



*La giustizia tra la legge e la forza di Cesare Maccari*

**A.D.M.I.**

**WOMEN AND GIRLS  
IN DETENTION**

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Detention of women leads to the alienation of their identity and affection.

This is because prison is an entirely male institution, with rigid, pre-set rules designed to contain aggression and violence, but no place for the emotional dimension, which in contrast is part of the communicational experience of every woman.

In addition, following arrest and during detention, women (who account for just over 4% of the total prison population in Italy) are forcibly separated from any minors in their care, for whom they are often the only ones responsible, making detention even more onerous.

Detention has a negative effect on the well-being of minors who are separated from their mothers, interrupting the relationship and cutting children off from the family network and environment.

The child's overall psycho-physical development can be damaged both at the moment of the arrest and when the child is placed in custody together with the mother, because the loss of liberty causes feelings of inadequacy in the woman and undermines her parental authority with respect to the child.

Further problems arise when the child reaches the age limit for remaining with the mother in custody and must once more be separated from her. For this reason the needs of minors need to be carefully considered, taking account of their opinion and adequately informing them of what is happening to the adults in question.

Detention often completely annuls the right to co-parenting and affection, which is the right of both the parents and the children.

This problem affects above all foreign female detainees and their children, as they are often not legally resident, with family networks that are absent or dysfunctional.

Italian legislation (enshrined in Law 62 of 21.4.2011) is highly specific in this regard. The law prohibits pre-trial custody of *pregnant women or women with children under*

*the age of six living with her*, unless there are exceptional circumstances that require detention (article 275 co 4 c.p.p.).

In this case the judge can however order detention in an ICAM, a “mitigated custody” institution for imprisoned mothers (article 285 bis c.p.p.). ICAMs tend to be situated outside the walls of a conventional prison: the security apparatus -such as bars on the windows- is of the type seen in civil dwellings; the prison officers do not wear uniforms and are assisted by a series of other operators including teachers, child-minders and health personnel who can create an environment that is adapted to the presence of mothers with children.

The ICAMs are supported by a network of local services and volunteers. They have communal kitchens, laundries and dedicated spaces -both indoors and outdoors- for the children’s recreation and the activities of the mothers.

They are conceived in accordance with a community model, so as to enable the full recovery of the parental functions of care and supervision of the growth of the children.

This experience has been pioneered in Italy, and is a test-base for the development of other initiatives in Europe.

When the less severe option of house arrest can be applied, the judge can choose between the home and a place of care, or even sheltered housing, if available (article 284 c.p.p.).

Once the sentence appeals process has run its course and the sentence has become definitive, its execution can be postponed for pregnant women, until the end *of the child’s first year of life* (article 146 c.p.).

When the sentence is executed the women are housed in special detention facilities, or in special sections of other structures (article 11 O.P.).

Italy has five exclusively female institutions (Pozzuoli, Rebibbia Femminile, Empoli, Venezia Giudecca and Trani), and there are 49 female wings in other prisons.

Mothers are allowed to keep their children with them until the age of three, although very few mothers actually decide to do so: as of 9.3.2016 there were only 42 women in Italian prisons together with 45 small children, out of a total of 2,170 women prisoners, many of whom were mothers.

802 women prisoners are foreign nationals.

Articles 11 O.P. and 19 of presidential decree 230/2000 expressly stipulate that obstetric wards and nurseries must be organised for the care and assistance of children in prison; that the rooms where they are housed are not locked, in order to enable them to move around within the ward or section; and that age-appropriate recreational and educational activities are provided.

In addition, with the consent of the mother, the children can be taken by social workers to outside nurseries and infants’ schools.

In cases where the children are not housed within the structure, family meetings play a key role in the management of detainees’ affective relations.

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**Detenute madri con figli al seguito presenti negli istituti penitenziari italiani distinte per nazionalità**

Regione di detenzione	Istituto di detenzione	Italiane		Straniere		TOTALE	
		presenti	figli al seguito	presenti	figli al seguito	presenti	figli al seguito
CAMPANIA	AVELLINO "Antimo Graziano" Bellizzi CC	2	2	1	1	3	3
LAZIO	ROMA "Germana Stefanini" Rebibbia Femminile CCF	4	4	6	6	10	10
LOMBARDIA	COMO CC	1	1	1	1	2	2
LOMBARDIA	MILANO "Francesco di Cataldo" San Vittore CCF	1	1	9	10	10	11
PIEMONTE	TORINO G. Lorusso/L. Cotugno" Le Vallette CC	4	5	1	1	5	6
SARDEGNA	SASSARI "Giovanni Bacchiddu" CC	1	1	1	1	2	2
TOSCANA	FIRENZE "Sollicciano" CC	1	1	/	/	1	1
VENETO	VENEZIA "Giudecca" CRF	2	3	3	3	5	6
<b>Totale</b>		<b>16</b>	<b>18</b>	<b>22</b>	<b>23</b>	<b>38</b>	<b>41</b>

However there are many mothers who forego these meetings, either because the minor is not able to manage their feelings of anger and anxiety arising from the imprisonment of the parent, or because the new separation at the end of the visit is too painful for the child.

On the 21<sup>st</sup> of March 2014 the Italian Charter of the Children of Parent Detainees (*Carta dei Figli dei genitori detenuti*) was signed.

Unique in Europe, the document affirms the fundamental 'rights of minors' with parents held in custody (more than 100,000 in Italy).

The Charter commits the prison system to creating a suitable environment for minors and sets up a permanent committee for monitoring the implementation of its principles: a commitment to create a truly welcoming environment (which includes the choice of furnishings, games-rooms, green areas for use by mothers and children) while respecting the need for security and paying closer attention to the training of prison personnel.

Because of the highlighted problems, there is also a need to introduce alternative measures to prison for mothers.

A series of alternative measures and benefits enabling mothers of children below 10 years of age to serve their sentence outside the prison structure are already envisaged. These apply in cases where the sentence is less than four years or where fewer than four years remain to be served (article 47 ter O.P.); with longer sentences, the time can be served outside prison after at least a third of the sentence, or 15 years in the case of a life sentence (article 47 quinquies O.P.).

In both cases this right (which also applies to the father if the mother is dead or unable to care for her offspring) is subject to the approval of the Supervising Magistrate (*Magistrato di Sorveglianza*), who must take account of the risk to society that the convict poses.

Article 47 quinquies, comma 1 bis O.P. stipulates that in order for mothers convicted of more serious crimes to qualify for the above-mentioned benefits, the minimum period of detention can be served in an ICAM, and if there is deemed to be no flight risk, under house arrest, in a place of care or treatment, or in sheltered housing.

Where other alternative measures are not accessible, arrangements can be made for the mother to care for her children outside prison, and the right to visit sick or handicapped children, should they be in imminent danger of death or serious health problems, is guaranteed.

There is also the possibility of accompanying the children during specialist medical appointments (article 21 bis and ter O.P), although again, this is subject to the approval of the Supervising Magistrate, who must assess the progress made by the prisoner in terms of her rehabilitation and weigh the risk of her reoffending.

Currently however, women convicted of more serious crimes listed under article 4 bis O.P. (such as terrorism, organised crime, etc.) are excluded from the measures and benefits under article 21 bis and ter O.P. since they cannot care for their children outside prison, nor can they access the “mitigated custody” institutions if they have not been admitted to alternative measures.

This is a system that respects the human rights of incarcerated women, as affirmed on an international level by the treaties of the United Nations, in particular the Bangkok Rules and the principles concerning the protection of minors established by the “Convention on the Rights of the Child”.

These treaties prohibit discrimination and establish the right to balanced development.

The uphold the principle that the ‘interests of the child’ must be paramount in every decision, law, judicial decree and initiative concerning the provision of social care whether public or private.

In 2011, the concluding remarks by the UN Committee responsible for monitoring the application of the CRC praised the new legislation in the civil, criminal and penal sectors that directly affect women and minors.

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