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Meeting: 1468th meeting (June 2023) (DH)

Communication from an NGO (StraLi for Strategic Litigation) (09/03/2023) in the case of Sy v. Italy (Application No. 11791/20).

Information made available under Rule 9.2 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 : 1468^e réunion (juin 2023) (DH)

Communication d'une ONG (StraLi for Strategic Litigation) (09/03/2023) dans l'affaire Sy c. Italie (requête n° 11791/20) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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DGI

09 MARS 2023

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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9 March 2023

COMMUNICATION

In accordance with Rule 9.2 of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and terms of friendly settlements by

STRALI ETS-ODV (STRALI) in the case

***Sy v. Italy* (Application No. 11791/2020) (leading repetitive case)**

1. Introduction

This communication on the execution of judgment in the case *Sy v. Italy*, Application No. 11791/2020, 24 January 2022, is submitted pursuant to Article 46 of the European Convention of Human Rights (“ECHR” or “Convention”) and of Rule 9.2 of the Rules of the Committee of Ministers. The submission addresses the ineffectiveness of the general measures set out in the Action Plan submitted on 26 January 2023, and sets out recommendation for effective implementation.

StraLi¹ is an Italian NGO founded in 2018 by lawyers and legal practitioners to react to human rights violations in society and combat them with legal means. The association promotes strategic litigation as a mean to advance the respect of human rights in society. In doing so, it ensures technical and juridical support to victims of abuse, and it raises awareness of the topical issues at stake in society.

¹ The official website of our NGO can be found at < <https://www.strali.org/> >.



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StraLi has been involved in similar cases concerning the health of detainees, also specifically regarding the problem of detainees waiting for a place in Residential Centre for the enforcement of preventive measures (hereinafter only “REMS”)², and is therefore well aware of the challenges that need to be addressed for the betterment of the current Italian system.

2. Case Summary

The applicant, who suffers from a bipolar disorder aggravated by drug addiction, was maintained in detention in an ordinary prison between December 2018 and May 2020, in spite of domestic court decisions ordering his transfer to a REMS. The transfer was issued on the basis of expert psychiatric assessments that his mental health was incompatible with detention in prison. Even a subsequent judgment by the court of appeal, ordering his release on account of the delay in placing him in an appropriate establishment, was not enforced.

On 7 April 2020 the Court requested that the Government, in pursuance of Rule 39 of the Rules of Court, ensure M. Sy’s transfer to a REMS or other institution capable of providing appropriate medical treatment for the applicant’s mental illness. The domestic authorities transferred the applicant to a therapeutic community thirty-five days after the Court had requested the measure. The Court found violations of Articles 3, 5§1, 5§5, 6§1 and 34 of the Convention.

3. General Measures

The measures set out in the latest Action Plan and put in place by the Italian Government to ensure respect for the rights of detainees with psychiatric needs are inadequate. They fail to meet their purposed goals and they leave individuals with psychiatric needs, who should not be in prison, with the only possibility of being *de facto* detained in ordinary prisons, which lack the necessary facilities to provide adequate medical treatment. The allocation of funding by the Government has not proved sufficient, with few, overcrowded, and malfunctioning REMS facilities being never modernised or improved since their establishment in 2014.

² See, for instance, the case *Saad v. Italy*, Application No. 53640/22, currently pending before this Court.



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3.1 REMS' principles and role in the Italian system

Custody in a REMS is a so-called “security” measure, provided for by Article 215 of the Italian Criminal Code, which can be applied to convicted people with mental health pathologies. Instead of being kept in detention, convicts are held in facilities where appropriate psychiatric treatment is provided. More specifically, such a measure can be applied by a judge to a subject who has committed a crime, has been acquitted due to his/her insanity and is also considered a threat to society (*i.e.*, “socially dangerous”). Additionally, the measure can be applied provisionally before sentencing.

The definition of “*social danger*” is provided for by Article 133 of the Italian Criminal Code, while the legislation regarding REMS facilities is enshrined in Laws No. 9/2012 and 81/2014.

REMS facilities are supposed to be rehabilitative centres rather than detention centres, places where individuals with psychiatric needs can be taken care of and, eventually, rehabilitated into society.

REMS facilities have been implemented into the Italian system in substitution of the so-called “*ospedali psichiatrici*”³. In particular, the institution of REMS facilities aimed to determine a shift in perspective in the Italian criminal system, namely to start considering convicts with (mental) health issues as people in need of medical support, rather than as problematic detainees who should be segregated to avoid any kind of (social) complications.

Ideally, the management and organisation of REMS facilities should be guided by two main principles: the principle of territoriality and the principle of individualization of treatment.

While the former requires the patient to be hosted in the REMS closest to the city where he/she resides (in order not to deprive him/her of his/her family and social net), the latter requires that each individual who is hosted in a REMS must receive a medical treatment tailored to his/her specific needs.

Even if the premises based on which REMSs were opened can be considered admirable, their practical functioning as of today does not respect either one of the mentioned principles. The

³ Psychiatric hospitals.



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biggest challenge lies in the lengthy and problematic procedure to be admitted into a REMS. In fact, there are many individuals now forced to live in *limbo*, not knowing whether and when they will ever be transferred to this facility⁴.

At the same time, the lengthy waiting list⁵ to be granted a spot in a REMS often leads people awaiting admission to start additional therapy or treatment to try to cure his/her mental illness. Consequently, when the chance to be transferred to a REMS becomes a reality, the patient is obliged to end the therapy previously initiated and commence a new one elaborated with the REMS personnel. In this way, the benefits gained from the previous treatment often risk vanishing or being severely compromised.

3.2 The current situation in Italy

In reality, the principles underpinning the creation of the REMS institution are easily disregarded. The latest Action Plan does not accurately reflect the real conditions of REMS facilities and the application of the admission procedure.

⁴ See the table contained in the National Ombudsman for the rights of persons deprived of their liberty's Report to Parliament of 2022 ("Ombudsman's Report of 2022"), available [here](#), p.48, which mentions that 42 individuals were detained waiting for a spot in a REMS as of 22.03.2022 (7% of a total of 605 people waiting to be transferred to a REMS, see p.88). See also the decision of the Italian Constitutional Court n. 22 of 27 January 2022 available in Italian [here](#). The Constitutional Court mentions that its investigation on the numbers of detainees awaiting transfer to a REMS facility (which led to written responses from the Minister of Justice, the Minister of Health, the President of the Conference of Regions and Autonomous Provinces, and the President of the Parliamentary Budget Office) led to non-uniform results: "*as of July 31, 2021, 750 persons according to the Department of Penitentiary Administration, and 568 according to the Conference of Regions and Autonomous Provinces - to the latter figure, however, it is necessary to add 103 persons who, according to the Conference, are not immediately placed in REMS, since they are, for example, persons detained in prison in another capacity, untraceable or residing in a foreign state*" (para 5.3).

⁵ For a first recognition of the problematic see the resolution adopted by the Higher Council for Magistrates of 19 April 2027 available in Italian [here](#) and the report of the NGO Antigone available in Italian [here](#). See also judgment 22/2022 of the Italian Constitutional Court, cit., which reports that "*The average time on the waiting list is reported unanimously to be 304 days; but the data on average waiting times in individual regions are of little significance, since in many regions waiting lists are a marginal phenomenon, concerning fewer than 10 people; and that, on the other hand, waiting lists are numerically significant in five regions (Sicily, Apulia, Calabria, Campania and Lazio) in which 78 percent of the phenomenon is concentrated. In particular, as many as 172 people on waiting lists are noted in Sicily, accounting for just under one-third of the total, with an average time on the waiting list of 458 days*" (para 5.3.).



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The management of the 30 REMS currently existing in Italy is subject to regional law, making the quality of life of patients differ from region to region. REMS structures are only present in 17 of the 20 Italian regions⁶.

Each REMS shall host a maximum of 20 individuals⁷, but, in reality, REMS' locations are not uniformly spread across the country, and this agreement was not respected. There are, in fact, two regions, Lombardy and Lazio, hosting about half of the total number of patients, 218 of 573.⁸

The most relevant issue for patients is the lengthy period between the request of admission into a REMS, following the judge's decision, and the transferral. Such a long period is often equal to the overall duration of the safety measure as decided in the judgment⁹. As the waiting period extends further and further, so does the infringement on the right to health of the individuals involved.

As highlighted recently by the Italian Constitutional Court,¹⁰ the institution of REMS facilities, far from being only a matter of rehabilitation, is first and foremost, intrinsically entangled with the right established under art. 3 of Convention¹¹.

In 2022, between 670 and 750 individuals awaited a place in a REMS structure in Italy (42 of these waiting in prison¹²), with an average waiting time of 304 days¹³. This entails that almost a year passed before an applicant could see his/her right to health being respected.

⁶ See the table contained in Ombudsman's Report of 2022, p.78.

⁷ As set for in an agreement signed by the government of Italy and the representatives of the Regions on 26 February 2015. The agreement of the Unified Conference between the Italian State and the Regions can be found [here](#).

⁸ See the table contained in the Ombudsman's Report of 2022, p. 79.

⁹ As previously mentioned, waiting lists for REMS facilities are extremely lengthy, and often incapable of ensuring that a patient will be admitted at all.

¹⁰ See the judgment 22/2022 of the Italian Constitutional Court, cit., para 5.4.

¹¹ See the latest report (05/01/2023) of the National Ombudsman for the rights of persons deprived of their liberty on suicides committed in jail which reports that 42% of the total suicides were committed by individuals which were suffering of a psychiatric disorder. One of them was awaiting to be transferred in a REMS. The report is available in Italian [here](#) (table 8, p. 16-17).

¹² According to a report from last year. See the table contained in the National Ombudsman for the rights of persons deprived of their liberty's Report to Parliament of 2022 ("Ombudsman's Report of 2022"), available [here](#), p.48, which mentions that 42 individuals were detained waiting for a spot in a REMS as of 22.03.2022 (7% of a total of 605 people waiting to be transferred to a REMS, see p.88).

¹³ See the passage from the Italian Constitutional Court's decision cited above n. 5.



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It should also be noted that the number of individuals on the waiting lists is on the rise. From 175 in 2020 and “only” 92 in 2019, as found by a report of the University of Turin¹⁴, they became more than 600 in 2022¹⁵.

Another aspect that should be highlighted concerns life after treatment in a REMS. It has been noted that the number of days that individuals spend in these institutions is increasing (from an average of 452 days in 2018 to 708 days in 2021)¹⁶. The risk of an unlimited extension of time spent in a REMS brings about a two-fold problem. First, unlimited treatment goes against the goal of a REMS, whose duration is limited in nature, and whose aim is only to rehabilitate someone who is mentally ill. Second, the more a patient is kept in a REMS facility, the longer it will take for a new one to be admitted.

The current situation of persons with psychiatric disorders in detention is extremely problematic, as was recently underlined by the national Ombudsman: in 2022 alone, 214 inmates died, out of which 85 committed suicide¹⁷.

3.3. Comments on the Action Plan

In describing the general measures adopted, the Italian government has described a situation where “*great attention*” is paid to the issue “*with a view to preventing similar events and important steps have been taken in this direction*”¹⁸.

The measures indicated to implement and solve the endemic problem of lack of available places at REMS facilities, as pointed out by the government’s Action Plan, have been in place since the

¹⁴ Research Project SMOP, “*Sistema informativo per il Monitoraggio del superamento degli Ospedali Psichiatrici Giudiziari*”, available at [here](#), p.29.

¹⁵ According to the National Ombudsman for the rights of persons deprived of their liberty, there were at least 605 people on the waiting lists as of March 2022, and 42 waiting while detained in ordinary prisons. Ombudsman’s Report of 2022, p.48.

¹⁶ Research Project SMOP, p. 79.

¹⁷ The Ombudsman’s Report of 2022 refers to detainees with mental disorders specifically and mentions that: “*The current situation of prisons is particularly complex and critical. In 2022, 214 people died in detention: 93 from natural causes, 85 from suicide, 32 from reasons to be ascertained and 4 from accidental causes*”, p. 7 .

¹⁸ Action Plan, p. 2.



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establishment of REMS in 2014¹⁹. Therefore, part of these measures was already in place at the time of the Court's ruling.

However, in reality the measures adopted are very few, they do not include the allocation of sufficient funds and are still preliminary and evaluative concerning the steps to be taken in the future. Above all, these measures appear to lack coordination and systematicity. They prove to be ineffective in addressing the problem from a general perspective and, as such, fail in preventing the future lodging of individual complaints on similar matters to the Court.

First, the Government specifies that in 2021 the National Agency for Regional Health Services (“AGENAS”) established a committee with a view of monitoring waiting lists for the placement of individuals in REMS facilities²⁰. This committee was mandated with the task to “*take action for a prompt allocation*” of available spots and “*survey the actual capacity of REMS*”. Its objective was to coordinate the existing facilities, rather than create new places or allocate new resources. At present, no results of this specialised committee were published, and the actual practical usefulness of this institution is unknown, except for the Government's generic indication that it would favour “*the exit from prison of those awaiting hospitalization*”²¹. However, it is unknown in what terms it contributed to this result. We ask the Committee to request the authorities information about the results of this Committee.

What is certain is that the committee appears to have been replaced by a subsequent committee, established on 30 November 2022 with a coordinating function (see below).

The Government emphasises that it has allocated “*extraordinary funding in favour of the Liguria Region for the three-year period 2022-2024*”²² (Decree-Law No. 17/2022) and that it has opened a new REMS facility in Girifalco (Calabria) with 20 available beds (but the Government did not say that another REMS is going to be closed in Mondragone²³). These interventions are by no means organic, and are, instead, dictated by specific needs and availability. Moreover, the allocation of funds for a fixed period of three years exclusively to one region, where additional

¹⁹ “When the reform came into force (1 April 2015), the REMS system experienced difficulties in the availability of places compared to needs”. See the Government’s Action Plan, p. 3.

²⁰ Action plan, p. 4.

²¹ Action plan, p. 5.

²² Action plan, p. 5.

²³ Ombudsman’s Report of 2022, p. 77.



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beds are created and patients are admitted from other regions (just for the sake of giving them a temporary placement), is contrary to the principle of territoriality, and engenders other human rights violations.

The principle of territoriality is closely related to the purpose of care, which is necessarily premised on the idea of reintegrating the individual into the “social fabric” which was disrupted by his/her antisocial behaviour.

In fact, creating new REMS facilities in only one place and exclusively for the purpose of “plugging” the lack of available places bears severe consequences on the effectiveness of treatments and the individuals’ prospects of resocialization. Patients, eradicated from their contexts, are prevented from establishing real contact with local treatment centres, which are those who should take care of them and draw up a therapeutic program. They cannot be visited by the psychiatrists who have been in charge of their case until then, nor by their loved ones²⁴.

Furthermore, the Government has emphasized that the Department of Penitentiary Administration (“DAP”) “*continues to pay the utmost attention in order to ensure that they receive the best assistance available*”²⁵.

The situation on the ground indicates otherwise. Incessant complaints by prison officers denounce an intolerable situation that cannot be coped with any longer. Even most recently, the President of the Penitentiary Police Labor Union (“SAPPE”), as a spokesperson of the union, affirmed that “*in this chaos, the Penitentiary Police officers are requested to act as “nurses” to the sick, while lacking the skills to do so, and to concretely save the lives of people who attempt unconscionable gestures towards themselves or the others. Not to mention the countless times that officers are physically assaulted by problematic subjects. It is clearly not possible to go on like this. We welcome the condemnation of the problems as noted by the World Health Organisation – problems and deficiencies that we have been denouncing for years*”²⁶.

²⁴ As underlined above, the REMS system suffers a significant problem of distribution of available spots, see the Ombudsman’s Report of 2022, p. 85. In many case people are collocated in the first free spot.

²⁵ Action plan, p. 7.

²⁶ Federico Pilagatti, Segretario Nazionale del Sindacato Autonomo Polizia Penitenziaria (SAPPE). Available [here](#).



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The overcrowding of Italian prisons and the shortage of personnel, including agents, psychologists, doctors and educators, is, sadly, an infamous problem²⁷. On this matter, it must be mentioned that the Budget Law approved in December 2022²⁸ provides a drastic decrease in the DAP's spending budget to roughly 36 million euros. This cut strikes the final blow to an institution which is, as mentioned above, already understaffed and in great difficulty. It follows that any generic reference to the fact that the "*DAP continues to pay the utmost attention in order to ensure that they receive the best assistance available*"²⁹, remains a mere statement of principles, which does not correspond to proper investment in resources and funds, and it is not representative of the current situation.

Furthermore, the Government presents the departments dedicated to mental health present inside detention centres (so-called "*Articolazioni per la tutela della salute mentale*"- "*ATSM*") as an example of the "best assistance available" to detainees awaiting transfer to a REMS³⁰. This affirmation is far from the reality and purpose of ATSMs. First and foremost, ATSMs are not present in every prison, as they can be found in only 32 (out of the 191 prisons present in the Italian territory)³¹. As such, they do not represent a viable option available to all those who are detained awaiting transfer to a REMS. Moreover, ATSMs are special sections which are (theoretically) dedicated to inmates who cannot be treated in ordinary sections. These subjects are placed in the ATSM under "psychiatric observation" (an extendable 30-day period aimed at assessing whether the health state of the individual is compatible with the detention). Here lies the crucial difference with the placement in a REMS: the decision to transfer an inmate from an ordinary section of the prison to an ATSM (and on its extension/repeal) is taken by the prison's internal administration and, as such, is not subject to judicial review. The application of a security measure - such as the one of being hosted in a REMS - is instead taken by a judge. Most

²⁷ See the 2022 Antigone Report, available [here](#).

²⁸ At the same time, the DAP was unjustly obligated to an expenditure saving of more than 36 millions. See Art. 1, para. 878 of Law 29 December 2022: "*A decorrere dall'anno 2023, il Ministero della Giustizia – Dipartimento dell'amministrazione penitenziaria assicura, mediante la riorganizzazione e l'incremento dell'efficienza dei servizi degli istituti penitenziari presenti in tutto il territorio nazionale, il conseguimento di risparmi di spesa non inferiori a 9.577.000 euro per l'anno 2023, a 15.400.237 euro per l'anno 2024 e a 10.968.518 euro annui a decorrere dall'anno 2025*". The full text of the law as adopted is available [here](#).

²⁹ Action Plan, p. 6.

³⁰ Action plan, p. 6.

³¹ See Antigone's Report, p. 5. Available [here](#).



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importantly, ATSMs have been subjected to heavy criticism³². They lack a unitary regulation which defines how these departments should be spatially organized (furniture, beds, bathrooms) or which lays down the essential levels of care to which they must adhere³³. In one particular case, they were even closed due to their inhuman conditions, which lead to being labelled as the "department of horrors"³⁴. In a statement of February 6, 2023, a representative of the Labor Union of the Penitentiary Police (USPP) commented the ATSM present in the prison of Marino del Tronto and described it as *"a department which is blatantly not up to standards both from a structural and a sanitary point of view. There are no walking rooms for the inmates, there are no medical rooms and medical supplies inside the department, there are no rooms for therapeutic and recovery treatment activities, there is very little presence of professional figures who are essential in realities such as these, such as psychologists and psychiatrists"*³⁵. It follows that they actually represent the *worst* assistance available.

Lastly, the Government points out that on 30 November 2022, an agreement was signed for the *"management of patients subjected to security measures"*³⁶. This agreement provides for the creation of a National Steering Committee and a Regional Contact Point ("PUR") with the task of drawing up protocols with territorial judicial authorities to establish care procedures in favour of patients, to refer experts and consultants to the PUR and to manage waiting lists. This provision substituted previous agreements on the matter, thus without regulating the fate of existing protocols and practices on the matter.

³² On this point Antigone Report of 2022 highlights *"systematic violations of individual rights and serious management problems, repeatedly pointed out by the Network of "Garante" of Persons Deprived of Liberty, human rights associations and the European Committee for the Prevention of Torture during inspection visits to our country"*. The Report is available [here](#) .

³³ See the research published by the NGO La Società della Ragione, p. 18. The research is available [here](#).

³⁴ There is a trial pending at the Criminal Court of Turin. On this matter see the 2022 Antigone Report (available [here](#)) which mentions: *"Antigone uncovered alarming and unworthy situations. Today that section is closed and under renovation, the Turin Public Prosecutor's Office has opened an investigation file to verify the commission of crimes by prison and health care workers. But that case leaves open the question of how to "regulate" the Articulations both on the normative and regulatory level and on the operational level. It is necessary to identify, as soon as possible, homogeneous operating models, to open a discussion between mental health workers and prison workers in order to share, so that the Articulations really become places where care can be promoted and not only the neutralization of people"*.

³⁵ See the full statement [here](#).

³⁶ Action Plan, p. 6. The agreement is available in Italian [here](#).



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Another problematic aspect is the extreme centralization of all the competence to identify the individual patients' needs in the PUR. The PUR is a place far removed from daily practice and from the contingent needs that such delicate and complex situations continually pose. This procedure, therefore, is aimed at simply speeding up the process, and not at taking care of individual needs. Moreover, no decision is taken on the endemic problem of the lack of places in REMS.

It would be necessary to allocate resources and especially funds to the Departments of Mental Health and their territorial articulations; to hire new psychiatrists, psychologists, educators, and social workers; to strengthen the presence of community residential facilities, including high protection ones. In fact another problem is the constant increase of individuals who are sentenced to be in a REMS without being affected by grave psychopathological illness but rather, who are suffering from addiction, social marginalization, or other types of cultural, social, and economic dysfunctionalities that could be better addressed outside the context of a REMS.

The inability of the Italian system to correctly distinguish between those who are actually socially dangerous and are in need of rehabilitative therapy in a REMS, on one hand, and those who should be otherwise treated, on the other hand is one of the causes leading to the excessive length of the waiting lists. Indeed, the Italian legal system foresees other types of security measures, such as probation, which can be tied to temporary residence in a therapeutic residential facility. In this perspective, the improvement of territorial facilities and psychiatric medical services would guarantee the protection of those individuals who are awaiting placement in REMS facilities, without being incarcerated. Furthermore, it would encourage the immediate identification of an individual pathway and it would make possible to identify in advance those individuals who really need to enter a REMS, those who do not, hence leading to a reduction of the list.

The PUR Agreement does not address how to cure patients in the long term³⁷, but simply finds a quick fix focused on where to place people in the list.

³⁷ This is a request of the ECtHR and also of the Italian Constitutional Court. See Constitutional Court, Decision of 27 January 2022, No. 22.



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Furthermore, the Agreement completely omits to see the role played by lawyers (and lawyers' association) in ensuring and defending inmates' rights. Moreover, regional watchdogs were not included in the proceedings which led to the drafting of the Agreement.

3.3.1. Legal remedies

Finally, the Government's remarks do not adequately address the issues highlighted by the Court, specifically concerning violations of Articles 5 and 6 of the Convention.

To begin with, the Government contends that *“the involvement of a multitude of institutional actors on these issues and the practical implementation of these measures also underscores the high complexity of the issue”*³⁸. However, the issue regarding detainees awaiting placement in REMS dates back to 2014 and the Court has repeatedly noted that *“it is the responsibility of governments to organize their prison systems in such a way as to ensure respect for the dignity of detainees, regardless of any economic or logistical difficulties”*³⁹.

Moreover, the Government did not address the Court's relief to the finding that *“the civil action for compensation for violation of personal liberty, provided for by the Italian legal system, was not an effective remedy for obtaining redress for violations of paragraphs 1 and 4 of Article 5 of the Convention, as the government did not provide any examples to show that such an action had been successfully brought in similar circumstances [...] In light of the foregoing, the Court finds that the applicant had no means of obtaining, with a sufficient degree of certainty, redress for violations of Article 5 § 1 of the Convention”*⁴⁰. It must be stressed that, at present, even in light of a recent reform of the criminal justice and criminal procedure system⁴¹, **there is no specific remedy in our legal system to claim the damages for detention in conditions that do not comply with the provisions of the Convention**. No legislative and/or jurisprudential measures have been taken (or even indicated) by the Government regarding the noted absence of effective

³⁸ Action Plan, p. 8.

³⁹ Sy vs. Italy 2022 and also Muršić § 99, e Neshkov & others, § 229.

⁴⁰ Sy vs. Italy 2022 147- 149.

⁴¹ D.lgs. 10 October 2022, n. 150 - 30 December 2022. Available in Italian [here](#).



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recourse in our system against the detention situation being evaluated by the European Court of Human Rights.

In addition, in the precautionary measure system, there is no avenue for the detainee to appeal prison measures that are revoked in favour of being subject to custody in a REMS. In that case, the detainee remains in prison despite prison measures being revoked because there are no REMS available places without the possibility of re-evaluation of his/her situation, as there are no means of appeal. Indeed, the local Judge of Appeal normally rejects its competence on the matter – saying that the measures has been already revoked and so it's only a problem of execution of the decision – and the detainee is only left with waiting for a spot in REMS⁴².

In conclusion, the detainee remains without a mechanism of re-evaluation and a subsequent effective compensatory remedy.

4. Conclusions and recommendations

The assignments and transfers to REMS facilities are arranged by DAP. Even though the Italian Government claims that the question is of “absolute priority”, the budget law of 2023 provides for a reduction of the DAP’s budget of 36 million euros for the next three years. Only adequate funding would allow the DAP to efficiently oversee the matter of persons detained in ordinary prisons while waiting for their (rightful) spot in a REMS⁴³.

Furthermore, the Government should pursue the development of best practices with the involvement of all relevant stakeholders. Relevance should be given to the role of lawyers, Bar association and civil society, who represent key players in ensuring that inmates’ rights are respected. Moreover, regional watchdogs should be included in such practices.

The measures indicated by the Italian Government are limited to specific regional contexts, *i.e.*, the Liguria and the Calabria regions. Thus, the solution to this **endemic** issue is not only the opening of new facilities but also increase the amount of funding and resources dedicated to the

⁴² This is a point underlined in the application Saad v. Italy, No. 53640/22, currently pending before this Court. On this see also: Cassazione penale sez. IV, 23/06/2022, n.28369 “*is inadmissible, for lack of interest, the cassation appeal complaining about the delayed transfer from the prison to the REMS facility*”.

⁴³ In the Government’s words, to “*pay the utmost attention in order to ensure that they receive the best assistance available*”, Action Plan, p. 6.



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public healthcare system, specifically to the regional departments of mental health which are tasked with the development of Individual Rehabilitation Therapeutic Plan(s) (“PTRI”), and the *plethora* of services which are present on the territory, such as other types of psychiatric residential facilities. This measure would be efficient in making sure that art. 8 of the Agreement between the Government and local authorities, which establishes the importance of the PUR, is truly implemented⁴⁴. The Government must improve the strength of the territorial network which can guarantee that the PTRI can be executed in facilities other than REMS.

In light of the above, we respectfully ask the Committee of Ministers to:

- Schedule the case of examination on the agenda of an upcoming CM-DH meeting, at its’ earliest convenience;
- Request the authorities to create new places in REMS respecting the principle of territoriality and allocate new and sufficient resources to respect the principle of individualisation of treatment, also ensuring that sufficient resources are allocated to regional mental health departments tasked with developing Individual Rehabilitation Therapeutic Plans and for other psychiatric services in the territory, in order to lower the number of future persons in need for places in REMS overall, and thus the risk of similar violations recurring;

⁴⁴ Art. 8 reads as follows: “The P.T.R.I. defines the course of treatment and rehabilitation that includes general and specific objectives, prevention of risk behaviors, specific treatments and interventions in any case aimed at social reintegration also through the management of relations with the family, the external community and the world of work.

For each patient to whom a security measure is applied, a specific individualized therapeutic-rehabilitative project (P.T.R.I.) is defined, periodically verified according to health procedures and included in the personal medical record; this path must provide for the maximum active involvement of the subject, as indicated in the principles of recovery:

- multi-professional assessment, according to precise procedures and tools defined for each area;
- definition of the therapeutic-rehabilitation pathway and treatment contract that includes general and specific objectives, prevention of risk behavior and that is nevertheless aimed at social re-inclusion, as well as specific aspects of treatment (setting the daily routine, empowerment of people in the life of the facility, rehabilitative activities, including through maintaining relationships with the family).

The competent DSM, within 45 days, defines the P.T.R.I. in collaboration with the U.I.E.P.E. Offices of the competent territory and provides for its inclusion in the information system referred to in Art. 14; the P.T.R.I. is communicated to the Judicial Authority and must be periodically re-evaluated to allow for any remodeling of the care pathway.

Therapeutic-rehabilitative activities, as constituent elements of the care path, even if carried out in a place outside the R.E.M.S., are reported in the specific P.T.R.I. and do not require further endorsement by the AA.GG.”.



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- Request the government to pursue the development of best practices with the involvement of all relevant stakeholders, in collaboration with bar associations and civil society representatives;
- Request the authorities to adopt by law a specific compensatory remedy to enable applicants to obtain, to a sufficient degree of certainty, redress for violations of Article 5 § 1 of the Convention;
- Request the authorities to provide further information on the impact of the work of the committee monitoring waiting lists for the placement of individuals in REMS facilities.

Done in Turin, 9 march 2023

A handwritten signature in black ink, appearing to be "BP", written in a cursive style.

Benedetta Perego
Presidente
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