



# 17° CDAP – ROME 2012

## *“Foreign Prisoners”*



## Considerations on Rule 35 of the Recommendation Rec(2012)12 on Foreign Prisoners

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# *The CoE Recommendation on foreign prisoners*

## *General background*

- European Parliament resolution of 5 April 2011 on migration flows: scope and role of EU foreign policy (2010/2269(INI))
- Aims: to limit and to regulate immigration flows, in order to avoid any actions bringing to violations of human rights connected with illegal immigration



# *The CoE Recommendation on foreign prisoners*

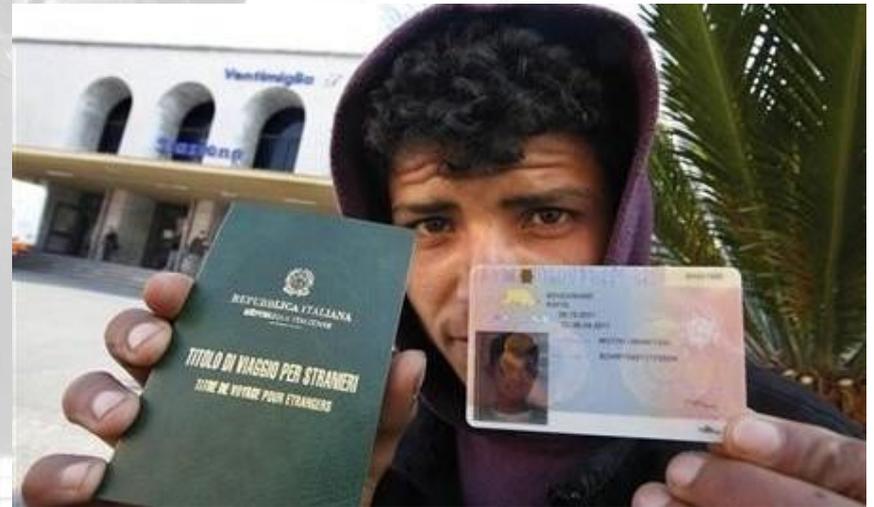
## *General background*



- **Rec(2012)12: in the same wake of European Parliament Resolution.**
- **Replaces CoE Rec. of 1984.**
- **Establishes some important innovations concerning social inclusion of foreigners.**

# *The CoE Recommendation on foreign prisoners Innovations*

- **Trans-national dimension of support interventions and social integration measures**
- Establishment of a **wide, structured network of assistance** to foreigners
- **Integrated services** between prisons and the local community



# *The CoE Recommendation on foreign prisoners Innovations*

Support network aimed at facilitating access to:

- **Judicial/legal** information;
- **Administrative** information;
- **Social/healthcare** information;
- Information on **job-placement**,

in order to provide prisoners, upon their release, with **more chances of successful social inclusion**



# *The CoE Recommendation on foreign prisoners*

## *Need of fighting against illegal migration*

**Illegal migration** exposes people to conditions of **discomforts, fragility and precariousness**, which favour:

- **trafficking in human beings;**
- **exploitation of people in the job field;**
- **radicalisation;**
- **micro-criminality and deviant behaviours in general.**



# *The CoE Recommendation on foreign prisoners*

## *Foreign Prisoners in Italy (data as of 31<sup>st</sup> October 2012)*

<b>NUMBER OF FOREIGN PRISONERS</b>	<b>TOTAL NUMBER OF PRISONERS</b>	<b>% of foreign prisoners</b>
<b>23.789</b>	<b>66.685</b>	<b>35,67 %</b>



*The CoE Recommendation on foreign prisoners*  
*Foreign prisoners in Italy*

Foreign prisoners in Italy mainly come from:

- Morocco (4,592),
- Romania (3,637),
- Tunisia (3,085),
- Albania (2,855)
- Nigeria (1,057)
- Algeria (648), etc.

In Italian prisons, there are foreigners representing about **150 nationalities**

# *The CoE Recommendation on foreign prisoners*

## *Foreign prisoners in Italy*



- 5 foreign prisoners out of 10 are waiting for final judgment;
- Most of foreign prisoners are irregular and/or illegal immigrants;
- Thus, they can be the object of exclusion (or “removal”, in EU terms)

*The CoE Recommendation on foreign prisoners*  
*Rule 35.1*

*“35.1 Preparation for release of foreign prisoners shall start in good time and in a manner that facilitates their reintegration into society”*

- Offenders’ reintegration into society (in its wider sense) should be the main aim of their preparation to release.
- Such aim also guides the modalities and the times of preparation to release.

## *The CoE Recommendation on foreign prisoners*

### *Rule 35.2*

- *“35.2 In order to facilitate the reintegration of foreign prisoners into society:
  - a. their legal status and their situation after release shall be determined as early as possible during their sentence;”*
- *the definition of their legal status and of their situation has to be made not only “during their sentence”, but even “as early as possible”*
- *The aim of such provision is to avoid to restrain foreign nationals again, in other structures, after release.*

## *The CoE Recommendation on foreign prisoners Rule 35.2 – Italian project*



- Establishment of a “Unit of State Police agents – Immigration Office” **at the prisons** carrying out procedures relevant to foreign prisoners during their detention;
- to acknowledge their **right to stay as refugees or asylum seekers** or due to other higher needs of protection, or,
- alternatively, in order **to facilitate their removal** and to avoid their prolonged stay in other centres after release.

## *The CoE Recommendation on foreign prisoners*

### *Rule 35.2 – Italian project*

- That unit of **State Police** collaborates with the **penitentiary staff** and with the **Penitentiary Police** in performing a wider task of support to foreign prisoners, in compliance with other rules of this Recommendation.



## *The CoE Recommendation on foreign prisoners*

### *Rule 35.2 – Italian situation*

- In Italy, it is not possible to remove those foreign prisoners who in their country of origin risk to be persecuted for reasons of race, politics, religion, gender, language, citizenship.
- Apart from those cases, if regular foreigners are arrested or convicted, their **permit to stay** can be **revoked**, if they are assessed as **dangerous**.
- Possibly, even the offender's **removal** can be ordered



# *The CoE Recommendation on foreign prisoners*

## *Rule 35 – Italian situation: a wish*

- it would be desirable that, under certain conditions, irregular or illegal foreign prisoners can **access procedures for their regularization**,
- to **increase the efficiency** of reintegration programmes, without frustrating:
  - Actions and **resources employed for their rehabilitation treatment** during the enforcement of the sentence, both inside and outside the prison;
  - the **positive outcomes of the treatment**.



# *The CoE Recommendation on foreign prisoners*

## *Rule 35 – Italian situation: a wish*

- It is time to consider the sentence served and the positive outcomes of the treatment as requirements fulfilled for the “rehabilitation” of the migrants’ illegal condition.
- Increase the value of foreign prisoners’ good behaviour:
  - Their commitment in work and treatment activities;
  - Their willingness to integrate in the country where they are serving sentences, or where they will be moved.



*The CoE Recommendation on foreign prisoners*  
*Rule 35 – Italian situation: a wish*

**Give a further  
opportunity to those  
who left their  
countries, in most  
cases, not to offend,  
but to find a job and  
to lead a decent life.**



## *The CoE Recommendation on foreign prisoners*

### *Rule 35 – Italian situation: 2 cases*

- Our law provides for two cases where the irregular or illegal foreign prisoner can exceptionally obtain a permit to stay.
- The first case is when “ ... situations of violence on or of serious exploitation of a foreigner are verified, and there is concrete danger to his/her life, in consequence of his/her efforts to get out of the conditioning by an association”
- In that case a residence permit is issued, valid for six months and which can be extended.
- That is a clear instrument of fight against organised crime and of protection of the foreign person's safety

## *The CoE Recommendation on foreign prisoners*

### *Rule 35 – Italian situation: 2 cases*

- **Second case**: a residence permit granted **at the end of the sentence** to the **foreigner** who has served a sentence for a crime perpetrated **when he/she was a minor** and who demonstrated **active participation in the social integration treatment**.
- This case has the marked character of **rehabilitation** which the Italian law assigns to the **treatment of minors**.
- In our system, provisions and measures initially provided for minors have often been extended to all offenders.
- Concretely, a **further path of regularization** would thus be established as follows: **prison – compliance to treatment – granting of residence permit**.

## *The CoE Recommendation on foreign prisoners* *Rule 35.3*

- Once established the **legal status** of those who will remain in the country where they served their sentence, **Rule 35.3** invites to provide them with **instruments** aimed at **offenders' reintegration**.



# *The CoE Recommendation on foreign prisoners*

## *Rule 35.3*

- For the foreign offenders who are to be transferred or to be removed, two options are possible:
  - to serve their sentence or a part of it in their country of origin;
  - to be removed once the sentence has been served.



# *The CoE Recommendation on foreign prisoners*

## *New Possible Model*

- Recommendation (2012)12: provisions referable to forms of “hybrid enforced return” or “assisted return”, implying the
  - preparation,
  - accompanying and
  - help to reintegration of the removed migrant



## *The CoE Recommendation on foreign prisoners*

### *Prisoners' consent*

- Rules 35.4 and 35.5 involve the issue of the “prisoners' consent”, required to forward documents and information necessary.
- That consent could be a big limit.
- In general, the foreign prisoners put up a strong resistance to reintegration in their countries of origin, because of the reasons which pushed them to migrate;
- That is “pushing” factors (i.e. reasons to leave: climatic, economical and political reasons) and factors of “attraction” (in the countries of destination: social and economical well-being, democratic institutions, etc.)
- Often they also fear a negative response from their families.

## *The CoE Recommendation on foreign prisoners*

### *Prisoners' consent*

- It is therefore necessary to induce the foreigners to give their consent, by:
- making the possibility of reintegration concrete through an efficient and functioning network of assistance;
- enabling them to keep contacts with their families through the use of all the available instruments.



## *The CoE Recommendation on foreign prisoners*

### *Rule 35.4*

- Rule 35.4 : “efforts shall be made”, should be intended in the sense that the maximum possible effort is to be made.
- The success of the Recommendation is based not only upon the excellent functioning of the network built around the foreign offender,
- but also upon the necessary “LINK-BRIDGE” with the networks and the agencies situated in the countries of destination or of origin of the prisoners ...
- ... towards the same, shared objective of the subjects' social reintegration.
- Contact State authorities as well as assistance services should be contacted, to inform them about the arrival of the subjects and to provide those agencies with the necessary information.

# *The CoE Recommendation on foreign prisoners*

## *Rule 35.4 – Continuity of treatment*

- To ensure the continuity of treatment, the offenders' personal record should follow the foreign nationals when they are transferred to other prisons
- That record contains all the personal and judicial data of the offenders
- it is therefore necessary to define the modalities of programmes communication and implementation, through bilateral or multilateral agreements



# *The CoE Recommendation on foreign prisoners*

## *Rule 35.4 – Prisoners' consent*

- **Crucial issue: the prisoners' consent**, in matter of communication of personal data.
- **Exchange the sole information** useful for the prisoner's social reintegration, then
- **identification of the authority responsible** for keeping and processing the personal data.
- **Penitentiary authorities hand over the medical file with a document of synthesis drafted with the interested offender's participation and approved by a magistrate**



# *The CoE Recommendation on foreign prisoners*

## *Rule 35.6 – Independent advice and information*



- Rule 35.6 requests to provide foreign prisoners with assistance enabling the access to independent advice.
- Assistance means above all information.
- In Italy, all the prisoners are entitled to receive, since the beginning of their imprisonment, detailed information about the prison regulations and about the possible benefits they can obtain.

# *The CoE Recommendation on foreign prisoners Italian Charter of prisoners' Rights and Duties*

- Soon available a Charter of prisoners' Rights and Duties containing many information on obligations and opportunities for prisoners as well as on services provided in prisons.
- That charter was drafted with the decisive contribution of the top-management of the Department of Penitentiary Administration

# *The CoE Recommendation on foreign prisoners*

## *Rule 35.7 – Information on regimes*



- Rule 35.7 recommends to provide a wide range of information concerning the detention conditions, the prison regimes and the possibilities of release.
- In this rule the desire is implicit to progressively homologate the judicial regimes, and the penitentiary regimes in particular.
- PROPOSAL: some information to be published and disseminated by each Country in printed leaflets as well on the Internet.



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**THANK YOU FOR YOUR KIND ATTENTION !**