

## Chapter 13

# The Professional Training of the Italian Surveillance Magistracy: The Useful Knowledge of Criminology and Victimology for a Working Italian Prison System

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### EXECUTIVE SUMMARY

*The Italian prison system is characterized by a sort of schizophrenia (Ferrajoli, 2000) due to two opposite principles of legal framework: the certainty of sentence and the re-educative purpose of imprisonment. The action of the Surveillance Judge (Magistrato di sorveglianza) – a relevant authority for the enforcement of a criminal judgment – takes its place in the heart of such tension. In fact, he must ensure a right implementation of the sentence and, at the same time, he has to attend that the sentence serving is realized in accordance with penal rules and, particularly, with the re-educative aim. Therefore this study will highlight the importance of professional training for serving sentences judges whose educational programming would provide for inputs of criminology and victimology studies. They supply the Surveillance Magistracy (Magistratura di sorveglianza) with cognitive tools to identify the right treatment program for the convicted personality and to promote a mediation process between offenders and victims.*

### THE ITALIAN PRISON SYSTEM AND THE SURVEILLANCE JUDGE

The Italian prison system has the peculiarity of having the help of the Surveillance Magistracy (*Magistratura di sorveglianza*). Its institution dates back to 1930, in the fascist regime, when the law maker introduced new criminal code and

that of the penal procedure which brought up the detention orders – laying on the so-called «double binary» («*doppio binario*») – and assigned a task of surveillance and of a working administration within the phase of penal serving sentence (Ferraro, De Stefanis, 1995:7). This authority constitutes originality not only for the Italian legal system, but also for the foreign ones: in fact, it has been introduced in France and in Spain. Such introduction could be understood keeping in mind various

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features, some of them having legal roots, others socio-political ones.

As to the first, we have to consider that the Italian legal system can be traced back to an institutional model commonly called «civil law»; therefore, also judicial authorities are founded on a legal structure distinguished first by a clear powers separation and, then, by the provision for relevant procedures of selection and training. For these reasons it isn't casual that an authority quite similar to our Surveillance Magistracy has been introduced in the French legal framework, as well as a «civil law» system (Vichnieswky, 1980; Mestitz, 1990). Actually, courts having jurisdiction on serving sentence are not instituted in those legal systems which could be traced back to an institutional model commonly called «common law». On the contrary, in these last contexts competence on penitentiary matter it is attributed to independent agencies that are not judges. So they aren't screened by competition procedures and don't return verdicts. Very often penitentiary experts are appointed by government organisms.

As regards the socio-political roots, it's right to hint at the historical context in which the Surveillance Judge has been drawn up and instituted.

This framework can be analyzed during a long period of time. In the first years of the 19th century the prisons looked as places of despair and totally neglected, though the authorities decided to intervene ordering the construction of new prisons and many researchers led a large campaign to raise public and political class awareness of the appalling conditions of the jails<sup>1</sup>. Over the years, we have been watch the revival of the punitive stance according to which punishment could have a reward aim to the community in proportion to the harm; and it has been partnered the abolition process of capital punishment. All this has produced a rigorous idea of the prison which is conceived as an institution distinct and autonomous from judicial guarantees of the legal system; the prison control were firstly assigned

to military and police forces; then it has been recognized to administrative authorities. By the strengthening of this feeling of «social defense» the prisoner was thought of as a man excluded by society and by all rights and guarantees that lawmaker was recognizing to free people.

After the enactment of the Italian Constitution a change process got off, that, although long and difficult, produced a modernization of the penitentiary system: it firstly means that an innovation has established itself as a result of new methods, equipment and ideas which involved the actions of judges, prison workers and police men. This process, made easier by the consolidation of the constitutional principle of re-educative purpose of imprisonment<sup>2</sup> - which Italian prison system must primarily obey - was formalized in 1975 through the drafting of the Prison System Act (*Ordinamento penitenziario*)[*ord. penit.*] (26 July 1975/354 Act) and it is fully working. If we think over the interconnection pointed out in this brief retrospective, it appears readily understandable the clear change materialized by the 1975 reform which held in store a role of undoubted prominence for Surveillance Magistracy (Della Casa, 1998:2). It is possible to single out some weighty corollaries of this change: the punishment meted out can be modified qualitatively and quantitatively during serving; as prisoners separateness has produced self-defeating outcomes, the use of adequate instruments is spreading to develop contacts with the territorial institutions; finally, the prisoner is regarded as owner of legal statement towards to penitentiary service in full obedience of re-educative aim of punishment.

As a consequence in the field of trial, the judge has to enforce penitentiary laws (code of criminal procedure, Prison System Act and prison regulations), but his task is not so easy as it could seem. In fact, over the last thirty years after the Prison System Act<sup>3</sup>, several reforms of judicial system have changed the role of Surveillance Judge<sup>4</sup>: the phase of serving sentence has been transformed into a fourth judicial step characterized by the

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