



## Italian policies to prevent Covid-19 and contain its spread in prisons

### About Antigone

Founded in 1991, Antigone is a NGO dealing with human rights protection in the penal and penitentiary system. It carries on a cultural work on public opinion through campaigns, education, media, publications and its self-titled academic review. An Observatory on Italian prisons, involving around 200 people, is also active since 1998, when Antigone received from the Ministry of Justice special authorizations to visit prisons with the same power that the law gives to parliamentarians. Antigone's observers can enter into prisons also with video-cameras. Every year Antigone's Observatory publishes a Report on Italian penitentiary system. Since 2009, Antigone is allowed to enter also in all Italian juvenile prison facilities. Through a prison Ombudsman to which it gave birth, Antigone also collects complaints from prisons and police stations and mediates with the Administration in order to solve specific problems. Furthermore, Antigone's lawyers and physicians operate in some Italian prisons giving suggestions and monitoring life conditions. Antigone also carries on investigations about ill-treatments and sometimes is formally involved in the related trials and leads a European Observatory on prisons involving nine European Countries and funded by the European Union.

1. *Note. This affidavit reports the steps taken by Italian institutions in chronological order. Final considerations can be found in paragraphs 11 and 12. Between February 22 and March 13, several decrees and internal regulations were issued; as the necessity to prevent the spread of the virus grew more compelling these documents became increasingly detailed and specific,. Also, in the beginning some of the regulations (where indicated) applied to only some northern parts of the country, while from March 8 the lockdown was ordered for the whole country.*



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2. On 22 February, the [Department of the Penitentiary Administration](#) (DAP) and the [Department of Juvenile Justice and Community Measures](#) (DGMC) issued two similar recommendations that stated that all personnel resident (or living) in the cities where the virus was concentrated<sup>1</sup> (at that time the lockdown was established only in some city-wide red zones) should not come to work. Access was denied also to volunteers, family members, and other professionals who were resident or living in those areas. Transfers of detainees to and from the Judicial Regions<sup>2</sup> of Turin, Milan, Treviso, Bologna, Pontremoli and Florence were halted. Indications were given to follow the indications issued by the Ministry of Health and the WHO recommendations.
3. On 24 February, the Minister of Justice established with an [internal order](#) a task force whose members were the Heads of all the Justice Departments (among which there are the Heads of the DAP and the DGMC).
4. On 25 February, the DAP issued an [internal note](#) which prescribed the following. All Directors of penitentiary institutes, and Directors of Judicial Regions had to contact the local Health Authorities to receive instructions on how to follow Ministry of Health's [internal regulation n.5443 of 22 February 2020](#), that gave indications on the definition of a Covid-19 case, a suspect case, a close contact, the procedures to follow in each case, the cleaning procedures of all environments, the correct way to test a suspected case, and the list of the laboratories that can carry out the analysis of the tests.

The DAP also gave the indication to penitentiary institutes to create the necessary space for the eventual need to isolate (suspect) positive detainees; moreover, it adds that newly-arrived detainees have to undergo a pretriage and that the Department of the Civil Protection (Dipartimento della Protezione Civile) was available to provide pretriage tents where health professionals can carry out the pretriage measures. Therefore, the Heads of the Judicial Regions had to make a survey of the necessity of their Region and to report back to the Department so that it could activate a cooperation with the Civil Protection.

In case of a **symptomatic detainee**, the internal regulation indicates to follow the aforementioned Ministry of Health's internal regulation (valid for all people, not

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<sup>1</sup> Codogno, Castiglione d'Adda, Casalpusterlengo, Fombio, Maleo, Somaglia, Bertinico, Terranova dei Passerini, Castelgerundo, San Fiorano (province of Lodi), and Vo' (province of Padova).

<sup>2</sup> Provveditorati regionali - i.e. the territories in which the Italian State is divided for the purposes of the administration of justice. They sometimes correspond to Regions (even if they are completely different entities), but often they include more Regions or only parts of them.



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detainees in specific), which states that the doctor has to visit the patient, report the patient to the emergency numbers and to the Department for Infective Diseases, isolate the patient, and discourage going to the hospital unless instructed by the emergency numbers. According to the Ministry of Health's internal regulation, transfers to hospitals have to be carried out following a specific procedure that has to be planned between the starting point and the hospital of arrival.

In case of a **detainee with lighter symptoms or that came in contact with a positive person but that is negative to the test for Covid-19**, the situation of the inmate will have to be evaluated by the doctor and the Territorial Health Department.

In case of a **positive asymptomatic detainee**, s/he has to be isolated for fourteen days and has to be under active surveillance by the prison doctor.

The DAP's internal regulation adds that the request of personal protection equipment was to be made directly by the DAP and that Judicial Regions has to evaluate the necessary quantitative (especially for the personnel that carries out front-desk tasks).

If the **personnel of the penitentiary institutes experiences symptoms** related to Covid-19, they have to immediately report to the emergency numbers and to the Director of their unit. If the symptoms become manifest on the job, they have to report to the health personnel of the institute.

5. On 26 February, [the DAP issued another note](#) with more stringent measures to the Judiciary Regions that were most hit by the virus<sup>3</sup>. In particular:

- Activities where contact with the external world was necessary were suspended;
- Work activities outside the institute and work activities carried out inside the institute that needed the entrance of outside personnel were suspended;
- Family visits were substituted with video calls (i.e. using Skype) and phone calls, that could be granted for over the 10-minute limit per week.

The Regions to which this regulation was addressed quickly implemented the regulation while in the other Regions, the other Heads of the Judicial Regions and Directors of Institutes were given the choice to take the measures that they deemed necessary. Over the following days, restrictions were not adopted homogeneously throughout the Italian territory and Antigone received information about suspended activities and family visits even from areas where the virus was not present causing a great confusion and panic among the detained population and family members.

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<sup>3</sup> Namely, the Regions of Piedmont, Liguria, Lombardy, Veneto, Friuli Venezia Giulia, Trentino Alto Adige, Emilia Romagna, March, Tuscany, and Sicily.



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6. On 5 March, [Antigone submitted](#) to the attention of the Minister of Justice, Bonafede, and to the Head of the Department of the Penitentiary Administration, Basentini, some urgent propositions to increase the possibilities for prisoners to maintain contacts with their families. Contacts that are inevitably different from a family visit. Antigone proposed to increase the number of phone calls for each prisoner (the penitentiary law usually allows one phone call per week for 10 minutes) suggesting to allow one phone call per day, to use as much as possible Skype (or whatsapp) for video calls. Video calls should not replace phone calls but rather family visits.
  
7. With [Ministerial Decree of March 8](#), the Council of Ministers ordered the total suspension of family visits throughout the country (in person visits were an exception and had to be authorized) and indicated to all penal institutions to increase access to telephone calls for prisoners, to allow them to video call their family members. Not all institutions promptly adapted to these changes. It also recommended to isolate all newly-arrived symptomatic detainees and to consider the possibility of home detention instead of granting leaves of semi-freedom measures. [With a video-message, Antigone's president](#) urged prison directors and the Surveillance Judges to put in practice all part of the Ministerial Decree and to ease the tension in penitentiary institutes. Also, despite all internal regulations had urged prison Directors to openly discuss and explain to detainees the necessity of the measures and the gravity of the situation, one of the reasons of the revolts that took place between March 7 and 9 might be a lack of communication between the prison direction and the detainees. The revolts took place in 49 penitentiary institutes and resulted in 13 dead detainees because of overdose. In other cases, Antigone has received information of dialogues and meetings carried out to inform detainees on the measures that needed to be adopted and on the measures to counterbalance the restrictions. In these cases, the tension was eased and the protests quickly died out.
  
8. Following the Ministerial Decree, with a [note dated March 13](#), the DAP gave further operational instructions for the prevention of the contagion. First of all, it encouraged the adoption of protocols with the Territorial Health Departments. Regarding newly-arrived inmates, a visit from the prison doctor has to take place before entering the prison and the doctor should decide if the detainee needs to be isolated or not. Isolation should take place in a single cell with sanitary facilities. Regarding detainees who are already in the institute:  
**If they present typical symptoms of Covid-19, they are to be visited by the prison doctor in their cell and cellmates should be visited as well. If there are elements to**



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**suggest that it is necessary to test the inmates for Covid-19, testing will be arranged and carried out by the territorial Health Department. If the result is positive, the health personnel along with the prison doctor, will evaluate the health of the inmate and decide whether to organize a transfer to the hospital or to isolate the inmate in prison. If the test turns out negative, the detainee will remain in isolation until the medical personnel deems it necessary.**

**With regard to the penitentiary police, this internal regulation states that, just like other professionals, they are considered essential personnel and therefore need to continue to work even if they are suspected of being positive to the virus or if they came in contact with a positive person; however, it is essential that they don't enter in contact with detainees. However, in case of Covid-19 symptoms, they have to abstain from going to work into penitentiary institutes and if the symptoms appear on the job, they have to leave the prison immediately.**

The same internal regulation also states that in the category "Critical Events"<sup>4</sup> all Coronavirus cases (suspected or confirmed) need to be reported both in the case of detainees and in the case of staff in order to have a full record of all cases at all times. For detainees the following has to be reported: date of entry in the prison, cell, cell mates, eventual participation to group activities, precautionary health isolation, type of measures adopted, hospitalization.

In the case of staff: type of work carried out, contacts with other staff members or detainees, whether housed in barracks, type of measures adopted, application of home detention, hospitalization.

The DAP disclosed the numbers of infected inmates only at long intervals. The most important source of information has been the Italian NPM (National Guarantor of the Rights of detained people or people deprived of personal liberty), who has published daily (now periodically) updates on the situation of the pandemic in places of deprivation of liberty. [Updates are also available in English.](#)

There have been some cases of contagion in prisons, two of them are in Milan and in Turin. In Milan – San Vittore, the prison administration has involved professionals, Doctors Without Borders (MSF), in order to manage the outbreak in the institute, and MSF has gladly taken up and met the challenge by creating a Covid-19 section in the prison. In the model adopted in Turin for all detainees (also the asymptomatic ones) who tested positive to the virus a request of release was filed to the Surveillance Judge (the judges that overview the serving of sentences and who make the decision to grant alternative measures to detention) regardless their actual health conditions and not necessarily isolating them. However, it is a difficult situation to manage

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<sup>4</sup> The register Eventi Critici is an internal register of the Penitentiary Administration, where critical events like protests, hunger strikes, violent incidents, self-harm and suicides are recorded. The content of this register is not secret and aggregated data from this register can be disclosed upon filing a request.



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when infected inmates are many. From the beginning of the virus outbreak to May 22, around 300 detainees had been infected; however, around May 20, the effective number of infected detainees was of 119 (of which 2 are hospitalized). On the same day, among the prison personnel, positive people are 162. A total of 4 inmates and 4 staff members have died due to the virus.

Thanks to the isolation measures, the vast majority of prisons has not had even one case, while as previously mentioned, in the institutes where the virus managed to spread numbers were very high (e.g. in Verona, there were 29 cases and in Turin 67) compared to the rest of the country.

9. In the [decree-law of 17 March](#), articles 123 and 124 were intended to decrease the number of people in prisons. In particular art. 123 is about home detention. For home detention, the conditions to satisfy are the following:

- less than 18 months of prison term to serve;
- if the months to serve are between 7 and 18, electronic monitoring is needed.

Detainees can be excluded because:

- they have been condemned for crimes contained in art. 4 of the penitentiary law (e.g. criminal organizations, crimes against children, corruption);
- they are subjected to the regime ex art. 14bis of the penitentiary law (they are under stricter surveillance);
- they are habitual offenders or reoffenders;
- they don't have a home that satisfies the requirements for home detention;
- their home is the same where the victims of their crime live.

Art. 124 allows detainees in semi-freedom (i.e. spending the day outside prison for work or educational purposes and re-enter at night) to spend the night at home.

The necessity to reduce the number of detainees was clearly understood by the authorities, since the penitentiary system was severely overcrowded (with an official occupancy rate of 120% and an unofficial rate of 130%), and an infection would have transformed prisons in leproseries and would have weighted on the Territorial Health Systems. At the end of February, there were over 61,000 detainees and by mid-May they were 52,600: 8,551 fewer detainees (-13.9%). The decrease in numbers is due partially to a lower number of people who enter prisons, a higher number of people that accessed home detention. However, it is important to point out that many of them received home detention thanks to the previous law, while those that were released between 18 March and 15 May thanks to art. 123 were 3,282 (919 of which with electronic monitoring). The work of Surveillance Judges was a key element to lower the number of the prison population.



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10. On 24 March the [Minister of Justice Bonafede stated](#) during the Question Time at the Chamber of Deputies that 1600 smartphones had been distributed to the penitentiary institutes and another 1600 were about to be bought in order to guarantee more telephone contacts with the families since family visits were suspended.

11. Key lessons for other jurisdictions:

- a. Isolating prisons from the outside world works, but it is necessary to counterbalance further restrictions of the prison regime with the possibility of more frequent virtual family meetings that help to reduce tension in prisons.
- b. If the virus enters prisons that are characterized by overcrowding and unsanitary conditions, it is eventually going to spread and it will be very difficult to stop it.
- c. Reducing the prison population allows social distancing and the institution of cells for isolation of suspected cases.
- d. Technology is not a dangerous tool. Even if technology can't substitute in-person family visits or other activities, it can be used to help maintain family ties and the empower other activities (e.g. educational activities that entail the entrance in prisons of teachers and professors).
- e. Informing the detained population on the necessity of the measures is a key element to obtain cooperation and avoid violent incidents.
- f. An infected prison population is likely to heavily impact on the local hospitals that are probably overburdened with Covid-19 critical cases.

12. Challenging issues for other jurisdiction:

- a. Finding the right balance between the need to prevent the spread of the virus and the imposition of further restrictive measures on the detained population.
- b. Framing the reduction of overcrowding as a policy of social inclusion (i.e. the release of detainees should not be solely aimed at confronting Covid-19 but should also have the long-term goal of reintegrating people into society).
- c. Finding a solution to the scarcity of personal protective equipment for staff and for detainees.
- d. Establishing a cooperation protocol between health services and prison services.

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