INTRODUCTION

Migratory flows in Italy. Crime, immigration and foreign prisoners

Significant changes to the dynamics of international migratory flows have occurred over the past decade. Many of the countries affected by immigration, including Italy, have become both staging posts and destinations for migrants.

In particular, over the years, alongside the traditional figure of the migrant moving direct from his country of origin to the country of destination in order to look for work, a new category of migrants has emerged and become more widespread; in order to arrive at their chosen target country, the members of this group pass through different territories and during the course of this journey generate a series of relationships – with differing degrees of legality – with the countries through which they have transited.

A study of migration in the Mediterranean countries shows the complexity of migratory flows and of the mechanisms governing transit migration.

Italy became one of the target countries (i.e. both a transit country and a country of destination) for migration during the 1980s.

Within this context, and against a backdrop of evolving migratory policies, our country has been forced to deal with steady growth in migratory flows that can be ascribed to its geographical proximity to the countries of origin as well as to the presence of specific conditions, such as the need for labour in sectors in which Italians had little interest in working, the increase in the number of elderly people and the lack of support services, with the resulting emergence of a need for family assistance workers.

By 2012 the number of legally resident foreign nationals in Italy had reached 3 million, a figure which does not take account of the considerable number of illegal and unregistered foreign nationals present within the country.

Moreover, more than half of the people who currently legally reside in Italy previously had irregular status, which was remedied through leniency measures.

Based on a study of the statistical data, the percentage of foreign nationals in Italy varies between 6% and 7% of the overall population, a figure which is lower than the average for other European countries.

If the data on the relationship between crime and immigration are closely examined, it can be seen that crime rates for Italians are practically identical to those for legal immigrants, whilst crime rates for unregistered and/or irregular immigrants are significantly higher (also largely due to offences associated with illegal immigration).

As regards the dangerousness of foreign prisoners, it is necessary to analyse the offences for which they have been prosecuted. A considerable number of offences are associated with their status as unregistered immigrants.

In particular, the following forms of criminal behaviour are predominant within the world of unregistered immigrants:

a) *Prostitution and the exploitation of prostitution*: according to Eurispes, there are estimated to be around 70 thousand prostitutes in Italy. Of this number, around 70% are illegal immigrants (almost 50 thousand),

b) Smuggling. According to Interior Ministry estimates, this type of illegal activity is predominantly carried out, above all during the final distribution stage, by illegal immigrants from the African continent;

c) Drug dealing. The distribution and sale of drugs appears to be monopolised by unregistered immigrants from North Africa (largely unregistered migrants, operating at the lowest levels of the chain), whilst major international trafficking continues to be monopolised by Italian criminal organisations;

d) Thefts and robberies. According to the Ministry of Justice, 20% of foreign prisoners have been accused of theft or robbery.

Considered overall, the above figures clearly gainsay the biased preconception which purports to establish a relationship between the increase in crime and the presence of foreign nationals who are legally resident in Italy.

Conversely, there appears to be significant statistical corroboration for the existence of a relationship between criminal conduct and unregistered status.

It follows that, from a criminological point of view, the most appropriate analytical approach concerns not so much the general relationship between "immigration" and "crime", but rather the relationship between unregistered status and crime. It can be observed that when a person wishes to emigrate, there are two *filters/barriers* which must necessarily be overcome:

- the barrier organised and imposed by the country of origin, consisting in control of its borders, its policy regarding visa applications, and economic and social strategies aimed at retaining its labour force, etc.;
- that put in place by the receiving country or the initial transit country, consisting in policies relating to: borders, residence permits, the granting of entry quotas and the system of prevention and punishment, etc…

These *filters/barriers* result in the creation of three categories of immigration: *regular, irregular and unregistered* (the last two categories are often considered to overlap). In order to circumvent these barriers, immigrants rely at considerable cost on criminal organisations operating on different levels, which are interlinked by relations of interdependence and complementarity:

• *the first level* is comprised of the organisations with a national ethnic base which plan and manage the transfer of irregular immigrants from their country of origin to the country of destination;

• *the second level* is comprised of criminal groups within the transit countries (or those bordering on the countries of destination), which guarantee the transportation, temporary housing and entry of irregular immigrants.

Obviously, the cost of such options cannot always be borne by the individual immigrant or his family, and is met – generally in the first instance – by a moneylender who exploits the unregistered immigrant using false visas and/or passports.

Under this scenario, it is likely that irregular immigrants will be more inclined to choose to turn to crime, since:

• they necessarily enter into contact with deviant elements upon entry into the country of destination or the transit country (in order to procure fake documents, etc.);

• they experience situations of extreme hardship, which provide an ideal breeding ground for entry into the downward spiral of crime.

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The relationship between ***irregular immigration and crime*** may be addressed in concrete terms solely:

1) by eliminating the unlawful status of unregistered immigration (through the gradual transformation of irregular into regular status through appropriate measures to end the immigrants' irregular status and promote their integration).

2) with a selective and effective policy of expulsions.

This policy must operate in tandem with the provision of resolute, well-founded support for immigrants, who must be given all possible means of integrating into the host society.

The recommendation concerning foreign prisoners

Recommendation CM/Rec (2012) 12 concerning foreign prisoners, recently adopted by the Committee of Ministers of the Council of Europe, may be regarded as the completion of the broad regulatory framework put in place to ensure the proper governance of migratory flows.

The European Parliament recently addressed the issue of migration and adopted an important resolution in the spring of 2011, the strategic direction of which seeks to:

1) control migratory flows through political and economic initiatives in the countries of origin and a selective and effective policy of expulsions;

2) regulate the phenomenon through measures to promote legal immigration, thereby reducing its illegal counterpart.

This last strategy is intended to stem the risk of exploitation to which illegal immigrants are exposed, which may result in serious violations of human rights.

The recommendation with which I am concerned here was issued against this backdrop and calls for the implementation of safeguards to ensure the social reintegration of foreign prisoners.[1]

It replaces the previous recommendation in this matter, which dated from 1984.

Many of its provisions concern the adaptations necessary so as to be in line with the many initiatives taken in recent years in recommendations and guidelines on closely related issues.

Other provisions can, however, be seen to be innovative in that they provide for the creation and enhancement of social inclusion mechanisms in a transnational context, also extending to the countries to which a prisoner wishes to be transferred or to which he/she will be extradited.

Amongst the proposed mechanisms, particular importance is attached to the establishment of a support network to assist the foreign prisoner.

It is envisaged that this network will involve the implementation of integrated services between the prison and the local authorities.

In practical terms, it should enable easy access to numerous sources of information and services in the following fields: **a)legal;[2] b) administrative;[3] c) social and health;[4] d) employment.[5]**

Further provisions lay down a series of arrangements aimed at the conservation, intensification – or indeed the creation – of significant social and family contacts (through exchanges, telephone calls and prison leave).

All of these measures also have the goal, alongside "treatment" *stricto sensu*, of preparing the prisoner for release and facilitating his/her social integration.

In this regard there is a clear link between the principle laid down in rule 9 of the Recommendation[6] and rule 35.

Ultimately, also as regards its policy content, the recommendation aims to put in place various options, which may be tailored to each individual case, in order to guide the social integration of a foreign prisoner in:

- the country where he/she is serving the sentence;
- the country of destination;
- the country of origin (in this regard it also calls for intensive recourse to legal instruments, such as intergovernmental agreements, which already enable custodial sentences or alternative measures to be served in the country of origin).

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[1] Persons who, due to negative socio-economic factors (and also climate-related factors), have left their countries of origin and arrived in transit or destination countries, largely by illegal means, and have committed offences for which they have been sent to prison.

[2] Involving the assistance of a lawyer, plus advice on access to alternative measures and prison benefits.

[3] Consular and linguistic assistance, Prisoners' Rights Ombudsman.

[4] Financial assistance, group accommodation also for prisoners who are mothers, access to specialist health treatment and treatment for drug addiction and AIDS.

[5] Language courses, vocational training and guidance, links with companies and social cooperatives in line with skills and the actual needs of the labour market.

[6] "The prison regime shall accommodate the special welfare needs of foreign prisoners and prepare them for release and social reintegration."

This is an ambitious document, constituting a further means of socio-political integration within European countries, which is rooted in the historical experience that migratory flows are constant and inevitable human events which may give rise to positive advances in all fields, provided that legal immigration is incentivised and illegal immigration is contained.

Illegal immigration is a phenomenon which must be stemmed since it exposes the numerous individuals who have recourse to it to conditions of hardship, vulnerability and precariousness which favour:

a) human trafficking;

b) exploitation of their labour;

c) radicalisation;

d) micro-crime and law-breaking in general.

Rule 35 of the Recommendation

Before examining the rules applicable to preparation for release, it is appropriate to provide some statistical data reflecting the situation of foreign prisoners in Italy **and highlighting certain critical issues shared with other European countries**, and also to summarise the legislation governing expulsion from Italy.

According to the official figures, updated as at 30 September 2012, there are 23,838 foreign nationals out of a total of 66,568 inmates in Italian prisons.

This means that foreigners account for 36% of prisoners, and that therefore one prisoner out of every three is a foreign national. 39.6% (9,449) of these foreigners are EU nationals, most of whom are Romanian (some 37%, or 3,647).

The remaining 60% are non-EU citizens, primarily Moroccans (4,633), Tunisians (3,037), Albanians (2,839), Nigerians (1,060), and Algerians (670).[7]

Based on the data regarding foreign nationals in prison, it is also clear that most of them are illegal and/or undocumented migrants.

This is also the case in other European countries.

Foreign nationals (including both non-EU and EU citizens) are also subject to **expulsion orders** (or 'deportation', to use the term employed in EU law). The criminal courts may order expulsion as a public security measure in cases involving custodial sentences in excess of two years.[8] The courts may also order the expulsion of foreign nationals who are deemed to represent a danger to

[7] As regards their legal situation, around 50% of foreign prisoners are being held under the terms of a definitive sentence, whilst the remaining 50% are in prison after being remanded in custody and are therefore awaiting trial at first, second or third instance (and hence have the status of accused, i.e. not yet sentenced persons).

[8] Pursuant to Article **235 of the Criminal Code.**

society where they have been convicted of offences for which provision is made for mandatory or optional arrest if the individual is caught red-handed, irrespective of the length of the sentence.[9]

As a general rule, expulsion must be enforced after the end of the custodial sentence.[10]

That said, rule 35.1 starts by calling for the reintegration of a foreign prisoner in society (understood in its broadest sense) as one of the objectives of preparation for release.

The rule also specifies that the same objective must also guide the manner of preparation for release and the time when it begins.[11]

Rule 35.2 calls for the prompt determination of the legal status and circumstances of the foreign national.

The following points go on to recommend the use of:

1) facilitation measures, such as the granting of prison leave;

2) and support measures aimed at maintaining relations with relatives and agencies.

Therefore, the rule calls for a form of preparation consisting of a series of measures, including steps intended to facilitate reintegration, taking account of the foreigner's destination after release.

More specifically, it is hardly necessary to point out that the rule requires first and foremost that the foreigner's legal status and situation should be determined not simply **whilst the sentence is being served** but rather **as early as possible.**

It is clear that, to begin with, it is necessary **to identify the foreign national**, which causes serious difficulties in Italy, as elsewhere, since a considerable number of foreign prisoners do not have any identity documents.

After such individuals have served their sentence in Italy, if they have not been fully identified they are held in special facilities called "Centres for Identification and Expulsion".

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[9] Pursuant to Article **15** of the Consolidated Text on Immigration contained in Legislative Decree No. 286/1998 as amended.

[10] Expulsion is also provided for, again within the criminal law system as an **alternative measure** to detention, for undocumented non-EU nationals who are required to serve a custodial sentence with a full or residual term not exceeding two years, pursuant to **Article 16(5) of the Consolidated Text on Immigration**. It is also provided for under Italian law as a **substitute penalty** (**Article 16(1)** of the Consolidated Text on Immigration), again for undocumented non-EU citizens, in relation to offences punished by a custodial sentence not exceeding two years or for certain offences punished by fines (unlawful entry into and stay within state territory: Article 10-bis of the Consolidated Text on Immigration; failure to comply with an expulsion order issued by the chief of police: Article 14, 5-ter and 5-quater).

[11] In this regard it can be noted that during the period leading up to release (starting from six months prior to it), sentenced prisoners and other detainees in Italy benefit from a special treatment programme aimed at resolving the specific problems relating to family life, employment and living conditions they will have to confront. To this effect, particular care is taken to discuss with them the various issues which may arise and examine the possibilities for overcoming them, which may also involve their transfer, if requested, to a prison close to their place of residence, unless there are justified grounds to conclude that this is unadvisable. In order to determine and implement the aforementioned programme, the prison's management requests the cooperation of the social services centre, the competent local services and the voluntary sector (Article 88 of the Implementing Regulation).

The aim of the rule in this regard is clear: **identification and determination of legal status must occur when the foreign national is still imprisoned, thereby avoiding subsequent periods of detention**.

In accordance with an inter-ministerial directive (of the Ministry of Justice in conjunction with the Interior Ministry), in 2007 the Italian prison administration issued a document laying down the "Procedures for identifying non-EU prisoners awaiting expulsion".

Under these procedures, every two months, prison governors are required to send to the competent police headquarters information regarding the date of release of non-EU prisoners against whom expulsion orders are to be enforced, along with any information that may be useful in order to identify them which was acquired during their imprisonment.[12]

However, as things stand, the procedure described above does not guarantee that the formalities will be completed promptly, and there can be no denying the fact that numerous foreign nationals previously held in prison are detained in Centres for Identification and Expulsion, even for considerable periods of time.

To make up for the fact that this mechanism does not always work properly, a **project aimed at completing identification procedures during the imprisonment stage** is currently at an advanced stage of implementation. This desirable objective is perfectly in keeping with the terms of the recommendation under examination.

This project involves a substantial innovation: **the establishment of a "Unit bringing together officials from the State Police and the Immigration Office"** within prison facilities and the completion of the procedures relating to foreign prisoners during the imprisonment stage, with a view to recognising their right of residence as refugees or asylum seekers, or due to other overriding protection requirements, or to facilitating their expulsion by avoiding the prolonged procedures referred to above.

This is therefore a body which, in cooperation with prison staff and the prison police, assumes a broader role of providing legal and administrative assistance to foreign prisoners, thereby also constituting a response to the other rules laid down in the recommendation (not discussed in this paper).

Once the foreign national has been fully identified, **the determination of his/her legal status is, for other reasons, just as complex and difficult**.

In the first place, it is necessary to consider the situation of a legally resident foreign national who, after undergoing a criminal investigation and being sent to prison, may lose that status through a refusal to renew his residence permit.

[12] The procedure requires that particular consideration be given to the findings made during observation of the prisoner. If requested by the chief of police, the authorities will then arrange for the transfer of the aforementioned prisoners to prisons located in the cities where the respective diplomatic or consular authorities are located; they will ultimately arrange for the transfer of non-EU prisoners who are to be deported to prisons close to the place where the expulsion order will be enforced, in accordance with the indications provided to that effect by the competent chief of police.

In these circumstances, it would appear desirable to ensure that the foreign national does not automatically lose that status in all cases.

With specific reference to Italy, it must first be recalled that **a foreign national who risks suffering persecution in his/her country of origin on grounds of race, politics, religion, sex, language, citizenship, etc. cannot be expelled**.

In other cases, if a foreign national with a residence permit is arrested or convicted, Italian law provides that the Chief of Police may order the revocation of or refuse to renew the residence permit if the foreign national is considered dangerous, which may result in his/her expulsion.

This means that the procedure is not automatic in these cases, and that it is necessary for the Chief of Police to ascertain whether or not the individual is actually dangerous, which will on its own justify the revocation of the residence permit.

On the other hand, by law it is not possible for a foreign national who has been convicted of certain types of criminal offence, even if the judgment is not yet definitive (including judgments issued following plea bargains), to renew a residence permit; these include particularly serious offences, such as those linked to the drugs trade and the exploitation of prostitution.[13]

As regards a foreign national who is an illegal or undocumented migrant at the time of entering prison, it would be desirable to stipulate that, **under certain circumstances and where certain requirements are met**, this individual may be allowed access to procedures which enable his/her status to be regularised.

In this regard, the objective to be pursued in accordance with the recommendation under consideration is the effective implementation of the rehabilitation programme, without frustrating:

a) the specific efforts and resources deployed during execution of the sentence, both inside and outside prison, with a view to achieving the social integration of the foreign prisoner;
b) the positive results achieved during treatment.

This would seem to be the right time to assess whether it is possible, under certain circumstances and where certain requirements are met, to consider the sentence served and the positive results achieved during treatment as a basis for concluding that rehabilitation has been successful and that the status of an illegal or undocumented migrant may be regularised.

In substance, this would involve assigning value and giving tangible recognition to various forms of conduct, from a commitment to work and engage in other activities proposed during treatment to demonstration of a will to integrate in the country where the sentence is served or the country of final destination.

[13] See Article 4 of Legislative Decree No. 286/1998

Lastly, a further possibility could be granted to those who (it must not be forgotten) have in most cases left their own country not in order to commit crime but to find work and lead a dignified life.

Italian law makes provision for residence permits to be granted to illegal and/or undocumented migrants in certain exceptional cases.

The first possibility concerns cases in which "…***violence against or serious exploitation of a foreign national has been established, and there are tangible dangers for his/her physical integrity as a result of attempts to avoid the influence of an association… or of statements made during the course of investigations ….***".[14]

In this case, the Chief of Police may, acting on his own initiative or following a proposal by the public prosecutor, issue a residence permit valid for six months, which may be renewed if the foreign national undergoes the agreed rehabilitation programme.

The second exception involves the issue of a residence permit – **at the end of the prison term** – to a foreign national who has served a sentence for an offence committed when he/she was a minor and **who can show that he/she participated in social assistance and integration programmes agreed upon with educational staff**.[15]

Both cases are provided for under the same law, although their purposes are very different.

The former is clearly a means of combating organised crime aimed at safeguarding the physical integrity of the individual, while the latter forms part of the rehabilitation of minors, a priority objective of the Italian legal system.

However, although the latter exception applies to a limited number of cases only, it can be seen to **follow the same logic as that focusing on the positive results achieved during treatment as a prerequisite for the regularising the status of a foreign prisoner who is an illegal or undocumented migrant**.

It is hardly necessary to point out that, in our legal system, extending to all prisoners a measure initially applicable solely to minors is nothing new.

This occurred in the past with regard to the release on probation of convicted offenders. More recently, it seems that the measure of probation with suspension of the criminal proceedings, currently applied to certain minors who have been charged with an offence, will probably be extended to everyone, following its inclusion in a draft bill which has already been brought before Parliament.

In practice, a further regularisation procedure would be established, which could be summarised as follows: prison- treatment programme-issue of residence permit.

[14] Article 18 of Legislative Decree No. 286/1998.
[15] Article 18(6) of Legislative Decree No. 286/1998.

Once legal status has been determined, rule 35.3 recommends, for those who may remain in the state where they served the sentence, that instruments be put in place with the purpose of continuing the "treatment" with a view to the rehabilitation of the foreign national.[16]

On the other hand, as regards **foreign prisoners who are to be transferred and expelled**, at least two alternatives are possible:

a) **enforcement of the sentence or part thereof in the country of origin;**
b) **expulsion after serving of the sentence.**

The provisions of the recommendation appear to follow the logic of the legislation governing "forced repatriation", conceived as a means of controlling and managing migratory flows, which has almost entirely superseded "assisted voluntary return" in an international context which in fact gives priority to a "defensive" approach to migratory phenomena.

Indeed, repatriation to the country of origin and/or transit of individuals who do not meet the conditions for entry into and residence in Europe has taken on the role of an "exemplary measure" (an expedient), in the broad sense, for the protection of the country's borders. More specifically, these provisions could be classified as forms of "hybrid deportation" or "assisted deportation" in which, notwithstanding the mandatory nature of the measure, provision is made in parallel for: **the preparation, accompaniment and provision of reintegration assistance to the expelled immigrant.**[17]

Turning now to an examination of the content of rules 35.4[18] and 35.5,[19] which address the issue of prisoners who are to be expelled or transferred, it would appear appropriate to make some comments on the "**consent of the prisoner**".

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[16] Regarding the issue of **post-prison assistance**. Article 46 of the Law on Organisation of the Prisons provides that prisoners and detainees shall receive special assistance during the period immediately prior to their release and for an appropriate period thereafter. Definitive reintegration into everyday life will be facilitated through action taken by the social services, which shall also cooperate with the bodies referred to in Article 45. Released prisoners who suffer from a serious physical illness or from mental illness or other mental conditions shall also be referred to the bodies responsible for the protection of public health to receive the necessary assistance. Attention should be drawn to the responsibilities of the local offices for external enforcement of sentences regarding the provision of assistance and coordination with local services (Article 72 of the law) and those of the **social assistance boards** which provide assistance during imprisonment and following release (Article 75 of the law). (NB: in 1977 the resources for funding benefits paid to released prisoners were transferred to the regions).

[17] Financial support for the experimentation of this measure was provided in the past under the budget line (B7-667) launched by the European Commission and introduced by the budgetary authority in 2001, with the objective of financing preparatory actions in relation to migration and asylum, the priority being given to countries for which the Council had agreed migration action plans.

[18] "Where foreign prisoners are to be expelled from the State in which they are being held, **efforts shall be made**, if the prisoners consent, **to contact the authorities in the State to which they are to be sent with a view to ensuring support both immediately upon their return and to facilitate their reintegration into society.**"

[19] "In order to facilitate continuity of treatment and care where foreign prisoners are to be transferred to another State to serve the remainder of their sentence, the competent authorities shall, if the prisoner consents, provide the following information to the State to which the prisoners shall be sent: a) the treatment the prisoners have received; b) the programmes and activities in which they have participated; c) medical records; and d) any other information that will facilitate continuity of treatment and care."

Consent is required in order to proceed with the dispatch of the documents and information needed to provide support to the deported individual and to guarantee continuity in the treatment of a prisoner who has been transferred.

However, although consent may be necessary and indispensable, it could constitute a serious constraint.

Indeed, as a general rule the authorities encounter strong resistance on the part of a foreign prisoner against reintegration into his/her country of origin.

This is because the measure clashes with the reasons which led him/her to emigrate, and which may be summarised as the combined effect of "push" factors (favouring departure: climatic, economic and political) and "pull" factors (in the country of destination: socio-economic wellbeing, democratic institutions, etc.).

Moreover, not infrequently a decisive role will be played by the fear of a negative reaction from those who remained in the country of origin, in particular family members and networks of relations.

In order to ensure that the rules do not become *de facto* impracticable, it is therefore necessary to provide incentives to the foreign national.

These may include:

1) giving concrete form to the possibility of reintegration by activating an assistance network which appears – and actually is – efficient and functional;

2) enabling significant contacts to be maintained with the family, even if it is located abroad, through the flexible use of all available instruments, as is moreover already specified in some of the rules contained in the recommendation itself.

As regards rule **35.4**, I have been told that the phrase "**efforts shall be made**" in relation to possible contacts with the authorities of the state to which the foreign nationals are sent should be understood as a requirement to **make all possible efforts** in order to achieve this.

As mentioned above, the pursuit of the recommendation's goal requires not only the **optimal functioning of the network devised around the foreign prisoner**, but also the **necessary establishment of a bridge/link with networks and agencies located in the countries of destination or of origin**, so that all the parties work together in full harmony with the shared goal of achieving the social reintegration of the individual.

After creating this link, in addition to the state authorities it will also be necessary to contact services providing assistance in order to inform them of the individual's arrival, and to provide the same information as stipulated in rule 35.5, about which more will be said below.

As regards transfer to another country in order to serve the remainder of the sentence and the assurance of continuity of treatment, as specified in rule **35.5**, it can be noted that the Italian prison system currently makes no provision for the supply of information useful for the reintegration of the prisoner to the authorities of the state of destination.

However, the principle which applies is that the personal file should follow the prisoner upon transfer to another facility.[20]

This file contains all the data (including personal and judicial data) along with any orders relating to alternative measures which must be notified to the social services, the privileges earned (sentence reductions, etc.), information regarding the prisoner's conduct and relations with family abroad.

Such matters are dealt with by a team responsible for observation of the prisoner, which is comprised of various professionals: educators, psychologists, social workers, doctors, prison police officers, teachers, voluntary assistants, cultural mediators, community leaders, etc.

In order to enable continuity of treatment it is therefore important for the countries involved to determine the procedures for implementing and notifying the programmes, through international cooperation, in order to arrive at bilateral or multilateral agreements above all with the Mediterranean countries most concerned by migratory movements.[21]

Here, a further problematic aspect enters into consideration, regarding the consent of the prisoner to the transmission of sensitive data (data relating to health, sexual orientation, religion or political affiliation) and those relating to his/her safety.

In order to be able to transmit the documents relating to treatment, under the conditions envisaged by the provision being examined, it will in all likelihood be necessary to establish ad hoc rules, which could be discussed in an international cooperation context.

An agreement could easily be reached on the exchange solely of information which is useful for social reintegration, once it has been ascertained.

However, the authorities responsible for storing the information and for processing personal data must first be identified.

Under such a rule, the prison authorities could provide a summary document along with a copy of the prisoner’s medical file.

This document could be drawn up with the prisoner's participation and subsequently approved by a judge (in Italy, by the supervisory judge pursuant to Article 69(5) of the Law on Organisation of the Prisons) and updated in line with the data as ascertained at the time of release.

A procedure of this kind has been adopted in Italy for example for the treatment programme.

This could make it easier to secure the prisoner’s agreement to the transmission of information concerning him/her to the state of destination.

Moreover, a foreign prisoner's acceptance may also be facilitated through appropriate independent legal advice regarding the consequences of transfer.

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[20] Article 26 of the regulation implementing the Law on Organisation of the Prisons.

[21] It is also important that they take account of EU decisions on the enforcement of alternative measures to detention: see framework decision 2008/946/JHA on the mutual recognition of judgments imposing a suspended sentence or parole and alternative measures to imprisonment which may be enforced in the relevant EU Member State which accepts responsibility and guarantees supervision.

Rule 35.6[22] lays down a specific requirement of assistance in order to enable access to independent advice. In Italy, Article 25 of the regulation implementing the Law on Organisation of the Prisons (Presidential Decree No. 230 of 30 June 2000), entitled "Register of Lawyers" provides that "….[it] shall be posted in the facility in such a manner that it may be consulted by prisoners", while Article 18 of the Law on Organisation of the Prisons and Article 67 of the implementing regulation provide that all prisoners may also apply to the Prisoners' Rights Ombudsman within the prison, who may provide assistance also in concluding legal acts. Assistance first and foremost involves the provision of information.

In this regard Italian law already provides that from the time he/she enters prison an inmate must receive a number of detailed items of information regarding the prison regulations and the benefits which may be obtained.

Legislation will shortly be enacted establishing a statutory requirement that each prisoner be provided with a "Charter of rights and duties of prisoners and detainees" containing detailed information on the rights and duties of inmates, prison facilities and the services which may be provided.

Senior officials at the Prison Administration Department contributed to the preparation of this "Charter".

Finally, rule 35.7[23] recommends, with some forcefulness, that a broad range of information be provided regarding conditions of imprisonment, prison regimes and the possibility for release in the countries where prisoners will serve the remainder of their sentence.

The hope here is clearly that there will be a progressive harmonisation of legal rules, and of prison regimes in particular.

In the meantime and in accordance with the rules laid down, it would be desirable that, at the very least, summary information in this subject area should be published and disseminated by each state in small leaflets, as well as on line, in order to guarantee easy access to data and information and to enable their continuous updating.

[22] "Where foreign prisoners may be transferred to another State, they shall be assisted in seeking independent advice about the consequences of such a transfer."

[23] "Where foreign prisoners are to be transferred to another State to serve the remainder of their sentence, the authorities of the receiving State shall provide ... information on conditions of imprisonment, etc..."