



# Report of Various Size – Fieldwork research (FRANET)

## Criminal Detention in the EU – Conditions and Monitoring

### Country Report Italy

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Final Submission: June 2018

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## 1. Cell space

- a) What is the national standard for cell space available to prisoners in m<sup>2</sup>? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- b) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- c) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). 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 here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

### **Please cite any relevant sources**

National standards on detention conditions are 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,<sup>1</sup> as subsequently amended and modified until 2015, 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.<sup>2</sup>

As to jail cell space, Article 5 of Law No. 354/1975 sets out that detention facilities must be built so as not to accommodate an excessive number of detained people, and that such facilities must be provided not only with spaces for prisoners' individual life, but also with adequate spaces for their community life. Moreover, Article 6 of the above mentioned law sets forth that 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, defendants – i.e. those who have not yet been sentenced – should be given the possibility to sleep in one-bed cells; each prisoner must be given adequate equipment for their bed.

As is clear from the abovementioned provisions, no specific standards in terms of square metres are set; it is also worth stressing that each detention facility has its own internal regulation (to be approved by the Italian Ministry of Justice), which must respect the principles enshrined in national legislation (Article 16 of Law No. 354/1975, and Article 36 of Decree of the President of the Italian Republic No. 230/2000).

In spite of this lack of specific standards, something changed following the Chamber judgment by the European Court of Human Rights (ECtHR) in the *Torreggiani and Others v. Italy* case, according to which the lack of individual space suffered by the complainants while in detention represents a violation of the fundamental right to human dignity.<sup>3</sup> Although the ruling did not lead to any changes at legislative level, the managers of detention

<sup>1</sup> Legge 26 luglio 1975, n. 354, Norme sull'ordinamento penitenziario e sulla esecuzione delle misure privative e limitative della libertà, available at:

[www.procuragenerale.trento.it/attachments/article/31/Ordinamento%20penitenziario.pdf](http://www.procuragenerale.trento.it/attachments/article/31/Ordinamento%20penitenziario.pdf).

<sup>2</sup> Decreto del Presidente della Repubblica 30 giugno 2000, n. 230, Regolamento recante norme sull'ordinamento penitenziario e sulle misure privative e limitative della libertà, available at:

[www.penale.it/legislaz/dpr\\_30\\_6\\_00\\_230.htm](http://www.penale.it/legislaz/dpr_30_6_00_230.htm).

<sup>3</sup> ECtHR, *Torreggiani and Others v. Italy*, Chamber judgment, No. 43517/09, 8 January 2013, available at: <https://hudoc.echr.coe.int/eng-press#%22itemid%22:%22003-4212710-5000451%22>. "The Court found that the applicants' living space had not conformed to the standards deemed to be acceptable under its case-law. It pointed out that the standard recommended by the Committee for the Prevention of Torture in terms of living space in cells was 4 sq. m per person. The shortage of space to which the applicants had been subjected had been exacerbated by other conditions such as the lack of hot water over long periods, and inadequate lighting and ventilation in Piacenza prison. All these shortcomings, although not in themselves inhuman and degrading, amounted to additional suffering. While there was no indication of any

facilities started to comply with the 3-sq. m minimum standard (set by ECtHR) as the standard dimensions of jail cells, as reported by Antigone, the most important Italian association for the protection of prisoners' rights.<sup>4</sup> According to the Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (*Garante nazionale per i diritti delle persone detenute o private della libertà personale*) – which acts as the Italian National Preventive Mechanism (NPM)–, even though at the end of 2017 no prisoners detained in Italy were living in a space whose surface was inferior to 3 sq. m, overcrowding issues were far from being tackled. The overall capacity of the Italian detention system was 50,108 places as of February 2017: this capacity was set considering the housing standards applying to civil dwellings. According to the abovementioned authority, the 3-sq. m standard should be considered as a minimum standard – the breach of which would amount to a severe violation of human dignity – and not as the ordinary standard for jail cells.<sup>5</sup> In the 2018 report to the Italian Parliament, the Authority confirmed its concerns about the situation of overcrowding in Italian prisons: according to the Authority, the 3-sq. m. standard continues being conceived as the ordinary standard for jail cells and the number of detainees exceeds the 85% of the overall capacity of the Italian detention system. Considered the uneven distribution of offenders from a territorial point of view, in some detention facilities monitored by the Authority the number of detainees amounted to the 150% of the jail's capacity.<sup>6</sup>

## 2. Sanitary Facilities

- a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do prisoners have access to these facilities without undue delay, even during the night? Do these facilities offer privacy to prisoners who use them?
- 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 offer privacy to prisoners who use them?
- c) Is the provision of cleanly sanitary facilities regulated by any legal instrument such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*

intention to humiliate or debase the applicants, the Court considered that their conditions of detention had subjected them – in view of the length of their imprisonment – to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. There had therefore been a violation of Article 3 of the Convention.” (Article 3)

<sup>4</sup>Scandurra, A. and Miravalle, M. (eds.) (2018), *Un anno in carcere. XIV rapporto sulle condizioni di detenzione*, Antigone, available at: [www.antigone.it/quattordicesimo-rapporto-sulle-condizioni-di-detenzione/](http://www.antigone.it/quattordicesimo-rapporto-sulle-condizioni-di-detenzione/).

<sup>5</sup> Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2017*, available at:

[www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf](http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf). “In tema di sovraffollamento i dati sono ancora distanti dall'essere soddisfacenti. È vero nessuna persona è attualmente in una camera detentiva il cui spazio individuale lordo sia inferiore a 3 metri quadrati: ce ne erano oltre 7500 nel gennaio 2013. Tuttavia troppo spesso ci si accontenta di questo risultato, quasi ad inventarsi il parametro standard della regolarità e non il parametro minimo al di sotto del quale si apre inevitabilmente il tema della violazione dell'articolo 3 della CEDU.” (p. 46)

<sup>6</sup> “Inoltre, la non uniforme distribuzione del dato nel territorio nazionale [...] comporta che in alcune situazioni le presenze raggiungano valori superiori al 150 per cento della capienza regolamentare. È bene ricordare, proprio in ragione dei diversi fattori che non consentono la uniforme e generalizzata distribuzione di detenuti che il livello di presenza non dovrebbe essere uguale alla capienza, perché non dovrebbe superare all'incirca il suo 85 per cento affinché il sistema non presenti una condizione di sovraffollamento”; “L'Italia calcola la capienza regolamentare sulla base del criterio di “abitabilità” delle civili abitazioni, che prevede nove

metri quadrati per l'alloggiamento di una singola persona e di ulteriori cinque metri quadrati per ogni ulteriore persona (parametro ribadito dalla circolare ministeriale del 17 novembre 1988 e mai modificato). Tuttavia questo parametro meramente teorico e mai rispettato, è nella pratica recente sostituito dalla certezza, riscontrata in tutte le visite agli Istituti, che assicurare tre metri quadrati a ciascun detenuto sia condizione non solo necessaria, ma anche sufficiente, insomma una sorta di nuovo parametro regolamentare”, Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2018*, available at: <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bbb00eb9f2e4ded380c05b72a2985184.pdf>.

- e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). 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 here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

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As to sanitary facilities, Article 8 of Law No. 354/1975 establishes that the use of basic sanitary facilities (including showers, toilets, washbasins, and all the necessary equipment to ensure personal hygiene) must be guaranteed to all detainees.

Article 7 of Decree of the President of the Italian Republic No. 230/2000 establishes that such facilities shall be located in a separate area annexed to the jail cell. Such areas must be equipped with: sanitary facilities providing (hot and cold) tap water; a toilet; a washbasin; a shower; and – especially in the female wings of prisons – a bidet. Such facilities must also be provided in those areas where common activities take place. Article 8 of the same act establishes that showers can be made mandatory for hygienic and healthcare reasons. Before the approval of this act, sanitary facilities were located inside the cell.

According to Antigone<sup>7</sup> though, 10 % of the monitored detention facilities in Italy are not provided with a functioning heating system. Forty-three per cent (37) of the monitored facilities do not ensure their detainees' continuous access to hot tap water. Sixty per cent (50) of the monitored facilities do not have showers inside the cell. Moreover, showers in shared areas often feature inadequate hygienic conditions; detainees have to wait a long time for their turn to have a shower, and the amount of water available to each of them is limited. Five per cent (four) of the monitored facilities do not even have toilets in a separate area from the cell.

**3. Time out of cell**

- a) What is the national standard set for time per day/week spent by prisoners outside of their cells:
- Outdoors (within the boundary of the prison)?
  - Indoors in the common area?
- b) Are sports or other recreational and educational facilities available to prisoners? If so what types?
- c) Is time spent in cells regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). 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 here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

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National standards on detention conditions are ruled by Law No. 354/1975, as subsequently amended and modified until 2015, as well as by Decree of the President of the Italian Republic No. 230/2000.

<sup>7</sup>Scandurra, A. and Miravalle, M. (eds.) (2018), *Un anno in carcere. XIV rapporto sulle condizioni di detenzione*, Antigone, available at: [www.antigone.it/quattordicesimo-rapporto-sulle-condizioni-di-detenzione/](http://www.antigone.it/quattordicesimo-rapporto-sulle-condizioni-di-detenzione/).

As to the time spent outside the jail cell, Article 10 of Law No. 354/1975 establishes that detainees who are not allowed to take part in work release programmes have the right to spend two hours a day outside their cell. This time span can be reduced for exceptional reasons, and cannot in any case be inferior to one hour a day. Detainees are divided into groups during their out-of-cell time, which is generally spent on sports or other physical activities. 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). 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). 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). Prisoners undergoing a specific surveillance regime (*regime di sorveglianza particolare*) –<sup>8</sup>governed by Article 14a of the abovementioned act – can be imposed restrictions in relation to the two-hour 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 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 41a). The Article-41a detention regime 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.

Article 41a was the object of the monitoring activity of the Senate Special Commission for the Protection and Promotion of Human Rights (*Commissione Straordinaria per la Tutela e la Promozione dei Diritti Umani*): in the 2016 final report, the commission pointed out that, in 2015, 729 people were detained under the Article-41a regime; as of June 2014, 29 prisoners had been serving under this regime for more than 20 years. Some of them spend up to 22 hours a day inside the cell, and the out-of-cell time is sometimes spent in narrow yards covered with an iron grid. They can generally spend one hour a day in a specific room dedicated to community activities. Moreover, they do not have access to the library, cannot have more than three books in their cell, and can read only national newspapers (local ones are forbidden). Sometimes, surveillance video cameras are located inside toilets too.<sup>9</sup>The Article-41a regime was also the object of three different rulings adopted by the Italian Constitutional Court (judgments Nos. 349 of 28 July 1993, 357 of 19 July 1994, and 351 of 18 October

<sup>8</sup> 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.

<sup>9</sup> Senate Commission for the Protection and Promotion of Human Rights (2016), *Rapporto sul regime detentivo speciale. Indagine conoscitiva sul 41-bis*, available at: [www.senato.it/application/xmanager/projects/leg18/file/repository/commissioni/dirittiumaniXVII/allegati/Rapporto\\_41bis\\_aprile\\_2016.pdf](http://www.senato.it/application/xmanager/projects/leg18/file/repository/commissioni/dirittiumaniXVII/allegati/Rapporto_41bis_aprile_2016.pdf).

1996), which set strict limits on the discretionary power of the prison administration, as well as clarifying the scope of the judicial monitoring power, and the reasons for the application of such regime. The compliance of the prison regime under scrutiny with the European Convention on Human Rights (ECHR) was assessed on different occasions by ECtHR: according to the court, the regime does not generally infringe upon the rights enshrined in the convention; it however stigmatised some of the aspects of the implementation of such regime. More specifically, the regime might be found in breach of Article 3 inasmuch as it entails inhuman and degrading treatment for prisoners;<sup>10</sup> moreover, the court expressed its concerns about the possible violation of the right to private and family life, enshrined in Article 8 of ECtHR.<sup>11</sup> A violation of Article 8 was found by the court in the continuous censorship of the incoming mail addressed to a prisoner serving under the Article-41a regime.<sup>12</sup> In this ruling, the court also confirmed its previous case law concerning the necessity to adopt humanitarian measures in favour of those prisoners detained under a strict surveillance regime who are elderly or in poor health conditions. In its 2018 report, the Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (*Garante nazionale per i diritti delle persone detenute o private della libertà personale*) expressed its concern about the limits to the right to spend time out of cell for prisoners subject to the Article-41a regime: according to the Authority, most prisons' directions currently interpret the hour these detainees can spend in common areas to be subtracted to the two-hour time they can spend out of cell. According to the authority though there must be a distinction between the time prisoners can spend outdoor and the time spent out of the jail's cell but inside the prison's facility (for example, in socialisation areas).<sup>13</sup>

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). 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). Leisure, sports, and cultural activities shall respect detainees' distinctive features and expressions, and shall promote the involvement of all prisoners.

<sup>10</sup> ECtHR, *Bagarella v. Italy*, No. 15625/04, 15 January 2001, available at: <http://echr.ketse.com/doc/15625.04-en-20080115/view/>.

<sup>11</sup> ECtHR, *Di Giovine v. Italy*, No. 39920/98, 26 July 2001, available at: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%2226772/95%22%2C%22appno%22:%5B%2239920/98%22%2C%22itemid%22:%5B%222001-64167%22%5D%7D>; ECtHR, *Labita v. Italy*, No. 26772/95, 6 April 2000, available at: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Labita%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%222001-58559%22%5D%7D>; and ECtHR, *Messina v. Italy*, No. 25498/94, 28 September 2000, available at:

<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22messina%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%222001-58818%22%5D%7D>.

<sup>12</sup> ECtHR, *Enea v. Italy*, No. 74912/01, 17 September 2009, available at: [https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22%22CASE%20OF%20ENEA%20v.%20ITALY%20-%20\[Russian%20Translation\]%20summary%20by%20the%20COE/ECHR%22%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%222001-117276%22%5D%7D](https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22%22CASE%20OF%20ENEA%20v.%20ITALY%20-%20[Russian%20Translation]%20summary%20by%20the%20COE/ECHR%22%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%222001-117276%22%5D%7D).

<sup>13</sup> "Vale la pena evidenziare innanzitutto l'interpretazione che è stata data alle ore da trascorrere all'aperto: di fatto, l'ora nella sala di socialità viene sottratta alle due ore da trascorrere all'aperto. Il Garante ritiene che la dizione «all'aperto» non possa essere ricondotta all'apertura della cella, ma che configuri l'accesso «all'aria aperta», cioè in spazi a tal fine predisposti ove trascorrere quelle che comunemente sono definite "ore d'aria". Ricorda, a tal fine, l'articolo 10 o.p. e l'articolo 16 del Regolamento di esecuzione che limita tale possibilità a motivi eccezionali e che tale limitazione deve essere disposta con provvedimento motivato dal direttore dell'Istituto da comunicarsi al provveditore regionale e al magistrato di sorveglianza. L'articolo 41 bis o.p., nel parlare di limitazione della «permanenza all'aperto» non può quindi che fare riferimento a quanto previsto dal citato articolo della legge e dal relativo articolo del regolamento", Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2018*, p. 190, available at: <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bbb00eb9f2e4ded380c05b72a2985184.pdf>

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).

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*):<sup>14</sup> 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.

According to Antigone,<sup>15</sup> 35 out of the 86 prisons monitored in 2017 had areas where cells were open less than eight hours a day: this time span includes the hours spent in the yard, and those spent in shared areas. Ninety-two per cent of the monitored prisons were endowed with areas for community activities: these are generally rooms (30-50 sq. m) with plastic tables and chairs, a TV set, play cards, and some musical instruments. As to yards, according to the association, they are generally endowed with a shelter to protect prisoners against harsh weather, a toilet, and a place to sit; nonetheless, these areas are generally extremely squalid and surrounded by tall buildings, which engender a feeling of oppression. The availability of sports areas varies greatly depending on the considered prison: in 48 % of cases, detainees are allowed to attend the prison gym once a week, and in 61 % of cases a sports area, which is generally a football pitch. As to leisure, sports, and cultural activities, in 2017 about 700 activities were offered in 189 prisons in Italy. Only 8.5 % of such activities were directly organised by the prison management, whereas in all the other cases the activities were arranged by local institutions and associations. Only two out of the 86 monitored prisons did not have a library, whereas 22 % did not have a sports facility. The most frequently offered activities are: theatre workshops, cinema workshops, music classes, creative writing workshops, and reading clubs. Nonetheless, the association stresses there is no common framework on the skills and qualifications that the staff involved in such activities should have. In 2017, 25 % of prisoners took part in at least one cultural activity. As to dynamic surveillance, the association reports that, in 2017, in 50 out of the 86 monitored prisons, cells remained open for at least eight hours a day, but only in 17 of them prisoners were allowed to freely move outside of their wing. As many as 77 prisons did not have a canteen where prisoners could have their meals together.

#### 4. Solitary confinement

- a) What is the national standard set regarding solitary confinement? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- b) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- c) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). 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 here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

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National standards on detention conditions are set by Law No. 354/1975, as subsequently amended and modified until 2015, as well as by Decree of the President of the Italian Republic No. 230/2000.

As to solitary confinement, Article 33 of Law No. 354/1975 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.

<sup>14</sup> Available at: [www.polpenuil.it/attachments/article/5248/251644-2013.pdf](http://www.polpenuil.it/attachments/article/5248/251644-2013.pdf).

<sup>15</sup> Scandurra, A. and Miravalle, M. (eds.) (2018), *Un anno in carcere. XIV rapporto sulle condizioni di detenzione*, Antigone, available at: [www.antigone.it/quattordicesimo-rapporto-sulle-condizioni-di-detenzione/](http://www.antigone.it/quattordicesimo-rapporto-sulle-condizioni-di-detenzione/).

Moreover, Article 72 of the Italian Criminal Code<sup>16</sup> envisages that daytime solitary confinement might be imposed also on those prisoners who have been convicted for multiple criminal offences that are punished with a life sentence; such confinement can last between six months and three years; prisoners who are convicted for a criminal offence punished with a life sentence and for other minor criminal offences can be condemned to this kind of solitary confinement for a period of between two and 18 months.

Article 73 of Decree of the President of the Italian Republic No. 230/2000 establishes that solitary confinement for healthcare 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. The solitary confinement regime 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).

According to the Authority for the Protection of People who are Detained or Deprived of their Personal Freedom,<sup>17</sup> in some cases prisoners in solitary confinement for disciplinary reasons might be detained in so-called 'empty cells' (*celle lisce*), i.e. cells with no furniture except for the bed (and in some cases a table with a chair). This prison regime infringes upon the principle of human dignity, and has already been stigmatised by both ECtHR and Italian courts. Another critical issue reported by the authority concerns the possibility that, on the one hand, the same prisoner is condemned to more than one solitary confinement period and, on the other hand, those prisoners condemned to such detention measure in accordance with Article 72 of the Italian Criminal Code are excluded from all community activities, whereas this legislative provision does not set out the complete deprivation of social contacts.<sup>18</sup>

## 5. Access to healthcare

- a) What is the national standard with regard to access to medical services in prisons? (E.g. do prisoners have prompt access to medical services within prisons or externally? Do prisoners have access to dentists and opticians?)
- b) Are there any special provisions relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly prisoners, the mentally ill, drug addicted prisoners etc.)
- c) Is access to healthcare in prisons regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes.

<sup>16</sup>Available at: [www.brocardi.it/codice-penale/libro-primi-titolo-iii/capo-iii/art72.html](http://www.brocardi.it/codice-penale/libro-primi-titolo-iii/capo-iii/art72.html).

<sup>17</sup>Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2017*, available at:

[www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf](http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf).

<sup>18</sup>Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2017*, available at:

[www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf](http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf). "Analoghe considerazioni valgono per quanto attiene all'applicazione dell'isolamento diurno previsto dall'articolo 72 c.p. che la prassi interpretativa dell'amministrazione penitenziaria configura con l'esclusione totale da ogni forma di socialità in particolare quando è connesso al regime di cui all'articolo 41-bis o.p. A tal proposito si rileva che se la giurisprudenza di legittimità ravvisa la compatibilità dell'istituto con i principi dell'articolo 27 co.3 della Costituzione nel fatto che 'il condannato sottoposto a tale misura può comunque fare vita in comune' (Cass. Sez.I, 26.02.2014, n.9300), con ciò escludendo che l'isolamento possa consistere nella privazione totale di ogni forma di socialità, per altro verso il Comitato europeo per la prevenzione della tortura ha sempre espresso serie censure alla previsione della misura dell'isolamento in sentenza richiedendone fin dal 2004 (CPT/Inf (2006) 16, par. 91) l'esclusione dall'ordinamento e ribadendo tale richiesta anche nel suo più recente Rapporto relativo alla visita del 2012, (cfr. CPT/ Inf (2013) 32, par. 98), in ragione del principio affermato in ultimone XXI Rapporto generale del 2011 che 'la detenzione è di per sé la pena e aggravamenti potenzialmente pericolosi di una sentenza di detenzione come parte della pena sono inaccettabili' (XXI Rapporto generale del CPT, 10.11.2011, sezione dedicata all'isolamento, par.56-64)." (pp. 71-72)

- e) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). 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 here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

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Article 11 of Law No. 354/1975 establishes that 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. In case the court considers there is no risk of escape during the transfer, police guard during the external treatment can be avoided. At the beginning of the detention period, each prisoner must undergo a general health check-up aimed at identifying any physical and psychological diseases. Prison medical staff members are supposed to attend prisoners every time their intervention is required, and are supposed to inform relevant authorities of any disease requiring specialist care. In female detention wings, specialist medical care shall be ensured to pregnant women and new mothers. The prison administration can establish cooperation protocols with local medical facilities. Prisoners can ask to be examined by medical professionals of their choice if they can bear the related costs. Twice a year, a doctor inspects each prison with a view to monitoring healthcare services, hygienic conditions, and contagious diseases prevention mechanisms. Article 13a of the above mentioned act sets out that prisoners convicted for sexual crimes perpetrated against children can apply for a specialist psychological treatment aimed at their rehabilitation. Prisoners sentenced to up to three years' imprisonment can be placed under the custody of local social services, or under home custody if the prison medical staff certifies they are affected by AIDS/HIV (Article 47c). Prisoners with physical or psychic impairments shall be detained in specific facilities or areas in order to receive adequate treatments (Article 65).

Article 17 of Decree of the President of the Italian Republic No. 230/2000 also establishes that, in case an emergency transfer is needed (and there is not enough time to wait for the authorisation from the competent court), the authorisation can be given by the prison director; such decision shall be immediately communicated to the competent judicial authority. The assessment of prisoners' psychic condition is carried out by the prison specialist staff, if available, or in another detention facility (Article 112). Each prison can establish cooperation protocols with local psychological and psychiatric medical facilities (Article 113).

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,<sup>19</sup> 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. Local healthcare departments are consequently in charge of medical assistance in adult prisons, juvenile prisons, special facilities, wings destined to prisoners with physical and psychic impairments, and judicial psychiatric hospitals.

The last relevant legislative reform in this field was the approval of Law No. 81 of 30 May 2014, Conversion into law, with modifications, of Decree Law No. 52 of 31 March 2014, Urgent provisions for the replacement of judicial psychiatric hospitals.<sup>20</sup> The aim of this law was to abolish judicial psychiatric hospitals (*ospedali psichiatrici giudiziari*, OPG) as of 31 March 2015 and to replace them with Security Measures Enforcement Facilities (*Residenze per l'Esecuzione delle Misure di Sicurezza*, REMS), to be established at regional level in order to

<sup>19</sup> Decreto del Presidente del Consiglio dei Ministri 1 aprile 2008, Modalità e criteri per il trasferimento al Servizio sanitario nazionale delle funzioni sanitarie, dei rapporti di lavoro, delle risorse finanziarie e delle attrezzature e beni strumentali in materia di sanità penitenziaria, available at:

[www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2008-05-30&atto.codiceRedazionale=08A03777&elenco30giorni=false](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2008-05-30&atto.codiceRedazionale=08A03777&elenco30giorni=false).

<sup>20</sup> Legge 30 maggio 2014, n. 81, Conversione in legge, con modificazioni, del decreto-legge 31 marzo 2014, n. 52, recante disposizioni urgenti in materia di superamento degli ospedali psichiatrici giudiziari, available at:

[www.gazzettaufficiale.it/eli/id/2014/05/31/14G00093/sq%20](http://www.gazzettaufficiale.it/eli/id/2014/05/31/14G00093/sq%20).

host individuals from the regional territory. Such residences shall be staffed with qualified and trained personnel, and accommodate a limited number of people. Moreover, security staff shall carry out its duties outside the facility only.

According to Antigone,<sup>21</sup> it is difficult to monitor prisoners' health conditions because of the lack of an effective data gathering and storage mechanism at national level. Between 60 % and 70 % of detainees suffer from chronic diseases; moreover, 59 out of the 86 monitored prisons still do not use electronic medical records, and consequently continuity of treatment is not always ensured in case the prisoner is transferred to another detention facility. Moreover, only 30 % of the monitored prisons are adequately equipped to grant assistance and to respond to the needs of prisoners with disabilities. Psychiatric assistance is provided 8.6 hours a week, whereas psychological assistance 11.3 hours a week: in both cases, there are significant differences at regional level. At the moment, Italy features 30 operational REMS, which detain 599 people (including 54 women, i.e. 9 %, twice the percentage of women serving in Italian adult prisons).

The Authority for the Protection of People who are Detained or Deprived of their Personal Freedom<sup>22</sup> stressed some crucial concerns about detention conditions of people whose psychic impairments emerge during the detention period: these people are usually detained in specific areas of the detention facilities or in specific facilities (Branches for the Protection of Mental Health – *Articolazioni per la tutela della salute mentale*), where they can be adequately treated and assisted (REMS, instead, are detention facilities targeted at those prisoners whose psychic impairment is considered to be the main cause of the perpetrated criminal offence). The medical staff within the Branches for the Protection of Mental Health should provide tailored assistance to each prisoner in such conditions. According to the authority's monitoring activity, some prisons are not endowed with the facilities under examination, and prisoners are detained in solitary confinement or in ordinary detention areas. Moreover, the authority reported that the 'empty cell' practice (described in previous sections) is still an appalling reality in some prisons. Finally, the authority pointed out that, in two of the monitored prisons, physical restraint was used to control prisoners with psychiatric impairments.<sup>23</sup> In its 2018 report, the Authority stressed a crucial point concerning female detainees who are not granted an in-house gynaecological healthcare support and they are forced to be transferred to local hospitals to have a visit: this practice – considering the fact that outside visits require an additional administrative and bureaucratic procedure – might discourage some female detainees from requesting a needed visit. Moreover, this practice constitutes a barrier to the access of female prisoners to female cancer prevention which is publicly granted to all women living in Italy.<sup>24</sup> More in general, the Authority reported the situation of prisoners detained in "protected medicine sections" (*Reparti di medicina protetta*), that is those sections existing in some jails providing healthcare assistance to those detainees who need enduring and specialised assistance. According to the Authority, detention conditions of prisoners in these

<sup>21</sup>Scandurra, A. and Miravalle, M. (eds.) (2018), *Un anno in carcere. XIV rapporto sulle condizioni di detenzione*, Antigone, available at: [www.antigone.it/quattordicesimo-rapporto-sulle-condizioni-di-detenzione/](http://www.antigone.it/quattordicesimo-rapporto-sulle-condizioni-di-detenzione/).

<sup>22</sup>Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2017*, available at:

[www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf](http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf).

<sup>23</sup>Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2017*, available at:

[www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf](http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf). "Seguendo questi parametri, il Garante Nazionale ha spesso invitato, a seguito delle visite effettuate, ad attuare una radicale revisione dell'approccio al tema della privazione della libertà di persone condanno mentale, non soltanto per rispetto delle persone malate, qualunque sia il reato da esse commesso, ma anche al fine di tutelare la complessiva armonia all'interno dell'Istituto e di non caricare il personale che vi opera di un ingiusto e inadeguato peso lavorativo ed emotivo. Non può tuttavia esimersi dal sollevare alcune perplessità sul fatto che in due Istituti – e secondo il sistema ufficiale di controllo di tali eventi, soltanto in essi – si sia applicata la contenzione fisica con fascette e legatura di polsi e caviglie, in un caso tre volte, nell'altro quattro, in sezioni classificate per *osservandi*." (p. 68)

<sup>24</sup> "Così come appare inaccettabile che per le visite mediche ginecologiche in taluni Istituti, come per esempio la Casa circondariale "Salvatore Bacchiddu" di Sassari, si debba ricorrere sistematicamente alle visite esterne in ospedale perché non è prevista tra gli specialisti la figura di un ginecologo. Inutile dire che la prevenzione dei tumori femminili, che ormai sul territorio italiano è assicurata a tutte le donne con campagne informative e diagnostiche delle Aziende sanitarie territoriali, in tali condizioni è inimmaginabile: ecografie mammarie, mammografie o pap test non vengono proposte alle donne e sono garantite solo in caso di prescrizione medica, quindi in una prospettiva tipo reattivo", Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2018*, p. 182-183, available at: <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bbb00eb9f2e4ded380c05b72a2985184.pdf>

sections – often located in neglected areas of the prison – are critical entailing isolation, no access to socialisation areas or to outdoor spaces, no possibility to go out of their rooms or communicate with other prisoners. There is no phone to call their relatives or the lawyer and the rooms' windows are often sealed. For these reasons – and also to improve the difficult working conditions of the police staff operating in these sections – the authority recommends the complete reform of these sections in all the prisons where they have been created.<sup>25</sup>

## 6. Special measures in place to protect juvenile prisoners.

- a) Are there any legal instruments, such as a legislative act, internal prison regulations, manuals, policy papers etc. regulating the separation of juvenile prisoners from adults? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)
- b) What age category falls under this specific juvenile prison regime?
- c) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- d) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). 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 here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

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Children are not detained with adults but in specific detention facilities. They also stand trial in the framework of a specific juvenile justice system.

According to Article 98 of the Italian Criminal Code,<sup>26</sup> a person can be charged with a criminal offence if, at the moment of the perpetration of such offence, they are at least 14 years old, and are deemed to be mentally fit to stand trial. Decree of the President of the Italian Republic No. 448 of 22 September 1988, Approval of provisions

<sup>25</sup> “In generale, comunque, nella gran parte delle strutture ospedaliere destinate alle persone detenute non c'è spazio per tutti quegli elementi che l'ordinamento definisce come centrali quali il positivo mantenimento del rapporto con la famiglia, le attività trattamentali, la socialità, i momenti all'aria aperta. A volte manca anche il telefono per chiamare le famiglie o l'avvocato. Inoltre, l'organizzazione burocratico-amministrativa rende la vita in alcune di esse, per esempio in quella della “Azienda ospedaliera dei Colli” di Napoli, molto difficile: per fare un colloquio, i famigliari devono ritirare fisicamente un foglio all'Istituto di appartenenza della persona detenuta ricoverata – che magari è in un'altra città – e con quello presentarsi al Reparto ospedaliero; per gli eventuali acquisti i detenuti devono fare richiesta al proprio Istituto di appartenenza che verifica il loro conto, acquista il genere e lo porta fisicamente al Reparto

ospedaliero tramite la Polizia penitenziaria. Assenti quasi ovunque i volontari e laddove sono operativi talvolta – come nel caso del “Sandro Pertini” di Roma – devono effettuare i colloqui con i pazienti detenuti attraverso il cancello chiuso della stanza. Una prassi questa che il Garante stigmatizza con forza. In altre parole, in Ospedale il carcere rischia di tornare a essere solo sbarre, porte blindate, separatezza e ozio. Tutto il resto è temporaneamente sospeso. Pur comprendendo e ribadendo che si debba trattare di strutture ospedaliere in cui la permanenza dovrebbe essere limitata al tempo strettamente necessario per le particolari analisi o terapie, l'aspetto segregante di tali strutture, in particolare di quelle non configurate come Reparti ma come stanzette separate e utilizzabili al bisogno, richiede una revisione sostanziale. Anche in considerazione del fatto che questa situazione ricade anche in modo inevitabile sul personale di Polizia che vi presta servizio, che opera a volte senza una specifica attenzione preventiva sul piano profilattico e psicologico, in spazi che rischiano di essere avulsi dal contesto del proprio naturale luogo di lavoro, a continuo contatto con un surplus di sofferenza e in ambiti che troppo spesso trasmettono una sensazione di marginalità e a volte degrado”, Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2018*, p. 200, available at:

<http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bbb00eb9f2e4ded380c05b72a2985184.pdf>

<sup>26</sup>Available at: [www.brocardi.it/codice-penale/libro-primotitolo-iv/capo-i/art98.html](http://www.brocardi.it/codice-penale/libro-primotitolo-iv/capo-i/art98.html).

on criminal proceedings against minors,<sup>27</sup> governs the juvenile detention and criminal system. According to the applicable legislation, detention shall be considered as a last-resort measure, whereas alternative measures shall be preferred whenever their application is possible. There are 16 Juvenile Detention Centres (*Istituti penali minorili*) in Italy.

According to the Ministry of Justice, in 2017 1,057 children (939 boys and 118 girls) started to serve a detention period in a juvenile detention facility; as of 31 December 2017, 425 children were still detained in such facilities (394 boys and 31 girls).<sup>28</sup>

According to the Authority for the Protection of People who are Detained or Deprived of their Personal Freedom,<sup>29</sup> detention is actually the last-resort measure for children who have committed criminal offences:<sup>30</sup> in its 2017 report, the authority pointed out that, out of the 8,435 young criminal offenders assisted by the juvenile judicial system, 459 children were detained in a Juvenile Detention Centre. This opinion is confirmed in the Authority's 2018 report: detention still is the last-resort measure and concerned – as of 31 March 2018 – 480 children detained in the 17 existing Juvenile Detention Centres.<sup>31</sup>

## 7. Special measures in place to protect prisoners from violence

- a) Are any special measures in place to protect prisoners against violence, including sexual violence? (E.g. are prisoners supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do prisoners have access to a complaints mechanism?)
- b) Are there any special measures in place to protect LGBTI prisoners, who are particularly vulnerable to violence/sexual violence?
- c) Are these measures regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.)..
- e) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English) These reports

<sup>27</sup> Decreto del Presidente della Repubblica 22 settembre 1988, n. 448, Approvazione delle disposizioni sul processo penale a carico di imputati minorenni, available at:

[www.laricerca.loescher.it/images/stories/pdf\\_normative\\_1/dpr\\_448\\_1988\\_disposiz\\_penali\\_minori.pdf](http://www.laricerca.loescher.it/images/stories/pdf_normative_1/dpr_448_1988_disposiz_penali_minori.pdf).

<sup>28</sup> Ministry of Justice [2017], 'Flussi di utenza degli Istituti penali per i minorenni. Situazione Nazionale. Anno 2017', available at: [www.giustizia.it/resources/cms/documents/IPM\\_anno\\_2017.pdf](http://www.giustizia.it/resources/cms/documents/IPM_anno_2017.pdf).

<sup>29</sup> Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2017*, available at:

[www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf](http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf).

<sup>30</sup> In its 2017 annual report, the authority expressed its concerns about the possibility of children being transferred to adult prisons once they turn 18, being consequently exposed to the risk of getting in contact with criminality. As to this issue, the authority made the following recommendation: "Nel corso delle visite agli Istituti penali minorili (IPM) è emersa tuttavia un'acriticità legata alla presenza dei giovani adulti all'interno degli Istituti (decreto legge 26 giugno 2014 n. 92, convertito in legge 117/2014). Non sfugge l'importanza della finalità della legge, tesa a evitare il passaggio dei giovanissimi nell'ambito del sistema penale per adulti, con il rischio di favorire un contatto e un ingresso in circuiti criminali. Tuttavia, le visite effettuate hanno mostrato frequentemente una realtà non attrezzata in maniera tale da offrire spazi, attività e percorsi differenziati per soggetti di età così diversa come possono essere un ragazzo di 15 anni e un giovane di 25. La necessità di sviluppare progetti adeguati alle età e organizzare spazi che diano la possibilità di effettivamente implementare tali progetti sono gli unici antidoti per evitare o una difficile commistione o la richiesta da parte degli stessi giovani ultradiciottenni di essere trasferiti verso un Istituto per adulti, quasi vivendo tale ipotesi come un processo di emancipazione." – Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2017*, p. 48, available at:

[www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf](http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf).

<sup>31</sup> Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2018*, p. 218, available at: <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bbb00eb9f2e4ded380c05b72a2985184.pdf>

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The applicable legislation does not rule in great detail the issue considered in this section.

Article 35 of Law No. 354/1975 introduced a generic right to file a complaint, granted to all prisoners to allow them to challenge any decisions concerning their detention: such complaint can be addressed to the prison director, judicial authorities, the Authority for the Protection of People who are Detained or Deprived of their Personal Freedom, its regional counterparts, the President of the Regional Council, the surveillance court, and the President of the Italian Republic.

Article 2 of Decree of the President of the Italian Republic No. 230/2000 establishes that 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. Article 75 establishes that the surveillance court and the prison director shall grant each prisoner the possibility of communicating with them through individual meetings on a regular basis, during which complaints can be lodged. The surveillance court and the prison administration are compelled to promptly inform prisoners about the outcome of their complaints. The act also governs disciplinary infractions perpetrated by prisoners, and sets out potential sanctions to combat and punish such infractions (Article 77). It furthermore sets rules on the disciplinary procedure to combat such infractions (Article 81). These provisions, however, cannot be considered as measures aimed at protecting victims against violence, but rather as measures aimed at punishing unlawful behaviours against the prison administration or other prisoners.

According to the Authority for the Protection of People who is Detained or Deprived of their Personal Freedom,<sup>32</sup> Italian authorities should introduce a strict monitoring system to identify acts of violence perpetrated by police officers against prisoners, as well as a specific criminal offence to contrast such violence.<sup>33</sup> Moreover, the authority points to the critical situation of LGBTQI prisoners: they are often detained in isolated areas of the prison together with offenders condemned for specific offences (such as sexual offences against children), which puts them at risk of violence by other detainees. Solitary confinement measures are often justified by the prison management as necessary to protect these subjects from potential violent acts (including sexual violence) perpetrated by other prisoners. According to the authority, the division between heterosexual/cisgender prisoners and LGBTQI prisoners represents a breach of the latter's human dignity, unlawfully discriminates against them, and makes them serve their detention period in even harsher conditions. Segregation and solitary confinement – far from being a protection measure – can exclude these subjects from the social activities and integration programmes they are entitled to. For these reasons, the authority recommends that LGBTQI

<sup>32</sup>Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2017*, available at:

[www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf](http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf).

<sup>33</sup>In its 2017 annual report, the authority made some recommendations on how to implement a monitoring and referral system focused on violent acts targeting prisoners in detention facilities: “Il punto centrale non è il numero dei casi; è piuttosto il clima silenzioso, opaco, chesiavvertequandoicasisimanifestanoecheimpediscediisolareipochiviolenti, a danno dell'intero sistema. Il salto in avanti da compiere è la rottura di questo schema, a partire dall'adeguatezza delle indagini da compiere di ciascun episodio. Questo aspetto chiama in causa diversi attori, con funzioni e responsabilità diverse; in particolare i medici a cui vanno richiesti scrupolosamente i compiti della completa refertazione (in modo comprensibile) di ogni traccia di violenza sul corpo della persona visitata, del riportare le motivazioni che tale persona indica come causa di tal traccia, dell'indicare il livello di coerenza tra quanto riportato e quanto riscontrato nella visita medica. Ma, chiama in causa anche direttori e comandanti di reparto, per la loro capacità di individuare segnali e di saperli reprimere sul nascere, nonché sull'inviare periodicamente, in modo formale nei comportamenti, il messaggio che simili azioni non sono e non saranno tollerate. Chiama infine l'Amministrazione perché definisca regole di indagine interna che rispettino quei parametri che la Corte EDU ha più volte stabilito per definire 'effettiva' una investigazione su un caso di maltrattamenti. Infine, le Procure perché scrupolosamente si attengano al principio di non poter assegnare funzioni di Polizia giudiziaria a persone che appartengono allo stesso Corpo degli indagati – cosa che attualmente non è rispettata. Infine, chiama in causa anche il Garante Nazionale, che pure non ha esitato a informare la Procura in alcuni casi, per la sua funzione di continua vigilanza e perché culturalmente aiuti a isolare quei pochi che con il loro comportamento offendono la stragrande maggioranza che opera con professionalità, in piena legalità e anche spesso con personale passione.” – Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2017*, p. 47, available at:

[www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf](http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf).

prisoners be detained together with the other prisoners, and that protection measures be implemented to protect their safety.<sup>34</sup> As to transgender prisoners, the authority suggests they should be detained in female prisons or in prisons where a female wing is available; however, in view of the anatomy of these subjects, security can be ensured by male prison officers. The authority also provides significant data concerning LGBTQI prisoners: as of 24 January 2017, three detention facilities had a specific wing for lesbian and gay prisoners, detaining a total of 20 people; moreover, six prisons had a specific wing for transgender prisoners, detaining a total of 47 people.<sup>35</sup> These recommendations concerning the treatment of LGBTQI prisoners are confirmed in the 2018 report of the Authority that stressed again its concerns about the possibility that the creation of separated sections for these subjects might result into an unjustified discrimination and exclusion from common activities and socialisation causing them a relevant harm and distress from a psychological point of view.<sup>36</sup> Moreover, the

<sup>34</sup>This kind of recommendations had already been made by the authority after its monitoring visit to the detention centres of Veneto, Trentino-Alto Adige/Südtirol, and Friuli Venezia Giulia on 28 June and 5 July 2016. In the report released after the visit, the authority expressed its opinion concerning the existence of a specific wing for lesbian and gay detainees in the detention centre of Gorizia: “[...] il Garante Nazionale ritiene che si giunga al momento di fare il punto sull’iniziativa in presa con l’apertura di una sezione di questo tipo, sul significato che essa inevitabilmente assume, sul rischio di ulteriore stigmatizzazione che essa può comportare sulle persone che vi sono ospitate e, più in generale sulla accettabilità in sé di una sezione così connotata, destinata ad accogliere persone detenute da un territorio che copre tutto il Triveneto e a proporre un regime diverso dall’ordinario sulla base del loro orientamento sessuale [...] il Garante Nazionale aveva osservato che la predisposizione di una specifica sezione in uno specifico Istituto in cui far confluire i detenuti da altri Istituti che o chiedono protezione o siano individuati a rischio di possibili aggressioni in base all’orientamento sessuale si configura inevitabilmente come un ‘mondo a parte’, in pieno contrasto con un’idea di esecuzione penale che offra anche chances differenti a individui differenti, ma che non contraddica il principio di uguaglianza che connota il concetto stesso di pena privativa della libertà. [...] Pertanto il Garante Nazionale [...] raccomanda fermamente che sia posto termine all’esperienza della sezione per protetti omosessuali nella Casacircondaria di Gorizia, che le persone attualmente ristrette siano trasferite altrove, che i locali siano altrimenti utilizzati.” – Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2016), *Rapporto sulla visita nelle Regioni Veneto, Trentino Alto Adige, Friuli Venezia Giulia (28 giugno - 05 luglio 2016)*, available at: <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/9958ac6c553f6e5037634149b372605b.pdf>.

<sup>35</sup>Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2017*, available at: [www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf](http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/91f69ffca2d0d1e224c08c65adf62343.pdf). “Il Garante Nazionale ritiene che la netta separazione tra detenuti eterosessuali e LGBTQ violi in maniera pesante la dignità di questi ultimi ed è per questo che è importante trovare soluzioni alternative per garantire la tutela di tutti i detenuti. Creare sezioni apposite destinate ai detenuti omosessuali, per tutelarli da eventuali aggressioni omofobe, può significare, indipendentemente dalle intenzioni di chi le ha ipotizzate, escluderli da percorsi di trattamento negando loro diritti riconosciuti agli altri detenuti. [...] La protezione che deve essere garantita alla popolazione detenuta negli Istituti che applicano tale forma di tutela non deve, pertanto, diminuire la partecipazione degli stessi alla normale vita carceraria, alle attività dirette al reinserimento e, quindi, a tutti i percorsi di trattamento predisposti. Pertanto, ove mai fosse necessaria per la loro sicurezza una particolare collocazione durante le ore di riposo in apposite stanze detentive a essi riservate, all’interno dello stesso Istituto dove sono ristretti, questa non può e non deve consistere nella predisposizione di una sorta di situazione detentiva ad hoc dove trasferire i soggetti detenuti in base all’orientamento sessuale. Un’organizzazione di siffatto tipo determinerebbe non soltanto una illegittima discriminazione di carattere personale ma indurrebbe una situazione di isolamento ingiustificato e lesivo della normale dignità che va riconosciuta a qualsiasi persona, indipendentemente dalla condizione detentiva.” (pp. 76-77) As to transgender and transsexual detainees, the authority made some recommendations: “Anche con riferimento ai detenuti transessuali, si ritiene che le condizioni detentive debbano assicurare momenti di essenziale socializzazione e rieducazione indipendentemente dall’espressione della propria sessualità garantendo, nel contempo, opportuni mezzi di ‘protezione’ a tutela di eventuali discriminazioni e/o violenze. Ai fini di una migliore tutela di tali persone, il Garante Nazionale accoglie con favore la possibilità di ubicazione dei detenuti transessuali negli Istituti femminili o in cui sono presenti sezioni femminili in considerazione delle esigenze trattamentali e di maggiori garanzie. Al contrario, però, suscita qualche perplessità che la vigilanza di tali sezioni possa venire svolta solo ed esclusivamente da personale di Polizia penitenziaria di sesso femminile dato che, comunque, fino ad ora, per ragioni relative anche alla fisicità ed alla anatomia (si pensi a una perquisizione) di tali detenuti, questi compiti vengono espletati dal personale di Polizia penitenziaria di sesso maschile.” (p. 77)

<sup>36</sup>“In alcune realtà penitenziarie visitate sono state riscontrate prassi di collocazione in sezioni o celle specifiche che, se da un lato possono andare incontro alle esigenze di protezione, dall’altro possono al contrario causare ulteriore discriminazione ed emarginazione. In particolare, quando la separazione diviene totalizzante dell’intera giornata e, quindi, anche delle possibilità comunicative. Frequentemente, infatti, il Garante ha verificato come tali soluzioni abbiano dato luogo

Authority reported that in some of the detention facilities monitored during 2017, LGB prisoners are detained in generic protected sections and all the documents concerning their status and detention activities (such as the formal requests addressed to the jail's direction) report the indication "Protected-homosexual": considering that such documents can be accessed by several members of the prison's staff this might represent a disclosure of sensitive personal data and a violation of the prisoners' right to protection of personal information. For these reasons, the Authority recommends to abolish such practice in all Italian detention facilities.<sup>37</sup> As to female T detainees – who as for 9 April 2018 were 58 detained in 10 specifically-destined prison sections – they were all held in male detention facilities. For this reason, the Authority recommends again that these people are detained in female sections in order to respect their gender identity and that a public and political debate is fostered to promote their detention conditions. In any case, the Authority recommends for this group of detainees as well that protection measures do not entail the exclusion of prisoners from common activities and socialisation.<sup>38</sup>

## 8. Responsible authorities

- a) What authority is responsible for the provision of additional information requested under Article 15 of the EAW Framework Decision? (*Please specify whether there a central authority deals with these requests, if yes, please provide contact details, such as the name of the institution, a website, physical and email addresses, and a telephone number. In the absence of a central authority, who deals with those requests?*)
- b) What authority is responsible for monitoring conditions of detention and putting forward recommendations?

***Please cite any relevant sources***

a serie problematiche: minore accesso ai diritti riconosciuti agli altri ristretti; minore offerte trattamentali; esclusione dalle attività comuni, anche quelle scolastiche; mancanza di un servizio sanitario adeguato ai loro specifici bisogni assistenziali. Sebbene, quindi, l'obiettivo dichiarato sia di tenere queste persone al riparo da atti di omofobia e violenze, il sistema adottato finisce per escluderle dalle attività di rieducazione e dalla vita detentiva quotidiana e alla richiesta di protezione si tende a rispondere con esclusione e isolamento. Il Garante ribadisce che la protezione, quando richiesta, va assicurata senza che quest'ultima porti alla diminuzione della possibilità di partecipare alla vita comune e ai percorsi trattamentali", Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2018*, p. 177, available at:

<http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bbb00eb9f2e4ded380c05b72a2985184.pdf>.

<sup>37</sup> "Purtroppo però va sottolineato che anche in alcuni Istituti ove le persone di diverso orientamento sessuale sono ospitate in sezioni genericamente indicate come «per protetti», gli stampati che riportano la loro collocazione indicano la dizione «protetti – omosessuali»; tali stampati vengono gestiti da tutto il personale, inclusi gli amministrativi, con una inaccettabile non tutela della privacy della persona detenuta. Il Garante chiede che tale pratica sia con urgenza rivista su tutto il territorio nazionale", Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2018*, p. 178, available at:

<http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bbb00eb9f2e4ded380c05b72a2985184.pdf>

<sup>38</sup> "Il Garante nazionale ha da tempo espresso l'opinione che sia più congruo ospitare tali sezioni specifiche in Istituti femminili, dando maggior rilevanza al genere, in quanto vissuto soggettivo, piuttosto che alla contingente situazione anatomica. Nello scorso anno aveva valutato con soddisfazione la stesura di un decreto del ministro che, almeno in via sperimentale, andava in questa direzione e ridefiniva le sezioni destinate alle persone transessuali. Purtroppo il decreto non è stato più emanato e il tema sembra sparito dall'agenda delle urgenze. Per questo, raccomanda che sia almeno riaperta la discussione, anche al fine di considerare le perplessità che possano averne frenato il percorso. Ribadisce comunque, che anche per tali sezioni, la cui specificità è ineliminabile, valga il principio dell'inclusività nella vita detentiva generale dell'Istituto e che siano predisposte sia attività specifiche, sia attività in comune con altre persone detenute", Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), *Relazione al Parlamento 2018*, p. 179, available at: <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bbb00eb9f2e4ded380c05b72a2985184.pdf>

- a) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States was implemented with Law No. 69 of 22 April 2005, Provisions to bring the national legal framework into conformity with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.<sup>39</sup> As to the authority responsible for the provision of additional information as requested under Article 15 of the decision, Article 16 of Law No. 69/2005 establishes that the territorial Court of Appeal in charge of the case – which received the European arrest warrant (EAW) from the Ministry of Justice – can request the other Member State – directly or through the mediation of the Ministry of Justice – to provide additional and missing information. The Court of Appeal can set a deadline in this regard, which cannot be in any case longer than 30 days. If the issuing Member State does not comply with the information request, the Court of Appeal can reject the EAW request. The Italian territory is divided into 26 courts of appeal districts, coinciding with the territory of each Region or with a part of it. As to the authority dealing with information requests from other Member States, it is not clearly identified by either the abovementioned act or the vade mecum concerning the issuing procedure of an EAW released by the Ministry of Justice: nonetheless, as the Ministry of Justice acts as the central authority in compliance with Article 15 of the decision, it can be assumed that it is the authority in charge of liaising and cooperating with other Member States in the framework of EAW procedures. More specifically, information requests are received by the Ministry of Justice, which can ask the Italian judicial authority that requested a specific EAW, to provide clarifications. The Ministry of Justice's professionals in charge of such procedures are the Director General of the Criminal Justice Department (*Direzione Generale della Giustizia Penale*) and the Director of the Second Section of the same department.<sup>40</sup>
- b) The authority responsible for monitoring detention conditions in Italy is the Authority for the Protection of People who are Detained or Deprived of their Personal Freedom, established with Article 7 of Decree Law No. 146 of 23 December 2013, Urgent provisions concerning the protection of detainees' fundamental rights, as well as the progressive reduction of the prison population.<sup>41</sup> This decree was then converted with amendments into Law No. 10 of 21 February 2014, Conversion into law, with modifications, of Decree Law No. 146 of 23 December 2013, Urgent provisions concerning the protection of detainees' fundamental rights, as well as the progressive reduction of the prison population.<sup>42</sup> The authority is an independent monitoring institution in charge of visiting and assessing detention conditions in all the facilities where people are deprived of their personal freedom, including prisons. The authority can point out critical elements in relation to detention conditions, and cooperate with public authorities in order to address them. It furthermore drafts an annual report, which is presented to the Italian Parliament, and has two additional missions: on the one hand, it acts as the monitoring authority under the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; on the other, it is in charge of monitoring return operations of irregular foreign citizens, in compliance with Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>39</sup> Legge 22 aprile 2005, n. 69, Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri, available at: [www.camera.it/parlam/leggi/05069l.htm](http://www.camera.it/parlam/leggi/05069l.htm).

<sup>40</sup> Direzione generale della giustizia penale: Via Arenula, 70 – 00186 Rome; phone +39 06 68852360; fax +39 06 68852030; email: [segreteria.dgpenale.dag@giustizia.it](mailto:segreteria.dgpenale.dag@giustizia.it); certified email: [prot.dag@giustiziacert.it](mailto:prot.dag@giustiziacert.it); Director General: Donatella Donati.

<sup>41</sup> Decreto-legge 23 dicembre 2013, n. 146, Misure urgenti in tema di tutela dei diritti fondamentali dei detenuti e di riduzione controllata della popolazione carceraria, available at: <http://www.gazzettaufficiale.it/eli/id/2013/12/23/13G00190/sq>.

<sup>42</sup> Legge 21 febbraio 2014, n. 10, Conversione in legge, con modificazioni, del decreto-legge 23 dicembre 2013, n. 146, recante misure urgenti in tema di tutela dei diritti fondamentali dei detenuti e di riduzione controllata della popolazione carceraria, available at: [www.gazzettaufficiale.it/eli/id/2014/2/21/14G00022/sq](http://www.gazzettaufficiale.it/eli/id/2014/2/21/14G00022/sq).