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41-bis prison regime (Italy): leave no one behind during COVID-19

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The prison environment is highly conducive to the transmission of infections, including the novel Coronavirus (SARS-CoV-2). The aim of this paper is to provide an overview of the Italian Ministry of Justice response to COVID-19 in Italian prisons. In particular, the manuscript addresses the conditions of high-risk prisoners sentenced to life imprisonment and the measures taken by the Italian Government to mitigate the transmission of the SARS-CoV-2 infection.

In 1975, the Italian Ministries of Justice and Interior jointly established the Article 41-bis of the Prison Administration Act, also known as *carcere duro* - hard prison regime (Ordinamento Penitenziario, 1975). The article 41-bis, initially introduced as an emergency measure to deal with crimes committed during the “Years of lead” – the political terrorism period named after the unprecedented number of bullets fired - has so far been applied to prisoners with the highest security risk in the prison system. Those prisoners with the highest security risk are mainly Mafia bosses and their subordinates. Currently, there are a total of 13 Italian prisons with 647 (3 women) super-maximum security (supermax) prisoners. About 100 of these prisoners are detained in pre-trial custody and are presumed to be legally innocent (Palmisano, 2019).

Prisons are an integral part of the public health response to the COVID-19 pandemic in Italy. Overcrowding in prisons, operating, on average, at 129% of their capacity, poses immediate healthcare risks to prisoners considered to be of high security risk (Voller *et al*, 2016).

The Government took some positive steps to mitigate the spread of the current SARS-CoV-2 infection among the prisons including, for example, 1) restrictions on family and lawyers’ visits; 2) indications for testing and isolation of inmates; 3) the supply of personal protective equipment (PPE). However, the overall response of the Italian penitentiary system to COVID-19 appears to be inadequate. Indeed, 45,800 masks have been distributed, an insufficient number for 60,679 prisoners and 38,082 prison officers. Accessing the same standard of care and treatment for SARS-CoV-2 infection offered to the general population is very difficult for high security prisoners, as it requires multiple authorizations and very complex management (Logar and Leese, 2020).

Furthermore, high security prisoners are usually placed in sections on the ground floor of the penitentiary facilities. The conditions on the ground floor sections encourage viral contamination. The cell windows include three-level barriers (bars, fences and a series of iron bands/burglar-proof glass), causing severe limitations of ventilation and fresh air (ISTAT, 2020).

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3 On March 10, 2020 the Cabinet issued the “Cura Italia - Care Italy” Decree, which aims to offset the economic
4 impact of COVID-19 on the general welfare of the country. It introduced, among other things, the temporary
5 release from custody (CTR) scheme, designed for detainees with less than 18 months left to serve on their
6 sentence (Official Gazette, 2020). About 1,900 prisoners have so far benefited from this measure.
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10 The law explicitly excludes high security prisoners; however, during the COVID-19 emergency, three high
11 security prisoners, detained under high security regime at the time of the decision, obtained temporary non-
12 custodial measures, in accordance with legislation (applicable to any convicted person with the aim to
13 protect their constitutional rights to health and humanity). This was granted in view of their advanced age
14 (over 65 years old) and the presence of severe comorbidities (including SARS-CoV-2 risk factors) (Anastasia,
15 2020). One of the detainees has spent the last 12 years in multiple maximum-security prisons.
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21 The decision to grant a temporary non-custodial measure to these prisoners resulted in unprecedented
22 political protests which ultimately led to the forced resignation of the Department of the Penitentiary
23 Administration (DAP) director. This release was met with criticism in the country overall, as it was considered
24 as showing a lack of respect to victims of the Mafia. The protests resulted in a mandatory review of the de-
25 incarceration applied to Mafia bosses placed under house arrest, with the declared purpose to revoke this
26 benefit. This gave rise to the establishment of the Decree Law n.29/2020, passed by the Council of Ministers
27 on 09 May 2020 (Official Gazette, 2020).
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34 To date (22 May 2020), the Italian penitentiary system reported 162 SARS-CoV-2 positive inmates (four
35 related deaths) and 154 COVID-19 cases among the prison staff, although none of the prisons have so far
36 carried out mass testing (Il Sole24Ore, 2020).
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42 In the context of the COVID-19 pandemic, correctional systems are a hotspot for the SARS-CoV-2 infection
43 due to 1) the inability to respect social distancing rules as a result of overcrowding in prisons; 2) the limited
44 testing capacity and the shortage of supply of personal protective equipment (PPE); 3) the systematic
45 inequalities in the provision of access to health care for prisoners.
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51 Furthermore, the high security sections suffer from 1) unsanitary conditions including inadequate cell
52 ventilation; 2) an extremely vulnerable population sentenced to permanent life imprisonment with a suicide
53 prevalence of 1 out 283 prisoners (the Italian general population rate is 1 out 20,000) and 3) the prisoner
54 demographics (e.g. high security prisoners have a mean age of 64, meaning they are at high risk of contracting
55 SARS-CoV-19 infection) (Castelpietra *et al*, 2016). The high security (41-bis) regime has also been declared
56 incompatible with human dignity by the European Convention on Human Rights (Alvanou, 2019).
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3 It is imperative that the Italian government makes complex plans for high security prisoners in response to
4 the current COVID-19 epidemic. The measures that should be included for high security prisoners are non-
5 custodial sentences and the provision of appropriate health care, as this is clearly a State responsibility.
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11 **COMPETING INTERESTS**

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13 We have read and understood the Journal policy on declaration of interests and have no relevant interests
14 to declare.
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20 **AUTHORSHIP CONTRIBUTIONS**

21 All persons listed as authors have contributed to preparing the manuscript and their authorship meets the
22 International Committee of Medical Journal Editors (ICMJE) criteria.
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