

Release of Mafia-crime prisoners during the COVID-19 epidemic: imbalance between detainee's health and public safety

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The COVID-19 epidemic has raised the issue of prisons as incubators of infectious diseases. People held in prisons and other detention facilities need to be considered in the broader public health response to COVID-19. Efforts to release prisoners when possible have been encouraged, based on their risk to the community and vulnerability to infection.¹

In Italy, the situation in prisons is chronically critical, in particular with regard to overcrowding. For this reason, the European Court of Human Rights condemned Italy for violation of Article 3 of the European Convention on Human Rights.

Considering this context, the impending health emergency and the rise of unrest in Italian prisons, a decree from the government on 17 March 2020 provided for competent magistrates to consider home detention for individuals with a residual sentence not exceeding 18 months, with those convicted of serious crimes excluded.²

Surprisingly, the Italian public is currently witnessing the release of individuals not affected by COVID-19, imprisoned for mafia crimes and responsible for heinous acts,³ subjected to the so-called 41-bis regime of the Italian penitentiary system.⁴ This regime is a highly restrictive measure, the spirit of which is to sever all ties between the prisoner, the prison community and the outside world in order to annul or at least reduce criminal potential.⁴ In reality, these prisoners are among the least exposed to COVID-19 and their release cannot be justified for infectious disease reasons. In fact, 41-bis provides for isolation of

the prisoner from the rest of the prison population (single cell) as well as from family members.⁴ There have been cases where 41-bis prisoners with concomitant illnesses, whose continued care in prison was not affected by the COVID-19 emergency, have been released from detention.³ In addition, in one case, an inmate could have been transferred to another suitably equipped prison to continue his medical treatment, but instead he was sent to home detention.³ Inspections by the Minister of Justice have been launched to investigate mismanagement with regard to these releases.

The 41-bis regime is harsh and subject to censorship by the European Court of Human Rights.⁵ Its revision is advisable in favour of a prison regime which does not result in human rights violations but at the same time remains effective in the fight against the Mafia. However, the mishandled release of prisoners risks nullifying the efforts of civil servants who died bringing them to justice. Moreover, it gives strength and impetus back to the criminal organisation by offering a chance to rebuild the chain of people affiliated to the criminal association and allowing criminal projects to be resumed and perpetuated. Even more concerning is the risk of new affiliations, when a socio-economic crisis looms in Italy due to COVID-19 and fragile subjects are vulnerable to forces that exist outside the law and which are more present than the State.

The release of mafia-crime detainees is to be considered serious collateral damage of COVID-19. In light of the worldwide reach of the Mafia, consequences on a global scale are likely.

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