software application, developed in the past months, which provides the central Administration in real time with the determination of the vital space for each inmate when he is placed in a cell. We consider that such an algorithmic system is one of the best achievements of the past months because it gives a clear picture of the ongoing situation. The constant monitoring of the spaces and number of inmates is enabling a rapid reorganization and rationalization of the system as a whole.

Regional Prison Department	*Detainees accommodated in less than 3 square meters*	*Detainees accommodated in 3 to 4 square meters*	*Detainees accommodated in more than 4 square meters*
Piemonte	0	705	3930
Liguria	0	113	1307
Lombardia	0	1863	6114
Emilia Romagna	0	58	2773
Veneto	0	933	2265
Toscana	0	581	2670
Umbria	0	244	998
Marche	0	224	640
Lazio	0	1080	4634
Abruzzo e Molise	0	232	1845
Campania	0	1327	5564
Puglia	0	419	2793
Basilicata	0	92	177
Calabria	0	510	1738
Sicilia	0	1135	4545
Sardegna	0	21	1904
total	**0**	**8925**	**43159**

3. A more open prison regime

The Action Plan presented in November 2015 underlined that the review of the daily detention regime is based on the following lines:

- Inmates (classified as medium or low security) should spend at least 8 hours per day outside the overnight cells and the sections where the cells are located, and should devote their time to various types of activities or work:

on March 2014	*On 27 May 2014*	*At present*
54 % of the potential beneficiaries	83.13 % of the potential beneficiaries	**95 % of the potential beneficiaries**

- Extension of vocational training and work.

Detainees working inside the prison under the Prison Administration	**12.345**
Detainees working inside the prison under enterprises	**906**
Detainees working inside the prison (not in the detention area) ex art 21 of the penitentiary law	**616**
Detainees working outside the prison as per art. 21 of the penitentiary law	**659**
Detainees on vocational training (170 courses)	**1.930**

- More visits by relatives and different modalities of visits.

on March 2014	*On 27 May 2014*	*At present*
Visits 6 days a week: 81 prisons	93 prisons	**98 prisons**
Visits in the afternoon and on **weekends**: 77 prisons	129 prisons	**137 prisons (148 on Sundays)**
Booking service for visits: 62 prisons	90 prisons	**123 prisons**
Spaces for children on visit: 74 prisons	130 prisons	**172 prisons (and 66 toy libraries)**

Renovated, new spaces for children, spaces to socialize outdoors. Staff training to welcome visitors and families and provide information.

- More and better communication with the outside world and beloved persons:

on March 2014	*On 27 May 2014*	*At present*
Telephone card: 60 prisons	Telephone card: 66 prisons	**Telephone card: 120 prisons**
Skype with relatives: 0 prisons	Skype with relatives: 6 prisons	**Skype with relatives: 30 prisons**

- Legal assistance and cultural mediators:

At present	
Legal assistance points (provided by NGOs): 134 prisons	
Cultural mediators:	East Europe: 85 prisons North Africa: 88 prisons Other Africa: 28 prisons Middle-East: 42 prisons South America: 24 prisons Other: 15 Prisons

- Cooperation with the National Olympic Committee to carry out sport activities within the largest possible number of institutions and the contemporary training of some inmates as tutors and referees for some of the proposed individual sports. 28 projects are underway

The launch of a more open detention regime clearly aimed at social reintegration is based in Italy on the provisions of Article 27 of the Constitution which establishes that the purpose of punishment is rehabilitation. That purpose is not something additional to the alleged central role of the retributive principle of punishment, but it is one of its structural aspects. It appeared necessary that this view of the

penalty should be conveyed by a broad initiative of comprehensive involvement in order to develop a consensus from society when it is enforced.

For this reason, a cultural initiative was launched to discuss and gather feedback involving various bodies of society by holding a wide consultation called "Stati Generali dell'esecuzione penale" (General Assembly on the enforcement of sentences): it is structured into 18 Working Tables and involves more than 200 participants, including academics, practitioners, judges, lawyers, volunteers; this debate aims to reshape the culture upon which the prison system must be based 40 years after its adoption.

The whole initiative, which will include public debate events and which is also consulting groups of prisoners, draws on the lines in the pilot judgment of the *Torreggiani v. Italy* case to develop a greater awareness of society as a whole about its role in the positive rehabilitation of those who have committed crimes.

The outcome of this debate will be published and made available also in the international debate on the enforcement of sentences, particularly through the use of a web page already implemented on the Ministry of Justice website.

At the same time, Parliament is discussing a bill which delegates government to take action, with adjustments and modifications of the penitentiary system, on some key points with the aim of introducing more limited detention in terms of numbers, more respectful of rights, and more able to reduce the risk of recidivism.

4. 5. The system of remedies (preventive and compensatory)

The preventive remedy was introduced under article 35 bis of the Penitentiary Law by Law-Decree 146/2013 converted into Law 21 February 2014 n. 10.

A Law-Decree adopted in June 2014, after sending the Final Report to the Committee of Ministers, introduced the compensatory remedy. In fact Decree-Law no. 92/2014, converted into Law no. 117 of 11 August 2014, included, after article 35 bis (preventive remedy) a new article (35 ter) concerning the compensative remedy accessible to everyone who alleged that he/she was kept in prison under detention conditions contrary to article 3 of the ECHR.

Article 35 ter provides for the compensation of a sentence reduction equivalent to 10% of the time spent in conditions in violation of Article 3 of the Convention, as interpreted by the ECtHR jurisprudence (that is the reduction of 1 day every 10 days). This compensation can be requested to the Supervisory Judge by those who spent at least 15 days in such conditions and are still serving a sentence. If the time to be spent before the end of the sentence doesn't allow the total reduction of the days the judge defines a monetary compensation of 8 Euros for each day of violation. Those who suffered these conditions during their remand detention and those who ended the execution of their sentence may apply, within 6 months after the end of their detention, to the ordinary civil judge who will define the same compensation applying the same criteria in full compliance with the jurisprudence of the ECtHR. The positive decision of the judge is final.

First application of the new legal provisions.

The measures are relatively new and this first assessment is not indicative of their effectiveness in the mid- and long-term. However they are indicative of the necessity of developing a new cultural approach of all the components, including the judiciary, in order to improve their effectiveness.

As regards the **preventive remedy** (at. 35 bis) the implementation is going on without major problems as the remedy gives a new procedural form to an activity the Supervisory Judges were already very familiar with.

The implementation of the new **compensative remedy** was more challenging. Many Supervisory judges are only partially familiar with the jurisprudence of the European Court. Therefore initially some of them started requesting the applicant to produce clear evidence about date,

conditions, dimensions of the cell, while the obligation to produce evidence should be reasonable and mainly is up to the defendant. On the contrary it is up to the State, in particular, the Prison Administration, to produce elements able to challenge what is affirmed by the applicant and supported for instance by Reports of NGOs visiting the relevant prison or even by other external monitoring bodies.

In addition, a number of Supervisory Judges rejected the applications presented by detainees concerning their past detention allegedly in conditions falling under the definition of "inhuman or degrading treatment" as enshrined by article 3 ECHR, because those conditions were no longer going on.

Now the situation is getting much better after the organisation of special training by the High School for the Judiciary (Florence, January 2015) and many meetings and discussions organised by the National Committee of Supervisory Judges (CONAMS) and the Department of Prison Administration.

As a final point of clarification a rather recent judgment of the Supreme Court (Corte di Cassazione, 1° Penal Section, n 43722/2015, dated 11.06.2015, Rapporteur Judge Raffaello Magi) affirmed that:

"It is clear that in case of violation of [the right not to be treated in an inhuman or degrading way] already suffered (or depicted as such) but non-existent (in its cause) at present, the prisoner remains entitled to special protection (compensative in nature) granted by the legislator in Article 35-ter, to be carried out during the enforcement of the sentence, before the Supervisory Judge"

In the same judgment we read: "The necessary present character of the prejudice is a necessary condition in the ordinary complaint (Article 69 Prison Rules) precisely because of the correlation with the type of protection the system provides in relation to the consequences of the offense (Art. 3 para.3) whereas it doesn't become an essential requirement of the action when the complaint, given the particular severity of the violating conduct, is aimed at the granting of compensative remedies".

Finally: "Hence the consideration of a continuing interest of the applicant in obtaining a ruling on the merits examining – after due hearing of the parties - whether or not the event causing the prejudice exists (i.e. the violation of the right not to be treated in an inhuman and degrading manner, due to conduct attributable to the administration) and drawing - if so - the consequences, in relation to the current legislation"

So the situation of uncertainty which characterized the initial approach to the new rules by the judiciary is curtently solved and the law is now being progressively more uniformly applied.

Therefore, an outline of this first application may be drawn - excluding many applications by prisoners - after the approval of the new rules, which included very generic elements indicating more an overall discomfort for the life in prison than actual elements - and this has led to an increase in the official number of applications. Manifestly ungrounded and clearly generic applications were declared inadmissible under Article 666, paragraph 2, of the Code of Criminal Procedure.

In order to monitor the application of the new law, three different monitoring activities were started. In particular:

1. monitoring by the Department of the Prison Administration (Directorate General for prisoners care and treatment, circular Note no GDAP 0289804 of Aug. 26, 2014);
2. monitoring by the Directorate General of Statistics of the Department for judicial organization of the Ministry of Justice;
3. monitoring by the Complaints Service of the Prison Administration Department.

The three structures monitored the application under three different perspectives and the results were then cross-compared.

The outcome of the application of the monitoring of the newly established compensatory remedy is rather satisfactory.

So far (13 October 2015) 1.176 applications were considered by the relevant judge admissible and the alleged violation was ascertained. Consequently at the same date **the total number of days reducing the sentence to be expired by the applicants was 52.736** (on average 50 days each). **The amount of money already awarded by Supervising Judges to the applicants was 209.888 €.**

Those who had been already released at the time of entry in force of the law were offered the opportunity to appeal the Civil Judge within six months after being released. This system is working, but it is affected by the great amount of cases pending before the Civil Judge, despite some legislative interventions of last year have streamlined civil proceedings and reduced the number of pending cases.

Currently the applications filed are 1507 and 242 have already been settled: **87 out of these were upheld** and the awarded amounts were calculated on the basis of 8 euros for each day spent in conditions assessed by the court to be contrary to the obligations in Article 3 ECHR.

Following a request of the Ministry of Justice, the relevant courts are keeping a Register where to take note of the cases tried on the basis of Article 3 ter of the Law on Execution of sentences.

A final note

There is no doubt that Italy responded to the pilot judgment referred to in this Report not only in legislative and structural terms, but also in terms of information and social awareness of the seriousness of the situation existing in our prisons, and therefore, of the severity of the judgment itself.

Public opinion was widely informed and many debates and initiatives were organized, with the significant support of associations of judges, lawyers and NGOs in order to draw the attention of the community to prison situation thus contributing to reforms.

For this reason it is worth emphasizing once again the initiative launched in recent months by the Minister of Justice consisting of a wide consultation involving prison and probation practitioners, judges, lawyers, representatives of voluntary organizations working in detention facilities, intellectuals, journalists, to explain the initiatives launched over these two years and draw the community's attention to the enforcement of sentences as part of the complexity of society in relation to which the community has perspectives and potential to offer, but also responsibilities to take on. As already mentioned, this broad consultation, involving more than 200 representatives, under the leadership of a committee of experts, was called "Stati generali dell'Esecuzione penale" (General Assembly on the enforcement of sentences). The

scheduled duration of this consultation is six months: from May to November 2015. The outcome of the consultation will be announced in a national initiative to be held in January 2016

The motivation and structure of the "Stati Generali" can be summarized in the following three points

- Parliament is debating a bill delegating the government to take action, by decrees, to be defined according to established criteria, on 9 aspects of the current prison rules and on the setting up of prison rules for juveniles (which do not exist at present). This bill passed the lower House of the Parliament and now will be examined by the Senate for final approval;
- 18 "discussion panels" were set up, mainly dealing with the 9 points of the said bill: they include prison structure, life in prison, health protection, affection and the relationship with family members, detention of aliens, sports and theater as part of prison treatmem, education and vocational training, work etc. Each "discussion panel" consists of 10-12 members, with the skills and expertise mentioned above, to discuss the different aspects of the enforcement of sentences (the list of topics covered is given below). Each panel participated in video-conference meetings on an *ad hoc* online platform, heard also prisoners, visiting a detention facility of its choice, relevant in relation to the topic addressed. Each panel will produce a summary document of its work by the end of this month and the Select Committee of experts will bring all the documents together in a uniform text and present it at a major public initiative in January 2016;
- the material produced and discussed by the panels is accessible on the public Website of the Ministry of Justice where it is possible for an outside user to follow the progress in the development of the material and send comments to an *ad hoc* e-mail address.

The Ministry thinks that acknowledging the indications from the outside and building consensus and responsibility in relation to reforms pertaining to the security of citizens, prosecution by the State and also to the scrupulous protection the rights of those who have committed an offense is part of the overall reversal of the approach to detention which could be adopted also thanks to the serious warning given to our country through the pilot judgment of the European Court of Human Rights: this experience shows the fundamental role, not only in terms of judgment, but also in terms of incentive to change, that the Court continues to play in the European Union.

For this reason, the Committee for the enforcement of judgments of the Court shall be informed at the closing stage of this painful, but reinvigorating experience.

2. *ANDREOLETTI + 27 C. ITALIA* (RICORSO N. 29155/95) - RISOLUZIONE CM/RESDH(2015) 246

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Final Resolution CM/ResDH(2015)246
Execution of the judgments of the European Court of Human Rights in Twenty-eight cases against Italy

Application No.	Case	Decision of the Committee under former Article 32	Judgment of	Judgment final on
29155/95	ANDREOLETTI	DH(97)299 (15/05/1997)	-	-
37165/97	T.A.M.	DH(99)88 (18/01/1999)	-	-
44457/98	BONELLI	-	01/03/2001	01/06/2001
48403/99	MINICI	-	23/10/2001	23/01/2002
26046/94	RAFFI	DH(96)507 (13/09/1996)	-	-
26440/95	R.D.	DH(96)545 (13/09/1996)	-	-
26829/95	A.A.Q.	DH(96)615 (15/11/1996)	-	-
27962/95	S.D.P.	DH(97)141 (19/03/1997)	-	-
29040/95	FAIETA	DH(98)25 (18/02/1998)	-	-
29130/95	V.M.	DH(97)323 (15/05/1997)	-	-
29161/95	CAVADINI	DH(97)304 (15/05/1997)	-	-
29653/96	FORESTA	DH(97)432 (17/09/1997)	-	-
32280/96	MINNAI	DH(98)35 (18/02/1998)	-	-
33148/96	SGRO	DH(98)119 (22/04/1998)	-	-
33158/96	LAINO	-	18/02/1999	18/02/1999
34241/96	MANNI	DH(98)244 (10/07/1998)	-	-
34278/96	PEZZINI	DH(98)250 (10/07/1998)	-	-
34851/97	DI FABIO	DH(98)338 (25/09/1998)	-	-
35921/97	BAZZEA PAOLA	DH(99)53 (18/01/1999)	-	-
37175/97	BOLIGNARI	DH(99)136 (19/02/1999)	-	-
38109/97	BARGAGLI	-	09/11/1999	09/11/1999
38485/97	DALLA POZZA	DH(99)382 (09/06/1999)	-	-
44394/98	LIBERATORE	-	27/02/2001	27/05/2001
40593/98	TEDESCO	DH(99)636 (08/10/1999)	-	-
45874/99	PITTONI	-	07/11/2000	07/02/2001
46513/99	ROTIROTI	-	21/11/2000	21/02/2001
47786/99	G.V.	-	01/03/2001	21/06/2001
52969/99	ALMANIO ANTONIO ROMANO	-	12/02/2002	12/05/2002

(Adopted by the Committee of Ministers on 9 December 2015 at the 1243rd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of former Article 32 and those of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"),

Having regard to its decisions adopted under former Article 32 of the Convention and to the final judgments transmitted by the Court to the Committee in these cases, as well as the violations established of Article 6, paragraph 1, of the Convention on account of the excessive length of divorce and legal separation proceedings,

Recalling the obligation of the respondent State to abide by the decisions adopted under former Article 32 of the Convention as well as its obligation, under Article 46, paragraph 1, of the Convention, to abide by all final judgments in cases to which it has been a party, recalling also that these obligations entail, over and above the payment of any sums awarded by the Committee or by the Court, the adoption by the authorities of the respondent State, where required

- of individual measures to put an end to violations established and erase their consequences so as to achieve as far as possible *restitutio in integrum*, and
- of general measures preventing similar violations,

Having noted that the just satisfaction, where awarded, has been paid by the government of the respondent State and that the government reported to the relevant domestic courts, with a view to speeding them up, the proceedings which were still pending at the time the Committee adopted its decisions under former Article 32 or the judgments of the European Court became final;

Internet : http://www.coe.int/cm

Having noted further the promising results obtained by the First Instance Courts and the Courts of Appeal as regards the average length of divorce and legal separation proceedings between 2011 and 2013,

Noting that these results will be consolidated through the recent measures adopted and those still envisaged by the Italian authorities in this area, in particular the introduction in 2014 of an alternative dispute resolution mechanism in respect of such cases, the envisaged setting-up of specialised sections for family cases within the First Instance Courts and the majority of the Courts of Appeal and the simplification of the procedure before these sections;

Noting with satisfaction the authorities' commitment to continue their efforts to put an end to the more general problem of excessive length of proceedings before civil courts in the context of the cases of the *Ceferoni* group which remain under the Committee's supervision;

Recalling also that the Committee continues to examine the outstanding issues concerning the compensatory remedy introduced with regard to the excessive length of judicial proceedings by the Pinto Act in 2001, within the framework of the *Giuseppe Mostacciuolo* group and the *Gaglione and Others* case,

DECLARES that it has exercised its functions under former Article 32 and under Article 46, paragraph 2, of the Convention in the cases listed above and concerning the length of divorce and legal separation proceedings,

DECIDES to close their examination

3. *AC + 148 C. ITALIA* (RICORSO N. 27985/95) - RISOLUZIONE CM/RESDH(2015) 247

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Final Resolution CM/ResDH(2015)247
Execution of the judgments of the European Court of Human Rights in 149 cases against Italy

(See Appendix for the list of cases)

(Adopted by the Committee of Ministers on 9 December 2015 at the 1243rd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of former Article 32 and those of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"),

Having regard to its decisions adopted under former Article 32 of the Convention and to the final judgments transmitted by the Court to the Committee in these cases and the violations established of Article 6, paragraph 1, of the Convention on account of the excessive length of proceedings before civil courts;

Recalling the obligation of the respondent State to abide by the decisions adopted under former Article 32 of the Convention as well as its obligation, under Article 46, paragraph 1, of the Convention, to abide by all final judgments in cases to which it has been a party; recalling also that these obligations entail, over and above the payment of any sums awarded by the Committee or by the Court, the adoption by the authorities of the respondent State, where required:

- of individual measures to put an end to violations established and erase their consequences so as to achieve as far as possible *restitutio in integrum*, and
- of general measures preventing similar violations,

Having noted that the just satisfaction, where awarded, has been paid by the government of the respondent State and that the government reported to the relevant domestic courts, with a view to speeding them up, the proceedings which were still pending at the time the Committee adopted its decisions under former Article 32 or the judgments of the European Court became final,

Noting with satisfaction the information provided by the government that the First Instance Courts (*tribunali*) which had jurisdiction over the proceedings at issue in these cases have, over the past years, succeeded in reducing the average length of civil proceedings and the backlog of civil cases pending for more than three years well below the relevant national average indicators, through appropriate organisational measures taken at the level of each of these courts;

Noting that these positive results will be consolidated through the recent measures adopted and those still envisaged by the Italian authorities to tackle the excessive length of proceedings before the civil courts, noting also their commitment to continue their efforts to put an end to this long-standing problem in the context of the cases of the *Ceteroni* group which remain under the Committee's supervision,

Recalling also that the Committee continues to examine the outstanding issues relating to the compensatory remedy introduced with regard to the excessive length of judicial proceedings by the Pinto Act in 2001, within the framework of the *Giuseppe Mostacciuolo* group and the *Gaglione and Others* case,

DECLARES that it has exercised its functions under former Article 32 and under Article 46, paragraph 2, of the Convention in the cases listed below and concerning the length of civil proceedings which were under the jurisdiction of the First Instance Courts (*tribunali*) of Rovereto, Asti, Busto Arsizio, Verbania, Torino, Trieste, Ivrea, Marsala, Udine, Monza, Lecco, Trento, Ferrara, Como, Bolzano, Pordenone, Genova, Ravenna, Termini Imerese, Mantova, Chieti, Milano and Lanciano[1]

DECIDES to close the examination of these cases.

[1] The First Instance Courts of Aosta, Cuneo, Lodi and Lanusei have obtained similar results but there are no cases under the supervision of the Committee concerning the length of civil proceedings before these courts.

Internet: http://www.coe.int/cm