Enforcement of sentences and releases from prison: which challenge(s)? which lasting solution(s)?
The Italian Case

Good morning, and thank you to the Council of Europe for inviting me to speak today. It is an honour to contribute to this discussion on a problem affecting many European countries, with profound implications for human dignity and the rule of law.
I have been asked to present the Italian experience. To do so, I shall focus on three questions:

1) First, what did Italy do after the European Court of Human Rights identified prison overcrowding as a structural problem?
2) Second, what did those measures achieve?
3) Third, what is the situation today, and why has overcrowding apparently returned?

My main point is this: legislation can provide useful instruments, but lasting results depend on the capacity of the entire sentence-enforcement system to apply them promptly and effectively.

1) *Torreggiani and Others vs Italy* and the measures adopted thereafter
Let me start with this chart.
As you can see, the Italian prison population peaked in 2010. In January 2013, the European Court's pilot judgment in *Torreggiani* and Others v. Italy identified overcrowding as a structural and systemic problem. Italy was required to address its underlying causes. The action plan submitted to the Committee of Ministers was quite extensive. For this panel, I shall concentrate on three lines of action directly concerned with sentence enforcement.
Italy sought to:
a) accelerate releases;
b) expand access to non-custodial measures;
c) introduce judicial remedies for inadequate conditions of detention.

a) Accelerating releases
First, the legislature introduced a temporary form of early release, known in Italian as *liberazione anticipata speciale*.
Under the ordinary scheme, which is still in force, a prisoner may receive a sentence reduction of 45 days for each six-month period served, on demonstrating participation in the rehabilitative process.
The special scheme increased that reduction from 45 to 75 days for qualifying six-month periods served between 1 January 2010 and 23 December 2015. However, it was conceived as a temporary intervention, and it has now ceased to operate.

b) Expanding access to non-custodial measures
Second, access to alternative measures was widened.
As the overview shows, Italian law provides a range of alternatives to imprisonment. Many were already available at the time of *Torreggiani*.
Moreover, in the Italian system execution is generally suspended where the statutory conditions are met, allowing the convicted person to apply for an alternative measure while remaining at liberty and thereby avoiding initial imprisonment.
There are, however, some exceptions. The suspension does not apply to some offences, mainly listed in Article 4-bis of the Prison Act. Originally limited to organised crime and terrorism, the provision has been repeatedly expanded to cover a much wider range of offences (from 2 to more than 30 today).
People convicted of these offences generally enter prison as soon as the conviction becomes final, even when the sentence would otherwise fall within the limits for an alternative measure, and they may face additional requirements before obtaining non-custodial enforcement.

What, then, changed after *Torreggiani*?

The threshold for probationary supervision - *affidamento in prova al servizio sociale* - was raised from three to four years of sentence or remaining sentence. This was significant because probationary supervision is the most frequently used alternative measure in Italy.

c) Introducing judicial remedies for inadequate conditions of detention

Third, Italy introduced a preventive and a compensatory remedy, as required by the Torreggiani judgement.

As far as the preventive remedy is concerned, under Article 35-bis of the Prison Act, a prisoner can challenge serious and current prejudice to the exercise of a right. If the complaint is upheld, the supervisory judge orders the prison administration to put the violation to an end. In an overcrowding case, this might require a transfer or appropriate works to be carried out.

Article 35-ter provides compensation for detention contrary to Article 3 of the Convention: normally, the principal remedy is a reduction of one day from the remaining sentence for every ten days of violation. Where the full reduction cannot be applied, the law provides eight euros per uncompensated day.

2) Did these measures succeed?

These measures initially produced significant results. As the chart shows, the prison population fell markedly between 2010 and 2015. In March 2016, the Committee of Ministers closed its supervision of the *Torreggiani* judgment, referring to the measures taken and the positive statistical trend. The European Court also held, in *Stella and Others v. Italy*, that the new remedies were, *prima facie*, effective.

3) The situation today

Thirteen years after *Torreggiani*, however, the initial improvement has not been consolidated.

On 31 August 2026, Italy held 65,661 prisoners against an official capacity of 51,220 places: 128.2 prisoners for every 100 places. That national figure conceals considerable differences between prisons. Some establishments have occupancy rates close to, or above, 200 per cent of their available capacity.

These figures must be read with caution, though.

In fact, the Ministry of Justice calculates official capacity using nine square metres for the first occupant of a cell and five for each additional occupant. This standard is more generous than the one applied by the CPT. Consequently, the official occupancy rate does not show how many prisoners are actually being held in conditions that fail to meet the CPT standard.

Moreover, since temporarily unavailable places are included in the official denominator, this understates pressure on the places that can actually be used.

Finally, overcrowding cannot be measured in square metres alone. Sanitation, structural conditions, healthcare, access to activities and meaningful family contact all determine the real quality of detention.

It is, however, undeniable that pressure on the prison system is rising once again, and the ongoing national public debate is evidence of this.

Why has that pressure returned despite the reforms? There is no single explanation. Several factors affect admissions, the length of detention and the possibility of release.

We may, however, gain some insight by looking at what has happened to the measures I outlined earlier.

The special early-release scheme was temporary and did not provide a permanent solution.

A bill seeking to introduce a new form of special early release was put forward in 2024 but was not enacted.

Community-based enforcement has expanded, but this has not produced a corresponding increase in releases from prison. Since 2021, more than 30,000 alternative measures have been granted each year. However, that figure includes both people leaving prison and people who were already at liberty while awaiting a decision.
If we look only at probation and home detention beginning from prison, the annual total remained between approximately 10,500 and 12,800 cases each year from 2019 to 2025. In other words, the growth of community enforcement has not translated into a comparable growth in releases.
One possible explanation - although certainly not the only one - lies in two parallel developments: the widening scope of criminal law, on the one hand, and the gradual expansion of Article 4-bis of the Prison Act, on the other.
As criminal law expands - with new offences being introduced - many more people enter the criminal enforcement system. At the same time, the expansion of the Article 4-bis catalogue means that more people are sent directly to prison and face greater obstacles to release.

There is also the question of resources. Community enforcement requires adequate staff and coordination among prisons, supervisory courts, the Probation Offices, healthcare providers and social services. Without sufficient operational capacity, decisions and releases are delayed, and alternative measures become more difficult to implement and sustain. This is the case in many areas of Italy.

Finally, let me turn to the preventive and compensatory remedies. As the chart shows, the available figures record considerably greater use of compensation. This is particularly striking because Article 35-bis covers many violations, not only overcrowding.
And recently the effectiveness of the preventive remedy in addressing overcrowding has been called into question by the Florence Supervisory Court. The issue arose in relation to Florence Sollicciano Prison, where overcrowding is compounded by serious and long-standing structural deficiencies. Although a complaint under Article 35-bis was upheld, the subsequent enforcement proceedings showed that more than fifty months would be needed to complete the necessary refurbishment works. The Florence Court therefore referred a question to the Constitutional Court, arguing that, where the preventive remedy cannot bring conditions contrary to Article 3 ECHR to an end within a reasonable time, the legal system should provide an ultimate remedy, - a specific form of home detention -, subject to an assessment of the individual case and of the risk posed to society.
The Constitutional Court heard the case on 22 September 2026; its decision is awaited.
At present, the principal practical response to overcrowding in terms of judicial remedies remains the compensatory remedy. Yet such a limited reduction - one day for every ten days of violation - may be insufficient both to provide genuinely effective redress for the violation suffered and to have a meaningful impact on the overall level of prison overcrowding.

Conclusions
In my opinion, the measures adopted after *Torreggiani* were valid, definitely contributed to the initial response and broadened the framework for non-custodial enforcement and judicial protection.
However, the subsequent rise in the prison population shows how difficult it has been to sustain those gains.
The Italian experience demonstrates, in my view, that a lasting response requires not only legislation, but also the capacity to give it effect. That means addressing admissions and releases, adequately resourcing prisons, courts and community services, and ensuring that judicial remedies can bring violations to an end in time.

Thank you for your attention.