REPORT ON THE ACCESS TO JUSTICE FOR VICTIMS OF VIOLENT CRIME SUFFERED IN PRE-TRIAL AND IMMIGRATION DETENTION

by the implementation of Directive 2012/29/EU on the minimum standards on the rights, support and protection of victims of crime and of Directive 2004/80/EC on the compensation to crime victims

Country report – Italy

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Table of contents

Desk-Based Research

Introduction

First and Foremost, it's important to do an essential distinction between criminal detention - either as preventive or corrective measure - and the administrative detention carried out in Migrant Detention Centers. The only thing these two forms of detention have in common is the fact that they obviously entail a deprivation of liberty. In fact, the conditions of each type of detention, their scope of application, the aim pursued, and the framework applied are radically different. While, in fact, the detainee in pre-trial detention is accused for the commission of a crime - and so the detention is a penal detention - for migrants everything is different. Foreigners who are awaiting the expulsion (or refoulement) measures are detained in a CPR. It is the art. 13 of the Consolidated Immigration Act established with Legislative Decree n. 286/1986 to regulate the "*administrative expulsion measure*" (originally establishes with Law n. 40 dated 6 March 1998, art. 11), that lists the cases: - Par. 1, lett. a: For reasons connected to public order or the State's security (this measure falls under the authority of the Ministry of Interior);

- Par. 2, lett. b: Because of the violation of one or more rules on border control (lett. a) or resident permissions;

- Par. 2, lett c: If there is the founded suspicion that the foreigner is habitually involved in crimes, or that his/her standard of living could be a result of crime, or he/she is suspected to be part, for various reasons, of a criminal or terrorist organisation (national or international) and other similar reasons (all categories indicated in article 1 of law n. 1423 dated 27 December 1956, as substituted by article 2 of law n. 327 dated 3 August 1988, or in article 1 of law n. 575 dated 31 May 1965, as substituted by article 13 of law n. 646 dated 13 September 1982). These measures fall under the authority of the *Prefetto* (Prefect).

- Par. 3, 3-*bis*, 3-*ter*, After the foreigner has served the penal sentence and when for other reasons the repatriation becomes an alternative to the detention.

The Italian system has experienced difficulties when transposing the European Directive. There is no specific disposition mentioning detainees as victims unless when they are subject to the crime of torture.

We will then study the general regime of victims and the specificities of vulnerable victims. It is important to clarify that there is a gap in the treatment of detainees as accused and as victims, which is why in some part the regime of detainees as offender can appear in the report. In fact, in practice both regimes can be confused or intertwined. A detainee or offender that

also becomes a victim can benefit of his rights as "offender" - right to translation and interpretation, right to information, right to legal assistance- when asserting his rights as a victim. Finally, due to the article 3 of the European Convention of Human Rights - on prohibition of torture, and inhuman or degrading treatment or punishment - judges have been taking care of ensuring the rights of those detainees who were victims of violence in prison.

1. National legal and institutional framework

1.1 Overview of the Italian Framework on victims and transposition of the Directives

Italy has never signed nor ratified till today (2018)[1] the *European Convention on the Compensation of Victims of Violent Crimes* made in 1983 by the Council of Europe, - this could be considered the ancestor of directive 2004/80/EC concerning compensation for victims of crime - this proves in a way a certain non adherence to this kind of procedure.

Italy was first condemned for the failure to transpose the Directive before the deadline.[2] (Judgment of the Court (Fifth Chamber) of 29 November 2007 – Commission v Italy, Case C-112/07).

The directive 2004/80/EC imposed in art 12 the transposition and therefore the establishment of a compensation procedure for victims of violent intentional crimes "committed in their respective territories, which guarantees a fair and adequate compensation of the victims » before July 2005.

Italy finally transposed directive 2004/80/EC with the Legislative Decree n. 204 of 6 November 2007.
Nonetheless in 2013 the Commission has again seized the Court on Italy's default of transposition. In fact, it appears that Italy has only transposed partially the directive and for this Italy has been condemned a second time by the Grand Chamber of European Court of Justice

[1] https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/116/signatures?p_auth=KyuWUtt8
[2] http://rivista.eurojus.it/incompleta-trasposizione-della-direttiva-sullindennizzo-delle-vittime-di-reato-la-responsabilita-dello-stato-italiano-allattenzione-dei-tribunali-nazionali-e-ancora-una-volta-dell/?print=pdf

(cfr. Commission c. Italy C-601/14) on a sentence of October 11th, 2016.[3] The Italian Law of November 6th 2007 - of transposition - describes a cooperation system to access for indemnities in cross-border situations, and details the authorities providing assistance and the ones in charge of deciding for the compensations marking as a central point of contact the Ministry of Justice. Even the applicable linguistic regime was established. **Nonetheless, when transposing it, there has been no previous or subsequent law regulating a comprehensive national compensation system for victims of crime.** The only existing laws setting a compensation system fund is the old one on terrorism and mafia. **So, in other words the compensation mechanism has only opened it to specific victims of terrorism or mafia when the directive provides that all victims of intentional violent crime as defined by the state criminal law should be entitled to be indemnified.**

In other words, for almost a decade, Italy's failure to fulfill its obligations under the directive has been subject of disputes between the Court of Justice and national courts.

Furthermore, there were two diverse interpretation of Italian national courts which affected the directive application[4]. The diverse opinions resided in the need or not for a element of cross-border/international element imposed by the Directive 2004/80/EC.

On Italy's transposition of the Directives

It's important to understand what has been transposed to understand the current Italian regime.

The first transposition[5] concerning the Directive 2004/80/EC on compensations for victims of crime intervene with the legislative decree of November 9th 2007 n°204 that entered into force on November 24th. On its first article called "Authority of assistance" it defines the Public Prosecutor of the Court of Appeal as the assistant authority (art 1.1), which helps with the procedural process. The condition set is that the crime is committed in the any member State of the EU. The Italian General Public Prosecutor is also chosen as intermediate between the Decisional Authority (also of another member State) and the applicant. In article 1.2 and 1.3, he is given to power to help the procedure in two different ways: he either assists the victim upon being questioned by the authority of the other member State following the rules of the

[3] https://www.penalecontemporaneo.it/d/5038-la-corte-di-giustizia-dellunione-europea-dichiara-litalia-inadempiente-in-relazione-al-sistema-di-i

[4] http://rivista.eurojus.it/incompleta-trasposizione-della-direttiva-sullindennizzo-delle-vittime-di-reato-la-responsabilita-dello-stato-italiano-allattenzione-dei-tribunali-nazionali-e-ancora-una-volta-dell/?print=pdf

[5] http://www.camera.it/parlam/leggi/deleghe/07204dl.htm

other member State; or questions the victim in person and transmits the recording to the authority of the other member State.
Article 2.1 specifies that when it is the Italian State who has to compensate a victim who is a resident of another member State, the complaint can be filed by the victim in her own State of residence. In such case, as further specified by art 2.2, the Italian authority has to communicate to authority of the other State the confirmation of the receipt of the application. As in the precedent article, the Italian decisional authority can ask to the assistant authority of the other State to proceed to hear the victim via videoconference. Article 3 is related to the languages allowed to the claim. Article 4 specifies that there shouldn't be fees on the claim regarding legalization, article 5 sets the ministry of justice as central point. Article 6 concerns the entry into force, Article 7 concerns the provisions execution provisions and article 8 concerns the financial issues of implementation.

The transposition concerning the Directive 2012/29/UE on minimum conditions on law, assistance and protection of the victims of crime. The Italian Government has complied with its obligation to implement the Directive by bringing into force a specific law: Legislative Decree n. 212 of 16 December 2015 (hereafter D.lgs n. 212/2015).

As it was underlined by the Report on National Legislation of SAVE project (760574 - SAVE - JUST-AG-2016/JUST-AG-2016-07), the D.lgs n. 212/2015 “has introduced new and important right within the Italian Legal System, but has completely omitted some others, in particular the right for victim to have access to support services” (p. 6).
Thanks to D.lgs n. 212/2015 victims of crime have seen their situation considerably improved compared to the marginal role they had before within the criminal procedural law.

Article 1 of D.lgs n. 212/2015 concerns the modification both on the Criminal Code and the Code of Criminal Procedure (hereafter c.p.p.). Article 2 concerns the execution, coordination and transitory provisions of the c.p.p..

Even if article 90 hasn’t been modified, it could be useful to mention it because it defines the rights and possibilities of the person who has been victim of a crime.
Article 1 modifies first the Title of the Code of Criminal Procedure on *“Person Offended by the Crime*” **adding a 90.2 bis cpp** concerning minor presumptions, **modifying 90.3 cpp** extending the rights of the offended person to someone not only to relatives but also to persons involved in an affective relationship and cohabiting permanently in case the victim has lost her life. This mean that it takes into account the *de facto* relationship. Are also **added a 90 *bis*, *ter* and *quater*.**

90-bis introduced (for the first time in the Italian system) a detailed list of the **information to be given to the offended person**. It is added that they have to be transmitted in a "comprehensive language" which indirectly refers to translation and interpretation. Among them we find to what refers to the complaint (a), the possibility to follow up the procedure (b), the right to be informed of the dismissal of the procedure (c), the right to have legal assistance and legal aid (d), the modalities to have access to interpretation and translation (e), to the eventual protection measures he can benefit of (f), the information on the recognition of his rights in the case he lives in a different State - **of the EU** - to which the crime has been committed (g). The modalities to complain about the refusal of his rights as a victim (h), to the authority to who refer to obtain information concerning the proceedings (i), information on the possibility to ask the reimbursement of the fees use for the criminal process (l), on the possibility to request compensation for damages deriving from a crime (m). Informed on the possibility that the proceeding will be defined with the remission of a complaint referred to in Article 152 of the Penal Code, where possible, or through mediation (n), to the faculty to ask for probation or possibilities in which the exclusion of the punishment due to particular tenure of fact (o). Finally, there has to be information given on the sanitary structures on the territory, on family centers, on anti-violence centers and shelters (p).
Even though the article details a lot of information to be given, its effectiveness is uncertain. It is not specified who should be in charge specifically more than "an authority", nor in what limit of time frame more than "since the first contact with the authority", it is not specified neither if there is an obligation, and if the non-respect of this obligation can be contested. There is no detail on particular information to vulnerable victims, nor victims dependent on authorities, nor of victims detained or deprived of liberty.

90-ter cpp introduces the right to know whether the offender has escaped or has been released.

90-quarter cpp prescribes the conditions of particular vulnerability. Such condition can be deduced from the person's state: age, state of infirmity or psychic deficiency but also from the type of crime, or from the modalities and circumstances surrounding the crime. The assessment of the condition takes into account: whether the event is committed with violence to the person or with racial hatred, if it is due to organized crime or terrorism, even international, or trafficking in human beings, if the crime is related to discrimination, and/or if the injured person is emotionally, psychologically or economically dependent on the offender.
As it is possible to see, there is no mention of detainees, refugees. And in the only hypothesis they could be taken into account would be in the case they are "emotionally, psychologically

or economically dependent". Nonetheless, their non-mention into the dispositions might reveal the non-consideration of these group of people. As it would be suggested later on, this disposition has not been applied to detainees nor the persons to immigrant detainees with considerable consequences on their role in the procedure.

The following articles refer to persons of particular vulnerability. **Art 134.4 c.p.p.** is modified and is added that the audiovisual recording has to be always assured when proceeding to the recording of the particularly vulnerable person's statement (it is not an obligation to record using the audiovisual recording in other cases). Art 143.*bis* concerns the cases of appointment of the interpreter or translator. Also, article 190-*bis*.1-*bis* has been modified to be extended to persons of particular vulnerability. This article prescribes that there is no need to question again someone if she has already testified in another moment of the trial unless the questioning regards facts or circumstances that are different from those of the previous questioning or if the judge or one of the parties finds it necessary on the basis of specific exigencies. Art 351.1-*ter* c.p.p. is modified to give the same rights to minors and vulnerable persons with regard to the obligations of the judicial police. The officers when questioning the persons have to have a psychological or psychiatric expert assisting the subject. Furthermore, they have to assure that the person does not have contact with the person suspected or accused of the crime and that there is no proceeded to any further interrogation of the vulnerable person unless there is an absolute necessity for the investigations. Also for the Public Prosecutor upon gathering information ("assunzione di informazioni") art 362.1-bis cpp is modified to include the same obligations for the judicial police. This double obligation is a way to protect even more the person of particular vulnerability. Art 392.1 *bis* has been modified to extend the "evidentiary hearing" (*incidente probatorio*) to include the offended person particularly vulnerable. An "evidentiary hearing" (*ex* artt. 392-404c.p.p.) is a pre-trial hearing where for imperative or urgent reasons, circumstances, the proofs have to be heard or presented to a judge during the preliminary investigations - as normally done - (such as an imminent expertise). Both the person under investigation and the Public Prosecutor can ask the judge for that type of procedure. The procedure does not exist in front of the judge of peace though. In the case of a person particularly vulnerable, the offended person can ask the Public Prosecutor to ask for the evidentiary hearing to the judge, if the PP doesn't take the initiative. Furthermore, on the proceedings to request the Evidentiary Hearing, **art 398.5-*quarter* cpp** has been modified to take better consideration of the persons of particularly vulnerability. **Art 398.5-*quater* cpp** specifies that not only the persons of particular vulnerability are entitled to benefit from a special procedure for on what concerns the place, the time and the particular measures (reference to article 398.5 *ter* and 398.5 *bis*) but they can also benefit from special measures when being interrogated for testimony or cross examination (reference to article 498.4 quarter).

Art 498.4 *quarter* cpp has being modified to include special protective measures for persons of particular vulnerability when proceeding to the direct examination or cross-examination of their testimony. It can be done by the judge directly or requested by the offended person or her defendant.

Finally, article 2 of law 212/2015 added art **107-*ter* of the code of execution, coordination and transitory provisions of the c.p.p. that concerns the right to the interpreter assistance to file a complaint**: "*The offended person who does not know the Italian language, if he presents a complaint or a lawsuit before the public prosecutor's office at the court of capital of the district, has the right to use a language to her known. In the same cases he has the right to obtain, prior request, translation into a language known to her, the notification of the receipt of the complaint*".

The last article added 108-bis of the code of execution, coordination and transitory provisions of the c.p.p. concerns the communication of the complaint for a crime committed in another member state.

The Italian Law did not make a separate chapter for particularly vulnerable victims but did made an effort to include dispositions to protect such group of people. It's important to know that when considering detainees or immigrants deprived of their liberty: the non-definition or better said the not explicit nor implicit reference through praxis has inevitable led for them to be left out. The regime and protective measures applicable to the persons of particular vulnerability cannot be applied to them if there are not considered as particular vulnerable persons.

Due to the Italian imminent condemnation - intervening on October 2016- by the European Court of Justice, **a new law (122/2016) intervene some months before, on July 7th, 2016** that has been even later actualized by a legislative decree of November 20th 2017.

Art 11 to 16 of the legislative decree 122/2016 reform the compensation system to make it more conform to what was required by Directive 2004/80/EC. **A compensation fund has been established or more precisely the one of the victims of terrorism and mafia has been enlarged to regroup also other victims of intentional violent crimes**. Furthermore, a certain retroactivity on the access to the compensation fund has been set, prior to the adoption of the law, to the date in which Italy had to comply with the transposition of article 12 of Directive 2004/80/EC, meaning on July 30th 2005. In other words, claims for persons that have been victims of violent intentional crimes since July 2005 could be compensated by the

State compensation fund. For the victims prior to the entry into force of the law, the time framework to request the compensation claim was set to 120 days starting on the day of publication of the law.

Nonetheless some critics can be raised on this last Italian law of implementation[6] of the directive on compensation for victims of intentional crime, but also on the ministerial decree concerning its application (Ministerial Decree 31 august 2017).

According to the Doctrine[7] the Italian legal system has not yet transposed the Directive properly, even with the legislative decree of 2016.

Notwithstanding the extension of the possibility to all the victims of intentional violent crimes to request the compensation from the State, some restrictions on the conditions to access it (art. 12 law 122/2016) can be highlighted and criticized.

First of all, the beneficiaries entitled to request the **compensation need to have an annual income inferior or equal to 11.528,41 euros**, the same one use for the admission to State legal aid (art 12.1a) law 122/2016). This provision that limits the compensation to only citizens of low incomes doesn't seem to be in accordance with the aim of the directive.

The condition setting that the victim has not received any amount of either a public or private parties for the same crime, again raising some doubts of compatibility with the Directive's aim, for example if the victim has the right to access other solidarity benefits public bodies such as INPS and INAIL; (art 12.1 e) dlg 122/2016).

Furthermore, here on the limits of the compensation where - except in the case of homicide or sexual violence - is limited, according to law 122/2016, to the reimbursement of medical expenses only. Even in this scenario, more than a few perplexities emerge on the compatibility of this provision with the compensation rights provided by the Directive 2004/80/EC; (art 11.2 dlg 122/2016).

Last but not least, another critical fact is that **beneficiaries have the obligation to take part to the criminal trial by bringing a civil action against the offender (unless he is unknown) to have access to the compensation (articles 74-83 c.p.p.)**. In fact, the Italian legislative

[6] https://www.giustizia.it/giustizia/it/mg_2_10_6.page
[7] http://www.quotidianogiuridico.it/documents/2017/06/13/opposte-pronunce-di-merito-sull-equo-indennizzo-alle-vittime-di-reati-violenti-ed-intenzionali

decree 122/2016 imposes to the victim to bear not only the costs but the time she has to **wait for an executive action that must be unsuccessful in the end (art 13.b d.lgs 122/2016)** only to be compensated for the medical expenses incurred (unless the case involves rape or death). A condition that, as was unanimously stressed, seems to contrast even more than the previous with the "ratio" of the directive. In fact, the European provision aims to help the victim by exempting her from the tiring process requested to obtain compensation for damages, placing in the States a solidarity charge of "compensation" by definition less burdensome than the total restoration.

1.2 Rights of detainees enshrined in national law

The national normative framework that prescribes the rights of detainees in correctional institutions are - having regards of hierarchy of norms - the Italian Constitution, the Charter of fundamental rights of the European Union, both at the highest level; the Criminal Code Procedure and the Penitentiary Law (Legge n. 354/ 1975) at the ordinary law level; the Regulation that gives execution to the Penitentiary Law (D.P.R n. 230/2000), the normative value of a “Regulation” is lesser than the one of the law or legislative decrees.

Differently from penal detention, that is regulated also with regard to conditions of detention for detainees by L. 354 of 1975, the conditions of administrative deprivation of personal liberty (which is the case of migrants) are not based on only one text neither on norms that have the value of laws.
In order to understand the complexity of the issue, it is important to summarize the process that brought to the institutionalization of Centers for the administrative detention for migrants.
The first Centers of Temporary Stay (Centri di Permanenza Temporanea - CPT) were created with the 1998 law on immigration Turco-Napolitano (art.12 of law 40/1998), their name then changed in Centers for Identification and Expulsions (Centri di identificazione ed espulsione – CIE) by the Bossi-Fini law (L.189/2002), and finally called Centers of Residence for Repatriations (Centri di Permanenza per i Rimpatri - CPR) by the Minniti-Orlando law (L. 46/2017). These places, however called, are detention facilities where foreign citizens without a regular residence permit are detained. Based on art. 14 of the T.U. 286/1998, later modified by the Bossi-Fini law (189/2002), by the “Pacchetto Sicurezza” (L. 94/2009), by the implementation law of the Repatriation Directive (L. 129/2011, the Police Commissioner (“Questore”) could request detention for a period of 30 days, which could be prolonged to a maximum of 18 months “whenever it was not possible to immediately proceed with the deportation or the rejection at the border because of transitory situations that hinder the

preparation of the repatriation or to carry out the rejection…". In 1998, the function of CIE went from assistance to identification; however, the interpretation of the law also allowed its custodial nature.
In October of 2014, an amendment by senators Manconi and Lo Giudice to the EU Law 2013 *bis* reduced the maximum period of detention to 90 days.
In 2015, the maximum detention time underwent another variation. Legislative Decree 142, the implementing law of directive 2013/33/UE on the norms on the reception of asylum seekers, established that optional detention up to 12 months was available for asylum seekers "who posed a danger to public order or national security" and "who are suspected to probably flee".
Finally, the conversion into law of the Minniti-Orlando decree n. 13 of 17 February 2017 the 3-month maximum detention period (art. 14.5 of T.U. 286/1998) "can be extended of 15 days, after a validation of the judge of the peace, in cases when the identification and organization of repatriation procedures are particularly complex".

Although foreign nationals are held inside CPRs with the status of detainees or guests, their stay in the structure corresponds in the facts to a detention, as they are deprived of personal freedom and are subject to a regime that, among the other things, prevents them from receiving visits and exercise the fundamental right to legal defense.
The centers of detention, with their various renaming and modifications, gave a start to administrative detention in Italy, subjecting to deprivation of personal liberty individuals who have violated an administrative provision, such as the obligation to possess a residence permit.

The Prefect is responsible for operating these facilities; he entrusts the management services of the structure to private individuals, who are responsible for the relationship with the prisoners and the material functioning of the center. The police guard the outer space of the structures and can enter the areas where the prisoners live only at the request of the managing bodies in exceptional and emergency cases, even if in reality this occurs every day.

2017 reports confirm that CIE that are still operating, like the others that had been temporarily closed, were totally inadequate, both from a structural and functional point of view, to guarantee the dignity and fundamental rights of foreign detainees detained.
At the beginning of 2017, there were four active CIEs in Italy (Brindisi, Caltanissetta, Rome, Turin), for a total capacity of 359 places.

Decree Law n. 13/2017 (converted into law with L. n. 46/2017) prescribed the increase of the number of these centers (by establishing one CPR per Region) with the aim of reaching a

capacity of 1600. From the annual report of the National Guarantor of the rights of persons detained or deprived of personal liberty, it is clear that these interventions have been requested by the European Union with the primary objective of increasing repatriations and decreasing the presence of irregular foreigners on the national territory. D.L. n. 13/2017 does not introduce any further guarantee regarding the respect of fundamental rights.
Currently the active CPR on the national territory are: the CPR of Rome with 125 available places (female facility), Bari with 90 available places, Brindisi with 48 available places, Turin with 175 available places and Potenza with 100 available places (all of them are all-male facilities). The total number of available places is 538. In 2018, the Italian Government has opened 3 other structures, all former CIEs: in Gradisca d'Isonzo, Modena and Macomer.
In light of the most recent reforms, CPRs are detention facilities in which irregular migrants awaiting deportation can be held for up to 90 days (120 days if the foreigner has already been detained in a penitentiary facility before entering a CPR), period that can be extended of further 15 days in cases of particular complexity. The maximum time may be of 12 months in the event that a foreigner, who has already been detained because he is the recipient of an expulsion or rejection order, files an application to request international protection.
Although since 2011 the law provides for the possibility to adopt alternative control measures, such as the obligation to surrender documents, the obligation to sign or the obligation to reside in one place, the requirements that the foreigner must possess in order to access a non-custodial measure are so many (possession of documents, of adequate sources of income, of a domicile or a fixed residence, not to be considered socially dangerous, etc.) that detention ends up being the most recurrent measure.

CPRs have clearly assumed traits of closed centers since their establishment. In fact, since 1998 the Turco-Napolitano law and its implementing regulation, while stating that “detention must take place respecting the dignity of the foreigner” and that to the foreigner is granted “the guarantee of contacts, also by telephone, with the outside”, established the absolute prohibition to exit from such centers and entrusted the police with responsibility for internal surveillance and security. The discretion granted to the public security authority in the management of the CPR has been partly limited by the approval of a series of regulations and ministerial directives that have clarified the prison regime and the management standards of these structures.

In the last five years, the network of detention centers for expelled foreigners has been constantly decreasing, going from over 1900 available places in 13 detention facilities scattered throughout the national territory, some of which (Rome, Turin, Bari, Gradisca d’Isonzo hosted more than 200 "detainees" at the same time), to less than 400 available places

at the end of 2016, concentrated in only 4 detention facilities (Turin, Rome, Brindisi, Caltanissetta). This was offset by a progressive decrease in the number of entries and expulsions actually carried out since the establishment of the former CIE. Expulsions have been for years around half of the total number of admissions.

This contraction was perhaps the result of a loss of political interest in the administrative detention of foreigners, even if it is true that a planning document published by the Ministry of the Interior in 2013 denounced its inefficiencies, also underlining the costs and difficulties of managing a detention system in which damages, revolts and violence were taking place daily. However, the current Government seems determined to take the opposite direction and with art. 19 of Decree Law n. 13/2017 has launched a program to expand the network of detention centers for foreigners, which will ensure the distribution of facilities throughout the country.

The lack of clarity on the regulations on hotspots has been highlighted not only by the communications between the Parliament and the NPM in 2017 but also by many academic publications. Their conclusions have shown that the lack of clarity is such that it prevents to draw a precise legal definition.

Hotspots have been introduced by a Ministerial Circular of the Ministry of the Interior of October 6, 2015 - a regulatory act of secondary rank - which defined the hotspot as an area equipped for landings aimed at providing rescue, assistance and a first identification of the migrants.

However, the Guarantor stresses some issues around these institutions. If hotspots, on first sight "appear as places with a humanitarian vocation for first aid and assistance activities and information and reception for those who have expressed the desire to request international protection, **on the other side** they are places were the police conducts procedures of photo-signaling and the starting point of forced repatriation operations. These procedures imply for the “guests” both a prohibition to leave the Center until the conclusion of the operations of identification and, for those who have to be expulsed, a coercive execution of the expulsion order”.

1.3. Rules governing places of deprivation of liberty

Without making a difference between correctional institutions and pre-trial detention centers, the rules governing the penitentiary facilities are:

- Rules of the Penitentiary Order set by the Parliament (Legislative value), Law n. 354/1975
- The regulation of execution of the penitentiary law: “Regolamento recante norme sull’ordinamento penitenziario e sulle misure privative e limitative della libertà” set by Decree of the President of the Republic D.P.R. n. 230/2000
- The Ministerial Internal Regulation of the MInistry of Justice, Department of the Penitentiary Administration.
- The code of conduct of penitentiary police
- The code of conduct of each institute: correctional institute, pre-trial detentions centers (police station).
- La Carta dei Diritti e dei doveri dei detenuti e internati (Charter of Rights and duties of detainees and internees, as prescribed by the penitentiary regulation of execution)

With regard to the immigration centres see above par. 1.

1.4. Rights of victims of violence committed in detention

Law n. 110 of july 14th, 2017 introduced the specific crime of torture into the Italian criminal system. For further information on the implementation on the Law, hereafter it is possible to find the link to one of the most respected Manual on Italian Criminal Law: Fiandaca, 2017, Legge Orlando (disciplina penale). Il nuovo reato di tortura, Aggiornamento redazionale, Zanichelli)

The adoption process was very long, surrounded by a difficult political climate. Even though the final law - law 110/2017 - does not appear compliant, specially when thinking to the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** made in New York, December 10th 1984. Italy ratified that Convention in 1988, one year later after its entry into force. In 2015, Italy was condemned for the failure to implement the provisions of the Convention in the Cestaro Case of the European Court of Human Rights. The case involves the incidents that took place during the Genoa events of 2001 while hosting the G8 summit. On a sentence of April 7th, 2015 the European Court of Human Rights - case (6884/11) - condemned Italy for the violation of the Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms while highlighting the serious lack of a law punishing torture in the Italian legal system and the fact it conduces to impunity.

The parliamentary debate on the introduction of the law began in 2013 when the Bill (hereafter DDL) C.2168-B was presented to the respective chambers.

The new crime of torture has found its place in the Criminal Code, Second book on specific crimes, Title XII on crimes against person, Chapter III that involves offences against personal freedom/civil liberties, Section III, crimes against moral freedom.

Two new articles are introduced in the criminal code 613-bis and 613-*ter*. (art 1 law 14/07/2017). Art 2 of the law modifies art 191 c.p.p., (on the proof when torture) adding 191.2-*bis* c.p.p..

Following, the normative framework dressed by art 613-*bis* of the Criminal Code on the crime of torture.

Sentence	Perpetrator	Act	Causes	Victim	Other conditions
(1) 4 to 10 years	Anyone	<u>Type of Act:</u> -Violence -or serious threats -or acts with cruelty <u>If:</u> -repetition: act conducted multiple times - or act constitutes an inhuman and degrading treatment for the dignity of the person.	- acute physical suffering - or verifiable psychological trauma	- person deprived of personal liberty or entrusted to the perpetrator's custody, vigilance, control, care or assistance, - person of *minorata difesa*	
(2) 5 to 12 years	-Public official - Person in charge of a public service	idem	idem	idem	- abuse of powers - or in violation of duties pertaining to the function or service exclusion if: suffering results solely from the execution of legitimate measures of privation or restriction of rights.
Sentence + 1/3	(1) or (2)	idem	idem	idem	If results in a person injury for the victim
Sentence +1/2	(1) or (2)	idem	idem	idem	Very serious personal injury
30 years	idem	idem	idem	idem	If unintended death
Life imprisonment	idem	idem	idem	idem	If voluntary death

The crime of instigation to commit torture (Art. 613-*ter* c.p) is portrayed hereafter.

Sentence	Instigator	When	Form of the instigation	Who	Other conditions
6 months to 3 years	-Public agent -Or officer in charge of a public service	In the exercise of the functions or the service	Instigates in a concretely suitable manner	Another public official Or another person in charge of a public service to commit the crime of torture	-If the instigation is not accepted -or if the instigation is accepted but the crime is not committed

It is possible to propose a general evaluation of the new law on torture.

- First of all, the crime of torture is considered a **generic crime** that, as stated in the paragraph one, can be committed by anyone. On the other hand, the UN Convention against torture prescribes a crime that is specific of the public authority, which means, a crime that can be perpetrated only by a State official who has to be punished because of his being a State official. However, the text of the Italian law, unfortunately, hasn't the strength to affirm this value, that is very strong also from the theoretical point of view. It is the State, which is the holder of the legitimate monopoly of the use of force, should preserve itself from the possible misuse of this power, of which torture is a possible epiphenomenon.
- Moreover, the UN Convention seems to have been disregarded also in other points: for example, with regard to the modalities to perpetrate the crime. These modalities are with "violence or grave threats, or by acting with cruelty" which implies that the new law requires multiple acts or if the single act "causes an inhuman and degrading treatment for the dignity of the person". Patrizio Gonnella[8], in a journal article titled *Storia natura e contraddizioni del dibattito istituzionale che ha condotto all'approvazione della legge che criminalizza la tortura* (History, nature and contradictions of the institutionalized debate that led to the approval of the law that criminalizes torture) published on the academic Journal *Politica del Diritto* writes: "The chosen model was not the one of guaranties with a clear definition of the crime, but rather that of a vague definition that rests on the jurisprudence developments. A type of offence that resembles an accordion, that widens and tightens depending on the parts and on the intentions of the judge who is called to interpret the law".
- It has only a general intent, because the law doesn't evaluate the reasons that could push the perpetrator to torture a victim.
- And it is always Gonnella who, in conclusion of his article, reflects on how it is still the "judge (...) who has to define the concept of violence or, in alternative, of cruelty (without violence of threats), to verify the psychic trauma, the notion of *minorata difesa*, the inhuman and degrading treatment as a result of a personal cruelty," the qualification of the second paragraph, that concerns specifically public officials as an aggravating circumstance instead than a specific type of crime. Finally, "it is still up to the interpretation of the judge to apply the parts of the law related to the expulsion or extradition of migrants towards countries where there is a risk to be subjected to torture".

[8] Researcher of Philosophy of law and Professor of the course of *Prison law clinic* at Roma Tre University. President of Associazione Antigone and of the Italian Coalition for Civil Liberties and Rights.

- Finally, the law that prescribes the crime of torture did not introduce any derogation to the statute of limitation, that remains the usual one.

With regard to the instigation to commit torture.

- The form of the instigation “concrete suitable manner” is not defined by the law and will remain explicitly of the competence of the judges to define it.
- The article added in the code of criminal procedure (191.2-*bis* cpp) specifies that the declarations or information obtained through the torture offense (613-*bis*, 613-*ter* c.p.) cannot be used, for example against a detainee. Nonetheless, that same information can be used to prove the criminal responsibility of the accused of torture.
- This new provision is welcome favorably in the sense that it forbids to use torture as a procedure to obtain information while allowing them to be used as proof of the crime of torture. All this goes in the sense of protecting more the victims of violent intentional crimes, as required by the Directives.

1.5. Facilities for pre-trial and immigration detainees

The facilities in the penal and penitentiary system are:

- Police Holding Cells: (penal system) they are located in police forces stations all around the country (also in the Local Police stations, the police of the municipality). The Police Holding Cells have the function to custody people that have just been held. The stay in these facilities cannot be longer than 48 hours (*ex* art. 386 c.p.p.). Some police stations do not have enough of cells, or some cells are in very bad conditions. This situation, also combined with a certain custom of policemen, leads to detainees of pre-trial detention to be place directly in prison while waiting for their sentence. In fact, recently, because of the overcrowding of Italian prisons (that is still affected by this problem), the second Government of the XVI Legislature 16 November 2011 - 27 aprile 2013 (Minister of Justice was Paola Severino), issued a decree so called “svuota carceri” (emptying prisons) in 2012. This decree established that at the time of arrest, the arrested persons should not be taken to prison, but held for the 48 hours provided for by art. 386 c.p.p. in the holding cells. This decision, however, triggered a clash between the Ministry of Justice and the heads of the State Police, directly under the control of the Ministry of the Interior. The reason lay in the inadequacy, according to the Police, of the Police Holding Cells. “Police Holding cells are too few, 1057 is the total number, and they don't guarantee the dignity of those who should be held within them (...).

Detainees are better off in prisons", declared the vice-head of the Police Francesco Cirillo.

- Casa Circondariale: (penitentiary system) this term indicates the facility in which persons awaiting trial are held or those condemned to sentences of less than five years. In many Case Circondariali there is a "Criminal Section" to house prisoners with longer sentences.
- Casa di Reclusione: (penitentiary system) this term indicates the structure dedicated to the execution of prison sentences. In many Case di Reclusione there is a "Judicial Section", to accommodate people awaiting trial.

For **detainees with psychological and psychiatric pathologies** there are the R.E.M.S. (Residenze Esecuzione Misure di Sicurezza - Residences for the Execution of Security Measures). In this case it is desirable that even the detainee who has just been arrested is kept in these places because they are able to address his psychiatric pathologies.

For **minors**:

- CPA - Centri di Prima Accoglienza (art. 9 d.lgs n. 272/1989): These are facilities that temporarily host the arrested child until the validation hearing, which must necessarily take place within 96 hours from the arrest. The main purpose of these facilities is to avoid the strong impact with the prison.
- IPM - Istituti Penali per Minorenni: These are structures aimed at ensuring the enforcement of judicial authority measures such as pre-trial detention and the execution of the prison sentence of juvenile offenders. I.P.M. host minors and young adults (18-24 years).
- Comunità: In Communities judicial authorities' orders against juveniles offenders are carried out according to artt. 18, 18-*bis*, 22, 36 and 37 of the D.P.R. 448/88.

Nor the facilities of pre-trial nor immigration detention have been privatized. However it is important to point out that hotspots for migrant are managed by private cooperatives.

2. Right to information:

2.1 Stages to inform detainees of their rights

First of all, it is important to point out that there aren't specific references to victims of crimes who are deprived of liberty (either in the case of pre-trial facilities, penitentiary institutions, or

administrative immigration detention facilities) in the implementation of Directive 2012/29/UE through legislative decree n. 212/2015.

In general, pre-trial detainees are provided with the letter of rights when arrested or detained (Art 293 c.p.p. and 386 c.p.p.), at the police station or prison.
When an individual is arrested, the police has to follow the procedures prescribed by article 386 c.p.p.. First of all, the public prosecutor is informed of the arrest (*habeas corpus ex* art. 13 of the Italian Constitution), secondly the suspect is informed of the faculty to appoint a legal counsel as provided by article 96 c.p.p. (this information is given through the Letter of Rights, that enlists all the other relevant rights as well).

However, as there aren't specific references to victims of crimes who are also deprived of liberty, they are granted the same rights that are generally granted to victims of crimes who are not deprived of liberty. For this reason, art. 101.1 c.p.p. provides that, when the public prosecutor and the judiciary police receive the notice of the crime, they have to inform the victim of her rights and inform her of the possibility to access legal aid as set out by art. 76 D.P.R. n. 115/2002.
With regard to the right to understand and to be understood (provided for by art. 3 of Directive 2012/29/UE), the Italian system (as it is also confirmed by the Tabella di Concordanza attached to the Report on the discussion of the introduction of the Legislative Decree that implements the Directive) "does not provide to the victim of the crime a general right to have the documents of the proceedings translated at the expenses of the State, neither to the assistance of an interpreter who can, on the other hand, be appointed by the judge or by the public prosecutor when the victim of the crime has to be heard as a witness of the events". Therefore, the right to an interpreter and to a translator is only granted exclusively to the accused person (art. 143 c.p.p.).

2.2 Information provided to detained victims

There is not any specific information provided to victims of violence in detention as for our knowledge.
Therefore, the rules that are valid for this specific typology of victims, are the general ones concerning information due to offended persons, as listed in the aforementioned art. 90-bis c.p.p. as amended by Legislative Decree no. 212/2015, which takes the form of a list of information that the victim of crime has the right to receive from the authority initiating the proceedings. This information must be provided in a language understandable by the victim.

Before the intervention of Legislative Decree implementing the 2012/29/EU directive, this right was exclusively recognized to victims considered as "particularly vulnerable".
This means that also for detained victims the content of art. 90-*ter* (see above for details of answer 1.1) is valid. While art. *90-quater* prescribes - as already mentioned - the criteria to assess the vulnerability.

As Gonnella writes in the already-cited article (*Storia natura e contraddizioni del dibattito istituzionale che ha condotto all'approvazione della legge che criminalizza la tortura* published on the academic Journal *Politica del Diritto*), "**in Italy there aren't branches of the judicial police specifically trained to deal with the violence committed by the same members of the police forces**. Prosecutors work daily alongside police forces and the first may fear repercussions from the latter in terms of loyalty and commitment in other investigations considered more important, that joint work permeates a common culture, that the border between ill-treatment and torture is not easy to detect, the future history of imputation of torture will be strongly conditioned by all these factors. Also, the joint work permeates a common culture, the border between ill-treatment and torture is not easy to spot. The future history of the charge for torture will be strongly conditioned by all these factors.
As a matter of fact, the judicial chronicle of the last ten years is sufficiently rich in cases that have not passed the phase of the first investigations and that hadn't, therefore, the chance to be evaluated with a trial. In the most common cases of physical violence in a prison, in a center for migrants, in a barracks or in a police station there is a numerical inequality between the witnesses of the victim (few or none) and witnesses in support of the policeman or carabiniere accused. This quantitative inequality is accompanied by a different qualitative assessment by the judge during the investigation or during the trial of the people who testify. It is part of the culture of the justice professionals to evaluate the testimony of an inmate differently from that of a person in uniform. It is no coincidence that not infrequently, when the trial is about violence perpetrated by the police, there is another proceeding ongoing at the same time for defamation against the person who filed the complaint.

A sort of manual of violence is the one expressed by a prison police officer in service at the Casa Circondariale of Teramo, whose statement was audio-recorded and ended up on the web. "We risked once because the negro saw everything. Inmates should not be beaten in the section, but rather is massacred downstairs ». At the end of 2009, six police officers were under investigation. They defended themselves, according to custom, arguing that it had been the inmate to use violence against them. The Public Prosecutor, however, asked for the dismissal of the accusations by writing that the code of silence that reigned in the prison made it impossible to verify the responsibilities ".

From this we can infer that **the legal culture of the professionals is a determining factor**. In fact, if, as already illustrated, **art. 90-*quater* leaves room for interpretation by the judge regarding the assessment of the particular vulnerability of the victim, it is then on the sensitivity of the professionals - on their legal culture - that it is necessary to work.**
In fact, if a criterion for recognizing the victim's particular vulnerability is (under Article 90-*quater*) his dependence on the offender, if this is a police officer, but also another inmate (or a group of detainees), the state of custody and deprivation of liberty may somehow be among the hypotheses for which the victim would not be able to defend himself independently or to avoid being subjected to violence.

Being recognized as a particularly vulnerable victim would allow the victim in custody to be recognized as having a large number of rights, protections and additional protection.
For example, he would have access to audiovisual recording of his declarations (art. 134.4 c.p.p.) and should not find himself in the position of having to repeat - for example during the hearing - his statements.

The protections referred to in art. 190-*bis* par. 1-*bis* c.p.p. which aims to avoid the possibility of having to participate in the hearing for the particularly vulnerable victim.
It would be entitled to psychological aid (articles 351 par. 1-*ter*, 362 par. 1-*bis* c.p.p.) and the same victim or the public prosecutor can request that from the moment of the acquisition of the testimony of the offended person an evidentiary hearing is carried out (art 392 paragraph 1-*bis*).

It is always the *Centro Studi* of the Chamber of Deputies that reconstructs the birth of this norm: it was the Justice Commission of the Chamber (XVII Legislature) to request that attention should be paid to the protection of the most vulnerable victims from the very early stages, from the first moment in which the information of a crime is given to the judicial police and to the Public Prosecutor.

Legislative Decree no. 212/2015 provides for the possibility that the victim of crime testifies in a protected manner. This possibility is not made dependent on either a subjective element of the victim or an objective one of the crime (art. 398.5-*quater* and art. 498.4).
Once again, the legal culture of professional is the focal point of the issue, in fact it is clear that the victim in a state of detention has objective difficulties in continuing to share the space with the perpetrator (both in the hypothesis that this is one or a group of detainees, and that in which it is one or a group of public officials). In fact, although the most common practice in the

case of victims in custody is that of transferring the offended person to another institution, this provision appears not to be strong enough for several reasons, as was explained in the previous question and will be reiterated in paragraph 5 in the section “right to protection”.

2.3 Format of the information provided

The letter of rights is provided in writing unless there is not a translation available in timely manner. In that case, the information is provided orally while awaiting the written information. There is no specific wording used to make it accessible to the detainee as set by the law or the praxis, it depends on the translator skills. As for the written form we provide as an example a letter of rights both in Italian and English in Appendix 1.

2.4 Measures taken by the authorities to overcome communications barriers when informing detainees of their rights

The authorities can provide a translator or interpreter for free if asked by the detainee as accused when defending his case but not a specific one as the detainee as a victim. Article 107-*ter* disp. att. cpp on the right to translation when filing a complaint or procedure do not refer to rights notifications nor to detained victims. There is also a procedure for persons with some physical disabilities, article 119 cpp. foresees a particular procedure for deaf, mute or deaf-mute people. **There is no other procedure to adapt the notification procedure to the individual case for the detainee.**

2.5 Right to translation and interpretation

The law does recognize the right of interpretation and translation of detained victims in pre-trial detention who do not speak Italian. This provision was added to the code by Legislative Decree n. 212/2015 implementing Directive 2012/29/EU. Art. 143-*bis* was added to the c.p.p. in this way.
Article 143 c.p.p. already provided for the accused, **whose non-knowledge of the Italian language was established** (paragraph 4):

1. in the first paragraph: the right to receive **free of charge**, and regardless of the outcome of the trial, the **assistance of an interpreter** for:
    a. to be able to understand the accusation made against him
    b. follow the completion of the proceedings and the conduct of the hearings to which he participates

c. the communications with the defendant before making an interrogation
d. in order to present requests or give statements during the proceeding.

2. the second paragraph: the right to **written translation**, in an appropriate time to guarantee the right of defense:
    a. notification of being under investigation
    b. information on the right of defense
    c. measures that prescribe personal precautionary measures
    d. the notice of conclusion of the preliminary investigations
    e. the decrees that set the preliminary hearing and the summons to trial
    f. sentences and decrees of conviction

Article. 143-*bis* has expanded the subjects who can benefit - free of charge - from the interpreter or the translator.

1. first paragraph: it is the authority that is carrying out the trial to request "when it is necessary to translate a writing in a foreign language or in a dialect not easily intelligible or when a person who wants or has to make a declaration does not know the Italian language". It is a vague rule and therefore also applies to the offended person.
2. second paragraph: the interpreter is appointed - also ex officio - when it is necessary to hear the offended person who does not know the Italian language or when the offended person wants to attend the hearing and has requested to be assisted by the interpreter.

The interpreter can do a long-distance intervention using communication technologies, except in case there is the necessity that he be physically present.

In fact, as reported in the E-Justice Portal, the victim of crime is entitled, if the judicial or police authority deems it appropriate to guarantee the right to understand, both at the time of the report of a crime and during the investigation and the trial, to the appointment of an interpreter when:

1. the victim does not know the Italian language and must make a declaration (declaration that can also be made in writing and that is attached to the police written report with the translation made by the interpreter);
2. when it is necessary to translate a written document into a foreign language;
3. at the moment of hearing a victim who does not know the Italian language;
4. when the victim who does not know the Italian language must take part in the hearing and has asked to be assisted by an interpreter.

The offended person who does not know the Italian language has the right to the free translation of acts or parts of the acts, which contain information useful for the exercise of his

rights. The translation can be arranged either verbally or summarized if the prosecuting authority considers that there is no detriment to the rights of the victim (Article 143-*bis* c.p.p.). In the same cases, she has the right to obtain, upon request, a translation to a language known to her of the acknowledgment of receipt of the complaint or of the lawsuit. (Article 107-*ter*. disp. att. c.p.p.).

2.6 Obstacles experienced by detainees and/ or detained victims in obtaining information on their rights

With regard to foreign detainees, one of the obstacles that they encounter in obtaining information on their rights is the difficulty to communicate. In fact, the poor quality of translation during the proceeding hinders the possibility to inform the judge that a violation of their rights has taken place in prison. In fact, many of the detainees who are undergoing a trial exploit the hearing also to denounce that they have become victims of a violent crime. The are several problems that emerge from our previous researches (here and here) regarding the interpretation of criminal trials.

First of all, there is no national register of interpreters and translators across the country which means **there is no national authority, uniform procedure or control of interpreters and translators**. Furthermore, the lack of a proper national official Register of interpreters and translators implies the **absence of a specific Code of Conduct.** In practice, every court disposes of a list of translators and interpreters, to whom resort whenever necessary as technical court consultants. The existence of one register per court, the lack of a general accreditation procedure and the lack of a specific training in the judicial field causes disparities in the level of professionalization between courts, lowers the quality of interpretations and causes a general lack of availability of interpreters of rare and non-European languages.

Moreover, in the Code of Criminal Procedure **there is no distinction between translators and interpreters** which lowers the professional standards. The code regards translation and interpretation as two overlapping entities, whereas it addresses translation of documents, while competencies for these two tasks are different in nature.

As a result of these issues, interpreters are often not qualified nor adequately trained. Nonetheless, given the disproportion between demand and offer, courts usually tend to accept many interpreters regardless of their skills.

Finally, a particularly grave issue that surely impacts on the quality of interpreters is the low wage and the very long time it takes for payments to be made. In fact, since interpreters are paid for by the State, their remuneration is regulated by law n.319 8 July 1980, that states that the first “vacazione” (service of two hours) is paid 14,68 euro; from the second to the fourth

“vacazione” (each day an interpreter can perform a maximum of four “vacazioni”) they are paid 8.15 euro each. There is also a chance for doubling in case of a very challenging and urgent job under the judicial authority’s discretion. Moreover, the payment is performed through an online procedure that many consider to be very cumbersome, and often happens with serious delays, even up to one year and a half. The low remuneration coming late makes the work unattractive for more qualified interpreters or translators, the salary being so way too distant of the actual market prices (that, as of 2018 are of 80-90 euros per hour).

2.7 Differences between the rights of people held in correctional institutions and those held in pre-trial or immigration detention

As it was already mentioned, between pre-trial detention and correctional institutions there aren’t differences. With regard to migrant detention, it is not clear whether the Directives apply, in fact the Directives surely apply to the criminal trial; however, immigration detention is an administrative deprivation of liberty. Furthermore, there are no specific rules (unlike penitentiary institutes that are regulated by the penitentiary law) that regulate this kind of detention. In any case, a person that is placed in immigration detention can during (with more difficulty) or after being released have contacts with a lawyer.

3. Monitoring of detention facilities

3.1 National Preventive Mechanism (NPM)

The “Garante nazionale dei diritti delle persone detenute o private della libertà personale. Meccanismo nazionale di prevenzione della tortura o dei trattamenti o pene crudeli, inumani o degradanti” (National Guarantor for the rights of persons detained or deprived of personal liberty), the Italian NPM, was established by art. 7 of the Decree Law n. 146 of 23rd December 2013 (Misure urgenti in tema di tutela dei diritti fondamentali dei detenuti e di riduzione controllata della popolazione carceraria), which became, after amendment, Law n. 10 of 21st february 2014.

As it is possible to read in the “Note Verbale” by the Permanent Mission of Italy to the International Organization, signed on 28th of April 2014 in Geneva, and as it is established by art. 5.1 of Decree law of 23 December 2013 n. 146 (converted into law 21.02.2014 n.10), according to the law the National Guarantor would have coordinated the network of local Guarantors, formed by institutions already in place or to be set up at regional and city levels”.

In fact, in Italy were already in place the Regional and Local Guarantor for the rights of detained people. Since 2003, some Municipalities and some Regions have been appointing local and regional prison Guarantor (or Ombudsmen). The Regional Guarantors are established by Regional Laws that, according to the Constitutions, have the force of law. The Local Guarantors are established by "Delibere Comunali" (City Council resolutions). Their jurisdiction is regionally or locally limited. However, their overall number is not high at the moment and they can intervene only on issues depending on Municipalities or Regions. For instance, Regional Guarantor/Ombudsmen can intervene on matters related to the Health System but none of them has any power on security issues. A recent law gives them visiting power in the prison facilities of their Municipality or Region. They are still in office, but not in every Region and only in few big cities.

3.2 Authorities allowed to access all places of detention

Art. 67 of the Italian Penitentiary Law (Law n. 354 of 1975, hereinafter O.P.) prescribes the possibility to visit all the penitentiary facilities (both pre-trial and correctional) for

a) the President of Council of Ministers and the President of Constitutional Court;
b) Ministers, Judges of the Constitutional Court, Secretaries of State, members of Parliament and the members of the Superior Council of Magistracy;
c) the President of the Court of Appeals, the Republic's General Prosecutor at the Court of Appeals, the President of the Court and the Republic's Prosecutor at the Court, Surveillance Judges (Artt. 677 to 684 of Code of Criminal Procedure - hereinafter c.p.p. - and artt. 68 to 71-*ter* O.P., which have different prerogatives such as the supervision on the penitentiary treatment, administrative tasks among which the acceptances of requests of permissions or treatment plans, jurisdictional power like the execution of alternative measures and others) within their own jurisdictions; and any other magistrate within his functions;
d) Members of Regional Councils and the President of the Regional Council, within their districts;
e) diocesan ordinary with territorial jurisdiction to carry out its duty;
f) the Prefect of the Province and the district Police Chief (Questore), the provincial doctor;
g) the General Director for penitentiary facilities and the magistrates or functionaries delegated by the General Director;
h) the General Inspectors of the penitentiary administration;
i) the inspectors of chaplains;

l) the Penitentiary Police Officials;

l-bis) the Guarantors for the rights of detainees (of any name) [this provision has been introduced by art. 12-*bis,* c. 1, lett. b) of D.L. n. 207 of 30th of December 2008 which became, after amendment, Law n. 14 of 27 of February 2009].

l-ter) the members of the European Parliament [this provision has been introduced by art. 2-*bis*, c. 1, lett. a) of D.L. n. 211 of 22nd of December 2011 which became, after amendment, Law n. 9 of 17 of February 2012].

This access power is also extended to the other places of deprivation of personal freedom: art. 67-*bis* O.P. provides the faculty of access to the "holding cells" in Police Stations; Law n. 46/2017 provides the same power for Immigration Detention Centres.

Obviously also CAT members can visit penitentiary facilities (both correctional and pre-trial), "holding cells" in Police Stations and facilities for immigration detention without restrictions.

3.3 Mandate of the NPM

The mandate of the NPM is set by Art.7.5 (letters a-g) of Decree law of 23 December 2013 n. 146 (converted into law 21.02.2014 n.10). In particular, letter a) sets out that the NPM monitors that the custody of detainees, internees, pre-trial detainees or of other people who are subjected to any form of deprivation of personal liberty, is carried out in compliance with the laws and principles established by the Constitution, with international human rights conventions ratified by Italy, with the laws of the State and with its regulations. Letter b) prescribes the powers to carry out unannounced visits to all places of deprivation of liberty: penitentiary institutes, judiciary psychiatric hospitals (now closed), sanitary institutes that host persons undergoing detention security measures, therapeutic and residential communities, public and private facilities that host people who undergoing alternative measures to detention or pre-trial home detention, penitentiary institutions for minors, communities that host minors as a result of an order of the judicial authority, and can visit, upon notification, the cells that are located in all police forces' stations. Letter c) sets out that, upon verbal consent of the person deprived of liberty, the NPM can examine his/her personal file on the matter that are related to the conditions of detention. According to letter d), it can also request to the facilities listed under letter b) information and documents that are necessary to exercise his mandate. If these documents are not given him within a period of 30 day, he can ask to the surveillance judge to issue an order to the facilities. Letter e) grants him full access to all places of detention for migrants and verifies that their rights (as set out by artt. 20-23 of the Regulation D.P.R. 31 august 1999, n. 394) are respected. According to letter f), the NPM also addresses

recommendations to the concerned administration and can receive complaints from detainees *ex* art. 35 of L. 26 July 1975, n. 354. Finally, according to Letter g), the NPM annually publishes a report on its activities.

3.4 Composition and appointment of members of the NPM

According to art. 7.2 of Decree law of 23 December 2013 n. 146 (converted into law 21.02.2014 n.10) the NPM is a collegial body composed by the president and two members, "chosen among people not employed in the public administration and capable to guarantee independence and competence in subjects connected to the human right protection". They are appointed with a decree of the President of the Republic after a decision of the Council of Ministries taken upon having listened the advice of the competent parliamentary commissions. Initially the abovementioned law also provided to the NPM for a staff of 25 people all from the Ministry of Justice and the ration was that of providing to the Guarantor the competent staff that he needed to perform his monitoring mandate in custodial settings (Garante Nazionale dei diritti delle persone detenute o private della libertà personale, Relazione al Parlamento 2018, pp. 340-341). However, as the competence of the NPM regards also non-custodial-like facilities (such as social care homes), the Guarantor himself has asked for a modification of law in order to have a multidisciplinary team. In fact, now the law prescribes at paragraph 4 that the staff of NPM be formed by 25 people: 20 of them are from the Ministry of Justice, 2 from the Ministry of Interior and 3 from the National Health System. According to the annual report of the Guarantor, the staff is now formed by 17 people from the Ministry of Justice and 1 person from the Ministry of Interior. The NPM is awaiting the decree of the President of the Council of Ministers (who, as set forth by the abovementioned law, decides along with the Minister of Justice, the Minister of Interior and the Minister of Economy and Finances) regarding the composition of the office, and on the selection of the missing personnel. The Regional Guarantor is a political appointment (done by the Regional Council); it is embedded in the regional political structures and has administrative support facilities managed by a Director.

3.5 Handling of complaints by the NPM

The NPM is empowered to receive complaints. Article 35 O.P. establishes the Right of Compliant for the detainees and internees. This article has replaced the previous one by art. 3, c.1, lett. a), D.L. of 23rd December 2013, which became, after amendment, Law n. 10 of

21st of February 2014. In private detainees can address oral or written complaints to, among others:

c) the National, Regional or Local Guarantor;

Thanks to this article, the Guarantor can receive written complaints filed by detainees and internees. Also, detainees in High Security circuits and in special regimes (such as the 41-bis for accused or convicted for mafia-related crimes) have the right to privately correspond with Guarantors. Detainees or internees can write a letter of complaint to the Guarantors (National, Regional or Local). This communication must be strictly private (*ex* art. 35 O.P.). The NPM or territorial Guarantors can choose the better way to respond, they can also decide to visit the detainee/internee. Following the principle of subsidiarity, Local or Regional Guarantors visit the inmate in prison even if he has turned to the National Guarantor when reporting the act of violence or other kind of abuse. Moreover, the National Guarantor has added at art. 4.1 lett) e of the Code of Self-regulation of the National Guarantor (issued on 31 May 2016 and subsequent revisions) the "obligation to quickly send to the competent judicial authority the information that a crime against detained persons or persons deprived of liberty that becomes known to the Guarantor while exercising his institutional duties".

3.6 Independence of monitoring bodies

Monitoring bodies (NPM, Regional and Local Guarantors) are independent from officials in charge of the detention center. The NPM is appointed by the President of the Republic.

3.7 Access to places of detention by local or international civil society organisations

Since 1998 Antigone has an Observatory on prison conditions. In that year Antigone has been authorized by the Minister of Justice to visit the 190 penitentiary institutions. The permission to access all detention facilities is renewed each year. Since 2012 our monitors can enter also with video cameras. Visits are made by volunteers, always accompanied by at least one member of the staff. The only sections excluded from access are those of the high security regime "AS 1" and of the "41-*bis*" regime. The AS 1 regime is dedicated to detainees and internees belonging to the mafia type organizations, for whom the application of 41-*bis* regime has been ended. The 41-*bis* Regime is dedicated to people convicted mainly for mafia and terrorism (but there are not Islamic radicalized inmates because they are subjected to another high security Regime). There are 724 detainees (2018) held under article 41-*bis*, which represent the 1.2% of the total number of detainees; moreover, there are 8,862 people subject

to high security which represent 15% of the total prison population. Antigone has over 80 observers authorized to enter the prisons with powers similar to the ones of parliamentarians. This is an important proof of transparency from the penitentiary administration. The big difference between Antigone's prerogatives as observatory is the necessity to schedule visits and the prohibition to talk with detainees during the observation.

3.8 Differences between access to correctional institutes and places for immigration detention

The only difference regards the prohibition for the local civil society to enter immigration detention facilities. In this specific case, in fact, there authorizations to access and to monitor these facilities have never been granted to the Civil Society. This denial also concerns the "Holding cells" of Police stations to which only the authorities listed in art. 67 O.P have access.

4. Complaints

4.1 Complaint procedures for detained victims of violence in detention

There is more than one procedure for detained victims to file a complaint.

Article 35 O.P. establishes the Right of Compliant for detainees and internees and indicates to whom detainees can file requests or written and oral complaints, that can also be kept secret (answer to question 4.3 lists in detail which is the competent authority that considers the complaint, as requested). It is a "generic complaint", already introduced in the originary norm of 1975 (the law regulating the Penitentiary System n. 354/1975), and later modified by art. 3, c.1, lett. a), D.L. n.146 of 23rd December 2013, which became, after amendment, Law n. 10 of 21st of February 2014.

The introduction, that occurred a bit late, of art. 35-*bis*, which dates back to the same decree that amended art. 35 (DL n.146 of 23rd December 2013, which became, after amendment, Law No. 10 of 21st of February 2014), responds to the need to recognize the possibility to file a complaint, not generic, but with a full judicial value and, consequently, granting the right of judicial protection. In 1999, the Constitutional Court, with sentence no. 26, declared constitutionally illegitimate both art. 35 that art. 69 O.P. (which will be discussed soon after),

due to the absence of a provision to grant judicial protection against administrative acts damaging the rights of those subject to the restriction of personal freedom.
There is no formal requirement to file a complaint.

In paragraph 6 of article. 69 O.P. concerning the Functions and the Orders of the Surveillance Magistrate, was added the provision introducing the duty for the Magistrate to look after complaints (***ex* article 35-*bis***) concerning (letter b) "the non-compliance of the administration with provisions envisaged in this law and the related regulation, that caused to the detainee or internee a real or serious infringement to the exercise of rights".

However, the main problems for inmates who suffer violence in prison seem to continue to be the denunciation procedure and the fear of secondary victimization. For this analysis, it is necessary to make a distinction between two very different hypotheses concerning the author/authors of the crime. If, in fact, it is a prisoner or a group of prisoners to commit episodes of violence, physical or psychological, in theory it is easier to denounce the incident to prison officers. Unfortunately, as it will be explained later, the lack of support for victims and the protection mechanisms - of dubious effectiveness - put in place do not allow prisoners who are victims of crime to freely report if the aggressor or the group of aggressors belong, for example, to organized crime.
The situation is even more complex if the perpetrator is one or a group of prison officers.
In the case of inter-prisoner violence, the disciplinary council of the Institute, formed by the director (or by the employee with the highest level), the prison doctor and the educator (art. 40 O.P.), can intervene and punish the violent action. Some crimes can be prosecuted ex officio (meaning that as soon as the Surveillance Magistrate receives the information that a crime falling under this category has the obligation to inform the prosecutor of such a crime) while other crimes need to be reported by the victim in order to be prosecuted.

4.2 Eventual fees to submit complaints, possibility and conditions to access legal aid

There isn't any kind of fee to be paid in order to file a complaint. The only expense that the prisoner should bear is that of the stamp to be applied on the letter (*ex* article 35). Also in the case of a complaint filed *ex* art. 35-*bis* there is no fee.
Regarding legal aid, it is important to explain that it is in no way mandatory - for the inmate - to employ a lawyer to file a complaint (ex-articles 35 and 35-bis O.P.). That said, legal aid is available, but there are two conditions to be met:

1. from a subjective point of view: if the victim has an income of less than 11,000 euros he is always entitled to legal aid.
2. from an objective point of view: as it was already explained, the Italian legal system, incorporating various EU norms on victims' rights, has provided access to legal aid at any time to all victims of particular crimes (see above). In any case, these are mainly situations in which the victim falls under the status of "particular vulnerability"; therefore, it is possible to repeat the same considerations that were previously made on the hope to recognize, even only from the interpretative point of view, of the victim deprived of personal liberty as "particularly vulnerable".

4.3 Competent authorities that consider the complaint and their independency

On the basis on the prescription of art. 35 O.P., detainees can address private oral or written complaints to:

d) the Director of the facility, the Chief of Penitentiary Administration, the Minister of Justice;
e) the judiciary and health authorities of the institute;
f) the National, Regional or Local Guarantor;
g) the President of the Regional Council;
h) the Surveillance Judge;
i) the President of the Republic.

Detainees can address oral or written complaints to all of those institutional Offices, that for various reasons and in different ways can take care of complaints and bring them forward. When a detainee becomes a victim of violence, the ordinary way to address the situation is still through art.35 and 35-*bis* O.P and in case.

Art. 3, c.1, lett. b), D.L. of 23rd December 2013, which became Law n. 10 of 21st of February 2014, has also introduced art. 35-*bis* in the O.P. on Jurisdictional Complaints. This norm is essential to fully and effectively affirm the rights of the detainee. The theoretical foundation is to guarantee and protect the rights of the detainee regardless the deprivation of liberty to which he is subjected to. This means that the jurisdictional protection of rights must always be absolute, inviolable and universal and for this reason even detainees must have the jurisdictional protection of their rights. The institution that has to protect their rights is the surveillance judge, who is the recipient (*ex* art. 69.6 O.P.) of jurisdictional complaints filed ex art. 35-*bis* O.P.. This article follows art. 35 O.P. that provides, instead, for the possibility to file “generic complaints”; in fact, it seems that the legislator has established a “progressivity” of

the protection mechanisms available to the detainee (as explained by the most accredited doctrine on the penitentiary code F. Della Casa, G. Giostra, 2015, *Ordinamento Penitenziario commentato*, Wolters Kluwer).

The Law states (artt. 677 to 684 c.p.p. and artt. 67 to 70-*ter* O.P.) that one of the tasks of the Surveillance Judge is the legal supervision of prisons. Surveillance judges have a visiting mandate and can talk with prisoners, who can also file a complaint with them. However, traditionally surveillance judges have not fully accomplished their mission of prison supervision, because of the many other tasks the law assigns them (to evaluate the possibility of admission to alternative measures, to authorize volunteers to enter prisons, to evaluate the request of sending a prisoner to an external hospital, etc.). National and regional parliamentarians can visit all prisons without restrictions.

In addition, the inmate can ask his lawyer to file a complaint or report on the violent incidents that he underwent while in prison. Even in this case the legal procedure remains the same as the one which would be used by a victim not deprived of liberty.

4.4 Particular circumstances of the victim taken into account in order to facilitate the submission of a complaint to the relevant authority

In answer 5 of the paragraph on the right to information is explained how linguistic barriers are overcome upon filing a complaint. The status of vulnerability is discussed in answer 1.1 of the paragraph on the National legal and institutional framework and in answer 2 of the paragraph on the right to information. As already stated, minors are regarded as vulnerable people.

4.5 Data on the prosecution of detention officers after violence against people deprived of liberty has been reported

The administration does not publish official data that would allow us to state how many detention officers have been tried with the accusation of violence on detainees occurring in prison.

Moreover, to our knowledge, **a consolidated collection of statistical data** covering all cases of complaints, appeals, disciplinary proceedings against security staff, and criminal proceedings or convictions for offences against persons in State custody, does not exist. The institutions involved are the Ministry of Justice, the Ministry of Defense and the Ministry of the Interior. During the 119th session of the UN Human Rights Committee (6-29 March 2017), the Italian Government provided the following data in its reply to the List of Issues in relation to the

country's sixth periodic report:*"(a) As for investigations and disciplinary proceedings against staff of the Penitentiary Administration, the Service for Discipline has been monitoring for 10 years the cases of ill-treatment against inmates, perpetrated by penitentiary police officers. Almost all the disciplinary proceedings against penitentiary officers for those events derive from penal cases, which, on their turn, come either from complaints of inmates or from investigations made by agents of the same Penitentiary Police Corps. The number of disciplinary sanctions inflicted largely overcomes the percentage of 5% of penal sentences, since sanctions may also derive from behaviors which are not criminally prosecutable, but which can be disciplinarily punished of from behaviors which were not criminally prosecuted because of some reasons, e.g. since they were not prosecutable. Currently the Service for Discipline is monitoring 96 penal procedures against Penitentiary police staff for alleged ill-treatment against inmates; such trend puts into evidence that the Penitentiary Administration carefully focuses on abuses events. (b) As for law enforcement staff, including Carabinieri and Guardia di Finanza Corps, between 2012-2016 (first semester): there have been 125 officers reported; 50 trials pending; 82 condemned; 85 subjected to disciplinary sanction; 212 dismissed (this last data also includes cases reported prior to 2012)"*[9].

Internal regulation 13 April 2012 - Guidelines and details on the exercise of disciplinary actions of the penitentiary police and d.lgs. 449/1992, regulates the behavior by which detention officers have to abide.

4.6 Obstacles to the investigation and prosecution of allegations of abuse

A major obstacle to the prosecution of violent incidents of which detainees in prison are victims, is the so-called "spirito di corpo" (corresponding to the Blue Code of Silence existing in the U.S.). In fact, as it was emblematically demonstrated by what happened in 2009 in the Teramo prison in central Italy, very often the judiciary encounters a wall of silence, isn't able to overcome it and has to dismiss the case without going further. In Teramo in 2009 a recording made by an anonymous person inside the prison and sent to get to the press, had leaked some conversations between some penitentiary policemen about some beatings that had taken place against the detainees. In particular, in the recorded audio it is possible to hear the voice of the then Chief of the Prison Police stationed in Teramo who says: "One doesn't beat a detainee in the section, rather downstairs… We risked a revolt because the negro has seen everything ». The magistrate seized the audio and opened an investigation. The detainee who supposedly had been the victim of the beatings did not file a lawsuit. There were two requests

[9] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fITA%2fQ%2f6%2fAdd.1&Lang=en

for dismissal of the case - the first one rejected - which made any attempt for the case to get to the court impossible. The magistrates have highlighted and remarked on several occasions the impossibility to prove the facts even for the omertà registered in the prison environment.
Moreover, the praxis reveals another major obstacle that regards the access to justice of detainees who, while in pre-trial, report that they have been victims of violence. It happens sometimes (in the proceedings followed by Antigone it has often happened) that magistrates unify the criminal procedure to which the inmate is subjected for the crime he committed and the one where he is the victim of the violence he has reported.

4.7 Differences between the situation of people held in correctional institutions, pre-trial and immigration detention

As already stated, there aren't differences between detainees in correctional institutions or in pre-trial detention.
All migrants that are detained in migrant detention centers have the possibility to denounce that they have suffered violence inside the center:

- Once outside the detention center they can, following the general procedure of any person who is a victim of a violent crime, go to any police office (questura, commissariato, stazione dei carabinieri o caserma ecc.) and denounce the crime, or they can be assisted by a lawyer in doing so.
- As already stated, it is also possible - though more complicated - to be assisted by a lawyer even while detained in a migrant detention center.

In abstract it is anyway possible for all migrants detained in an administrative center to denounce a crime to the authorities.

5. Right to protection

5.1. Right to protection of victims of violence in the law

The law does not provide to detainees held in penitentiary institutions any particular right to protection. There are, however, some preventive measures that are used in particular cases such as: LGBT detainees, detainees that were former police officers, and justice collaborators.

In the first two cases, detainees are usually hosted in a separate section of the prison not because the law provides a specific form of protection for them, but because the custom of holding them in separate sections in order to protect them has developed with time. The norms

that allow this different allocation are art 14 O.P. and artt. 31 and 32 of the Regulation that gives execution to the O.P.. Article 14.2 O.P. allows the penitentiary administration to decide on allocation of detainees on several criteria; one of these is to offer a better rieducational treatment to a homogeneous group of detainees and to avoid negative influences of one detainee on another. However, art. 32.3 of the Regulation allows the prison administration to find "the most suitable allocation for those detainees and internees who could be subjected to aggressions or subjugation by the other inmates. *Ad hoc* sections can be used for this purpose; however, the allocation of each detainee in these sections has to be frequently reviewed to verify that the reasons for his separation from the general prison population still exist". While on the one hand the protective (and preventive) purpose of this article is evident, on the other hand the praxis has led to the development of ghetto-sections (often characterized by a general lack of activities or by an unlawful use of solitary confinement) for the abovementioned protected detainees, that has been strongly condemned by the Italian NPM (pp.176-179).

The case of justice collaborators (who are often allocated in the same sections for protected detainees) and the legal basis for the protection that is granted to them are different. First of all, it is important to point out that the need to protect justice collaborators has arisen in the 70s and 80s during the years of political terrorism and, then, it was strengthened in the 90s during the years of the battles against mafia-organizations and mafia-related crimes. Justice collaborators are people who have committed a crime (usually mafia-related or related to a criminal organization) and decide - for whatever reason - to cooperate with the investigation.
This is not the place to discuss this topic further, as it is very complex and would need a very large research and space to explain it fully.

5.2. Protection from reprisals and secondary victimisation for having submitted a complaint

The measure that is most frequently taken is that of **transferring** the detained victim. This measure is in theory taken as a means of protection of the inmate, but actually risks to constitute yet another increase in the affliction of the penalty. The detainee who succeeds to denounce the violence suffered, especially if the perpetrator or perpetrators are prison police officers, is often transferred to another penitentiary.
First of all, this measure that should be a means of protection - so as to remove the victim from the aggressor - it is not always put in place. Secondly, it should be noted that the **transfer could have a negative effect on the detention conditions of the detained victim** as it could distance him from the family, deprive him from his work performed inside the prison ex art. 20

O.P. (but also from work performed outside the institute *ex* article 21 O.P.), as well as interrupting his school, university educational or recreational activities as well as other kinds of activities he was involved with inside the prison. It would thus be an unjustified increase in the affliction of the penalty done to a victim of crime.

With regard to the risk of **secondary victimization**, it is important to draw attention to the attacks suffered by some relatives of detained or arrested victims of violence.

Mr. Stefano Cucchi's case

The 30-year-old Stefano Cucchi died on 22 October 2009 at the penitentiary section of the hospital Sandro Pertini of Rome following a period of detention at the Regina Coeli prison. His death started a long judicial case to bring clarity to the suspicious circumstances of his death, which resulted in the **acquittal** of all the defendants. In September 2015 the case took a new turn when at the request of the Cucchi's family, the Prosecutor of the Republic of Rome decided to re-open the investigations. On 17 January 2017, at the conclusion of the preliminary investigations, the three Carabinieri who arrested Stefano Cucchi were accused of "*omicidio preterintenzionale*" (involuntary manslaughter) and abuse of power.

They were accused of causing the injuries that led to his death due to a subsequent omission of the physicians as well as of imposing on him restrictive measures not allowed by law. The three militaries were accused of having caused Mr. Cucchi's death "with slaps, kicks and punches", causing "a ruinous fall which caused the impact of the sacral region with the ground". One of them, along with the Marshal in charge of the Carabinieri station in which Stefano Cucchi was held after his arrest, were also charged with false reporting and defamation. A fifth *Carabiniere* was accused of defamation. Only on February 2017, the three Carabinieri accused of involuntary manslaughter were suspended from their duties. On 10 July 2017, the Tribunale di Roma decided to try the five *Carabinieri*. The trial began on October 13th before the Third Corte d'Assise.

A secondary victimization was noted not only in the case of the deceased victim, but the whole family of Stefano Cucchi suffered very severe attacks, especially his sister Ms. Ilaria Cucchi who, more than any other, was involved in the search and in the request for justice for her brother Stefano.

- here the article where the former Undersecretary of State to the Presidency of the Council of Ministers Carlo Giovanardi affirmed that Stefano Cucchi died because of his drug addiction, anorexia and because he was HIV-positive. Stefano Cucchi, however, was not HIV-positive or anorexic.

- Matteo Salvini, secretary of the Lega party and - currently Minister of the Interior and Vice President of the Council of Ministers, said on two occasions in 2016 and 2018, that Stefano's sister, Ilaria Cucchi, "makes me sick" and that "she should be ashamed".
- A police trade union, the Coisp, has also denounced Ilaria Cucchi in 2013 for defamation against the police.
- The autonomous police trade union Sappe, denounced Ilaria Cucchi in 2014 for instigation of hatred against the police.
- Ilaria Cucchi has also suffered insults and serious threats on Facebook. For some of these insults the leader of the autonomous police trade union Sap, Gianni Tonelli, who is also a parliamentarian of the League party, was also condemned in 2018.

Mr. Federico Aldrovandi's case

Federico Aldrovandi was a student who had just reached the age of majority. He was killed at dawn on September 25, 2005, in Ferrara, a small town in northern Italy, during the intervention of two cars of the State Police.

As stated in the sentence convicting the accused given by the court of highest degree (Judgment of 21 June 2012, No. 36280/12, of the Court of Cassation), since the very beginning this case has followed an incredible path, with the obvious objective of undermining the investigations.

The facts: Federico Aldrovandi is found by a police car, call from a lady who had seen the young man around 5:45 a.m. yelling and losing control. Federico Aldrovandi had spent the evening and most of the night in Bologna in a nightclub with friends and had taken drugs. He had been left by his friends near the park (where he was declared dead at 6:35 a.m.) because he had said he wanted to go home on foot. That was when the lady called the emergency number 112 (the operator forwarded the call to the State Police) and requested the intervention for that strange young man who had lost control and "was beating everywhere". There was the intervention of a first police car and then, after the request of the two officers who - they declared - had tried to contain it, the intervention of a second police car. When the latter came, a violent clash began again with the young Federico who was then immobilized on the ground with his face turned to the ground and the handcuffs on his wrists behind his back. The ambulance intervention was requested by the officers only when they realized that Federico was no longer breathing and he was in serious condition. The ambulance arrived when Federico Aldrovandi was already dead.

To investigate the suspects for involuntary manslaughter were the same policemen who were accused of having caused Federico's death: a complete malfunction of Justice. The attempt to clarify the incident did not seem to fall within the priorities of the Questura: the first to arrive on the crime scene on early September 25th were many police officers. Only at 11 in the

morning, after the body of Federico had already been taken to the mortuary, his relatives were warned.

The trial, despite all the difficulties and obstructions, showed that Federico Aldrovandi died because the procedures followed by the officers - who once had handcuffed him put their knees on his back - prevented him from breathing, causing him a postular hypoxia-asphyxiation and an hematoma on the heart bundle branch. So death was not accidental and it was indeed proved that he had been beaten for at least half an hour with truncheons. The convictions for the four officers were for involuntary excess in involuntary manslaughter.

However, also the Aldrovandi family had to undergo secondary victimization.

1. Three of the four police officers, "convicted of manslaughter by Italy's supreme court in June 2012 and sentenced to three years and six months in jail for their role in Aldrovandi's violent death", have received - at the end of April 2014 - a five-minute standing ovation by their colleagues during the conference of Sap[10]. The officers, however, benefited from the pardon, which covers thirty-six of the forty-three months of imprisonment prescribed by the judgement. Above all, the expectations of the family and of civil society were disregarded: they asked the disciplinary procedure (following the final conviction) to end with the removal from the service; however, the disciplinary commissions decided the four convicted policemen to be suspended for merely six months and their subsequent transfer to administrative functions.
2. Patrizia Moretti, mother of Federico Aldrovandi, is undoubtedly the person who suffered more than any other member of the family the consequences of secondary victimization. She was so strongly and frequently attacked by the Coisp, police trade union, that she had to sue Franco Maccari the general secretary of the union for stalking (complaint that she withdrew withdrawn). In fact, this union had even started a sit-in in front of the office where Ms. Moretti worked in March 2013. Always the Coisp in August of the same year had filed 72 complaints against as many people who had spoken up against the actions of the trade union.
3. Here a video (unfortunately in Italian, but with Italian subtitles) in which the Sap denounces the dangerousness of the handcuffing techniques used by officers following the exact procedure stated in the manuals. As pointed out in the article, this seems a defense that turns against the accused.
4. Between 2017 and 2018, several football clubs of the man Italian Serie A, B and C (AS Roma and Parma, Torino, Napoli and others) were fined because their own fans would

[10] They were Paolo Forlani, Luca Pollastri and Enzo Pontani, while the fourth convicted police officer, Monica Segatto, didn't take part to the Sap Conference.

have displayed banners or flags depicting the face of the young Federico Aldrovandi. In the motivations of such fines it is written that exposing the photo of Aldrovandi is considered a "provocative gesture".

5.3. Procedure to request/adopt measures of protection

The procedure that follows the complaint about the violence suffered - especially if perpetrated by policemen or prison officers - is basically the transfer of the detainee. On the appropriateness of the adoption of this measure it is directly the Prison Administration to decide, probably (but it is not certain) upon request of the magistrate. Under certain conditions there may also be a transfer of the officer. In any case, it is avoided that the accuser and the accused are together. But it is not always done.
For example, there has been a case, that of Mr. Carlo Saturno, who suffered violence by prison officers in a Penal Institute for Minors (IPM). Once out of the juvenile, he again entered the prison, this time as an adult. Unfortunately - but also for institutional negligence - he found there the officers he had reported for violence in the other institute (both had changed prison!). He died hanged in 2011 in unclear circumstances. The whole affair has not been prosecuted because it had exceeded the statutory time limitation.

Also Rachid Assarag, an inmate in the Parma prison who in 2010, after having being just transferred from another institute, complained of being subjected to violence; violence to which also other prisoners were subjected. Assarag succeeded to record conversations of prison police personnel which were published with the help of his wife (here you can read the transcripts and even see a video). In addition to having suffered personal retaliation, Assarag did not get justice, as the charges have exceeded the statutory time limitation.
These are just a few stories, but often as a result of reporting violence, detainees attempt suicide or die.

5.4. Differences between the procedures in the case of correctional institutions, pre-trial and immigration detention?

As already stated, there aren't differences between detainees in correctional institutions or in pre-trial detention.
Migrants that are detained in migrant detention centers don't have - just like detainees in penitentiary institutes - offices with the specific aim to offer protection to those who are victims of violence.

Médecins Sans Frontières in many of the migrant detention centers has several desks for victims of torture; however, their services are mostly oriented to those who have endured torture in the respective countries of origin. Furthermore, it is relevant to point out that Médecins Sans Frontières is a NGO; therefore, not a State agency.

6. Individualised needs assessments

6.1 Evaluation to establish the vulnerability of a victim of crime

Vulnerable victims fall within a list provided for by art. 90-*quater* c.p.p. added to the code by Legislative Decree n. 212/2015. As indicated by this article, the condition of "particular vulnerability" can be deduced from:

1. age
2. state of infirmity or psychic deficiency
3. the type of crime
4. the modalities and circumstances of the facts that are being tried.

Moreover, the condition of particular vulnerability is subjected to an evaluation by the interpreter of the laws - the judge. The law therefore does not definitively establish who or for which crime a particular vulnerability is recognized to the victim, but this must be evaluated from time to time by the interpreter. The norm gives some guidelines for this evaluation regarding the fact:

1. if the act is committed violently against the victim or with racial hatred
2. if the act is committed in within organized crime or terrorism, even international
3. if it regards human trafficking
4. if it involves discrimination
5. if the victim is emotionally, psychologically or economically dependent on the offender.

Although in this list there is no explicit reference to the state of deprivation of liberty as an element to presume the state of "particular vulnerability", there is still margin - although very labile and which would probably require a slight hermeneutical stretch - for the interpreter to recognize it. However, it does not appear that this ever happened.

The Ministry of Health, in March 2017, has published the "Guidelines for the programming of assistance and rehabilitation interventions as well as for the treatment of mental disorders of refugees and of people with subsidiary protection that have suffered torture, rape or other serious forms of psychological, physical or sexual violence". These guidelines are also

applicable to asylum seekers or to people seeking international protection. Obviously in this case they are not victims of torture or other crimes in Italy, but these measures are exclusively addressed to the holders of refugee status and or refugees thanks to subsidiary protection.
With regard to what actions can be taken and their timing, the E-Justice portal states that, in particular for certain types of victims or offenses (those for which the particular vulnerability can be presumed), support for victims is offered by the State health facilities present in the territory such as: family homes, anti-violence centers, shelters and other facilities managed at local and regional levels. It is easy to deduce that this list considers only the victims who are not deprived of liberty and, secondly, that it mainly concerns the victims of private violence (mainly domestic), of stalking or other crimes related to a emotional, psychological or economic dependance from the offender. Furthermore, victims of human trafficking and minors are included in this group.

In any case, the majority of the provisions were made *ad hoc* and prior to Legislative Decree n. 212/2015 implementing Directive 2012/29/EU.
In fact:

1. Minors, it was the Law n. 172/2012, which ratified the Lanzarote Convention for the Protection of Minors (particularly if victims of exploitation and sexual abuse) to introduce particular rights and protection for them by modifying some articles of the Code of Criminal Procedure and providing emotional and psychological assistance to the minor by the parents (or adult of his choice), but also by experts in the field of associations, foundations, groups provided they are included in a special list (Article 609-decies). Furthermore, the presence of an expert is mandatory when the police, magistrates and judges must hear the minor victim of sexual violence or exploitation (articles 351, 362 and 391-bis). The minor (but also the adult person) victim of sexual violence must be heard during the evidentiary hearing (Article 392). Furthermore, the Consolidated Law on "Justice Expenditures" (D.P.R. n.115 of 30 may 2002) was modified and art. 76 granted free legal aid to the offended person for her to take part to the proceeding as a civil party, if she is a minor, victim of sexual exploitation. In these cases protection is granted *erga omnes* without considering income requirements.
2. With regard to the provision of protection for victims of crimes related to the emotional / sentimental sphere or victims who are in a state of economic dependence on the offender (extended protections also to minors who are eye witnesses), have been included in the legislation by Decree Law 93/2013. Without going into detail, on the one hand these were extensions of provisions already envisaged for other crimes, such as the possibility to access simplified procedures to denounce a crime, an easier access to welfare services (articles 609-*decies*, 612-*bis*), or precautionary measures against

the accused (such as removal from the family home). On the other hand, there also some more protections for the victim have been introduced, such as the obligation for the authority to notify the victim of any request for dismissal of the case. Furthermore, free legal aid was extended *erga omnes*. Also, access to a special residence permit was provided for foreigners without permits who have been victims of this type of crimes.

The abovementioned study of the *Centro Studi* of the Chamber of Deputies, also reports the possibility that the victim is listened to in a protected manner, if the criminal proceedings concern crimes of mistreatment in the family, trafficking of persons.
Victims of crimes that are deprived of liberty seem completely excluded from the normative provision.
However, the Italian Government also reports through the E-Justice portal that for all other types of crime there are also Associations - connected in a network with local authorities, with the public prosecutor's offices and the courts, and with health services - that offer free assistance to the victims.

Law enforcement agencies provide information to victims of particular types of offenses (eg human trafficking, family mistreatment, sexual violence) on certain facilities (anti-violence centers or shelters) where assistance is available.

The legislator, as evidenced by the document "The system of protection of victims: supranational principles and national legislation" produced by the *Centro Studi* of the Chamber of Deputies, is fully aware of the **absence of protection for all.** This absence of protection is justified by a selective approach that widens the forms of assistance only to some victims because of the scarce economic resources available. This selective approach has seen a priority given to victims considered particularly vulnerable.
Access to assistance facilities is possible regardless of the fact that the crime has been reported.

6.2 Training for officials who deal with vulnerable detained victims in pre-trial and immigration detention

It was noted - already in the course of other projects on victims (such as SAVE that was mentioned previously) - a general lack of training on victim protection for the personnel anyhow involved.

6.3 Access to a victim support system for detained victims

There is no support program for detainees who are victims of abuse in prison that is directly provided by the State or the Ministry of Justice in case of pre-trial detainees, nor by the Ministry of Interior in the case of immigration detention. Moreover, in the law on torture (which is widely discussed above) the establishment of a fund for victims is not foreseen.

However, there are some supports for detainees and migrants. These are generic supports and not entirely dedicated to victims. But, in the course of their ordinary work, they can also encounter detainees or migrants who have suffered violence. Here below some examples:

1. Associazione Antigone:
    a. In 2008, Antigone launched the prison Ombudsman service, which receives complaints from detainees in prisons, families of detainees and former detainees and police stations all over the country. The Ombudsman mediates with the prison administrations in order to address specific cases related to detainees' detention conditions (hence, it doesn't get involved in the specific trial), but some of these cases end up in court and Antigone supports people whose rights have been violated, or brings a civil action in the criminal proceedings.
    b. Since 2015, Antigone has also started law clinic activities in three different penitentiary institutes in Rome. Two of the law clinics (those in the Regina Coeli and Rebibbia Femminile prisons) were set up thanks to an agreement with the Roma Tre University. Students from the Law Department are initially trained in order to address issues related to the detention conditions; afterwards, they are paired with more expert students and a tutor, with whom they discuss cases. The third law clinic, located in Rebibbia Nuovo Complesso, is managed entirely by Antigone. The lawyers who follow cases are experts in penitentiary law and migration law.

    Antigone's Ombudsman deals each year with around 200 cases from penitentiary institutions that concern the conditions of detentions of detainees. Most of detainees' requests regard problems with the penitentiary administration, health issues, transfers to other prisons, requests to work inside or outside the penitentiary institute. In the majority of the cases, volunteers file requests to the administration, send and receive documents from the family or the lawyer of the detainee, and follow up with the case until it is closed. Law clinics have the advantage of being in the same institute where

the detainee is held. As this model is very successful, two new law clinics will be opened in the upcoming year.

In more serious matters involving violence, death and if the detainee agrees, cases are taken to court (up to the ECtHR) and followed by our lawyers.

2. Arci Solidarietà Viterbo:

   The information desk of Arci Solidarietà Viterbo Onlus has been operating in the Viterbo prison since 2005.

   The information desk activity is characterized by a continuous and synergistic collaboration with the professional figures of the educational and health staff, with the facilities present in the territory and with other associations that deal with the penitentiary sector.

   The operators of the desk provide information about life in the institution, the national legislation and the procedures to be carried out according to need, indicating the contacts and the appropriate methods and sometimes acting as facilitators. Contacts and information are provided for the paths of restorative justice.

   Information and references are provided on the protection of their rights and how to report violations to the authorities such as judicial authorities, surveillance magistrates and guarantors of the rights of persons detained.

   There are many requests of support for the period of imprisonment. During individual meetings, self-determination and empowerment skills are strengthened, motivating people to be active and aware of the importance of creating an individual path by finding their own point of reference in institutional operators.

3. Medici per i Diritti Umani (MEDU) - (Doctors for Human Rights – Italy).

   They are currently involved in national and international programs. Their projects in Italy are developed with a specific attention to the most vulnerable sector of the population excluded from access to health care. Among their many projects the Observatory on Italian Centres for Identification and Expulsion for immigrants is worth mentioning. For further information about their projects it is possible to visit their website.

4. There is a victim support service called Associazione Libra for victims in Italy as highlighted in the Report made by the Oxford Human Rights Hub, Office Pro Bono

Publico, on Victim participation in criminal procedure in Italy[11]. Nonetheless the access to this service for detained victims seems unlikely since the contact - due to the lack of personal freedom - is difficult to be assured.

6.3.1 Overview of the legal framework on victims support services in Italy

According to our research and as highlighted by a report on Italian legislation made for SAVE there are several issues on victim support services and compliance of Italian legislation with the Directive. While the Directive has a general approach, the Italian legislator chose to have a more specific one which as consequences results in institutions only for particularly vulnerable victims like minors or victim of domestic violence. **Italy does not have a legislation for assistance for victims in general**.

Moreover, the conclusions of the Study carried out by the *Centro Studi* Service of the Chamber of Deputies in the XVII Legislature stress that the Italian legislator is aware of the legal vacuum on this matter. That being said, this means that only the emotional and psychological damage suffered by victims of specific violent crimes and not all violent intentional crimes can be taken care of. Also, only the "vulnerable victims" described in the answer to question 6.1 have the possibility to access specific assistance services, that are, however, neither widespread nor always available, nor always State-managed.

Furthermore, when transposing the Directive in lgs 212/2015, even if some news rights were given, the right to access a victim support service was not implemented.

On November 7th 2002, a proposition was presented to the Chamber of Deputies, to create a body of assistance support and protection for victims of crime. That law would have allowed to create a Victim Desk in each territorial office of government, who would be in charge not only of providing information to the victims but also of coordinating the activities of public or private institutions in the issue in their respective area. That general provision was not approved. There are only a few specific laws on specific victims. For example, our system provides protection for victims of stalking (*legislative decree 23 feb. 2009 n. 11, modified in the law 23 April 2009 n. 38, art 612 bis criminal code*) and victims of trafficking (articles 12 and 13 Law. August 11th 2003, n. 228).

[11] http://ohrh.law.ox.ac.uk/opbp-makes-submissions-to-redress-on-victim-participation-in-criminal-procedures/

As already said, there is no Victim Desk Support in the courts, nor any law concerning the establishment or organization of a victim support service, which is why the civil society ended up intervening.

Nonetheless, in the frame of a DAFNE project, it was promoted the creation of National Service of Coordination to bring support to victims of crime, in order to "ensure that the rights of victims are respected and that a uniform treatment is guaranteed throughout the national territory by:

- The creation - in at least each regional capital - of support services for victims of crime
- The accreditation by Ministry of Justice of associations that provide assistance services in collaboration, jointly, or on the basis of agreements with local public bodies (municipalities, provinces, unions of municipalities);
- the training and qualification of operators involved in victim assistance services."

As stated by the SAVE report: On September 14th, the Ministry of Justice and DAFNE Network (Rete Dafne) signed a memorandum called *Project aimed at mapping assistance existing services for victims on the national territory,* declaring that: "Italy is failing to comply with the obligations set out by Directive EU / 2012/29 concerning services to help victims of crime; that for this reason, during 2016, the Ministry of Justice started activities aimed at establishing a national coordination of services to assist victims of crime, the development of guidelines directed to associations providing assistance to victims, rationalization of existing legislation and identification of the appropriate means to publicize the assistance services to existing victims in Italy".

6.3.2 Lack of legal framework on victim support services: A protection carried by civil society

In correctional detentions centers

As already mentioned (par. 4), in penitentiary institutes there is no specific procedure to file a complaint against a violent crime apart from the generic and jurisdictional complaint procedures. However, it is important to mention that also the non-custodial staff of the penitentiary institute can be of support to the victims of inter-detainee violence or of violence perpetrated by the custodial staff. In particular, educators (art. 83 O.P.), who are in charge of the individual plan of each detainee, and cultural mediators (art. 35 of the Regulation that gives execution to the penitentiary law), who are of support to the personnel in light of the increasing number of detainees from different cultures, are those who are allowed to visit detainees anytime and without an authorization. Detainees can also reach out to them in case they are subjected to mistreatment.

Moreover, the prison medical staff has the duty to report if any mistreatment has taken place in the prison. In fact, art. 331.1 c.p.p. prescribes that whoever is in charge of a public service (e.g. also the prison doctor, the nurse), when in service, upon discovering that a crime has been committed, have to denounce it in writing even when the perpetrator is unknown. Furthermore, art. 365 of the penal code punishes whoever, if in the exercise of a medical profession, omits or delais to report to the authorities that a crime that can be prosecuted *ex officio* has been committed. Upon denouncing a crime, the medical professional has to present a medical report (*referto*) within 48 hours to the public prosecutor or to a police officer (art. 334.1 c.p.p.). According to art 334.2 c.p.p., the medical report indicates the person that was assisted and, if possible, informations to identify her, the place of her whereabouts, and time, place and other circumstances of the medical intervention. Moreover, it indicates the information that explain the circumstances of the facts, the means that have been used to commit them and the effects that have been caused or that can be caused. Not all crimes can be prosecuted *ex officio*, in some cases it is the offended person who has to denounce the offender.

Theoretically this should allow the most serious offences not to go unreported; however, in reality we have found that doctors sometimes tend not to enquire deeper into a suspicious case and accept the first explanation of the detainee. Therefore, many cases of violence are not reported to the competent authority. There are no other specific guidelines that regulate the role of the medical staff in penitentiary institutes. Moreover, during the research, it soon became clear that not only specific guidelines don't exist, but also that in the medical field violence in prisons appears not to be a debated topic, on the contrary a topic to be carefully avoided because perceived as very delicate.

7. Compensation

While compensation by the State might exist for detainees on overcrowding or unlawfully detained, it does not exist, or in other words there has not been - as for our knowledge - any case involving detained victims of crimes.

Moreover, as noted also by the study carried out by the *Centro Studi* of the Chamber of Deputies in the XVII Legislature, already mentioned above, the Italian legal system has numerous gaps regarding the possibility to receive compensation when one is a victim of a crime. In fact, there is no general protection, as the legislator has provided compensation exclusively for certain categories of victims: organized crime and terrorism.

7.1. Specific legislation establishing a procedure for victims of violent crime in detention to claim compensation

There is no specific legislation concerning victims of violent crimes suffered in pre-trial and immigration detention. Nonetheless, there are some specific provisions to what regards persons that are particularly vulnerable but there are not integrated or considered as so, nor by the law, nor by praxis.

According to Directive 2004/80/EC, the State, as implemented in Italy (d.lgs n. 122/2016), must guarantee to citizens and foreigners, victims of intentional and violent crimes (malicious murders, malicious injuries, sexual violence) committed in the Italian territory, a fair and adequate compensation (or, at least, a reimbursement), whenever the perpetrator is unknown or has escaped justice or, in any case, has no economic resources to compensate the victim (or, in the case of death, to the family members) for the damages caused.

7.2. Compensation outside of the framework of court proceedings

It is not likely victims are entitled to compensation outside of the framework of court proceedings since the compensation conditions implied that the victim brings a civil action against the author of the crime. **(art 13.b legislative decree 122/2016).**
In fact, the procedure to be followed to file a claim for damages to be paid by the offender - as reported by the official Justice portal of the European Union E-Justice on the basis of the information received from the Governments of the Member States - in Italy it is only after a conviction sentence that the offended party can claim damages. However, an exception seems to be represented by the hypothesis in which the perpetrator has remained unknown (see the previous answer).
Here the general process that has to be followed by the victim to file a claim for damages, as presented by E-Justice.
“Italian law provides two ways for you to obtain compensation for the damage you have suffered:

- You can join the criminal proceedings against the offender as a civil party.
- You can bring an independent civil action.

This is your choice, as the legislation leaves the two proceedings separate: the criminal proceedings and the civil proceedings.

Only after a request that the case be committed for trial, or committal for trial (at a hearing), may you, assisted by your counsel, join a civil action and thus become an effective party to the proceedings, with full rights of representation. When sentencing, the criminal court will award you a sum, the so-called interim award, which is immediately enforceable, referring the decision about the total and final amount of compensation to a civil court, to be fixed only after the criminal judgment has become res judicata.
As an alternative to joining proceedings as a civil party, you can bring an independent civil action to request compensation for damage suffered as a result of the offender's behaviour."

However, there were exceptions that have been covered by the transposition of Directive 2004/80/EC.
The said Directive requires the State to establish compensation/reimbursement mechanisms in exceptional cases where:

1. the perpetrator is unknown
2. the offender has escaped justice
3. the perpetrator does not have sufficient financial resources to cover the victim's (or, in the case of death, the family members) compensation (in the broad sense introduced in Article 90.3, as amended by article 1.1 letter a) of the d.lgs n. 212/2015 implementing Directive 2012/29/EU).

7.3. Compensation of victims in the absence of the identification of a perpetrator

Victims can receive compensation even without the identification of the offender under the general regime of victims. The system does provide that possibility. (See answers 1 and 2 of Par. 7). Nonetheless, we do not know if in the cases of victims of crime in pre-trial and immigration detention it, the same procedure would apply, for example in the case of the detainee not identifying the guard that has had a violent behaviour towards him.

7.4. Average amount of compensation depending on the harm

A ministerial decree of August 31th 2017 on application of the legislative decree 122/2016 sets some amounts for compensation of victims of intentional crimes.

The sums will be represented in the table hereafter:

Violent intentional crime	Compensation	Conditions
Murder	7200 euros	
	8200 euros for the children of the victim	If the crime is committed by the spouse - even separated or divorced - or by the person related to the victim by a affective relationship.
Sexual violence	4800 euros	(ex art. 609-bis cpp) Unless the circumstance of minor gravity is applicable.
Other crimes	Max 3000 euro: reimbursement of the medical and treatment expenses	upon presentation of the certification of the expenses.

Regarding to the amounts set by the State, the compensation doesn't seem neither fair nor adequate, as it should be on the basis of the European Directive.

7.5 Fees in claims for compensation that proved to be unsuccessful

As set that the compensation procedure is quite recent, there is not enough information to know if there are fees involved when the claim for compensation is unsuccessful. **Nonetheless, it is important to highlight that in the case the victim pursues a civil action against an accused who is not found guilty, the victim can be ordered - by the judge - to pay the accused persons' expenses spent to defend himself in the civil claim (Article 541 CPP).**

7.6 Differences between the situation of those held in correctional institutions and those held in pre-trial or immigration detention

Since the compensation possibility in Italy is quite recent, we can not say that the right differ legally. In practice, as for our knowledge, there still has not been any case nor any access to compensation for victims of crime in pre-trial or immigration detention.

8. Research and case studies

8.1 Public available information related to the frequency of violent crime, including violence conducted by members of the authorities against detainees, in detention facilities

The Department of Penitentiary Administration publishes data on prisons in its website. However, upon filing a request, it is possible to have the most recent data on the penitentiary institutions. Among the information we will able to find data related to “critical events” where, suicides, attempts of suicides, fights or crimes that happen in prison are highlighted. Even though it is impossible to know if their classification is rightfully established for each kind of “critical event”, it’s important to acknowledge the existence of some databank notwithstanding the facts that some events might remain disguised.

8.2 Research or reporting on detained victims

There has been a recent research and report called Inside Police Custody made by our Organisation, that even though it concerned the detainees as accused, it gives an overview on some of the rights to which detainees are entitled as accused but of which they can benefit as victims.
Within the aforementioned SAVE project a report was produced on the national legislation on “Victims of Crime” in general - starting with the Directive 2012/29/UE and its needs of implementation.

8.3 Systemic challenges of the framework for victims of violence

8.3.1. Transparency

The fact that all the places related to the Ministry of Interior are close and impenetrable represents a big problem in the Italian system. The only exception to this closure is made to the NPM. Nonetheless here again there is absence of transparency since - as already mentioned in Section X - he can only access the Security Chambers only with a previous communication/notification to the Police Station (being them Questure, Commissariati, Caserme - barracks - e Carabinieri Stations). Associazione Antigone has only an authorization from the Ministry of Justice - not the Ministry of Interior - to access penitentiary establishments, also the ones for juveniles. Antigone, as already stated, has not received an authorization from the Ministry of Interior; therefore, it does not have access to police stations and cannot monitor

the conditions to which pre-trial detainees are exposed. Furthermore, due to the lack of facilities or adequate facilities in police stations, pre-trial detainees are often placed in prison instead of police stations - prison to which Antigone has access and can monitor - exposing them to be more victimized than what they would be in police stations.

8.3.2. Lack of recognition of the vulnerability of those deprived of liberty

On one hand, the lack of recognition condition is emphasized by an obvious absence of the legislator's intervention to consider the detainee victim of crime's difficult position. On the other hand, the lack of recognition is enhanced with regard to the difficult procedure to report crime that occurred in a place of detention. **In fact, when we focus on the prisoner, victim of violence perpetrated by one (or more) police officers, it is very difficult to imagine the possibility to contact the Penitentiary Police (if it happens inside the prison) or the Police (if it happens in the Police Stations).**
In answer 4, we will first describe somes cases followed by Antigone and then highlight some of the difficulties and stratagems used by victims of crime in prison - caused either by authorities but also other inmates - to report the violence suffered.

8.3.3. Respect of the victim

1. The respect of the Victim: Examples of the risk of secondary victimization

While the Directive 2012/29/EU aims to diminish the risk of secondary victimization (article 18,19,20), the situation in Italy does not reflect the same aim.

Inmates, or in any case detainees in police stations, **frequently suffer a heavy secondary victimization**. Notwithstanding they are only potential criminals - as known in pre-trial detention stage, they still benefit from the presumption of innocence - this same status (of potential criminal) exposes them to violent attacks both by the police forces - as it can been seen with some Italian trade unions - (as we have specified at paragraph 5 questions 2 and 3) than the Minister or political figures.

2. The Respect of the Victim: The controversial solution to prevent the risk of secondary victimization

The secondary victimization can also be seen in the procedures or measures implemented after receiving a violence complaint from a detainee. In fact, many prisoners declared that once the violence suffered is reported to the authorities, the victim is immediately

transferred from the prison in which they were held to another. This issue was already discussed in answer 2 paragraph 5 (right to protection).

8.4 Cases related to violent crime in detention

Hereafter some cases of violence that has been reported and that Antigone took part to.

The prison of Asti: the Cirino-Renne case

On 27th October 2011, Antigone acted a as plaintiff in the criminal proceedings that saw five police officers accused of using violence against two detainees, Renne and Cirino. These abuses were committed in the prison of Asti, in December 2004. The proceeding was concluded on January 30th 2012 because it exceeded the time limitation. On October 26th 2017, the European Court of Human Rights has condemned Italy for the violation of art. 3 of the European Convention on Human Rights that prohibits torture, and inhuman or degrading treatment or punishment. The President of Antigone, Patrizio Gonnella, received anonymous personal threats for having taken a position and asked for clarity about the facts of the Asti prison (see paragraph 8, question 4 about this case).

The prison of Lucera: the Rotundo case

On 13th January 2011 Giuseppe Rotundo sends a letter from the jail to his lawyer where he reports having been victim of a beating inflicted by three prison officers. Antigone followed the case supported by its team of lawyers. The trial is currently underway at the Foggia Court and it is the result of the unification of two lawsuits; in fact the three officers have also denounced the assault by the convict. During the debate, several witnesses have been questioned. The prison psychologist reported the interview she had with Rotundo the day that followed the event: “it was the first time I had seen a person so brutally roughed up” and she reminded Rotundo’s words: “he had been brought in a cell, presumably in solitary confinement, and asked to get undressed and then the beating had begun (…).” (Hearing of 29th November 2016). The next hearing is scheduled on 25th October 2018 and the time limitation is getting closer.

The prison of Siracusa : the Liotta case

It was the 9th of March 2013 when Antigone received an email from Mr. Liotta’s sister, who was reporting the death of her convicted brother: “(…) I am asking your intervention in defence of the case of Alfredo Liotta who has died without any medical aid. Last time I saw him it was April 2012 and he was already very run-down, he weighed no more than 55 kg. Then from April until July the psychophysical decay has brought him to death.” On 6th June 2013

Antigone filed a petition to the Public Prosecutor's office of Siracusa in order to ask to identify the individuals responsible for Alfredo's death, that took place on26th July 2016 in a cell of Cavadonna's prison in Siracusa. On 29th November 2013, the Public Prosecutor's office of Siracusa informed that nine physicians that had examined Liotta had been put under investigation along with the expert of the Court of Assizes of Appeal and the then prison director. The collective technical opinion registered on 23rd June 2014 judges heavily the behaviour of the medical staff in the period 21-25 of July 202: Alfredo dies in the bed of his prison cell due to a cardiac circulatory collapse: "related to a rectorrhagia caused by a haemorrhoidal lesion". Three years after Alfredo's death –25th April 2015 – Antigone has filed a motion in order to urge the Public Prosecutor's office to close the investigation. On 14th December 2016, the Prosecutor asked for a judgment for manslaughter of nine out of ten indicted. The director had been deleted from the accused. The Prosecutor indicated Antigone among the offended parties. During the preliminary hearing held on 6th April 2017 the Judge approved the request of Antigone to take part as plaintiff. The next hearing for the definition of the preliminary phase of the trial is scheduled on 17th May 2018.

The prison of Ivrea

In March 2016, Antigone denounced an incident of violence that occurred against an African prisoner. The incident was reported by another detainee: "On Saturday, November 7th, I witnessed the mistreatment of a young prisoner, probably from North Africa whose name I do not know. At about 8.15 am I heard screams of pain and requests for help and I came out of my cell in the corridor that allows you to see the roundabout on the ground floor. Indeed, I am detained in the section where there are the cells of people in semi-liberty and in art.21. Then, I I saw three police officers that I could recognize even if I do not know their names, beating with slaps and punches the young man who kept shouting asking for help and trying to protect himself without reacting. On the scene there were other agents and a health worker who remained passive to observe. The young man was dragged to the infirmary while he kept shouting. Currently, four criminal proceedings are pending before the Public Prosecutor's Office of Ivrea, two against known and two against unknown people. Antigone will deposit a formal request to encourage the closure of the investigations.

The prison of Pordenone: the Borriello case

On 8th April 2016, Antigone lodged a complaint before the Public Prosecutor of Pordenone to denounce various inconsistencies on the death of the young Stefano Borriello (who was merely 29 years old), which occurred, on 7th August 2015, in the prison of Pordenone. According to the report of the death written by the Director, at 8:15 pm a police officer saw Borriello in his cell (number 2), lose consciousness and fall to the ground; he was carried to the emergency

room of the Pordenone Hospital where his death was recorded. The preliminary investigations developed into two phases with similar outcomes, namely the request of dismissal by the Public Prosecutor. The mother of the young man opposed to the dismissal of the case, so the judge of the preliminary investigation considered necessary an integration to the preliminary investigations. It was the 28th of September 2016. In the second phase of the investigation, the Public Prosecutor, after having arranged a medical consultation, on 17th July 2017, advanced a second request for the dismissal of the case. Antigone presented a notice of opposition to the dismissal that was discussed during the hearing of 18th of December 2017: according to the specialist in infectious disease appointed by our association, a visit to the patient (even the day before his death) would have allowed the beginning of a therapy that would have increased his possibility to survive. In the outcome of the hearing, the judge provided for a measure of coercive imputation that brought the Public Prosecutor to formalize the charge of manslaughter for the doctor of the prison. The preliminary hearing, in which Antigone asked to take part as a plaintiff, will take place on 8th May 2018, in the Court of Pordenone.

The prison of Regina Coeli: the Guerrieri case

Valerio Guerrieri committed suicide on 24th February 2017 in the bathroom of his cell in Regina Coeli: he had just turned 22 and he had severe psychic disorders. According to the last specialist who visited him, Valerio was suffering from “personality disorder” with a "sort of chronic dyscontrol and manipulative attitudes" and the suicidal risk of the young man was "rather significant" and "not negligible”. Valerio had spoken in that hearing saying that he was sick but not dangerous for other people because he didn’t harm anyone. He also said that at Regina Coeli there was not even an officer every floor and that the psychiatrist who was supposed to visit him had never done so. At the end of that hearing, ten days before Valerio’s death, the judge declared Valerio partially non compos mentis and he condemned him to four month of prison withdrawing the pre-trial detention in prison and providing for the security measure in Residence for the Execution of Security Measures. The security measure was not disposed provisionally and so it had to be carried out only after serving the sentence. Immediately after his death, the Public Prosecutor's Office opened proceedings against unknown for manslaughter. Antigone did not take part in this proceeding but it lodged a complaint to shed a light on the legal ground of Valerio’s detention. In fact, when someone is deprived of legal capacity, he/she should be held in REMS instead of in prison; however, due to the lack of available places in REMS several people are now detained in penitential institutions. The investigations on this proceeding have been concluded on 20th February with a request of dismissal. Antigone, with Valerio’s mum, have lodged an objection to the request of dismissal.

The prison of Velletri: the Prato case

On 25th January 2018, Antigone has lodged a complaint to shed a light on the death of Marco Prato, who committed suicide on 20th June 2017 in the bathroom of a cell in the prison of Velletri. On 13th February 2017, Mr. Prato was moved from Regina Coeli to the Velletri prison against his will and with unreasonable motivations. In Rome, he was under strict surveillance and he was subjected to an important therapy. In the next months, he made sporadic interviews with the psychiatrist and despite the obvious signs of detachment and isolation - he left the cell only few times and he had interrupted the correspondence with his friends- no particular actions were taken to help him. Antigone has lodged two complaints to the Public Prosecutor's Office of Rome and Velletri: to the first one for the violation of law on privacy (some clinical data were disclosed by a television broadcasting) and the second one for Marco's suicide. From October 2017, reports of violence have come from the following prisons: Regina Coeli (one detainee), Viterbo (three detainees), Foggia, Ascoli Piceno and La Spezia. The national Guarantor of people deprived of liberty or the local Guarantor have been promptly informed.

The prison of Solliciano

The NGOs l'Altro diritto and Antigone acted as a plaintiff before court in the proceeding against four officers guilty of ill-treatment of some inmates in the Sollicciano prison in Florence. The facts go back to the period between September and December 2005. Three incidents were reported involving the agents accused of having applied "severe measures not allowed by law", in violation of article 608 of the Criminal Code, launching slaps against prisoners or hitting them with objects blunt. The most serious incident occurred on October 26, 2005, when, according to the prosecution, one of them repeatedly hit an inmate with the handle of a broom "until he broke it in several parts". The first instance sentence arrived on the June 21th 2013 and convicted the three officers, with sentences ranging from eight months to a year and six months of imprisonment plus compensation for damages in favor of the civil parties. On April 17, 2018, five years after the first decision, the second instance judgement is delivered. This one absolves partially the three officers but the sentence remains for multiple injuries and compensation for the victims. On the other hand, the charges for the violation of Article 608 fall, according to an interpretation of the law, requires, in order for the fact to exist, the further limitation of personal freedom already compressed. The three officers benefited from the time limitation. Two of them have chosen to renounce to it while the officer who has not renounced yet is still in service. Alongside the criminal proceedings, the disciplinary hearing (which was held before the appeal) has also ended because the facts have been considered as not having

caused "disturbance”. The sentence delivered by the second instance was sent to the penitentiary administration.

Summary report of the interviews

During our research activity, we interviewed 17 persons, representing the following categories:

a) defence lawyers (3)

b) victims (2)

c) activists of NGOs concerned with the rights of persons deprived of liberty (4)[12]

d) detention facilities staff[13] (1) health care professionals (2) and probation staff (5).

The questionnaires concerned:

1) Right to information

2) Complaint procedures

3) Right to protection and individualised needs assessment

4) Compensation.

1. Right to information

Art. 32 of the *Penitentiary Law* (L. n. 354/1975) established that, when entering the detention facility, every detainee is informed about his rights and duties, without exactly specifying the content of this information and whether it had to be given orally or in writing.

Until 2012, the *Penitentiary Rules* (d.p.r. n. 230/2000) provided that the detainees had to be given an extract of the Penitentiary Law and other relevant acts and regulations.

According to the lawyers that have been interviewed, even if Law n. 354/1975 is written in a quite plain language, it is still a law, so it could be not completely understandable for detainees (especially for those who do not speak Italian). In most of cases, however, the extract was not provided at all.

In **2012**, art. 69 of the *Penitentiary Rules* was modified and now provides that the detainees are given a "***Charter of Prisoners' and Internees' Rights and Duties***", whose text was adopted with a Decree of the Ministry of Justice and is available in 10 foreign languages (English, French, Spanish, German, Albanian, Arabic, Bulgarian, Croatian, Romanian)[14].

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[12] *A Buon Diritto*, *Osservatorio Italiano Repressione* (OIR), *Ristretti Orizzonti*, *Volontari In Carcere* (VIC).

[13] The Penitentiary Administration never answered to our request for an authorisation to interview the penitentiary staff. We could only interview the *chaplain* of an Italian detention facility: the chaplain is independent from the Administration but, according to the Penitentiary Law (L. n. 354/1975), he plays a role that is not limited to religious services (*e.g.* he takes part to the commission which adopts the Internal Rules of the facility) and, in practice, many chaplains also provide material assistance to all detainees, regardless of their religious beliefs.

[14] *See* https://www.giustizia.it/giustizia/it/mg_1_8_1.page?contentId=SDC804746&previsiousPage=mg_1_8_1.

The only reference to the right of raising complaints about violence exerted on detainees is the following: «*prisoners have the right of not being subjected to any means of coercion for disciplinary aims (such as the use of handcuffs) and can make a complaint to the supervisory judge relevant to the way disciplinary power is exerted*».

There is not any data available about the practice of the distribution of the Charter.

The victims interviewed told that they never received any paper about detainees' rights in none of the facilities they have been detained in – even if both of them have a long experience of detention and one of them has been detained in 21 different penitentiary institutes in Italy.

The chaplain interviewed described a non-uniform distribution of the Charter among the detainees.

All other interviewees do not have any direct experience about the practice of the right to information on detainees' rights.

2. Complaint procedures (and subsequent proceedings)

As any other individual outside of the detention institutes, detainees have the **right to file a complaint** when they become victims of a crime while they are in detention.

In practice, however, an important obstacle is represented by the **lack of independence of the authority that is competent for receiving complaints**: as a matter of fact, the complaints filed during detention are made to the Penitentiary Police, that is not independent from the detention facility staff, since they are part of the staff themselves. This is the main problem which was pointed out by many of the interviewees (lawyers, victims, activists of local NGOs) and that, according to them, is the very cause of the **low frequency of complaints filed during detention**.

Something that should be underlined is that the delay in filing complaints is normally detrimental for the possibility to effectively prosecute the perpetrators of the violent crimes, unless the violence ends in the death of the detainee (and therefore leads to a prosecution for homicide), since the crimes of *percosse* (battery) and *lesioni* (injuries) have quite short terms of prescription.

In the few cases which led to the prosecution of the perpetrators, the complaint was not filed from the inside of the detention facility.

A famous case is the one of Parma prison, where a detainee audio-recorded his conversations with some Penitentiary Police officers, in order to prove the violence perpetrated against him. This is, however, an isolated case.

As both lawyers and activists of local NGOs told, normally, detainees which become victims of violent crimes inform their families or lawyers through letters sent from the detention facility,

usually signed by a cell-mate. Sometimes they report these facts to volunteers.
When the chaplain gets to know about a violent episode, he usually reports everything to the detainee's lawyer. When the fact is serious, his advice is to file a complaint.

The role of health care professionals can be relevant for the emersion of violent crimes. It was of a fundamental importance, for example, in the case of one of the victims that have been interviewed: for a lucky coincidence, a psychological visit was scheduled for the day after he was seriously injured, so that the doctor could immediately see the signs of the battery and promptly alert the detainee's lawyer.
The health care professionals which have been interviewed during the research told that when detainees are brought to them because they have reported injuries, they usually do not tell that they were assaulted (by other detainees or members of the staff): they normally say that it was an accident. Therefore, there is the need of verifying the attendibility of what detainees report.
Following internal protocols of the ASL (health service local units), the health care staff files a report (*referto*), writing everything that the detainee told, even if he does not want to be explicit about the causes of the injuries.
Normally, nurses and doctors do not enter the cells: the detainees which need health care are brought to the doctor's office or to the first-aid station by Penitentiary Police agents. Even when they received urgent calls and have to intervene in the detention rooms, it is a Penitentiary Police agent which first enters the cell, followed by the sanitary personnel.

The social workers of the probation staff interviewed report that they have barely heard stories of violence suffered in prison from detainees directly. Moreover, UEPE has never adopted any guide line that social workers should follow in these particular situations. They usually report the case to the head of the prison.

As regards the **proceedings against the perpetrators of violent crimes in detention facilities**, according to both lawyers and activists of local NGOs, the participation of the victims and/or their families has a crucial importance. When the detainee does not have anyone caring about him/her outside – for example in the case of migrants in administrative detention which often do not have any family link in Italy – it is very difficult to prosecute violent crimes perpetrated in detention facilities.
However, even when there is a strong interest in establishing the truth, these proceedings are very difficult to go on until their end. One of the obstacles for the victims and/or their families is the **cost** of the proceedings, which often need technical advice by experts and have a very long duration.

According to one of the activists of local NGOs which have been interviewed, a relevant obstacle for the effective prosecutions of these crimes is the **lack of independence of the**

police bodies which are entitled to investigate on these facts. In his opinion, there should be a separated police body or, more easily, a general prohibition for a determined police body to investigate on crimes for which a member of the same body is suspected (*e.g.* the prohibition for the *Carabinieri* to investigate on crimes allegedly perpetrated by a member of *Polizia di Stato* and *vice versa*).

According to one of the victims' witness, the detainees are always forced to an isolation status After being victimized in prison. This happen since their requests of meeting their families are valuated by the same officers who probably cause the violences.

3. Right to protection and individualised needs assessment

After an episode of violence, before and regardless any assessment of the responsibilities, the standard practice followed by the Administration is to move the detainee(s) involved to another section of the facility or, if necessary, to a different penitentiary institute. All the lawyers, the victims, the chaplain and the health care professionals which have been interviewed agreed on this point.

The aim of these measures is to separate the sides of the violent episode (both in the case of violence between detainees and in the case of a clash between detainees and penitentiary staff).

No individualised assessment of the victim's needs is provided for by law or is carried out in practice by the Penitentiary Administration.

The interviewed probation staff members underline how the transfer to other prisons causes a secondary victimization of the detainee whose previous re-educational process become quite useless.

The health care professionals, which are independent from the prison facility staff, visit the injured detainees following internal protocols of the ASL (health service local units)[15]. As we could get to know from the interviews, there is not a specific protocol about individualised needs assessment of the victims, but there are general protocols prescribing an individualised assessment of the overall conditions of the detainees, when entering the facility (*e.g.* protocols about the risk of self-endangering or the risk of harming others; protocols for preventing suicides, *etc.*).

4. Compensation

There is not any specific regulation establishing a special procedure by which victims of violent

[15] It was not possible to consult the protocols because they are not public and we were not allowed to read them.

crime in (pre-trial and immigration) detention may claim compensation for the injures suffered.

The remedy is the general one, provided for the compensation of torts by **art. 2043** of the ***Civil Code***, which requires a judicial proceeding. There is not any remedy outside of a court proceeding (administrative/disciplinary proceedings).

The victim can claim for a compensation before a civil Court or, alternatively, exercise his/her rights in the criminal proceeding against the perpetrator (*see* art. 75 Code of Penal Procedure).

According to the lawyers interviewed, even this general remedy can be effective.

There is no data available about the average amount of the compensation.

No specific remedies are provided for the case that the perpetrator is indigent and cannot pay.

5. Recommendations

A. General distribution of the *Charter of Rights and Duties*: it should be given to every single detainee in both penitentiary institutes and detention centres for migrants, in a language that he/she can understand.

B. Stronger presence of the NPM and the local guarantors in the detention facilities: the guarantors' staff should be increased, specifically trained on the subject of vulnerable victims, given the resources needed for constantly monitor all the detention facilities in the Italian territory and it should be invested of the competence of receiving complaints from detainees which become victims of violent crime in detentions facilities.

C. Independent investigations: there should be a prohibition for a police body to investigate on the crimes allegedly perpetrated by the members of the same body.

D. Further development of Health Services protocols on the subject of violent crimes: the health service units are already provided with good practices and protocols regarding the assessment of the detainees needs, the prevention of suicide and self-endangering *etc.*; they should elaborate a specific protocol about detained victims and provide specific training on the issue to the health care professionals who are going to work in a detention facility.

E. Increase Spontaneous visits by "magistrato di sorveglianza " and local guarantors. Thanks to this solution, the victims are able to avoid that the officers supervise their request, so they are not submitted to the isolation status.

F. Creation of a private PO box where the prisoners can file their complaints.

Relevant cases reviews

Mr Rotundo case (Lucera, 2011)

On 13th January 2011 Giuseppe Rotundo sends a letter from the jail to his lawyer where he reports having been victim of a beating inflicted by three prison officers. Antigone followed the case supported by its team of lawyers. The trial is currently underway at the Foggia Court and it is the result of the unification of two lawsuits; in fact the three officers have also denounced the assault by the convict. During the debate, several witnesses have been questioned. The prison psychologist reported the interview she had with Rotundo the day that followed the event: "it was the first time I had seen a person so brutally roughed up" and she reminded Rotundo's words: "he had been brought in a cell, presumably in solitary confinement, and asked to get undressed and then the beating had begun (…)." (Hearing of 29th November 2016). The next hearing is scheduled on 25th October 2018 and the time limitation is getting closer.

Mr Prato case (Velletri, 2017)

On 25th January 2018, Antigone has lodged a complaint to shed a light on the death of Marco Prato, who committed suicide on 20th June 2017 in the bathroom of a cell in the prison of Velletri. On 13th February 2017, Mr. Prato was moved from Regina Coeli to the Velletri prison against his will and with unreasonable motivations. In Rome, he was under strict surveillance and he was subjected to an important therapy. In the next months, he made sporadic interviews with the psychiatrist and despite the obvious signs of detachment and isolation - he left the cell only few times and he had interrupted the correspondence with his friends- no particular actions were taken to help him. Antigone has lodged two complaints to the Public Prosecutor's Office of Rome and Velletri: to the first one for the violation of law on privacy (some clinical data were disclosed by a television broadcasting) and the second one for Marco's suicide. From October 2017, reports of violence have come from the following prisons: Regina Coeli (one detainee), Viterbo (three detainees), Foggia, Ascoli Piceno and La Spezia. The national Guarantor of people deprived of liberty or the local Guarantor have been promptly informed.

Ms Joy O.'s case (Milan, 2009)

In the 13th of August 2009, a Nigerian woman called Joy O. was involved in a revolt inside the C.I.E. (Centre for Identification and Expulsion) placed in via Corelli, Milan. She was tried in a "direttissimo" proceeding – together with other four women – and sentenced to six months'

imprisonment. At the trial, she denounced that a policeman, the Ispettore Capo Vittorio Addesso, tried to sexually assault her inside the C.I.E.
He was tried with a giudizio abbreviato in the preliminary hearing by the Court of Milan (judge for the preliminary hearing: dr. Simone Lueri), which acquitted him in the 2nd of February 2011.
Joy O. had been heard as a witness in an incidente probatorio (evidentiary hearing): she told that one night, some days before the revolt of the 13.08.2009, Mr Addesso came to her room while she was sleeping, sat on the bed and started to touch her, recalling that he had already told her that he would have helped her to go out of the Centre if she accepted to have a sexual intercourse with him. Her room-mate Hellen – another of the women tried for the revolt of August 2009 – confirmed her story.
In the meanwhile, nothing to do with the sexual assault proceeding, she was granted a permesso di soggiorno (residence permit) for protection, because she was recognized as a victim of human trafficking, after the denunciation of the criminal organisation which had exploited her.

Ms Preziosa's case (Milan, 2008)

The 31st of July 2008, when she was released from the C.I.E. placed in via Corelli (Milan), a Brazilian transsexual woman called Preziosa, filed a complaint claiming she had been beaten and insulted by seven policemen serving in the Centre.
In October, she was heard by the Public Prosecutor and in December she was heard by the Judge for the Preliminary Investigation, before which she recognized some of her attackers.
In the end, the Prosecutor (dr. Carlo Nocerino) had to ask for the dismissal of the case because there were no witnesses.
Initially, she was granted a temporary residence permit for justice reasons, but in the end she had to go back to her country.

Mr. Stefano Cucchi's case (Roma, 2009)

The 30-year-old Stefano Cucchi died on 22 October 2009 at the penitentiary section of the hospital Sandro Pertini of Rome following a period of detention at the Regina Coeli prison. His death started a long judicial case to bring clarity to the suspicious circumstances of his death, which resulted in the acquittal of all the defendants. In September 2015 the case took a new turn when at the request of the Cucchi's family, the Prosecutor of the Republic of Rome decided to re-open the investigations. On 17 January 2017, at the conclusion of the preliminary investigations, the three Carabinieri who arrested Stefano Cucchi were accused of "omicidio preterintenzionale" (involuntary manslaughter) and abuse of power.
They were accused of causing the injuries that led to his death due to a subsequent omission of the physicians as well as of imposing on him restrictive measures not allowed by law. The

three militaries were accused of having caused Mr. Cucchi's death "with slaps, kicks and punches", causing "a ruinous fall which caused the impact of the sacral region with the ground". One of them, along with the Marshal in charge of the Carabinieri station in which Stefano Cucchi was held after his arrest, were also charged with false reporting and defamation. A fifth Carabiniere was accused of defamation. Only on February 2017, the three Carabinieri accused of involuntary manslaughter were suspended from their duties. On 10 July 2017, the Tribunale di Roma decided to try the five Carabinieri. The trial began on October 13th before the Third Corte d'Assise.

Mr. Federico Aldrovandi's case (Ferrara, 2005)

Federico Aldrovandi was a student who had just reached the age of majority. He was killed at dawn on September 25, 2005, in Ferrara, a small town in northern Italy, during the intervention of two cars of the State Police.

As stated in the sentence convicting the accused given by the court of highest degree (Judgment of 21 June 2012, No. 36280/12, of the Court of Cassation), since the very beginning this case has followed an incredible path, with the obvious objective of undermining the investigations.

The facts: Federico Aldrovandi is found by a police car, call from a lady who had seen the young man around 5:45 a.m. yelling and losing control. Federico Aldrovandi had spent the evening and most of the night in Bologna in a nightclub with friends and had taken drugs. He had been left by his friends near the park (where he was declared dead at 6:35 a.m.) because he had said he wanted to go home on foot. That was when the lady called the emergency number 112 (the operator forwarded the call to the State Police) and requested the intervention for that strange young man who had lost control and "was beating everywhere". There was the intervention of a first police car and then, after the request of the two officers who - they declared - had tried to contain it, the intervention of a second police car. When the latter came, a violent clash began again with the young Federico who was then immobilized on the ground with his face turned to the ground and the handcuffs on his wrists behind his back. The ambulance intervention was requested by the officers only when they realized that Federico was no longer breathing and he was in serious condition. The ambulance arrived when Federico Aldrovandi was already dead.

To investigate the suspects for involuntary manslaughter were the same policemen who were accused of having caused Federico's death: a complete malfunction of Justice. The attempt to clarify the incident did not seem to fall within the priorities of the Questura: the first to arrive on the crime scene on early September 25th were many police officers. Only at 11 in the morning, after the body of Federico had already been taken to the mortuary, his relatives were warned.

The trial, despite all the difficulties and obstructions, showed that Federico Aldrovandi died because the procedures followed by the officers - who once had handcuffed him put their knees on his back - prevented him from breathing, causing him a postular hypoxia-asphyxiation and an hematoma on the heart bundle branch. So death was not accidental and it was indeed proved that he had been beaten for at least half an hour with truncheons. The convictions for the four officers were for involuntary excess in involuntary manslaughter.

Appendix 1

1- Models of Italian Letter of Rights:

a. The first is for accused persons, art. 293 c.p.p.

COMUNICAZIONE SCRITTA PER L'IMPUTATO

IN CASO DI ESECUZIONE DI CUSTODIA CAUTELARE - EX ART. 293 C.P.P. -

(da consegnare contestualmente a copia del provvedimento)

Il giorno _____ alle ore _____, negli Uffici dei _____
noi sottoscritti Ufficiali e Agenti di polizia giudiziaria
_____
diamo atto di aver proceduto alla consegna della presente comunicazione a _____, con la quale viene informato, ai sensi dell'art. 293 del c.p.p., di diritti e facoltà dell'imputato nei confronti del quale si esegue un'ordinanza di custodia cautelare:

- facoltà di nominare un difensore di fiducia e di essere ammesso al patrocinio a spese dello Stato nei casi previsti dalla legge;
- diritto di ottenere informazioni in merito all'accusa;
- diritto all'interprete ed alla traduzione di atti fondamentali;
- diritto di avvalersi della facoltà di non rispondere;
- diritto di accedere agli atti sui quali si fonda il provvedimento;
- diritto di informare le autorità consolari e di dare avviso ai familiari;
- diritto di accedere all'assistenza medica di urgenza;
- diritto di essere condotto davanti all'autorità giudiziaria non oltre cinque giorni dall'inizio dell'esecuzione, se la misura applicata è quella della custodia cautelare in carcere ovvero non oltre dieci giorni se la persona è sottoposta ad altra misura cautelare;
- diritto di comparire dinanzi al giudice per rendere l'interrogatorio, di impugnare l'ordinanza che dispone la misura cautelare e di richiederne la sostituzione o la revoca.

ENGLISH

List of the rights/powers of defendant who has been subjected to a pretrial detention order, as under section 293 of the criminal procedure code:

- *Power to appoint a trusted lawyer and to be granted access to legal aid, as envisaged by the law;*
- *Right to obtain information on the charges brought against the defendant;*
- *Right to have an interpreter and to have the relevant documents translated;*
- *Right to avail himself/herself of the power to remain silent;*
- *Right to be granted access to the documents on which the order is grounded;*
- *Right to inform the consular authorities and his/her family members;*
- *Right to be granted access to emergency medical care;*
- *Right to be brought before the judicial authority not later than five days from the beginning of the order enforcement if the measure is pre-trial detention in prison, and not later than ten days if the person is subjected to a different custody measure;*
- *Right to appear before the judge in order to be interviewed, to challenge the pre-trial detention order and to apply for its substitution or revocation.*

Firma dei verbalizzanti **Firma dell'arrestato/fermato**

b. The second is for arrested persons (art. 386 c.p.p.)

INTESTAZIONE DEL REPARTO

COMUNICAZIONE SCRITTA PER L'ARRESTATO (Art. 386 C.P.P.)

L'anno _____ addì ___ del mese di _____ alle ore _____ in _____ (___) presso _____viene redatto il presente atto per far risultare quanto segue.

VERBALIZZANTI

_____ appartenenti al Reparto in intestazione

_____ appartenenti al Reparto in intestazione

PARTE

Cognome: _____Nome: _____ nato il _____ a _____ (___), di cittadinanza _____, residente in _____ (___) via _____ _____, identificato mediante cartellino fotodattiloscopico **CUI** _____,

FATTO

Noi sottoscritti verbalizzanti, in forza al Reparto in intestazione, con il presente verbale diamo atto che in data odierna, abbiamo **proceduto alla consegna della presente comunicazione alla persona arrestata**, sopra meglio generalizzata, con la quale viene informata, **ai sensi dell'art. 386 C.P.P.**, di diritti e facoltà per l'arrestato:

- facoltà di nominare un difensore di fiducia e di essere ammesso al patrocinio a spese dello Stato nei casi previsti dalla Legge;
- diritto di ottenere informazioni in merito all'accusa;
- diritto all'interprete ed alla traduzione di atti fondamentali;
- diritto di avvalersi della facoltà di non rispondere;
- diritto di accedere agli atti sui quali si fonda l'arresto o il fermo;
- diritto di informare le autorità consolari e di dare avviso ai familiari;
- diritto di accedere all'assistenza medica di urgenza;
- diritto di essere condotto davanti all'autorità giudiziaria per la convalida entro novantasei ore dall'avvenuto arresto o fermo;
- diritto di comparire dinanzi al giudice per rendere l'interrogatorio e di proporre ricorso per cassazione contro l'ordinanza che decide sulla convalida dell'arresto o fermo.

ENGLISH

List of the rights and powers of arrested person:

- The right to appoint a trusted lawyer and to be granted access to legal aid, as envisaged by the law;
- Right to obtain information on the charges brought against the persona arrested;
- Right to have an interpreter and to have the relevant documents translated;
- Right to avail himself of the power to remain silent;
- Right to be granted access to documents on which arrest or detention are grounded;
- Right to inform the consular authorities and his family members;
- Right to be granted access to emergency medical care;
- Right to be brought before judicial authority for arrest confirmation not later than ninety-six hours from the measure enforcement;
- Right to appear before the judge to be interviewed and to appeal to the Supreme Court of Cassation against the order confirming arrest.

Fatto letto e sottoscritto il presente atto viene chiuso in data e luogo come sopra e copia del presente atto viene consegnato alla parte.

I VERBALIZZANTI **PARTE**

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Appendix 2

Model to be filed by victims of violent crimes to request compensation

This model is available in all Prefectures (Territorial Offices of the Government)

Mod. 1 – domanda di accesso al fondo – Legge 7 luglio 2016 n. 122

Al Prefetto di ..... (*)

Il/La sottoscritto/a (cognome e nome), Codice Fiscale (.....) nato/a a ..... il .....e residente in..... via .....,

CHIEDE

l'accesso al Fondo di rotazione per la solidarietà alle vittime dei reati di tipo mafioso, delle richieste estorsive, dell'usura e dei reati intenzionali violenti, istituito con legge 22.12.1999, n. 512, modificato con legge 26 febbraio 2011, n. 10 e dall'art. 14, comma 1 della legge 7 luglio 2016, n. 122 per il pagamento dell'indennizzo previsto dal decreto interministeriale 31 agosto 2017, pubblicato il 10.10.2017, in attuazione dell'art. 11, comma 3 della legge 122/2016 e disciplinato dal titolo II del D.P.R. 19 febbraio 2014, n. 60 del 2014,nelle more del nuovo regolamento, in quanto vittima di un reato di cui all'art. 603 bis del codice penale e, in particolare .....

A tal fine il/la sottoscritto/a consapevole delle sanzioni penali, nel caso di dichiarazioni mendaci, di formazione o uso di atti falsi, richiamate dagli artt. 46 e 76 del D.P.R. 28.12.2000, n. 445:

DICHIARA

a) di aver **già esperito infruttuosamente l'azione esecutiva** nei confronti dell'autore del reato, per ottenere il risarcimento del danno riconosciuto dalla sentenza n… **.

b) di non aver concorso, anche colposamente, alla commissione del reato che ha cagionato il danno, ovvero di reati connessi allo stesso, ai sensi dell'art. 12 del codice di procedura penale;

c) di non essere stato condannato/a con sentenza definitiva, ovvero, alla data di presentazione della domanda, di non essere sottoposto/a a procedimento penale per uno dei reati di cui all'articolo 407, comma 2, lettera a), del codice di procedura penale e per reati commessi in violazione delle norme per la repressione dell'evasione in materia di imposte sui redditi e sul valore aggiunto;

d) di non avere percepito, per lo stesso fatto delittuoso, somme erogate a qualunque titolo da soggetti pubblici o privati superiori a 5.000 euro.

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