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Oñati International Institute for the Sociology of Law
Avenida Universidad, 8 – Apdo. 28
20560 Oñati – Gipuzkoa – Spain
Tel. (+34) 943 783064 / opo@iisj.net / https://opo.iisj.net

The Italian Supervisory Court's professional culture and practices: among legal norms, bureaucratization, and prison moral environment

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DANIELA RONCO*

Abstract

This article presents a socio-legal reflection on the role of the Italian supervisory judge in shaping the prison moral environment. The Italian supervisory judges ("magistrati di sorveglianza") officially perform two main functions: supervising the enforcement of sentences; and monitoring application of the law in prisons. They should therefore play a key role in terms not only of achieving the rehabilitative ideal, but also of preventing violations of prisoners' rights. Nevertheless, traditionally they have never fully accomplished their mission of prison supervision, and only in a very few cases do they regularly visit prisons, since they are usually more focused on other (often bureaucratic and formalistic) tasks. Using ethnographic notes collected while acting as an external expert in an Italian Supervisory Court, in this paper I will reflect on how informal norms affect the ordinary practices and the decision-making process, with reference to both of the above-mentioned institutional mandates.

Key words

Prisoners' rights; supervisory judge; rehabilitation

Resumen

Este artículo presenta una reflexión sociojurídica sobre el papel del juez de vigilancia italiano en la configuración del entorno moral penitenciario. Los jueces de vigilancia italianos ("magistrati di sorveglianza") desempeñan oficialmente dos funciones principales: supervisar la ejecución de las penas y controlar la aplicación de la ley en las prisiones. Por lo tanto, deberían desempeñar un papel clave no sólo en lo que respecta a la consecución del ideal rehabilitador, sino también a la prevención de las violaciones de los derechos de los reclusos. Sin embargo, tradicionalmente nunca han cumplido plenamente su misión de vigilancia penitenciaria, y sólo en muy pocos casos

* Daniela Ronco. University of Turin, Department of Law. Email: daniela.ronco@unito.it

visitan regularmente las prisiones, ya que suelen estar más centrados en otras tareas (a menudo burocráticas y formalistas). Utilizando notas etnográficas recogidas mientras actuaba como experto externo en un Tribunal de Vigilancia italiano, en este trabajo reflexiono sobre cómo afectan las normas informales a las prácticas ordinarias y al proceso de toma de decisiones, en referencia a los dos mandatos institucionales mencionados.

Palabras clave

Derechos de los reclusos; juez de vigilancia; reinserción

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1. The frame. The growing attention to the safeguarding of prisoners' rights

The Italian prison population has increased remarkably in the past 30 years, as has happened in many other Western countries. *Mass imprisonment* first characterized the United States (De Giorgi 2006, 2013a, 2013b, Wacquant 2009) in the 1970s and then, twenty years later, a large number of the Global North countries. While this process has been partly reversed since the mid-2000s in many Global North jurisdictions (Simon 2014, Brandariz 2022), Italy is an interesting case because of the persisting increase in its prison population. Even if this increase has not been regular and has been punctuated by some *moderation* phases (Gallo 2015, 2018), we can observe a structural growth in the long run. On 31 December 1991, there were 35,469 prisoners in Italy; on 31 December 2023 there were 60,166. The peak occurred in 2010, when more than 68,000 people were in prison (specifically, 68,246 on 30 June).

The growth of the United States' prison population was to a great extent the result of *zero tolerance* policies (Wacquant 2009), often supported by threatening slogans (Garland 2002) making use of belligerent language: *War on drugs*; *War on terrorism*; *Three strikes and you're out*; *Truth in sentencing, Mandatory sentencing*, etc. The sharp rise in the Italian prison rates resulted from increasingly harsh policies addressed in particular to drug addiction, migration, and recidivism. According to Ministry of Justice official data, at least from the mid-2000s, drug addicts have represented roughly one quarter of the total prison population, while one third of the detainees have been imprisoned for drug-related crimes. These data are underestimated if we consider the lack of precision in certification and the large *dark number* of undeclared drug addicts (Sbraccia 2018). Foreigners constitute roughly 30% of the prison population. This figure evidences the *crimmigration* effect (Stumpf 2006) and the changing penal power stressed by the border criminology approach (Bosworth 2017) in the Italian context (Scomparin and Torrente 2021). Moreover, the 2005 reform of recidivism (l. 251/2005, the so-called ex-Cirielli) introduced severe and disproportional penalties for "repeat offenders", making access to alternatives to imprisonment increasingly difficult for them. The impact of these three policies is shown by the structural level of prison overcrowding in Italy, among the highest in Europe. The peak occurred in 2010, when Italy recorded an overcrowding rate of 150%; on 31 January 2024 the rate was 118%. Overcrowding is considered, to some extent, a "new normality" if not a tool for the daily management of the prison system (Santorso 2023).

Meanwhile, in parallel with the expansion of prison systems, in the age of mass incarceration, the safeguarding of prisoner's rights has received increasing attention worldwide, in three domains.

It has done so firstly on a normative level. This is demonstrated by the approval of the Mandela Rules and, at the European level, the European Prison Rules and their updates.[1] Secondly, there has been the increasing involvement of the international courts in this domain, specifically the European Court of Human Rights. The ECHR deals more and more often with possible violations of prisoners' rights, thereby affecting both the national jurisdictions and policies (Anastasia 2012, p. 116). Suffice it to recall the 2008

[1] For an in-depth analysis of the application of the European Prison Rules on a European comparative level, see the European Prison Observatory data base and reports: http://www.prisonobservatory.org/

Scoppola v. Italy judgement, the 2009 *Suleijmanovic v. Italy* judgment and the 2013 *Torreggiani v. Italy* judgement. In all three cases, Italy was condemned for violating art. 3 of the European Convention on Human Rights ("Prohibition of torture. No one shall be subjected to torture or to inhuman or degrading treatment or punishment"). The *Torreggiani* judgement, in particular, showed the structural and systemic overcrowding of prisons in Italy, framing it as a violation of personal dignity. This provoked a far-reaching institutional and political reaction.

Thirdly, we have been witnessing an expansion of both institutional and non-institutional monitoring activities (Aizpurua and Rogan 2021). Here the most significant event has been the adoption of the Optional Protocol to the United Nations Convention against Torture (the OPCAT) in 2002, which established bodies, the National Preventive Mechanisms (NPMs), which regularly visit national and local places of detention and have day-to-day contacts with authorities. The Italian NPM, called 'Italian National Guarantor for the rights of persons detained or deprived of personal liberty', was established as an independent national authority by law in February 2014 as a collegial body composed of a chairman and two members.[2]

From an institutional point of view, however, even if the NPM is the most important actor in monitoring activities inside prisons, it is not the only one performing this task on a national level: the supervisory judge, in particular, is responsible not only for supervising the enforcement of sentences but also for monitoring application of the law in prisons. This role can be considered crucial precisely because it is situated at the intersection among the three above-mentioned domains (normative, judicial, and monitoring). The judicial level, quite obviously, working within the judiciary system. But the supervisory judge also performs a "normative" role: according to the legal realism approach (Llewellyn 2011), the law corresponds to its concrete application. It is for this reason that, to really understand it, we must observe how judges take decisions (here the reference is to the – according to many, controversial – creative power exercised by judges). It is the anti-formalistic approach that marks the socio-legal perspective and that is also shared by the social constructivism approach to crime (Hester and Eglin 2017).[3]

Finally, on a third level, the supervisory judge also engages in monitoring activity (in particular institutional monitoring), which at least in theory could contribute to depriving the jailor of monopoly over control inside prisons.[4]

This growing attention clearly does not necessary match better protection of prisoners' human rights. As regards judicial attention to this matter, for example, as Scott (2018, 132) writes, "Rights of access to the courts has not proved significant in terms of substantive issues such as improving living conditions, health care, education, or working environment and opportunities". Or, in the words of Stanley (2018, 10), "even

[2] For a description of the role, activities and reports of the Italian NPM, see the official website: https://www.garantenazionaleprivatiliberta.it/gnpl/

[3] An in-depth description of the theoretical frame of the present study is included in the Methodology section.

[4] Also, all the Italian members of parliament or regional councils and mayors, have a specific power of control over prisons. But as in the case of the supervisory judge, only in a few cases do they actually exercise this inspection power.

if a case gets to courts, the rights of incarcerated people are regularly read down as judges defer to state arguments that violations are necessary for reasons of security, order, safety or crime prevention" (see also Drake 2012). From a general socio-legal perspective, therefore, the interest is focused on the gap between laws and their concrete enforcement, as well as on the formal and informal context where the involved actors operate. Hence the following pages will be devoted to exploring how the prison moral environment affects the *modus operandi* of one among the aforementioned actors (the supervisory judge) when performing his/her role.

2. Methodology

This article presents results from fieldwork conducted within an Italian supervisory court, and specifically while I was acting as an external expert within that court. During this activity, I was able to directly observe hearings and the routine activities of the court. The activity started in 2020 and is ongoing. I participated in 30 hearings, for a total of 152 hours, and I spent around 30 hours examining files. The parallel observation was specifically addressed to the following topics: first, the judges' professional culture and their conception of rehabilitation; second, the selective practices in approving alternatives to imprisonment, with particular regard to the use of categorizations, stereotypes, and common-sense considerations (the two aspects are obviously interrelated).

The fieldwork can thus be framed within courtroom ethnography (Flower and Klosterkamp 2023). From a theoretical point of view, two perspectives oriented the research reported in this article. Firstly, the legal realism approach, according to which, to really understand the application of the law, we must look at the practices and the decision-making processes of the judges. The "law" is identified precisely in judges' decisions (Llewellyn 1930/1960, 1962/2008, 2011), so that the interest is in the *creative* power exercised by these social actors. Secondly, the research was based on the constructionist approach, according to which crime is the product of a process of criminalisation in which the tribunal and its actors play a key role (Hester and Eglin 2017).

The difficulties of, and limitations on, the research were many. First of all, the role of the researcher. The study was conducted while performing a specific institutional function. Whilst, on the one hand, this was a unique chance to observe all the interactions and discussions among judges (precluded to all the other actors of the court), on the other, it posed major challenges as regards reflexivity and positionality (Klosterkamp and Anwar 2023, Hambly 2023). This was strictly linked, furthermore, to ethical issues raised by courtroom ethnography. To address these challenges, I followed Klosterkamp and Anwar's (2023, 56-57) suggestions: "In the case of courtroom observation during public trials, where informed consent is not explicitly given by all actors in the room (…) the researcher should still follow similar guidelines", protecting the personal information of all the people involved, deleting all personal details not relevant to the socio-legal analysis, and clearly declaring "when data is collected from interviews done with informed consent or from the court observations of the researcher". All the quotations reported in the present article are therefore anonymised and all personal details have been deleted. All of them derive from my observation during the fieldwork. They are consequently clearly situated and embodied.

In this experience of observation, I was anything but a "neutral observer" (Ellis 2016) if one considers my active role (albeit marginal) within the process. In regard to this aspect, a brief description of the role played is necessary to clarify how the study was conducted (and the advantages/limits it produced). Italian criminal procedure provides that when a supervisory court must decide on the granting, revocation, or transformation of an alternative measure, or on cases of prisoners' complaints, the decision must be collegial. The collegium is composed of two judges (the president and a "rapporteur" judge) and two external experts. They are appointed by the Ministry of Justice from among people with professional skills in psychology, social service, pedagogy, psychiatry, clinical criminology, or the teaching of criminological subjects. They are elected for three years, and their appointment is renewable two times at most. Each hearing lasts 6-7 hours on average, and experts are the only people, together with the appointed judges, that participate in every phase of the procedure. Although this imposes a series of limitations on the observation, at the same time it provides a distinct advantage in terms of proximity to the social world being studied (Fassin 2013).

3. The supervisory judge's role and main functions, between law and practice

The attributes of the Italian supervisory judge were established by law 354/1975. This was a large-scale reform of the Italian penitentiary system which superseded the previous fascist prison regulation (dated 1931). Among the purposes of the law, there were: the use of prison as a last resort; the opening of prisons to external society; administrative decentralisation; the social reintegration of prisoners through their participation in everyday prison life; the judicialisation of penal execution (Sarzotti 2010, Fiorio 2014).[5] This last aspect exactly concerns the supervisory judge's role. Since the 1975 reform, he/she has formally performed two main functions: supervising the enforcement of sentences, and monitoring application of the law in prison. But observation of actual practice shows that supervisory judges rarely interpret their role in terms of ensuring that prisoners' rights are safeguarded. They usually concentrate on supervising the alternatives to imprisonment, which means, in many cases, controlling and sanctioning infringements and violations committed by convicts. With few exceptions, in the professional culture of supervisory judges this latter task is relegated to the background, and their presence in prisons is infrequent. The non-presence of supervisory judges inside prisons has been explained by two factors: (i) the heavy caseloads regarding requests for access to alternative measures, early release, etc.;[6] (ii) a perception of the scant utility of one's presence in a place considered to be the responsibility of the prison administration (Renoldi 2007). This attitude stems from awareness of having little capacity to impact on the prison administration when it violates some rules. Something has changed since the approval of two laws in 2014: law 10, introducing the jurisdictional complaint to the supervisory judge in the case of "concrete and serious violation of prisoners' rights" (art. 35 bis, Prison Law); law 117, introducing legal remedies in the case of violation of art. 3 of the ECHR towards

[5] Socio-legal analysis of the impact of this reform has shown that most of these objectives have not yet been achieved (Sarzotti 2010. This author, in particular, is wondering about the link between the ratio of the law and the possible symbolic use of law).

[6] Suffice to say that on 31 December 2023, the total amount of people serving an alternative to imprisonment in Italy was 41,176.

prisoners (art. 35 ter, Prison Law). These legislative changes evince the lawmaker's awareness of the centrality of the supervisory judge's role in protecting prisoners' human rights (Gianfilippi 2015). However, if one observes the practices and the professional culture of supervisory judges, one notes a general difficulty or reluctance to recognize themselves in that role. Moreover, as regards the prison's moral environment, physical harm, improper treatment, and poor facilities are considered *normal* and therefore widely tolerated (Scott 2015).

A wide gap exists between the principle of *dignity* and its concrete application in prisons. From a normative point of view, it is enshrined in the first article of the Mandela Rules approved in 2015, which states that "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times." Dignity can therefore be considered a sort of overarching principle that stands above all the prisoner's other rights. The monitoring of prisoners' rights is addressed first of all to the safeguarding of the prisoner's dignity. This can be achieved only by preventing maltreatment and, consequently, by revealing violence which occurs within the spaces and relationships of daily life in prison (Medlicott 2008). Nevertheless, if we consider, for example, the social representation of violence in prison, we observe a high level of normalisation (see Section 5). In what follows, I will concentrate on a description of the professional culture and practices of supervisory judges in order to aid understanding of how this normalisation can be achieved.

4. The professional legal culture

The social and cultural context in which a profession operates contributes to defining the identity and behavior of its practitioners. From a sociological point of view, the concept of "professional culture" refers therefore to the set of values, norms, beliefs, behaviors, and knowledge shared by those working in a particular field of activity.

In the specific legal field, the classic reference is to the concept of legal culture, which encompasses "the term we apply to those values and attitudes in society which determines what structures are used and why; which rules work and which do not, and why" (Friedman 1969, p. 17). The focus, as highlighted by Cotterell (2017), is firstly on meaningfulness of law as a social institution, something that evokes a broad sense of culture, encompassing both the *internal* legal culture (the values, ideologies, beliefs, shared principles, and practices by those who operate professionally and work within the legal system) and the *external* legal culture (that involves the "opinions, interests and pressions brought to bear on law by wider social groups" - Nelken 2004, p. 8).

To narrow the scope, here I refer specifically to the *internal* legal culture, as the attitude towards law of legal actors such as judges and lawyers (Nelken 2004, Banakar 2015). Secondly, focusing on a case-study, I adopt a "local legal culture" perspective (Church 1982), that is those local patterns of practises reflecting in part informal norms and shared expectations that lawyers and judges have developed.

Nevertheless, cautions have been raised regarding the tendency to view professions as a "coherent group" (Freidson 1988). Moreover, this article does not intend to fully

address the broad and complex issue of the professional culture of supervisory judges. I will rather focus on some aspects observed during my fieldwork that may aid to understand why the approach of supervisory judges is almost entirely focused on supervising the enforcement of sentences and they actually totally ignore (with some important exceptions) their other task related to the safeguarding of prisoners' rights.

4.1. Bureaucratisation and selectivity

A first issue is the high level of bureaucratization. In many cases, I observed a sort of *obsession* with legal formality and complete separation between procedures and substance. A powerful example is provided by the video link allowing prisoners to participate in court hearings, a practice developed during the lockdown but maintained also after the end of the COVID emergency.

Ensuring the possibility to video link is considered an absolute right for the prisoner and, during my period of observation, it was always ensured from a formal point of view.

> If the prisoner makes a request to participate virtually, it seems that the most important thing is to ensure that he/she is connected. Everybody waits until he/she gets the position in front of the computer. When the connection is interrupted, everybody waits till it restarts, etc. And that's ok. But then nobody speaks clearly at the microphone, or gives the floor to the prisoner, or even looks him/her in the face, almost never says goodbye, if not to dismiss him/her when he/she, unable to even understand what is happening, just stands waiting for an answer with understandable anxiety. And this answer by the judge is invariably 'the jury shall retire'. Even when the decision is already taken before the hearing starts. There is no correspondence between the safeguarding of a formal right and the actual exercise of that right. (Notes, June 2020)

The lawyer, who normally sits beside the convict and helps him/her to understand the court's ritual, or guides his/her reply when s/he is addressed by the judge, is physically and symbolically distant in the case of a video-link. The instrument of video makes everything even colder and more ritualised, if possible.

Another powerful example of bureaucratisation is provided by the presentation of reports full of unhelpful and boring details, that no one listens to, and which only serve the (formal) aim of giving all the items of the case required to take a decision, but that decision is actually taken in a completely standardized way.

> Our role of experts… The total indifference toward us, sometimes becomes annoying disregard and just keeping us 'kidnapped' for the entire hearing and the subsequent council chamber. Only in a very few cases do we participate in a proper collegial debate, and the request for our opinion is only made in order to legitimate the decision-making process in those few cases less easy to resolve. The large majority of cases require bureaucratic paperwork on issues for which our presence is absolutely useless (free legal aid, etc.). (Notes, October 2021)

As the pioneering study by Blumberg (1967) showed, the *problem* of a tribunal is basically how to combine the management of a large number of files with respect for the due process of law. The solution, according to Blumberg, is to adopt shortcuts, classifications, standardized choices, that make it possible to pursue the imperative efficiency required by the New Public Management. One of the most important examples is the distinction

between "easy cases" and "trouble cases". Following the classic study by Emerson (1969) on juvenile justice, within a tribunal the practice of classifying offenders is a useful means to take decisions about what kind of treatment to apply to an individual. But even before, easy cases and trouble cases received different amounts of resources (time devoted to discussion of the case, for example). Here a big difference also concerns whether the defendant has a private lawyer (more probably well-prepared on the case) or a court-appointed lawyer, who does not know the case and almost always passively accepts the judge's decision.

Alongside the inquiry realised by the supervisory judge to whom the case has been assigned, a lawyer may or may not engage in a parallel activity of assessing/making available the resources necessary to obtain (or maintain) an alternative to imprisonment: employment, housing, familial relations, availability of voluntary work, etc. This clearly makes a difference in terms of the concrete possibility to obtain that alternative to imprisonment measure and, consequently, is in itself an important resource with which to avoid the likelihood of imprisonment.

In this regard, the observation confirmed the selectivity of the criminalization process during the phase of a sentence's execution (Mosconi and Pavarini 1993).

4.2. Discretionary power

The decision-making process within a supervisory court is characterised not only by a high level of bureaucratisation but also by remarkable discretionary power (Vianello 2018a). Sometimes it happens to assist to demonstration of "good sense" by judges. This is the case when a judge proposes to the lawyer a postponement in order to obtain updated reports because "*It would be a pity to regress in the rehabilitation process*". Or, in many cases, the judge proposes alternative procedures that could be reasonably accepted and could ameliorate the convict's situation, etc.

But discretionary power is more often used for punitive purposes. Once again the role of stereotypes becomes crucial. One of the most common stereotypes concerns the residence: a measure is never approved if the person asks to stay in a caravan even if it is actually a permanent dwelling. The "housing suitability", "one cannot live in a caravan!", "caravans and gypsy camps are not suitable places to live", are expressions often used by judges.

> 'Why?', I asked myself. Just yesterday I read a newspaper article about a young American couple who had decided to quit their jobs, and sold their house to transfer to an old school-bus transformed into a fully-furnished dwelling, with which travel around the United States. A young Australian couple has done the same thing, I read. I assumed they were upper class, perfectly integrated into society. Sometimes trendy, sometimes unfit… (Notes, February 2021)

Furthermore, in many cases I observed a high level of incertitude as regards the assessment of some variables. This was the case in particular of the length of the sentence. Typically, this may be used in either a "positive" or a "negative" manner. If the end of the sentence is approaching, this event can be considered a variable encouraging approval of an alternative measure or, conversely, as a condition to justify the *status quo* ("Four months is not enough time to prepare a programme"). This causes a high level of incertitude about the final decision.

Discretionary power can be also observed in the use of social service/police/prison staff reports: these documents may be either used or ignored to reinforce decisions already taken. These documents are useful more to legitimate or validate decisional processes, not as instruments with which *to take* decisions. An exception is represented by medical reports, which are often taken seriously, probably also to remove responsibility. In cases where the convicted person asks for an alternative to imprisonment for health reasons, meticulous inspection is made of the reports by doctors listing pathologies and specific healthcare conditions totally incomprehensible to non-experts. Why devote so much time to this activity? Probably the use of language which is incomprehensible but associated with science and objectivity, shifts the burden of responsibility and decision-making to the medical knowledge.[7]

4.3. The prison moral environment: paternalism, restitution and reliability

The observation made it possible to develop various reflections on the prison moral environment and the main informal rules and principles regulating the prison context (Vianello 2018b). Among them, I shall specifically focus on the following issues: the infantilisation process (expression of a widespread paternalistic attitude); the particular meaning of rehabilitation (primarily linked to respect for the rules and often also to restitution); and the concept of reliability (which is considered a prerequisite for obtaining any progress in the penal execution).

In what follows, I mention some typical expressions used during the hearings, in the form of comments to the reports and to describe the cases:

- "He committed violations during the provisional home detention. So he didn't even *deserve* that temporary period, because then he was suspended. During temporary home detention *you have to be good*!"

In this case, the judge, employing markedly infantilizing language, highlights how a previous grant of an alternative measure would have been too "permissive," considering that the individual violated the imposed conditions. The technical conditions (regarding movements, etc.) are thus equated with crimes committed during the execution of the sentence. The person who violates these conditions is seen as not having "deserved" what is often perceived as too lenient treatment, rather than as a progression in the individual rehabilitation program.

- "Asking and obtaining an alternative to imprisonment can be *disastrous* for the person!" (because of an offence committed during home detention)

In suspending an alternative to prison, the judge here expresses a paternalistic view that considers stricter control as a way to *protect* the individual, while greater freedom could indeed prove "disastrous," without taking into account the viewpoint of the convicted person.

- "You didn't show great cooperation. You will stay in home detention, there is only one alternative: going to prison. *Don't ask* to leave home, your

[7] Similarly, it is common to observe in prison an attitude of "defensive medicine", often adopted by healthcare staff to prevent and avoid lawsuits (see Vaughn 1999, Sim 2002).

grandparents will do your shopping. The lockdown is still ongoing for you!" (because the lockdown period was about to end)

In this case, the judge is informing a young convicted of granting him home detention while simultaneously warning him to strictly adhere to every condition, hinting at the likelihood of the measure being revoked upon the first violation (which should still undergo evaluation in the specific case).

- "We *pardoned* him, but it seems that he doesn't really want to understand *how to behave*!"

These statements clearly show the infantilisation process (*You have to be good! Don't ask!*) and the paternalistic view expressed by the judges and shared among the various actors involved (lawyers for example). Moreover, typically, the words used by judges emphasise the need *to deserve* an alternative to imprisonment (Vianello 2018a, 143). Far from being considered a right, convicted people must *earn the trust* to obtain an alternative to prison.

Another interesting aspect of the prison moral environment is the meaning of the term "rehabilitation" used by all the actors involved in the supervision of prisoners' penal execution. Firstly, the fieldwork revealed a strong emphasis on restitution. Some judges interpreted this in a moralistic sense: a supposed "total lack of critical awareness", for example, is often used as a justification for rejecting a request for access to an alternative measure. Others interpreted restitution in a more materialistic sense: restitution to the victim in terms of money, which is generally perceived as a *conditio sine qua non* for approval of the "stronger" measure: that is, probation with the supervision of the social services.[8]

Secondly, another aspect which is taken closely into account by judges is the reliability of the convicted person. What kind of reliability can he/she promise in terms of respect for the prescriptions? There follow some examples of statements used by judges to justify rejection of requests presented by convicts:

- "The total lack of any critical awareness and absence of restitution to the victim" (prosecutor) ;
- "I express a contrary opinion obviously justified by the rebellious behaviour in prison. I was wondering what reliability he can promise in terms of respect for the prescriptions" (prosecutor) ;
- "Rehabilitation occurs also through restitution to the victim. Rehabilitation in abstract doesn't exist!" (supervisory judge) ;
- "Considering the type of offence (fraud), the main problem is the total absence of repentance" (supervisory judge).

This is the language usually used to explain and justify the rejection of some requests by the convicted. The main issue is how to measure that reliability, and how to use stereotypes and non-judicial variables to assess it. "To do justice is to categorize and to

[8] Probation with the supervision of social services is considered, among the various alternatives to imprisonment, the one granting the highest level of "liberty" to the person, as for the possibilities of moving out-of-home, doing activities, etc. (even if a lot of prescriptions about times and displacements remain, as well as police control over compliance with the programme).

act consistently on the basis of the categorizations made", wrote Cotterrell (2006, 2). Reliability is generally associated with respect for the rules within prison. Breaking a rule during imprisonment means being unreliable and, consequently, not deserving to obtain an alternative measure. This supposed equivalence (between breaking a rule in prison and breaking a rule in an alternative measure) reflects, besides the disciplinary attitude permeating the entire prison moral environment, also poor knowledge about (or scarce attention to) the concrete dynamics of life in prison, where conflicts among prisoners or between prisoners and staff are daily occurrences.

4.4. The relationship between the supervisory judge and the prison administration

Law 10/2014 and Legislative Decree 92/2014 have modified the procedure that incarcerated individuals must follow to report detention conditions. Previously, it was necessary to appeal to the European Court of Human Rights, but since 2014, one can follow an internal judicial route (specifically, if the person is detained, they can file a complaint with the Supervisory Judge). If the complaint is upheld, it is possible to receive a sentence reduction or compensation (depending on the remaining sentence).

Participation in hearings has allowed the observation of various cases of complaints filed by detained individuals following rejections, where decisions were generally made swiftly, either upholding or dismissing them. In one case, however, a debate arose between the Supervisory Judge and the lawyers regarding a complaint filed this time by the prison administration. This debate provided interesting insights into, more generally, the judge's perception of the material conditions of detention and their relationship with the prison administration. Here we were discussing the appeal by the prison administration, which refused to compensate the prisoner. What is interesting is the reaction of the supervisory judge.

> H. sued the prison administration for legal compensation for having been confined for 400 days in a prison in Northern Italy in violation of article 3 of the European Convention on Human Rights. The prison administration lodged an appeal. The supervisory judge quickly dismissed the issue, saying 'Besides the fact that the prison administration will never pay, there is a matter of principle here, because I do not think there has been inhuman and degrading treatment'. Even if the lawyer sought to demonstrate (properly and successfully in my view) the existence of violations of article 3, the judge did not listen. Clearly the decision had already been taken and there was no possibility of changing it.
>
> I wonder when this supervisory judge last went into a jail if he says that inhuman treatment is out of question. And about the institutional team's esprit de corps, leading to defend ex-ante and blindfolded the attitude of the 'almost colleagues' prison staff, in spite of the supervisory judge duty of supervising the respect of law and prisoners' rights safeguard. (Notes, January 2023)

In the first instance, the supervisory judge denied deprivation caused by the prison's structural conditions and daily life within it. This may have resulted from a lack of knowledge due to a very infrequent presence within the prison (a necessary condition for monitoring prison conditions and their effects on prisoners' rights), or to some normalisation and tolerance of the very bad prison conditions.

This was a paradigmatic case also because it revealed a general attitude of supervisory judges towards the prison administration and the kind of relationship between the two. And this is linked to the power to inspect prisons exercised by supervisory judges.

What clearly emerged during the observation is that the power of control exercised by the supervisory judge is applied only to prisoners' behaviour and almost never to the prison administration's conduct, as prescribed by the law.

This does not mean that there is no conflict between these two institutional actors. But the concrete conflict between the supervisory judge and the prison administration occurs only in relation to the supervisory judge's first mandate (granting and supervision of the enforcement of sentences), for example because judges disagree with the contents of a report, or with the proposal of an alternative measure, etc. Conflict never arises on issues regarding the violation of prisoners' rights. This strongly reduces the possibility to exercise a role in the monitoring of respect for prisoners' rights and, more in general, in depriving the jailor of monopoly over control within prisons.

Among the more challenging aspects of this institutional relationship is the reaction to violence occurring in prison. Discovering and dealing with violence is the most important action to safeguard prisoners' dignity (Medlicott 2008). At the same time, on the one hand, it is extremely difficult, and on the other, the reactions to various types of violence differ widely. If violence among prisoners is generally treated very seriously and severely punished, institutional violence is much more tolerated and "normalised". Following the triangle of violence proposed by Galtung (1969), prison is particularly suited to observing the interweaving of direct, symbolic and cultural forms of violence. Prisoners belong to the most marginalized social groups, which are the targets of various forms of structural violence outside prison, and this vulnerability exposes them to violence within prison.

The prison moral environment tends to minimize or normalise institutional violence. That is why, in the perception of their role, supervisory judges almost never consider taking action to protect prisoners against abuse or maltreatment.

If this is the ordinary and generalised approach, there are some, extremely rare, but significant exceptions, like what happened in the Santa Maria Capua Vetere prison during the COVID-19 lockdown. The following section describes the violence occurred in that prison and the (exceptional and unrepresentative) role played by the Supervisory Judge in unveiling that violence. This description doesn't result from ethnographic research, but it is presented here to reflect on the distance between the ordinary attitude and perception of own role observed in the field and how, on the contrary, that judge interpreted his own role and behave in that specific situation.

5. An exceptional case: Santa Maria Capua Vetere

On 6 April 2020, in the prison of Santa Maria Capua Vetere (in the South of Italy) more than 150 prisoners were subjected to serious abuse, as a video published one year later clearly showed. The violent event took place the day after a protest when prisoners asked for COVID tests and masks following the first case of coronavirus inside the prison. The repression was presented as "an extraordinary search operation" conducted to re-establish order.

The surveillance video recording of the violent suppression was published on 28 June 2021. The Public Prosecutor issued 52 provisional orders against the police officers and prison officials involved. The accusations were of torture, abuse of authority, false declarations, and cooperation in the culpable homicide of an Algerian prisoner (Hakimi Lamine, a 28-year-old prisoner, detained for one month in isolation after the abuse, where he died). The case produced a strong political reaction and resonated across Europe. The Italian Prime Minister, the Minister of Justice, and the National Ombudsman visited Santa Maria Capua Vetere prison on 14 July 2021. On 26 April 2022, the first 107 indictments for prison violence were issued and the judge called the violence a "horrible massacre".

What kind of violence had occurred in the case just briefly described? Studies on violence in prison have shown that it is intrinsic to imprisonment and that it is considered a means to control and manage prisons (Edney 1997), but also that it can occur with different degrees of severity. Ordinary violence is considered routine and is widely tolerated. Extraordinary violence (as the one occurred in the case here dealt with), instead, exceeds ordinary violence: it can become severe maltreatment (or even torture) also because of the number of people involved (both victims and offenders), the level of organisation, and the seriousness of the abuse (McCulloch and Scraton 2008, p. 3).

Moreover, according to studies by Zimbardo, a distinctive condition for the production of violence in prison is the moral distance between prisoners and guards. De-humanisation and moral distance were evident in the case of Santa Maria Capua Vetere prison: the suspects' cellphone messages were intercepted during the investigation, and in them one could read statements like "We'll slaughter them like calves", "Tame the beasts", the language typical of the de-humanisation approach.

Furthermore, whilst violence is often justified with the rhetoric of maintaining order ("an extraordinary search operation was conducted to re-establish order", in this case), it is also known that, in the various areas of a prison, different methods to exercise control are used. Although violence may occur anywhere, it is more probable where the relationships between prisoners and staff are less structured (Edney 1997), such as solitary confinement units, transit wings, etc, where the effects of de-humanisation are toughest and there are no witnesses. In the words of Scott (2015, p. 60), "the architecture of the prison place determines the location of events and distribution of bodies and in so doing also highly regulates relationships, and subsequently physical violence". Santa Maria Capua Vetere represents an exception in this case, because violence occurred in the ordinary spaces of the prison (corridors and common rooms).

A more typical aspect is instead the ritual of violence that occurred also in this event: the video shows that prisoners were made to strip and kneel, and then were beaten; some inmates' beards were shaved off; some of them were put into solitary confinement without any justification; prisoners were beaten from both sides as they were paraded along a corridor full of prison officers. Furthermore, in the interceptions one can hear voices saying: "Head down and hands behind your back", "I made everyone shave", etc.

One of the most interesting aspects of this event is how the violence was revealed. Talking about prison violence, this is one of the greatest problems. As said in the previous section, physical violence among prisoners is generally taken very seriously and severely punished, because it is considered an assault on the state's monopoly of

power (Scott 2015). Conversely, institutional violence rarely comes to light. It is a crime typically being left in the dark figure of crime. This is also due to a general reluctance to face the consequences and the impact of imprisonment (Davies 2003), besides the understandable reluctance of victims to report violence against them. De-humanisation, in itself linked to the routinisation and bureaucratisation that characterise prison organisation, produces a normalisation of violence that traverses prison walls and causes widespread indifference to the illegal practices carried out within prisons (McCulloch and Scraton 2008).

This clearly contributes to shaping (and is shaped by) the prison moral environment, a variable of extreme importance for understanding the processes of normalisation of violence: it "provides the framework through which we either see, or don't see, violence in the first instance. Culture gives us eyes or makes us blind" (Scott 2015, p. 59).

How the facts came to light in the case of Santa Maria Capua Vetere is unusual and extremely important for sociological reflection on prison violence. After the video was released, few doubts remained about what had happened. The video detailed, minute by minute and for an overall time of four hours, how the squadron of officers acted well outside any and all rules of conduct. Hence it was crucial for disproving the "rotten apples" rhetoric, but also for facilitating the legal proceedings, since it provided the prosecution with strong evidence. Both the national ombudsman and the supervisory judge had a key role in shedding light on the violence that occurred in that prison. Focusing on the supervisory judge's conduct, we can call it "unusual and uncommon". First, he made several visits to the prison and had private talks with inmates on the days after the violence (even at 9pm, something never seen in an Italian prison). Secondly, he exercised his power of control over the prison administration's conduct. He promptly informed the prosecution, and this happened on his own initiative and in the immediate aftermath of the abuses (what was essential for the subsequent investigation by the prosecutor). Thirdly, by acting this way, he entered into open conflict with the prison administration, fully exercising his role as guarantor of prisoners' rights.

It is extremely uncommon for a supervisory judge to enter into open conflict with the prison administration, and the police staff in particular, as I have already said. The specific attitude of the supervisory judge wrong-footed all the prison staff involved in this event. There may be many reasons why, ordinarily, a supervisory judge does not interpret her/his role as active involvement in the safeguarding of prisoners' rights: maybe because understaffed and with an excessive workload that become getting rid of folders; because of the widespread marginalisation of this specific branch of the judiciary; because of institutional closeness with the police and prison administrations; because almost all supervisory judges do not know prisons and their concrete problems since they never go there but instead take refuge in a formalistic approach (Romano 2021).

Relationships between supervisory judges and prison administrations are generally dominated by a high level of bureaucratisation, as we have seen: not only do judges rarely go into prisons, but communication typically consists of notifications, formal requests, and the transmission of reports and decisions in written form. This condition, together with the intent to reduce conflict with prison administrations, results in an

exclusive focus on that first function of supervisory judges (supervising the enforcement of sentences) and neglect of their duty to safeguard rights.

How can this exception be explained? The level and extent of violence can be a relevant variable in delineating the boundary between tolerated use of force and intolerable abuse. However, at least in the Italian context, the emergence of the most brutal cases has generally been the result of interventions by other actors (direct intervention by the prosecutor's office, reports by victims, the role of prisoner rights ombudsmen, lawyers). The supervisory judge rarely figures among these actors driving the penal action. Instead, the specific role in this matter seems to be attributable to the discretion with which the supervisory judge can interpret his/her role. Typically, there is a widespread reluctance to exercise control over the prison administration (for the various reasons outlined above), which can translate into a marginal role in shedding light on institutional violence. However, the case of Santa Maria Capua Vetere demonstrates that an alternative perspective is possible. The supervisory judges have the normative and operational tools to play a significant role in terms of preventing and uncovering violence, provided they distance themselves from a bureaucratized vision and a reluctance to manage conflicts with the prison administration.

6. Conclusion

The behaviour of supervisory judge in the above-described Santa Maria Capua Vetere case had an impact first of all in revealing a serious act of violence. By making the confiscation of the surveillance video possible, he played a key role in making the beginning of the lawsuit possible. In so doing, he fully disoriented the prison staff, for the various reasons described in the previous section.

The question is that his attitude is basically an exception: the ordinary practices of a supervisory judge are connoted by bureaucratisation, scant knowledge about prisons, a tendency to maintain a non-conflictual relationship with the prison administration. All these factors produce a lack of intervention when prisoners' rights are violated. But the case-study presented here, even if just an exceptional way of understanding own's role, may also be considered a prominent legal precedent in the safeguarding of prisoners' rights. Trying to be optimistic, the case described here could be considered an important step in a potential transformation of the professional culture of this branch of the judiciary.

Another case of exceptional involvement, of a supervisory judge, in promoting and protecting prisoners' rights concerned the safeguarding of prisoners' affective needs. A recent judgement by the Italian Constitutional Court declared art. 18 of the prison law unconstitutional. This article, which prescribes visual control by a prison officer when prisoners met their relatives, violates the right to affectivity and sexuality, the Court affirmed with Judgement 10/2024. Another circumstance, therefore, where the Court declared that dignity is violated when prisoners are deprived of these rights, and so too is the rehabilitative function of punishment.

The supervisory judiciary was involved for two reasons. Firstly, because also in this case there was a proactive intervention by a supervisory judge, who, while examining a complaint by a prisoner, raised the question and formally asked the Court to take a decision on the general issue. Secondly, because, from a socio-legal point of view, in the

coming months and years, it will be particularly important to follow and monitor how and to what extent this judgement will be implemented. With its decision, the Court urged the prison administration and the supervisory judiciary to enforce this rule. Therefore, the supervisory judges will be responsible, together with the prison administration, for its concrete application. In this regard, it will be particularly interesting, on adopting a legal realist approach, to observe this process of implementation and the specific role of the supervisory judiciary, considering the various limitations, difficulties and challenges that this process in all probability will face.

Moreover, this is another example of how prominent the role of the supervisory judges can be in safeguarding prisoners' rights, in contrast with the perception of marginality that permeates their professional culture (Scomparin 2012). If we consider the general political and cultural environment in which the events described here occurred, the role of this branch of the judiciary becomes even more interesting from a socio-legal point of view. In recent years, the Italian political debate on punishment and imprisonment has been dominated by a radical populist approach. Law-and-order campaigns and zero tolerance policies have been the subject of repeated announcements and election campaigns. The issue of prisoners' rights is anything but interesting in this general political climate. Even if for at least thirty years, Italy has experienced, like many other Global North countries, a fall in its crime rate, the emphasis on security and law-and-order campaigns has not decreased (Ferrajoli 2024).

Also for this reason, the role of all the actors involved in the protection of prisoners' rights, including the supervisory judges, is particularly important in order to promote, besides the protection of fundamental rights, a change in the social representations of punitiveness.

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