

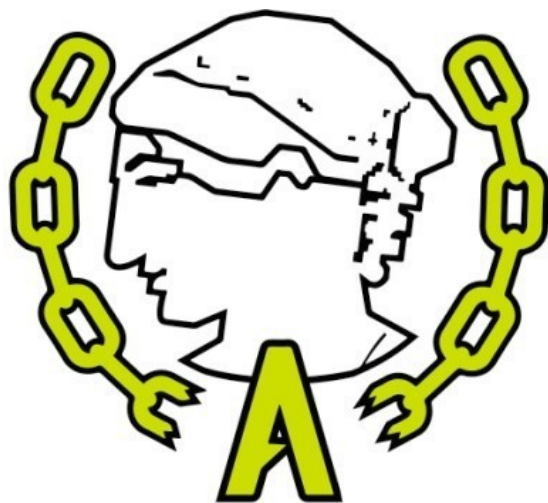
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**Have prisons learnt from Covid-19?
How the world has reacted to the pandemic
behind bars**



ANTIGONE



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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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ITALY - Coronavirus and Italian prisons: a success story?

Federica Brioschi¹

1. The first response to the arrival of the virus

At the beginning of 2020, the pandemic caught Italy unprepared and severely hit the northern regions of the country, leading the government to issue a decree² on 23 February, containing the first measures to try to slow down the spread of the virus, thus establishing a lockdown in some city-wide red zones.

On the previous day, both the Department of Penitentiary administration (Dap) and the Department of Juvenile justice issued two similar recommendations³ that stated that all personnel, volunteers, family members and other professionals resident (or living) in red zones should not enter prisons as a precautionary measure. Transfers of detainees to and from the territories of Turin, Milan, Treviso, Bologna, Pontremoli and Florence were halted.

On 22 February, the Ministry of health issued guidelines on the management of Covid-19 cases⁴ that was promptly endorsed by the Dap⁵ and adapted to the prison

context. The Dap indicated to penitentiary institutes the necessity to create space for the eventual need to isolate (suspect) positive detainees and added that newly-arrived detainees had to undergo a pre-triage to verify whether they had Covid-19 symptoms.

With a worrying increase in cases in the north of the country, the Dap had to deal with the necessity to prevent outbreaks of the virus in Italy's overcrowded prisons. For this reason, on 26 February, the Dap issued another note⁶ addressed to the *Provveditorati Regionali*⁷ most hit by the virus (namely the regions of Piedmont, Liguria, Lombardy, Veneto, Friuli Venezia Giulia, Trentino Alto Adige, Emilia Romagna, Marche, Tuscany and Sicily) with more stringent measures. The note suspended recreational and work activities for detainees that required contacts with people coming from outside the prisons and work activities involving detainees carried out outside the institute. Moreover, family visits were suspended and substituted with video calls (i.e., using Skype); what is more, each prison had the possibility of increasing the number and length of phone

calls that are limited by Penitentiary law to one 10-minute call per week.

The *Provveditorati* targeted by the regulation quickly implemented it while the heads of those remaining and the directors of penitentiary institutes were given the choice to take the measures that they deemed necessary.

The note also stressed the importance of informing the detained population in advance of the provisions to be adopted. This reasonable indication is peculiar since it directly recommended informing detainees - who are often mere recipients of directions and orders - of the necessity of these extraordinary measures. In several cases, prison administrations held meetings with inmates or their representatives, but the information that Antigone received over the following weeks suggests that this did not take place everywhere. The freedom that was given to some of the heads of *Provveditorati* and prison directors to implement the measures they deemed necessary resulted in a patchy adoption of restrictions throughout Italy: some prisons suspended activities, family visits, the reception of packages, and the entrance of volunteers. Detainees suddenly felt abandoned and completely cut off from their loved ones who, on the other hand, did not know if they could visit their imprisoned relatives and were concerned for their health. Confusion and panic started to spread amongst detainees and their relatives: it was an early warning sign of a ticking bomb that was about to go off.

2. Lockdown and prison riots

8 and 9 March were the hottest days of the brisk Italian spring, not only because they were the first two days of an over

two-month-long lockdown, but also because of the riots and revolts that took place in 49 prisons.

In the previous two weeks, Covid-19 cases in Italy had soared from less than 100 to over 7,000 and intensive care units had started to fill. The worsening of the situation led the government to order a lockdown for the entire country on 8 March⁸. The lockdown decree also considerably affected the prison system. It suspended family visits and the granting of permits throughout the country and allowed an extended use of telephone and video calls in all penal institutions so that prisoners could contact their family members. In the severely overcrowded prison system, where confusion and panic were running wild and the tension was already palpable, the news of the lockdown triggered revolts and protests.

Unfortunately, the bulletin of those two days did not only include the damaged property of the Dap but also the lives of 13 detainees who, according to the accounts, entered the prison infirmaries and overdosed on drug reduction medicines (investigations of these events are still ongoing) (Antigone, 2020a, p. 63). But this is not the only shadow that fell on those days because Antigone received some allegations of ill-treatment that had taken place in some of the prisons where the revolts took place (Antigone, 2020b, p. 10). Antigone has filed several complaints even for the crime of torture that was introduced in the Italian penal code only in 2017.

According to the accounts, in the Milan-Opera prison, the revolt that took place on 9 March was suppressed at 6.00 pm, and detainees were taken back to their

cells. Allegedly, around 8.30 pm, the lights were cut and police forces entered the cells to beat both the detainees, who had taken part in the revolt, and also those who had not. After collecting all the testimonies, Antigone filed a complaint to the authorities for abuse, violence and torture and official investigations are currently underway.

In the Pavia prison, the revolt took place on 8 March. Antigone was contacted by detainees' family members who reported that the day after the revolt, the police had used violence and humiliated several detainees, hitting them, insulting them, stripping them of their clothes, and leaving them without food. According to the accounts, some detainees had also been immediately transferred to other penitentiary institutes without their personal belongings and without notifying their families of the transfer. Following these events, Antigone filed a complaint for abuse, violence and torture; the authorities are investigating the events.

In the Melfi prison, the protest took place on 9 March. Several days later, Antigone was contacted by family members who reported that during the night between 16 and 17 March, several members of the penitentiary police had entered the cells in the high-security section, handcuffed the detainees, beat them up with truncheons, placed them in isolation, insulted and spat on them. After the events, allegedly detainees were forced to sign a declaration in which they stated that the injuries were the result of an accidental fall. In the following hours, several detainees were transferred to another institute allegedly without the possibility of getting dressed or of taking any personal effects. In April 2020, after collecting the accounts,

Antigone filed a complaint for violence, abuse and torture.

Yet, the gravest case allegedly took place in the S. M. Capua Vetere prison at the beginning of April. On 5 April, detainees found out that one inmate had been found positive to coronavirus and started a protest. According to the accounts of some detainees' family members who contacted Antigone, the day after the protest, around 400 members of the penitentiary police had entered the Nilo section and the cells in riot control gear (wearing helmets covering their faces and gloves) and allegedly beat up detainees with kicks, punches and truncheon blows. Some inmates had undergone other kinds of humiliation, some of them were allegedly isolated after the beatings, and others were transferred. Only a few detainees had been visited by prison doctors who had not reported their injuries. After collecting the accounts, Antigone filed a complaint to the authorities for – among other – torture (for police officers), forgery and omission to report (for prison doctors); investigations are currently underway.

3. Prevention and case management in prisons

On 13 March, the Dap issued a new note² urging prison administrations to adopt protocols with the territorial health departments for the management of Covid-19 cases in prisons and transfers to hospitals in case of need.

The note also gave further operational instructions for the prevention of the contagion.

Newly-arrived inmates had to be visited by a prison doctor, who decided if the detainee needed to be isolated or not.

Isolation had to take place in a single cell with sanitary facilities. On the other hand, if detainees already present in the prison institute presented typical Covid-19 symptoms, they were to be visited by a prison doctor in their cell along with their cellmates. Testing was arranged and carried out by the territorial health department: if the result was positive, the infected inmate had to be isolated immediately and kept under observation in case the need for a transfer to hospital arose.

After isolating the prison system, the Dap, government officials and other decision makers in the judicial system started to work to reduce the number of detainees.

Overcrowding of the Italian penitentiary system has been chronic for years: as of 29 February, there were 61,230 detainees for 50,931 available places, which means a prison population rate of 120.2%. Antigone has estimated a rate of 130%, taking into account unavailable places in some prisons (Antigone, 2020a, p. 11). In practice, this means adding one or two beds to many cells, cramped spaces, few activities and jobs for too many people.

A Covid-19 outbreak in prisons would have led to terrible consequences for the entire prison population and personnel and could have become a burden on the already overwhelmed territorial health systems.

In the first weeks of March, the prison population began to drop thanks to a lower number of crimes committed during the lockdown (hence a lower number of new detainees entering the prison system) and a more extensive application of the already-existing alternative measures to

detention and pre-trial detention by judges. This fact suggests that the law is often only one of the factors that affect the numbers of the prison population and the regulation of prison life. At this time Antigone along with other associations and one of the largest trade unions elaborated several proposals to reduce the prison population and to make life in prison a little better during these uncertain times. At the beginning of the second wave, Antigone would once again propose similar measures because the number of detainees still needed (and still needs) to be reduced in order to live a safer prison life.

At that time, the government decided to include in the decree law of 17 March¹⁰ two articles to further push in this direction. To the disappointment of many, the two articles did not add any new measures to the existing ones. Art. 123 was about home detention. To benefit from this measure, an inmate had to have less than 18 months of prison term to serve; if the detainee had to serve between 7 and 18 months, electronic monitoring was needed. As already underlined, this measure already existed in the law and the decree law basically expedited its application.

Detainees could be excluded from benefitting from this measure for several reasons. For example, if they were condemned for serious crimes (listed in art. 4 of the penitentiary law) such as: terrorism, association of mafia-type, kidnapping, human trafficking, sexual violence; or if they were subjected to the regime of special surveillance (*ex art. 14-bis* of the penitentiary law) which is a preventive regime for detainees who

disrupt the good order of the prison; or if they were habitual offenders or re-offenders; did not have a home that satisfied the requirements for home detention; their home was the same as where the victim of their crime lives.

Art. 124 allowed detainees in semi-freedom (spending the day outside the prison for work or educational purposes and re-entering at night) to spend the night at home.

Another very important indication that aimed at lowering the prison population came from the General Prosecutor of the Court of Cassation, who on 2 April published a document with some reflections¹¹ on the possibility for prosecutors of extensively interpreting some norms so as to prevent as many people as possible from entering prisons. This document included (among other) reflections on pre-cautionary measures (the arrest) to be carried out in the form of home arrest or police stations instead of prison, the possibility of suspending the execution of some prison sentences, granting the alternative measure of social service even in the absence of the work to be performed.

All these factors decreased the prison population even though this decrease is still not sufficient if compared to available places in the prison system. By mid-May, there were 52,600 detainees compared with the 61,000 detained at the end of February: 8,551 fewer (-13.9%). One very important outcome was a great decrease of the pre-trial prison population, which indicates that there was less recourse to pre-trial detention: this is a trend to be encouraged also in normal circumstances.

However, the National Guarantor of the rights of detained people and people deprived of personal liberty (the Italian national preventive mechanism) pointed out that as of 20 May, those who benefitted from the measure of home detention were 3,379, of whom 975 with electronic monitoring, while the 17 March decree had foreseen the use of 5,000 monitoring bracelets. What became evident was the lack of electronic bracelets and the high prices that the State was (and still is) paying to the private contractor of the service.

One good practice that was implemented in some prisons in Lombardy, where the number of inmates who were found positive to Covid-19 was becoming dangerously high, was the cooperation with Doctors without borders, who were granted access to prison establishments to manage a specific Covid-19 section. This experience proved to be positive because the infection was contained and reduced and this project was extended to other prisons in Marche, Piedmont and Liguria (*Medici senza frontiere*, 2020).

Another welcomed good practice was put in place by the Dap that granted detainees the possibility of carrying out video calls with mobile phones. Around 1,600 cell phones were acquired by the Dap (as strongly demanded by Antigone that also mediated between the Dap and a private donor who was willing to provide more phones). Video calls were often made via WhatsApp directly in the wards. Never before had a mobile phone entered a prison legally. It was truly a cultural revolution that will hopefully leave its effects even at the end of the health emergency.

4. Did *phase two* take off in the prison system?

The emergency measures issued in March expired at the end of June, and the country moved towards the so-called *phase two*: at the end of May, the lockdown had ended, most of the work activities and services in the country were re-opened and most of the limitations and prohibitions were lifted. How did this apply to prisons?

To find out, Antigone surveyed 30 prison institutes scattered throughout Italy (Antigone, 2020b, p. 7). The sample was significant, given that it included many of the largest institutions in the country and that these prisons alone were hosting 23,601 inmates, 44% of the entire Italian prison population. The information was collected between 20 July and the first days of August. The 30 institutes monitored are located in Lombardy (6), Sicily (5), Latium (5), Campania (5), Puglia (2), Tuscany (2), Piedmont (2), Umbria (2), and Calabria (1).

Over the summer, family visits were resumed everywhere and took place with various preventive measures (acrylic glass separations, masks, temperature control, etc.). The number of visitors was limited to one or two and often minors were not allowed.

Despite the lift of the suspension of family visits, in most prisons telephone calls continued to be granted beyond the limits prescribed by the law. Video calls were still essentially made in all the institutions monitored and often counted as family visits. Even if the physical presence of a loved one would certainly have been preferred, video calls showed many advantages for elderly parents or young children who were able to see their

imprisoned relatives without the need for a long commute.

Antigone also tried to find out whether recreational, sport, educational and vocational activities had resumed and found that, when these activities required the entering of prison by volunteers or other personnel, they were not resumed. Only in a few cases were these activities carried out using video calls, which was appreciated by detainees.

Finally, the survey revealed that in more than half of the prisons, detainees were once again benefitting from leaves. However, the measures taken upon return to prison varied greatly. In many institutions, 14 days of quarantine were compulsory upon return, which discouraged many prisoners from benefitting from permits. In other cases, prisoners were tested for Covid-19 and the result came back within a few hours. If the result was negative, they were allowed back into their section.

5. Is the Italian case a success story?

During the first phase of the Covid-19 outbreak, Italian prisons saw only a limited number of infections and few deaths. Thus, is it possible to call the Italian response to the pandemic in prison a success story?

Surely the prison population was reduced and this helped to create space for the isolation of positive inmates, but the prison system was (and still is) overcrowded and social distancing impossible to practice. Indeed, in some prisons the virus spread rather quickly with great risks for the whole prison population. In short, the efforts to reduce the prison population have been

insufficient and the number of detainees is still far from the official prison capacity. The prison system has obviously benefitted from the reduction of the prison population but more needs to be done. The limited number of infections in prison has also to do with a little luck.

The second wave is confirming this. Over the summer, the prison population grew again and at the end of September, there were 54,227 detainees and an official prison population rate of 107.3%. At the end of October, the government issued a new decree¹² in which it granted measures similar to those already granted in March, hence with the same limits of applicability.

In November, the government issued a new decree¹³ that included restrictions of the freedom of movement in areas at greater risk; the decree also affected life in prison, as it prevents people from areas at greater risk from travelling to other regions (or even municipalities) to visit their imprisoned relatives. Also, the Dap issued an internal regulation¹⁴ with a new set of preventive measures to be applied within prisons depending on the number of infected inmates and staff.

In this second wave of Covid-19, the official numbers of infections in prison are proving to be much higher than in the first wave when on any given day the number of infected detainees was never higher than 200 people (*Garante nazionale dei diritti delle persone detenute o private della libertà personale*, 2020b, p. 225). However now, according to the latest data released on 9 December by the National Guarantor of the rights of detained people and people deprived of personal liberty, 1,049 detainees are positive to the virus: 959 of them are asymptomatic, 90 have

symptoms and 41 of them are hospitalised (*Garante nazionale dei diritti delle persone detenute o private della libertà personale*, 2020a). Many prisons have become Covid-19 clusters and recently 9 detainees have lost their lives due to coronavirus. Among prison staff, 853 are infected. Numbers are very variable because the situation is constantly changing. The Dap has only recently started to publish these numbers on its website, which is much appreciated. Antigone has been demanding transparency since the first moment the pandemic hit Italy. Prison must always be transparent, all the more in this dramatic situation because a lack of news and updates creates panic.

What emerges from the current situation is the need to create space in prisons to allow social distancing and the isolation of cases otherwise the success story of the first wave risks turning into a terrible tragedy.

Hopefully, some lessons learned during this difficult time will not be forgotten and will help to build a new prison system. This concerns not only the issue of prison overcrowding but also the use of new technologies. The emergency has shown that they can enter prisons without causing security problems or excessive burdens on the system. Antigone hopes that they will also be used when the situation is back to normal because they can be used not only to maintain ties with one's family but also to carry out activities foreseen by prison treatment.

Notes

¹ **Federica Brioschi**: has a degree in human rights from the University of Vienna. She has been a researcher at Associazione Antigone since 2017 coordinating national and international projects. She is now in the editorial staff of the journal “Antigone”.

² Decreto legge n. 6,23 febbraio 2020, *Misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da Covid-19* <https://www.gazzettaufficiale.it/eli/id/2020/02/23/20G00020/sg> (accessed 20 October 2020).

³ Dap, *Raccomandazioni organizzative per la prevenzione del contagio del coronavirus* [https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_62&contentId=SDC248986&previousPage=mg_1_8](https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_62&contentId=SDC248986&previousPage=mg_1_8;); Dipartimento di giustizia minorile e di Comunità, *Raccomandazioni organizzative per la prevenzione del contagio del coronavirus* https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_62&contentId=SDC249009&previousPage=mg_1_8 (accessed 20 October 2020).

⁴ Direzione generale della prevenzione sanitaria, *Covid-19. Nuove indicazioni e chiarimenti* <https://www.certifico.com/component/attachments/download/16935> (accessed 5 October 2020).

⁵ Dap, *Ulteriori indicazioni per la prevenzione del contagio da coronavirus* https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_62&contentId=SDC249492&previousPage=mg_1_8 (accessed 5 October 2020).

⁶ Dap, *Indicazioni specifiche per la prevenzione del contagio da coronavirus - regioni Piemonte, Liguria, Lombardia, Veneto,*

Friuli Venezia Giulia, Trentino Alto Adige, Emilia Romagna, Marche, Toscana e Sicilia https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_62&contentId=SDC249652&previousPage=mg_1_8 (accessed 5 October 2020).

⁷ The territories in which the Italian State is divided by the Ministry of Justice for the administration of justice. They sometimes correspond to regions (even if they are completely different entities), but often they include several regions.

⁸ Decreto legge n. 11, 8 marzo 2020, *Misure straordinarie ed urgenti per contrastare l'emergenza epidemiologica da Covid-19 e contenere gli effetti negativi sullo svolgimento dell'attività giudiziaria* <https://www.gazzettaufficiale.it/eli/id/2020/03/08/20G00029/sg> (accessed 5 October 2020).

⁹ Dap, *Ulteriori indicazioni operative per la prevenzione del contagio da coronavirus negli istituti penitenziari* https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_62&contentId=SDC253426&previousPage=mg_1_8 (accessed 5 October 2020).

¹⁰ Decreto-legge n. 18, 17 marzo 2020, *Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da Covid-19* <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg> (accessed 5 October 2020).

¹¹ Procura Generale delle Corti di Cassazione, *Pubblico ministero e riduzione della presenza carceraria durante l'emergenza coronavirus*, <https://www.sistemapenale.it/it/documenti/pubblico-ministero-e-riduzione-presenza-in-carcere-coronavirus-procuratore-generale-corte-cassazione-giovanisalvi-1-aprile-2020> (accessed 13

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¹² Decreto legge del 28 ottobre 2020 n. 137, *Ulteriori misure urgenti in materia di tutela della salute, sostegno ai lavoratori e alle imprese, giustizia e sicurezza, connesse all'emergenza epidemiologica da Covid-19*, <https://www.gazzettaufficiale.it/eli/id/2020/10/28/20G00166/sg> (accessed 13 December 2020).

¹³ Decreto del Presidente del Consiglio dei Ministri 3 novembre 2020, *Ulteriori disposizioni attuative del decreto-legge 25 marzo 2020, n. 19, convertito, con modificazioni, dalla legge 25 maggio 2020, n. 35, recante «Misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19», e del decreto-legge 16 maggio 2020, n. 33, convertito, con modificazioni, dalla legge 14 luglio 2020, n. 74, recante «Ulteriori misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19»*, <https://www.gazzettaufficiale.it/eli/id/2020/11/04/20A06109/sg> (accessed 13 December 2020).

¹⁴ Dap, circolare n. 0401524.U del 10 novembre 2020, Monitoraggio dei casi di Covid-19 e nuove misure da adottare, http://www.ristretti.it/commenti/2020/novembre/pdf3/circolare_10_novembre.pdf (accessed 13 December 2020)

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