Serving a Sentence in Italy: Old and New Challenges

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When considering the rehabilitation of people who have committed a crime, it is important to note the lack of clarity of the very term rehabilitation in the literature, at both the national and supranational levels. Fergus McNeill (2014), in his attempt to define this, adopted the term 'tangle', that in the criminology literature spans both theory and practice. Sonja Meijer (2017) later pointed out that the concept of rehabilitation remains vague and is implemented differently in various European nations. In Italy, the term is not included among the fundamental principles in penal law: Article 27 of the Italian Constitution, which came into force in 1948, states in its third paragraph that 'sentences cannot consist of treatments that are contrary to the sense of humanity and must tend toward a re-education of the sentenced people'. The re-educational aim of the sentence thus became, for the first time in the national context, the principal aim of the sentence, relegating the ideas of retribution and deterrence to a secondary level. The term can be traced back to the scientific culture of the time when the Italian Constitution

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was written, dominated by the pedagogic ethos. Nowadays the concepts re-socialization, rehabilitation and inclusion are preferred. Although not entirely interchangeable, in Italy these terms refer to the possibility of abandoning deviant behaviour.

The long history of the developmental pathway of this fundamental principle has not yet led to a concrete implementation of the concept, at least as regards the enforcement of prison sentences. The conditions of chronic overcrowding, lack of staff and inadequate institutions, have in practice prevented the period of detention from becoming a time of promoting change and a proper tool for assisting re-entry into society after the completion of the sentence. To deal with this partial failure, legislators have at various times introduced modifications of the norms, envisaging alternatives to prison sentences, such as probation. In recent years, new penal pathways, such as pre-trial probation, have been formulated and applied with positive results, starting in the Juvenile Courts. However, even today rehabilitation remains a target that depends too strongly on the goodwill of prison and probation officers rather than on well-structured good practices. Aware of the limits of the procedures currently applied, professionals are continually in search of applicative solutions that may most efficaciously achieve effective rehabilitation.

In this context, an important role has always been played by politics and public opinion. These tend to regard prison as a tool to be used to guarantee collective security rather than an opportunity for rehabilitation, not understanding that, often it perpetuates deviancy. Until a greater awareness of the need to contribute pathways encouraging desistance in an active and collective manner spreads more widely, the term rehabilitation runs the risk of remaining, for many more years, a concept that is full of shared general principles but is poorly carried out in practice.

A Brief Historical Outline of the Rehabilitation System in Italy

The historical evolution of the system of the enforcement of the sentences in Italy has been, ever since its first conception, characterized by a strong divide between the good intentions of the Constitution and the reality of their implementation. In the years after the Constitution became law, and, as we will see, still today (Manconi et al., 2015), the penitentiary system was very clearly different from the one envisaged in the Constitution itself. Penal institutes, whose structural conditions were ‘shameful’ (Corleone, 2015) have

always been grossly overcrowded, a problem that was periodically but inefficaciously alleviated for a brief time by emergency measures like amnesty and pardons that temporarily brought the situation within slightly better limits. Moreover, the opportunity offered to spend the detention time fruitfully by practising work activities, was always extremely limited, and little more than lip service was ever paid to this option. Internal training opportunities were also minimal, and inmates spent 16–18 consecutive hours in their cells, in extremely distressing conditions.

Against this dark panorama offering no re-educational prospects in the form of probation, reduced sentences for good behaviour, or the granting of pardons (applicable only in rare cases by the Ministry of Justice), inmates had little to hope for, but also little to lose if they resorted, as they so often did, to violent behaviour inside the prison (Ricci & Salierno, 1971). This gave rise—in conjunction with the historical period in Italy from the 1960s characterized by high levels of violence—to a phase of riots inside penitentiaries in the attempt to draw attention to the huge gap between the principles of Article 27 of the Constitution and their complete non-application in the penitentiaries. There were some desultory attempts to humanize prisons, for instance, the fitting of a television per section to allow inmates to keep up to date with what was happening in the outside world, but the weak, under-resourced penitentiary administrations continued to use violence as the means to suppress the protests that sometimes developed into full uprisings. This recourse to violence during the most serious episodes that drove the inmates to decide to occupy the roofs of the prisons and shout out their protests to the world resulted in the death of some inmates and the wounding of others. In that out-of-control situation, there were numerous successful prison escapes.

The ongoing prison reform bill was finally presented in 1973 but modified in 1974, even before it became law, owing to the outbreak of more grave forms of violence that led to the introduction of restrictions of the proposed new alternative measures and penitentiary regime. Moreover, no provision was made in the law for increasing the human and economic resources in order to achieve the specified objectives. The Reform also introduced the figure of the *Surveillance Judge* and the *Surveillance Court* with a specific supervisory role in the enforcement of the sentences, but implementation of the latter was postponed, and it became operative only in 1974. Among all the innovative aspects dealt with in the new law, the introduction of licences for sentenced people was particularly important because it left the *Surveillance Judge* ample discretion in their application of discipline. However, the greatest novelty in the new norms was undoubtedly the introduction of the

above-mentioned alternative measures to prison sentences and of the institution of early release which reduced the time spent in prison to 45 days every six months if the person maintained positive behaviour during the detention. However, the alternatives to imprisonment, as formulated in the new law, were soon revealed to be inadequate: they were too rigid, applicable to very few inmates and therefore only useful as a means of improving the difficult situation in the penitentiaries. Moreover, at the beginning of 1977 visiting permits were modified by a law that reduced them to the status of exceptional tools to be used only in the case of extremely serious family events. Between the 1970s and 1980s, in the tense climate induced by the internal terrorist actions that shocked the country, prison became a place where order was the most important priority, to be attained at whatever cost.

Maximum security prisons were created in these years for those prisoners considered to be most dangerous to society, while all others (except for those few fortunate individuals who were working or attending school) were kept in their cells all day except for the one hour spent in the outside courtyard. All this was clearly strongly at variance with the reform that had been passed shortly before. However, the show of force made in the penal institutions did not quell the ongoing disorders, riots and violence. It was not until the 1986 Legge Gozzini[1] came into force that a truly positive change occurred, and renewed attention was paid to the Constitutional principles in Article 27. Essentially, this law acted on two fronts: maximum security prisons and alternative measures, eliminating practically all the obstacles to the application of the latter to most inmates. This law played a fundamental role in reaffirming the principle of rehabilitation of each sentenced person, regardless of their offence. However, in the 1990s, following a strong revival of organized crime, the State responded with a heavy hand, introducing restrictions on access to alternative measures and to permits rewarded for good behaviour for those prisoners responsible for an extensive list of crimes considered particularly heinous. In addition, the extremely rigid detention system called the '41 bis' (from the number of the article in the penitentiary law that regulates it) was introduced, it being a permanent maximum security regimen for those who had taken part in organized crime activities.

In 1998, a new law[2] confirmed the pivotal role of the enforcement of the sentence outside of prison, and despite a few obstacles linked to specific situations as described above, the rehabilitation principle gained a new impetus and territorial probation measures started to be applied more widely. In the next years, many laws were passed that improved the applicability of the alternative measures for some specific categories of prison inmates (e.g. for people affected by AIDS, women with young children, and people aged over

70 years), in the hope of improving the application of individual treatment pathways aimed at effective rehabilitation. But it was not until the suspension of the sentence with probation for adults was introduced[3] that an increased number of people could benefit from external non-custodial treatment to degrees almost equalling those serving a prison sentence.

Currently, the area of alternative measures to prison is a major commitment of the *Surveillance Courts* and the probation offices. Data updated to 15 January 2022 indicate 31,183 alternative measures and 24,182 suspension of the sentences with probation in force throughout Italy (www.giustizia.it). Considering that in 1990 there were 6300, (www.giustizia.it), it is evident that this sector has grown enormously, confirming the utility of these rehabilitation tools in reducing recidivism. Nevertheless, the penitentiary system itself does not appear to have gained relief from these strong attempts to comply with the constitutional principles. In fact, the prison population has grown continually since 1990, generating such serious overcrowding that this situation has been a cause of condemnation of Italy by the European Court of Human Rights on more than one occasion (ECHR, 2013).

Rehabilitation Mechanisms: Context and Statistics

In Italian penitentiary law, the achievement of the rehabilitation purpose is directed towards both sectors, prison and probation, to which restorative justice in the form of the suspension of the trial with probation has recently been added. The idea that prison, despite all the intrinsic critical elements linked to the deprivation of personal liberty, should have a positive treatment value, to be attained with the aid of programmes involving professionals (educators, psychologists, criminologists) and resort to external community measures, is rooted in the Penitentiary Law (articles 15–16) and cannot, therefore, be formally abandoned. However, for a series of socio-political and cultural reasons, over time the attempts to achieve a positive reintegration into society have been concentrated in the system of alternative measures, leaving the prisons to suffer a slow but constant involution in which the rehabilitation principle has been constantly eroded and lost. Obsolete facilities and chronic overcrowding then contributed to a definitive decline in the detention conditions to the extent that it seems paradoxical even to mention the rehabilitation purpose of the prison sentence. If it is true that internal rehabilitation treatment, based as much as possible on study, work, religious worship and recreational activities involving the

external community, demands scientific, targeted approaches built around individual needs (Article13 Penitentiary Law), members of staff need to be appropriately trained, but this rarely happens.

As regards the above-mentioned components of prison treatment, the available statistics do not offer reasons for optimism: people involved in some kind of working activities in prison are only 35.5% of the total prison population, and of these 88% are employed by the penitentiary administration and so engaged in activities such as cleaning the common rooms, distributing goods or preparing meals (data updated to 30/12/2021, www.giustizia.it). In this context, it is interesting to note that the numbers for this aspect (work inside the prison) are similar to the ones of 1991 (34.5% of working prisoners, of whom, 89.5% were employed by the prison administration) and this clearly shows the inability of the correctional department to improve the intramural work situation. The fact that there are rare working activities connected to the external production chains of factories is a clear illustration of an isolated prison world strongly separated from society. According to the study, an element of personal growth, a conceptual pillar of penitentiary treatment, is pursued by only 28.5% of people in prison who are enrolled in one of the 1655 courses offered by the 190 Italian penal institutes. It is also interesting to note that 40.5% of the total number of the involved people engaged in the literacy courses offered by the Italian prison administration were foreigners (Mulè, 2009).

Recreational activities, mainly organized by people working for charity associations or by single volunteers, in accordance with articles 17 and 78 of the penitentiary law, have been organized with (or have counted upon) the collaboration of 9825 people authorized by the *Ministry of Justice*. The choice to delegate the creation of rehabilitation projects to Civil Society Organizations (CSOs) and Non-Governmental Organizations (NGOs) is, however, in some senses limited. The availability of such treatments is extremely uneven across the country because the areas most sensitive and better endowed with economic resources can guarantee a variety of proposals whereas others less well organized or financed, have difficulty in offering adequate proposals. Also, as regards safeguarding the right to religious worship, daily practice is very different from that required by law especially concerning the practice of the Islamic faith. In practice a Catholic priest is always available despite the diverse needs of those of different faiths entering the prisons. Muslims in prison (the second most numerous group after Catholics) can only rarely count on the presence of authorized spiritual guides and only in 20.5% of the prisons is there an adequate space provided for the practice of worship other than for the Catholic faith (Antigone, 2021). The problem of freedom

of worship in prison has been recognized only in recent years but with specific reference to the risk of radicalization and the prevention and countering violent extremism strategies, thus raising the possibility of leading to further limitations of the rights of this group of prisoners (Ravagnani & Romano, 2017).

The fact that these inadequate detention conditions have failed to arouse loud protests by public opinion confirms the point that detention is generally seen as retribution and a way to protect society (Scimià, 1987), whereas with probation, ever since its introduction as an alternative sentence, the community has seemed to be poorly aware of its potential. Clearly, the impact, in terms of reducing recidivism and hence increasing the level of social security, has not been adequately understood. Most of the population has always regarded alternative measures as intended to unfairly reduce the prison sentence and set sentenced people free earlier than the judicial authorities had judged right (Calvanese, 2010). Underlying the dissent by public opinion, reference is often wrongly made to the idea that the certitude of punishment is undermined by what is seen as an unfair early return of the culprit to society (Donini, 2012). Such an idea encompasses the vision of the Italian penal system being too soft with criminals and disrespectful of the rights of the victims. What is lacking in these arguments against the application of alternative measures is the awareness that the gradual application of these tools (in other words the sequential progress from more limited advantages like permits to greater benefits like probation) presupposes the attribution of a growing responsibility to the individual; and, supported by a reference figure and supervised by a jurisdictional authority (the supervising Magistrate, the *Surveillance Court* or the probation officer, depending on the case) the development of an attitude predisposed to a positive reintegration into society.

Provisions such as prison licences granted for good behaviour, home detention and probation under the supervision of the social services are not mandatorily applied in penitentiary law. Nevertheless, over the years the will to optimize the rehabilitation treatment ethos has consolidated these practices in the *Surveillance Courts*, since premium permits (that can be granted for progressively longer periods in subsequent applications) are regarded as a preliminary step allowing the application in the near future of ever wider probation measures. The system of the enforcement of the sentences offers good guarantees of achieving the objectives specified in the Italian Constitution. However, some structural limits, which are inherent to the tools themselves, cannot be ignored and will be discussed in the next section. If

poorly understood and implemented, they run the risk of creating inconsistency of treatment among sentenced people thus undermining the efforts to reduce the levels of recidivism.

Available Tools for the Rehabilitation of Sentenced People

In the last 15 years, among academics and operators in the field it has become increasingly evident that the rehabilitation system has, at least in part, not come up to the expectations and overall, the within-walls reform model has been a failure (Bertaccini, 2021). The need to consider other possible approaches, such as a reinforced use of alternative measures (also including pre-trial probation that until then in Italy had only concerned the trials of minors) and the introduction of tools tending towards the idea of restorative justice, has become increasingly evident. Regarding the former, certainly the legislators will take into account specific situations involving vulnerable people (drug addicts or alcoholics, those with mental health problems, sentenced people over 60 years of age affected by specific diseases, and those over 70) be underlined (Romano et al., 2020) as well as the problems of women with children under 10 years (Ravagnani & Policek, 2015). For all these groups, specific alternative measures had already been introduced at separate times with the aim of carrying out re-education programmes based, above all, on the consideration of any particular health or social problems that unless adequately managed could negatively affect such rehabilitation efforts. These include home detention and probation under the supervision of the social services, which are in fact guaranteed, under certain limits of the length of detention sentence, to the entire penitentiary population, (excluding the perpetrators of crimes considered particularly dangerous, as listed in the penitentiary law), although handled in a specific way for the vulnerable people listed above.

Probation under the supervision of social services certainly has some more incisive characteristics in terms of rehabilitation. Based on the enjoyment of ample daily freedom, which must be filled with adequate working or study activities, interpersonal relationships (with, for example, family members), this can be seen as an excellent, inclusive tool available to the competent supervising authorities in the Italian panorama. However, its basic elements (working activities, home, socio-familial relationships) can in practice introduce problems of discrimination that tend to mostly affect those perpetrators of crimes defined by Margara (2015) as representatives of 'social detention'

(the imprisonment of people belonging to the most poor and marginalized persons) and foreigners. Both categories have difficulty in meeting the minimum requirements for the application of the measure (Durnescu et al., 2017). Moreover, the theoretical, positive application of probation is often at variance with its actual implementation since, for example, the requirement for regular police controls at the workplace and the subject's residence place poses the risk of compromising the positive relationships with, for example, employers and colleagues who should not necessarily be informed about the individual's judicial situation. The stigma attached to a person involved in the penal system is one of the elements that most seriously affects any attempt to build a new social image (Chiricos et al., 2007; Copenhaver et al., 2007). Finally, it cannot be ignored that the times taken to apply alternative measures (due to the jurisdictional monitoring of the *Surveillance Court* magistrate) are often incompatible with allowing people to take up a job offer or move into the chosen social housing, both of which are very difficult for them to find. Waiting for at least six months for the Court hearing may in fact cause the loss of previously available job offers or housing.

Home detention, the second alternative measure to prison in order of importance in the Italian penitentiary system, does not present any treatment possibilities since it simply allows the individual to serve the sentence at home or at another domicile considered suitable. However, this option should not be ignored. In fact, almost to the same extent as the deprivation of personal liberty in a prison environment, the successful outcome of home detention depends on the individual maintaining good self-control because even if not under supervision 24 hours per day, they must conform to strict behavioural rules (first of all those related to the fact that he or she is forbidden to venture outside the prescribed area within the strict home perimeter). This self-control, often for periods as long as two years, needs to be strong and reliable and can demonstrate a serious willingness to change. In this sense, and in view of the self-management capacity required, home detention can be considered a highly re-educational instrument, especially compared to the imprisonment option that completely deprives the individual of personal liberty and tends to lead to very immature self-management during the little leisure time available (Vianello, 2020). Before moving on to consider restorative justice approaches, it is worth mentioning both the 'semi-liberty' option among the alternative measures that is available to the Italian sentencing system and the use of electronic monitoring.

The observations made above about the gradual approach to the different rehabilitation tools are equally valid in the context of semi-liberty whereby the inmate spends the daytime outside the prison, engaged in study or working

activities. However, since access to premium permits gained more widespread use as a precursor of the application of more ample measures such as probation, semi-liberty has been used less and less, accounting for only 2.5% of the overall alternative measures now applied (www.giustizia.it). It is reserved mainly for people sentenced to life imprisonment, excluding those sentenced to life for the commission of a crime on the list of those considered most heinous (the so-called 'ergastolo ostativo'): they are still today precluded from access to any alternative sentence. The issue of a sentence that precludes any hope of future freedom and is thus in conflict with the rehabilitation purpose of the punishment, is a matter of constant debate. The Constitutional Court[4] states that a life sentence is legitimate because 'the function of the punishment is certainly not simply the rehabilitation of the sentenced person because there can be no doubt that dissuasion, prevention and social defence are, no less than the hoped-for amendment, at the root of the punishment'. Nevertheless, it must be recognized that the stark contrast between the re-educational aim and perpetual banishment from society has been significantly diminished since the admission of life-sentenced people to conditional release after having served at least 20 years of imprisonment.[5] The concession of this benefit, if the person shows certain signs of repentance and a changed attitude, in practice annuls the perpetuity of the life sentence.

Electronic monitoring was introduced in the Italian legal system in the context of measures restricting personal liberty in 2000[6] that featured some modifications of the penal procedure code and penitentiaries law. It became possible to apply the use of electronic monitoring in order to achieve two aims: firstly, to respond to the growing demand of public opinion to strengthen public security and secondly, to deal with the steadily increasing grave problem of overcrowding in prison. In subsequent years electronic monitoring became a tool for use in specific pre-trial situations (instead of the application of a precautionary detention measure) or to replace a brief prison sentence, but also as an alternative during the last period of a medium- or long-term prison sentence. The application of electronic monitoring is always subject to the individual's consent, but the latter is largely a theoretical matter since failure to accept it causes the immediate imposition of a custodial measure. Apart from the evolution of the norms that have led, in theory, to an increased use of this tool, the debate for and against it has always been very sharp, especially regarding the ethical and legal questions linked to its application. One of the main objections to electronic monitoring is its relation to the concept of rehabilitation: the use of remote control of people deprived of personal liberty, and especially those serving their sentence according to one of the alternative measures, introduces the risk of a negative bias, skewing

the final aim away from rehabilitation towards public security. During the Covid-19 pandemic, to reduce the numbers in prison, a new law[7] introduced a change in the criteria for access to home detention. It stipulated the use of electronic monitoring in all cases of home detention for a period exceeding six months, but this in practice has reduced the chances of access to this option because there were too few devices available: the results have, therefore, fallen far short of the expectations. From the very first application of this tool, the drawback has always been the chronic lack of electronic devices despite the millionaire contracts awarded to the supplier firms (until 2020, the number of applications of this option remained limited to just a few dozen cases) and the trend for 2020, although improving, still has not reached significant numbers (latest data released on 29 May 2020 by the *Garante Nazionale delle Persone Private della libertà*—National Guarantor of People Deprived of Liberty) with only 1005 people in home detention undergoing electronic monitoring.

The suspension of trial during probation, introduced in 2014 extended the possibility, previously only available for juveniles, for people who had committed a crime to avoid trial and avoid a criminal conviction if the prescription established for a specific time lapse by the Judge of the preliminary investigations has come to a satisfactory end. This provision, with its strong connotation of social and individual restitution, presupposes consent by the involved person (Cornelli et al., 2018. However, it cannot be denied that its inclusion in the pre-trial phase does not only indicate the will to offer greater rehabilitation possibilities to the perpetrators of crimes (Carabellese & Grattagliano, 2008)—inherent in the constant need to implement the constitutional principles described above—but also highlights the problems faced by the Italian penal system, due to the large number of pending trials and the overcrowding of the penitentiaries. In just a few years, the introduction of this option, together with community service, has led to a doubling of the overall number of people serving alternative sentences (68,870 people under supervision by probation officers—data at www.giustizia.it) so that it exceeds the number in prison (54,372—data at www.giustizia.it).

The option to carry out unpaid working activities for the community, applicable in different ways depending on various criteria disseminated in the Italian legal system, has had a lesser impact, but it accords with the definition of re-education as defined by Dolcini and Marinucci (2001), namely a process of modification of attitudes hindering constructive social participation. This tool is aimed on the one hand, at reducing recourse to detention and on the other, at offering people who have committed a crime a concrete chance to become reintegrated into the community. It can be applied as the

main penal sentence (in the case of minor crimes, devolved to a specific Judge called *Judge of Peace*) and as a substitute sentence. According to the same law, in cases of inability or failure to pay a fine, or in cases of a sentence or plea bargain for minor crimes involving drug addicts or alcoholics where the conditions for the application of a conditionally suspended sentence are not me, this may be converted to community service. This can be applied also as reparative conduct or in special recognition of repentance[8] (envisages conditional suspension of the sentence, subordinated to a series of obligations including community service), or as an accessory penalty[9] in controversies arising over road accidents. Finally, reference must be made firstly, to the possibility of implementing community service in accordance with Law 67/2014 that focusses on its re-educational aspects by making the suspension of the trial (in some specific cases) subject to the completion of public utility works; and secondly, to the introduction of a new Article 20 (called Article 20 ter) in the penitentiary law[10] that allows prisoners, depending on their specific occupational skills and attitudes, to be admitted to public utility work during their detention. This clearly highlights the rehabilitation aims of this option and the general view that an adequate re-orientation scheme must be implemented to achieve the true rehabilitation aim of the sentences.

Rehabilitation of Sentenced Foreigners

As previously mentioned, Article 27 of the Italian Constitution is strictly linked to the fundamental principles enunciated in the opening articles (1–12) among which is Article 3, which condemns every form of discrimination and calls upon the State to guarantee the practical achievement of this principle, is particularly important. Inevitably, a corollary of this is that rehabilitation as the purpose of the sentence must not encounter obstacles for the individual in the form of cultural, ethnic, religious or linguistic difficulties. Unfortunately, the risk of a foreigner suffering discrimination is very real, especially in cases where elements of ethnic or racial prejudice are present, as is sometimes the case with people coming from specific geographical areas or belonging to cultures or religions that are poorly integrated in the social context.

Discriminatory attitudes can take the form of verbal or physical abuse but are more commonly observed in the kind of attitudes that are difficult to classify in terms of arbitrary violation of the rights of foreigners. Examples of this include ignoring informal requests made by foreigners for a different allocation, frequent recourse to disciplinary penalties in their regards and the

use of more frequent and rigid cell searches. Other forms of discrimination against foreigners can include the impossibility of taking part in schooling or work activities aimed at social reintegration. Although these are ostensibly open to all, they are often inaccessible to foreigners because of language issues and the lack of an interpreter. Access to the alternatives to imprisonment described above, although guaranteed to all condemned people by law, in the case of foreigners is strongly limited because of their lack of resources and status as foreigners (Durnescu et al., 2017). This discrimination also includes failure to prepare them for a return to the community. In addition, being unable to take advantage of those tools that should have been provided during their detention, they have greater difficulties in finding work, building stable interpersonal relationships and obtaining the economic support available to other vulnerable people. Moreover, their widespread inability—or reduced possibility—to communicate with their family makes it often difficult for them to return and re-enter their own country or community (Ravagnani & Romano, 2013).

Also, the application of European Framework Decisions based on achieving a satisfactory level of social reintegration and hence rehabilitation[11] have not yielded the anticipated results. Initially seen as a useful tool to reduce the worrying level of prison overcrowding, they have in practice been less than the hoped for, thus undermining European efforts to bring about a unitary system of penal enforcement of sentences aimed at reducing recidivism and increasing collective security.

Empirical Results of the Italian Rehabilitation System

The data regarding recidivism have long been the subject of strong debate among operators in the field and public opinion. The lack of systematic collection and evaluation of elements that could assess the efficacy of the available rehabilitation tools has resulted in the circulation of poorly illustrative data. Nevertheless, important, albeit not recent research conducted in 2007 (Leonardi, 2007) confirmed the positive feelings of the supporters of community-based approaches. According to this research, 68.5% of the people in prison in Italy are recidivist compared to 19% of those granted an alternative sentence. To fill the gap created by the lack of empirical evidence, reflections can be made about the small number of cases of the recalls of alternative sanctions (Ravagnani et al., 2018): these data are, in fact, a useful indication of the capacity of these approaches to affect recidivism and even

more importantly, desistance (Weaver, 2019). In particular, the Ministerial data show that in most cases, the number of recalls is higher in regard to measures applied during prison (4%) than those that avoid imprisonment altogether (2.5%). This result confirms the evidence, amply shared in the literature (Cullen et al., 2011), that imprisonment has a negative influence on the possibility of future social reintegration.

As far as probation is concerned, the highest recall numbers are found in those forms of probation involving drug or alcohol addicted people (11.5% of people serving the first part of the sentence in prison, 6.5% of the people serving the whole sentence in the outside community, with the application of an alternative measure). These recalls concern almost entirely the negative assessment of the person's behaviour during the enforcement of the alternative measure (8.5% of people that have served the first part of the sentence in prison have been recalled for the violation of the prohibition of consuming drugs, and 4.5% of people serving the whole sentence in probation have been recalled for the same reason) rather than for the commission of a new crime (1.5% people who served the first part of the sentence in prison have been recalled for the commission of a new crimes while the 1% of people serving the whole sentence in probation have been recalled for the same reason). The highest number of probation recalls in these cases must undoubtedly be attributed to the specific characteristics of the measure itself involving as it does the serious nature of the individual's addiction. In these cases positive progress may be followed by relapses: in other words, a higher rate of failure is inevitable in those addicted to psycho-voluptuary substances.

As to the overall data on the recall of alternative measures, issued by the Italian Ministry of Justice, it is important to remember that of the 6% of total recalls only 1% are due to the commission of a new crime, 3% to a negative assessment of the interested person's progress and 1% to a new, definitive legal position that increases the limits of the sentence beyond those envisaged at the time of sentence. The available data allow some positive observations to be made about the measures currently available for the rehabilitation of sentenced people, at least in the short term. However, as regards long-term results further analyses need to be developed, aimed at assessing the stability of conduct of sentenced people and studying the risk of recidivism after an interval of at least 5–10 years.

Future Perspectives: New Rehabilitation Paradigms

The prison rehabilitation model in force in Italy has thus clearly been a failure, especially in terms of its re-educational purpose. If education is the product of a greater awareness and stronger values stemming from the participation in a certain number of quality relations and experiences, then prison is the very opposite of a 'virtuous' or efficacious educational model (Ferraro, 2013). Certainly, imagining that one can socialize people in society and help them to live peaceably with others by preventing them from living in society, can only be an empty rhetorical exercise lacking any real content. In contrast, probation measures, by restoring the social dimension to the perpetrators of crimes, can lead them towards the acquisition of relational models that may act as the backbone of a correct, stable and lasting return to the social world. It is generally recognized among all operators in the world of justice that it is necessary, finally, to achieve a major improvement of all the critical aspects evident in the penitentiary environment.

This is also expressed in the illuminated attitude of the current Minister of Justice, Marta Cartabia, that has led to the formulation of a new Law[12] in which the Parliament delegates the Government to intervene for the improvement of the criminal trial and for the implementation of an efficient restorative justice system. This law presents profoundly innovative characteristics about the need to implement and reinforce rehabilitation pathways for people who have committed a crime, stating that the clear objective of applying probation in all cases where the penalty is no longer than a maximum of six years. Moreover, the Government is called upon to align restorative justice in accordance with EU norms, definitions, programmes, criteria for access, guarantees and stipulation of which individuals have the right to participate. Efforts must be made to ensure that, with the aid of an impartial third party, the victim and the perpetrators can actively participate in the resolution of the conflict and the consequences of the crime.

It is to be hoped that, at least this time, the new discipline, which shows good signs of promising outcomes, may be supported by the necessary investments in terms of economic and human resources. Should these fail to materialize, it will count as nothing more than yet another lost opportunity to bring Italian justice nearer to the real needs of citizens, while respecting the fundamental rights of all the involved parties.

Notes

1. Law 10 October 1986 n. 663 LEGGE 10 ottobre 1986, n. 663—Normattiva.
2. Law 27 May 1998 n. 165 Legge 165/98 (camera.it).
3. Law 26 April 2014 n. 67 LEGGE 28 aprile 2014, n. 67—Normattiva.
4. Constitutional Court n. 264 of 22 November 1974 Sentenza n. 264 del 1974 (giurcost.org).
5. as introduced by Law n. 1634 of 25 November 1962 Gazzetta Ufficiale.
6. Law Decree 341/2000 DECRETO-LEGGE 24 novembre 2000, n. 341—Normattiva.
7. Law Decree 178/2020 Gazzetta Ufficiale.
8. Law 12 June 2004 n. 145 L 145/2004 (camera.it).
9. Law 21 February 2006 n. 102 LEGGE 21 febbraio 2006, n. 102—Normattiva.
10. With Law Decree 2 October 2018 Gazzetta Ufficiale.
11. European Framework Decision 909/2008 and European Framework Decision 947/2009.
12. Law 27 September 2021 n 134 LEGGE 27 settembre 2021, n. 134—ormattiva.

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