



THE SUPERVISION OF MATTERS RELATED TO DETENTION

Prison overcrowding: the Italian experience

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What is fight against prison overcrowding about?



1. Better material conditions, but also
2. Respect of dignity
3. Effective prison treatment
4. Actual rehabilitation and social resettlement
5. Reducing the risk of re-offending

Italian Laws and Regulations on the prison system



1. **Penitentiary Act:** Law n. 354/1975
2. **Regulations of Enforcement:** dpr n. 230/2000

The Italian Penitentiary Act is considered as an advanced model of legislation, which, in practice, does not achieve all the expected results

Constitution of Italian Republic

Article 27



“The punishments **shall not consist of treatments against the sense of humanity** and they shall be **aimed at the re-education** of the sentenced person”

REHABILITATION CONCERNS THE WHOLE OF SOCIETY

European Court of Human Rights

sentence of 8 January 2013

(Torreggiani and others vs. Italy) – 1



Italy was sentenced for violation of article 3 of the European Convention of Human Rights

1. When imprisoned, a person assigned to multiple beds cell cannot have at its disposal less than 3 Sq m of living space
2. If the space is between 3 and 4 Sq m, the violation exists if other elements make more difficult the prisoner's living conditions (*e.g.: bad toilet functioning, lack of light or ventilation, long period spent in the cell...*)

ECHR sentence of 8 January 2013

(Torreggiani and others vs. Italy) – 2

The Court reiterates that:

1. Imprisonment is a measure of last resort
2. Much more recommended are Alternative Measures
3. Inhuman treatment not depend only on the space
1. Temporary circumstances cannot integrate inhuman treatment

ECHR sentence of 8 January 2013

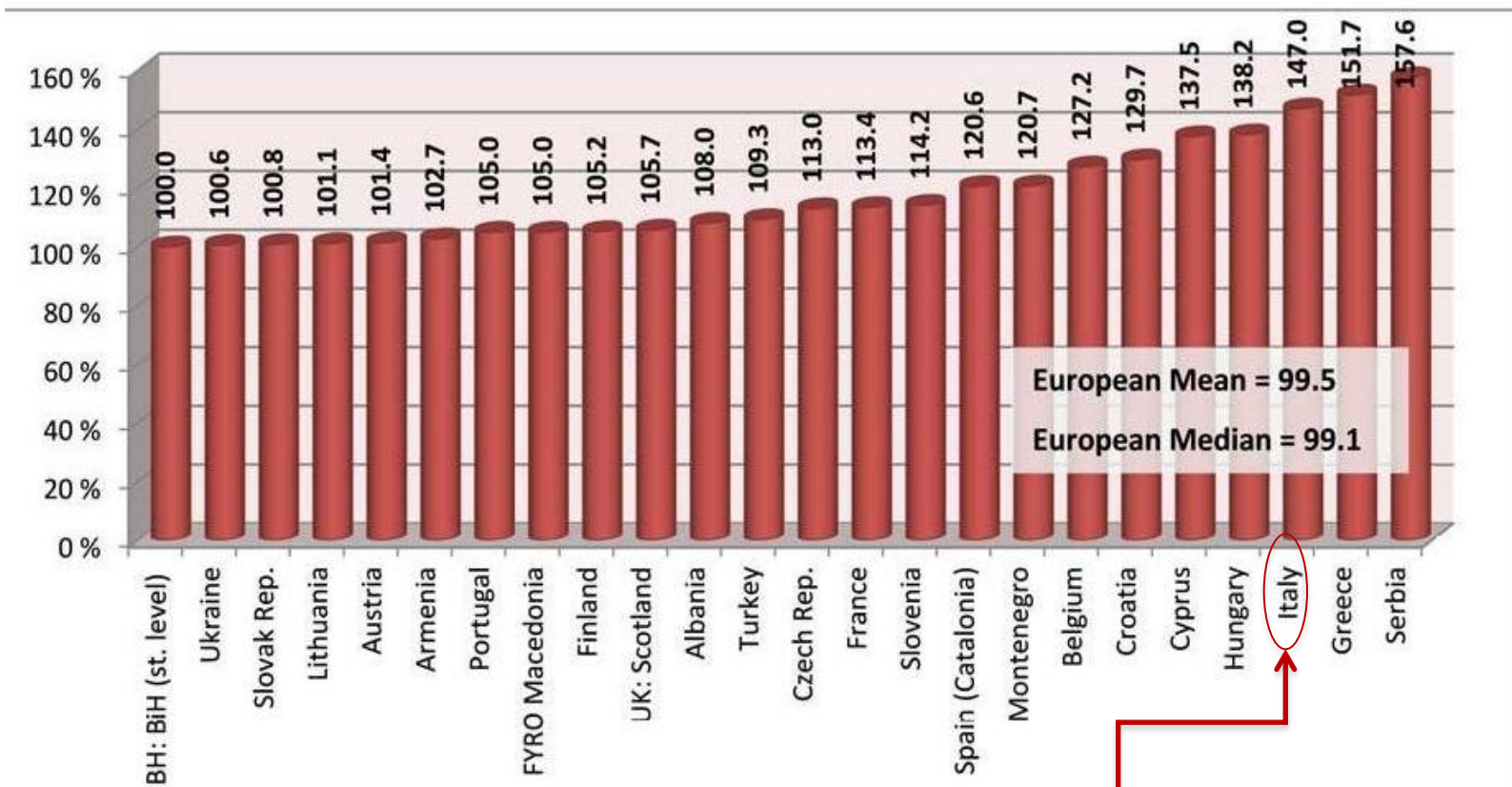
(Torreggiani and others vs. Italy) – 3

The judgment also indicates to:

1. Promote the development of measures to reduce the actual length of prison sentence carried out, preferring individual measures rather than the collective ones
2. Consider the conditional release as one of the most effective measures (mainly in terms of reintegration)
3. Design and implement effective treatment programs in detention so as to facilitate the rehabilitation of offenders, reduce recidivism, ensure the safety and protection of the public

Prison Density: a comparison from SPACE 2011 data

FIGURE 1.B: COUNTRIES WITH PRISON POPULATION OVERCROWDING (MORE THAN 100 PRISONERS PER 100 PLACES)



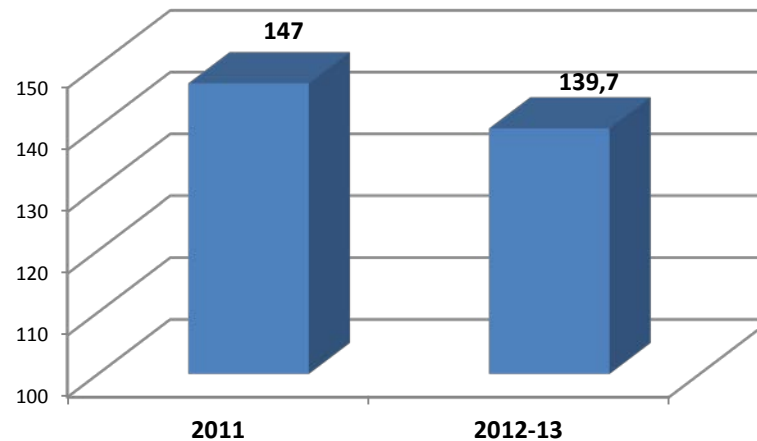
In 2011 survey, Italy results as the 3rd most overcrowded country within CoE member States

Prison Density:

Data provided in the SPACE Project website for the years 2012 and 2013




Italy - Density for 100 official places



Data show a meaningful decrease in the prison density in Italy, together with the flux of the prison population rate per 100,000 inhabitants (from 110,7 in 2011 to 110 in 2012-13)

Measures adopted and to be adopted in Italy

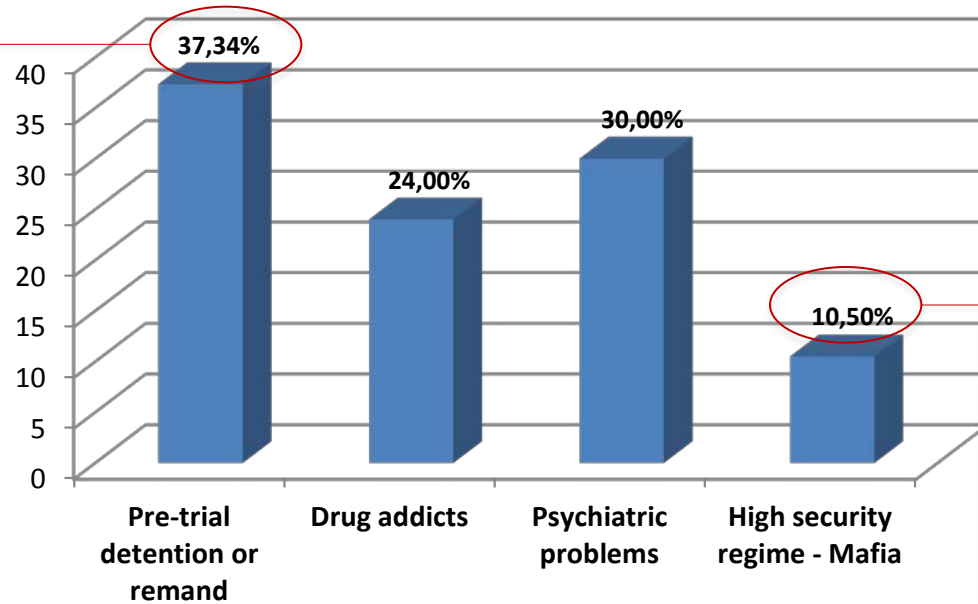
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- Measures affecting criminal sanction system (e.g.: de-penalization)
 - Measures affecting penal procedures (reduction of remand in custody)
 - Increase in access to alternative measures (removing of obstacles in pre-requisites)
 - Reshaping of daily life in prison
 - Increase in number of prison places

Current situation of the Italian prison system

(data as 7 November 2013) -1

- In Italy there are **64,333 prisoners**, in **206 prisons**, while the regular capacity of our system actually is **47,599 places**
- The prison capacity is calculated in compliance with a Decree of the Ministry of Health: 1 single cell has to be of 9 Sq. m. For every further prisoner, 5 Sq. m have to be added to the cell surface
- From the capacity indicated above, a meaningful number of Sq. m have to be deducted, because of continuous renovation works carried out in many prisons

Italian Prison population (data as 14 June 2013)



→ only 18,78% waiting for a first judgment

716 prisoners under the special Maximum Security regime (article 41b - Penitentiary Act)

Foreign prisoners

The correct management of foreign prisoners and the difficult task of ensuring them the same rights as other prisoners is a very important issue in Italy

Problems:

- The availability of important (medical or legal) information in their own language
- The contact with their families and the country of origin
- The access to alternative measures and contacts with outside world
- Their preparation for release
- The training of staff

Foreign prisoners – Undertaken or to be undertaken measures

- Supporting Countries of destination
- Full implementation of the regulations set out by article 15 of Law 189/2002 foreseeing sanction of **expulsion for foreign prisoners** who have not link with Italian soil and have to serve a residual sentence not exceeding two years
- Approval (2012) of **Charter of Prisoners' and Internees' Rights and Duties of prisoners and internees** (now being translated into several foreign languages): clear and simple information in order to ensure a wider exercise of their rights and a greater awareness about the rules regulating their life in Italian prisons

“Normal revolution”

- **A review of the prison circuits** has been carried out by DAP to ensure the distribution of prisoners in each category thus ensuring best observation processes and individualized treatment
- **Medium Security detainees** will be allowed to walk around freely in their corridor or in the courtyard for most of the day
- All the **workers** will give their contribution to security in prisons together with **Penitentiary Police** staff and, at the same time, Police will play a role in all treatment activities

The aim is to set up a “community” of people, respectful of rules and able to achieve a civil growth

Examples of good practices

- Work of excellence
- Theater in prisons: the Volterra permanent theater company
- The movie “Cesar must die”



Results achieved -1



- Constant decrease of the total number of prisoners: **from 69,000 in 2010 to 64,333 of today**
- Reduced number of pre-trial detainees, from 30,549 in 2009 to 24,744. Of those ones, only 12,348 are awaiting for their first level of judgment
- Added bed places: 3,178 in 2013; further 6,700 are expected to be available by the end of May 2014

Results achieved

Legislation -2



- A new type of Home detention providing for the possibility of serving sentences not exceeding 18 months at one's own domicile: it involved 12,109 cases, since December 2010 until 30th September 2013. A very low percentage of revocation (8.58%) shows the positive impact of that provision on rehabilitation.
- High reduction of “revolving doors” effect, that is the persons entering the prison system only for two-three days.
- Re-opening the possibility of suspending the order of imprisonment also for recidivist offenders (will lead to a decrease of 4,000 inmates per year)



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The role of the judiciary in handing down alternative sanctions in their judgments

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Some reasons of prison overcrowding

- Rising crime rates
- More effective investigations
- More perpetrators sentenced

BUT ALSO:

- Excessive length of proceedings
- Excessive recourse to Pre-trial detention
- Poor use of non-custodial measures

The Council of Europe and the EU recommend

- 
1. Non-custodial measures for less serious crimes
 2. Measures to reduce length of sentences
 3. More recourse to conditional release (parole)
 4. More measures in the community
 5. Penal mediation and restorative justice
 6. Efficient supervision of prison sentences for effective reintegration into society

The Italian System

Non-custodial measures

1. Prohibition of expatriation
2. Obligation to report to the police in specific dates and times
3. Removal from family home
4. Prohibition of approaching the places frequented by the victims
5. Prohibition to live in specific places

Article 275 of the Code of Criminal Procedure states that “Pre-trial detention may be ordered only when all other measures are found to be inadequate”

The Italian System

Conditions for pre-trial detention

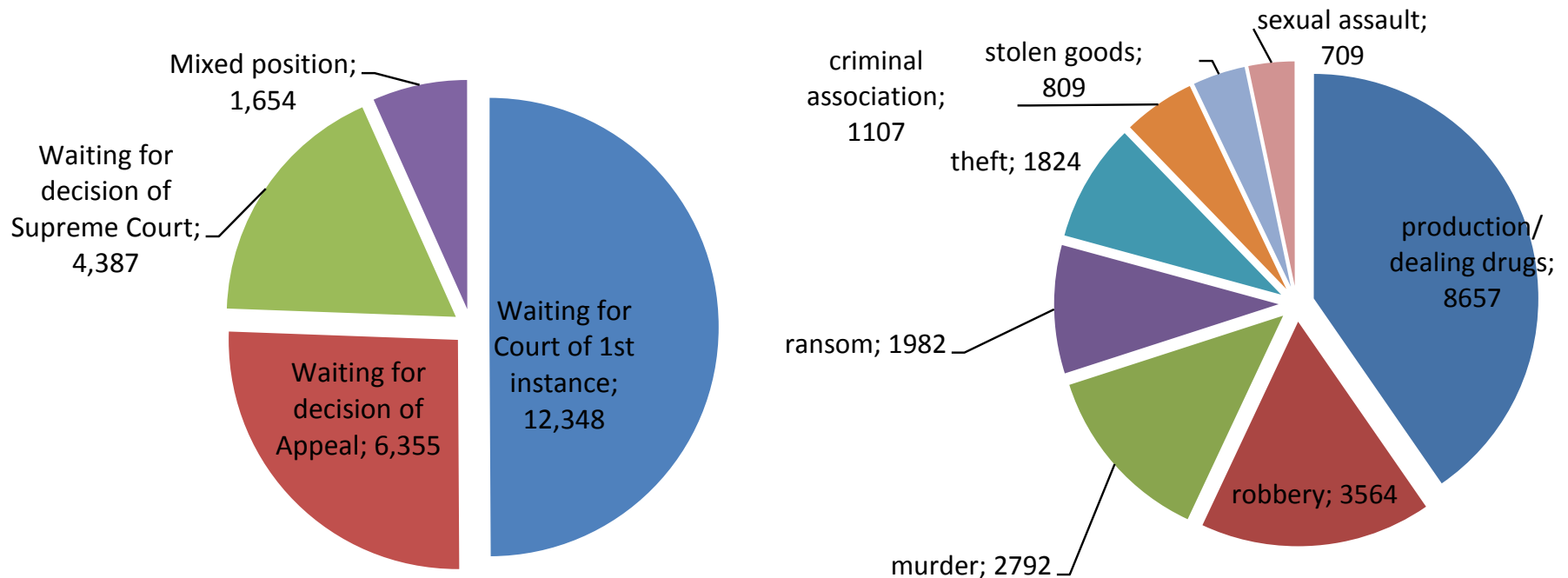
1. The offence is punishable with at least a 4-years custodial sentence
2. The offence is in practice punishable
3. There are serious indications of guilt

+ existence of at least one of the following reasons

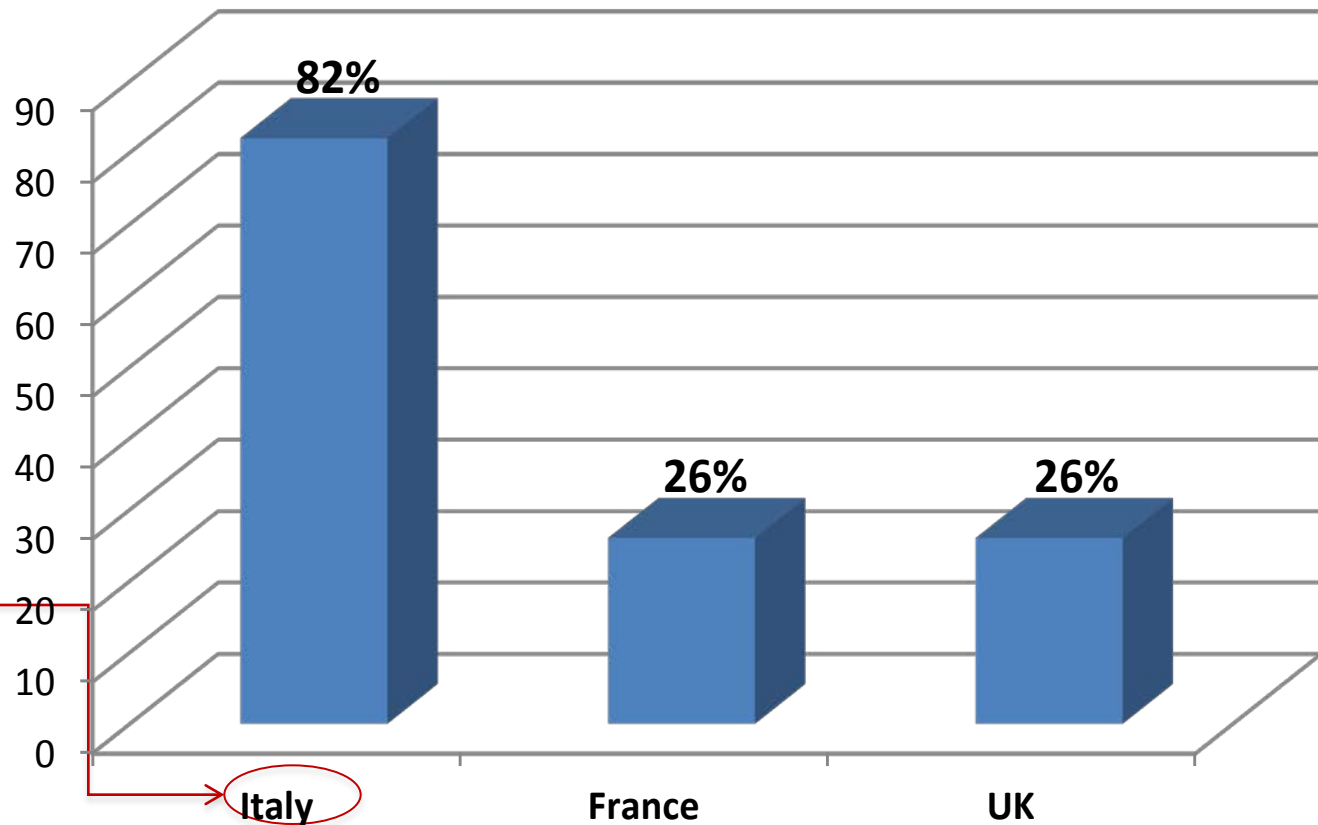
1. Imminent risk of interference with evidence
2. Real risk of the accused person absconding
3. Risk that the person, if left at large, might commit further specific serious offences

The Italian System – Data on pre-trial detention

24,744 pre-trial detainees (at 14.10.2013)



The Italian System – Detention is still the main punishment



23,094 persons
detained for drug
offences

Supervisory Judges in Italy

a) in prison

1. Members of judiciary supervising that sentences are enforced in compliance with the law
2. Ensure that law is complied with;
3. Guarantee the rights of all prisoners;
4. Issue provisions aimed at eliminating violations of prisoners' rights
5. Receive complaints from prisoners against provisions of the Penitentiary Administration

DAP has promoted regular meetings with Supervisory Judges to develop lines of understanding and cooperation

Supervisory Judges in Italy

a) as for community measures

1. Grant measures alternative to detention as per the Penitentiary Act, both from the state of liberty and from detention (as a final part of a sentence to imprisonment to be served in the community)
2. Decide on general penitentiary benefits (bonus leaves, work outside prison, conditional release).

Recent Law reduce the obstacles preventing the so-called “qualified recidivists” to be granted alternative measures also from freedom

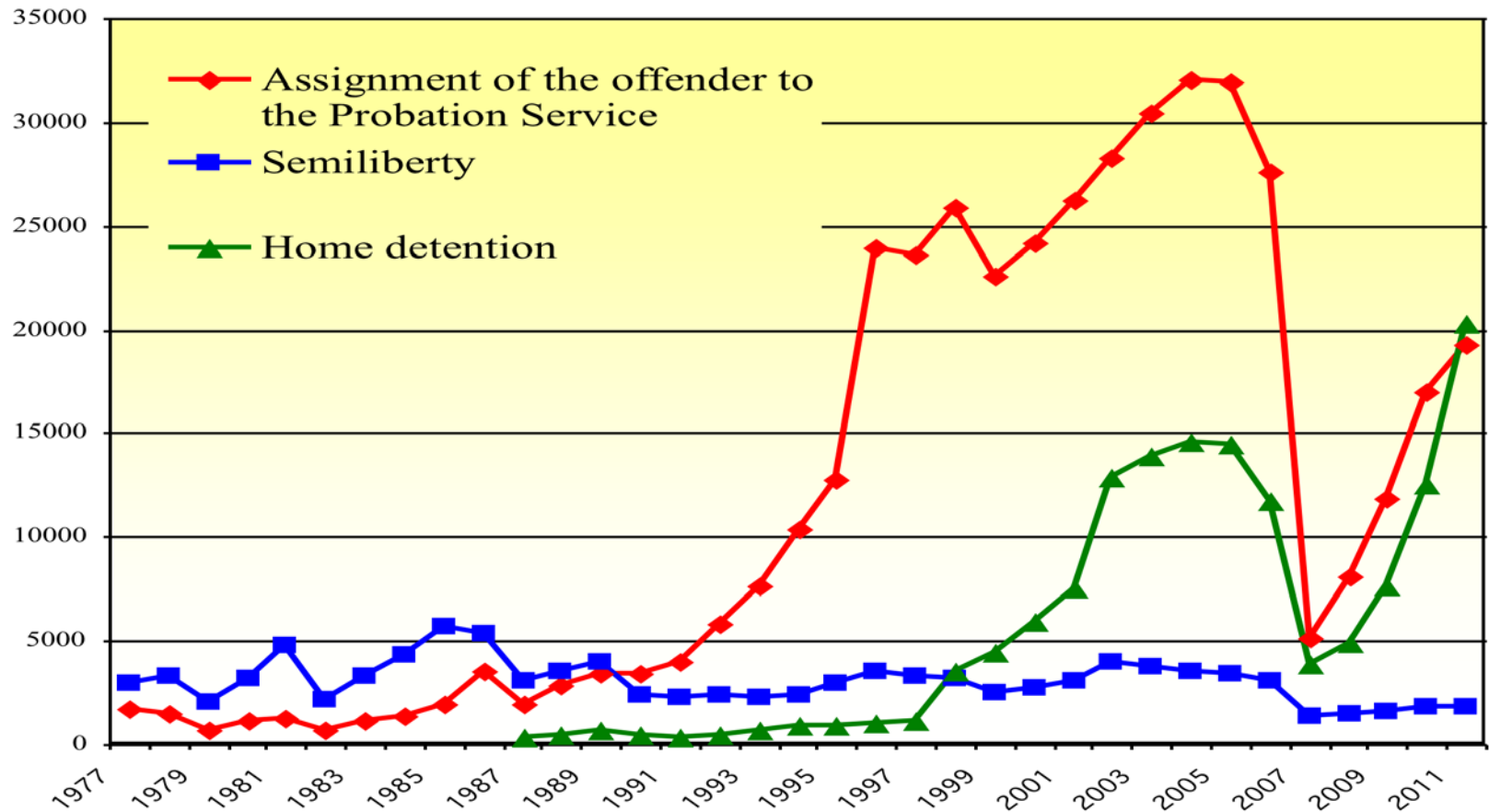
The Italian System - Alternative measures post-trial (1)

1. Assignment of the offender to the probation service
2. Special probation for drug addicts or alcoholics
3. Home detention
4. Semi-liberty
5. Conditional release
6. Early release

Due to the restrictive criteria for granting alternative measures introduced by Law, those are not significantly implemented

Alternative measures

historical trend years 1977-2011 (followed cases)



Recidivism

Statistical data on recidivism show huge differences depending upon the different ways of serving sentences:

Offenders who served their whole sentence in prison show a rate of re-offending between 65% and 75%

Offenders who served their sentences under alternative measures show a re-offending rate between 20% and 30%.

Alternative measures are a way both to fight against overcrowding and to reduce recidivism.