

MEDICINA NEI SECOLI
ARTE E SCIENZA



CAUGHT FROM INSIDE: THE OTHER SIDE OF LIFE
AN OVERVIEW ON THE RIGHTS OF PRISONERS

Autori vari



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Introduzione/Introduction

THE PROJECT “CAUGHT FROM INSIDE:
THE OTHER SIDE OF LIFE

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General outline

The project “Caught from Inside: the Other Side of Life” aims to deepen themes borrowed from European and International law, as well as from the Universal Declaration of Human Rights by the UN and from Medical Deontological Ethics, in order to awaken the interest and increase Medical and Law students’ awareness on the topic of inmates’ fundamental rights. The project raised from the collaboration between ELSA Italia, ELSA Croatia, ELSA Macedonia and SISM.

ELSA (the European Law Students’ Association) is a non-political, non-governmental, non-profit making, independent organization which is run by and for students. It’s the world’s largest law students’ association and it is represented at nearly 300 law faculties in 41 countries across Europe with membership in excess of 40000 students and young lawyers. It was founded in 1981 by 5 law students from Poland, Austria, West Germany and Hungary. Since then ELSA has aimed to unite students from all around Europe, to provide a channel for the exchange of ideas and opportunities for law students and young lawyers to become internationally minded and profes-

sionally skilled. ELSA's focus is to encourage individuals to act for the good of the society in order to realize the vision "*a just world in which there is respect for human dignity and cultural diversity*".

The structure of the Association is based on three interlinked Key Areas: AA (Academic Activities), S&C (Seminars and Conferences) and STEP (Student Trainee Exchange Programme).

SISM (Segretariato Italiano Studenti in Medicina) is a non-partisan, non-denominational, no-profit voluntary Association made up of medical students, which rejects any discrimination based on gender, race, language, nationality, religion, political ideologies and sexual orientation. It consists of 37 Local Committees, and has more than 6000 members. SISM is full member of the International Federation of Medical Students' Association (IFMSA), an international forum of medical students from more than 100 student organizations throughout the world which directly collaborates with the WHO (World Health Organization). SISM endeavors to respond to the health needs of the population through contributions to academic education of students, their awareness of the ethical and social profiles of the medical profession; contributions to the intellectual and professional growth of the new medical classes; information and health education of the population. According to its institutional goals SISM promotes relations both among Italian and foreign universities; activities in the fields of general and specific medicine, education and social care, reproductive health, public health, global health, human rights and scientific research of particular interest; participation in international cooperation programs; development of voluntary associations.

The structure of the Association consists of 6 interlinked areas: SCORA (Standing Committee On Reproductive Health including HIV/AIDS), SCOPH (Standing Committee On Public Health), SCOPE (Standing Committee On Professional Exchange), SCOME (Standing Committee On Medical Education), SCORP (Standing

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Committee On human Rights and Peace). In particular, SCORP focuses on the importance of raising students' awareness about human rights and the pillars of its Universal Declaration. Students, as future doctors, must work in the field of Health with the perspective to make human rights be respected. Therefore, SISM and its Human Rights Standing Committee are working at the introduction of inequalities in Health and their causes as an important part of the core curriculum of the Italian medical students. In this sense, the concept of Global Health is fundamental as the new perspective through which students and physicians should consider their way of doing medicine. In fact, the international and political dynamics as well as globalization influence the access to healthcare and so our Health. In this contest, future doctors have the duty to defend and protect the Right to Health in order to guarantee *“a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”*.

The joint project started from the belief that prisoners are ordinary human beings, therefore, as far as the law can afford it, they should have the same rights as other citizens. Inmates are people who have lost their personal freedom because of their crimes, but they should not lose their dignity and their right to an equal treatment in every aspect of their individual and social life. In other words, offenders sentenced to imprisonment should not receive other punishment but the imprisonment itself, especially in a “modern” and “civilized” country. Nevertheless, nowadays human and civil rights of prisoners are routinely, systematically violated. First, overcrowded prisons' conditions contribute to cruel, inhuman, degrading treatments, which in some cases lead to death in custody and to the development or worsening of physical and mental illnesses. On the other hand, a criminal justice which truly respects individual rights should deem prisons, apart from places of punishment and confinement, as care and rehabilitation dwellings, where a minimum level of civil rights,

such as freedom of religion, expression, association and access to health care, is always guaranteed to everyone, without distinction of sex, “race” and religion.

The phases of the project

From the very beginning the joint international project was meant to be structured in three different phases, in order to analyze and experience the topic from several perspectives and using a comparative approach. The first step was to provide the participants, selected among medical and law students and young lawyers, with the necessary knowledge with regards to the legal framework on one hand and the most relevant health issues on the other. Therefore, we launched a Legal and Medical Research Group in each one of the countries involved under the supervision of ELSA and SISM National Coordinators and Project Managers and with the valuable support of our Academic Advisors.

For the second stage, in strict cooperation with national institutions, we decided to choose a more practical approach, giving to researchers, as well as to other ELSA and SISM members, the unique chance to experience the real living conditions of inmates and the level of protection of their fundamental rights in several types of structure, both in Italy and in Croatia.

In November 2013 ELSA Croatia took care of the organization of the visit to the beautiful capital Zagreb and two of the most interesting structures that can be found in its surroundings: the official local prison of Zagreb, located in the Remetinec neighborhood, which is also the largest prison in Croatia, and the Lepoglava penitentiary, the oldest prison of the country, located in the Varaždin County, northern Croatia. In both cases the visiting group had a full guided visit through almost all the inside and outside spaces, from the cells, often overcrowded, to meeting rooms, common spaces, social and medical departments. Moreover, we had the opportunity to meet the directors

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and to attend a lecture on the history of the structures, their current situation regarding the fulfillment of the level of protection of prisoners' rights and, more in general, the Croatian penitentiary system. The second cycle of visits took place in Italy, where ELSA and SISM members visited the local prison in Monza (MI), and the OPG (Psychiatric Judiciary Hospital) in Castiglione delle Stiviere (MN), a very peculiar structure that is unusually run through a cooperation with the Hospital "Carlo Poma" of Mantova, instead that by the Department of Penitentiary Administration, like the others OPGs. The group attended a meeting with directors and several members of the staff or penitentiary officers. On the last day before the departure of participants, we met a young doctor, member of the association Antigone, an NGO with its headquarters in Rome that promotes debates on the model of legality in the Italian criminal and procedural law and its evolution, collects and disseminates information on living conditions in prison, develops law proposals and promotes public awareness and information campaigns on issues related to the protection of inmates' fundamental rights. It was very interesting, after an academic research and two visits, to face the topic also from a different point of view and listen to the concrete experience of someone who usually works with inmates and gives assistance to them in relation to the most frequent issues of their life.

The third and final part of the project was a conference that took place in Rome, Italy, with the aim to present to a bigger audience the whole project, starting from the several topics that have been analyzed by the Legal and Medical Research Groups and proceeding with the contribution of some of the participants to the institutional visits. The event represented also another opportunity, for ELSA and SISM, to invite other professors and expert to discuss more in depth the Italian penitentiary system and its problems, the main issues connected to the right to health of prisoners and the protec-

tion of minorities' rights, with a special focus on those pathologies which are linked to drug dependences.

The structure of the research

The topics that we have chosen and decided to examine in depth are extremely relevant from a legal, as well as ethical and bio-ethical point of view. How does incarceration affect detainees' life quality? What is the path from sentence to release, and which main principles regulate the different stages of this path, providing a legal protection to inmates? Is it really possible, for them, to benefit an access to health that entirely reflects the complex values on which is usually based the protection ensured to free people? If yes, how it is guaranteed?

Starting from the analysis of the current level of protection of the rights of prisoners in Croatia, Italy, Republic of Macedonia and, in general, in all European countries, we have tried, case by case, to point out the potential alternatives to the current system and, in some cases, to promote new solutions. The present publication will specifically focus on the actual level of implementation of the protection of prisoners' rights in Italy, from a legal and medical perspective.

ELSA Italia

The research activity of the ELSA Italy's group includes five primary topics. Before going through the most specific part, in the first chapter the law students started with an accurate analysis of the main principles governing the penitentiary system at an International, European and Italian level, giving a special attention to the protection of prisoners' rights. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Standard Minimum Rules for the Treatment of Prisoners (SMR) contain some of the most important principles, that are also incorporated in the Italian Constitution. The European Prison Rules were set up on these basis and provide guidelines to European countries

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for their legislation and practice with regard to several issues such as accommodation, communication, work, freedom of thought, conscience and religion, right to vote and health.

In the second part of the research the group focused on the analysis of living conditions in jail and examined in depth and from an innovative point of view, the issue of suicides among detainees. The widespread phenomenon of suicides is indeed connected to the conditions in which the inmates are forced to live, in particular the unsustainable overcrowding. The research has therefore also the aim to identify, when possible, potential alternative solutions to this problem, such as amnesty or pardon, upon which the Ministry of Justice has recently express a favorable opinion, or a strong structural revision of jails that allows to increase the small number of available places ensuring, at the same time, bearable living conditions. Another option could be an increase the use of alternative measures to detentions or a reduction in the use of detention.

The third chapter of the research is dedicated to a more detailed analysis of prisoners' social rights such as right to vote and right to work. The ultimate goal of every detention penalty, in fact, is (or at least should be) the principle of re-education, which also means rehabilitation and re-integration of detainees into society and protection of their individuality. This principle is permanently and strictly bound to the principles of dignity and humanity of punishments and the exercise of the right to vote and to work of the inmates has to be considered a fundamental component of the penitentiary treatment. Moving from this perspective is therefore necessary to overcome the practice of civil rights deprivation, which finds its origins in Greek and Roman law, but unfortunately is still present nowadays. We will take into consideration some international proceedings, focusing not only on specific judgements, but especially analysing the arguments used to justify or deny the legitimacy of this measure. The main purpose of this part of the research is to confirm in which legal and

social areas this measure is used and, in general, to investigate his legitimacy and effectiveness.

After a general overview of international and national provisions related to the right to health in jail, the fourth chapter will focus on the real situations in Italian penitentiary structures, highlighting its problems and contradictions. Practical barriers such as overcrowding and exaggerate bureaucracy prevent detainees from a proper access to health care, although this right is recognised as a fundamental right by the Constitution. We will then analyse more specifically some problems related to the presence of minorities among detainees, such as those affected by mental diseases or HIV virus and drug-addicted, a situation that arises several legal and organizational issues. We will close this chapter with a brief description of the best practices carried out in other European countries as a part of some experimental plans, such as the Health In Prison Programme (HIPP), developed by the European Regional Office of the WHO, which in 2010-2011 has enabled to Albania, Croatia, Kosovo and Serbia to implement their available resources in order to reach the predetermined goals. Another valuable example is the project on detainees' malnutrition experimented in the Danish prison of Renbaek, which is often mentioned as one of the most efficient and well organised penitentiary structure in the world.

To end our research, we propose a further and deeper analysis of the issues related to the management of pregnancy and motherhood in jails, through an excursus on the Italian and European regulations, as well as taking advantage of direct evidence by people working at the female's sections of the Venice Giudecca Prison and the House of Detention of Padua. Considering that women represent the 4-5% on the total number of inmates in Italy, they definitely are a minority, with specific health and social needs. Nevertheless, within a penitentiary system which is mainly designed for men and finds its main goal in the social security, rather than in the health care of the person, these needs are often neglected. However, the issue of women

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detention is still considered as one of the most relevant, since it is strictly linked to another delicate issue: the protection of children born inside penitentiary structures. Therefore, our research will also focus on the rights of inmates' children, living special attention to the Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly in 1989, which includes several principles and rights with regard for children's rights and compels each country to adopt all the necessary and appropriate measures to ensure the fulfillment of these rights and their effective protection.

SISM

SISM researchers mainly focused on issues such as the right to health and the access to medical treatments in jail, as well as on inmates' living conditions and discriminations towards immigrants. The last part of the research is dedicated to another relevant topic: ethical and health-related issues linked to the management of pregnancy and maternity in jail. Following this short introduction, we will briefly introduce the content of each chapter.

Infectious diseases in jail

Among the most relevant health issues we find the exceptional spread of infectious diseases among detainees, which is by now of such an importance to represent an extremely serious situation: a recent study states that in Italy two inmates out of three contract infectious diseases during their detention. Unfortunately, it is quite difficult to collect official and precise data, since screening for this kind of illness is not mandatory and inmates are often reluctant when it comes to get tested. Moreover, from one to three prisoners is not aware of his health condition with respect to these infections.

The inmates are considered a population at high risk of infection for two main types of reasons. Some of them facilitate the transmission, the others favor the development of the mentioned diseases.

Overcrowding, which leads to promiscuity and lack of hygienic control, is a clear example of the first type, but also tattoos and piercings, although formally illegal inside the prison walls, are still clandestinely practiced. We should also mention that unprotected homosexual sex is very common, as well as the use of needles and syringes, which is forbidden without the supervision of a member of the medical staff. Among the causes of the development of these pathologies we can include the inadequate ventilation of the cells, resulting from both overcrowding and structural deficiencies, combined with frequent malnutrition, smoking in narrow and promiscuous spaces, drugs, lack of air and light and wide diffusion of the HIV virus. All these conditions, acting individually or simultaneously as a whole, debilitate the already weak immune system of the detainees.

Furthermore, within a system that seems designed to reduce individuality and self-determination to a minimum level, and where inmates often have experienced social exclusion for a long time and have a low self-confidence, compliance towards long-term treatments, such as those for tuberculosis and HIV, is usually minimal, even more if we consider that the relationships with the medical staff inside jails are frequently marked by mistrust or even conflict.

Infectious diseases are indeed one of the most serious and relevant health issues, as well as one of the most underestimated and hard to contain. The complexity of these situations underlines the importance of a proper individual health care plan, connected, if possible, with the local health care services, in order to ensure continuity to pre and post-detention medical treatment, despite the lack of human and economic resources.

Mental Health

The Mental Health research group focused on four main topics: the structure and organisation of mental health services in jail, Judicial Psychiatric Hospitals, drug dependence and suicide.

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Mental health diseases are one of the most important and prevalent pathologies among detainees as they affect one out of three prisoners in Italy. The overcrowding, the lack of social and recreational activities, violence and aggressiveness are just some factors associated with detention conditions, which lay detainees' mental health on the line. These factors can worsen the health of prisoners and, at the same time, they can increase the chances of accidents, traumas, bullying and threats to happen, together with the raise in the number of self-mutilations and attempted suicides.

All these issues deeply and negatively prejudice the relationship between detainees, but also between detainees and personnel in jail, leading to arguments and collisions.

Recently, mental healthcare of workers in jail came to light as an important issue to deal with, as they are increasingly exposed to stressful and dangerous situations which could threaten their health.

For all these reasons, the research group decided to focus on the role of psychiatrists and on how psychiatric assistance must be assured inside the detention structures. Besides, the group cited some alternative projects and valuable experiences that differ from traditional care, i.e. the collective therapy project activated between 2003 and 2007 at the Rebibbia district prison, in Rome.

Detainees acquitted as unable to understand and act are addressed to the Judicial Psychiatric Hospitals, OPGs. In 1975, these structures replaced the former criminal asylum as they were thought as an alternative to assure both social security and mental health of the "patient-detainee" in a place designate for this purpose. Unfortunately, in the majority of cases these objectives are not completely fulfilled due to huge lacks in appropriate and suitable structures and in specialized personnel either. The living conditions inside the Judicial Psychiatric Hospitals are inhuman: direct evidences, together with an investigation conducted by a specific Parliamentary Commission established in 2010, strongly confirm the presence of serious and

dangerous lacks in the whole system. It is important to clarify some of the key points associated with those unacceptable lacks. In fact, the presence of crumbling buildings, dirty rooms and physical restrictions has been strongly condemned by the European Committee for the Prevention of Torture (CPT). At the moment, there are six OPGs in Italy, five of them can be compared to *gironi infernali* instead of specialized healthcare centres for rehabilitation. The only exception is the OPG situated in Castiglione delle Stiviere. The members of the mental health research group in Caught from Inside had the chance to enter inside the structure and have a guided visit in March 2014. At last, the Italian Government has issued a Legislative Decree, than modified into a formal Law by the Parliament in 2012, which programmed the effective and definitive closure of the Judicial Psychiatric Hospitals on the 31st of March 2013. The Law provided also for the procedure to make detainees to be transfer into structures managed by local psychiatric services, the so-called *Residenze per l'Esecuzione delle Misure di Sicurezza* (REMS). Nevertheless, none considered the fact that no Regions in Italy would have been prepared to fulfil what the Law was expected to be done. So, notwithstanding the current regulation a first postponement of seven months was granted to let the Regions manage with the new rules. A second postponement fixed the final date on the 1st of April 2014. Now, the situation is urgent, critical and apparently unsolvable as Italy is not accomplishing the deadlines settled on by National and European laws.

Analysis of the living condition and migration in jail

This part of the research focuses on the analysis of the living conditions in jail from a medical and social point of view. In fact, researchers highlight the correlation between socio-economical determinants of health and the human conditions in which detainees live and their health. One of the key points is the epidemiological data comparing Italian Regions or European Countries as regard the access to health-

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care. Starting from the WHO guidelines and European Penitentiary Laws and going through the analysis of the living conditions in jail ending the chapter with a focus on migration. Migrants represent the 37% of all detainees in Italy and this implies detention structures to cope with issues and problems that has important links with the population of the structure itself, such as the needs for an efficient cultural-linguistic mediator services (CLM).

Pregnancy and Maternity in Jail and in general Care of incarcerated pregnant women and their children

In line with the previous sections of the research, this part of the project has the aim of providing a general background on the maternal health and childhood in jail. In particular, the focus is on the fundamental aspect of the protection of personal relationships during the detention and the consequences that this issue can affect either mental or physical health of mothers and children.

Conclusions

This publication and the project itself are not an arrival point, but a first step made by students for students in order to raise their awareness towards the critical aspects that characterize the penitentiary system and the existing correlation between inmates' conditions, their rights and their health. Caught from Inside accounts as a project that tries to open the door to the debate and analysis among students and civil society, strengthening their competences and knowledge as a tool to be used for information and education. As future professionals, students should start to address these issues from now, educating themselves as better citizens.

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