



المؤتمر الدولي: "قانون العقوبات والتدابير البديلة:  
تجربة نوعية في التشريع الجنائي"

International Conference: "Alternative Sanctions and Measures  
Law: Qualitative Experience in Criminal Legislation."

2022 سبتمبر 27-28 Sep. 2022

المؤسسة الوطنية لحقوق الإنسان  
National Institution for Human Rights

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## Working Paper

### "Alternatives to imprisonment in the Italian Criminal Justice System"

#### The International Conference: "Alternative Sanctions and Measures Law: Qualitative Experience in Criminal Legislation"

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#### 1. Criminal sanctions in the Italian criminal justice system

Imprisonment and fine are the main penalties under Italian law. The death penalty, actually, was abolished at the time of World War II, in 1944. The ban on the death penalty is expressly provided for in Article 27(4) of the Constitution.

Imprisonment, in particular, can be perpetual or temporary. Life imprisonment is provided only for the most serious crimes. Normally, in fact, imprisonment is temporary. The duration depends on the seriousness of the crimes. For the most serious ones, it is 30 years and never more.

In addition to the main penalties, the law in some cases provides for further criminal sanctions. These are accessory penalties, that prevent the convicted person from doing a particular job or holding a public office. Property penalties, such as confiscation, also play an important role, especially in fighting financial crimes, corruption, and organized crime offenses.

In practice, fine sentences account for only 23% (2021); therefore, imprisonment is the most applied penalty. This is mostly temporary imprisonment: actually, life sentences account for only 5% of criminal convictions (2021).

Detention is therefore nowadays the central penalty in the Italian system. This is true for the generality of crimes and, in particular, for the most common ones such as murder, sexual assault, bribery, fraud, money laundering, theft, robbery, trespassing, and so on.



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Only a few minor offenses, assigned to the jurisdiction of honorary judges, are punishable with sanctions other than imprisonment or fine: community service or home confinement. This is, for example, the case of battery or minor injury.

## 2. The aims of punishment

As in other legal systems, punishment in Italy has multiple functions and aims to achieve the following purposes: deterrence, rehabilitation or incapacitation of the offender.

However, according to Article 27(3) of the Constitution, the main purpose of punishment is the rehabilitation of the convicted person. Punishment should aim at the rehabilitation of the convicted person. This is the main purpose of punishment; a purpose that must override all others. On the one hand, needs of deterrence cannot override those of rehabilitation; on the other hand, incapacitation is an extreme purpose of punishment, which implies the impossibility of rehabilitation because the offender does not intend to be rehabilitated. This is, for example, the case of some mafia men or terrorists.

Deterrence is a general purpose of punishment because by threatening punishment the state expects that people will not commit crimes or return to committing them. Incapacitation, on the other hand, should be conceived as an exceptional function, achieved through the deprivation of the offender's personal freedom.

The ordinary and main purpose of punishment, in the Italian legal system, is the rehabilitation of the convicted person. Rehabilitation is understood in a lay sense, not in an ethical-moral sense. It is in society's interest that the convicted person, at the end of his or her sentence, does not return to committing crimes and re-enters society as a law-abiding citizen. Rehabilitation, therefore, is not only in the interest of the convicted person. It is also in the public interest. Punishment should serve to reduce recidivism, thus defending public and private interests.

It has always been problematic to succeed in rehabilitation through prison. This is because prison, through detention alone, realizes incapacitation, preventing the convicted person from committing further crimes. Mere detention does not improve people who enter prison. In order to rehabilitate the convicted person, prison must respect human rights and provide activities that are useful for reintegration into society, such as education, cultural activities, work, and contact with family members. Prison cannot be just detention; detention must be combined with activities useful for rehabilitation.



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### 3. Alternative measures to detention accorded during the execution of the sentence

In order to motivate prisoners to participate in rehabilitation activities, Italian law provides that the judge responsible for the execution phase may authorize the offender, after a certain number of years, if there is no danger of recidivism, to leave prison for short periods, or to work outside during the day. The rationale is to reward progress on the path to rehabilitation and to realize a gradual return to society as one approaches the end of the sentence.

This possibility of serving part of the sentence outside the prison, during execution, is provided for all convicted offenders, including those with life imprisonment, after a certain number of years from the beginning of the execution of the sentence. Limitations are provided only for the authors of particularly serious crimes, such as those of the Mafia and terrorism.

Therefore, alternatives to prison, at the execution stage, serve to allow the convicted person, after a certain number of years, to return free for part of the day (semi-freedom) or, even, for the whole day: either in his home (home detention) or under the supervision of social services. The decision is made by a judge, different from the sentencing judge, who is responsible only for the execution. No one gets in and out of a prison if not for a judge's decision. And if the sentenced person fails to comply with prescriptions, he or she goes back to prison. These alternative measures to imprisonment are granted under a double condition:

- a) the judge thinks that the convicted person has demonstrated good behavior in prison by participating in rehabilitative activities;
- b) the judge thinks that the convicted person, once free, will not commit new crimes.

The judge makes such assessments with the help of the prison director, educators and social service experts.

Scientific studies and statistical surveys show, in Italy as well as abroad, that recidivism rates decrease in relation to offenders admitted to alternative measures to imprisonment.

The execution of the sentence outside prison, of course, requires an organized and efficient public structure: dedicated police controls and social services.

When outside prison, the prisoner can work, attend school or university, and live with his family. These are all useful activities for his social reintegration.



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#### 4. Criminal sanctions replacing imprisonment up to four years

Rehabilitation in prison is easier when the sentence to be served is of medium or long duration. On the other hand, when the sentence is of short duration, it is difficult to carry out useful activities for social reintegration in prison. Prison can be more harmful than helpful. It is used to say that prison is like 'the university of crime', where you enter thieves and leave robbers. There is always the risk of contact with other inmates, perpetrators of more serious crimes. That is why, traditionally, Italian law tries to avoid entering prison for short periods of time.

To date, a prison sentence is considered short when it does not exceed two years. However, a reform is being approved just these days, at the initiative of the Italian government and Justice Minister Prof. Marta Cartabia, which extends from two to four years the length of the sentence imposed by the judge that can be executed from the beginning through an alternative measure to imprisonment.

The mechanism is this: when the judge sentences to a prison term of no more than four years, he can replace the imprisonment with a different penalty: semi-release, home detention, community service, or fine.

Fine can replace imprisonment of not more than one year.

Community service can replace imprisonment of not more than three years.

Semi-release and home detention may replace imprisonment not exceeding four years.

The judge chooses the sentence most useful for the social reintegration of the convicted person and to ensure the protection of society from the danger of committing other crimes. The choice to replace imprisonment with one of the above-mentioned alternative punishments is discretionary, never mandatory.

The new reform, which will come into effect in the coming days, can substantially reduce the number of prisoners. This is also positive because Italy faces a problem of prison overcrowding for many years. As of December 2021, one in three inmates in Italian prisons was serving a short sentence, that is, no more than four years. That was more than 11,000 people out of 37,000 final convicts in prison.

Prison replacement sentences have actually existed since 1981. The forthcoming reform, however, enhances them in a relevant way.

Semi-release means that the offender is required to spend no less than eight hours in prison (usually at night). For the remaining part of the day, the offender can leave to go to work, study, and so on.



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Home detention entails an obligation for the convicted person to spend at least 12 hours a day in his or her home or at a place of care. For the remaining part of the day, the convicted person can go out and engage in study, work, and so on.

Community service involves the obligation to work, without pay, for the state or for public or private social welfare or voluntary organizations, for not less than six and not more than fifteen hours per week.

These substitute sentences are of the same duration as the substituted prison sentence. They can be revoked, and in this case the prison sentence, or another more serious alternative punishment, returns.

If the prison sentence is not more than one year, it can be replaced with a fine. The conversion is done by multiplying the days of imprisonment by the value of a daily quota of the fine to be paid. The value is calculated based on the economic condition of the convicted person.

The substitution takes place at the end of the trial, in a sentencing hearing. This hearing is attended by the social service, which prepares a rehabilitation program and monitors the path of the convicted person, during the execution of the sentence.

Substitutive sentences give the offender the assurance of avoiding imprisonment. This is also why they can be requested in plea bargaining. They are useful in reducing recidivism rates, reducing the number of prisoners and improving the living conditions of those who remain in prison to serve longer terms. They are sentences associated with a rehabilitation program and the work of social services operating in the community.

## 5. Community sentences

The execution of punishment outside prison, in the community, has been a growing reality in Italy for years. At the Ministry of Justice, a department dealing with out-of-prison criminal execution has been established for a number of years. The administrative structure includes branches in the territory and a number of social workers and educators that the Italian government has recently doubled.

According to the Italian experience, alternative sentences work, as effective alternatives to prison, if a public or private support system works efficiently. The central role is of educators and social workers, including any cultural mediators and interpreters. It is important that they are in proportionate numbers to the convicted, so that they can be monitored and supervised.



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It is also important that a network be developed in the territory with entities, public or private, that can give work or social or health care to convicts. The Italian government has been for years and increasingly engaged in entering into agreements with entities to carry out public benefit work.

You have to consider that the number of people serving sentences in the community nowadays (about 70,000), in Italy, is greater than the number of those in prison (about 54,000).

Prison in Italy is not the only answer to crime: alternative sentences exist and are applied more than prison. Revocation rates of alternative sentences are low. Recidivism rates are decreasing. These are for all intents and purposes, especially in the reform, real punishments, also included in the penal code.

A cultural change, not easy, is needed to limit the use of prison to only the most serious cases and expand the role of different punishments. The idea, the concept of punishment evolves over long periods of time. Cultural commitment to the enhancement of alternative punishment is important for the progress of human rights and the protection of society. Being able to graduate punishments according to the seriousness of the crime and the person of the offender ensures compliance with the principle of proportionality of punishment to the seriousness of the crime, which the Italian Constitutional Court recognizes as a constitutional principle. Prison is an extreme measure, which can be waived, in the interest of society, when there is no danger to the community and a different punishment promises to be more appropriate for the social reintegration of the convicted person.

Italy has taken the path of alternatives to prison with conviction, which is a central point of the latest criminal justice reform.

The same path has been taken by other nations, all over the world. The very interesting experience of the Kingdom of Bahrain and this international conference itself is a confirmation of that.

## 6. International cooperation.

At the international level there are cooperation initiatives among states related to alternative sentencing. An important example for Italy is a 2008 European Union Framework Decision (No. 909) on the mutual recognition of alternative sentences. International cooperation is important not only when enforcing a prison sentence, but also when a different sentence is to be enforced. Therefore, the development of alternative sentences to prison must also take into account international cooperation.



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In addition to judicial cooperation, scientific cooperation between public institutions, universities and research organizations is also important. Sharing experiences, best practices and researches and studies can be useful in improving the reality of alternative sentencing and developing public debate. In Italy, the mistaken idea that the only possible answer to crime is prison is still widespread in a part of public opinion. I do really think that to overcome this idea, and develop more and more real and effective alternatives to prison, socially perceived as punishment and really useful for rehabilitation, initiatives such as the conference organized in the Kingdom of Bahrain by the National Institution for Human Rights are very important. For this reason, too, the Italian Ministry of Justice is honored and pleased to have participated in this conference and thanks once again for the kind and welcome invitation, confirming its willingness to cooperate in future initiatives.

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