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foster Inmates’ Legal Capability?  
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# Does the “Open- Cell Regime” foster Inmates’ Legal Capability? Evidence from two Italian Prisons

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## Abstract

This study is a first attempt to map non-criminal legal needs of prisoners by means of a peer-setting survey. The investigation has been carried out in 2014 in two Italian prisons. Evidence shows that prisoners’ legal needs are mainly related to family law matters, property law issues and administrative procedures, including release and renewal of documents. We test the general hypothesis according to which imprisonment by itself represents a recurrent cause to give up trying to solve legal problems. We focus, in particular, on the introduction of the *open-cell regime* to identify the effects of isolation due to imprisonment on the frequency of problem resolution. We also investigate how inmates’ specific characteristics (being a foreigner or waiting for a first-instance judgment), on the one hand, and prison-specific characteristics, on the other hand, affect the capacity of prisoners to manage their pending legal issues (legal capability). This contributes to debate about detention conditions as an important part of European Union justice policy.

*JEL classification:* K41.

*Key-words:* Access to justice, legal needs, prison.

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## 1. Introduction

According to the 2019-2024 Strategic Agenda for the European Union<sup>1</sup> (EU, hereafter), the EU is committed to improving judicial cooperation in criminal matters by fully applying the principle of mutual recognition of judgments and judicial decisions. Case-law of the EU Court of Justice shows that poor *prison conditions* represent a relevant obstacle to mutual recognition.<sup>2</sup> In this spirit, the Finnish Presidency invited the Member States to continue the discussion on detention and its alternatives as an important part of the EU justice policy.<sup>3</sup> In the EU-level discussions regarding detention<sup>4</sup>, it clearly emerges that poor prison conditions not only hinder cooperation and are contrary to the core value of the EU, but are also linked to ineffective social rehabilitation of inmates and their recidivism (Drago et al. 2011; Mastrobuoni and Terlizzese, 2014; Andersen, 2015), and even radicalization (Mulcahy, 2013).

Although the European public opinion almost completely pushes back any discussion about potential social benefits (monetary and non-monetary) of alternatives to detention and “softer” detention regimes where inmates can live, socialize, and work almost like common citizens (including Swedish, Dutch, and Finnish models of “open prisons”)<sup>5</sup>, both scholars and policy makers are aware of the negative effects of prison overcrowding and the loss of individual and social capabilities for inmates related to poor prison conditions, including the lack of proper social, relational, and rehabilitative activities<sup>6</sup>.

In this framework, mapping legal needs and the legal capability of prison inmates and studying how inmates manage their non-criminal legal issues depending on different prison regimes can contribute to the debate about detention and access to justice for inmates.

The debate about access to justice and prison typically focuses on issues related to the right of defense and associated legal tools, including legal aid.<sup>7</sup> When, instead, access to justice and legal capability concerns ordinary people, the debate usually refers to the satisfaction of every-day legal needs by institutional means.<sup>8</sup>

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<sup>1</sup> <https://www.consilium.europa.eu/en/eu-strategic-agenda-2019-2024/>

<sup>2</sup> The case-law C-404/15, 659/15 PPU, Aranyosi and Căldăraru states that a Member State transferring a suspect or sentenced person to the State issuing a European Arrest Warrant must verify the detention conditions in the issuing country: When there are strong indications that detention conditions in the issuing Member State infringe Article 4 of the Charter of Fundamental Rights of the EU (corresponding to art. 3 of the European Convention of the Human Rights prohibiting torture or inhuman and degrading treatments), the executing judicial authority must refuse surrender of the person against whom a European arrest warrant is issued. Here, we also recall the ECHR case of *Torreggiani and Others vs Italy* (43517/09 (ECHR, 08 January 2013) stated that poor detention conditions, and in particular, incarceration in overcrowded prisons represent a violation of article 3 of the European Convention of the Human Rights.

<sup>3</sup> The Finnish Presidency during an informal meeting of Justice and Home Affairs Ministers, 18-19 July 2019, Helsinki Working session II of Justice Ministers on 19 July 2019: “Future of Justice: Detention and its Alternatives”.

<sup>4</sup> See the Hague Program 2004 (OJ C 53, 3.3.2005, pp. 1–14.), the Stockholm Programme 2009 (OJ C 115, 4.5.2010, pp. 1–38), the Green Paper on “The application of EU criminal justice legislation in the field of detention” (COM(2011) 327 final), the European Parliament Resolution A8-0251/2017 on prison systems and conditions.

<sup>5</sup> Comments to the online article are just an example: <https://www.debatingeurope.eu/2019/08/06/should-we-stop-sending-so-many-people-to-prison/#.XV-rVS2B3jB>. See also Doran Larson on GLOBAL (Sept. 24, 2013) “Why Scandinavian Prisons Are Superior ‘Open’ prisons, in which detainees are allowed to live like regular citizens, should be a model for the U.S.”.

<sup>6</sup> See Andersen (2013); Musa and Mdahab (2015) and several contributions in Condry and Sharff Smith (2013).

<sup>7</sup> See Varano and De Luca (2007); Mattei (2006).

<sup>8</sup> See, among others, Cappelletti et al. (1979); Rhode(2004); UNDP (2004).

The wide range of access-to-justice topics that are sensitive for common people in Europe (CEPEJ 2014 and FRA, 2011), the United States (U.S. Dep. of Justice, 2013), Canada (CFCJ, 2012) and Australia (AAGD, 2014) includes the need of prompt, effective, and affordable legal remedies, the suitability of alternative dispute resolution mechanisms especially in specific legal areas like family and commercial law and the adoption of simple and accessible administrative procedures.<sup>9</sup>

On the other hand, in the literature about access to justice, a particularly relevant gap concerns the legal need of prisoners. Inmates are in the paradoxical position of being within the (criminal) justice system since into custody (they either have a lawyer who looks after their case, or had one before being definitely convicted, they are in touch with the surveillance judge<sup>10</sup> or, sometimes, with the public prosecutor or the investigating magistrate, they are exposed to judicial legal language and procedures, etc.). Nevertheless, because of the restrictions on freedom, prisoners face relevant limitations in their actual legal capability and obstacles to access justice for issues other than their criminal case.<sup>11</sup>

Inaccessibility to rights and legal remedies becomes an ancillary penalty that, though not prescribed by the law, actually increases the afflicting dimension of imprisonment and further worsens the every-day-life in jail. This represents a serious problem of fairness and equity, but also risks frustrating the rehabilitation purposes of punishment.<sup>12</sup>

Although the overall imprisonment rate in Europe has continued to fall starting from 2012 (from 125.6 prisoners per 100,000 inhabitants in 2012 to 102.5 inmates per 100,000 inhabitants in 2018), some countries including Italy, shows an increasing trend from 2014 (+7.5% only in the biennium 2016-2018). In addition, Italy deals with the long-standing problem of overcrowding (in 2018, on average, in Europe, overall 91.4 of every 100 available places in prisons were occupied, in Italy 115.0; in 2014, when our questionnaires have been administered 105.6).<sup>13</sup>

For all these reasons and given the impressive number of inmates currently detained in Italian prisons<sup>14</sup>, investigating the access-to-justice problems of prisoners becomes peremptory. The topic is sensitive also for

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<sup>9</sup> Nonetheless, there are a limited number of bottom-up contributions that explore ordinary legal needs and obstacles to access to justice through investigations directly involving people. Among the survey-based contributions, we number Genn (1999) and Genn and Paterson (2001) for the United Kingdom, AM. BAR ASS'N (1994) and LEGAL SERVS. CORP. (2005) and (2009), for the U.S., Currie (2006), (2009a) and (2009b) for Canada, and Coumarelos et al. (2006) for Australia.

<sup>10</sup> In Italy, the Surveillance Magistracy (Magistratura di Sorveglianza) is a branch of the judiciary, with specialized competences over the supervision of prisons. It has the task of supervising the enforcement of sentences, applying alternative measures to imprisonment, enforcing security measures.

<sup>11</sup> These obstacles are well illustrated by Grunseit et al. (2008), which is the only access-to-justice survey involving prisoners to our knowledge. However, it has the limit of being based on a very small number of interviews to inmates who are detained in Australian prisons.

<sup>12</sup> On the serious consequences of inaccessible legal remedies and ineffective right protection, see Pleasence et al. (2004), Pleasence et al. (2007) and Pleasence et al. (2008), Saraceno (2008) and Stratton and Anderson. (2008).

<sup>13</sup> For EU countries, biannual data are available at the Council of Europe Annual Penal Statistics (SPACE Reports). <https://www.coe.int/en/web/prison/space>. Other European countries have serious problems of overcrowding, including North Macedonia (122.3), Romania (120.5), France (116.3), Republic of Moldova (113.4), Serbia (109.2), Portugal (105.9) and the Czech Republic (105.6). Data refers to 2018. See also Macula et al. 2013.

<sup>14</sup> At June 2014, when we administered the questionnaire, 58.092 inmates are detained in 205 Italian prisons (Source: Dip. Amministrazione Penitenziaria).

many other EU and non-EU countries since detention models and related problems are very similar among countries (PRI 2015).

This study provides evidence emerging from a survey aimed at mapping inmates' legal needs in two Italian prisons: the Casa Circondariale di San Vittore (Milano) and the Casa di Reclusione di Bollate (Milano). The survey has been carried out in 2014 within a peer setting operational framework where some selected interviewer-inmates administered the questionnaires to their prison mates.

The empirical analysis investigates how individual and social characteristics of the prisoners, on the one hand, and institutional/organizational features of the hosting prison, on the other hand, affect access to justice of the inmates. The hypothesis that is empirically tested concerns the fact that, although prisons provide services to support inmates in the resolution of their legal problems, limitations related to the life in prison discourage problem resolution. We test the hypothesis according to which prisoners who are not restricted in their cells for a long time during the day, prison services become more effective in satisfying legal needs of the inmates. We exploit the introduction of the "open cell" regime to identify the effects of fewer restrictions on prison conditions.

Descriptive statistics suggest that imprisonment in itself represents an obstacle to actual access to justice to fundamental rights and citizenship; it also strongly limits the possibility to manage and solve legal issues that typically emerge in the areas of family law, private law and administrative procedures. The empirical analysis supports this evidence showing that the establishment of the open-cell regime tends to increase the rate of problem solution. This might provide a useful policy implication supporting the open-cell regime, as well as other rehabilitation methods alternative to detention as a good practice.<sup>15</sup>

The paper is organized as follows. Section 2 illustrates the questionnaire and the phase of questionnaire administration; Section 3 presents the methodology and results of the empirical analysis, Section 4 concludes.

## **2. The survey**

In order to map civil/administrative legal needs of inmates who are detained in the two prisons, a multiple-choice questionnaire has been designed by including the following six sections<sup>16</sup>:

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<sup>15</sup> The open-cell regime should be implemented when inmates can move in proper common spaces and are involved in individual/social activities. This regime should be applied in all the Italian prisons starting from 2018. In fact only 50% of prisons implement the open-cell regimes (95% in Lombardia- North Italy, 5% in Campania -South Italy). See Burdese (2018).

<sup>16</sup>The questionnaire is available upon request. Before administration, the questionnaire has been deeply checked for coherence and understandability purposes. In particular, volunteers who are used to work with prisoners, rehabilitation staff members from Bollate and San Vittore, and some prisoner-volunteers who are affiliated to the Association Articolo 21 of Bollate have been asked to provide comments and suggestions about the questionnaire. For the prison of Bollate, an additional section about the use of prison services by the inmates has been included. Related evidence is not discussed in the present summary.

1. Detention: it frames the position of the respondent as a prisoner (judgment phase<sup>17</sup>, duration of conviction, residual duration of imprisonment, recidivism, detention regime, lawyer, etc.).
2. Citizenship and family: it frames personal and social features of the respondents (citizenship, gender, age, religion, education, language comprehension, etc.)
3. Pending non-criminal legal issues arisen before the detention: it investigates which kind of pending non-criminal legal problems the inmate had before being detained (debts/credits, commercial/private law/tort disputes, family law issues, problems with public administration, etc.).
4. Resolution of problems arisen before the detention: it investigates both to what extent and how non-criminal legal problems that were pending before detention have been resolved during the detention.
5. Non-criminal legal issues arisen during the detention and their resolution: it investigates which kind of non-criminal legal problems the inmate is having/has had during the imprisonment and to what extent and how these problems have been resolved.
6. Fundamental rights: it investigates if the prisoners experienced problems that are related to the fundamental rights including health, discrimination, and education and, if this is the case, how they legally proceeded.

Given the high presence of foreigners, especially in San Vittore, we opted for providing the questionnaire in different languages (Italian, Albanian, Arab, Romanian, French, English, and Spanish).

The questionnaire was anonymous. Participants to the survey have been provided with a brief letter where the aims of the survey are explained. Inmates have been invited to sign the letter both to confirm that they have understood the objectives of the research and for privacy law compliance purposes. In the letter, the anonymity of the questionnaire has been particularly emphasized. In order to favor the participation to the survey, not only the anonymity of the respondents but also a mechanism of questionnaire collection that does not involve any member of the prison staff have been guaranteed.

In order to favor the possibility of the inmates to ask for clarifications about the questionnaire without frustrating the aim of avoiding any interference by members of the prison staff, we opted for a peer-setting administration; in particular two inmates have been selected in each prison section to be trained to administer the questionnaire to their mates.<sup>18</sup>

In the spring 2014, all the inmates detained in the prisons of Bollate and San Vittore (but those in solitary confinement regime) have been invited to participate to the *survey*. The response rates, although highly variable by section, have been excellent overall: 44.5 percent for Bollate and 37.1 percent for San Vittore. Certainly, the individual effort devoted by the interviewer-inmates mattered in determining the response rates; in some sections the response rate has been extremely high like in the female section of Bollate (76.7%) and in the section of hospitalized prisoners in San Vittore (88.0%). From a methodological perspective, this peer-setting approach to administer the questionnaires seems to have been a good choice (moreover we do not know any

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<sup>17</sup>Waiting for first judgment, appellant, definitely convicted.

<sup>18</sup> Interviewer-inmates have been selected because assigned to some role of support to the sections (“scribes”, librarians, etc.) and then able to move within the section without restrictions. Before starting the survey, questionnaires filled by interviewer-inmates have been used to identify and correct residual ambiguities (pilot-phase).

precedent for surveys in prisons). Actually, multivariate analyses allow controlling for multiple interviewers therefore their different motivations and abilities do not represent a problem for a correct data-analysis.

The interviewer-inmates have been also debriefed in order to understand both the difficulties that they faced during the questionnaire administration and the general reaction of the respondents.

From an anecdotal perspective, prisoners generally appreciated the aims and the methodology of the survey; especially because many of them consider access to justice a sensitive topic.

The quality of the responses (consistency, sample variance, etc.) and the overall number of observations (893 respondents - 526 from Bollate and 367 from San Vittore) make the resulting dataset a liable starting point to investigate access-to-justice problems in prison.

By comparing both institutional information about Bollate and San Vittore and the questionnaire responses of the inmates of the two prisons, it is clear that these two penitentiaries are very different. Table 1 summarizes the main institutional features of the two prisons, Table 2 describes how they are organized by sections and provides information about the presence of foreigners and women among the inmates; Table 3 encapsulates both individual and social features of the respondents and information about their detention.

**Table 1 – Bollate and San Vittore: institutional features<sup>a</sup>**

Prison	Bollate	San Vittore
Type	Casa di Reclusione	Casa Circondariale
Year of foundation	2000	1879
Sections	6 for males + 1 for females	7 for males (2 not working) + 1 for females
Accomod. capacity	976	753
Inmates	1152	988
Type of inmates	Defendants, convicted people	Arrested people, defendants, convicted people
Officers	450	654
Rehabilitation staff	15	13
Network officers <sup>b</sup>	4 (from 2005)	3 (from 2005)
Medical staff	20 MD and 10 paramedics	9 MD and 65 paramedics
Psychologists	4	11
Social workers	10	n.a.
Volunteers	About 100	46
Services/ activities (from year)	Sports (2000 ) and Drama activities (2003) Library (2000) Handicraft (various years) Vocational training/ secondary school/ University (2006) Primary school (2000) Office of civil registry/fiscal matters (2012) Legal assistance helpdesk (2003) Office for public health assistance (2000) Job placement (2010)	Sports and Drama activities (n.a.) Library (1982) Handicraft (n.a.) Vocational training (2008) Primary school (from foundation) Office of civil registry/fiscal matters (2000) Informative point for legal matters (2005) Office for public health assistance (2008)
“Open-cells” (8.00 a.m - 8.00 p.m)	Across-the-board and since prison’s establishment	In some sections from January 2014, in others from May 14, limited in Section VI, II Floor.
<sup>a</sup> During the survey.		
<sup>b</sup> They help inmates to manage issues involving institutions outside of the prisons (i.e. embassies for foreign inmates, etc.)		

In particular, from Tables 1-3 it emerges that Bollate has a population mostly including Italian people (foreign inmates are 32.3 percent), who are definitely convicted (88.9 percent), with medium-long penalties (average duration 13.2 years). On the other hand, San Vittore hosts a population where the incidence of foreign inmates who are still waiting for a first-instance judgment is substantial (foreigners are 61.7 percent of the population, 37.3 percent of the respondents is waiting a first-instance judgment while inmates who are definitely convicted are 35.1 percent). This is not unexpected if we recall that Bollate is a “casa di reclusione” and so aimed at hosting prisoners who are definitely convicted while San Vittore hosts many arrested people because it is a “casa circondariale”. In addition, from its foundation, rehabilitation projects related to long-term imprisonment have been specifically developed in Bollate from its foundation. Information about employment before the imprisonment seems to be consistent with the previous features characterizing the populations of the two prisons: before being detained, respondents of San Vittore have been either unemployed or occasionally employed more than those of Bollate.

**Table 2 – Bollate and San Vittore: Organization of the Sections, Foreigners and Women**

<b>Bollate</b>				<b>San Vittore</b>			
Section	Section type <sup>a</sup>	Inmates, of them foreigners (%) <sup>b</sup>		Section	Section type <sup>a</sup>	Inmates, of them foreigners (%) <sup>b</sup>	
I	Over 50	156	29.5	Criminal	Young men	89	84.3
II	Addicted people	182	25.3	II	Not working	-	-
III	30-50 years old	148	39.9	III	Addicted people	219	45.7
IV	Young men/ Students	100	32.0	IV	Not working	-	-
V	Work release or semi-custodial	137	25.5	V	Men	260	67.3
Female	Women	91	44.0	VI – I floor	Men	180	72.8
				VI – II floor	Sex offenders	64	56.3
VII	Sex offenders	338	33.8	VII	Hospitalized people	92	34.8
				Female	Women	84	72.6
	Overall of them women (%)	1152	32.3		Overall of them women (%)	988	61.7
		15.3				14.0	

<sup>a</sup> Male section, unless otherwise specified.  
<sup>b</sup> During the survey.

Concerning the incidence of women and the average age of the inmates, the two prisons have very similar populations. Respondents are homogeneous also for their family situation: about one-third of the respondents are married, more than two-third has children; about 20 percent are divorced/separated.

Although the presence of foreigners is very different in the two prisons, responds are homogeneous for religion: about 70 percent is Christian while 13-14 percent is Muslim.

Generally, respondents both from Bollate and San Vittore say that they understand Italian well or well enough; in both prisons more than 90 percent of the respondents has at least primary education and more than one-third has at least higher education.



Although in both prisons just under 90 percent of respondents is detained according to the ordinary regime, 8.2 percent of the respondents of Bollate is under a work release or semi-custodial regime, at San Vittore this happens only for 4.1 percent of the respondents.

Table 4 shows evidence about civil/administrative legal problems and their resolution. The most common problems that were pending at the moment of the incarceration concern family law matters and issues with public administration (fines/administrative sanctions and tax/duties/contributions). 46.1 percent of respondents of Bollate and 68.8 percent of respondents of San Vittore had pending legal problems before the imprisonment, but in both prisons only 15 percent of respondents have somehow resolved the pending issues. More than 10 percent of respondents give up because in prison. Inmates mainly appeal to their criminal lawyer, relatives, and other inmates for looking for a solution to their non-criminal legal problems.

**Table 3 – Individual and social features of the respondents, and their detention conditions**

Prison	Bollate				San Vittore			
Average age	42.7				43			
Good / good enough language comprehension (Italian)	95.5				84.1			
Education	None	Primary	Secondary	Bachelor	None	Primary	Secondary	Bachelor
	8.1	54.4	32.6	4.9	5	49.7	36.1	9.2
Employed	Unempl.	Occasionally	Regularly	Other <sup>a</sup>	Unempl.	Occasionally	Regularly	Other <sup>a</sup>
	21.9	19.8	48.7	9.6	29.8	23.0	38.5	8.7
Religion	Christian		Muslim	Other	Christian		Muslim	Other
	70.1		14.0	15.9	72.6		13.0	14.4
Married	32.0				39.2			
Divorced/separated	21.78				20.9			
With children	67.4				67.0			
Arrested - waiting for the first instance judgment	0				37.3			
Defendants (waiting for II or III instance judgment)	11.1				27.6			
Convicted people	88.9				35.1			
Paying a personal lawyer	63.3				59.6			
Legal aid	21.0				22.8			
Court-appointed attorney	7.0				13.4			
First time in prison	53.6				49.7			
Penalty duration: average	13.2				8.0			
Residual penalty: average	8.0				6.9			
Imprisonment regime	Ordinary	Work release or semi-custodial		Other	Ordinary	Work release or semi-custodial		Other
	87.9	8.2		3.9	88.5	4.1		7.4
<sup>a</sup> Students and retired people								

During the imprisonment, more than 60 percent of respondents have experienced problems related to the release or renewal of documents (mainly driving license and identity card). It is worth noticing that services that are provided within the prison seems to have some role in the resolution of the issues related to the release/renewal of documents: in order to solve problems related to administrative documents, more than 25 percent of respondents of Bollate turned to the prison staff and 12 percent of San Vittore turned to volunteers who cooperate with the prison.

Likewise for problems pending at the moment of the incarceration, respondents who say to have or to have had non-criminal legal issues during the imprisonment are significantly more copious at San Vittore than at Bollate (74.9 vs 52.7 percent). Again, the most common problems are related to family law matters, but also to property law and administrative law including evictions, repossessions and loss of subsidies and family support grants.

**Table 4 – Legal problems related to non-criminal matters, and their resolution**

Prison	Bollate		San Vittore	
Respondents with pending legal problems at the moment of incarceration	46.1		68.8	
Predominant legal problems arisen before the imprisonment (%) <sup>a</sup>	Fines/Admin. sanctions	11.9	Fines/Admin. sanctions	16.4
	Others <sup>b</sup>	8.0	Family law matters	8.7
	Family law matters	6.0	Tax/Duties/Contributions	8.0
Predominant counterpart in problems arisen before the imprisonment (%) <sup>a</sup>	Others <sup>c</sup>	16.0	Public Administration	24.2
	Public Administration	14.2	Spouse/partner	10.2
	Spouse/partner	7.7	Others <sup>c</sup>	20.7
Respondents who solved the problems	15.0		15.3	
Respondents who gave up because in prison	10.9		13.3	
Who has been contacted in order to try to find out a solution to the pending problems (%) <sup>d</sup>	Personal criminal lawyer	15.9	Personal criminal lawyer	21.8
	Other inmates	6.8	Family	13.1
	Family	5.9	Other inmates	7.5
Document release/renewal during the imprisonment (%) <sup>e</sup>	Respondents who had/have problems	61.7	Respondents who had/have problems	66.1
	Solved in less than 6 months	16.0	Solved in less than 6 months	7.9
	Solved in more than 6 months or not solved yet	84.0	Solved in more than 6 months or not solved yet	92.0
Who has been contacted in order to try to find out a solution to the document problems <sup>a</sup>	Family/friends	26.7	Family/friends	39.5
	Prison staff	25.5	Personal criminal lawyer	36.5
	Personal criminal lawyer	22.7	Volunteers	12.0
Respondents who had/have legal problems during the incarceration	52.7		74.9	
Predominant legal problems arisen during the imprisonment (%) <sup>a</sup>	Others <sup>f</sup>	14.8	Others <sup>g</sup>	14.6
	Family law matters	10.2	Family law matters	13.7 2
	Eviction-repossession	7.6	Loss of subsidies/ Economic aid for the family	10.0
Respondents who solved the problems	9.3		15.5	
Respondents who gave up because in prison	11.6		11.2	
Who has been contacted in order to try to find out a solution to the problems (%) <sup>d</sup>	Personal criminal lawyer	13.1	Personal criminal lawyer	21.7
	Other inmates	9.5	Family	17.9
	Family	7.1	None	7.5

<sup>a</sup> The three most frequent categories are reported.

<sup>b</sup> Unspecified problems other than Inheritance, Bankruptcy, Eviction - repossession, Tax/duties/contributions, Permit to stay, Labour contracts, Contractual liability, Damages/Torts.

<sup>c</sup> Unspecified counterparts other than employers, suppliers and clients, relatives but the spouse.

<sup>d</sup> The three most frequent categories are reported. The questionnaire also reported the following choices: another lawyer, officers, rehabilitation staff, social workers, the priest, MD, network officers, volunteers, none.

<sup>e</sup> Mainly identity card and driving license, then permit of stay.

<sup>f</sup> Unspecified problems other than Inheritance, Bankruptcy, Loss of subsidies/Economic aid for the family, Tax/duties/contributions, Permit to stay, Labour contracts, Contractual liability, Damages/Torts.

<sup>g</sup> Unspecified problems other than Inheritance, Bankruptcy, Eviction - repossession, Tax/duties/contributions, Permit to stay, Labour contracts, Contractual liability, Damages/Torts.

It is worth noticing that the fact of being in prison seems to lead to augmented non-criminal legal needs: in both prisons the number of respondents who report legal issues and problems increases of about 6 percent with imprisonment. The two penitentiaries have similar rates of inmates who give up trying to solve their legal issues because in prison (about 11 percent). Only few respondents declare to have been able to resolve their problems. Again, inmates mainly turn to their criminal lawyer and to relatives to manage pending legal issues; prisoners of Bollate also declare they ask their mates for help.

Table 5 summarizes evidence about problems related to access to health care, discrimination and access to education. For the most part, but in the case of access to education, respondents did not experience severe problems. Nonetheless, a relevant number of respondents have (seldom or often) faced problems related to health, discrimination and/or education. The most part of prisoners who have had problems did not legally proceed. Finally, the number of respondents who successfully proceeded is very limited.

**Table 5 –Fundamental rights**

		<b>Bollate</b>	<b>San Vittore</b>
Respondents who have had severe problems related to access to health care during the detention (%)	No	60.7	54.6
	Yes, seldom	17.9	23.3
	Yes, often	21.4	22.1
Did you legally proceed? (%)	No	72.1	54.4
	Yes, but in vain	15.7	33.3
	Yes, successfully	12.2	12.3
Respondents who have suffered from injuries /violence during la detention (%)	No	81.4	79.0
	Yes, seldom	14.8	15.9
	Yes, often	3.8	5.1
Did you legally proceed? (%)	No	59.8	51.5
	Yes, but in vain	24.1	25.8
	Yes, successfully	16.1	22.7
Respondents who have discriminated during la detention (%)	No	84.1	79.5
	Yes, seldom	11.4	11.6
	Yes, often	4.5	8.9
Did you legally proceed? (%)	No	61.5	54.2
	Yes, but in vain	20.0	40.7
	Yes, successfully	18.5	5.1
Respondents who have discriminated by the prison staff (%)	No	68.9	70.6
	Yes, seldom	22.3	18.3
	Yes, often	8.8	11.1
Did you legally proceed? (%)	No	78.5	52.8
	Yes, but in vain	14.8	36.0
	Yes, successfully	6.7	11.2
Respondents who have had problems related to access to education during the detention (%)	I am not interested in	30.0	25.4
	No	19.6	30.9
	Yes, but not enough	11.9	18.9
	Yes	38.5	24.8
Did you legally proceed? (%)	No	63.0	61.4
	Yes, but in vain	21.0	23.5
	Yes, successfully	16.0	15.1

### 3. Empirical analysis

The purpose of this section is to investigate how individual-specific characteristics and prison-specific characteristics can affect the capacity of prisoners to manage their pending legal issues. In particular, we focus on those features that, according to anecdotal evidence, make legal problem resolution particularly tough: (i) being confined in the cell for many hours per day, (ii) being an inmate who is still waiting for a first-instance judgment, (iii.) being a foreigner.

*Ceteris paribus*, prisoners who are confined in cell for the largest part of the day have reduced capabilities in managing their legal needs: on the one hand they have reduced access to soft and hard legal information, on the other hand, they feel discouraged with respect to any proactive attitude. Furthermore, foreign inmates seem to be particularly exposed to difficulties in solving their legal problems because they have poorer networks and limited knowledge of customary and formal rules. Also inmates who are in pretrial detention live the extremely paradoxical situation of being excluded from many prison routines (since they are assumed to be innocent); moreover, for investigative purposes, they are subject to special rules often strongly limiting contacts with people outside.

To identify the effects of confinement on problem resolution capability, we focus on the introduction of the so called “open-cell” regime: after the European Court of Human Rights ruling on the case *Torreggiani and Others v. Italy* (application no. 43517/09), all the Italian prisons have been requested to revise their internal organization in order to operate on the basis of a regime according to which all the inmates (but those under rule 41 bis) can move within their Section without restrictions, at least for eight hours per day. In particular, we exploit the fact that the open-cell regime has been introduced at the section-level at different dates. Therefore, prisoners in the sample benefited from the open cell regime for a diverse time extent.

We use a database drawn from the survey illustrated in the previous section. In particular, we are concerned about pending legal problems that prisoners had at the time of their entry into prison. All observations included in the database refer to prisoners who claimed to have had at least one problem, whereas we discarded from the sample all those declaring they had no problems at the moment of their incarceration. After removing other observations that presented a relevant number of missing values in other key variables used in the analysis, a total of 443 observations have being employed. Summary statistics and description of the variables are reported in Table 6.

In order to inflect the effects of the introduction of the open-cell regime with respect to each specific type of problems faced by inmates, we use a multilevel model.

Define  $y_{ij}$  as a binary variable which takes value 1 if the inmate  $i$  facing at least one (type  $j$ ) problem she/he had before the time of incarceration declared she/he has solved (or is some way she/he dealing with) it, whereas  $y_{ij}$  is zero if the prisoner has ceased to deal with the problem. In the multilevel setup this leads to define a first individual-level equation where individuals are nested within a second (problem-level) setup. Suppose, then, that each observation from the distribution of  $y$  represents a draw from a Bernoulli distribution:

$$y_{ij} \sim \text{Bernoulli}(\theta_i)$$

We specify our model as follows:

$$\phi(\theta_{ij}) = \beta_{0j} + \beta_{1j}X_{ij} + \varepsilon_{ij} \quad (1)$$

where  $\theta_{ij}$  is a latent variable, being  $\phi$  a logit link function.  $X_{ij}$  is a predictor of the likelihood of solving problems (namely, the introduction of the open cells regime, as well as other individual characteristics of inmate  $i$  having problem  $j$ ),  $\beta_{0j}$  and  $\beta_{1j}$  are parameters which will be further detailed in the reminder of this section, and  $\varepsilon_{ij}$  refers to the random error of the individual-level equation.

**Table 6 – Summary statistics and variable description**

Variable Description	Mean	Std. Dev.	Min	Max
Dummy =1 if prisoner declares he has solved (or is dealing with) problems which were pending at the time of incarceration	0.6997743	0.4588742	0	1
Dummy =1 if Bollate	0.5485327	0.4982016	0	1
Nr. days open-cell regime	396	568	0	4680
Prisoner waiting for first-instance trial	0.1557562	0.363034	0	1
First time in jail	0.4130926	0.4929459	0	1
Length of staying in prison	449	565	0	4680
Prisoner was working at the time of incarceration	0.6862302	0.4645486	0	1
Tertiary education or bachelor	0.4221219	0.4944562	0	1
Prisoner is between 18 and 24 years old	0.0564334	0.2310176	0	1
Prisoner is between 25 and 34 years old	0.1918736	0.3942194	0	1
Prisoner is between 35 and 44 years old	0.2934537	0.4558593	0	1
Prisoner is married	0.3250564	0.4689255	0	1
Prisoner has children less than 18 years old	0.3950339	0.4894107	0	1
Prisoner is Italian	0.6568849	0.4752863	0	1
Prisoner owns a house	0.2460497	0.4311948	0	1
Prisoner speaks good Italian	0.6546275	0.4760271	0	1
Prisoner can work outside prison	0.0902935	0.2869257	0	1
Prisoner has his/her own lawyer	0.5981941	0.4908174	0	1
Prisoner is under legal patronage	0.2528217	0.435121	0	1
Prisoner has a public defendant	0.0948081	0.2932809	0	1
Obs. 443				

In our context, it is reasonable to assume that the willingness and the ability of solving or taking care of legal needs is in part common to prisoners facing the same needs. The reason could be that clusters of prisoners are likely to share common problems as well as common unobserved effects. In other terms, we estimate the likelihood of solving – or at least managing – legal problems conditional on unobserved latent variables.

In order to account for the presence of interdependence among responses belonging to the same clusters, we assume that parameters in (1) are distributed as follows:

$$\beta_{0j} = \beta_0 + v_j \quad (2)$$

$$\beta_{1j} = \gamma_1 + v_j \quad (3)$$

where  $\beta_0$  is the overall regression intercept, while  $v_j$  is a random error reflecting the gap between the group intercept and the overall regression intercept. In addition,  $\beta_{1j}$  can be decomposed into an general slope ( $\gamma_1$ ) explaining the overall marginal effect that a change in the predictor  $X_{ij}$  has on the likelihood of solving problems, whereas  $v_j$  is a random error reflecting the difference in the estimated marginal effect of group  $j$  from the overall marginal effect of a change in the predictor  $X_{ij}$ .

We also include covariates, and section and survey interviewer's fixed-effects. It is important to notice that legal problems arisen before detention are assumed to be common to clusters of inmates belonging to different sections and interviewed by different interviewers, but are independent from interviewers and personal characteristics of inmates which might influence the rate of problem solution. Indeed, biases may occur since the likelihood of civil and administrative problem solution could be correlated with both personal characteristics and the reasons why prisoners have been incarcerated, and eventually to the section they are assigned to. However, controlling for section specificities removes from the error term in (1) those personal components which might be correlated with the reasons of detention, so that – conditional on these specificities – the latter can be assumed to be independent from the type of legal and administrative problems we are investigating. In other words, controlling for section fixed-effects allows us to assume that pre-detention problems are randomly distributed across sections. Other personal traits, included as covariates, also help addressing endogeneity of the type described above.

Before proceeding, two remarks are in order. First, it must be noticed that an inmate cannot substantially interfere with the rules and the procedures governing his/her placement in a given section of the prison. Generally, a prisoner is assigned to a given section because of his/her gender and age irrespectively of the committed crime (but the sex offenders). Finally, assignments are very often determined by problems of section-capacity. In the end, we can exclude that a prisoner can significantly and systematically control where he/she will be assigned. The same can be said about prison selection. Second, we focused on the rate of resolution of problems that arose before incarceration in order to avoid that the imprisonment experience might influence the emergence of new problems.

We estimate (1)-(3) through a multilevel GLMM model. A Markov Chain Monte Carlo methodology is applied, assuming multivariate normal priors for the fixed-effects parameters, a zero-mean multivariate normal prior for the random-coefficients, and an Inverse-Wishart prior for their variance matrix. We also assume that  $\varepsilon$  is normally distributed, with zero mean and block-diagonal variance-covariance matrix, where blocks refer to types of civil and administrative problems. Finally, we use an Inverse-Gamma prior for modelling over-

dispersion in the variance-covariance matrix of  $\varepsilon$ . The model is run for 40,000 iterations, discarding the first 2,000 as burn-in and using a thinning interval of 10. The blocked Gibbs sampler 2 of Chib and Carlin (1999) is adopted.

Results of the empirical analysis, reported in Table 7, show that there is substantial heterogeneity in the degree of problem solution, according to the type of problem inmates had at the time of their entrance into jail. Heterogeneity can be observed, not so much in general (since there are no significant differences in the parameters referring to the intercepts) as instead in the intensity with which the regime of open-cells has facilitated the prisoners who have certain types of issues.

More specifically, looking at the type of problem (columns 1-4, table 7), one can notice that there is a greater effect of open-cells on the solution of problems related to divorce and child custody, residence permits, bankruptcy and, to a lesser extent, job, taxes, fines, civil liability and other categories not specified in detail. There is no significant evidence of improvement in the ability to solve problems of inheritance, home foreclosures and contractual liability.

Supporting this evidence, while concentrating on the subject against which the problem arose (columns 5-8, table 7), there is evidence in favor of the fact that the open-cell regime has led to a greater willingness and ability to solve problems with spouses or other relatives and, to a lesser extent, with the public administration, while there are no effects in terms of addressing job-related issues (i.e., with employers, suppliers and customers). Other significant effects are observed as for the increased chances of managing problems arisen with other people not clearly specified by the prisoner.

Other interesting effects are observed with regards to the control variables. First, it turns that inmates of the prison of Bollate, who benefited from the open-cell regime since the beginning of their incarceration, have more chance to protect their legal interests. This also holds for prisoners who have not had previous experience of detention. In addition, the total duration of stay in prison, measured at the time of the survey, has a negative effect on the ability to solve problems, likely to support the fact that a long detention tends to discourage inmates from taking care of their legal interests.

Unexpectedly, the significance of the parameter associated to the status of prisoner waiting for first judgment is quite low, although the parameter has the expected sign. There seem to be also significant evidence that older inmates have lower capacity of – or interest in – protecting their legal needs. Finally, those who have their own lawyer, as opposite to those receiving legal patronage or have a public defendant, have more opportunities to solve problems arisen before detention. Finally, as expected, there is significant evidence that the fact of being Italian facilitates problem resolution.

**Table 7 – Effects of the open-cell regime on the probability that prisoners solve or take care of their legal problems**

Dependent variable: dummy =1 if prisoner declares he has solved (or is dealing with) problems pending at the time of incarceration		Type of problem				Subject			
		Mean	SD*	Mean incl. covariates	SD** incl. covariates	Mean	SD***	Mean incl. covariates	SD**** incl. covariates
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
01	Nr. days open-cell regime	-0.021	0.029	-0.078	0.029	-0.051	0.036	-0.064	0.039
02	Length of stay in prison	1.287	0.629	0.586	0.402	0.062	0.506	0.657	0.936
03	Prisoner waiting for first-instance trial	-0.093	0.173	-0.134	0.203	-0.035	0.303	-0.204	0.208
04	First time in jail	0.302	0.209	0.102	0.112	0.304	0.094	0.115	0.186
05	Prisoner was working at the time of incarceration			0.161	0.182			0.188	0.108
06	Tertiary education or bachelor			0.113	0.147			0.111	0.079
07	Prisoner can work outside prison			-0.359	0.316			0.118	0.197
08	Prisoner has his/her own lawyer			0.347	0.151			0.321	0.133
09	Prisoner is under legal patronage			0.025	0.221			-0.486	0.164
10	Prisoner has a public defendant			-0.123	0.497			0.031	0.191
11	Prisoner is Italian			0.844	0.112			0.602	0.126
12	Age_18_24			0.632	0.615			1.089	0.532
13	Age_25_34			-0.055	0.135			0.003	0.119
14	Age_35_44			-0.280	0.089			-0.471	0.112
15	Prisoner speaks good Italian			0.239	0.115			0.043	0.113
16	Married			0.054	0.117			0.101	0.124
17	Prisoner has children less than 18 years old			-0.060	0.125			0.054	0.102
18	Prisoner owns a house			0.196	0.123			-0.098	0.150
19	Intercept. divorce and children	0.056	0.120	0.176	0.285				
20	Intercept. legacy	0.008	0.129	0.022	0.397				
21	Intercept. house	0.029	0.117	0.362	0.405				
22	Intercept. seizure	0.031	0.111	0.227	0.304				
23	Intercept. bankruptcy	0.053	0.126	-0.138	0.255				
24	Intercept. tax	-0.032	0.145	-0.483	0.195				
25	Intercept. fines	-0.105	0.116	-0.344	0.086				
26	Intercept. residence	0.011	0.101	0.498	0.251				
27	Intercept. job	-0.025	0.140	-0.231	0.211				
28	Intercept. contractual liability	0.001	0.113	-0.279	0.353				
29	Intercept. civil liability	0.027	0.089	0.134	0.151				
30	Intercept. other	-0.054	0.105	0.050	0.231				
31	Intercept. spouse					0.017	0.064	0.002	0.100
32	Intercept. relative					0.003	0.079	0.000	0.082
33	Intercept. employer					0.026	0.093	0.009	0.079
34	Intercept. public administration					-0.019	0.078	-0.001	0.073
35	Intercept. supplier or customer					0.002	0.098	-0.012	0.081

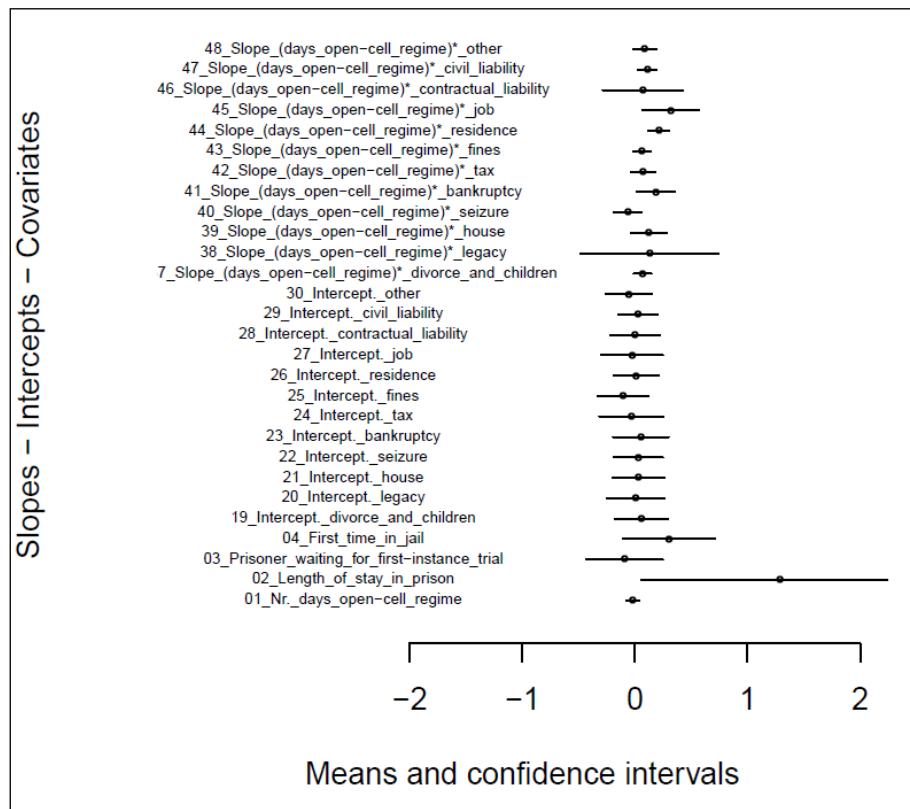


36	Intercept. other person					-0.029	0.080	0.002	0.094
37	Slope (days open-cell regime)* divorce and children	0.068	0.040	0.098	0.052				
38	Slope (days open-cell regime)* legacy	0.132	0.313	0.530	0.515				
39	Slope (days open-cell regime)* house	0.123	0.080	0.005	0.155				
40	Slope (days open-cell regime)* seizure	-0.062	0.063	-0.016	0.054				
41	Slope (days open-cell regime)* bankruptcy	0.185	0.088	0.435	0.122				
42	Slope (days open-cell regime)* tax	0.071	0.056	0.267	0.093				
43	Slope (days open-cell regime)* fines	0.060	0.040	0.087	0.033				
44	Slope (days open-cell regime)* residence	0.213	0.047	0.103	0.056				
45	Slope (days open-cell regime)* job	0.318	0.127	0.380	0.171				
46	Slope (days open-cell regime)* contractual liability	0.070	0.182	0.177	0.140				
47	Slope (days open-cell regime)* civil liability	0.112	0.042	0.070	0.052				
48	Slope (days open-cell regime)* other	0.086	0.051	0.052	0.059				
49	Slope (days open-cell regime)* spouse					0.102	0.029	0.123	0.060
50	Slope (days open-cell regime)* relative					0.105	0.048	0.099	0.050
51	Slope (days open-cell regime)* employer					-0.040	0.067	-0.004	0.061
52	Slope (days open-cell regime)* public administration					0.091	0.044	0.048	0.040
53	Slope (days open-cell regime)* supplier or customer					0.091	0.086	0.003	0.068
54	Slope (days open-cell regime)* other person					0.144	0.044	0.089	0.037
	Section Fixed-Eff.	yes	yes	yes	yes	yes	yes	yes	yes
	Administrator Fixed-Eff.	yes	yes	yes	yes	yes	yes	yes	yes
	Obs.	443	443	443	443	443	443	443	443

GLMM Bayesian estimates. Markov Chain Monte Carlo methodology run for 40,000 iterations, 2,000 burn-ins. Thinning interval: 10. Blocked Gibbs sampler used (Chib and Carlin, 1999).

\* Bayesian estimates: confidence intervals reported in Figure 1; \*\* Bayesian estimates: confidence intervals reported in Figure 2; \*\*\* Bayesian estimates: confidence intervals reported in Figure 3; \*\*\*\* Bayesian estimates: confidence intervals reported in Figure 4.

**Figure 1. Confidence intervals for intercepts and slopes – Type of problem**



**Figure 2. Confidence intervals for intercepts, slopes, and covariates - Type of problem**

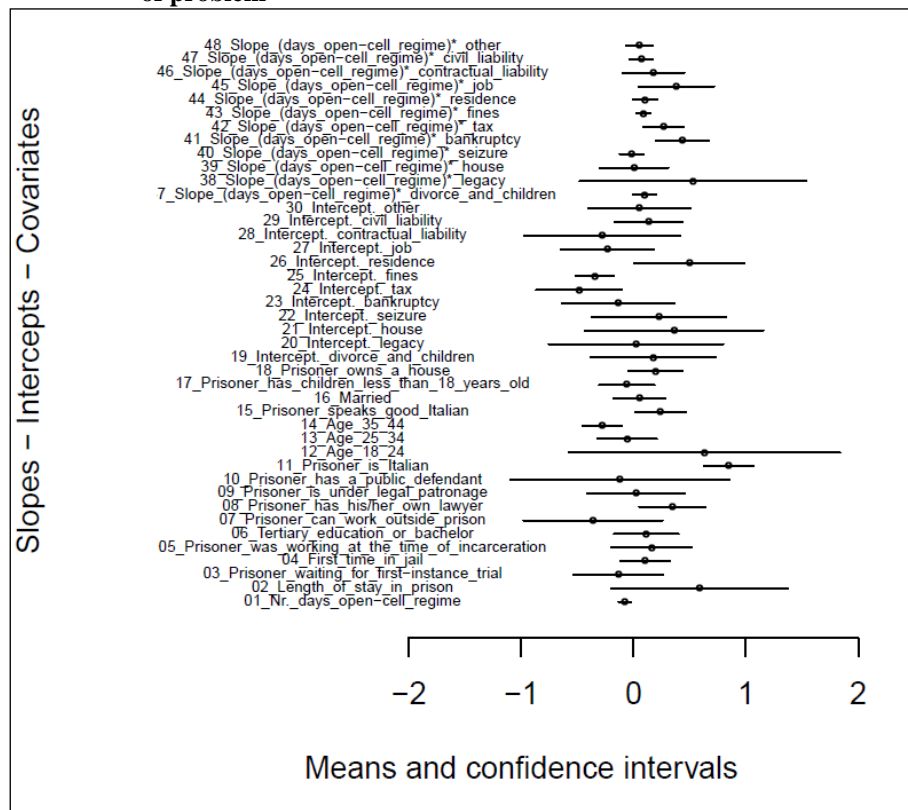


Figure 3. Confidence intervals for Intercepts and slopes – Subject

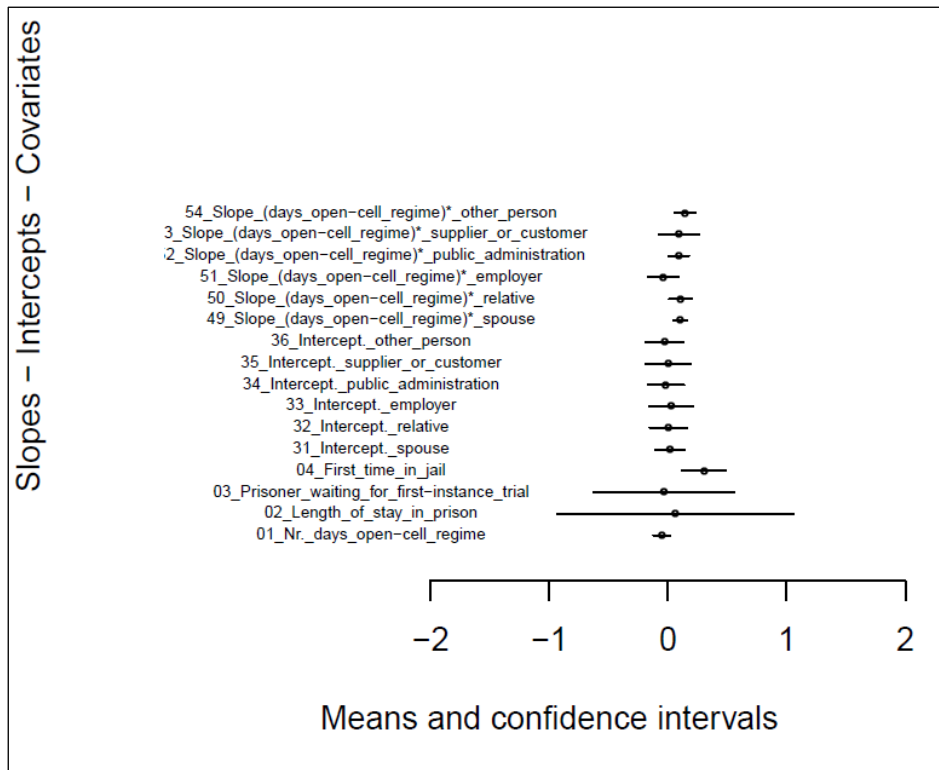
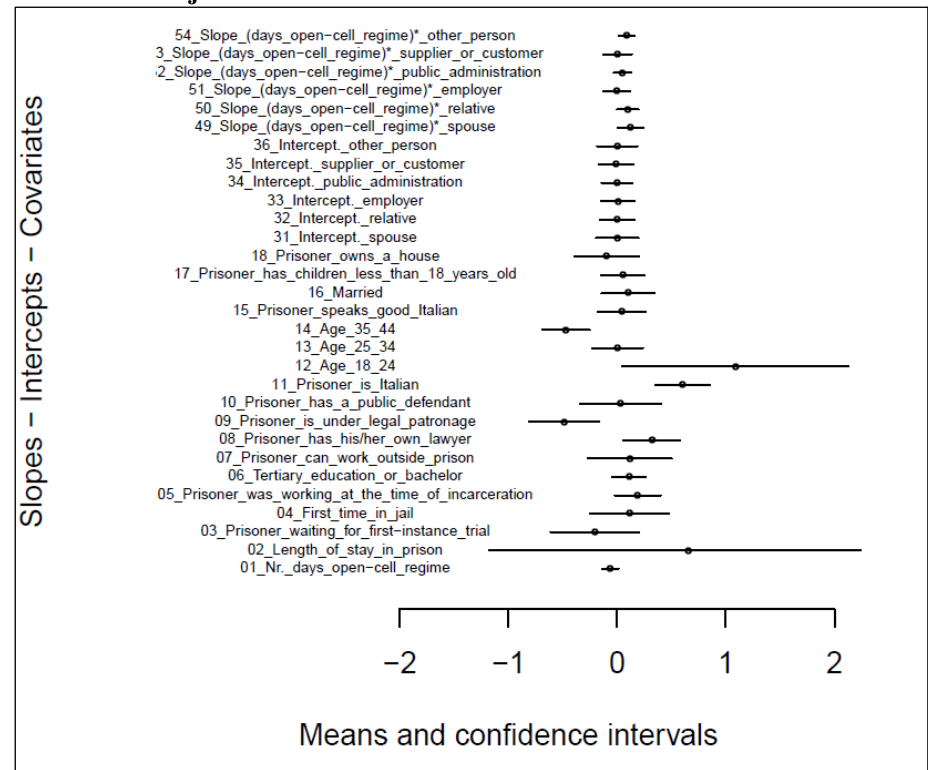


Figure 4. Confidence intervals for Intercepts, slopes and covariates – Subject



#### **4. Conclusions**

Evidence from the survey which has been carried out in Bollate and San Vittore shows that the largest part of prisoners had pending non-criminal legal problems at the moment of the imprisonment. Moreover, imprisonment results in an augmented number of inmates who face legal issues which are not directly related to their criminal story.

Prisoners' legal needs mainly concern family law matters, property law issues and administrative procedures. Often legal needs of prisoners involve ordinary activities like the release or the renewal of common documents. Imprisonment in itself represents a recurrent cause to give up trying to solve legal problems. Rarely inmates find institutional support to their legal needs within the prison. In fact prisoners turn to relatives and their criminal lawyers to manage pending issues. Therefore, it is plausible that people who cannot count on their family network and/or on a personal lawyer suffer from limited access to justice.

Although the two prisons host quite homogeneous populations in terms of age, gender, family situation, education and religion, statistics show that the share of respondents who face non-criminal legal problems is systematically (both before and after the incarceration) larger at San Vittore than at Bollate. This might presumably be explained by the significantly higher incidence of foreigners in the population of San Vittore.

Prison services to support inmates' legal needs seem to be significantly used only for document release and renewal. Although both prisons provide offices of civil registry and fiscal matters and legal assistance help-desks, Bollate' services seem to be more effective than those of San Vittore.

In this regard, data suggest non-mutually exclusive hypotheses that have been further investigated. The hypotheses are related to the relevant differences between Bollate and San Vittore. In particular, in the latter there is a greater incidence of foreigners and a significantly larger presence of prisoners who are still waiting for a first-instance judgment. Second, from the organizational perspective, San Vittore removed strict limitations to the possibility for inmates to move within their sections only very recently. These factors may have some role in the support effectiveness of services provided by the penitentiaries.

For instance, descriptive statistics suggest that Bollate is more effective in supporting inmates for the release/renewal of documents. This might be explained by the fact that prisoners can move within the prison with less restriction than in San Vittore (as showed in Table 2, the so called "open-cell" regime is longer and more widespread applied in Bollate than in San Vittore). Mobility might simply result in a more effective use of services by inmates.

On the other hand, an inmate who is still waiting for a first-instance sentence is paradoxically in an even more disadvantaged situation than the other prisoners. In fact, the former is often excluded from many rehabilitation programs and activities (given the presumption of innocence) and suffers from many limitations (related to investigation procedures etc.). The fact of being partially excluded from the ordinary life in prison might reduce the access to prison services and tools aimed at supporting non-criminal legal needs of prisoners.

The empirical analysis provides evidence in favor of the fact that the open-cell regime can increase the rate of solution (or willingness to solve) civil and administrative problems, especially those related to family issues.

There are instead no clear-cut results related to being in the status of prisoner awaiting for first-instance trial. Finally, the regression outcome also supports the idea that foreign inmates have a smaller rate of problem resolution.

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