

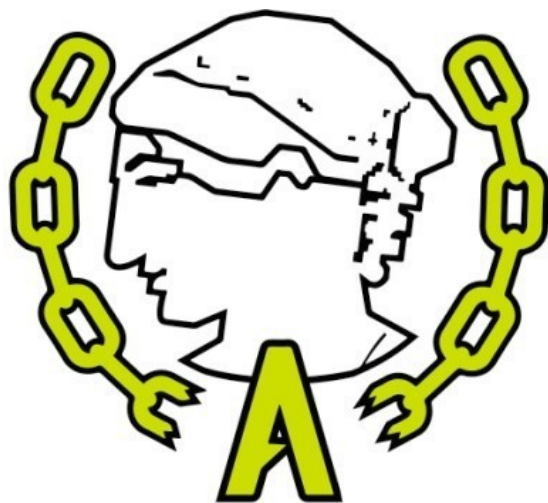
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**Have prisons learnt from Covid-19?
How the world has reacted to the pandemic
behind bars**



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Per i diritti e le garanzie nel sistema penale

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N. 1/2020 HAVE PRISONS LEARNT FROM COVID-19? HOW THE WORLD HAS REACTED TO THE PANDEMIC BEHIND BARS

edited by Susanna Marietti and Alessio Scandurra

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Preface

Susanna Marietti¹, Alessio Scandurra²

At the beginning of 2020 the Covid-19 pandemic began to threaten penitentiary systems around the world, bringing another aspect of the challenge posed by this global emergency under the spotlight. Prisons suddenly became a problem and many governments from all over the planet had to take specific measures to contain health disasters that could also dramatically affect the outside community. This issue of the journal «Antigone» focuses precisely on this epochal challenge that will certainly stay in the memory of all of us for a long time.

The first part of this publication aims to provide an overview of the world situation and collects articles on many different countries. Most of them start with some hints at the situation of prisons on the eve of this pandemic. Overcrowding was, and remains, a common feature of several national prison systems, making social distancing in prison virtually impossible. Prisons are also often reported to be poorly ventilated and unhygienic, and it is not by chance that prisoners, if compared to the general population, present heightened and

unique vulnerabilities, higher prevalence of pre-existing health conditions, problematic drug use and mental health problems. In particular, everywhere in the world prisoners present a very high prevalence of infectious diseases, such as Hiv, tuberculosis or hepatitis C. Infectious diseases in prison have always been a major threat, and also because of this the challenge posed by Covid-19 was, and is, a frightening one.

The articles appearing in the first part describe the reactions to the pandemic by the prison community. A common feature of this reaction was the immediate concern expressed by significant sectors of civil society. Not only Ngos but also academia, workers' unions and representatives of the judicial and forensic professions in many countries immediately launched a cry of alarm and called for immediate measures to combat overcrowding and contagions.

The first reaction of prison systems around the world was a sudden and often radical closure: almost everywhere prison systems went - and in many cases they still are while

we are writing - into lockdown mode. Prison visits by relatives were severely restricted, when not entirely banned, almost everywhere, even though these restrictions were not always proportionate, timely or consistent with other measures adopted for the prevention of the contagion. Prison leaves were largely suspended, as in many cases also the transfer of prisoners from one facility to another. Access to prison by volunteers and professionals not employed by the prison administration was radically restricted, significantly limiting in most countries the often scarce resocialisation and recreational activities available in prisons. Finally, access of lawyers was also restricted, and forms of remote consultation were encouraged, in the end putting at risk the very effectiveness of the right to defence in these critical times.

In some countries this closure of prisons has been partly made up for by an opening up to new technologies, which have made it possible to somewhat mitigate the distance from the outside world. Incredibly, the pandemic has been in several cases necessary for the prison to come out of its cyber illiteracy and move closer to the technological life of the outside world.

The toll of the pandemic on the prison population around the world is huge: in most jurisdictions, prisoners are experiencing unprecedented levels of isolation and lack of significant interactions, in many cases they have not seen their loved ones for months, and despite all this the number of detainees and members of staff that tested positive to Covid-19 is, in some countries, extremely high if compared to the general population.

As already mentioned, one of the first and most common requests by civil society organisations and other actors to address this emergency was the adoption of specific legal provisions aiming at reducing the prison population. Some jurisdictions reacted very quickly, others were much slower, while in several countries nothing has been done at all up to this date. Where measures have been adopted, they differ significantly. In some cases, they were aimed at facilitating the early release of prisoners, usually at the very end of their sentence, often to be put in home detention, with or without some form of electronic tagging. Sometimes those measures were targeted to specific segments of the prison population, such as older detainees, detainees with pre-existing conditions or pregnant women. Other measures adopted were aimed at reducing the number of new prisoners that were entering prisons, either postponing the enforcement of their sentence or converting those sentences into some form of alternative to detention, usually in cases of minor offences or when the offender posed no threat to society.

In most cases a mix of these different approaches has been adopted but in some jurisdictions none of this has ever happened: the extraordinary circumstances we are living in and the threats they pose were not considered a sufficient reason to diverge from the ordinary criminal policies. So much for the idea of detention as *extrema ratio*.

The impact of the measures adopted around the world is quite difficult to assess. The more or less strict limitations imposed on our movements and activities during the pandemic also affected, among

other, crime rates, which in many countries decreased significantly reducing the number of people arrested and taken into custody, as evidenced by the fact that a reduction in the detained population has also been observed in countries where no specific measures were adopted to tackle prison overcrowding. Moreover, several jurisdictions have put some limitations on judicial activities and court hearings to prevent the diffusion of the virus. In some cases, these measures might have even been the cause of an increase in the prison population, such as for instance where pre-trial detention orders were automatically extended with no judicial overview. However, their overall impact in fact has contributed to the reduction of presences in prison.

The articles in the first part of this journal also describe the *new normality* in prison during this pandemic, a normality made up of extremely exceptional measures. But if it is true that the limitations imposed on prisoners were, and are, extraordinary, it is also true that it will take time to assess the impact of all this on inmates and staff. One of the most severe consequences of the pandemic is, indeed, a sudden lack of transparency of prison systems around the world, due to the immediate and radical reduction of contact with, and access to, prisons. We know for instance that the pandemic and the measures adopted to prevent the virus spreading significantly limited the access of prisoners to healthcare services, especially when this would have implied resorting to external facilities. But to what extent this circumstance impacted the wellbeing, and the right to health, of prisoners around the world is too early to say. The same goes for the protests sparked in prison in recent

months and for their management. In some cases, their extent and consequences were so significant that the echo reverberated well beyond prison walls. But this does not mean that all the stories have been told yet. Therefore, what we know about the impact of the new coronavirus on prisons is limited so far. The contributions collected in this issue of our magazine are only a preliminary first attempt to reconstruct this complex story.

What is certain is that two scenarios are possible for the more or less distant future of prison systems all over the world, as well as the whole of humanity and our common coexistence. It may happen that at the end of the pandemic, when we have overcome the feeling of fear in which we live today, we will resume the life before Covid-19 by repeating the mistakes of the past, first of all that of neglecting the protection of the rights of the most vulnerable categories of people. Countries around the world will continue to rely on mass incarceration under the illusion of solving social problems, and life in prisons will resume too often in violation of every international standard on human rights. Or it may happen that we will choose to learn from the tragedy we have experienced. As far as prisons are concerned, this will mean asking ourselves about the too many aspects that make imprisonment today an inhuman, irrational and ineffective punishment in too many places in the world.

Many and broad are the aspects of detention on which we would like to see worldwide reflection. We limit ourselves to suggesting some ideas on which it would be very important to open a dialogue as soon as possible:

- Detention as a measure of last resort: what does it mean? Is there a minimal, or healthy, prison rate for our societies? Should the recommendation to use prison as a last resort not be accompanied by a universal identification of the only values to be protected through the criminal justice system, leaving room for different policies, as well as of the only criminal circumstances to be addressed through prison, leaving room for alternatives to detention?
- Social resettlement, interaction with society and new technologies: new technologies have changed the lives of all of us and of humanity itself. The Internet is one of the deepest fractures that has ever occurred in the course of human history. The prison environment should reproduce external life as much as possible in order to profitably prepare prisoners to re-enter society. The lack of access to new technologies strongly contrasts with the objective of social reintegration. In addition, and without wanting to replace physical contact with remote contact, we should ask: how can a closed community, that should be the most obvious environment for distance learning or remote work, still be the place of the most extreme digital divide in our societies?
- Time served in prison as a standard currency: how can time served in prison have the same *value* regardless of where, when or how it is served? Time served during Covid-19 pandemic proved to be much more demanding than before. This should prompt us to reflect on the differences

between detention under varying conditions, in different countries or even in different prisons in the same country. How can we have, in each jurisdiction but also beyond national borders, so vague and ineffective standards for detention when we have very strict rules, in particular across Europe, for instance for agricultural or industrial production and distribution, or for professional activities?

The second part of the publication collects essays that propose reflections on specific issues concerning the relationship between prison and the pandemic. It opens with an article by Laure Baudrihay-Gérard, who presents a world overview of the impact of the pandemic on pre-trial detention. In many countries, pre-trial detention accounts for more than a third of detained people. Reducing its use is even more crucial in time of Covid-19. Baudrihay-Gérard offers a global scale view of how in recent months many states, including those that have taken measures to reduce the number of prison population, failed to consider pre-trial detainees for large-scale release, undermining efforts to contain spreading of the virus. She also accounts in detail for the restrictions imposed on pre-trial detainees' access to defence rights by Covid-19 measures, thus limiting the opportunities for release. Alarming, legislative changes introduced by many countries further restrict pre-trial prisoners' rights also in the long term, while on the contrary, as Baudrihay-Gérard shows, the current Covid-19 context constitutes an extraordinary opportunity for reform to address the excessive use of pre-trial detention.

In the following contribution, Isabella Cordua and Joseph Bangura focus on the necessity, dramatically highlighted by the spread of the virus, to decriminalise petty offences in many African countries. Petty offences disproportionately impact those, often women, who are already poor and marginalised. Prosecuting petty offences - under vague laws that give the police wide liberty to extort bribes and conduct arbitrary arrests of marginalised groups - means punishing poverty. Many African countries have even created new petty offences to punish the violation of Covid-19 restrictions. Unnecessary arrests contribute significantly to prison overcrowding in Africa, facilitating the spread of diseases.

Luigi Ferrajoli reflects on the need that the pandemic has brought to light for a global constitutionalism. The survival of humanity depends on a unitary strategy for the whole planet. Covid-19, with its daily death toll all over the world, has made what was already clear also in other areas (think, for example, of global warming) dramatically evident. The pandemic strongly emphasises the need for world institutions to guarantee the right to health and all the fundamental rights established in the many international charters. Ferrajoli also dwells on the concept of an emergency and the role of judges in this context, as well as on the lesson we can learn from the pandemic regarding the need to put an end to the centrality of prison in the system of penalties.

In March 2020, the Centre for crime and justice studies in collaboration with Antigone and the World health organization developed a survey to take stock of the incidence and spread of

Covid-19 in prisons in Europe and to assess the different policies and practices pursued. Matt Ford analyses the data collected with this survey by members of the European prison observatory in Austria, Bulgaria, Hungary, Italy, Portugal, Romania, Spain including Catalonia, and in the United Kingdom. Data have been collected and organised according to the factors that could potentially impact the diffusion and the effect of the virus, and according to the actual outcomes. In the article, patterns in each factor and outcome are explored by turn, before correlations between factors and outcomes are analysed.

In the following essay, Corina Giacomello starts from her field work in prisons and drug treatment centres in Mexico in order to argue that current drug policies promote violence against women and children and further impair gender equality beyond the Mexican experience. The world female prison population has been increasing at a faster pace than the global prison population also because of the enforcement of repressive drug policies. These policies create the conditions for women's exploitation in a context of patriarchal relations, and their further exclusion through imprisonment. Covid-19 should act as a prompter of the need to reduce women's deprivation of liberty, including compulsory treatment, a common practice in different parts of the world that has attracted too little attention during the pandemic.

Patrizio Gonnella tackles the theme of identitarian ideology, a virus as dangerous as Covid-19. The virus of identitarian ideology is based on social exclusion, inequality and ethnic discrimination. The pandemic has called into question the certainties of sovereignists that seemed to be granitic and winning. Are we facing the

revenge of those who believe in the cosmopolitanism of human rights and solidarity? Pope Francis proposes the theology of fraternity. Is the world ready to transform a tragedy into an opportunity to rebuild less violent social ties, not based on prisons or penal repression?

Adriano Martufi illustrates the way European institutions have responded to Covid-19 in prisons during the early months of the pandemic, covering the initiatives adopted within the Council of Europe and the measures taken by the European union. The Council of Europe's bodies have confirmed their long-standing attitude to combine a normative approach based on human rights with evidence-based knowledge as a means to improve the treatment of prisoners. Institutions of the Eu, in turn, due to the lack of a clear legal basis to enact policy and legislation with regard to prisons, have been more reluctant to take action on this front. In both settings, however, the crisis has provided useful opportunities to expand their scope and the existing set of principles and norms.

As Aldo Morrone points out, Covid-19 has highlighted the inequalities among individuals, societies, nations and continents. It has never been true that in the face of illness we are all equal. We do not all run the same risks and do not have the same opportunities to be treated. Among the social groups most at risk, prisoners occupy an important position. Starting from the Italian situation, Morrone shows the health problems in prisons before and during the pandemic, indicating the path that medicine should take if it wants to take advantage of the lessons of Covid-19.

Starting from the awareness that the university institution has historically

shown little interest in the prison world, Iñaki Rivera Beiras retraces the history of some important exceptions and describes the work carried out in this respect at the University of Barcelona also during the pandemic. The health crisis has dramatically uncovered the critical aspects of mass incarceration systems all around the world. The university, as a place of production of critical knowledge, is today even more called upon to assume its role of research and civil commitment for the promotion of the fundamental rights of a category at risk such as people in the custody of public authority.

Gen Sanders illustrates how Covid-19 has not only placed a spotlight on the intersection between drug control, incarceration and prison health, but it has also cracked wide open the structural and systemic racism and discrimination that permeates the criminal justice system, and how all of these issues converge to create the perfect conditions for Covid-19 to thrive. In this dark and worrisome context, Sanders shows how in many cases the measures adopted around the world to curb the prison population failed to address, and in many cases explicitly excluded, people who committed drug offences. All this has contributed to increasing difficulties to provide essential health services to prisoners, including harm reduction measures.

Giving voice to the protagonists, Alice Speri proposes a harsh account of what happened in the Us prisons and jails with the arrival of the Covid-19. However, as the author points out, in the United States mass incarceration was already a public health crisis long before the pandemic. During recent months, prisons have become vectors that have helped the virus to spread also in the surrounding communities. But the system's devotion to

harsh punishment at all costs won, and only a negligible number of people were let out of prison. Perhaps because a high number of releases, without a consequent high increase in crime, would have revealed the excessive and unnecessary use of imprisonment.

Notes

¹ **Susanna Marietti:** is the executive director of the Italian association Antigone. Her publications include books and articles on penal and prison issues as well as on contemporary philosophical topics. She runs a blog on criminal justice hosted by the Italian newspaper “Il Fatto Quotidiano”. Together with Patrizio Gonnella, she authors and hosts the weekly Italian radio program on prison matters “Jailhouse Rock”. Ms. Marietti is the president of the sports club “Atletico Diritti”, which involves detained athletes.

² **Alessio Scandurra:** is the executive director of the European Prison Observatory, a network of organisations led by the Italian association Antigone and engaged in monitoring detention conditions and promoting human rights in prison at European level. Mr. Scandurra also coordinates the Antigone’s Observatory on Prison Conditions in Italy. For Antigone, he coordinates several other national and international programmes.

