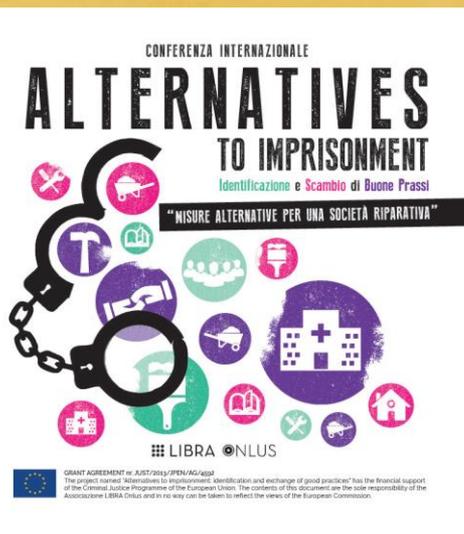




The Evolution of Probation in Italy

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Carlo Alberto Romano
University of Brescia





In Italy, the introduction of probation has occurred at the beginning of the first experiences of social services, applied in the system of penal execution, from the late 40s.

The Institute of probation was first implemented inside the juvenile justice system

In the adult sector, the prison situation after the war was dramatic, with a considerable increase in the prison population and that generated numerous revolts. The Constituent Assembly has given special attention to the function of the sentence, with the abolition of the death penalty and the wording of Article 27, which establishes that the penalties can not be contrary to the sense of humanity and must aim at rehabilitating the sentenced people. Prison reform work followed slowly and in 1960 introduced the first set of laws that would have been the basis of the subsequent development.

The basic principles were therefore confirmed and they will be recalled in the future reform of the prison system in 1975. Among those it worth to remember the individualisation of treatment, the observation of prisoners and especially the institution of social services for adults offenders. After a long legislative process in 1975, we finally arrived to the approval of the prison system reform law (P.L) and to the introduction of *Affidamento in Prova al Servizio Sociale* (a special kind of probation) regulated by art 47 of P.L.

The “*affidamento in prova al servizio sociale*” (the Italian probation of 1975) together with the other alternatives measures, is the legal expression of a new way of imagining the punishment. So, the probation in Italy was born as a specific choice, according to which the alternative measure can be applied to those offenders with a reduced capacity of committing a crime. Since the 1975 until today, several law reforms took place. Criminal policy, which was initially in line with the P.L., subsequently faced great difficulties in the implementation,₅

Many times, in Italy, it emerged that the favor or the disfavor given by the legislator to the principles of the reform was influenced by the public opinion. In the first 90's (for example) a new *mafia* crime wave brought back the attention to the penitentiary issues, and the following years were characterized by significant restriction rules. But in 1998, the reduction of the prison population due to the increased possibility to serve the sentence in one of the alternative measures provided for the P.L., was pursued.



Since then, several minor changes come in succession until 2014, when the legislator has introduced the probation, until that moment applied to only juvenile offenders, also for adults. Through this new measure the Italian criminal justice system has started a path on probation who has never happened before.

This new probation, under the supervision of the probation office (UEPE - *Ufficio Esecuzione Penale Esterna*) implies the realization of action that should minimize the negative effects of the crime itself. This happens through the compensation of the victim, the mediation with the victim, the payback orders. Obviously, by considering as of primarily importance the respect of obligations related to the accommodation, the freedom of movement, and the development of community measures (at least for a period of 10 days, even if not consecutive, taking into account the offender's needs related to the work, the education, the family and the health).



The above mentioned activities take place outside of the trial. Indeed, it is worth clarify that we should speak of suspension of the procedure for probation rather than probation *stricto sensu*. The probation project, developed by probation office (UEPE), must be presented, with the application, in front of the judge. The probation request must be promoted by the offender him/herself or by his/her lawyer.

The judge decides always through a decree about the suspension of the trial to allow the probation, when, according to Article 133 of the Italian Criminal Code, the project is suitable and the judge believes that the person will not commit crimes again. At the end of the probation, if the path has been positive, the judge declares the extinction of the penalty. He bases the evaluation on the relationship written by the UEPE. The judgment is declared during the hearing, after collecting the prosecutor's opinion, the accused but also to the victim.

From what has just been said, we can see the differences among the probation for minors and adults. The goal of the institute for minors is basic, educational and socializing. There is no subjective obstacles (established by the qualities of the condemned) or objective (such as the type of crime) and the application may be presented to each point during the whole judicial process, even during appeal, as its main target is to support the young offenders in his rehabilitative path.



On the contrary, the Italian legislator has established rigid barriers for the application of probation to adult offenders and has excluded the more severely punishable crimes. Moreover, there are evident similarities with the application of the sentence requested by the parties and it is also clear that the aim is solely the reduction of prison population.

However, we doubt that the reduction of the prison population could be achieved through this kind of approach!

First, limiting the probation only to minor offences creates a reduced possibility of application of the measure itself. In addition, some offenders could prefer to ask for conditional release instead of the probation (because, in some cases the law gives this opportunity)



So, it is plausible that the "average" offender prefers to risk the sentence, especially if the conditional release, as often happens, is not linked to the restorative activities, or if alternative measures are less limiting of probation.





What has to be added is that the activities required for the application of the probation are not less demanding and, therefore, do not represent a saving of work for the already busy probation offices (UEPE).



Some other considerations must be done according to the need of the victim to be involved, taking care of collecting the right data about the victim him/herself. It appears useful the involvement of the probation offices (UEPE) but also the social care services, the health services and the charity organizations with whom the judge will start a dialogue in the phases of preparation, enforcement and extinction of probation.

The adoption of the probation means a major challenge for Italy, which test the promotion of the themes of the penal mediation and the restorative justice to demonstrate that the Italian penal system can operate beyond the binomial: check of the accountability / punishment with the detention. The success of the probation could stimulate the enlargement of the categories of crimes to whom it is now applicable and could represent a real strategy for the reduction of the prison population.



THANKS

carloalberto.romano@unibs.it