

INTERNATIONAL CONFERENCE
ALTERNATIVES TO IMPRISONMENT
Identificazione e Scambio di Buone Prassi

LIBRA ONLUS

Alternatives to imprisonment: identification and exchange of good practices in a EU perspective

«Prison and probation system in Italy»

Dott.ssa Marzia Tosi



GRANT AGREEMENT nr. JUST/2013/JPEN/AG/4592

The project named "Alternatives to imprisonment: identification and exchange of good practices" has the financial support of the Criminal Justice Programme of the European Union.

Standards...

The prison and probation system in Italy is based on the following standards:

- The Constitution of the Republic of Italy of 1948;
- The Criminal Code of 1930, the text of which has been extensively modified by various reforms implemented over the years;
- The Code of Criminal Procedure of 1988, which has also undergone many changes;
- **Law 354/1975, the Penitentiary Law (OP), introducing alternatives to imprisonment; it too has repeatedly been amended (Law 663/86, Law 168/98, Law 67/2014)**
- Prison Regulations 230/2000, which defines certain aspects of the enforcement of sentences in detail;
- Law 67/2014, which recently introduced *probation* during the pre-sentencing period as well.

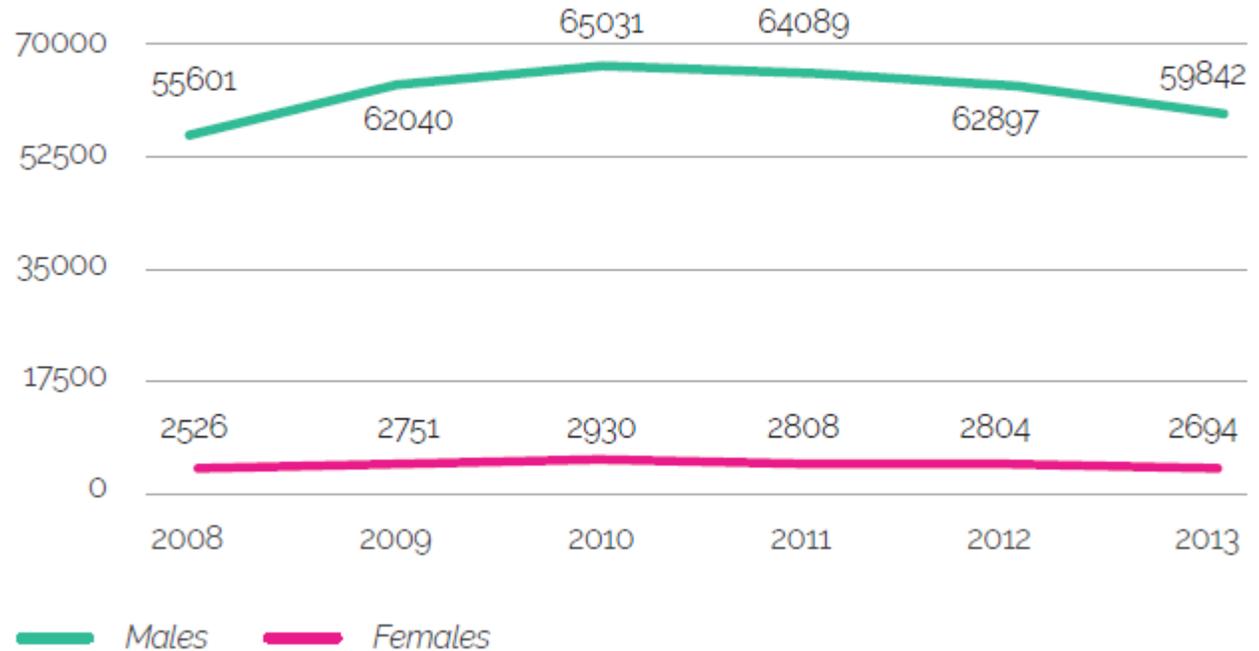
The Italian punishment system is based on a range of tools for the treatment of offenders: religion, education and work, leisure and sports activities, contacts with family and the outside world.



Prison population in Italy 2008-2013

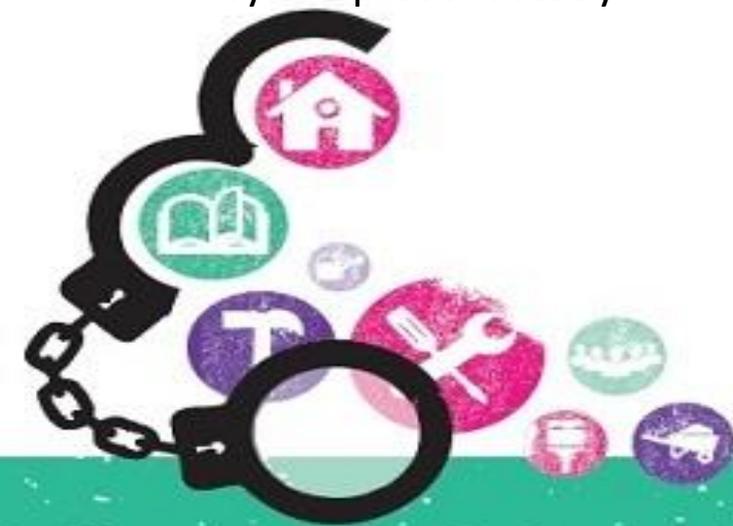
The overcrowding in correctional facilities that characterized the years 2009-2012 began to ease in 2012-2013.

The number of prisoners in Italy has continued to decrease, even after the timeframe considered by the present study.



Source: Ministry of Justice of the Republic of Italy

Official data show that in Italy the percentage of women in the total prison population has remained stable throughout the period studied, but is smaller in comparison to other European countries (2013: 4.3%).

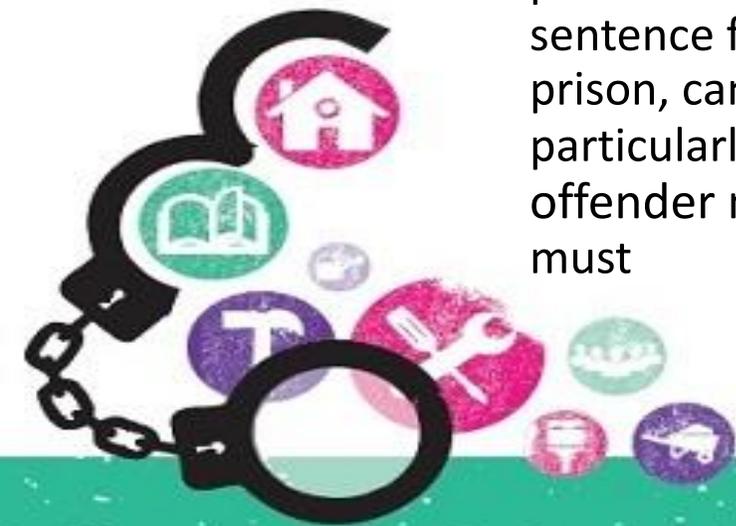


Prison population in Italy 2008-2013

In prison too, there are tools with the potential to re-educate detainees and to facilitate re-socialization, together with the alternative measures to incarceration.

One of these is certainly **Art. 21 (External) Penitentiary law.**

It defines a modality of serving the prison sentence that allows the prisoner to leave the penitentiary institution for work or training. Offenders who have received a definitive sentence for common crimes, with no limitations as to the length of the period spent in prison, can request inclusion in the program; only when the crimes committed are of a particularly serious nature is there the proviso that have been served before the offender may request it (in the case of life imprisonment, one-third of the sentence must

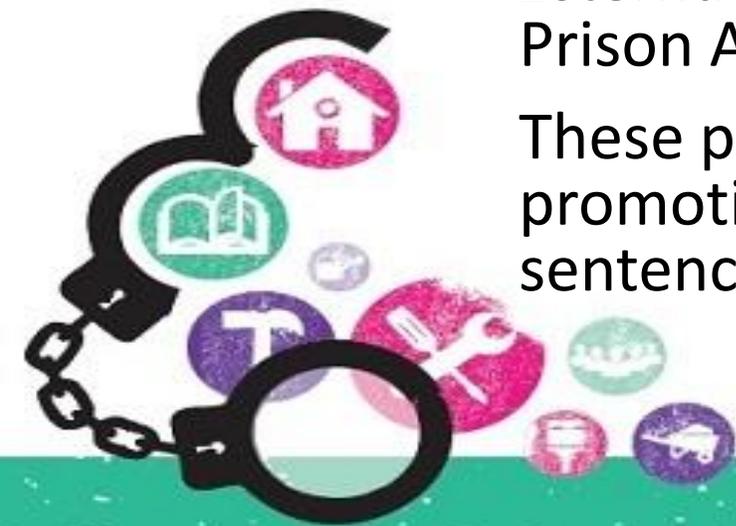


Italian probation system

Through its provisions for alternative measures to detention, first introduced in 1975 and since then gradually applied in a growing number of cases, the Penitentiary Law aims to emphasize the rehabilitative goal of punishment (art. 27 Cost.).

The services responsible for managing community-based sentences are the probation agencies (*Uffici Esecuzione Penale Esterna* | *UEPE*), established in 1975 as part of the Department of Prison Administration of the Ministry of Justice.

These probation services have a number of mandates, including promoting the social rehabilitation of convicts serving their sentences through alternative measures to detention.



Prison population and alternative measures in Italy

The number of prisoners is declining in Italy, whilst the number of those serving their sentences under an alternative measure is increasing.



Source: Ministry of Justice of the Republic of Italy



Alternative measures in Italy: probation

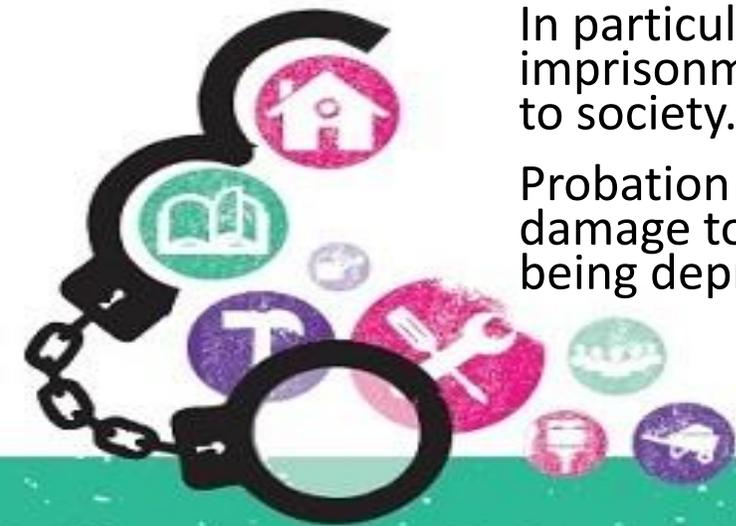
Probation under social services supervision is a particularly important alternative measure (Art. 47.1 OP): until the law enabling it to be applied to the pre-sentencing phase came into force, this was the only form of *probation* known in the adult criminal justice system in Italy.

This is an alternative measure that permits the individual to serve his sentence, not exceeding three years, outside the correctional facility.

Probation is granted when it has been noted that it will contribute to the rehabilitation of the offender and there is no danger that the offender will commit other crimes.

In particular cases it may also be applied to those sentenced to up to four years' imprisonment. In any case, the measure is not granted to anyone who is dangerous to society.

Probation takes place completely in the community and it aims to prevent the damage to the individual that may result from contact with the prison and from being deprived of freedom.



Alternative measures in Italy: home detention

Another widely-applied alternative measure is **ordinary home detention** (art. 47ter OP). In this case, an individual sentenced to a term of imprisonment not exceeding four years, serves it inside their home or in another private place of residence.

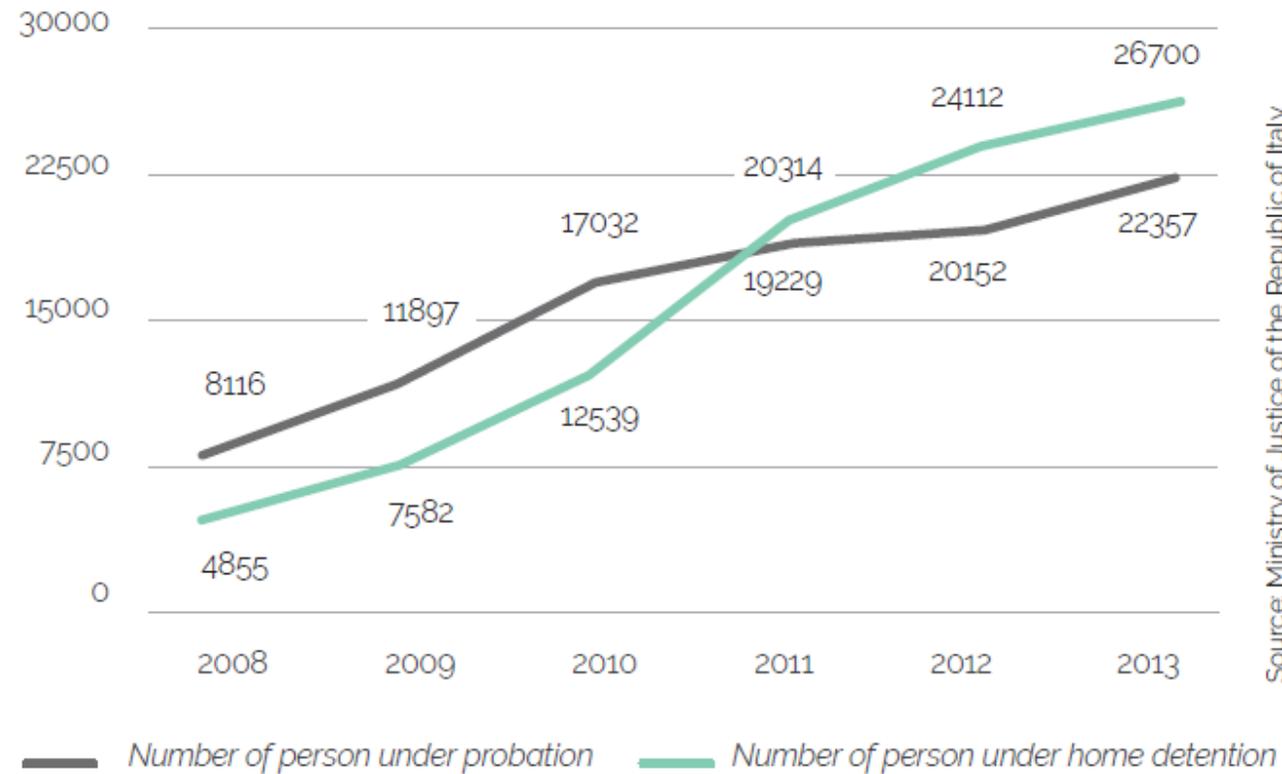
In comparison to *probation*, home detention is a less structured treatment modality, although in practice the distinction between probation and home detention has been lessening, since allowing home detainees to leave their places of residence because of the requirements of work or study has been more and more often recognized as well.

Law 199/2010 allows access to alternative measures by offenders serving a term of incarceration of not more than eighteen months, a period that extends to time remaining to be served as well, unless the offences cause particular concern, such as terrorism, criminal association, prostitution of minors, kidnapping for ransom, etc., or there is a danger of escape or a risk of recidivism.

As we shall see later, ordinary home detention may be granted to individuals for whom prison would have particularly negative effects: young people, the elderly and mothers of children under the age of 10. The latter, as we shall see, benefit from a special type of home detention.



Probation and home detention in Italy 2008-2013

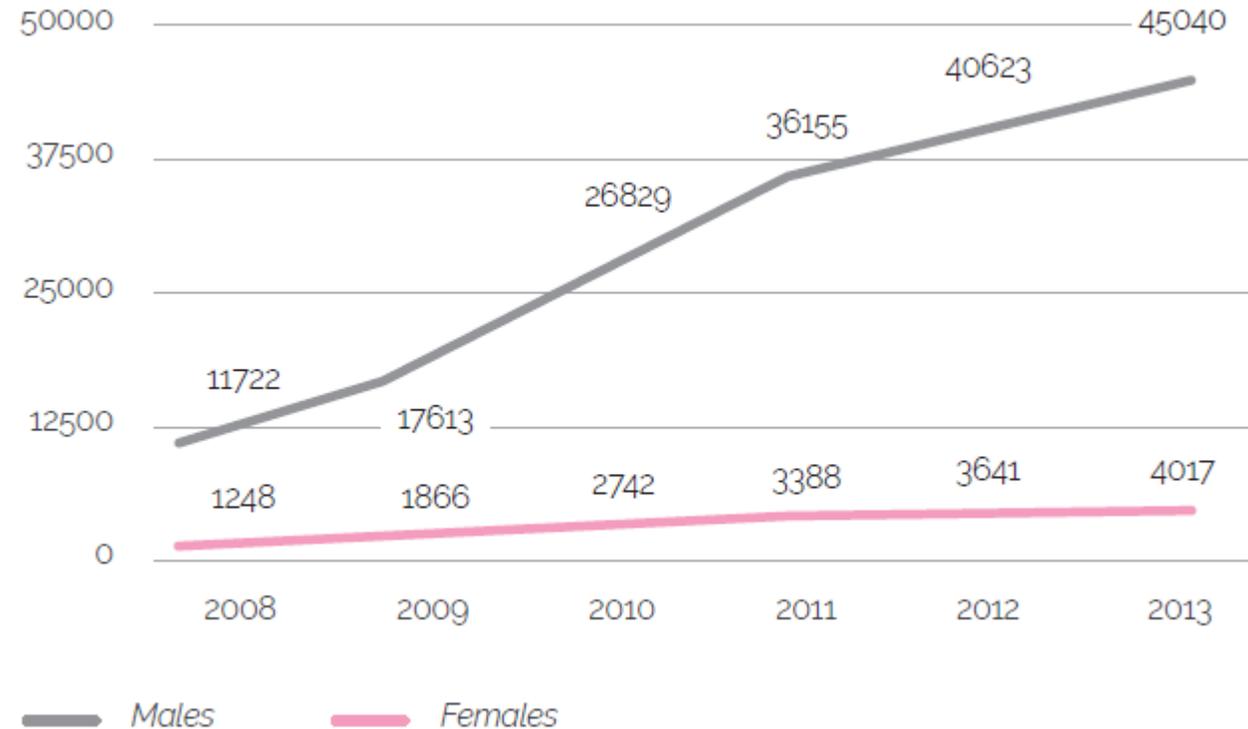


Probation and home detention in Italy 2008-2013

Compared to the prison population, the percentage of women in the total number of people subject to alternative measures is high, although it is decreasing.

According to data provided by the Ministry of Justice, the percentage of women dropped from 12.3% of the total number of home detainees in 2008 to 8.6% in 2013.

The percentage of women in day release is smaller (2008: 3.5%; 2013: 3%).



Source: Ministry of Justice of the Republic of Italy



Alternative measures in Italy: day release

Day release (art. 48 OP) is much less frequently applied.

Day release grants the sentenced offender permission to spend part of the day outside the prison to carry out work or training activities that will be useful to his social reintegration, under a treatment program supervised by the director of the facility. It is one of the measures that mitigate incarceration, as it is less restrictive than classic detention and enables individuals in the program to pursue interests and activities outside the prison for part of the day.

Those with a sentence not exceeding six months may request the measure, as may all sentenced offenders who have already served half of their sentences in prison (or two-thirds in the most serious cases), as well as those sentenced to a term of up to three years, even before having served half of the sentence.



Vulnerable groups

Drug and alcohol addicts are also considered vulnerable, and thus **special probation** has been designed for them: this measure may be granted to a convicted drug or alcohol addict if it is for the purpose of undertaking or pursuing a course of treatment. This is an alternative measure to a term of imprisonment of up to six years. This measure cannot be granted to the person more than twice.

Another modality of special probation that can be accessed by people in conditions of particular vulnerability is set out with reference to **people suffering from AIDS or severe immunodeficiency** who are in treatment or plan to go into a care and assistance program (art. 47*quater* OP).

They may also be granted **home detention** in certain cases.

The latter is an alternative measure that may be granted for humanitarian reasons to people with specific needs — **seniors** (over 60) and **youth** (under 21) for reasons of health, study, work and family.



Vulnerable groups

Ordinary home detention also includes the special case of **pregnant women or mothers of children under the age of ten**. This measure consists in enabling the offender to serve their sentence inside their own home, in another private residence, or in a care and treatment facility in order to provide healthcare and support for the children. In addition, Article 47 *quinquies* gives convicted mothers of children under the age of ten, the possibility of **special home detention** when the requirements for access to ordinary home detention are not met. In any case there must be no risk of recidivism, and the mother must have served at least one-third of her sentence.

The mother may serve that part of her sentence in a penitentiary facility for mothers or, if there is no danger of escape and recidivism, in her home or in a private residence or other care and assistance facility. If this is not possible, the sentence may be served in a protected family home setting. However, this possibility is excluded in cases of particularly serious offences such as terrorism, criminal association, prostitution of minors, kidnapping for ransom, etc.

It is important to remember that access to this measure is recognized for the **father** as well when the mother has died or is otherwise absolutely unable to care for the children.



Community services

The application of **community services** has been increasing recently. It consists in carrying out an unpaid work activity for the community through a public or private entity approved by the court of jurisdiction.

Community service may be an alternative sanction or measure; or it may be part of another alternative measure (e.g. probation under the supervision of social services) or even of a prison sentence.



Community services

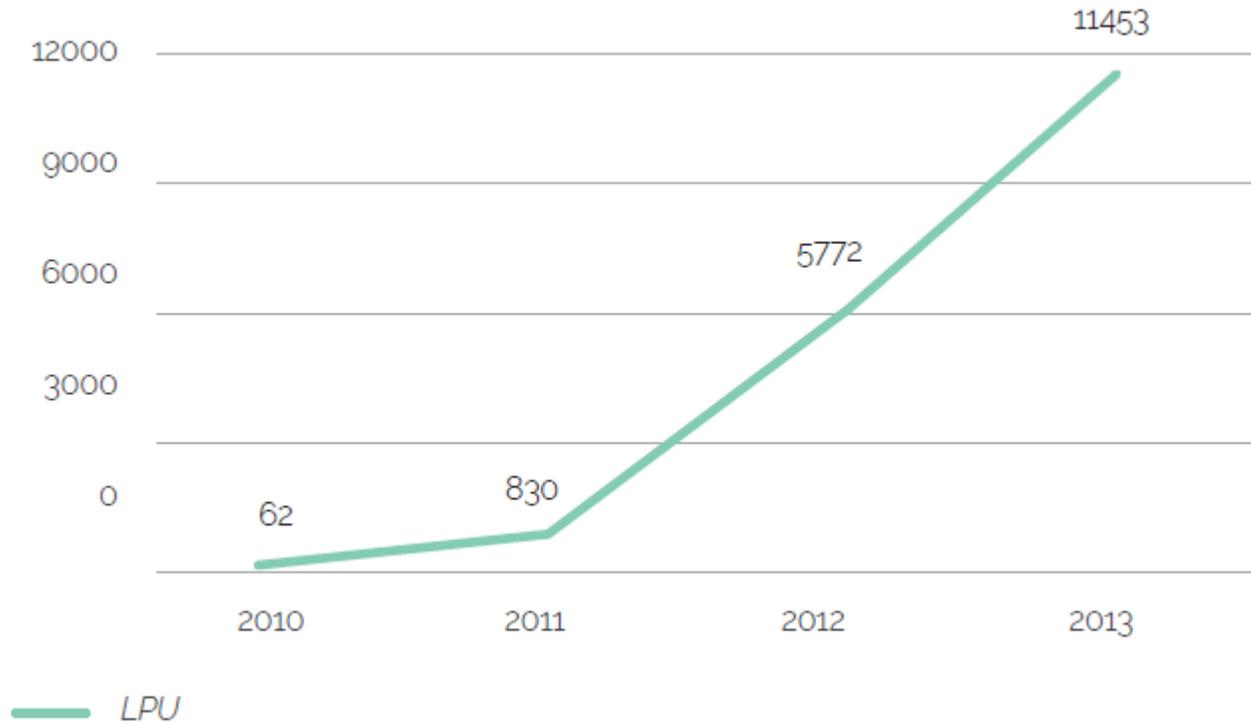
There are several forms and legal characterizations of community service work in Italy.

Community service work has expanded rapidly since 2010, thanks to the reform of the Highway Code. The data for previous years are not recorded.

Compared to other alternative measures, there is a higher percentage of women serving community service work, standing at 9.8% in 2013.



Community services



Source: Ministry of Justice of the Republic of Italy



New developments of probation

The **suspension of the criminal trial with probation for adults (*judicial probation*)** was only introduced into Italian law very recently. In this case, the defendant submits a request to the judge to stay the proceeding, pledging to work together with authorities to implement the measure.

It consists in carrying out, under the supervision of the UEPE, behaviors and actions aimed at repairing the harmful or dangerous consequences of the offence: compensation for the damage caused to the victim, mediation with the victim of the crime, volunteer activities, compliance with the requirements regarding residence permits, freedom of movement, avoidance of designated places, and carrying out community services, which are the necessary condition to receive access to the measure.

An individual may be granted access to the measure if the crimes of which he is accused are punishable with up to four years' imprisonment or other specified offences have been committed (such as grand larceny, receiving stolen goods, violence or threats to public officials). The measure may only be granted once, and in any case not to habitual offenders or to those whose probation has already been revoked.



New developments of probation

It is important to note that the tasks of the UEPE was significantly broadened after the entry into force of Law 67/2014, as the latter introduced the possibility for the defendant to request that his or her sentence be suspended in view of a probation project undertaken under the supervision of the UEPE. For the first time in Italy the Office is also responsible for those who have not been sentenced, even by a court of the first instance. It is basically a form of judicial *probation*, already known in other countries and in the juvenile system.



New developments of probation

It is important to note that new developments of probations requires a deep participation of the Society, here represented by NPOs and Local bodies.

Together with these actors, we believe that we will have the possibilities to widen the application od probation and so to impact on the number of prisoners.



Thank you!

Dr. Marzia Tosi

research@associazionelibra.com

