

# The COVID-19 Epidemic and the Prison System in Italy

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## Abstract

The Italian Ministry of Justice and that of Health have established two strategies to limit the spread of COVID-19 in prisons: progressive isolation from the external world and adoption of practices to identify possible cases and to treat infected subjects. After the announcement of regulations revolts erupted in numerous Italian prisons. The motivations and effects of these strategy are discussed critically into the search for a balance between the right to health and other rights of prisoners in Italian prisons with the problem of an occupancy level of 121.75%.

## Keywords

COVID-19, prison, pandemic, Italy, public health

On March 7 and 8, 2020, revolts erupted in numerous Italian prisons after the announcement of regulations to contain the spread of COVID-19 in prisons. On April 2, 2020, the first prisoner died of COVID-19, and as of April 9, 58 prisoners and 178 penitentiary police officers have tested positive for the virus (Ferrarella, 2020). Prison populations in other countries are also affected by the virus: In Great Britain alone, seven prisoners have died of it.

The situation in Italy is made all the more dramatic because of endemic overcrowding: As of April 3, 2020, there were 56,830 prisoners in institutions meant for a maximum of 47,000 people, an occupancy level of 121.75% (Garante nazionale, 2020). This particularly fragile environment calls for timely and appropriate provisions to contain COVID-19 infections.

## COVID-19: Transmission and Clinical Characteristics

On January 30, 2020, the World Health Organization (WHO) announced that COVID-19, a respiratory syndrome (SARS) caused by a new variation of coronavirus identified in 2019 (CoV-2), had reached the stage of epidemic and presented an international health care emergency. Human-to-

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human transmission of SARS-CoV-2 was identified between subjects in close contact with patients or with apparently healthy people who were carriers, termed *incubation carriers*. The virus spreads through direct contact in the form of droplets of respiratory secretions (Q. Li et al., 2020), and it has also been suggested to be transmitted through feces or blood (Zhang et al., 2020). The period of incubation has been estimated at 1 to 14 days, and during this latency time, the subject is contagious (Y. H. Jin et al., 2020). The elderly and those with comorbidities are the most vulnerable to infection (Huang et al., 2020). COVID-19 patients present a variety of symptoms, which may include fever, cough, and general tiredness, accompanied by gastrointestinal disorders; the clinical situation can rapidly degenerate into acute respiratory distress syndrome, multiple organ failure, and death (Huang et al., 2020).

Serum antibody tests are available to identify carriers (Z. Li et al., 2020) and subjects who have come into contact with the virus (Y. Jin et al., 2020).

Currently, there is no codified treatment able to curb and eliminate the infection; numerous antiviral drugs have already been used in China (Zumla et al., 2016), together with other drugs (Golden et al., 2015) potentially able to limit the cytokine “storm” elicited by the virus (Chen et al., 2020; Q. Liu et al., 2020; Y. Liu et al., 2020).

## **Legislation Detailing Prevention Measures to Be Adopted in Italian Prisons**

The Ministry of Justice and that of Health have established two strategies to limit the spread of COVID-19 in prisons: progressive isolation from the external world and adoption of practices to identify possible cases and to treat infected subjects.

### ***The Progressive Isolation of Prisons***

On February 22, 2020, the Justice Ministry published a circular to limit the COVID-19 epidemic by exonerating from service all penitentiary workers residing in areas with high numbers of infections, as well as by suspending the transfer of prisoners to and from prisons located in Red Zones (Ministero della Giustizia, 2020a). A Crisis Unit was established, under the General Direction for Prisoners and Treatment, to ensure constant monitoring of the phenomenon and information about suspected or confirmed cases, as well as the prompt adoption of the consequent initiatives.

As COVID-19 continued to spread throughout Italy, these measures were extended to all Italian prisons, and further initiatives were established to limit opportunities for the possible development and spread of the contagion (Ministero della Giustizia, 2020c). First, it was suggested that treatment activities involving or requiring contact with the external community be suspended. Visitors and defense lawyers must wear appropriate protection. Work outside the prison or work inside the prison that involved the presence of people from outside the prison was curtailed. In-person visits with relatives or figures other than defense lawyers were changed to telephone contacts or those using equipment available in the prison. Judicial bodies were encouraged to limit new permissions or provisions for settlement-day releases (Decreto-Legge, 2020b), but to extend those already granted, and to lengthen the period of good conduct leaves (Decreto-Legge, 2020c). Until May 31, 2020, prisoner participation in any audience takes place exclusively by videoconference or remote connection. Legislative Decree n. 11 of March 8, 2020 (Decreto-Legge, 2020a), introduced substantially the same measures for Italian penitentiaries and penal institutions for minors. In addition, to reduce overcrowding, Legislative Decree n. 18/2020 made it possible for sentences under 18 months, or sentences with under 18 months left to serve, to be served under house arrest. Similarly, leaves for good conduct for prisoners with settlement-day release schemes are extended until June 30, 2020, to avoid daily reentry into the prison.

## Health Care Measures

With the note of February 25, 2020 (Ministero della Giustizia, 2020b), the directors of penitentiaries were invited to define procedures for testing suspected cases of COVID-19 among the prison population, isolating those who tested positive, and providing for their health care; they could avail themselves of informative meetings held by experts from the local health care authority.

Pre-triage was introduced for prisoners who have access to the outside. For treatment of prisoners, the following classification was introduced:

1. symptomatic prisoner: a subject with a fever of 37.5 °C, sore throat, respiratory difficulty, and flu-like/COVID-19-like symptoms/pneumonia to be treated according to provisions indicated by the Health Ministry (Ministero della Salute, 2020);
2. prisoner with few symptoms, who has been in close contact with a patient, but whose test results are negative: a subject without many symptoms, evaluated together by the penitentiary physician and the local health care authority service;
3. prisoner who has tested positive for COVID-19 but at the moment is asymptomatic: isolation for 14 days in an area set aside for the purpose, with active monitoring by the penitentiary physician.

## Particular Problems in Application

The legislation has significantly reduced individual rights in order to protect public health, but in the prison context, the limitations imposed do not guarantee the achievement of the goal of the entire legislation, which is to interrupt the chain of transmission of contagion. In fact, the legislation does not provide for what has been commonly identified as the basis of prevention, namely, conducting tests in order to map persons bearing COVID-19 (European Commission, 2020; WHO, 2020b).

The Italian Constitution (Costituzione della Repubblica Italiana, 2012) dictates that in depriving persons of their freedom, there must be full respect of their rights to health, life, and personal integrity. Since prison is not an island, the spread of COVID-19 among prisoners risks creating an enormous hot spot that can transform Italian prisons into epidemic bombs that harm both prisoners and those outside. A prison cannot be entirely cut off because its operations depend on people who come and go daily, such as the directors, social workers, health care staff, and prison guards.

Currently, structural and contingent reasons make it impossible to enact the containment measures dictated (social distancing, voluntary isolation for suspected cases of contagion, health care isolation for those positive for the virus) in the respect for the principle of proportion between the sacrifice of individual rights and the common good.

Given the organization of prison life, prisoners are forced to share very limited spaces; they spend most of their day closed in their cells when they are not engaged in work activities or those of socialization, almost all of which at the moment have been suspended. They share their cells with one or more prisoners, with below-standard toilet and shower facilities and a substantial lack of protective materials such as disinfectants, masks, and gloves. They have the right to no less than 4 hours a day in the open air, but the courtyards available for walking are so small that it is difficult to maintain a safe distance for this elementary motor activity in times of “social distancing.”

In addition, the grave overcrowding of Italian prisons makes it substantially impossible to put into practice measures to contain the spread of COVID-19, even though the WHO guidelines of March 23, 2020, warned that “the global effort to tackle the spread of disease may fail without proper attention to infection control measures within prisons” (WHO, 2020c, para. 3).

By now, the problem of overcrowding has become endemic in Italy. It certainly contributed in the past to causing a high suicide rate (Polimeni, 2019) and earned Italy the condemnation of the European Court of Human Rights for violating art. 3 of the European Convention on Human Rights (inhuman and degrading treatment; Corte Europea, 2013).

In this context of structural and personal fragility in which prisoners are much more liable to be infected by COVID-19, it is indispensable to act quickly and well: In a very short time, Italian prisons must return to dignified living conditions, guaranteeing that “protective measures must never result in inhuman or degrading treatment of persons deprived of their liberty” (European Committee, 2020, para. 1).

## Conclusions

The approach to countering COVID-19 in Italian prisons, as expressed in the Italian legislation passed since February 2020, covers two large spheres: (1) regulations regarding relations with the “outside” world and (2) regulations regarding life inside the prison.

All of this legislation is based on a view of prison as a place closed off from the outside; COVID-19 should be prevented from entering, but if it should do so, its spread inside and its transmission to the outside world should be limited. This requires adoption of further restrictions, even though they have a very strong impact on the rights of people already deprived of their personal freedom, but in this phase of the emergency, in the very difficult equilibrium between individual needs and public health, the protection of the latter prevails over all other interests.

The issues involved in protecting the health of those inside the prison are even more complex, as the legislation makes no provision for suitable spaces for quarantine for the cellmates of a prisoner who has the virus (Cecchini, 2017; Massaro, 2017). In addition, in such overcrowded conditions, “interpersonal contacts” are not limited to cellmates, and thus even if only one person is infected with COVID-19, most of the prison population would have had contact with the positive case. The legislation does not stipulate concrete and valid preventive actions for this environment at very high risk of contagion. In substance, primary prevention is not possible in the prison environment. The only concrete alternative is to drastically reduce the number of prisoners.

In addition, secondary prevention is decidedly insufficient: The current legislation does not call for testing the entire prison population for COVID-19, and even if this information were available, prisons would not be able to respond with suitable measures to protect the health of the entire prison population. A possible solution could be to organize a “COVID-19 Penitentiary” where prisoners who tested positive would be moved. However, with the existing structures and legislation, this is not possible.

In other words, current Italian legislation attempts to contain some possibilities of contagion inside prisons, seeking to limit the emergency simply by treating subjects who contract the infection and present “appreciable” clinical situations. In substance, the other prisoners are exposed to the risk of infection, and efficient and effective measures of primary and secondary prevention have not been enacted.

It is necessary to adopt *intra moenia* all the safety measures indicated in the WHO’s interim guidance of March 15, 2020 (WHO, 2020a), but their efficacy depends on a rapid and drastic reduction in the prison population, which Italy finds difficult to do, even though many other nations are moving in this direction.

Many U.S. states (California, Ohio, Kentucky, and Texas) have decided to send elderly prisoners or those awaiting sentencing to house arrest. Albania has opted for temporary isolation at home, Brazil has decided to send home 30,000 prisoners deemed not dangerous, Afghanistan will release up to 10,000 and Indonesia up to 18,000, Ethiopia has decided to free 4,000 prisoners whose sentences end in less than a year, and Zimbabwe has adopted basically the same measure for those

sentenced to no more than 36 months and who have served at least half. The king of Morocco has pardoned 5,654 prisoners, while Algeria, Tunisia, and Libya have ordered the release of about 10,000 prisoners.

Of note in Europe is the April 6, 2020, statement of Dunja Mijatovic, the Council of Europe's Commissioner for Human Rights (2020): "The decrease of the prison population is indispensable across Europe to ensure the effective implementation of the sanitary regulations and to ease the mounting pressure on prison personnel and the penitentiary system as a whole" (para. 4).

Thus, in France, home arrest has been proposed for prisoners whose remaining sentence is 2 months or less, while sentences with 6 months or less remaining could be commuted to community service. In the German state of North Rhine-Westphalia, for prisoners with sentences up to 18 months, the remaining prison time is interrupted until the end of July. Norway, Denmark, Finland, and Latvia have suspended pretrial detention, except in cases of absolute necessity, and Spain and the Czech Republic recommend this choice to judges.

These provisions may vary but share the common goal of protecting health. However, in this context, as stated in the document "Respecting Human Rights, Democracy and the Rule of Law during the COVID-19 Crisis," issued on April 7, 2020, by the Secretary General of the Council of Europe, Marija Pejčinović Burić,

The virus is many lives and much else of what is very dear to us. We should not let it destroy our core values and free societies. [...] The major social, political and legal challenge facing our member states will be their ability to respond to this crisis effectively, whilst ensuring that the measures they take do not undermine our genuine long-term interest in safeguarding Europe's founding values of democracy, rule of law and human rights. (Council of Europe, 2020, p. 2)

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