

Criminal Detention in the EU Conditions and Monitoring

Update of FRA's Criminal Detention Database
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Part I: National standards

1. Cells

- a) **Cell space:** What is the national standard for cell space available to detainees in m²? Are the calculation requirements spelled out by the CJEU in its *Dorobantu* ruling¹ observed?

In Italy, national standards on detention conditions are still ruled by [Law No. 354 of 26 July 1975](#), Provisions on the penitentiary system and on the execution of measures involving deprivation or limitation of personal freedom, as well as by [Decree of the President of the Italian Republic No. 230 of 30 June 2000](#), Regulation concerning the provisions on the penitentiary system and on the measures involving deprivation or limitation of personal freedom. The Law No. 354/1975 was recently reformed by the [Legislative Decree No. 124 of 2 October 2018](#), on "Reform of the Penitentiary System's dispositions on detention life and detention work".

As per cell space, the reform did not introduce specific m² requirements. Art. 6 of the Law No. 354/1975 was revised, without changing the substance of the disposition.

Cells must be: spacious enough, enlightened with both natural and artificial light in order to allow detainees to work and study, ventilated and heated and provided with private, decent, and rational sanitary facilities. Cells can have one or more beds: wherever possible, remand prisoners – i.e. those who have not yet been sentenced – and detainees serving a life-long sentence, should be given the possibility to sleep in one-bed cells (unless they ask otherwise), unless the detention facility does not allow for this accommodation. Each prisoner must be given adequate equipment for their bed.

- b) **Cell equipment, furniture and facilities:** Are there any national standards for cell equipment (heating, ventilation, cooling, etc.), furniture (bed, mattress, shelf, wardrobe, seating, table, etc.) and/or facilities (lighting, incl. windows, washbasin, toilet, shower etc.), including any measurements? If so, what do they require?

Art. 5 and 6 of the Law No. 354/1975 establish that detention facilities must be structured as to accommodate a non-high number of detainees (no specific criteria to assess the "non-high" number available). Detention facilities must be provided with specific rooms and areas to fulfil the individual necessities of the detainees, as well as of areas destined to work, training, cultural, sport, and religious activities. All the facilities where detainees spend their days must be wide enough (no specific criteria available), enlightened with natural and artificial light to allow for working and reading. They must be ventilated, heated in cold weather, and provided with private, adequate, and rational hygienic services. All facilities must be kept in good state of maintenance and clean. Each detainee must be provided with an adequate equipment for their bed (no specific information on the composition of this equipment).

Art. 6 of the Decree of the President of the Italian Republic No. 230 of 30 June 2000 establishes that rooms' windows must allow the direct passage of natural air and light. Shielding preventing this passage are forbidden. Only in case of evidence-based security reasons, shielding can be introduced: however, this cannot be directly applied to the building's walls, and must always allow for the adequate passage of air and light. Each room must be provided with artificial light's buttons, as well as with buttons for the functioning of radio and TV devices. These buttons must be located both inside the cell – for the detainees' use – and outside – for the penitentiary police use. Penitentiary officers are allowed to impede the functioning of internal buttons, only if such use

¹ For the CEU's calculation requirements please see: CJEU, [C-128/18, Dorobantu](#) [GC], Judgment of 15 October 2019, oper. part.

compromises the peaceful coexistence of detainees. In case of night controls, penitentiary officers must use only soft lights.

c) **Video-surveillance of cells:** Are there any national standards for video-surveillance of cells? If so, what do they require?

No national standards available on this issue. Art. 24 of the [Decree of the President of the Italian Republic No. 82 of 15 February 1999](#) – providing the Regulation of the Penitentiary Police – establishes that penitentiary police officers must – in compliance with their mandate and respecting the detainees’ dignity – “continuously guard and monitor the detainees wherever they are”. This disposition allows the officers to control the detainees in every part of the detention facility, including the cells. However, no specific disposition governs the possibility to carry out this monitoring activity using video-surveillance devices (see Annex II).

d) **Hygienic conditions in cells:** Are there any national standards with regard to cleaning and/or cleanliness of cells? If so, what do they require?

Art. 6 of the Law No. 354/1975 establishes that all detention facilities must be kept in good state of maintenance and clean.

Art. 6 of the Decree of the President of the Italian Republic No. 230 of 30 June 2000 establishes that detainees who are physically and psychologically able to do so, are directly in charge of cleaning their rooms, and the hygienic services at their disposal. They provided with the necessary products and equipment to accomplish this task. In case of detainees who are not able to clean their rooms, the prison’s administration must resort to other detainees who are paid for this task.

e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

As reported above, the Law No. 354/1975 establishes that – wherever possible, and if the detainee does not request otherwise – remand prisoners, and detainees serving a life-long sentence should be given the opportunity to sleep in cells with just one bed.

f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 1. a) – e), including their respective legal basis.

Art. 35 of the Law No. 354/1975 governs the detainees’ right to complain. Detainees’ complaints can be filed using an oral or written format (including a sealed envelope) that can be addressed to: the detention facility’s director, the chief of the Italian detention administration, the Ministry of Justice, judicial or health authorities visiting the detention facility, the National Preventive Mechanism or its regional branches, the President of the Regional government, the surveillance court (*magistrato di sorveglianza*), the President of the Italian Republic. This disposition was deemed unconstitutional by the Italian Constitutional Court – [decision No. 26 of 11 February 1999](#) – since it did not include a judicial redress mechanism at the disposal of detainees whose rights were violated by the penitentiary administration. To respond to this decision, the articles 35-bis and 35-ter were integrated into the Law. According to Art. 35-bis – governing judicial complaints – establishes that the surveillance Courts are the judicial authorities in charge of responding to detainees’ complaints. The surveillance Court can impose the detention facility’s administration to comply with the judicial decision, imposing a deadline for its implementation. The decision of the judge can be challenged before the Court of Surveillance within 15 days, and, as last-resort remedy, before the Court of Cassation. Art. 35-ter governs the cases of detention – not inferior to 15 days – that violate Art. 3 of the ECHR. The detainees – personally or through their lawyers – can file a complaint before the Court of Surveillance. If the complaint is accepted, the Court can impose – as compensation measure – a reduction of the

sentence equivalent to 1 day for each ten days during which the detainee suffered the violation of their rights. If the remaining sentence to serve does not allow for this, the Court can financially compensate the complainant with EUR 8 for each detention day where the violation was perpetrated. The same approach applies for those violations which occurred for periods inferior to 15 days.

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

The [2020 report of the Italian NPM](#) – presented to the Italian Parliament on 26 June 2020 – does not cover this issue. However, in its [2019 report](#) – presented to the Italian Parliament in March 2019 – the Italian NPM stressed that “The problem is not that Italy lacks sleeping quarters approximating the advanced guidelines of its own domestic law. However, from the multi-faceted reality of the 191 prison institutions there emerges a general picture that is too often distant from the theoretical configuration. The reports on the visits the National Guarantor paid to such institutions still highlight an excess of inadequacies and the predominance of the ‘infantising’ model over the ‘responsibilising’ one, concerning both material conditions and the centre of gravity of prison life shifted on the room rather than outside it [...] In summary, the National Guarantor, as he has already expressed, stresses the importance that an established rule be respected, especially in a place where the focus should be the ‘re-education’ to the respect of rules. If such a rule is considered too wide-ranging, it should be modified and adjusted to European parameters. Conversely, if it is maintained, it must be respected. The situation of capacity, and thus of the actual being of the “cell” nowadays, assumes a particular outline, if we take into account the number of rooms or units that are out of order for damages or works in progress: as of 14 February 2019, those unusable are 6.5% of the total, a percentage that has however undergone a positive reduction of 3 points as compared with the one related in the Report to Parliament of two years ago. There subsist extreme cases: since several years in Arezzo only 17 places are available of a total of 101, only 24 places of the overall 57 in Gorizia, and, in Sardinia, 13% of official places are unusable”.

2. Sanitary conditions

a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do detainees have access to these facilities without undue delay, even during the night? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?

Art. 8 of the Law No. 354/1975 establishes that all detainees must be ensured the adequate and sufficient use of hygienic services and showers with running hot water, as well as of any other object that is necessary for their hygiene. Hygienic services are located in separates areas of the cells – so that they are always accessible by the detainees and they allow for the prisoners’ privacy – and must be ventilated. Each detention facility can organize a periodic barber service; detainees can be allowed to use electric razors. Detainees can be imposed to cut their hair only for specific health-hygienic reasons (the same applies to the obligation to shower, according to Art. 8 of the Decree of the President of the Italian Republic No. 230 of 30 June 2000).

Art. 7 of the Decree of the President of the Italian Republic No. 230 of 30 June 2000 establishes that hygienic services are located in a compartment adjacent to the cell.

Such services must be equipped with running hot and cold water, washbasin, shower, and bidet (especially in female detention facilities). Hygienic services – equipped with washbasin and showers in adequate number – must be also located in rooms close to the areas where social activities are carried out.

b) What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?

The same discipline described in section a) applies also to shower/bathing facilities. Art. 7 of the Decree of the President of the Italian Republic No. 230 of 30 June 2000 establishes that hygienic services are located in a compartment adjacent to the cell. Such services must be equipped with running hot and cold water, washbasin, shower, and bidet (especially in female detention facilities). Hygienic services – equipped with washbasin and showers in adequate number – must be also located in rooms close to the areas where social activities are carried out. The Decree does not mention the frequency of the detainees' access to hygienic services: however, Art. 8 of the Decree clarifies that the prisons' internal regulations can establish the hours of availability of hot water.

c) What are the national standards with regard to cleaning and cleanliness of sanitary facilities?

As reported above, Art. 6 of the Decree of the President of the Italian Republic No. 230 of 30 June 2000 establishes that detainees who are physically and psychologically able to do so, are directly in charge of cleaning their rooms, and the hygienic services at their disposal. They provided with the necessary products and equipment to accomplish this task. In case of detainees who are not able to clean their rooms, the prison's administration must resort to other detainees who are paid for this task.

Art. 6 of the Law No. 345/1975 establishes that the rooms and areas where the detainees carry out their daily lives must be kept in good maintenance and clean. At this end, Art. 47 of the Decree of the President of the Italian Republic No. 230 of 30 June 2000, the detention facility's administration can establish conventions with external private companies and social cooperative societies to provide specific services, such as the canteen service, and cleaning services. These private external companies can resort to the paid work of detainees who are considered as employees of the company: however, their wage must be transferred to the detention facility's administration that is in charge of giving it to the detainees.

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

Access to hygienic services is not subject to different standards depending on the prisoners' detention regimes.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 2. a) – d), including their respective legal basis.

The violation of the rights described in this section is subject to the same complaint mechanism described in Section 1.f.

f) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the

webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

According to the [2020 report of the Italian NPM](#) – presented to the Italian Parliament on 26 June 2020 – 20 complaints were filed before the NPM in 2019 concerning the violation of the hygienic standards. 9 of them were filed by detainees subject to the high-isolation regime, governed by Art. 41-bis of the Law No. 345/1975. In its [2019 report](#) to the Italian Parliament, the Italian NPM stressed its recommendation in this field to the Italian authorities – and namely that it is necessary “To equip all sleeping quarters with showers annexed to detention rooms, ensuring the best hygienic conditions and overcoming the widespread criticalities of common showers, often situated in degraded premises” – and also reported that this recommendation was included in Legislative Decree No. 124 of 2 October 2018, Reform of the prison system concerning detention life and work, implementing the provisions foreseen in Article 1, paragraphs 82, 83 and 85, letters g), h) and r), of Law no. 103 of 23 June 2017, Article 1, paragraph 7, letter c).

3. Time out of cell

- a) What is the national standard set for time per day/week spent by detainees outside of their cells:
- Outdoors (within the boundary of the prison)?
 - Indoors in the common area?

Article 10 of Law No. 354/1975 – as reformed in 2018 – establishes that detainees who are not allowed to take part in work release programmes have the right to spend four hours a day outside their cell. This time span can be reduced for exceptional reasons and cannot in any case be less than two hours a day: the reduction must be decided with the adoption of a specific provision of the detention facility’s director. This provision must be communicated to the regional branch of the Detention system administration, and to the Court of surveillance. Outdoor spaces must be offering the opportunity to shelter in case of bad weather. The time spent outdoor is enjoyed in groups, except for detainees subject to the isolation regime. It must preferably be dedicated to sport activities.

- b) Do sports or other recreational and/or educational facilities have to be available to detainees? If so, what types?

Each prison must provide prisoners with adequate equipment for work, study, and leisure activities, as well as access to a library with books and magazines (Article 12 of Law No. 354/1975). Cultural, leisure, and sports activities must be offered in each prison, and should be aimed at the development of detainees’ personality and at their re-education. These activities are organised and implemented by a commission whose members are the prison director, educators, social workers, and detainees’ representatives (Article 27 of Law No. 354/1975).

- c) Is there a national standard for time spent in cells? If so, what does it require?

No national standards apply to time spent in cells, which should be considered a place where detainees sleep, whereas the rest of their days are spent in other parts of the detention facility. It is worth recalling that on 14 July 2013, the Prison Administration Department (*Dipartimento dell’Amministrazione Penitenziaria*) approved a [circular letter](#) introducing the guidelines on the so-called ‘dynamic surveillance regime’ (*sorveglianza dinamica*): this detention regime allows prisoners who are not detained in maximum-security detention facilities to spend eight to 14 hours a day outside their cell, as well as the possibility to freely move within their wing, to take part in a higher number of activities, and to benefit from more opportunities. Moreover, the dynamic surveillance

regime entails a reduction in the number of police officers in that specific prison wing; such officers are partially replaced by a less intrusive video surveillance system.

d) Are there any national standards with regard to activities and/or programmes that should be available to detainees when they are outside their cells? If so, what do they require?

Article 16 of Decree of the President of the Italian Republic No. 230/2000 establishes that open-air spaces shall be used for sports, leisure, and cultural activities depending on the programmes implemented in each prison. Out-of-cell time is spent in areas preferably not enclosed between buildings; such areas shall offer protection from harsh weather and be spacious enough to mitigate the negative impact of freedom deprivation on detainees' physical and psychological wellbeing, in compliance with the assessments made by the psychological support staff. The reduction of out-of-cell time for exceptional reasons must be limited to short periods, and is decided by the prison director, who is supposed to provide adequate justifications, to be communicated also to the surveillance court (*giudice di sorveglianza*). Prisoners shall be granted access to the prison library, and the range of available books and magazines shall respect the cultural diversity of society. The library must also have a reading room (Article 21 of the Decree). Moreover, prisoners shall be provided with adequate education opportunities and information about them: such opportunities include compulsory education, vocational training, secondary education, and university (Articles 41-44 of the Decree). Leisure, sports, and cultural activities shall respect detainees' distinctive features and expressions and shall promote the involvement of all prisoners. Sports activities are offered especially to young detainees in cooperation with local and national sports organisations. Each prison shall also implement and offer leisure activities for those prisoners who are excluded from working activities against their will (Articles 59-60 of the Decree).

[According to Antigone](#) – the most well-known civil-society organisation monitoring detention conditions in Italy – in the schoolyear 2019/2020, one third of the detainees attended school programmes (20,263 detainees, 33.4%). 9,176 of them were third-country citizens. A relevant share of the detainees (4,820 detainees) attends literacy and Italian classes: 88% of them were foreign citizens. Detainees enrolled in primary- and secondary-school programs were 6,674 (3,963 attending primary school, 60% were foreign citizens; and 2,711 secondary schools, 28% were foreign citizens). 8,769 detainees were attending high-school programs (20% of them were foreign citizens). Eventually, some detainees were attending university courses: in fact, 27 university centers have been set up in Italian prisons. According to the report, the Covid-19 emergency severely compromised the education system in Italian prisons. During the first wave, most school activities were interrupted: 1,410 hours of classes were offered against the 38,520 envisaged by the programs (4%). The reasons for the interruption were the inadequacy of technological devices and the lack of wide rooms, allowing for the interpersonal safety distance.

e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

As a disciplinary measure, the prison administration can oblige detainees to spend their out-of-cell time alone for no more than 10 days or can prevent them from taking part in community activities for no more than 15 days, provided the healthcare staff certifies they can stand such a measure (Article 39 of Law No. 354/1975). Prisoners undergoing a specific surveillance regime (*regime di sorveglianza particolare*) –²governed by Article 14-bis of the Law – can be imposed restrictions in relation to the out-of-cell time, as well as to the right to access the prison library. In case of well-grounded public security reasons, the Ministry of Justice can suspend in full or in part the rights of some detainees

² According to Article 41a of the abovementioned law, this kind of surveillance can be imposed on detainees whose behaviour jeopardises security and order in detention facilities, who violently hinder other prisoners' activities, or who intimidate other prison inmates.

convicted for specific criminal offences, especially in order to prevent them from carrying on their criminal activity within the prison or while communicating with external visitors; such restrictions include detention in specific prisons or in confined areas of ordinary prisons, and the reduction of the out-of-cell time, which can be spent only in groups of no more than four detainees, and for a maximum of two hours a day (Article 41.bis). The detention regime ruled by Article 41-bis of the Law is applicable to people who have been convicted for one of the following criminal offences:

- acts of terrorism, including internationally, or attempts at subverting the constitutional order through violent acts;
- mafia-type conspiracy;
- supporting mafia-type activities;
- forcing into slavery or servitude;
- child prostitution, i.e. inducing a minor into prostitution, and favouring and exploiting such a condition;
- using minors to arrange pornographic shows or to produce pornographic material, inducing minors to participate in pornographic shows, and trading the abovementioned pornographic material;
- human trafficking;
- trading of slaves;
- gang rape;
- kidnapping for extortion or robbery purposes;
- criminal conspiracy for the purpose of smuggling tobacco products processed abroad; and
- criminal conspiracy for the purpose of smuggling drugs and psychotropic substances.

f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 3. a) – e), including their respective legal basis.

The violation of the rights described in this section is subject to the same complaint mechanism described in Section 1.f.

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

According to the [2020 report of the Italian NPM](#) – presented to the Italian Parliament on 26 June 2020 – 14 complaints were filed before the NPM in 2019 concerning the violation of the right to attend school programmes. 2 of them were filed by detainees subject to the high-isolation regime, governed by Art. 41-bis of the Law No. 345/1975. Moreover, 7 complaints were filed before the NPM in 2019 concerning the violation of the right to leisure and socialization activities. None of them was filed by detainees subject to the high-isolation regime, governed by Art. 41-bis of the Law No. 345/1975.

4. Solitary confinement

a) What are the national standards regarding solitary confinement?

Article 33 of Law No. 354/1975 – as reformed in 2018 – establishes that this measure is allowed for sanitary reasons or in case the prisoner is excluded from community activities in the framework of a disciplinary measure. Remand prisoners can be subject

to this measure for reasons connected to judicial necessities: however, the judicial provision ordering the confinement must indicate the length and the reason of this measure. The regime of solitary confinement cannot include limitations to the ordinary life conditions of the detainees. Moreover, solitary confinement does not preclude the right of the detainees to receive visits from authorised subjects. According to Art. 39 of the Law – governing disciplinary sanctions – isolation represents the most severe sanction: the detainee is excluded from social activities for 15 days. This measure must be decided by the discipline council of the detention facility and communicated to the surveillance Court. In order to implement this disciplinary measure, the medical staff must certify that the detainee’s conditions are compatible with solitary confinement. Despite being a last-resort measure, according to the [report released by the Association Antigone](#), solitary-confinement cases increased from 207 in 2013 to 2,350 in 2018.

Article 73 of Decree of the President of the Italian Republic No. 230/2000 establishes that solitary confinement for health reasons is required by the prison doctor in case of contagious diseases. Such confinement is spent in clinics or in the prison hospital and shall cease as soon as the infection risk disappears. Solitary confinement as a disciplinary measure is served in an ordinary cell unless the prisoner’s behaviour may pose a risk for security and order within the prison. Prisoners in solitary confinement are not allowed to communicate with other prisoners but are given ordinary meals and water supply.

b) Are there any national standards with regard to checking and/or monitoring the wellbeing of detainees in solitary confinement? If so, what do they require?

According to Article 73 of Decree of the President of the Italian Republic No. 230/2000, the solitary confinement regime for health reasons shall be strictly monitored on a daily basis by a doctor, police officers, and a member of the Observation and Treatment Commission (*Gruppo di osservazione e trattamento*, GOT).

As per solitary confinement used as disciplinary measure, Article 39 of Law No. 354/1975 does not envisage an independent monitoring mechanism. However, detainees subject to this measure can always resort to the complaint mechanisms ruled by Art. 35-bis and Art. 35-ter of the Law.

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

Specific standards concerning remand prisoners in pre-trial custody are reported in row a) of this section. More specifically, remand prisoners can be subject to this measure for reasons connected to judicial necessities: however, the judicial provision ordering the confinement must indicate the length and the reason of this measure.

d) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 4. a) - c), including their respective legal basis.

The violation of the rights described in this section is subject to the same complaint mechanism described in Section 1.f.

e) Please, provide a link to the National Preventive Mechanism’s reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

According to the [2020 report of the Italian NPM](#) – presented to the Italian Parliament on 26 June 2020 – 4 complaints were filed before the NPM in 2019 concerning the violation of the solitary-confinement regime. Moreover, as of 30 April 2020, 519 disciplinary isolation measures had been adopted. As per the solitary confinement for health reasons, as of 30 April 2020, 1,567 measures of this kind were adopted: a huge increase compared to 2019, when only 425 measures of this kind were registered. The dramatic increase of solitary confinement for health reasons can be explained considering that detention facilities resorted to this measure during the Covid-19 emergency to counter the virus propagation in detention facilities. In its [2019 report](#) to the Italian Parliament, the Italian NPM recommended Italian authorities “to eliminate the positioning in solitary confinement rooms of a bed riveted to the floor and far from the walls, which allows to control the person restrained from the peephole of the armoured door. Such a position deprives the person of his/her own space, however limited, and makes the room a place where the detainee’s body is merely available to the control of supervisors”. However, as reported by the report itself, this recommendation did not have any outcome in practice.

5. Access to healthcare

- a) What is the national standard with regard to access to medical services in prisons, including emergency care? (E.g.: Do detainees have prompt access to medical services within prisons and/or externally? Do detainees have access to dentists, opticians, etc.?) If so, what does it require?

Each prison has to be provided with a medical and pharmaceutical service, as well as with a psychiatric specialist professional. In case specialist care is needed (which cannot be provided by the prison medical staff), prisoners have the right to be transferred to civil hospitals or other external medical facilities with the prior authorisation of the competent court.

The legislative dispositions reported in the 2018 report were only slightly reformed by the Legislative Decree No. 124 of 2 October 2018. Here are some the reform’s most relevant innovations concerning access to healthcare. According to Art. 11 of the Law No. 354/1975, detainees who are transferred to other detention facilities have the right to carry on the same therapeutical programme they have started before the transfer. Transgender detainees – who are undergoing the gender affirmation process as governed by the Law No. 164 of 14 April 1982 – have the right to continue their therapeutical programme, and to receive psychological assistance. If a contagious disease is spotted in the detention facility, all measures must be adopted to limit the propagation, including the isolation for health reasons. The prison’s director must be immediately informed of the isolation, and the Surveillance Court must be informed immediately after.

- b) Are there any national standards concerning the availability of qualified medical and nursing personnel? If so, what do they require?

The [Decree of the President of the Italian Council of Ministers of 1 April 2008](#), Procedures and criteria to transfer to the national healthcare system all the functions concerning assistance, working relationships, financial resources, and equipment of prison medical facilities, placed medical assistance provided in the detention system under the responsibility of the National Healthcare System (*Servizio Sanitario Nazionale, SSN*), which provides such assistance through its regional and local branches. The Decree also provides [guidelines](#) establishing national standards on medical assistance in detention facilities. In this respect the qualified staff employed in each detention facility must ensure the following necessary interventions: i. the evaluation of the health conditions of the detainees at their arrival; ii. The provision of specialistic care where needed; iii.

The response to medical urgencies; iv. The response to contagious diseases; v. Prevention and treatment of drug addictions; vi. Prevention, treatment and recovery in the field of mental health; vii. The protection of female detainees and their children; viii. Specific measures to address health needs of immigrant detainees.

c) Are there any national standards for an initial medical examination upon deprivation of liberty or transfer of a detainees? If so, what do they require?

The [Decree of the President of the Italian Council of Ministers of 1 April 2008](#), Procedures and criteria to transfer to the national healthcare system all the functions concerning assistance, working relationships, financial resources, and equipment of prison medical facilities, placed medical assistance provided in the detention system under the responsibility of the National Healthcare System (*Servizio Sanitario Nazionale, SSN*), which provides such assistance through its regional and local branches. The Decree also provides [guidelines](#) establishing national standards on medical assistance in detention facilities. As per the medical examination upon arrival to the detention facilities, the guidelines establish that it must be carried out in different moments and include adequate monitoring periods. All the data collected by the medical staff must be registered in the detainee's personal file. The medical evaluation is conducted by the general practitioner working in the detention facility, in cooperation with the psychologist and other specialists, where needed (it can be therefore described as a multi-disciplinary procedure). Specific reception measures must be promptly adopted to alleviate potential traumatic effects of deprivation of freedom (including suicide and self-harm).

d) Are there any national standards relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly detainees, the mentally ill, drug addicted detainees, etc.) If so, what do they require?

Besides the general legislative discipline described in row a) of this section, the abovementioned 2008 guidelines include specific provisions concerning specialist care. Specialist care can be provided in-house or, if impossible, resorting to external medical facilities. The goals established by the guidelines are the following: i. ensuring a homogeneous quality of specialist care in all Italian detention facilities; ii. Ensuring prompt assistance to respond to healthcare needs expressed by detainees; iii. Integrating specialist care into a global vision of the healthcare of the detainee; iv. Introducing specific prevention programs based on the cooperation between detention facilities' medical services and local healthcare departments, aimed at fostering prevention, early diagnosis, and treatment of diseases entailing a high risk of disability.

e) Are there any national standards with regard to a medical treatment of the detainee's own choosing? If so, what do they require?

According to Art. 11 of the Law No. 354/1975 – as reformed in 2018 – all detainees have the right to request to be visited by a trusted doctor at their own expenses. The authorisation for the visit must be requested to and granted by the judicial authority in charge of the case – in case of remand prisoners – and by the prison's director – in case of detainees serving a definitive sentence.

f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The right to healthcare assistance must be ensured to all detainees, regardless of the detention regime they are subject to. However, depending on the stage of the judicial proceeding the detainee is living, the judicial authority in charge of authorising specific medical procedures might change: for instance, in case of requests of being visited by entrusted doctors, the authorisation must be obtained by the judicial authority in charge of the proceeding in case of remand prisoners; and by the prison's director in case of detainees serving a definitive sentence.

g) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 5. a) – f), including their respective legal basis.

The violation of the rights described in this section is subject to the same complaint mechanism described in Section 1.f.

h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

In its [2019 report](#) to the Italian Parliament, the Italian NPM recommended Italian authorities the necessity "to guarantee privacy during medical examinations and the interviews between the physician and the patients, ensuring that distance control is normally adopted by penitentiary police, whose presence in the room may be requested by the healthcare staff involved in specific and substantiated cases and can never become an ordinary routine". As reported by the report itself, this recommendation did not have an outcome in practice.

During the Covid-19 emergency, the national NPM developed a monitoring system of the virus propagation in detention facilities. [As of 27 November 2020](#), 882 detainees, distributed into 86 detention facilities, were positive to Covid-19: 65 of them showed symptoms, and 27 were treated in civil hospitals. The NMP reported that the situation is not concerning from the point of view of the number of infections, but rather if the ability of the detention system to respond to the emergency is considered. More specifically, the report stressed two issues: on the one hand, the lack of space in detention facilities, due mostly to overcrowding, that has often prevented the implementation of the necessary measures to limit the virus propagation; on the other hand, the high propagation rate among detention facilities' staff, mostly due to its insufficiency.

6. Special measures in place to protect young detainees

a) Are there any national standards with regard to the separation of young detainees from adults? If so, what do they require? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)

The [Legislative Decree No. of 2 October 2018](#) reformed the juvenile detention system. Art. 15 of the Legislative Decree clearly established that children must be separated from young adults; remand prisoners must be separated from detainees serving a definitive sentence; female detainees must be accommodated in separate facilities or wards.

b) Please indicate the age categories of young persons falling under your country's (juvenile) detention regime.

According to the Italian juvenile criminal system, children cannot be judicially charged under the age of 14. If the crime is perpetrated as a child, but the proceeding is still ongoing when the remand prisoner turns 18, the case is decided according to the juvenile criminal system. If the subject is sentenced and imposed a detention period, they will be detained in juvenile detention facilities until the age of 25. For this reason,

Italian juvenile detention facilities (*Istituto Penale Minorile*, IPM) host persons aged 14 up to 25.

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

According to the Legislative Decree No. 121/2018, remand prisoners must be detained separated from children or young adults serving definitive sentences. Moreover, isolation is not applicable in juvenile detention facilities, and cannot be used as a disciplinary sanction. Eventually, Art. 21 introduced the possibility of establishing mitigated-custody wards where to accommodate detainees who do not represent a threat for security, who are about to conclude their serving period, and who have already been involved in activities outside the detention facility. These wards must be organised as to leave room to a certain degree of autonomy in the management of personal and community life.

d) Please indicate any remedies available to young detainees in case of a breach or violation of the standards addressed under 6. a) – c), including their respective legal basis.

The Juvenile Surveillance Court is the judicial authority in charge of deciding and monitoring the detention regime for minor remand prisoners and detainees. Complaints can be filed before the Juvenile Surveillance Court by the child, the lawyer, and the holders of the parental responsibility. The Surveillance Court's decisions can be challenged before the territorial Juvenile Court.

e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

According to the [2020 report of the Italian NPM](#) – presented to the Italian Parliament on 26 June 2020 – detention of children is actually used as a last-resort measure in Italy. As of 31 December 2019, 363 persons were detained in Italian IPMs, compared to 1,072 serving their sentence in community centers. As of 15 April 2020, persons detained in IPMs decreased to 302 (138 children and 164 young adults). However, 42% of the persons detained in IPMs were third-country citizens: according to the NPM, this data suggests that foreign children have less possibilities to benefit from alternatives to detention. Moreover, the NPM stressed that the age assessment procedure – that is used mostly for unaccompanied migrant children who cannot demonstrate their age with the ordinary identity documents – is still too often carried out through traditional medical tests – especially the x-ray of the child's bone structure – instead of using a multi-disciplinary approach, as envisaged by international, EU and national legislation.

7. Special measures in place to protect detainees from violence

a) Are any special measures in place to protect detainees against violence from guards/prison staff, including sexual violence? (E.g.: Are there emergency call buttons? Do guards receive special training? Do detainees have access to a complaints mechanism?)

The violation of the rights described in this section is subject to the same complaint mechanism described in Section 1.f. Art. 41 of the Law No. 354/1975 establishes that it is forbidden to use of physical force against detainees, unless it is necessary to prevent or impede violent conducts, breakouts, or to counter the (passive) resistance to the staff's orders. The members of the staff who – for any reason – used physical force against the detainees, must immediately inform the prison's director who must promptly order medical examinations, and an internal investigation on the episodes. Prison's staff cannot use any means of physical coercion that is not explicitly envisaged by the prison's regulation: the use of authorised means must be limited in time and monitored by the medical staff. Prison's guards cannot carry arms on duty, except for exceptional cases and with the authorisation of the director.

b) Are any special measures in place to protect detainees against violence from other detainees, including sexual violence? (E.g.: Are detainees supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do detainees have access to a complaints mechanism?)

The prison director is in charge of ensuring security and order within the detention facility, by availing themselves of the support from the staff employed in each facility. No special measures available.

c) Are there any special measures in place to protect LGBTI detainees, who are particularly vulnerable to violence/sexual violence?

The only disposition governing this issue is provided by Art. 14 of the Law No. 354/1975, as reformed in 2018. According to this provision, the distribution of detainees who are at risk of violence from the other detainees on grounds of their gender identity and/or sexual orientation, must be carried out following homogeneous categories on the entire national territory, upon consent of the detainees who are, otherwise, distributed among ordinary prison wards.

As described in the 2018 report, LGBTI detainees are often detained in separated prison wards: this approach should be aimed at protecting their safety; in practice, it risks amplifying the negative impact of detention on the psychological wellbeing of the detainees, fostering their isolation from the rest of the detainees. Moreover, Art. 14.5 of the Law No. 354/1975 establishes that women must be detained separated from male detainees: according to some experts, this might result in the detention of transgender women who have not concluded the official gender affirmation process in male detention wards.

According to the [2020 report on the state of the art of rights protection in Italy](#), 70-80 transgender women are detained in Italian prisons in 2020. Six Italian prisons have set up a separate ward for transgender women, who spend their detention in isolation regime for safety reasons. An exception is represented by the prison of Sollicciano – where a separate ward is active – where transgender women can spend their out-of-cell time together with the other female detainees.

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The abovementioned legislation is applicable to all detainees, regardless of their detention regime.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 7. a) – d), including their respective legal basis.

The violation of the rights described in this section is subject to the same complaint mechanism described in Section 1.f.

- f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

In its [2019 report](#) to the Italian Parliament, the Italian NPM recommended Italian authorities the necessity to "guarantee in every institution a regular recording of "critical events" and the simultaneous entry of such data in the information system of the Ministry of Justice".

According to the [2020 report](#) of the Italian NPM – presented to the Italian Parliament on 26 June 2020 – LGBTI detainees must be considered a vulnerable category, more at risk of suffering violence during the detention period. In its opinion, the most urgent measure to implement is the development of training sessions concerning diversity and non-discrimination destined both to detainees and to the prison's staff. Moreover, the NPM recalled the necessity of elaborating strategies to ensure the detainees' right to affectivity and sexuality, including also non-heterosexual couples.

8. Women in detention

- a) Are there any national standards for conditions of detention of women in general? If so, what do they require?

The Law No. 354/1975 does not provide detailed standards ruling the conditions of detentions of women; neither does the Decree of the President of the Italian Republic No. 230/2000. However, in 2008 the Department for Detainees and their Treatment of the Ministry of Justice (*Direzione generale dei Detenuti e del Trattamento*) issued a scheme of [internal Regulation](#) for female prisons and female wards of ordinary prisons, to be adopted by the administration of each Italian detention facility where women are detained. The Regulation governs all the aspects of the daily management of these detention facilities, including the services, the organisation of the available activities, and the rights of the detainees.

- b) Are there any national standards for holding and accommodating male and female detainees separate from each other? If so, what do they require?

Art. 14 of the Law No. 354/1975 establishes that women must be detained in specific detention facilities or in specific wards in ordinary facilities. No further details are provided by the legislator as how to organise this separation. In Italy, there are four detention facilities which are specifically meant for women (Trani, Pozzuoli, Rome and Venice); in other cities, female detainees are accommodated in separate wards of male facilities. According to the 2020 annual report of the association Antigone, 2,250 women were detained in Italian prisons as of 31 January 2021. 26 of them were detained with their children. Women represent 4.2% of the Italian detained population. 549 women were detained in female detention facilities; the remaining detainees were detained in separate wards of male prisons.

- c) Are there any national standards for special hygiene conditions and/or hygiene products for female detainees? If so, what do they require?

The only specific national standard in this respect is Art. 7 of the Decree of the President of the Italian Republic No. 230 of 30 June 2000, which establishes that hygienic services are located in a compartment adjacent to the cell. Such services must be equipped with running hot and cold water, washbasin, shower, and bidet (especially in female detention facilities).

d) Are there any national standards for special healthcare for female detainees that respond to their specific needs, including i.e. pregnancy and post-natal treatment, and treatment/support of mother and child? If so, what do they require?

The Decree of the President of the Italian Council of Ministers of 1 April 2008 provides [guidelines](#) establishing national standards on medical assistance in detention facilities. A specific section of the guidelines focuses on healthcare needs of female detainees. Female detainees must be provided with gynaecological in-house assistance and be offered HPV prevention screenings. Training sessions must be offered to the medical staff concerning the specific medical needs of this sub-group of the detained population, as well as concerning the services available at local level fostering women's health.

e) Are there any national standards on pregnant detainees in terms of special prison cells for pregnant detainees and/or special facilities for female detainees with babies or young children? If so, what do they require?

Art. 14 of the Law No. 354/1975 establishes that each detention facility where women are accommodated must be provided with a specific medical service monitoring the conditions of pregnant women and new mothers. Art. 39 of the same Law excludes the possibility of disciplinary sanctions entailing limitations of social activities for pregnant women and mothers breastfeeding their children.

Art. 39 of the Decree of the President of the Italian Republic No. 230 of 30 June 2000 provides rules on the assistance to pregnant women and women with children. These must be assisted by specialist staff with competences in gynaecology. Childbirth must happen, whenever possible, in external medical facilities. Children detained with their mothers must be ensured specialist pediatric care. Kindergarten must be set up in all detention facilities where women are detained with their children: the cells cannot be closed, so that children can freely circulate in the ward. Children must be ensured adequate leisure activities. Moreover, children must be given the possibility to attend leisure activities in local kindergarten, with the support of local social services, with their mothers' consent.

The Decree of the President of the Italian Council of Ministers of 1 April 2008 provides [guidelines](#) establishing national standards on medical assistance in detention facilities. A specific section of the guidelines focuses on medical assistance to pregnant women and new mothers. These must offer specific programmes of preparation to childbirth, in cooperation with local medical services. Childbirth must happen outside the detention facility, and the new-borns must be ensured adequate and tailored assistance.

The [Law No. 62 of 21 April 2011](#) - reforming the Law No. 354/1975 - was introduced to protect the relationship between female detainees and their children. According to the law, children who are detained with their children must be accommodated in facilities with a mitigated-custody detention regime, where detention conditions resemble more ordinary civil dwellings. There are five detention facilities of this kind active in Italy in 2021 (Turin "Lorusso e Cutugno", Milan "San Vittore", Venice "Giudecca", Cagliari and Lauro); these are called "*Istituti a Custodia Attenuata per detenute Madri*" (ICAM). Moreover, the law establishes that female detainees who are pregnant or who have children aged less than 10, and who are serving a sentence that is inferior to 4 years, should be given the possibility of home-custody.

According to the [data released by the Ministry of Justice](#), as of 30 April 2021, 22 women with children (23 children) were detained in Italian prisons. 12 of them were third-country citizens.

f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The abovementioned legislation is applicable to all female detainees, regardless of their detention regime.

g) Please indicate any remedies available to female detainees in case of a breach or violation of the standards addressed under 8. a) – f), including their respective legal basis.

The violation of the rights described in this section is subject to the same complaint mechanism described in Section 1.f.

h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

No reports available on this issue for the considered reference period.

9. Nutrition

a) Are there any national standards with regard to nutrition in detention in general? If so, what do they require?

Article 9 of Law No. 354/1975 establishes that all detainees must be ensured a healthy and sufficient nutrition, considering their age, gender, health conditions, labour activity. Moreover, nutrition should include seasonal products. The 2018 reform integrated this legislative disposition, specifying that detainees must be ensured upon request a nutrition that is compatible with their religious faith, whenever possible. Food must be served in areas of the detention facility specifically destined to this purpose. The quality and quantity of food are determined by specific tables adopted with a Decree of the Ministry of Justice: these tables must be updated every 5 years. A delegation of detainees – chosen randomly on a monthly basis – is in charge of monitoring the correct implementation of the ministerial tables and the preparation of the food. Detainees are also allowed to purchase food, resorting to distribution points managed directly by the prison's administration. The prices of the products cannot be higher than the average price-level of the place where the prison is located. The delegation of detainees – integrated by a delegate of the prison's director – monitors the quality and the price of the products sold to the detainees.

Art. 13 of the Decree of the President of the Italian Republic No. 230/2000 establishes that each kitchen existing in the detention facility must be used to prepare the meals for no more than 200 detainees. The preparation of the meals is carried out by

detainees: at this end, specific training sessions are organised. Detainees are allowed to have personal stoves in their cells.

b) Are there any national standards with regard to frequency and regularity of provision of meals (warm and cold)? If so, what do they require?

According to Article 11 of Decree of the President of the Italian Republic No. 230/2000, meals are provided to the detainees three times per day (breakfast, lunch and dinner). The detention facility's internal regulation establishes the time of the meals, as to make sure that the first is provided soon after waking up, the second after about 5 hours, and the third after about 6 hours.

c) Are there any national standards with regard to healthy food, special diets or dietary restrictions? If so, what needs to be provided to detainees?

See Section 9.a.

In 2019, the association Antigone released a [specific focus on nutrition](#) in Italian prisons and its impact on health. The focus reports the results of a research carried out in Tuscany in 2014, monitoring health conditions of 15,000 male detainees in 57 Italian detention facilities. 35% of them was overweight, 12.8% was obese. This condition increases the risk of cardiovascular, breathing and metabolic diseases. Female and trans detainees resulted to be more exposed to obesity compared to both men, and to women not subject to detention. According to the report, this is due to the fact that nutrition tables are designed considering men's nutrition needs. Eventually, the focus stressed that 81% of Italian detention facilities ensures the possibility for Muslim detainees to have access to food that is suitable for their religious beliefs.

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The standards reported above are applied to all detainees, regardless of their detention regimes.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 9. a) – d), including their respective legal basis.

The violation of the rights described in this section is subject to the same complaint mechanism described in Section 1.f.

f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

According to the [2020 report of the Italian NPM](#) – presented to the Italian Parliament on 26 June 2020 – 3 complaints were filed before the NPM in 2019 concerning the violation of the nutrition rights.

Part II: National jurisprudence

Italy, Italian Constitutional Court (Corte Costituzionale), Decision No. 97/2020, 5 May 2020

Thematic area	<i>Solitary confinement</i>
Decision date	5 May 2020
Reference details	Italian Constitutional Court No. 97/2020 www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2020&numero=97
Key facts of the case	The case was brought before the Constitutional Court by the Court of Cassation in 2019. The case started thanks to the complaint filed by a man detained in the prison of Spoleto, and subject to the strict detention regime ruled by Art. 41-bis of the Law No. 354/1975. The complaint concerned the decision of the prison's administration to prohibit any exchange of objects between detainees subject to this detention regime, including between those detained in the same prison's ward. According to the complainant, exchanging objects – in the specific case, food sent to the prisoner by his family members – does not represent a threat to the high-security regime of his ward, since the detainees had already been allowed to spend together their out-of-cell time. The complaint was rejected by the Surveillance Judge; however, the Surveillance Court of Perugia deemed it legitimate. The Ministry of Justice challenged the decision of the Surveillance Court of Perugia before the Court of Cassation, stating that exchanging objects is not a crucial element of the detainees' right to socialization. The Court of Cassation decided to suspend its decision and refer the case to the Constitutional Court for a constitutional interpretation of the disposition.
Main reasoning/argumentation	The Court declared the constitutional illegitimacy of the Art. 41-bis of the Law No. 354/1975 (governing the Italian detention system, as explained in Annex I to this report), inasmuch as it prohibits any possibility of communication and exchange of objects between detainees even if they share the same socialization group. According to the Court, this prohibition is uselessly punitive, as it is not functional and proportional to the purpose of the high-security detention regime, which is to avoid the detainees' communication with the external world. According to the Court, the prohibition therefore represents a violation of the principle of equal treatment (Art. 3 of the Italian constitution) and of the rehabilitation purpose of detention (Art. 27.3 of the Italian constitution).
Key issues (concepts, interpretations) clarified by the case	The Court clarified that stricter detention regimes are legitimate only if they are necessary to counter crimes and preserve order and security in detention facilities. No unnecessary punitive measures should be imposed to the

	<p>detainees. Moreover, exchanging objects and food between detainees is considered by the Court an important way of preserving a sense of ordinary life in a context of deprivation of individuals' personal freedom.</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>The Court deemed the challenged disposition as illegitimate and decided that the prohibition of objects exchange can be imposed only between detainees who do not belong to the same socialization group.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>"2.2 [...] La stessa preclusione, per altro, contrasterebbe anche con il principio del finalismo rieducativo della pena, di cui all'art. 27 Cost., oltre ad integrare una limitazione al regime penitenziario ordinario contraria al senso di umanità: una volta stabilito che il diritto alla socialità debba essere esercitato nell'ambito di un limitato gruppo di detenuti, selezionato dalla stessa amministrazione penitenziaria in ragione della necessità di impedire il mantenimento dei legami con il contesto criminale di provenienza, la ulteriore limitazione conseguente all'applicazione del divieto imposto dalla disposizione censurata, nell'impedire «anche quelle forme "minime" di socialità che si estrinsecano nello scambio di oggetti di scarso valore e di immediata utilità o di generi alimentari tra persone che si frequentano "senza filtri" ogni giorno e in una prospettiva di normalità di rapporti interpersonali», finirebbe per realizzare una non consentita limitazione dei principi presidiati dall'art. 27 Cost."</p> <p><i>"2.2 [...] This prohibition violates the rehabilitation purpose of detention, ruled by Art. 27 of the Constitution, and represents a limitation to the ordinary detention regime which is against the sense of humanity. It was already established that the right to socialization can be exerted only in a small group of detainees which is formed by the prison's administration with the aim of impeding communications with the criminal network of the detainees. The additional limitation entailed by the challenged disposition – which impedes basic forms of sociality, such as exchanging ordinary objects and food between people who spend time together on a daily basis as a way of maintaining a perspective of normal interpersonal relationship – would represent an illegitimate violation of the principles enshrined in Art. 27 of the Italian Constitution"</i></p>

Italy, Italian Court of Cassation (Corte di Cassazione), Decision No. 944972/2018, 16 April 2018

Thematic area	Cells
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Decision date	16 April 2018
Reference details	Italian Court of Cassation, decision No. 44972 of 2018 www.giurisprudenzapenale.com/wp-content/uploads/2018/10/41-bis_cass.pdf
Key facts of the case	The Surveillance Court of Bologna accepted the complaint filed by a detainee subject to the high-security detention regime governed by Art. 41-bis of the Law No. 354/1975. The complaint was aimed at challenging the decision of the Surveillance Judge of Reggio Emilia who had rejected the detainee's complaint concerning the intrusive presence of video-surveillance in his cell, also framing the cell's toilet. The Ministry of Justice and the Detention Administration Department (<i>Dipartimento dell'Amministrazione penitenziaria</i> - DAP) challenged the decision of the Surveillance Court of Bologna before the Court of Cassation. According to the Ministry of Justice and the DAP, the use of video-surveillance was a proportional measure based on the high level of danger entailed by the detainee, who was a leader of a criminal organization. Moreover, the two institutions stressed that the ECHR – in the case Paolello v. Italy, No. 37648/02 – ruled that the use of permanent video-surveillance does not violate Convention's rights if the detainee – on grounds of their detention regime and their degree of social danger – is not entitled the right to privacy. Moreover, the complainants recalled that Art. 24.2 of the Decree of the President of the Italian Republic No. 82 of 15 February 1999 – providing the Regulation of the Penitentiary Police – establishes that penitentiary police officers must "continuously guard and monitor the detainees wherever they are".
Main reasoning/argumentation	The Court of Cassation accepted the complaint filed by the Ministry of Justice and the DAP. The Court recalled that the prison administration's control measures cannot by any means entail inhuman and degrading treatment on the detainees. In order to ascertain that a person is subjected to torture or to inhuman or degrading treatment or punishment, the specific case must be considered to assess whether the treatment exceeded the minimum severity threshold needed to define a treatment as a violation of Art. 3 of the Convention. This threshold is defined on three grounds: the duration of the treatment; its impact on the individual's physical and psychological integrity; its impact on the individual's personal characteristics, such as gender, age, and health conditions. According to the Court, the mere presence of a permanent video-surveillance device in the cell – aimed at maintaining public order and security in the detention facility – is a safety measure that does not exceed the aforementioned threshold.
Key issues (concepts, interpretations) clarified by the case	The Court of Cassation clarified that the social danger entailed by the detainee represents a proportional and necessary rationale for the introduction of a permanent

	video-surveillance system in his cell, aimed at the prevention of a threat to the prison's security. The necessity to maintain such security prevails on the privacy and the dignity of the detainee.
Results (sanctions) and key consequences or implications of the case	The detainee's complaint was therefore rejected, and the use of permanent video-surveillance devices deemed legitimate.
Key quotation in original language and translated into English with reference details	<p>"2. [...] L'esercizio del controllo con i mezzi in concreto ritenuti idonei, in forza di scelte rimesse all'amministrazione penitenziaria [...] in nessun caso però può trasmodare nella sottoposizione a torture o trattamenti inumani o degradanti. La giurisprudenza della Corte Edu [...] ha costantemente affermato che, per ravvisare un trattamento di quel genere, tuttavia, occorre che si superino certe soglie di gravità, da valutare nel caso concreto secondo alcuni concorrenti parametri [...] Tale superamento, come riconosciuto dalla stessa giurisprudenza della Corte Edu, non si verifica solo per effetto della videosorveglianza all'interno della cella ai fini della tutela di esigenze di ordine pubblico, nel caso del detenuto in regime di cui all'art. 41 bis Ord. Pen"</p> <p><i>"2. [...] The prison administration's discretionary power of defining the instruments that are necessary to exercise the legitimate control [...] cannot by any means result into torture or inhumane and degrading treatments. The ECHR jurisprudence [...] steadily established that, in order to be inhumane and degrading, the treatment must exceed a severity threshold that must be assessed case by case, according to specific concurrent parameters [...] the threshold's exceeding is not entailed – as established by the ECHR jurisprudence – by the mere presence of video-surveillance devices inside the cell, if this is aimed at maintaining public order, in the specific case of a detainee subject to the high-security detention regime ruled by Art. 41-bis of the Law No. 354/1975"</i></p>

Italy, Italian Constitutional Court (Corte Costituzionale), Decision No. 263/2019, 5 November 2019

Thematic area	Special measures in place to protect young detainees
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Decision date	5 November 2019
Reference details	Italian Constitutional Court, Decision No. 263/2019, available at: www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2019&numero=263
Key facts of the case	The Juvenile Court of Reggio Calabria – functioning as Court of Surveillance – challenged the constitutional legitimacy of Art. 2.3 of the Legislative Decree No. 121/2018, governing the juvenile detention system. The case was brought before the Court of Surveillance by a detainee serving a sentence for participation to a criminal organisation (crime perpetrated when he was a child), and who had filed a request for home-custody for the remaining 17 months of detention. Since the detainee had refused to cooperate with the judicial authorities – as it is generally requested to members of criminal organisations – the possibility for him to benefit from alternatives to detention seemed excluded by the abovementioned legislative disposition. According to the Court of Surveillance, this automatic exclusion represented a violation of Articles 2,3, 27.3 and 31.2 of the Italian Constitution, since the juvenile criminal system must be based on the judicial evaluation of the individual case and situation of the child, and must be aimed at the social rehabilitation of the juvenile detainee.
Main reasoning/argumentation	The Constitutional Court accepted the argumentation of the Court of Surveillance: according to the Court, the challenged disposition compromised the general purpose of the juvenile criminal system, prioritizing the protection of public order and the prevention of crimes, over the rehabilitation of the child. This approach represents a violation of the principles of proportionality and of the individual approach, which are at the core of the juvenile criminal system.
Key issues (concepts, interpretations) clarified by the case	The Court’s decision recalls the general purpose of the juvenile criminal system, and its crucial difference with the ordinary criminal system: the main goal of juvenile justice is to carefully assess the individual situation of the children involved as suspects or defendants, and to foster their rehabilitation and integration into society. Automatically excluding children with severe offences from alternatives to detention is illegitimate since this approach privileges public security over the children’s rehabilitation process.
Results (sanctions) and key consequences or implications of the case	With this decision, the Constitutional Court established the constitutional illegitimacy of Art. 2.3 of the Legislative Decree No. 121/2018: this legislative disposition is therefore cancelled from the Italian legislation.
Key quotation in original language and translated into English with reference details	4.1 “Il richiamo ai criteri posti dall’art. 4-bis ordin. penit. determina dunque un irrigidimento della disciplina dell’accesso ai benefici penitenziari. In ragione del titolo di reato per cui è intervenuta condanna è impedita al giudice una valutazione individuale sul concreto percorso rieducativo compiuto dal

minore. In questo modo, le finalità di prevenzione generale e di difesa sociale finiscono per prevalere su quelle di educazione e risocializzazione, restaurando un assetto in contrasto con i principi di proporzionalità e individualizzazione della pena, sottesi all'intera disciplina del nuovo ordinamento penitenziario minorile."

4.1 "The challenged legislative disposition results into a stiffening of the discipline governing the access to alternatives to detention. Because of the type of crime the child is sentenced for, judicial authorities are prevented from considering the case individually, assessing the child's rehabilitation path. Because of this approach, the general purposes of crime prevention and public order prevail over education and rehabilitation, compromising the principles of proportionality and individualization of the sentence, that are at the core of the new juvenile detention system."