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The right to health

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CONTENTS

FOREWORD

The international scientific thematic conference “The right to health” is organized by the Institute of Criminological and Sociological Research, Vojvodina Bar Association and branch of Serbian Academy of Sciences and Arts in Novi Sad, with the support of the Ministry of Science, Technological Development and Innovation. It took place on 30th and 31st October 2025 in Novi Sad, Serbia and brought together experts from various fields regarding this year topic. This scientific monograph entitled as „The right to health” contains contributions not only from the authors that presented their papers at the conference, but also from the authors who were not able to attend the conference for various reasons.

Building upon last year’s exploration of the right to life, it was only logical that this year’s inquiry would be enriched by an approach primarily centered on the right to health. The aim of the monograph is to present current trends when it comes to the right to health, based on human rights paradigm and through a discussion which encompasses a wide range of approaches to the consideration of the right to health. Since the authors from a various scientific fields and academic environment (more than 10) have contributed, the monograph is offering an important comparative and multidisciplinary view.

In the context of ongoing wars, brutal acts of aggression, and the enduring global impact of the COVID-19 pandemic, which have exposed vulnerabilities in health systems and highlighted systemic inequalities, and in light of contemporary threats such as environmental degradation, climate change, pollution, and the rapid development of new technologies, all of which carry profound implications for public health and necessitate a continuous reassessment of legal, social, and policy frameworks, the relevance of this year’s topic is particularly urgent.

Reflecting the Conference’s objective of bringing together leading experts from a wide range of fields directly relevant to issue of the right to health and its protection, this monograph seeks not only to provide clear and well-substantiated answers to some of the most urgent and pressing questions, but also to identify and highlight emerging challenges, provoke critical reflection, and stimulate a robust, ongoing scholarly debate capable of informing, shaping, and guiding public policy in a meaningful and practical way.

Editor

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Original Scientific Paper
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HEALTHCARE BEHIND BARS: CONSTITUTIONAL AND HUMAN RIGHTS CHALLENGES IN THE ITALIAN PRISON SYSTEM

This essay examines the health conditions of people in prison in Italy and highlights the systemic shortcomings associated with healthcare providers responsible for protecting the physical and mental well-being of people in prison. This analysis, conducted through a multilevel regulatory framework, takes into account constitutional guarantees and international human rights law within the Italian penitentiary system. The right to healthcare is protected under Article 32 of the Italian Constitution and the principle of equivalence of care established by the latest reform, which requires people in prison to receive the same level of care as those at liberty. Yet, serious structural shortcomings persist, severely compromising the implementation of this right for people in prison. The article analyzes recent data and institutional reports, and traces the intersection between criminal law enforcement and prisoner treatment with public health, focusing on several key areas: chronic overcrowding, the deterioration of prison infrastructure, the alarming prevalence of mental illness, and the widespread use of psychotropic drugs as a potential form of behavioural control. The study addresses various factors, including the lack of resources for medical, psychiatric, and educational staff, the high incidence of suicide and self-harm, and the lack of care. It also assesses the impact these factors have on the most vulnerable groups, including individuals subjected to solitary confinement (such as Article 41-bis), minors, and undocumented immigrants held in CPRs (Repatriation Detention Centres). The article highlights that the general conditions of detainees in Italy not only appear to constitute a public health crisis but also appear to constitute a substantial

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violation of fundamental rights enshrined in the Constitution and the European Convention on Human Rights. The article finally outlines a list of solutions and criteria for reducing the negative impact of detention conditions on public health, which requires interventions by prison and healthcare administrations and a more modern, responsible, and constitutionally oriented penal policy.

Keywords: *Prison healthcare, Human rights, Italian penitentiary system, Public health, Structural shortcomings, Constitutional law*

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1. Introduction

The concept of prison as a place of deprivation of personal freedom that restores social cohesion (Durkheim, 1893) or as a place of social control (Foucault, 1975) is a fairly recent phenomenon (Marzano, 2007: 148; Hillner, 2015: 169), although its origins can be traced back thousands of years (Larsen, Letteney, 2025: 3–4). In fact, it can certainly be said that it was only with the Enlightenment that the gradual replacement of capital punishment and torture allowed imprisonment to become a prominent feature of the criminal justice system (Santoro, 2004: 4). Before this paradigm shift, since ancient Greece and even more so in Roman civilisation (Mommsen, 1899: 48), the deprivation of personal freedom as a reaction to crime was a widely practiced solution, but its function was more practical for the trial, at the end of which a death sentence was handed down, or functional for the segregation of slaves to preserve and guarantee their labour force (Marzano, 2007: 149; Lovato, 1994: 110)[1], and therefore without the purposes of punishment that are now more widely accepted (Garland, 1990).

The question of the prison model (and its purpose), once imprisonment becomes the standard punishment, raises the question of the condition of people in prison[2], compounded by a changed sensitivity about the value of life and human dignity, even in the context of crime. The comparison between different models of prison institutions took place in the 19th century when, for example, in America, the Philadelphia model was

[1] In this regard, suffice it to say that the Italian word "*ergastolo*" (life imprisonment) derives from the Greek "*ergastḗrion*", meaning a place where people in prison, usually slaves, were imprisoned not to serve a sentence for its own sake but to be assigned to forced labour.

[2] In this essay, we will try to avoid using the terms "prisoners" or "inmates", which convey the image of categories rather than people characterised by a temporary condition. We will therefore prefer expressions such as "people/person in prison", in line with a person-centred perspective that seems more in keeping with a humane and contemporary conception.

compared with the New York model, the fundamental difference between which lay in the fact that in the former, people in prison were destined to constant isolation, while in the latter, people in prison were expected to live together during meals and work activities. A third model prevailed in Europe, which provided for communal life among people in prison, before this model was replaced by intermediate systems, such as the English and Irish models (De Angelis, Torge, 2011: 9–10).

Observation of these models showed that isolation had negative effects on the psyche of people in prison (De Angelis, Torge, 2011: 10), which naturally undermined the purpose of punishment, which had now taken on a different dimension than in the past. It was from this moment onwards that the purpose of punishment and the conditions of people in prison became linked, even before this was explicitly recognised in constitutions and international treaties.

Although a new awareness of the conditions of people in prison was emerging, at least in Italy, very few reforms were adopted before the reunification of the country (1861), and a survey conducted in the second half of the 19th century revealed appalling health conditions, to the extent that only 18 of the 135 prisons existing at the time were considered acceptable (Bellazzi, 1866: 153).

No significant change in prison conditions took place even after the approval of the Zanardelli Penal Code of 1889, which abolished the death penalty, relegation and infamous punishments, nor after the Prison Regulations of 1891, which further tightened the relationship between prison guards and people in prison, nor even after the reforms introduced by minister and then prime minister Giovanni Giolitti (1842–1928), which were opposed by the prison administration, which ended up agreeing with and complaining about the degrading conditions in which the people in prison were living (Neppi Modona, 1973: 1948).

The prison system underwent its first real change under the fascist regime, which was not interested in the health of people in prison but rather in exploiting their "re-education" for political propaganda purposes. In a changed legal context in the criminal field (remember that in 1930 the Rocco Penal Code was approved, which almost doubled the penalties), access for people in prison to work, education and Catholic worship became an obligation, to form "perfect fascists" and thus demonstrate that fascism had solved the prison problem (De Angelis, Torge, 2011: 21).

In reality, real change – at least in terms of legislation – came with the entry into force of the Italian Constitution in 1948, which, in Article 27, expressly sets out the principles of humanity and rehabilitation in punishment, which unequivocally provide a constitutional basis for the protection of the health for people in prison in a precise manner,

in addition to the right to health recognised in general for all members of society by Article 32 of the Italian Constitution. It is starting with the Constitution that subsequent reforms of the prison system have followed a path that is more respectful of the conditions of people in prison, although, as we will see shortly, the Constitution cannot be said to have been fully respected.

In this article, we want to analyse the current legal framework regarding the protection of the health of people in prison (§ 1.2) and compare it with the actual prison conditions that come out of multiple investigations in Italian prisons (§§ 1.2–1.4). which offer a far from comforting picture, with particular concern for certain at-risk categories (§ 1.5), to identify the cyclical and structural problems of the Italian prison system in relation to the failure to comply with the minimum conditions for the protection of the mental and physical health of people in prison (§ 1.6) with a view to offering possible solutions that bring the actual situation closer to the rules and principles laid down in the Constitution and international conventions (§ 1.7), to make Italy a country that respects the sense of humanity and human dignity that people in prison, above all, deserve.

2. The Right to Health Behind Bars

The mental and physical health of people in prison is subject to direct or indirect protection at multiple levels. In the international regulatory context, looking first at the European context, it is necessary to mention both the European Convention on Human Rights of 1950 and the Charter of Fundamental Rights of the European Union of 2000[3].

The European Convention on Human Rights does not contain any explicit reference to the health of people in prison or to the protection of health in general, since it only covers political and civil rights and not (expressly) social rights. However, the case law of the European Court of Human Rights has progressively identified the protection of health as a corollary of other fundamental rights expressly mentioned in the Charter, namely the right to life under Article 2, the right to respect for private life under Article 8, and, most relevant to the present case, the prohibition of inhuman and degrading treatment within the more general prohibition of torture under Article 3. The judges have, in fact, constructed two specific obligations around the regulatory framework laid down by these articles, one negative and one positive, namely not to cause the death of citizens and to offer the necessary care to prolong their lives (Cecchini, 2017: 6), and this, of course, also applies to the detainee.

[3] The Charter became binding in 2009 with the entry into force of the Treaty of Lisbon.

The Charter of Fundamental Rights of the European Union, on the other hand, expressly recognises the right to health in Article 35[4]. However, health protection has been the subject of attention in international law for much longer, as evidenced by Article 25 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948[5]. It is, in fact, a heritage guaranteed to all human beings (Corvi, 2021: 926). It is no coincidence, therefore, that it is explicitly referred to in Article 32 of the Italian Constitution (1948)[6].

While the right to health is recognised at multiple levels – including for people in prison – express protection for persons deprived of their liberty in terms of their mental and physical well-being is a more recent development in international law. First and foremost, the European Prison Rules, annexed to Recommendation R (2006) 2 of the Council of Europe, are worth mentioning[7]. Secondly, the United Nations Standard Minimum Rules for the Treatment of Prisoners of 2015[8] are relevant, committing States to protecting the health of people in prison[9].

It is important to note that the principles expressed in these international charters were echoed in the Italian Constitution, which, in Article 27, establishes the rehabilitative purpose of punishment and, at the same time, explicitly prohibits any punishment that results in inhuman treatment. Both aspects lead to the exclusion of any prison regime that could lead to the deterioration of the prisoner's health.

Despite the clear constitutional mandate, the issue of health for people in prison was only addressed by the legal system with Law No. 740 of 1970, which, for the first time, established the right of citizens to receive the medical care they needed while in prison[10]. This was a first step towards a healthcare system that remained essentially separate and independent from the ordinary system for free citizens, and this remained the

[4] Article 35 states that: Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.

[5] Article 25 states that: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services

[6] Article 32 states that: The Republic protects health as a fundamental right of the individual and in the interest of the community, and guarantees free medical care to the indigent.

[7] Article 39 states that: Prison authorities shall protect the health of people in prison in their care.

[8] This is a non-binding regulatory framework that reproduces and updates the one approved in 1955 during the first UN Congress on the Prevention of Crime and the Treatment of Offenders, "Standard Minimum Rules for the Treatment of Prisoners".

[9] Article 24 states that: The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

[10] At that time, decisions regarding the health of people in prison were made by the director or doctor on a case-by-case basis, within a legal framework that was not very clear, and in the face of a prison situation that was

case even after the most significant reform of the prison system by Law No. 354 of 1975, which still forms the backbone of Italian legislation on imprisonment. Prison healthcare remained the responsibility of the Ministry of Justice for a long time, at least until the reform introduced by Legislative Decree 230 of 1999, which separated healthcare responsibilities from prison administration and assigned them to the National Health Service, which is responsible for the health of both free citizens and people in prison[11]. It is important to note that the reforms have not eliminated any responsibility on the part of the prison administration; on the contrary, they have created an organisational and coordinating function that is fundamental to protecting the health of people in prison (Fadda, 2012: 635).

The legal framework governing the right to health of people in prison in Italy today revolves around three main factors: a) minimum conditions of detention to ensure that the mental and physical well-being of people in prison is not compromised; b) methods of accessing healthcare; c) the health conditions of people in prison and compatibility with the prison regime.

Concerning the first aspect, general conditions of detention are governed by Chapter II of Title I of the Prison Administration Act, which we have already mentioned (No. 354 of 1975). These provisions include rules on clothing, hygiene, and food for people in prison, as well as on living quarters and sleeping accommodations. The adequacy (size) of prison facilities is a particularly critical issue in the Italian prison system, which, partly due to overcrowding, does not always comply with the standards set out in the European Convention, to the extent that Italy has been expressly criticised on this point[12]. To the extent that these conditions are not met and may infringe upon a fundamental right, they are subject to judicial review through a specific complaint that the prisoner may file with some institutions, including the Supervisory Courts[13].

Access to healthcare, which is the second aspect of the legislation, is characterised by the principle of equivalence, i.e. people in prison must have access to the same

rather compromised by poor hygiene conditions, a serious problem of tuberculosis spreading, and a lack of vaccination among people in prison (Fadda, 2012: 634).

[11] This was a long process, which concluded with the Decree of the Presidency of the Council of Ministers of 1 April 2008, which effectively merged prison healthcare with the National Health Service.

[12] ECtHR, 16/07/2009, Sulejmanovic c. Italia.

[13] Health protection is at the heart of the decisions of the Italian Supreme Court of Cassation concerning complaints about general conditions of detention, which do not always coincide with the standards guaranteed by the European Court of Human Rights. For example, on the issue of overcrowding, the Court of Cassation tends to follow European guidelines, albeit with distinctions and adjustments. In other circumstances, however, it is the European Court that is not entirely convincing. In ECtHR, 30/09/2010, Pakhomov v. Russia, for example, the judges ruled that contracting an illness in prison does not in itself constitute a violation of Article 3 of the Convention, but rather that it is necessary to look at the remedies put in place by the State to remedy the situation.

level of healthcare as citizens who are not incarcerated[14]. For this reason, the Charter of Healthcare Services offered to the prison population is an important tool, developed in agreement between the health service and the prison administration. A further principle is that of freedom of choice of doctor, as it is essential that people in prison can choose, from among those working in the institution, the person to whom they wish to turn for the protection of their health. Although these principles cannot guarantee equal conditions between people in prison and free persons, they nevertheless aim to reduce differences in the protection of a fundamental right such as health[15].

The third element is the level of compatibility between the prisoner's health conditions and the state of detention. In fact, Articles 146 and 147 of the Criminal Code expressly provide for the postponement of the execution of a prison sentence when medical conditions make detention inhumane and degrading. The provisions refer to physical illnesses, but for some decades now, the case law of the Court of Cassation has also been open to less rigorous interpretations that include cases of mental illness[16].

From a regulatory perspective, this is a system of rules that appears to be capable of ensuring full respect for the right to health of people in prison.

However, the reality reveals a state of systematic and persistent fragility in the prison system, particularly concerning respect for the mental and physical health of people in prison, which makes it more than reasonable to question whether the conditions of detention, which in some cases are dramatic, do not constitute an overall violation of human rights. To address this question, it is therefore necessary to move from legal analysis to the reality on the ground.

3. Everyday Realities of Prison Healthcare

The health of prisoners is the subject of much attention in Italian public debate, but, paradoxically, there is no single national monitoring system operated by either the Ministry of Justice or the Ministry of Health. Instead, there are independent reports by non-profit organisations or reports by regional institutions, which are responsible for providing healthcare services. It must be pointed out that the lack of national monitoring

[14] This is established in Article 1, paragraph 2 of Legislative Decree 230 of 1999.

[15] The right to health is inviolable and, as such, enforceable under the provisions on complaints. However, it should be noted that the Court of Cassation has consistently ruled that complaints cannot be lodged regarding the way the right to health is exercised, which, for people in prison, is left to the prison administration, which– while having to guarantee the right to health–has broad discretion in choosing the means (e.g. whether to transfer the prisoner to an external healthcare facility for specialist examinations or to keep him in the prison facility). *See*, on this point, Court of Cassation, Sec. I, 15/07/2022, no. 33129.

[16] Court of Cassation, Sec. I, 01/06/2022, no. 26851.

is a serious shortcoming that reveals a certain lack of interest on the part of the state in safeguarding the health of people in prison. Despite the lack of a national observatory, accurate data on the health conditions of prisoners in Italy are nevertheless provided by various institutions and offer a clear picture of a dramatic situation.

According to the Italian Society of Prison Medicine and Health, the first and most significant concern today is mental illness and psychological distress, followed by gastrointestinal diseases (including obesity and diabetes) and dental problems. There is also a problem relating to cancer and infectious diseases due to a lack of screening and delays in diagnosis, as well as a significant problem linked to drug addiction (including smoking), which is probably one of the main risk factors, in addition to poor hygiene, a sedentary lifestyle and poor nutrition[17].

A study conducted in 2015 on over 17,000 people in prison revealed that over two-thirds of those concerned have at least one medical condition[18]. The diseases and incidence rates recorded are those shown in the following table.

	Disease	**Rate**
1	Mental disorders	41.3
2	Diseases of the digestive system	14.5
3	Infectious and parasitic diseases	11.5
4	Diseases of the circulatory system	11.4
5	Endocrine, metabolic and immune system diseases	8.6
6	Diseases of the respiratory system	5.4
7	Symptoms, signs and ill-defined conditions	5.1
8	Diseases of the musculoskeletal and connective tissue systems	5.0
9	Diseases of the nervous system	4.0
10	Diseases of the genitourinary system	2.9
11	Trauma and poisoning	2.2
12	Diseases of the skin and subcutaneous tissue	1.8
13	Tumours	0.9
14	Congenital malformations	0.7
15	Diseases of the blood and blood-forming organs	0.5

[17] See: https://www.ilsole24ore.com/art/carcere-malattie-psichiche-infettive-e-tumori-aumento-AGRko8hB, accessed on 15.09.2025.

[18] See: https://www.ars.toscana.it/files/pubblicazioni/Volumi/2015/carcere_2015_definitivo.pdf, accessed on 15.09.2025.

In a recent survey conducted on health conditions in prisons in Emilia-Romagna[19] alone, the most worrying data, updated to 2024, concerns mental and behavioural disorders, which affect 28.6% of people in prison. The same survey shows that 39.4% of the total number of people covered by the study have at least one of the four chronic conditions identified by the WHO (cardiovascular disease, diabetes mellitus, neoplastic diseases, and chronic respiratory diseases). Finally, 19.9% of people in prisons in the region in 2024 had a problem with substance abuse or addiction. The risk of overweight and obesity is also worrying, affecting 48.3% of those examined. All these percentages exceed the national average for people in the community and therefore raise alarm bells about the health of people in prison[20].

A recent study of the prison population at "Giuseppe Pagliei" Prison in Frosinone, central Italy, from May 2022 to May 2023 showed interesting results. A total of 477 adult male prisoners underwent systematic clinical assessments and medical record reviews. The study highlighted a significant incidence of cardiovascular disease (17.2%), probably due to high smoking rates and limited access to preventive health services, as well as other factors characteristic of prison life (sedentary lifestyle, low life satisfaction, chronic stress). Mental disorders are equally significant (19.9%) and, in particular, it was observed that drug-addicted prisoners are almost three times more likely to have a psychiatric disorder. The causes undoubtedly include chronic stress and poor psychological support. The incidence of respiratory diseases (12.2%) and endocrine-metabolic conditions (13.8%) is also significant (Lancia et al., 2025: 10).

These data are interesting because they highlight that even in facilities where overcrowding is below the national average, various other factors contribute to the incidence of disease and the burden on healthcare. In particular, certain structural determinants such as the organisational model of the prison, the ratio of staff to prisoners, as well as the shortage of healthcare personnel or limited access to specialised services, and the fragmentation of care, can have a negative effect, leading to the assumption that the fragile prison environment can be considered overall as detrimental to health (Lancia et al., 2025: 10). If this is the case, the state is not only restricting people's freedom, but also damaging their health, which is a matter of great concern for the stability of the system.

It has just been said that various structural factors can affect the health conditions of prisoners. However, it is undeniable that overcrowding is, at least in Italy, the main

[19] The Italian region with Bologna as its capital.

[20] See: https://salute.regione.emilia-romagna.it/notizie/regione/2025/maggio/sanita-penitenziaria-in-emilia-romagna-il-39-4-dei-detenuti-ha-una-diagnosi-cronica-soprattutto-connessa-ai-disturbi-psichici-e-comportamentali, accessed on 15.09.2025.

emergency. Once again, the figures collected – this time on a national basis by the Ministry of Justice – can provide us with some food for thought. There is no need to dwell on the overall number of people in prison. Suffice it to say that in 1991 there were 35,469 people in prison (15.1% of whom were foreigners), while on 31 August 2025 there were 63,167 prisoners (31.8% of whom were foreigners) [21]. Fortunately, the number of new admissions has fallen dramatically. In 2008, 92,800 people were admitted to prison, while in 2025, less than half that number (42,245 people) were admitted. This is largely due to the gradual expansion of alternative measures to detention, which allow sentences of less than four years to be served in ways other than placement in a penal institution. Nevertheless, the number of prisoners compared to the regulatory capacity shows an overcrowding rate of 123% (Cocco, 2025: 140).

Prison overcrowding is a danger to prisoners' health, as many studies have shown (Goldhaber-Fiebert, 2025: 819; Nudd, 2024: 41; García-Guerrero and Marco: 2012: 106). But it is not the only one. In Italy, 31.6% of cells provide prisoners with less than 3 square metres of space, and 55% of cells do not have a shower, which is only available in communal areas, with the risks of promiscuity, health and violence that this entails (Cocco, 2025: 142).

This factor affects the health and access to healthcare of prisoners, negatively influencing both factors. The most dramatic data showing the impact of overcrowding is probably the prison suicide rate, which in Italy is seventeen times the national average. In 2024, an all-time high was recorded, reaching 91 suicides. It is significant that one-fifth of suicides occur in the first ten days of detention, and that the same percentage is recorded in the last three months of the sentence. It is clear that the psychological difficulties of entering and leaving prison are destabilising factors that influence the decision to take such extreme action (Cocco, 2025: 143). Reducing the prison population is therefore an urgent priority, but one that Italian judicial policy has never seriously pursued. On the contrary, public statements by the government have expressly ruled out clemency measures, focusing instead on the construction of new prisons[22].

It is clear that fewer prisoners allows for a greater concentration of resources and, therefore, better psychological support, which can reduce the suicide rate, as well as the mental and physical illnesses that affect the majority of people in prison today.

[21] See: https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST1470061, accessed on 15.09.2025.

[22] See: https://www.rainews.it/articoli/2025/07/un-piano-strutturale-per-riorganizzare-le-carceri-italiane-10000-nuovi-posti-entro-il-2027-40272e3f-5ae1-4156-b6da-1321b7ef0c04.html, accessed on 15.09.2025.

4. Mental Health in Detention

Some studies conducted on a global scale have surprisingly reproduced, albeit with some differences in proportions, the above-mentioned studies that focused on conditions in Italian prisons. In fact, the significant prevalence of mental disorders among the prison population has been highlighted. Approximately one in ten people suffers from depression or post-traumatic stress disorder, and just under one in twenty is affected by psychotic disorders. A quarter of the prison population has a problem with alcohol abuse, and about four in ten with drug abuse. It is important to note the relationship between these issues, as about half of those affected by mental health problems also had alcohol or drug problems, and furthermore, the incidence rates of mental health problems are almost double those of people in the community. The mental health of prisoners is perhaps the main concern of our time (Favril et al., 2024: 256).

The relationship between the above-mentioned health problems and imprisonment is a particularly problematic issue. Some studies link, for example, drug addiction problems to a risk factor for imprisonment (Moore et al. 2019: 1). Previous health conditions are therefore brought into prison, where individual behaviour and collective organisational choices can aggravate or give rise to new problems.

Firstly, risky behaviours such as smoking, poor diet and lack of physical activity, which are quite common during detention, can have a negative impact. Added to this are the abuse of injectable drugs, unprotected sexual intercourse and tattooing, all behaviours that can spread viral infections. Furthermore, poor ventilation in places of detention, lack of sanitation and hygiene in general, as well as overcrowding, can cause infectious diseases to proliferate. COVID-19 is an example of this: in Italy, the lockdown measures put in place at the beginning of the pandemic, which led to numerous acts of violence, failed to prevent infections, so much so that they were replaced by measures of the opposite kind[23]. Finally, isolation, lack of recreational and educational activities, as well as lack of psychological support, can harm mental health (Favril et al., 2024: 256).

The fact that imprisonment may have a positive effect on the health of particularly marginalised groups, due to access to medical care and hot meals, as well as basic personal hygiene, is an issue which, without looking at the research on the subject (Bucerius, Haggerty and Dunford, 2021: 519), appears to be irrelevant in this context, except

[23] During that period, the supervisory judiciary worked intensively to broaden the scope of benefits granted to allow hundreds of prisoners with medical conditions for which contracting COVID-19 could be fatal to leave prison, which had become a risky environment (Corvi, 2021: 929).

insofar as it reinforces the belief that prison is not the solution to social welfare problems[24].

We do not wish to go so far as to address the causal relationship between imprisonment and mental health problems among prisoners. However, it is undeniable that the prison population suffers from these disorders and that there is a lack of informed health policies to address them, as well as scientific studies to support any solutions that may be pursued. Although these studies claim that they are not sufficient, there are results from scientific research conducted on people in prison that offer approaches that appear to produce better results in the treatment of mental disorders and drug addiction among people in prison (Fazel et al., 2016: 871). However, it does not appear that these or other studies are given sufficient consideration when addressing these issues. This is indeed an area where significant change is needed, and probably not only in Italy.

5. Groups Most at Risk

The issue of the health of people in prison, as mentioned several times throughout this essay, should be addressed in a unified manner at the national level in many respects, including organisational aspects, and in accordance with scientific studies that highlight the most effective treatment pathways for certain pathologies.

However, this principle does not mean treating all people in prison in the same way, as this risks resulting in a discriminatory approach and, in terms of our concerns here, one that is dangerous to the health of certain categories of people in prison. We refer to certain groups of persons who, in terms of health protection, suffer from the system's inability to recognise the existing differences between groups of people in prison, without even realising the effects that this approach has on the prison population.

Consider, for example, women, who on average suffer from weight problems more than men, partly because the diet designed for prisoners is tailored to the needs of the male population (Cocco, 2025: 140). Higher rates of mental disorders and drug abuse among the female population highlight the lack of a dedicated approach in these areas as well (Favril et al., 2024: 256).

[24] Studies in this direction could, if anything, demonstrate the absolute incompatibility of prison with improving the health conditions of marginalised people, since if institutions (public or private) are able to offer assistance services that improve certain conditions, they can also operate outside the conditions of deprivation of personal liberty, achieving the same results and, therefore, prison is a condition which, if removed, improves – rather than worsens – social welfare outcomes.

These are not minor consequences in general terms, as the lack of a diverse and comprehensive view of the prison population and its needs creates significant health problems for certain groups of people in prison, such as women.

Women currently account for approximately 4.3% of the prison population. In fact, there were 2,703 women in prison in 2025, over 40% more than in 1991 (Cocco, 2025: 140). However, this significant presence does not seem to have stimulated reflection on the creation of adequate programmes for the prison life of the female population.

A similar argument can be made in relation to transgender people in prison, who are mostly treated according to their biological sex rather than their declared gender. These individuals are not guaranteed prison treatment appropriate to their condition in many respects (Cocco, 2025: 140).

Studies have highlighted critical issues both in relation to gender identity and when the latter is combined with other factors such as ethnic origin, showing the fragility of the prison system in protecting these individuals from additional risks that differ from those normally observed. Some studies have shown, for example, the impact on the mental well-being of transgender person in prison of the language used by prison staff. Adequate training, net of cultural issues, can contribute positively to maintaining the mental health of prisoners in this situation (Hochdorn, 2024: 945; Dalzell, Pang and Brömdal, 2024: 21).

There are at least two further categories of people who should be considered in the discussion we are addressing. It has been clearly highlighted that, in Italy, the number of minors in prison has grown by nearly 50% following the approval of a decree against juvenile crime (Cocco, 2025: 142)[25]. Some studies have shown that four out of ten minors in prison suffer from some form of illness. In two out of three cases, this illness is mental and largely concerns drug addiction (Agenzia Regionale di Sanità della Toscana, 2015: 215). Over 50% of the 610 minors currently in prison are foreigners, which complicates what is already a difficult situation from an organisational and health perspective, which is unique (Committee on Adolescence, 2011: 1219).

Similarly, the peculiarities of managing the health of elderly people in prison should be highlighted: on this point, it should be noted that today around 30% of the entire prison population is over 50 years old [26]. Older people in the prison system face health problems in many more cases than younger people, and they face additional risks such as social isolation and loneliness, which can end up having a significant impact on the mental and physical health of prisoners and, therefore, need to be addressed specifically

[25] Decree Law 123/2023.

[26] See: https://www.giustizia.it/giustizia/en/mg_1_14_1.page?contentId=SST455313, accessed on 15.09.2025.

(Chan, 2025: 35). It has been noted that the issue of the relationship between elderly people and the criminal justice system is cross-cutting in nature, i.e. it concerns both criminal proceedings and the relationship with the parties to the proceedings, as well as – as far as this essay is concerned – the enforcement of sentences (Pavlović, 2023: 218). An individualised approach is needed that takes into account the age of the person in prison so that personal characteristics inherent to age do not translate into additional suffering.

Some groups of people ultimately face additional health risks that must be considered to ensure the physical and mental well-being of persons in prison, bearing in mind not only the principle of equivalence of care, but rather a principle of equal protection of the health of persons in prison. This is a different approach that would seek to offer not only care like that which persons in prison would receive if they were free, but also an additional level of care tailored to the specific risks that certain categories of people unfortunately face, and this also applies to particularly marginalised groups of people in prison, such as those who are poor (Ljubičić, 2023: 275).

6. When Prison Becomes a Public Health Issue

The prison environment provides fertile ground for the proliferation of certain sexually transmitted diseases, such as HIV or syphilis, and certain infectious diseases, such as tuberculosis.

The incidence rate of HIV among the prison population in Western Europe, including Italy (2,6%), is fortunately low, thanks in part to prevention campaigns over the last few decades. Unfortunately, the same cannot be said for Eastern Europe and sub-Saharan Africa. The presence of a significant foreign component in Italian prisons cannot fail to raise some concerns about the measures needed to prevent contagion (Agenzia Regionale di Sanità della Toscana, 2015: 130).

Syphilis, on the other hand, is the sexually transmitted disease with the highest mortality rate in Italy after AIDS. It affects about 0.5% of the prison population, while the morbidity rate among the free population is ten times lower. As with HIV, the highest rate of infection for syphilis is among transgender people (Agenzia Regionale di Sanità della Toscana, 2015: 134-5).

Another issue is tuberculosis, which affects approximately 0.6% of Italian prisoners. In this case, problems relating to prison conditions have a negative impact on the spread of the disease, so it is essential to take action to manage the risk of propagation from a public health perspective. It is a fact that the prison population in Europe has an average incidence of tuberculosis seventeen times higher than that of the general population. Although the percentages in Italy are fortunately far from this level, tuberculosis is

a significant problem since, as has been observed, in two out of three cases it is combined with other morbidities such as HIV (Agenzia Regionale di Sanità della Toscana, 2015: 132).

It is important to note that the spread of these diseases can constitute a public health problem and, therefore, be of general interest to the legal system.

7. Paths Toward Change

All studies that look at the health conditions of the prison population in Italy conclude that more economic resources are needed to better manage the health of people in prison. This is a conclusion from which we cannot deviate: protecting health is simply expensive, and it would be illusory to think that zero-cost intervention by the state would be enough to improve the problem[27].

However, limiting ourselves to looking at the issue from a point of view of economic sustainability could, perhaps not even legitimately, clash with the objection that the Italian Republic cannot do better than it already does, given the amount of resources already made available by the National Health System.

Attention must therefore be focused on organisational aspects. In several parts of this essay, it has been noted that the scientific literature offers an overview of approaches to protecting the health of people in prison that is not limited to pharmacological treatment but also documents particularly successful approaches to many of the diseases mentioned above. Furthermore, reference has been made several times to alternative approaches to a prison-centred and standardised approach.

Regarding the first element, it is naturally up to medical science and scientific research to offer the perspectives to be taken on board. However, from a legal point of view, it should be noted that solutions in the prison environment cannot, now more than ever, ignore scientific research, which, as mentioned above, still appears to be lacking and unheeded in some areas.

On the other hand, from an organisational point of view, some further reflection deserves to be made explicit. Some pathological conditions and suffering are essentially caused by organisational choices or inefficiencies. One example is the long-standing lack of a concept of affectivity in prison, which over the years has been shown to give rise to episodes of violence and morbidity in relation to sexually transmitted diseases. In this

[27] The spending on prison healthcare was €167 million in 2010 and will amount to €165 million in 2024. See: https://leg16.camera.it/522?tema=664&Il+livello+di+finanziamento+del+Servizio+sanitario+nazionale, accessed on 15.09.2025.
See, also: https://www.gazzettaufficiale.it/eli/id/2025/01/31/25A00541/SG, accessed on 15.09.2025.

regard, the changes brought about by the courageous intervention of the Italian Constitutional Court, which finally recognised the right of prisoners to cultivate their emotional relationships in prison, are to be welcomed[28].

It should not be overlooked that the main cause for concern is overcrowding, which can only be addressed by creating new detention facilities and, above all, by making greater use of alternative measures to short sentences. In this regard, after selecting the types of crime (e.g., organised crime, violent crimes) for which it is not appropriate to proceed differently, it seems feasible, if not necessary, in a situation of cell congestion, to proceed with the definitive replacement of prison sentences of less than a certain length with at least house arrest. In Italy, as of 30 June 2025, almost 43% of people in prison due to a final conviction must serve a sentence of less than five years (20,271 people). Replacing prison sentences with house arrest for a large proportion of these sentences would solve the problem of overcrowding and its consequences in terms of protecting the health of prisoners[29].

From an organisational point of view, it would then be necessary to separate those who have been definitively convicted and must be held in prison from those who are subject to personal precautionary measures and who, contrary to the law, are currently held in the same detention facilities. It should be noted that the number of individuals subject to such measures increased in 2024 compared to previous years[30], and it is therefore necessary to see whether the reforms recently introduced by the current government about the preliminary hearing on the application of the measure will allow the number of measures to decrease, otherwise posing a further problem of congestion[31].

There are also organisational solutions that need to be reviewed in light of the issues highlighted above. First of all, it is necessary to take note of the diverse composition of the prison population and the health protection needs of each of its components. We have mentioned the nutrition of women, the isolation of the elderly, the specific prob-

[28] Italian Constitutional Court, no. 10/2024.

[29] See: https://www.giustizia.it/giustizia/en/mg_1_14_1.page?contentId=SST1462532, accessed on 15.09.2025.

[30] See the Report of the Minister of Justice on Personal Precautionary Measures and Compensation for Wrongful Imprisonment: data for 2024 Report to Parliament pursuant to Law No. 47 of 16 April 2015, available at: https://www.giustizia.it/cmsresources/cms/documents/misure_cautelari_personali_2024_aggiornamento_gennaio2025.pdf, accessed on 15.09.2025.

[31] The Law no. 114/2024 introduced preliminary hearings into Italian law, whereby, in response to a request by the Public Prosecutor to enforce a personal preventive custody measure, the judge who must make the decision (except in cases of flight risk or evidence tampering, or in cases of particularly serious crimes such as organised crime) must first hear the accused to verify the validity of the charges and the existence of precautionary requirements. This reform, designed to limit preventive detention in the absence of a hearing, may affect the total number of individuals subject to this type of measure.

lems of minors, and the exposure to additional suffering of transgender people. Staff training is a crucial element of any plan to improve the health conditions of people in prison, together with organisational choices and solutions that avoid victimisation or further suffering[32].

These organisational solutions must include a new sensitivity to the psychological condition of prisoners, both in terms of the number of staff and the methods and timing of psychological support, based on the evidence shown by the above-mentioned data. Entering and leaving prison are among the moments when extreme acts of self-harm often occur, and therefore, attention must be focused on these moments.

Finally, research funds should be allocated to promote studies on organisational and legislative solutions aimed at improving the living conditions of prisoners, which could provide useful guidance to those involved in political and administrative decision-making.

8. Conclusion

The findings presented in this study confirm that the protection of health within the Italian prison system remains one of the most delicate and unresolved aspects of penal policy. While the normative framework – strengthened by Article 32 and Article 27 of the Constitution as well as by international conventions – offers a robust guarantee, the persistence of structural and organisational shortcomings prevents its effective implementation. Overcrowding, fragmented healthcare provision, and insufficient support for mental health continue to compromise the daily lives of detainees, producing consequences that extend beyond the prison walls and assume the character of a broader public health concern.

At the same time, the evidence gathered shows that such shortcomings weigh most heavily on groups already exposed to vulnerability, such as women, minors, older prisoners, and transgender individuals. This confirms that the principle of equivalence of care, though indispensable, is insufficient if not accompanied by an approach that recognises the differentiated needs of diverse categories within the prison population.

From the perspective of criminal law, these observations highlight the need to reconcile the aims of punishment with the constitutional mandate of re-education and the prohibition of inhuman or degrading treatment[33]. In the absence of adequate healthcare,

[32] See the case cited by Cocco (2025: 141) of the transgender person in isolation, because that was the method identified to protect their condition.

[33] Recently, the Supervisory Court of Turin (Order No. 2025/3394) stated that the health conditions of a person in prison who had applied for an alternative measure, although not incompatible with imprisonment in abstract

detention risks assuming punitive effects that go beyond the sentence imposed by the courts, undermining both the legitimacy and the credibility of the penal system.

A forward-looking strategy should therefore combine targeted investment in healthcare services with organisational reforms designed to reduce overcrowding and to strengthen the collaboration between the National Health Service and the prison administration. Equally important is the development of alternatives to short custodial sentences, which appear to be the most realistic way of alleviating structural pressures.

In conclusion, the health of people in prison must not be regarded as a marginal issue of prison management, but rather as a test of constitutional coherence and of Italy's adherence to its international commitments. Only by ensuring that detention does not entail the loss of fundamental rights can the prison system fulfil its rehabilitative purpose and contribute to a model of justice that is both humane and effective.

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terms, when combined with overcrowding, added to the sentence a surplus of suffering such as to render it incompatible with the Constitution, thus making not the sentence itself but the conditions of detention in open contrast with the Constitution. Although this is the first ruling of its kind, there is a possibility that other courts will follow suit, thus loosening the legislation on the prison system to allow for a reduction in the current level of cell congestion. The scarcity of medical care could also be a useful argument in favor of opening the prison gates to release sick people, in order to avoid the unnecessary suffering that it can cause (Caterini and Gallo, 2023: 188).

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