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### DH-DD(2023)620

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Meeting: 1468<sup>th</sup> meeting (June 2023) (DH)

Communication from an NGO (StraLi for Strategic Litigation) (09/05/2023) 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<sup>e</sup> réunion (juin 2023) (DH)

Communication d'une ONG (StraLi for Strategic Litigation) (09/05/2023) 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 MAI 2023

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

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**9 May 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 is submitted by StraLi 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** and it addresses the Action Plan submitted by the Italian Government on 3 April 2023. It is a follow up to our earlier Rule 9.2 Communication submitted on 9 March 2023, to which full reference is made hereto.<sup>1</sup> As such, the present Communication will only address the arguments made by the Government in the *second* Action Plan submitted on 3 April 2023 and the update of May 2, 2023<sup>2</sup>.

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<sup>1</sup> The first Communication responds to the first Action Plan submitted by the Italian Government on January 27, 2023. It is available [here](#).

<sup>2</sup> The Government filed a *third* communication on May 2, 2023 of one page. The communication reports that the applicant, involved in new criminal facts different and unrelated to those underlying the case at hand, has been subjected to a detention precautionary measure, based on an assessment of compatibility of his state with the detention conditions. Due to that, the security measure in place when the new criminal facts have occurred has been suspended by the Supervisory Court until the end of the current measure. The applicant is still detained in Rebibbia prison.



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Strali<sup>3</sup> 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.

## **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 residence for the execution of security measures (“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, in its Judgement of 24 January 2022, found violations of Articles 3, 5§1, 5§5, 6§1 and 34 of the Convention.

## **3. Insufficiency of Measures proposed in the Action Plan of 3 April 2023**

### **a. The Constitutional Court Judgment No. 22/2022**

Last year, the Italian Constitutional Court established that the concrete application of the current regulations on REMS to offenders with mental illnesses clashes with the Italian Constitution. The Court declared the questions of legitimacy raised inadmissible, since their acceptance, i.e., the striking down of a substantial part of the legal regulation of REMS, would have created intolerable gaps. The Court then formulated a strong warning to the Italian legislator to provide for a comprehensive reform of the system.

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<sup>3</sup> The official website of our NGO can be found at <https://www.strali.org/>.



StraLi for Strategic Litigation  
c.so Re Umberto 5 bis 10121 Torino

While this is a positive development, the Constitutional Court’s decision, “merely” signaled an issue, *i.e.*, that the concrete application of the current Italian regulations on REMS is not working, hence it does not reflect an initiative in addressing the issues brought to light by the Sy judgment. Moreover, it highlighted that the Italian practice on REMS in respect of mentally ill offenders presents “several”<sup>4</sup> frictions with constitutional principles, which the Italian legislator must eliminate as soon as possible. Unfortunately, **over a year has passed without any signs of legislating activity on the matter.**

b. Statistics

As mentioned in the Action Plan,<sup>5</sup> in the six months from 20 September 2022 to 20 February 2023, the total number of persons subjected to custodial measures pending admission to a REMS increased by 71 individuals (from 597 to 668). At the same time, the number of subjects detained pending admission to the REMS decreased only by one individual in the same period (from 50 as of September 2022 to 49 as of February 2023).<sup>6</sup> This happened notwithstanding the renewal and revision of the State-Regions Agreement regarding security measures in November 2022;<sup>7</sup> and the creation of the interdisciplinary Steering Committee (*Cabina di regia*), situated at the national agency for regional health services (AGENAS) in July 2021.

The Government listed the aforementioned measures as the causes leading to a “*significant drop in the number of persons awaiting internment inside the Institutes, namely from 90, on 20 April 2020, to 49 on 20 February 2023*”<sup>8</sup>. Thus, such a statement is misleading, since it does not take into account the **rising trend in the total number of persons subjected to a custodial measure pending admission in a REMS** (it was 752 as of 20 April 2020; it then

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<sup>4</sup> And not just “*some*”, as mentioned in the Action Plan, p. 12.

<sup>5</sup> Action Plan, p. 11.

<sup>6</sup> The Government has not made the most recent data public, *i.e.*, those related to March 2023 onwards.

<sup>7</sup> Available [here](#).

<sup>8</sup> Action Plan, p. 12.



StraLi for Strategic Litigation  
c.so Re Umberto 5 bis 10121 Torino

decreased to 597 as of 20 September 2022; the number grew again to 653 as of 20 January 2023 and then peaked to 668 as of 20 February 2023).

In this regard, the words of the Italian Constitutional Court become more relevant than ever: *“the system does not effectively protect either the fundamental rights of the potential victims of aggression, which the person with mental illness could realize again, nor the right to health of the ill person, who does not receive the necessary treatment to help him overcome his pathology and gradually reintegrate into society”*.<sup>9</sup>

c. The “Steering Committee” (Cabina di regia)

With regards specifically to the activities of the so-called “Steering Committee” (set up with the specific task of raising awareness among the regional administrations on the situations of detainees waiting internment), its functioning still appears to be absolutely obscure to the greater public. Since the signing of the State-Regions Agreement in November 2022, no information has been rendered public with regards to how the Committee arguably obtained the “significant drop” of detainees awaiting the transfer to a REMS; on how it put in place its monitoring activity; nor on the results of its “survey [on] the actual capacity of REMS active, to be activated and that can be activated on the national territory”.<sup>10</sup>

d. Funding for the Liguria Region and the Clashes with the Principle of Territoriality

The Government reports that *“an extraordinary funding in favor of the Liguria region for the three-year period 2022-2024 has been approved, with the declared aim of increasing the reception capacity of R.E.M.S., in particular for the purpose of extending the full functioning*

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<sup>9</sup> Corte Costituzionale, Press release of 27 January 2022. Available [here](#).

<sup>10</sup> Action plan, p. 12.



StraLi for Strategic Litigation  
c.so Re Umberto 5 bis 10121 Torino

*of the residence for the execution of the provisional security measures of Genova-Prà and at the same time allowing the startup of the REMS of Calice al Cornoviglio (La Spezia)*".<sup>11</sup>

Specifically, the latter currently hosts patients from other regions and autonomous provinces, and it does so “*without prejudice to the necessary prior authorization of the judicial authority to derogate from the principle of territoriality*”.<sup>12</sup> Yet, it must be noted that such an affirmation is the result of a misinterpretation of the scope of the principle of territoriality, which is reduced to a mere authorization of a judicial authority. Such a qualification is wrong, since the principle of territoriality seeks to avoid the “*unnecessary uprooting of a mentally ill offender from a familiar territory, which could result in difficulties arising from his relocation once he has completed treatment or passed the stage of pathological acuity*”.<sup>13</sup> Territoriality is closely related to the purpose of care, as it is premised on the idea of reintegrating the individual into the “social fabric” which was disrupted by his/her antisocial behavior.

Conclusively, increasing the number of beds in REMS facilities appears to be the only concrete measure indicated by the Government in the Action Plan.

e. Psychiatric Prison Wings for the Protection of Mental Health (“ATSMs”)<sup>14</sup> are Not a Remedy

The Government claims also that individuals detained awaiting the transfer to a REMS are being detained in psychiatric prison wings for the protection of mental health (“ATSMs”): “*the administration of justice continues however to pay the utmost attention in order to ensure that they receive the best available assistance, also at the A.T.S.M. (Departments for the Protection of Mental Health – articolazioni per la tutela della salute mentale), where*

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<sup>11</sup> Action Plan, p. 12.

<sup>12</sup> Action Plan, p. 13.

<sup>13</sup> As stated by the Vice-Minister of Health on January 15, 2020. The statement is available [here](#).

<sup>14</sup> *Articolazioni per la Tutela della Salute Mentale* – a specialised psychiatric section in prison to provide a proper therapeutic input to persons who have developed a mental disorder after their imprisonment.



StraLi for Strategic Litigation  
c.so Re Umberto 5 bis 10121 Torino

*they have been activated, in constant coordination with the focal point of the regional health systems and upon request of the Judicial Authority. [...]*<sup>15</sup>

This approach is problematic because only few prisons have psychiatric wards,<sup>16</sup> and even where they exist, A.T.S.Ms have a poor reputation. In this regard, we refer to our first submissions, in which we highlighted incidents related to A.T.S.Ms on national level, such as systematic violations of individual rights. As reported by Prison Insider, “[t]here are no national guidelines for the management of these units, and it varies from one region to another. Some units only have a few beds, while in Turin prison, there are two units with 36 beds. The living conditions are often similar to those of an ordinary prison regime”.<sup>17</sup>

Further examples can be found in the March 2023 Council of Europe Anti-Torture Committee (“CPT”) report on Italy, which describes the ATSM cells in the Milan San Vittore Prison as follows: *“The five ATSM cells were in essence a mirror image of the adjacent isolation unit and were staffed by the same prison officers. The three operational ATSM cells were equipped with a metal bed fixed to the floor and a sink, toilet and shower but no table, chair or lockers for belongings. Each cell was under CCTV and the patients were also observed by the custodial staff through the barred gate to the cell. Patients could access a small individual outdoor yard in the morning and early afternoon. **The environment was clearly not therapeutic and should evidently not be used for accommodating any persons in prison requiring treatment for a mental disorder. Even for the observation of persons under Article 112 of the Prison Regulations, the conditions could not be considered good**”*.<sup>18</sup>

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<sup>15</sup> At page 12 of the Action Plan.

<sup>16</sup> They are present in only 32 jails (out of a total of 191 prisons present in the Italian territory). See Antigone’s Report, p. 5. Available [here](#).

<sup>17</sup> The Report of April 2022 is available [here](#).

<sup>18</sup> Council of Europe Anti-Torture Committee, Report to the Italian Government on the periodic visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 March to 8 April 2022, p. 47. Available [here](#).



StraLi for Strategic Litigation  
c.so Re Umberto 5 bis 10121 Torino

As regards the Turin Lorusso e Cutugno Prison, the CPT report describes the conditions in the psychiatric unit as *“poor and unsuitable. There was a lack of activities and psychosocial rehabilitation, and the constant noise from the drilling and hammering emanating from the sections being renovated undermined any attempt to create a calm environment. Further, the mixing of the eight closed regime patients and 20 open regime patients was not appropriate”*.<sup>19</sup>

In addition, the conditions in the ATSM cells at the Rome Regina Coeli Prison are described as *“poor and the environment was not conducive for persons attempting to recover from a mental disorder.”* The *“ regime for patients was highly restrictive with only one room dedicated to mental health services (psychotherapy with psychologist/psychiatrist, any psychological testing, group therapy, contact with therapist etc.) which was totally insufficient”*.<sup>20</sup>

We strongly oppose that ATSMs present the best available assistance for those who are – unjustly – detained awaiting (better) psychological and psychiatric care in a REMS.

#### **4. Recommendations**

Conclusively, the confinement in jail of those individuals with psychiatric conditions who should be transferred to a REMS as a security measure, and whose mental health is incompatible with detention in prison, leads to constant and enduring breaches of rights enshrined in the Convention.

In light of the above, we reiterate the following recommendations to the Committee of Ministers:

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.





**StraLi for Strategic Litigation**  
c.so Re Umberto 5 bis 10121 Torino

- Request the Government to ensure, on the one hand, that sufficient resources are allocated to regional mental health departments tasked with developing Individual Rehabilitation Therapeutic Plans and with other psychiatric services on the Italian territory, in order to decrease in the total number of individuals in need for places in a REMS (thus reducing the risks of similar violations recurring); and, on the other, an increase in the capacity and quality of treatment in REMS;
- Request the authorities to adopt by law a specific compensatory remedy to enable applicants to obtain redress for the periods of detentions sustained while awaiting the transfer to a REMS;
- Request the authorities to provide further information on the impact and efficacy of the work of the AGENAS' Steering Committee and full disclosure of the data resulting from its monitoring activity.

We refer the CM to our first submission for further information on all these points.

Done in Turin, 9 may 2023

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