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IPA - Italian Prisoners abroad

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The issue of foreign national in prison has long been the subject of attention by academics and politicians, attempting on one hand to intellectually frame the phenomenon, whilst delineating its contours, defining its causes and highlighting its peculiarities, and, on the other, identifying the best criminal and penal policy trajectories able to prevent a raising prison population with all the real and perceived related emergencies. However, as stated, the attention to this specific category of particularly vulnerable detainees has witnessed national and international strings of normative instruments (directives, framework decisions, recommendations, minimum rules) aimed at protecting their rights. Not so noticeable has been the awareness disclosed with regard to their foreign nationals who, in all respects, fall within the category "foreign detainees" for the country that holds them. Indeed, criminological studies focussing specifically on this issue are characterised by an alarming paucity. Furthermore, even the academic literature both of empirical and theoretical description has not paid too much attention to national prisoners detained abroad, perhaps because the number of people involved is still far less than that of foreign detainees in their own country.

As can be seen from Table no. 1, the number of Italian prisoners detained abroad over the last three years has declined, mainly distributed in the European Union (76% of the total.)

Table 2 lists countries with more than 50 prisoners of Italian origin, out of a total of 79 in which there are few units. The largest figure is recorded in Germany, followed by Spain, France and Switzerland, countries that have a long history of Italian migration. Latin America is represented by Peru and Brazil and it is easy to imagine how detention in these Countries may be very different from that in European countries, considering the differences in the legal systems and the different, often draconian, prison regimes.

Tab. N. 1 - Italian prisoners in the world by juridical status

	2014				2015				2016			
	Extradition	Pre trial detention	sentenced	Total	Extradition	Pre trial detention	sentenced	Total	Extradition	Pre trial detention	Sentenced	Total
UE	18	2146	461	2625	17	2063	474	2554	25	1979	474	2487
Extra UE	4	132	25	161	2	151	20	173	13	163	26	202
Americas	9	317	164	490	5	286	170	461	24	290	158	472
Mediterran and Mid. East.	3	36	20	59	1	27	14	42	7	24	13	44
Sub Shaarian Countries	-	9	30	12	-	14	1	15	1	16	1	18
Asia e Oceania	-	56	19	75	-	35	8	43	-	47	17	64
Total	34	2696	719	3422	25	2576	687	3288	70	2519	689	3278

Source: Ministry of Foreign Affairs and Interational Cooperation, Statistic Annual Report, 2016 (Authors data processing)

Tab. N. 2 – Countries with more than 50 Italian prisoners

Country	Number of Italian prisoners
UK	52
Peru	56
Brazil	98
Switzerland	153
Belgium	279

France	347
Spain	494
Germany	1070

Source: Ministry of Foreign Affairs and International Cooperation, Statistic Annual Report, 2016 (Authors data processing)

It is worth briefly mentioning that, despite the fact that EU countries provide prisoners with a more or less analogous level of protection of their fundamental rights, nevertheless detention in any country where prisoners are foreign nationals is most certainly not less painful or less alienating even when their country of origin affords full enjoyment of rights to their inmates. At times, individuals residing abroad or simply abroad for business purposes or for holiday can become both the victim of a crime or the instigator, with either one leading to detention. Arrest and imprisonment can occur out of a willful criminal act or cultural insensitivity to local culture, norms and rules. Individuals incarcerated in a country other than theirs are unprepared and can find themselves facing a traumatic and incomprehensible experience compounded by several dimensions such as isolation, limited access, poor diet and unawareness of what is happening due to foreign languages, cultures and regulations.

The situation of Italian citizens detained abroad has been the subject of attention by the NGO *Carcere e Territorio* or ACT (Prison and Community) for a while now. Already in 2012 ACT tackled this issue which gave rise in 2015 to the project better known as IPA – Italian Prisoners Abroad – after having pursued long authorization procedures with the Italian Ministry of Foreign Affairs and the Ministry of Justice, respectively.

For the first time in 2016, IPA received funding from the Valdese Church to assist Italian prisoners abroad. After years of trying to raise awareness from both public and private funding bodies on the necessity to intervene to offer support to Italian nationals who have been held abroad, finally, after a long series of negative outcomes, the Valdese Church eventually considered the project worthy of funding within the frame of actions that the Church itself promotes yearly, thanks to income generated from tax relief revenues, known in Italy as *8xmille* - the eight per thousand is the IRPEF tax portion that the Italian state distributes, based on choices made by tax payers in declarations of income, this being a formal agreement between the state and the religious confessions that have entered into such arrangement.

Benefitting from an open line of working communication with the London-based Prisoners Abroad Association and the EUROPRIS FNP network, ACT has been able to structure a support plan for its fellow citizens detained abroad. The support package includes an information brochure aimed at both the Embassies and the Italian consulates abroad to be utilised if and when necessary, and at the detainees, who were able to contact ACT often through their families residing in Italy.

Since 2015, however, there have been few cases (7 in Spain and one in Colombia).

Alongside direct support actions for prisoners, much of the work was undertaken directly with the aim of supporting the families of those who are incarcerated. It should never be underestimated the hurdles and difficulties experienced by family members of those who are detained in a country other than theirs. Not to mention both the emotional and physical impact that being incarcerated in a foreign penal institution can have on inmates. Being physically removed from close emotional and family links is difficult for all prisoners: in particular, those detained abroad face the daunting situation of often being unable to communicate in a language that is alien to them. Language barriers for foreign inmates can be understood both in literal terms and as the inability to express cultural and social needs.

In addition, the difference between legal systems and sanctioning responses between the country of origin and the country where detention takes place, makes being detained abroad particularly challenging and problematic to handle both for inmates and for their families, all sharing fears of having to deal with particularly difficult and dangerous situations in prison. Moreover, this vision does not differ very much from the truth, if we pose to consider the conditions of detention of some non-European countries where the standards of protection of human rights are particularly limited or even non-existent.

This is not the case, at least on paper, with regards to the European perspective, united by the consideration of all the existing guidelines, minimum rules and agreements between member states, established and accepted in favour of the respect for the human rights of any individual who is detained.

The IPA project, despite its recent activation, has lately put in place a series of actions aimed at fostering the linkage with territorial realities, both involving volunteers and paid staff. All activities were targeted and organised in the country and in the locality of detention of the Italian citizen, in order to maintain a direct and frequent contact with the individual concerned.

It is worth pointing out here that, whether in the case of Italian prisoners detained in any European penal institution, a cognitive visit is conceivable in order to reduce the sense of isolation and abandonment that detainees often experience, for non-European destinations the situation appears to be much more problematic: travel and sustenance costs are often unsustainable, in the absence of budget-specific provisions for a project which at present is almost entirely supported by ACT, with (as it has been said above) just a unilateral third-party funding (that will last for one year) and logistic support.

Notwithstanding this, in 2015, the project co-ordinator was able to embark on a visit to a Spanish Penitentiary Institution where many Italians were held, meeting 15 Italian detainees and gathering their instances and their needs. In addition to the common requests put forward by any prisoner irrespectively of the geographical location of their detention, such as money, legal support through a trusted solicitor, family contacts, general needs of everyday life, what appeared staggering and unique to this group of inmates was the desire to identify and subsequently being able to tell them in their own familiar language, what are the actual genuine possibilities of transfer to Italy, the detention conditions, that they will face when back to their country and, in comparison with the Spanish prospects, what was the best strategy for dealing with the situation.

Some peculiarities of Italian nationals detained should be uncovered here: very seldom Italian nationals detained in a foreign country have express any desire to remain in the Country where they were serving their sentence but rather, they were all in favour of pushing to implement repatriation procedures under the framework decision 909, whenever possible, or the Strasbourg convention or bilateral *ad hoc* agreements.

In fact, findings from a meticulous research endeavour carried out under the STEPS II project by Luisa Ravagnani and two other colleagues from Spain, (Esther Montero Perez de Tudela and from Romania, Ioan Durnescu), had emerged that, for example, Romanian nationals interviewed when detained in Italy and Spain do not want to think of returning to their country of origin to serve their sentence, and indeed, in most instances, they express an opinion contrary to the transfer under FD 909, preferring to stay in Italy or Spain. This attitude, which certainly was not attributable only to the conditions of detention in Romania or to the longest period of time away from the country of origin, was more justified in the knowledge that the sentence could take advantage of the total length of life expectancy not provided by the country of birth. For this reason, having accurate information on the legal system of the Country where foreign

nationals are serving a sentence facing a penalty and on the one where they wish want to relocate becomes an indisputable and primary requirement. This is a need that should find means to be adequately and promptly satisfied. To this end, prison visits were organised such as those carried out in the Spanish Prison, as part of the IPA project

Such visits, made possible by close collaboration with the staff from the Italian Embassy in Madrid, were of particular significance as it was an enabling exercise in identifying certain areas of action which until then had not been taken into account:

- 1) The need to build solid liaison networks with existing NGOs operating in the country of detention so that they can provide logistical support to Italian prisoners upon specific inputs and directives from the IPA project, drawing on territorial resources that are otherwise difficult to reach effectively from another country.
- 2) The need to have access to legal advice about possible and plausible options: transfer to Italy, alternative measures to incarceration in the host country, terms and limits of both possibilities.

This pursuit is not in any way intended as a means to replace or overlap the legal team following the case in the host country, but, rather, the intent here is to afford a supportive environment for any Italian national incarcerated through an accurate representation of what can actually be done from a legal and legalist point of view because often solicitors, while working closely on the case, do not have the time to clearly explain to their clients their defence strategy, how they are implementing it and the reasons why. Often, the linguistic barrier makes it impossible for an accurate and technical dialogue between the parties. Forced to delegate any decision to their legal team because of lack of cultural and legal understanding is perceived by inmates as a very disempowering and almost scary experience, adding concerns and anxiety to an already very challenging experience.

To overcome the apprehension and the uneasiness experienced by Italian citizens detained abroad as the result of an inadequate understanding of what is their predicament, several outputs have been suggested during meetings held within Spanish penal institutions. First of all, the importance of forging strong academic links with local academic institutions whose expertise is in jurisprudence so that detainees can be made aware of their legal rights and can also provide legal training for volunteers who can act as a go between with the penal institution, the detainee and their legal team, was perceived as a sought-after opportunity. Secondly, there have been discussions about the creation of an information brochure specifically targeting

Italian prisoners abroad: such document would be able to summarize the main issues pertaining to the Italian penitentiary system, so that returning to the country of origin is, where possible, a deliberate and well-informed choice for any Italian citizen detained abroad.

It is useful to reiterate here how for the wellbeing of the inmates, relationships with their families in Italy and with their legal team in the country of detention are equally valuable: on the one hand families are experiencing an entirely new, painful and destabilizing experience and often, without knowing the language of the country where their loved ones are detained, they struggling to comprehend the entirety of all the facts relating to their arrest and subsequent. Upon specific request from the detainee's family, prior to obtaining formal consent from the detainee, interacting with the relevant solicitor allows the family to better understand the situation whilst providing them with all the information they require. Likewise, the translation of the legal proceedings against members of their family who are incarcerated, relating to any judicial paper work and court's deliberations, helps them to become aware of the legal procedures affecting their family member. In this way they are able to dissect with greater subjectivity all the information they receive via letter or via telephone thus interpreting legal jargon in a more accessible language. Translations from the most widely used languages (French, English, Spanish and German) are carried out effortlessly by project operators while with regards to others less known languages, unpaid external collaborators are involved.. Likewise, local language-based communications that can be of assistance for the support of the recruited person are handled by project operators and, if necessary, by these unpaid external collaborators.

3) The Post-Penalty Reintegration phase becomes one of the most important activities for detainees incarcerated in a foreign country. Paradoxically, detainees who are due to still serve a fraction of their sentence in Italy, being this a custodial sentence or any alternative measure to detention, fall within the existing circuits of assistance for detainees in Italy, both foreign and non-Italian, and thus have a greater chance of seeing their own needs intercepted and charged. Those who come from free, however, struggle to find support, not knowing the resources available on the territory. For this reason, it is crucial to have an information and support action for the Italians who have experienced the foreign custody experience in order to try to prevent them from returning to an Italian institution shortly afterwards.

Obviously, being a relatively new project for IPA, the primary difficulty is to find larger and ongoing sources of funding sources that will allow the permanent implementation of all the

activities listed in the information brochure for prisoners. Nevertheless, the possibility of being linked to other European realities that, in the individual countries, offer the same kind of assistance, allows us to enjoy a privileged channel of good practice for managing such pressing issues. In addition, contact with many foreign universities provides access to a wealth of legal information, which is hardly available online.