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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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DH-DD(2013)1368

Meeting: 1193 meeting (4-6 March 2014) (DH)

Item reference: Action report (29/11/2013)

Communication from Italy concerning the case of Torreggiani and others against Italy (Application No. 43517/09)

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Réunion : 1193 réunion (4-6 mars 2014) (DH)

Référence du point : Bilan d'action

Communication de l'Italie relative à l'affaire Torreggiani et autres contre Italie (Requête n° 43517/09) **(*anglais uniquement*)**.

Case Torreggiani and others v. Italy (43517/09), final on 27.05.2013

ACTION PLAN PRESENTED BY THE ITALIAN GOVERNMENT

27.11.2013

INTRODUCTION

The very critical situation suffered by the Italian prison system in the past recent years was reported by the highest institutions of the Country. Such a critical situation is both linked to the number of inmates as compared to the hosting capacity of detention institutions, which resulted in one of the highest prison population rates in Europe, and to the general features of the system with respect to the treatment of inmates, the managing of resources, the setting up of reintegration programs in order to reduce the risk of recidivism.

As a matter of fact, the Italian prison system, except for some remarkable situations, no longer fully meets the aims assigned to punishment by the Italian Constitution (under Article 27, paragraph 3 of the Constitution, punishment should re-educate inmates), nor the aim of ensuring absolute protection to the personal dignity of any person, even if incarcerated, repeatedly enshrined in the Constitution (Articles 2, 3 and 13 of the Constitution), nor the absolute prohibition of inhuman or degrading punishments or treatments provided for by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3) and by the Charter of Fundamental Rights of the European Union (Article 4).

The necessity to remove the prison conditions defined by the Court's decision as inhuman or degrading in violation of Article 3 of the ECHR's Convention has been expressed by the highest Institutions of the Country. By means of an exceptional procedure, which Article 87 of our Constitution reserves for situations of absolutely national relevance, the President of the Italian Republic sent a message to Parliament – the first of its long presidential term – so as to invite the legislature to promptly consider the "dramatic prison situation" and the "fact of exceptional importance constituted by the European Court of Human Right's decision". The President recalled "the urgent duty of ceasing prison overcrowding" and "to proceed to an internal remedy which may offer a restoration for the overcrowding conditions already suffered by a prisoner".

In his message, the President asked the Parliament to consider the adoption of both ordinary legislative measures and an exceptional measure for the implementation of the system's necessary reforms in order to reduce prison overcrowding and achieve the actions which are being planned. The Government shares the President'opinion.

The lines of action pointed out by the Government in order to put an end to the present situation and introduce a detention model in compliance with the European Prison Rules are the following:

a) A larger use of punitive measures not involving deprivation of liberty, as under Rec(1999)22;

b) A limited recourse to pre-trail custody in prison, as under Rec(2006)13;
c) Increased access to alternative measures to prison, as under Rec(2000)22;
d) Increased contacts among inmates and the adoption to the largest extent possible of open penitentiary regimes in line with the European Prison Rules (Rec(2006)2).

On the basis of these guidelines, the Government worked out an action plan dealing both with preventive remedies - in order to put an end to violations and prevent them from occurring again - and with compensatory remedies for those who suffered a violation.

The Plan follows four lines of action:

1. Legislative actions aiming at reducing prison entry flows and enabling inmates to progressively leave the prison system through the adoption of alternative measures facilitating their reintegration in the external community. Legislative actions concern more aspects: provisions for the decriminalization or the reduction of the punishment provided for by the law for some offences affecting the prison population; a strictly-limited recourse to pre-trial custody in prison; provisions on new alternative measures; the removal of the main obstacles preventing access to new alternative measures by individual guilty of non-serious offences.

2. Managing and organization actions through the implementation of more open prison regimes for inmates who are classified as requiring medium or low security measures, who are generally the large majority of the prison population and amount to 88% of the total; to reconsider the prison regime - as a regime in which prison cells accommodate inmates for their rest and not for spending their entire day - affects the consequent offer of daily activities and therefore the re-organization of work, training, leisure activities, time to devote to affective relationships;

3. Building actions, planned according to the present needs of our prison estate, with buildings that are often very old and need in many cases to be restored in order to make them available and, in some particular cases, with buildings that have to be completely replaced by new ones. This explains why, although considering what is stated in Recommendation (1999)22 where it is said that «the extension of the prison estate should rather be an exceptional measure, as it is generally unlike to offer a lasting solution to the problem of overcrowding », it was nonetheless deemed essential to use part of the resources in order to increase the number of places, which were built in compliance with the standards repeatedly stated by the Council of Europe.

These three action lines constitute the skeleton of the Plan. In addition to them, there is also the need for:

4. One or more measures by government initiative in order to provide for compensation procedures, not only and not primarily in financial forms, but also by means of prison benefits, for those who suffered a violation of their right to dignified detention conditions and lodged an application with the Court for Human Rights. The procedures provided for by such measures could be a domestic remedy to reduce the workload weighing on the Court following the great number of applications lodged in this respect.

1. ACTIONS OF LEGISLATIVE NATURE

a) Already adopted measures

On July 2013 the Government adopted a procedure of urgency, through the approval of a law-decree – an unusual instrument in this field – to reduce the prison entry flows and make the access to alternative measures foreseen by our legal system easier.

a.1. Reduction of Prison Entry Flows. Less recourse to prison

The new law provision introduces:

- an updating of the catalogue of the most serious offences for which, when the judgment become final, the incarceration is mandatory, the elimination of minor offences;
- the possibility to open a procedure for granting early release before the order of imprisonment is issued, so as to facilitate the suspension of the enforcement of the sentence in less serious cases and enable the access to alternative measures without a preliminary passage in prison;
- the possibility to be eligible for home arrest, without having preventive incarceration, for a list of vulnerable individuals in need of more protection (pregnant women, non-recidivists over 70 years of age, etc.), at least for those cases in which the prison term does not exceed four years;
- the elimination of bars for reiterated recidivists, with regard to whom a law approved in 2005 is still effective, produced an abstract presumption of dangerousness, founded only on the reiteration of the convictions, regardless of the seriousness of the crime committed, which was often of a modest nature and referable to social marginalization or drug addiction (this law is in fact the cause in the past recent years of the increased number of detainees);
- the elimination of the strictest provisions, always in relation to recidivists, with regard to the access to alternative measures in order to facilitate their social reintegration.

a.2. Limiting recourse to pre-trial custody

Recourse to pre-trial custody will be progressively limited by the new law provision which raises to five years of imprisonment the maximum limit set for the application of such restrictive measure, while excluding however some offences of particular social dangerousness, such as the offence of unlawful financing of political parties and the offence of aggravated persecutory acts. The effects on preventive custody have already produced some results, as the number of pending first instance proceedings has dropped to 12348. In addition to this last number, there are 6355 pending appeal decisions and 4387 cases pending before the Supreme Court of Cassation. It is worthwhile recalling that, as regards preventive measures, the Italian constitutional system, contrary to other European systems, takes into consideration all three levels of jurisdiction mentioned above and this means that the number of the people against whom a judgment is not enforceable is, therefore, 24744: a number which is still very high but which represents a reduction of 25% with respect to 30549 detainees who were in that same position in 2009.

a.3. Amendments to the detention regime

The new provisions introduced the following modifications:

- increase to four years imprisonment of the maximum penalty eligible for being granted leave on licence [*permesso premio*] without having served a portion of the prison sentence imposed;
- broadening of the opportunities of out-of-prison/external work, employing detainees in socially useful work, with special attention to making drug-addict prisoners have access to these forms of work;
- providing for increasing work offers from undertakings and social cooperatives employing prisoners. The Ministry of Justice has prepared the Regulation for the enforcement of legislation on fiscal benefits and contribution facilitations in favour of business hiring detainees. In implementation of Law no. 193 of 22 June 2000, as amended (so-called Smuraglia law), has been prepared the secondary legislation for enforcing the benefits and facilitations also to who engages detainees or prisoners who have not been admitted to out-of-prison work and therefore work inside the prison.

b) Forthcoming Government measures

The results achieved through the measures adopted are encouraging, especially for the flows of new incoming prisoners, however we have not achieved "the" solution. This is the reason why the Ministry of Justice has defined the content of a forthcoming urgent legislative initiative, which will soon be submitted to the Council of Ministers for approval, on a well-balanced reduction of the recourse to imprisonment so as to curb - and maybe solve - the problem of over-crowding in prisons and to restore the rehabilitation and social-reintegration nature of prison detention, once it will be applied to the cases where it is strictly necessary.

b.1. Reduction of the flows of new incoming prisoners. Reduced penalization of minor offences

The detention, production of, or trafficking in, narcotic substances will become an independent offence in "less severe" [*lieve entità*] cases and will be punished by a more lenient sanction. At present the "lesser severity" constitutes a special extenuating circumstance of the offence (as per Article 73, paragraph 5 of the Decree of the President of the Republic [*D.P.R.*] 309/90) and the fact that it is included in the broader case provided by Article 73 entails the risk that, on the one hand the "lesser severity" is outweighed by other circumstances, and on the other also there be a systematic recourse to precautionary custody [*custodia cautelare*]. The introduction of an independent offence for the cases involving a minor social impact will exclude balancing operation between aggravating and extenuating circumstances and will provide independent forms of precautionary custody, thereby producing obvious effects on the over-crowding, given the present incidence on the overall number of prisoners of those convicted of these offences.

b. 2. Broadening of the flows of outgoing prisoners: broadening of alternative measures

The draft emergency measure prepared by the Ministry of Justice provides for:

- broadening the cases eligible for the alternative measure of *probation with the social* services [*affidamento in prova al servizio sociale*], giving the power to grant it - as an interim measure - to the *surveillance magistrate, i.e. the magistrate responsible for the enforcement of sentences* [*magistrato di sorveglianza*], in anticipation of the however necessary decision by the collegiate body, i.e. the surveillance court [*tribunale di sorveglianza*]. At the same time, in order to exclude the risk of disregarding the need for social safety – as an unwanted consequence of the reduction of persons kept in prison – there will be the possibility to use the so-called electronic tagging also for controlling those granted measures alternative to imprisonment;
- eliminating the present prohibition to reiterate the granting of the so-called therapeutic probation [*affidamento cosiddetto terapeutico*] to drug and alcohol addicted offenders, with the aim of reinforcing the opportunities for a social and health rehabilitation of this specific category of offenders, through measures alternative to detention in prison;
- extending the duration of the measure of *imprisonment at home* [*esecuzione dello pena presso il domicilio*] for offenders sentenced to short prison sentences (less that eighteen months, even if residual of a longer sentence) to the measures destined to expire on the 31 of December of the current year.
- Increasing – from forty-five to sixty days per semester of detention - the reduction of penalty applied to anticipated release [*liberazione anticipata*], although for a period of three years to count from the entry into force of the relevant piece of legislation and as of January 2010. The measure, which is anyway dependent on the evaluation of the surveillance magistrates as to where one deserves it, will have a heavy and positive impact on reducing the prison population;
- Reinforcing the recourse to the measure of expulsion of foreign offenders, as a sanction alternative to imprisonment, not only by anticipating the start of the relevant identification procedure – which is a necessary precondition to the expulsion measure - to the moment of their entry into prison, but also extending the circle of foreigners admitted to benefit of this measure which in substance is an alternative to detention in prison.

c) Measures under discussion in Parliament

c.1. Broadening of the flows of outgoing prisoners: broadening of alternative measures

On the basis of a Government bill, Parliament is examining a measure (already passed by one of the Houses) that, considering the positive results experienced in the juvenile justice system, introduces also for adults the possibility to suspend/stay criminal proceedings for minor offences and concomitantly to put the offender "on probation", as well as to impose reparation conducts aimed at eliminating the negative consequences of the offence and, where possible, to impose damages. Parliament is due to conclude soon the examination of this measure.

c.2. Reduction of precautionary custody [*custodia cautelare*]: further measures

The Ministry of Justice is following with great attention the Parliament's activity on the bills introduced by Parliament (C. 6321 and C. 980) on the modifications of the code of criminal procedure concerning

precautionary measures afflicting the person [*misure cautelari personali*] , which are at present under the examination of the *Justice Commission* [*Commissione Giustizia*] of the Chamber of Deputies, also in view of the preparation of amendments to the unified text under discussion. The Ministry shares some advisable innovations introduced by the bill, which aim at skilfully reducing the recourse to precautionary custody in favour of measures with a lesser impact on the fundamental right to personal freedom. Among these measures it is noteworthy to mention the following ones:

- Reinforcing the so-called *disqualification precautionary measures* [misure cautelari cosiddette interdittive], i.e. measures inhibiting the performance of a power or activity directly connected with the commission of the act being prosecuted,
- Providing that imprisonment can be applied only when no other measure is found adequate, even if applied cumulatively;
- Providing that the judge can apply together coercive and disqualifying measures; this possibility will very probably reduce the recourse to imprisonment since the precautionary needs can be equally satisfied through the combination of less afflictive measures.

The Italian Government will inform the Committee of Ministers of the Council of Europe about the follow-up to the adoption of the new pieces of legislation as well as about the effects progressively brought by them on the overall number of persons detained in the Italian prisons.

2. INTERVENTIONS ON THE DETENTION REGIME

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This affects a set of administrative measures fine-tuned by an ad hoc Committee established at the Ministry of Justice that are mainly addressed to prisoners who are classified as requiring medium or low security measures. In general, they concern almost the whole of the prison population and affect 52,373 prisoners.

The guidelines of these actions are provided by the European Prison Rules, in the wording of Recommendation No. 2 of 2006. The paradigmatic model that is to be introduced is that of "open" detention in prisons, in which prison cells accommodate prisoners for their rest and not for spending almost the entire day.

a) Interventions already adopted, whose implementation has started

A number of interventions, in line with the so far scarcely applied Regulation implementing Prison Rules, and with the standards and the Recommendations of the Committee for the Prevention of Torture of the Council of Europe are already changing in these weeks the detention model prevailing in the Institutions. The first provisions already set up and which are gradually being extended to all Institutions are:

Prisoners should spend at least 8 hours a day outside their cells and the sections where these are located, devoting their time to various types of activities or work. Already 29% of prisoners benefits from this provision that, under the adopted time schedule, will be extended so as to reach at least 80% of prisoners by April 2014. The time spent outside the sections will have to be devoted to working, recreational and

socializing activities that each Institution is identifying and that have to represent the "Institution Plan" that will be discussed with the operators and will be approved within the end of this year.

- Extension of the working activity, in line with the mentioned facilitations provided for by the new rules for access to work, which must be connected to programs initiated by single Regions concerning community services.
- Increase and different modalities of visits of beloved ones: the time allotted for visits has been increased, by including afternoons and week-ends and this helps the relationships between prisoners and their children, especially those who go to school; a big plan for restructuring the existing rooms has been started, spaces for children have been envisaged, as well as spaces to socialize outdoors, and spaces to welcome visitors and give them information.
- Contacts with the outside world and families have been made easier also by the introduction of phone cards for prisoners (currently in more than 50% of institutions, with provision of extending it to all institutions in the first months of 2014); and, in those prisons where there is the relevant computer equipment, starting up the system of communications via skype.
- Arrangement of spaces to deal with the increased number of hours that can be spent outside the sections, in relation to the introduction of an open system of day management and to the offer of more work opportunities, the resources destined for prison extraordinary maintenance are being used to create poly-functional spaces with outdoor access where the daily activities of each prison section can be gathered, and where work and various activities especially sports can be practised. The works for the creation of these spaces have already begun in two pilot prisons (in Rome and Bologna). An evaluation will then be made of the pattern adopted to introduce improvements, if necessary, and then in the course of the next 6-8 months this intervention will be extended to other prisons in order to cover at least all the *Case di reclusione,* that is the prisons destined for the enforcement of judgments.
- Progressive implementation of a system of dynamic monitoring of prisoners, set up by the Department of Penitentiary Administration through relevant circulars, whose implementation is constantly monitored by the Department itself; this system enables to best use the staff who concentrate on knowing better each prisoner inside a given group and the group internal dynamics so that they may respond better to needs and prevent possible critical situations.
- Cooperation with the National Olympic Committee, through a relevant Protocol for Joint Actions, in order to carry out sport activities within the largest possible number of institutions (also on the basis of their structure) and the contemporary training of a number of prisoners as tutors and referees for some of the proposed individual sports: the program is in an experimental implementation stage in two Institutes and, based on the assessment of the first experience, it will be gradually extended to others.

b) Paths of overall redefinition

Some lines of overall intervention have been started and their development is constantly monitored so as to steer all consequent actions in the identified direction. They concern:

- The implementation within 2014 of a clear and effective separation between institutions for prisoners who are serving a penalty and those for prisoners in precautionary custody: going beyond

the current "heterogeneous" detention system, through an opportune differentiation and a comprehensive re-organization of the institutions' network, it will be possible to offer a more open regime, connoted by meaningful activities also in the high security sections in a general safe condition for the Institution;

- The increase of forms of systemic cooperation with Local Health Plants, which are regional bodies, entrusted with the responsibility for the organization and the implementation of health activity in prison, it being understood that the Penitentiary Administration will be fully responsible for the protection of the right to health of any person entrusted to it because he is deprived of freedom. This aspect has recently been recalled also by the National Bioethics Committee. Steps will be taken to ensure that the Health Authority will not only respond to single requests for medical assistance, but will also carry out an effective preventive function also by monitoring the hygienic conditions of institutions and by taking into care the subjective positions of prisoners, which are moreover connoted by a particular vulnerability;
- The progressive adoption of the digital medical sheet, so as to ensure a therapeutic continuity, as well as the possibility to continuously monitor the state of the taking into care of health protection by the local bodies pertaining to the National Health Service (at present the digital medical sheet has been introduced in 37 Institutions).

c) Envisaged and planned interventions

Based on the works of the specially arranged and previously mentioned Commission, the Ministry has envisaged a number of further interventions, defined in details in an internal Report – annexed to this plan – which have repercussions on the overall profile of detention in Italy. Such interventions, whose implementation time has been established, concern the following areas:

- the overall reorganization of prisoners' work, in accordance with the provisions in Rule 26, paragraph 7, of the European Prison Rules, facilitating all the conditions which make it possible to organize and manage the working activities, removing all the obstacles which turn out to be inadequate to promote the development of genuine work, managed according to entrepreneurial criteria, the only one which effectively contributes to the rehabilitation of sentenced persons. The aspects of the overhaul include life organization inside prison, the so-called *lavorazioni penitenziarie* [working activities carried out by prisoners], the involvement of prisoners in the renovation of their spaces, the organization of outdoor work, vocational training (including training periods and work experience grants);

- the overall reorganization of the system of supply by external companies (the so-called food) of foodstuffs, subsequently packaged and distributed inside the prison, the management of the sale of foodstuffs or other items to prisoners (the so-called extra food) and the outdoor items purchase service, at the request of the individual prisoner (the so-called shopping service). The management of these three services requires a complete rethink in order to improve their quality and streamline the procedures, ensuring complete safety and transparency;

- the review of the criteria for assignments and transfers in order to gradually return to the full compliance with the criterion of "territorialization" for enforcement purposes, as provided for by the Italian Prison System;

- the adoption of criteria for transfers due to health reasons only when it is absolutely certain that the receiving institution can take charge of the prisoner and the prompt notice - to be given to the judge - about the impossibility of finding a custodial solution able to meet the specific envisaged therapeutic needs;
- extending the experience of special facilities for housing mothers with children, in a an environment which, although being secure, is not clearly seen as a detention facility; their aim and everyday organization should be focused on the physical and mental well-being of the child.

3 . INTERVENTIONS ON PRISON BUILDINGS

The Government agrees with the principle according to which the response to prison overcrowding shall not be mainly focused on prison buildings. However, it deems that many detention buildings in Italy are so old that restoration works are necessary, but it also deems that new detention institutions should be built, in order to replace most of the existing ones, and structured in such a way as to allow the implementation of the detention model which the Administration is committed to introducing and whose characterizing features does not easily combine with some of the areas which are currently available.

For this reason, the Special Government Commissioner for prison infrastructure, acted on different levels of intervention. In particular:

- some interventions - and their relevant resources - concern the adjustments necessary for the implementation of certain aspects listed above (reorganization of the areas used for family visits, opening of the sections under safety conditions etc.);

- some interventions concern the construction of prefabricated structures within areas which are available in detention institutions where most of the activities can be carried out, both working and socializing activities and the management of everyday community life (for example, canteens are being built, in order to progressively abandon the past experience when the food was distributed and eaten in cells;

- the previous Building plan was reorganized and three new institutions were opened and, by December 2013, we expect to have a total of 2,000 places available in new structures;

We foresee that, according to the established schedule, we will have 4500 places more in May 2014. It must be noted, when considering the total accommodation capacity of Italian prisons, that such capacity is calculated by Italy on the basis of a higher standard than those used by other European countries and by the Court itself with reference to the standards of the Committee for the Prevention of Torture. The standard used to the determine the statutory capacity of the Italian prisons is the same prescribed for housing habitability, that is 9 square meters for a prisoner alone plus 5 square meters for each other prisoner who shares the same cell (instead the Court, more

than once, has referred to a standard of 7 square meters plus 4 square meters for each additional prisoner in the same cell, applied to calculate the accommodation capacity in many European countries).

4. COMPENSATORY REMEDIES

As already clearly stated by the Minister of Justice during her recent visit to the Council of Europe (4-5 November 2013) the Italian Government has committed itself to adopt legislative measures to compensate those who have served imprisonment terms in violation of Article 3 of the Convention. The possibilities under examination aim at joining the State's obligation of compensating said persons and the need not to lose the rehabilitation purpose of the punishment.

As a response, of a specifically compensatory nature, to the protection applications submitted through the relevant applications to the European Court alleging a violation of Article 3 of ECHR by prisoners forced to live in overcrowded cells, we are considering the possibility of reducing the sentence remaining to be served by a percentage determined in relation to the period of time such prisoners have lived in inadequate prison conditions. It would be an exceptional measure aimed at fulfilling the obligation of compensating those persons for the breach of the absolute prohibition enshrined in Article 3.

This proposal is based on two conditions: the first one is that preventive remedies put an end to said [inadequate] conditions (thus averting possible other applications against such conditions), the second one is that the applicants in question are still serving their sentences. When the second condition is not fulfilled Italy has undertaken to compensate the applicants in the manner which will be prescribed, and it is ready to find domestic ways to do so in order to alleviate the Court's caseload.

The Government is certain that the cooperation with the Committee of Ministers will provide useful suggestions to expand and improve the various actions, and it undertakes, in the context of the positive and fruitful dialogue Italy entertains with the Council and its Organs, to inform the Committee of Ministers about the developments of its action.

27 NOVEMBER 2013

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES

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DH-DD(2013)1119

Meeting: 1186 meeting (3-5 December 2013) (DH)

Item reference: Communication from the authorities

Communication from Italy concerning the case of Torreggiani and others against Italy (Application No. 43517/09) ***(French only)***

Information made available under Rule 8.2.a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1186 réunion (3-5 décembre 2013) (DH)

Référence du point : Communication des autorités (07/10/2013)

Communication de l'Italie relative à l'affaire Torreggiani et autres contre Italie (Requête n° 43517/09).

Informations mises à disposition en vertu de la Règle 8.2.a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

Rappresentanza Permanente d'Italia
presso il Consiglio d'Europa
Strasburgo

L'AMBASCIATORE – RAPPRESENTANTE PERMANENTE

1200 Strasbourg, 3 octobre 2013.

Monsieur,

J'ai l'honneur de vous transmettre, sous ce pli, les premières informations transmises par le Gouvernent italien sur les mesures prises suite à l'arrêt *Torreggiani c. Italie*.

J'en profite pour vous signaler que le Ministre de la Justice, Anna Maria Cancellieri, présentera, à l'occasion de sa visite à Strasbourg les 4 et 5 novembre prochains, les grandes lignes du plan d'action que nous vous soumettrons par la suite.

Je vous prie d'agréer, Monsieur, l'assurance de ma considération distinguée.

Monsieur Christos Giakoumopoulos
Directeur de la
Direction des Droits de l'Homme
Conseil de l'Europe

STRASBOURG

Rappresentanza permanente d'Italia presso il Consiglio d'Europa
Ufficio dell'Agente del Governo davanti alla Corte europea dei Diritti dell'Uomo

Torreggiani et autres contre Italie
(Requêtes n. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10, 37818/10)

Arrêt du 8 janvier 2013 définitif le 27 mai 2013.

INFORMATIONS DU GOUVERNEMENT ITALIEN

Après l'arrêt pilote Torreggiani du 8 janvier 2013, les Autorités italiennes ont adopté de nombreuses mesures, dans différents secteurs et à différents niveaux, directement ou indirectement, destinées à réduire le surpeuplement dans les prisons.

Le Procureur de la République de Milan, le 15 janvier 2013, a invité tous les magistrats du Parquet de Milan à prendre en compte les indications de la Cour, notamment aux §§ 92 et 95 de l'arrêt, pour utiliser le plus possible les mesures alternatives à la détention.

La Cour Constitutionnelle a accueilli la question de l'illégitimité constitutionnelle concernant l'article 275 § 3 du code de procédure pénale, soulevée par le Tribunal de réexamen de Lecce ; suite à son arrêt n. 57 du 29 mars 2013, la possibilité d'appliquer des mesures de prévention alternatives à la garde en prison pour les inculpés de certains crimes, qui étaient auparavant exclus, s'est élargie.

Le 26 juin 2013 le Conseil des Ministres a débuté l'examen du nouveau projet de décret-loi sur l'exécution des peines, présenté par le Ministre de la Justice.
Le décret-loi n. 78 du 1^{cr} juillet 2013 a été converti en loi n. 94 du 9 août 2013.

Nous avons l'honneur de transmettre, en annexe, une note du Ministère de la Justice, qui présente les deux lignes directrices de ce décret loi.

§1. Préambule

Dans son arrêt Torregiani de janvier 2013 la Cour européenne des Droits de l'Homme a condamné l'Italie en raison de l'absence, en droit interne, d'instruments efficaces de protection des droits des détenus, et plus particulièrement en ce qui concerne le phénomène, désormais endémique, du surpeuplement carcéral.

Pour cette raison, avec le décret-loi n. 78 de 2013, le Gouvernement italien a voulu fournir, en vue d'une future réorganisation du système punitif, une première réponse urgente, ayant pour objectif : de favoriser le non emprisonnement d'auteurs d'infractions pénales de moindre dangerosité sociale, tout en conservant le recours à la prison pour les détenus d'infractions de particulière gravité.

En même temps, on a souhaité intervenir avec le renforcement des alternatives de traitement pour les détenus moins dangereux, qui représentent la majorité des détenus actuels, plus particulièrement en ce qui concerne l'accès au travail.

La réforme a donc opéré sur deux points : celui de la gestion du nombre des détenus et celui de la réinsertion sociale.

Quant à la première série d'interventions, on a voulu, d'une part, régler plus efficacement les flux de l'entrée en prison pour les détenus qui, **étant déjà en liberté au moment du passage en force de chose jugée du jugement et n'ayant pas commis de graves infractions,** peuvent bénéficier d'une mesure alternative, décidée par le tribunal de l'applications des peines sans devoir entrer en prison ; d'autre part, intervenir sur les flux en sortie, en favorisant l'accès aux mesures alternatives pour ceux qui se trouvent déjà en prison.

Il est évident qu'une telle intervention globale ne pouvait se réaliser qu'à travers une modification de la discipline dictée pour les condamnés de récidive réitérée, considérant que :

a) Environ 70% des détenus sont récidivistes (ou ont déjà été en prison auparavant) ;
b) L'entrée en vigueur, en décembre 2005 / janvier 2006, de la loi ainsi dite ex Cirielli (loi du 5 décembre 2005, n. 251, qui contenait de lourdes peines à l'égard des récidivistes), a provoqué, en peu de temps, l'annulation des effets des remises de peines généralisées (*indulto)* qui tendaient à diminuer le surpeuplement carcéral (qui se sont produits à partir de la fin de juillet 2006) et qui ont atteint, en l'espace de deux ans, un « record » de présences dans nos prisons.

D'autant plus qu'il faut toujours rappeler que la récidive réitérée (art. 99, alinéa 4 du code pénal) est une récidive générale (et qui peut donc concerner des infractions minimales et très différentes entre elles) qui est temporairement indéterminée (pouvant donc concerner des infractions commises dans un laps de temps très long).
Sur le plan des interventions d'un point de vue humanitaire et rééducatif, on a augmenté les possibilités de bénéficier du travail à l'extérieur et du travail en prison, il en va de même pour les mesures alternatives pour les femmes enceintes ou les mères de jeunes enfants, les vieilles personnes ou les personnes atteintes de graves maladies.

§2. Les nouveautés apportées par les récentes modifications de la législation.

Pour atteindre les objectifs présentés ci-dessus le décret-loi a donc prévu les mesures suivantes :

a) Une mise à jour de la liste des délits les plus graves pour lesquels, au moment du passage en force de chose jugée du jugement, l'entrée en prison est obligatoire : en éliminant des infractions de moindre importance telles que le vol et en insérant des délits graves et toujours plus fréquents, tels que les délits de maltraitance en famille commis sur des mineurs et le harcèlement (ainsi dit *stalking)* ;
b) La possibilité de lancer une procédure pour obtenir la libération anticipée avant que ne soit signée l'autorisation d'emprisonnement, de façon à favoriser la suspension de l'exécution de la peine dans les cas les moins graves et de permettre l'accès aux mesures alternatives sans être emprisonné auparavant (art. 656, alinéa 4 *bis* et suivants du c.p.p.) ;
c) L'élimination des obstacles pour les récidivistes réitérés, à l'égard desquels il existait en théorie une présomption de dangerosité, qui d'un point de vue pratique était mal fondée, s'agissant d'auteurs d'infractions peu graves, de la part de marginaux ou/et de toxicomanes (articles 656, alinéa 9 § C c.p.p., 47 *ter*, alinéas, 1 et 1 bis du règlement pénitentiaire) ;
d) La possibilité de bénéficier de l'assignation à domicile, sans avant passer par la prison, pour les femmes enceintes et les mères d'enfants ayant moins de dix ans, pour les sujets très malades, pour les septuagénaires non récidivistes, du moins dans les cas pour lesquels une peine inférieure à quatre ans doit être purgée ;
e) L'élargissement de la possibilité de recourir au travail d'utilité publique pour les toxicomanes, également avec des limitations pour les infractions les plus graves (art. 73, alinéa 5-*ter* D.P.R. du 9 octobre 1990, n. 309*) ;*
f) L'élimination de dispositions plus sévères, encore une fois pour les récidivistes, en matière de semi-liberté, ou d'une mesure qui favoriserait

la réinsertion sociale à travers le travail en dehors de la prison (art. 50 *bis*, règlement pénitentiaire) ;

g) L'élargissement de la possibilité d'admettre que des détenus travaillent à l'extérieur, plus particulièrement les travaux d'intérêt public, ainsi que l'élargissement de la possibilité d'accéder aux réductions fiscales déjà prévues par la loi Smuraglia (loi du 22 juin 2000, n. 193), pour les sociétés qui embauchent des détenus ou des *ex* détenus ;
h) L'augmentation à cinq années de réclusion pour la peine maximale prévue pour la détention préventive, à l'exception du délit de financement illicite des partis politiques et de *stalking* (art. 612-*bis* du c.p.), afin de rendre plus difficile le recours aux mesures préventives d'emprisonnement, compte tenu qu'un pourcentage entre 35 et 40% est constitué de détenus soumis à détention préventive ;
i) L'élévation à quatre ans de réclusion de la limite de la peine pour laquelle il est possible de donner des « permis de sortie » sans avoir purgé une partie de la détention infligée (art. 30 *ter*, alinéa 1, a) du règlement pénitentiaire).
j) Le renforcement du rôle du Commissaire extraordinaire pour les prisons, auxquels on confie des tâches bien définies et destinées à atteindre, dans les plus brefs délais, la création de nouveaux instituts pénitentiaires et de l'amélioration structurelle de ceux qui existent déjà, et ceci parce que la situation de difficulté structurelle du système pénitentiaire ne peut pas être affrontée uniquement à travers des interventions législatives.

§3. Conclusions.

En définitive, nous sommes en présence d'une intervention qui cherche un équilibre difficile entre les exigences justes et auxquelles on ne peut pas renoncer de protection de la collectivité et le but tel que prévu au niveau constitutionnel et international, d'une réinsertion sociale des personnes qui ont commis des infractions, qu'il faut poursuivre surtout à travers un renforcement des possibilités d'accès aux mesures alternatives à la prison.
Ces mesures, loin d'être considérées comme des instruments de pure indulgence, apparaissent donc comme la réponse la plus efficace, par rapport au simple instrument de la prison, pour contrôler les parcours de récupération sociale des auteurs d'infractions pénales, consistant souvent dans des violations peu graves. Mesures qui, en plus de la finalité rééducative imposée par notre Constitution, représentent un indispensable instrument de déflation carcérale, qui mérite d'être renforcé, selon une ligne directrice commune à la grande majorité des systèmes démocratiques les plus avancés.