

The digital Resurgence of prisons

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Abstract

The aim of my research is first of all to analyze the importance within the prison reality of the right to affectivity and sexuality of prisoners, to be understood as a set of human and personal relationships intertwined with external figures, family members but also educators, psychologists, religious and school and university teachers. The meeting place between inmates and society can be the prison, but also the extra-murricular environment, since this possibility of exchange with the outside world is guaranteed through the important institutes of interviews with family members (art. 18, Op.) and prize permits (art. 30, ter Op.) in order to cultivate effective, cultural or work interests. The institutes are only a partial response to the need for prisoners to continue to have affective relationships, including sexual relationships, which are only used by a limited number of convicts. For the rest, there is a great legislative silence on the question of prison affectivity, which satisfies the demand for harsher sentences by criminal populism. This issue intersects with the right to information and communication in prison or access to the Internet because it is a useful tool for fulfilling the re-educational function of the penalty. It is a cross-border issue which includes supranational systems and the case law of the Strasbourg Court and is linked to the prohibition of inhuman and degrading treatment. The right to access the Internet, if it is not a fundamental right of the person, necessarily relates to the re-educational penalty and treatment in accordance with human dignity. Restrictions on access are not placed on persons as prisoners but would be necessary to avoid bad use of the Internet. From the judgment *Kalda v. Estonia*, Second Chamber, 19 January 2016 (Rec. 17429/10), there is no real right for prisoners to access the Internet, but rather it is "perceived" as a right composed of restrictions placed on the prisoner, on access to some sites, rather than others, to carry out regulatory research. The feeble justification in support of the Internet has taken into account limitations due to security reasons, but from a purely securitarian point of view, even reading a paper newspaper could jeopardise the internal security of the prison. At the legislative level, the first circular of the Department of Prison Administration implementing the principle of information and communication which introduced innovations on the use of personal computers in prisons was GDap 0366755 of 2.11.2015, entitled "Possibility of Internet access by prisoners". The limitations introduced are so specific that in order to ensure "the whole" prison population a plan to expand the use of Skype and telephone calls, to meet the need for all prisoners to have the right to be constantly informed about the state of health of their loved ones, we will have to wait for the Covid-19 pandemic. In summary, one can see a watermarked right to access the Internet, even though this right is very relative and subject to numerous limitations. With the spread of Covid-19, the precautionary suspension of interviews with family members, premium permits and the semi-freedom regime, which was followed by the interruption of school and university activities within prisons, risked, in a situation of health and social emergency, to further aggravate the precariousness of the Italian prison system. Fear of contagion, associated with miscommunication - which tended to present the measures that were about to be adopted as totally preclusive of any possibility of contact with the outside world or continuation of the paths taken -, has acted as a detonator within the prison population, causing protests and in some institutions even deaths. After calming the riots and calming the souls of the inmates, who in fact felt totally segregated, an attempt was made to maintain valuable contacts with family members and to provide a continuity of education through the increase in telephone contacts and the use of video calls. With the health emergency, the same positive actions aimed at ensuring the education of prisoners must be supported by technology, the necessary equipment, technical staff trained in new technologies and a budget dedicated to the purchase of the most suitable tools.

While the inadequacy of the IT infrastructure to cover the vast prison world has been demonstrated, efforts must be made to prevent virtual teaching from coming into conflict with video calls, as it has only recently become an indispensable and auxiliary tool for talks between prisoners and their families via Skype. The right to education is inevitably subordinate to the right to affectivity, so the necessary way must be sought to combine the two rights linked to the restricted rather than making them optional. The second decision of the

Court of Strasbourg, *Jankovskis v. Lithuania*, Fourth Chamber, 17 January 2017 (Rec. 21575/08), unlike the case cited above *Kalda*, does not refer to re-education but to prison education. The crux of the matter is not so much access to the Internet as the right to information and university education. The Court, as in the previous case, recognizes that the Internet must increasingly be understood as a right and States must commit themselves to public policies aimed at achieving universal access through the Internet. The pandemic has made it possible to show the importance of distance learning as a means of supporting, if not even replacing traditional distance learning in person. This was done with a view to providing an on-demand service, i.e. creating personalised routes for the individual prisoner. When the emergency phase will end, it will be essential to preserve if not enhance the technological tools to maintain emotional contacts with distant relatives, increasing telephone interviews, making them daily rather than weekly and enhancing them, where possible, with interviews via Skype. The target audience will undoubtedly have to be made up of all prisoners, regardless of the title of the crime or the circuit to which they belong in order to access specific sites. The recognition of the Internet as a right may subsequently be restricted in the face of certain offences, but this is diametrically opposed to the ban on all access to the Internet. The difficulty or even in many cases the impossibility of access lies in the inertia of the legislator. As a result of the coronavirus, it will be essential to take advantage of the spread of the IT tool to implement the treatment possibilities already provided for in our system, such as the study or professionalization of the work of prisoners.