



*Garante Nazionale
dei diritti delle persone
private della libertà personale*

Women in Prison: Italy

Analysis from the National Preventive Mechanism

| August 2024



association pour la prévention de la torture
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Italy



UNCAT Ratification	OPCAT Ratification
12 January 1989	3 April 2013
National Preventive Mechanism (NPM)	
<u>National Guarantor for the Rights of Persons Deprived of Liberty</u>	
NPM legal framework	NPM operationalisation
<u>Law No. 10 of 21 February 2014</u>	Since March 2016
NPM structure	NPM composition ¹
New specialised and independent institution	21 people (10 women): Board composed of two members (1 woman); 1 Senior executive (woman); 18 staff (8 women)

I. Facts and Figures

Prison population	Women in prison - Characteristics	Prisons for women	Prison staff
Total prison population	Women with children in prison	Total number of women's prisons	Prison staff (total)
61,480	23	49	39,907
Women in prison (total)	Foreign women	Women only prison	Women staff in women's prisons ³
2,682 4.4%	764	6	17.8%
	Source: Italian Penitentiary Administration, 30 June 2024		
	Women with mental health conditions ²	Mixed prisons with special unit for women	
	17	43	
	Women with disabilities		
	1		
	Suicide in prison committed by women ⁴		
	3		
Source: Italian Penitentiary Administration, 30 June 2024 ⁵	Source: Italian Penitentiary Administration, 2023	Source: Italian Penitentiary Administration, 2023	Source: Italian Penitentiary Administration, November 2023

¹ As of 26 August 2024.

² As per 31 March 2023, there were 17 women detained in the 6 specialised prison units for the treatment of female prisoners suffering from mental disorders.

³ As of 30 November 2023, women prison staff were as following: 13.3% of the penitentiary police corps (staff of the Ministry of Justice, specialised corps independent and separated from State Police); and 50% of other staff such as rehabilitation officers, prison governors, administrative staff, and cultural mediators.

⁴ In 2023, 3 out of 68 suicides in prison establishment were committed by women prisoners (2 Italian nationals and 1 foreign national).

⁵ https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST1410631

II. Recommendations

Solitary confinement, isolation

- + Solitary confinement is to be considered as a last resort, and imposed only where others have repeatedly proven to be ineffective in restoring normal behaviour.
- + Interruptions of at least fifteen to twenty days between two successive confinement measures should be provided, in place of the minimum five-day interruption as for the Prison Administration regulations.
- + Clarification should be sought on the observed practice of removing the television set from the room where disciplinary or judicial solitary confinement is enforced.⁶

Access to healthcare

- + The prison administration should adhere to the United Nations Bangkok Rules⁷, which emphasize the priority of providing gender-oriented intake and care services. This is in line with the principle of non-discrimination in the treatment of detained individuals.

Life in prison : regime and activities

- + Women in prison should receive gender equal and non-discriminatory treatment, in accordance with Rule 2 of the Nelson Mandela Rules. In women sections within facilities predominantly housing male inmates, it is advised that cultural, social, work-related, recreational, and sports activities be provided, consistent with what is outlined for all detainees.

Women with children in prison

- + Immediately restore the service of childcare providers in the "prison nursery" and ensure the service throughout the entire day.
- + Establish a stable group of prison police officers who, adequately trained, are dedicated to the security of the nursery, taking into full consideration the specific nature of this unit within the prison facility.
- + Ensure that women accommodated in the "prison nursery" have the opportunity to access rehabilitation programmes (educational, cultural, social, and occupational) with the support of all designated professional figures, as established for women detained in other prison wards.

III. Detention Issues

Body searches

a. Legal and regulatory framework

In Italy, prisoner's body searches are regulated by Article 34 of the prison law, while the modalities to

⁶ Additional recommendations on the topic of solitary confinement available at: <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/d7716fed68164b657b6bb0a41db176ea.pdf>, pp.101-103.

⁷ «Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners», Rule 10.1.

search a prisoner are explicated in Article 74 of the prison enforcement regulation.⁸ Article 34 of the prison law provides that prisoners may be subjected to a personal search for security reasons. The second paragraph establishes that it should be carried out with full respect for the individual's personality. A detainee who believes to have suffered a serious violation of their dignity due to the methodology applied can invoke the judicial remedy provided by Article 35-bis of the prison law.

One point of concern is related to the need of a judicial warrant – which is lacking – and the obligation to provide justification for "security reasons". Both aspects have not only granted the authority to conduct searches entirely at the discretion of the prison authorities; it has also raised constitutional concerns, specifically with respect to the absence of a requirement for the prison administration to provide a reasoned document on the grounds and methods of the search within 48 hours for judicial validation.⁹

However, in the absence of legislative interventions to constitutionally adjust Article 34 of the prison law, the circular letter of the prison administration department No. 3542/5992 of 2001 provided operational directives reaffirming the obligation of justification, albeit with less specificity than required by the higher Court, essentially reducing it to a "mere recording of data".

Furthermore, in line with the second paragraph of Article 34, Article 74 of the prison enforcement regulation intervenes to ensure the personal dignity of the person being searched and regulate the modalities to implement a body search. When a body search cannot be achieved through other means of control, such as a metal detector, it stipulates that the operations should be carried out by individuals of the same gender as the searched person, in the presence of a prison police officer holding higher rank.

The ministerial circular also addressed strip searches. It stated that strip searches without performing squats should also be considered as a last resort, limited to the strict necessary, both in terms of frequency and the availability of alternative control tools. However, its prescriptions are not sufficient to guarantee respect for the dignity of individuals subjected to this form of search. In fact, in evaluating the legitimacy of this measure, not only the criterion of internal security of the institution should be considered, but also the appropriateness and proportionality of the act, and the principle of reasonable necessity be applied on an individual basis.

Moreover, the circular letter specified that body searches can be ordinary or extraordinary. Ordinary searches, in addition to those carried out at arrival to the institution from freedom and during transfers to another institution, include those performed in situations established by internal regulations, which might allow searches in numerous other situations, including before and after meetings with family members, with prison staff, with judges, and with legal advisers; before and after access to workplaces, educational, cultural, recreational, sports, or representative activities; before and after yard exercises; upon exiting or returning to different sections of the prison; and in any other case determined by suspicion of possession of prohibited items. Extraordinary searches, on the other hand, encompass all searches performed outside the mentioned cases.

b. In practice

While the regulation of body searches meets the recognized need for the administration to resort to such measures without specific formalities, it does not wholly eliminate the risk of arbitrary or oppressive behaviour or systematic and degrading body searches.

⁸ Presidential Decree No. 230, 30 June 2000.

⁹ The Italian Constitutional Court has strongly asserted that the power to conduct searches cannot be exercised arbitrarily by the prison administration or police, and a constitutional provision on body searches must ensure effective protection of the rights of detainees by subjecting body coercion measures to judicial scrutiny. This scrutiny requires documenting the search, especially when using measures beyond the ordinary or involving inspection.

During its monitoring activity, the National Guarantor observed that body strip searches were a routine practice in some prison institutions and recommended to fully comply with the 2001 prison department's circular note by conducting them on an individual basis (therefore, not systematic) and only when there are no other alternative means of control.¹⁰

Moreover, the prison law is still very unclear in establishing what is intended for body search for security reasons and in regulating body searches with specific procedures and protocols which are lacking in its provisions. This state of the art has generated confusion in procedures which in many cases are still far from the implementation of international standards and ruling, for example as regards more intrusive body searches.

In 2021, the National Guarantor intervened on the issue of extraordinary general searches, with the Recommendation note addressed to the Minister of Justice after serious incidents in a prison. Said recommendations¹¹ emphasized the need for a prior and final oversight over such operations, both to safeguard those conducting the search from undue allegations and to prevent any impunity.

From the point of view of any difference in conducting a body search on a man or a woman prisoner, there are no gender-sensitive protocols implemented (LGBTIQ+ persons included).

Intimate body searches

In the prison law and in other legislative source, there is no reference to the prohibition of conducting intimate body searches by correctional staff nor in the necessity to implement them there is an established and specific protocol on who is going to conduct intimate body searches, and if they are adequately trained.

Solitary confinement, isolation

In Italy, solitary confinement is not to be considered as a systematic form of custody in prisons, but an exceptional detention measure to be adopted exclusively in the presence of specific circumstances.

Article 33 of the Italian prison law provides that solitary confinement may be ordered as a disciplinary sanction, for health and judicial reasons. It further states that, during the confinement, there should be no limitations on normal living conditions, except those functional to the reasons that led to it (like separated yards and restricted exercise time). Solitary confinement does not preclude the exercise of the right to receive in-person visits with authorized individuals.

The application of solitary confinement is regulated by Article 73 of the prison enforcement regulation, which affirms the safeguards and limits relevant to the implementation of the measure. This article recommends particular attention to the isolation situation of detained individuals (men and women), prescribing adequate daily on-site checks by both healthcare professionals and prison personnel.

Solitary confinement for health reasons must be carried out in suitable rooms proximate to medical treatment areas. Disciplinary isolation is executed in the cell unless the inmate's behaviour poses a threat to the order and discipline of the prison ward. It is imposed for a maximum period of 15 consecutive days and is suspended for pregnant women, women who have recently given birth for up to six months, and mothers breastfeeding their infants for up to one year.

Regarding this type of isolation, the Supreme Court has considered a maximum limit of 15 days, a constant and daily medical supervision be guaranteed, and a prohibition on continuous application with minimal interruptions of one day, as violating the constitutional principle prohibiting inhuman

¹⁰<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/d7716fed68164b657b6bb0a41db176ea.pdf>, p.105.

¹¹<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/fea9de4f98e533cb98332df08dc486af.pdf>

treatments.

The prison administration has taken heed of the Supreme Court's guidance and issued the circular letter 160093 of 6 May 2015, stipulating that, when the disciplinary sanction involves isolation for a period exceeding 15 days, the isolation must be interrupted for at least 5 days in between.

Lastly, with the circular letter 3693/6143 of 18 July 2022, the prison administration confirms the exclusive use of solitary confinement sections for the three aforementioned types of isolation. Moreover, it emphasizes the necessary distinction from sections provided in Article 32 of the presidential decree 230/2000; it prefers identifying separate rooms for health isolation; it confirms the need to be compliant to the European Prison Rules, especially regarding disciplinary isolation, and highlights recording obligations for the prison administration in terms of permanence in isolation (duration of the measure), in order to facilitate the supervision of entry and discharge dates.

A different perspective has been proposed for the so-called voluntary isolation, resulting from the inmate's free choice to be separated from the prison community. This type of isolation should never take the forms outlined in Article 33 of the penitentiary law, as it is already excluded by the fact that the same article mandatorily refers to the three typologies of isolation mentioned above.

Isolation with a protective function is effectively inadmissible, even if requested by the inmate. This unregulated measure, frequently applied in practice, aims to prevent aggression from other inmates towards the person requesting it. The prison administration ensures the personal safety of the inmate not through isolation for personal protection but through the measure of transferring the individual to suitable institutions or sections, as provided in such cases by Article 14 of the penitentiary law.¹²

Very often cells used for disciplinary confinement, for instance, do not meet national and international standards and, in many cases, isolation is carried out in unfurnished cells. Facilities are frequently inadequate, narrow, and poorly illuminated.

Life in prison: regime and activities

Despite Article 19 of the Italian penitentiary law stating that «through the planning of specific initiatives, equal access for incarcerated and interned women to cultural and professional training is ensured», education in detention poses a significant concern as women prisoners face unequal educational opportunities compared to their male counterparts.

In mixed prisons, for instance, access to school courses for women prisoners is considerably restricted, primarily due to various factors. One such factor is the limited number of women prisoners, making it challenging to organize educational courses and, in some cases, it may even be impossible due to insufficient student enrolment (in case of a section in male institutions).

The Ministry of Education's data, which the National Guarantor included in its [2023 Report to Parliament](#), explain that in 2022-2023, literacy teaching has been addressed to 192 women (141 foreign nationals) and to 2,445 men (2,191 foreign nationals) with a rate of 7.28% women prisoners attending literacy courses. Primary school courses were followed by 295 women prisoners (99 foreign nationals) against 3,590 men (1,484 foreign nationals) with a slightly higher rate of 7.59%. In secondary school courses, 145 women (43 foreign nationals) enrolled in the same tuition period 2022-2023, while 5,468 male prisoners (914 foreign nationals) attended school courses at this level. The percentage sharply declines to 2.58%.

¹² «The assignment of inmates and internees, for whom there may be fears of aggression or oppression from the remaining inmate population solely based on gender identity or sexual orientation, shall take place, for homogeneous categories, in sections distributed uniformly nationwide, with the prior consent of the individuals involved. In case of refusal, they will be assigned to regular sections. Participation in treatment activities is guaranteed in any case, potentially alongside the remaining inmate population» (unofficial translation).

IV. Women in special situations of vulnerability

LGBTIQ+ women

In the current penitentiary legislation, there is typically a strong difficulty in granting transgender individuals access to treatment programmes and institutional activities, and there is frequently a lack of provision for an adequate healthcare service tailored to the specificity of their health needs. These challenges also extend to placement systems, ranging from dedicated units, sometimes within male or women institutions, to placement in precautionary sections.

A predominantly male prison system characterized by a marked binary distinction between genders, coupled with the relatively low numbers of transgender individuals in detention, results in them being treated as "exceptions" within the penal system.

This kind of perception should not be understood in terms of having the opportunity to access a privileged condition. Instead, it often means facing or experiencing forms of multiple stigmatization and marginalization, encountering greater challenges in exercising their rights, and overall enduring a more burdensome incarceration. The social marginalization experienced in prison frequently mirrors the patterns of marginalization already encountered outside, and to which individuals will likely return once their sentence is served.

The legal, jurisprudential, and research interest in the impact of detention on the life paths of transgender individuals has only recently developed, and there is still much work to be done to fully affirm their rights and adequately address their expressed needs. Closing the gap in specific training for inclusion, utilizing an intersectional approach that «recognizes the interaction between gender identity, social class, and ethnic affiliation» (Mantovan, Vianello, 2015), appears to be the main challenge that the current prison system faces in bridging the divide between equality and equal access to rights in prison and the actual detention conditions experienced by transgender inmates¹³.

V. Alternatives to detention

In the regulatory and legislative framework of the execution of sentences in Italy, women are eligible for all alternative measures to criminal sanctions and measures, while in pre-trial detention, and/or serving a sentence. These include restorative justice (various practices up to offender-victim mediation), probation, house arrest and home detention, community service, suspension of the sentence enforcement, and other alternatives to incarceration such as diversion.

Article 47^{ter} of the penitentiary law specifically refers to home detention for women in situations of vulnerability:

«1. The imprisonment sentence, not exceeding four years, even if it constitutes the residual part of a greater punishment, as well as the arrest execution order, can be served at one's own home or another place of private residence or in a public place for care, assistance, or accommodation or, in the case referred to in letter a), in protected family homes when it concerns: a) a pregnant woman or a mother with a child under the age of ten living with her».

¹³ Daniela Ronco, *Diritti LGBTIQ+ in carcere: la difficile affermazione dell'identità di genere tra norme, pratiche e spazi del penitenziario*, in "Antigone", 2023, page 55. On solitary confinement and isolation of LGBTIQ+ persons, see also the NPM recommendations in *Norms and Normativity*: <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/d7716fed68164b657b6bb0a41db176ea.pdf>, page 45.

A draft law is currently under discussion at the Parliament that would introduce a discretionary rule regarding the imprisonment of mothers with children up to one year old and pregnant women. This rule would apply in cases where the offenders are deemed to have an exceptionally high likelihood of reoffending and are a significant threat for the community. The discretionary rule would replace the current obligation to defer imprisonment in the cases considered.¹⁴ Essentially, if delaying imprisonment is not feasible due to the exceptional risk of reoffending and danger posed by the offender, the only alternative to prison for mothers with children up to one year and pregnant women would be their placement in the dedicated ICAM facilities, or dedicated sections inside women's prisons. ICAMs are specialised centers separate from regular prisons but still very similar in nature. The NPM submitted [observations](#) to the Parliament Selected Committee on these matters:¹⁵

- The dedicated facilities are insufficient in availability of places (there are four structures: one ICAM institution and three ICAM prison sections in three women prisons). The penitentiary administration should resort to other facilities which could be available on the territory, such as the protected family homes, established in Law No. 62/2011.
- The proposed amendment under consideration may not comprehensively resolve the issue of children being present in penitentiary institutions. This situation is in conflict with national and especially international principles concerning the protection of children, with particular regard to the safeguards provided by various documents, including the 1989 UN Convention on the Rights of the Child, which requires that the "best interests of the child" be duly considered in every judicial decision involving them in any way or for any reason.

VI. Other relevant NPM information on women in prison

- + [Annual reports](#)
- + [Norms and Normativity: Standards for the enforcement of adult sentencing. Collection of recommendations 2016-2017](#)

This report is part of the Global NPM report on Women in Prison.
Access the full report here: www.apr.ch/global-report/

¹⁴ Or, in alternative, to execute the sentence under home detention (para 1^{ter}, art. 47^{ter} of the prison law).

¹⁵ <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/f699a181b019959e28f9c1ed44b6a5d8.pdf>