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Meeting:	1230 meeting (9-11 June 2015) (DH)
Item reference:	Communication from a NGO (Radicali Italiani (RI)) (05/05/2015) in the case of Torreggiani and Others against Italy (Application No. 43517/09) – (Appendices in Italian are available on the website of the Execution Department)

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 :	1230 réunion (9-11 juin 2015) (DH)
Référence du point :	Communication d'une ONG (Radicali Italiani (RI)) (05/05/2015) dans l'affaire Torreggiani et autres contre Italie (Requête n° 43517/09) ***(anglais uniquement***) (les annexes en italien sont consultables sur le site du Service de l'Exécution)

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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Case>: Torreggiani and others vs. Italy (judgment No. 43517/09 - January 8, 2013 ECHR)
Information provided by Radicali Italiani (Italian Radicals) under Article. 9 paragraph 2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlement.

Premise
As it is known, with the judgment of the European Court of Human Rights in the case "Torreggiani", referred to above, the Court, adopting a pilot judgment procedure, highlighted the structural nature of the breach of European Convention on Human Rights Article. 3 by the Italian State because of its structural overcrowding of the prison system, and adopted a number of recommendations and orders which can be summarized as follows:

- Adopt legislative measures to reduce structural overcrowding and therefore comply with art. 3 of the ECHR.

- Establish a remedy, or a set of effective domestic remedies, capable of preventing the inhuman and degrading treatment of inmates, and provide adequate and sufficient redress in cases of prison overcrowding, in accordance with the principles of the Convention as set out in the Court's jurisprudence.

At the end of May of 2014, the deadline set by the pilot sentence to prepare the remedies requested

by the Court of Human Rights, the Committee of Ministers, called to supervise the execution of the judgment of the Court of Human Rights by the States Parties to the Convention, took note of the legislative measures adopted by the Italian government to meet the criticism of the Court and decided to continue its monitoring of the implementation of the measures adopted for another year in view of its final assessment and in order to verify the effectiveness of the remedies put in place by Italy, and, more generally, to appreciate the impact that the new legislation had to resolve the problems found by the European Court.

Pursuant to Art. 9, paragraph 2, of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlement, the Italian Radicals wishes to highlight the following:

REGARDING OVERCROWDING AND STRUCTURAL COMPLIANCE WITH ART. 3 ECHR

In 2014, the Italian government presented to this Committee a series of legislative measures adopted, or in the process of being adopted, aimed at reducing the number of detainees.

It should be noted that, if on one hand it is true that the overall number of prisoners decreased over 2014, on the other, it is also true that the overcrowding of prisons persists to this day, as it is shown in **document A** attached to this letter and taken from the official website of the Ministry of Justice.

In particular, it should be noted that in 58 Correctional institutes there remains a structural overcrowding between 130% and 200% of the regulatory capacity of those prisons.

These figures show, inter alia, how the Italian prison system remains structurally inadequate to support the number of the prisoners is continues to host leaving interacts pockets of of overcrowding that affect thousands of prisoners.

In all fairness, it should be noted that the most effective measure adopted by the Italian Government in terms of deflating prisons overcrowding, is not due to the Government but is the declaration of unconstitutionality of art. 3 l. 309/90 (so-called Fini/Giovanardi Law adopted in 2006) in the field of drugs, adopted by the Italian Constitutional Court in February 2014.

In fact, the 2006 law declared unconstitutional last year, equated - in terms of penalties prescribed by law relating to traffic and / or possession - so-called "soft drugs" (e.g. hashish and marijuana) to hard drugs (e.g, heroin and cocaine) and foreseeing for to the sale of all drugs the same minimum and maximum penalties prescribed by law that ranged from six to 20 years in prison. Following the ruling of the Constitutional Court n. 32 of 25.2.2014, the punishment of offenses related to drugs have switched to read the minimum and maximum prescribed by law contained between 2 and 6 years. In addition to this, and as a result of other decisions of the Supreme Court of Cassation that redetermined the penalty imposed for convictions related to the sale of narcotics, 2014 saw, according to the data provided by the Department of Penitentiary Administration (DAP) the most significant decline in the population since Parliament adopted a law of pardon in 2006: the number of people liberated is of 8,913 inmates.

It should also be highlighted that the decrease of the indices of overcrowding has not implied the respect the provisions contained in Art. 3 of the ECHR.

As a matter of fact, in addition to overcrowding, the Court of Human Rights has repeatedly highlighted the need to respect a minimum requirement consisting for the person deprived of liberty, in the availability within the cell of at least three square meters of net space, that is not occupied by furniture (beds, tables, etc.).

The Court explained that under this minimum living space, there is always a violation of art. 3 of the ECHR, without there being a need to investigate other parameters.

The Court further specified that if the living space guaranteed in detention is higher than three sqmt - particularly in the case where this space is still less than seven sqmt, as identified by the Committee for the Prevention of Torture of the Council of Europ as Inhuman and Degrading Treatment as the minimal surface to be guaranteed to persons restricted - one needs to investigate other factors such as access to air, light, the hygienic conditions of the cell, the conditions of hygiene guaranteed to inmates, etc.

Despite Italian prisons do not ensure decent health and hygiene conditions to prisoners nor eneral living conditions barely worthy of a human being, Italy has remained totally inert on the matter.

The circumstances appear to be very serious in view of the fact that despite the current population hosted in the national prison system, the Italian Government cannot, and does not, guarantee the minimum seven square meters per prisoner. Such a context implies that other parameters identified by the Court of Human Rights remains ignored by the Italian Government, with the effect of determining the persistent structural breach of Article. 3 of the ECHR through the execution of penalties and precautionary measures technically to be considered "illegal".

Evidence of what stated above can be inferred from the data on suicides in prisons; in fact, in proportion to the prison population they have increased: in 2013 there were 49 suicides, 44 in 2014, and 15 in the first 4 months of 2015. Considering these figures as a percentage of the total number of prisoners it is clear that there has been an increase in suicides (in proportion twenty times higher than the suicide in the general population): in 2013, 49 suicides when the average presence was of 65,070 detainees - one suicide every 1,328 inmates; in 2014, 44 suicides when the average presence was of 57,029 detainees - one suicide every 1,296 inmates; in 2015, 15 suicides in the first 4 months (should the trend persist there could be 45 in 2015) when the average presence is of 53,998 detainees - one suicide every 1,199 inmates.

If the Italian Government and Parliament had followed up to the judgment Torreggiani, and the formal message to the Chambers sent on 3 October 2013 by the then President of the Republic on. Giorgio Napolitano, pursuant to Art.87 of the Constitution, today's situation would be very different.

REGARDING PREVENTIVE REMEDY

To address some of the issues at the center of the Torreggiani sentence The Italian State has introduced Article. 35 bis to the penitentiary code, titled "judicial complaint". The pilot sentence had observed the absence of a remedy that could allow prisoners to denounce the inhuman and degrading conditions experienced during their detention. It should be remembered that the Italy, in the preparatory phases of the Torreggiani, had submitted ad hoc documents, that ensured the Court of the existence, within the system, of a domestic remedy, which, in the opinion of the Italian State, already allowed prisoners to denounce the inhuman and degrading conditions experienced during the detention. This remedy was, according to the Italy, to be identified in art. 35 of the penitentiary, entitled "right to complain".

The European Court, in its Torreggiani judgment, did not accept the ensures of the Government on the basis of the observed ineffectiveness of said remedy, which was unable to put an end to detention in inhuman and degrading treatments as it lacked the mandatory execution of the orders given by the competent judicial authorities (supervising judge) by the DPA to examine the

complaint under Article. 35 of the penitentiary code.

It is necessary to highlight the fact that the ineffectiveness of the previous remedy did not depend on the lack of will on the part of the DPA to execute the orders given by the magistrate of surveillance aimed at ending the detention in inhuman and degrading conditions, but on the impossibility, given the structural overcrowding, to ensure a detention in full compliance of the provisions of Art. 3 of ECHR.

In other words, it is obvious that the effectiveness of the remedy depends on the material possibility that the penitentiary system, administered by the DAP, has to give positive feedback compared to the instruction given by the magistrate.

To everything already mentioned in the preceding paragraph and related to persistent structural given of overcrowding and the structural inability of the Italian penitentiary system to ensure the execution of penalties and precautionary measures in prison in line with the wording of art. 3 ECHR, also the remedy introduced by art. 35 bis of the penitentiary, regardless of whether it was qualified as legal remedy, stands still to be unable to provide a remedy and prevent inhuman and degrading treatment and therefore not to be an effective remedy.

REGADING COMPENSATORY REMEDIES

In order to address the Torreggiani Italy has introduced Article. 35 ter of the penitentiary code, entitled "compensatory remedies for breaches article. 3 of the ECHR".

The Court censorship arose from the observation of the absence in the Italian system of a tool that would allow the detainee to be compensated for being and / or having been subject to a detention in breach of Article. 3 ECHR. Also on this Radicali Italiani intends to highlight the incontrovertible ineffectiveness of the remedy, especially for those sill detained. In fact, according to the provisions of art. 35 her of the penitentiary code states: a) a detained person should be able to activate the remedy before the magistrate of surveillance; b) the person is no longer in detention should contact a Civil Court.

Regardless of the merit of the piece of legislation - and notwithstanding a strong suspicion of unconstitutionality as it pre-determines the amount of compensation fixing the sum 8 euro per day, without an evaluation to be performed for each case - what should be emphasized is the total non-application of the remedy by almost all judges of surveillance.

In fact, to date, according to data provided by the Union of Italian Criminal Chamgers (the representative body at national level of criminal lawyers Italian), developed on the basis of data supplied locally by the Presidents of the local Chambers and the local referrals the new instrument has totally failed.

The study elaborated by the Penal Chamgers on the application of said remedy and made public on 27 November 2014 is lapidary: ISSUES REGISTERED 18,104, DEFINED 7351, PENDING 10,753. Among them 6,395 (87%) were declared INELIGIBLE and only 87 ACCEPTED (1.2%).

This in total disregard of the clear provisions provided by the European Court of Human Rights with the pilot judgment Torreggiani, which had ordered the Italian State to adopt swift effective compensatory remedies.
The dramatic 87% of inadmissibilities is the result of of an interpretative posture adopted by the vast majority of judges of surveillance, which has its origin in a bad legislative drafting.

It is true, however, that among the possible interpretations of the rules in the new art. 35 ter of the Penitentiary Code, the surveillance magistrates, compactly, have chosen the less pro-reo interpretation of prisoners' rights and therefore less in line with what is required by the ECHR.

On this point in question, two parliamentary questions have been submitted by the Vice President of the Chamber of Deputies, the Hon. Roberto Giachetti, belonging to the majority, and one by the Hon. Saverio Romano, part of the opposition. In their questions both MPs asked the government to intervene with an authentic interpretation of the rule - in its answer the government reserved its right to do so at a later stage.

The two questions mentioned above, and the written response of the Deputy Minister of Justice, are attached to this memory (**documents B, C and D**). The government's response is clear about what is the main problem of the new institute, a problem also expressed formally by the Conams (National Coordination of Magistrates) with a note sent to the Minister of Justice as early as November 2014. In that note, which is attached to this letter (**document E**) judges showed that they were not equipped to cope with new legislative instrument denouncing that "*because of the uncertainties and gaps in the regulatory text, the serious jurisprudential conflicts, the complexity of the necessary investigations, and the absolute inadequacy of the resources and means available to the offices in charge of surveillance, it is easy to predict that an extremely small number of cases will decided upon and resolved according to the standard required by the European Justice in terms of effectiveness of 'speed', and of effectiveness of the remedies accorded*". Very grave words as they come from the same subjects called to ensure the standards requested by the European Court of Human Rights with the pilot judgment Torreggiani.

CONCLUSIONS

In light of the above, it is evident that the efforts made by the Italian government to address what contained in the Torreggiani sentence of the European Court of Human Rights, included in the pieces of legislation presented by the government throughout 2014, this Committee - appointed to oversee the proper implementation of judgments of the Strasbourg Court by States Parties - are totally inadequate efforts unable to ensure the full compliance with Art. 3 of the ECHR, and to ensure an adequate, effective and swift redress of the damage suffered by tens of thousands of prisoners, who were unjustly subjected to penalties, measures and inhuman and degrading treatment over the years.

We therefore submit this letter and the attached documents to this august Committee to contribute to its deliberations in relation with its institutional responsibilities.

Very truly your,

Rita Bernardini
Secretary

Rome, 5th May 2015