

# Italian Criminal Justice System and Sexual Offending: An Overview

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## Abstract

*In Italy since 1996, because of new legislation, many things have changed regarding sexual abuse policy and practice; in the main the changes have been twofold increased punitiveness towards the perpetrator and an increased focus on victim protection. Italy's policy regarding sex offenders, on the contrary, seems to be inspired only by retaliation and not by prevention or rehabilitation as there is no risk assessment, no treatment, no follow up in the community. Only in recent years things seem to be slowly changing. Many professionals and private agencies, all over the Country are struggling to change things. Some treatment programs have been implemented an increasing attention to risk assessment is growing, and a net of professionals has been created to share research and practices, even with other Countries. The article aims to give an overlook of the Italian Criminal System, especially as to concerns sexual abuse, and to present what's new in this field.*

*Keywords: Treatment, Risk, Assessment, Italy*

## Introduction

In Italy, as in many other Countries, a new attention has been given since the 70' to the issue of sexual abuse. A better knowledge of sexual abuse consequences, an increasing attention to women's and children's rights, some high impact cases of sexual violence, along with a new political climate all over the world, led to some changes in public policy and practice. A new attitude was growing toward the victims and their voice became to be more and more heard. However, in respect to how we manage, treat and respond to individuals that commit sexual abuse nothing has changed except an increase on the volume and type of punishment. As the sexual offender is perceived - not only by the public, but even by many professionals - as "doomed" to relapse, nothing is made regarding risk assessment, treatment or any form of rehabilitation.

Interestingly, almost paradoxically, despite the supposed dangerousness posed by the sexual offender there is no means or will to control, follow up or support the offender upon their release back in the community.

People working with these offenders, however - prison officers, probation officers, criminologists, psychologists, social workers - are strongly aware of these critical issues, but the lack of funding within the Italian penitentiary system, does not allow for any kind of prevention. The few treatment programs currently in place are those based on private initiatives by professional groups.

Here below are described some of these experiences, along with the ongoing debate over the Italian media and the increasing interest of the Institutions toward the possibility of treating the offenders.

## The Criminal Justice System in Italy

The foundations of Italian criminal justice are embedded in the Republican Constitution (1948) namely in art. 25, the principle of legality, and in art. 27 which states,

- Criminal responsibility is personal, i.e. it rests solely on the individual's acting;
- Anyone subject to a criminal prosecution is to be considered innocent until his guilt is proved in a final judgement;
- Any inhumane or degrading treatment of prisoners is strictly forbidden; and
- All criminal sanctions should have the aim of rehabilitating the offenders.

In Italy the sources of criminal law and procedure are codified, which means that it is difficult to amend the Criminal Code (*Codice Rocco*), which dates back to the Fascist regime (1930), to remove a lot of the problematic historical ideology and updating them for the modern era (Maffei & Merzagora Betsos, 2016a). In 1988 the Italian criminal justice system underwent a major reform known as the 'fair trial'. The old inquisitorial model, whereby judges collected all the evidence and issued a verdict, was replaced by an adversarial system, whereby evidence has to be presented orally in court and can be challenged during cross-examination.

The actual court processes in the Italian system is divided into two phases, the first, the investigative phase (preliminary investigations), during which the public prosecutor collects the evidence, and secondly, the trial phase, during which the contending parties put evidence before the court. The Italian system for adult offenders enables the Surveillance Judge and the Surveillance Court free reign to deliver a sentence, grant alternative measures to detention (i.e., conditional release, half-release, probation, house detention, etc.) and the possible application of security measures. This means that Judges in the Italian court system have a number of opportunities open to them while sentencing and free reign to choose the punishment that they think is the most appropriate. However, the defendant, as well as the district attorney, can appeal after the first decree and, after the second decree, he or she can appeal to the Court of Cassation which ultimately decides on the accuracy of the judicial process and can annul the previous sentences, while not judging substance of the sentence itself. To counteract the extreme length of the Italian processes, which can last many years, there is the option of a plea bargaining, as in the Anglo-Saxon law (Maffei & Merzagora Betsos, 2016b).

Juveniles in Italy are processed through a separate system (Decree No. 448/1988), the basic philosophy of this process is based on three fundamental principles (Giulini & De Gregorio, 2016), strong attention to the minor's personality; building a responsible attitude; and educational purpose of the Process. For these reasons, the juvenile criminal justice calls for detention only in very serious cases where there is no other option, otherwise there is a probation period at the end of which, if the result is positive, the crime is extinguished.

## The penitentiary system in Italy

According to the Italian Constitution, as mentioned above, the penalty must be aimed at rehabilitating the offender. Unfortunately, however, the Italian penitentiary system has a number of fundamental and critical issues which make offender rehabilitation virtually impossible. Italian prisons, which are exclusively state-run, in 2013 have been sanctioned across the board, with a few exceptions, by the Council of Europe because of the inhuman conditions of imprisonment they impose, their crumbling and sub-par estates, the fact that they are overcrowded and lack the

required staffing levels (Bultrini, 2013, Jan 29). Consequentially, as early as 1975 (Law 354/1975), there have been attempts to reform and improve the Italian prison system with a review focusing on:

- The delivery of penitentiary treatment inspired by the principles of humanity and dignity of the person, according to article 27 of the Constitution;
- The deliver individualized treatment, formulated through the scientific observation of the offender's personality, with the aim of reintegrating them back into their social context.
- Expand of the use of alternative measures to detention, for example parole, working permit, probation, etc.
- To open the prison estate to outsiders, as volunteers, external agencies for work and training, etc.

In 2000 there was the implementation of Law 354 which included the possibility of creating "*sezioni a custodia attenuata [attenuated custody sections]*" for "*prisoners and internees of not significant dangerousness, for which particularly significant treatment interventions are necessary , which ensure a wider development of the treatment activities.*" This rule creates the possibility of developing and organizing treatment programs for sex offenders (Giulini, Vassalli, & Di Mauro, 2003), but unfortunately not all prisons have the necessary spaces.

## Italian Criminal Justice and Sexual Aggression

In the Italian criminal system, until 1996, the response to sexual abuse was regulated by the Rocco Code, whereby all forms of sexual violence were considered a crime "against public morality and common decency". Since the 1970s, however, there has been a shift in the public perception of sexual offences as a result of greater reporting, recording, media coverage and socio-political debate which has resulted in an increase in public fears and concerns. In Italy, from the 70's onwards, the public started to develop a good understanding of the short and long-term consequences of sexual violence, with victims being heard and believed. At the beginning of the 80s the first Centers for the protection of minors victims of physical and sexual abuse were created the first teams of magistrates who dealt mainly with offenses against "weak subjects" (i.e. children and women) introduced. In 1996 a new law was introduced which stated that

- Sexual violence is a "crime against the person"
- The penalty imposed for sexual violence is from 5 to 10 years and from 6 to 12 years if the victim is under 14.
- The distinction between sexual violence and lechery is removed, with the new law stating that anyone who compels or induces another person to perform sexual acts, commits sexual violence.
- A sexual act with someone who is under than 10 years of age is sexual violence.
- The act of "sexual acts with a minor" (sexual acts with someone who is 10 to 14) is introduced, even if there is no violence or coercion (i.e., the victim provides consent for the sexual act to occur of their own free will)
- For gang rape, the penalty ranges from 7 to 14 years.

Building upon this legislation, in 1998 Law 269 introduces laws focusing on the exploitation of minors for the production of child pornography or for prostitution to enslavement (penalties from 6 to 12 years). In 2006 (Law 38) introduces the crime of detention and distribution of child pornography (sentences up to 3 years) is introduced. Over the last 40 years, or so, the Italian legal system has created more legalization around the prosecution of sexual offences that are punitive in nature

based on the view that longer sentences will act as a deterrence against future first time offending and potential re-offending.

## Italian Criminal Justice and Sexual Aggression: During the detention

Sex offender detention takes place in special sections within mainstream prisons in Italy; these prisoners are often labelled as "protected" and share spaces with other vulnerable inmates or those at risk of retaliation from other prisoners (i.e., cooperating witnesses and former members of the police force). This results in prisoners who have committed a sexual offence having poorer detention conditions, unequal treatment in accessing intramural work and poorer recreational activities. In addition, these prisoners spend the majority of their long prison sentences in almost total isolation. Hence, the sex offender becomes a 'hibernated prisoner' (Giulini et al., 2003) who will potentially become an even greater danger to society when they are released from prison. The sex offender, upon release from prison, tends to suffer from loneliness, marginalization, and a lack of economic resources which are powerful, well known risk factors for criminal recidivism across the board, not just for sex crimes (Marshall et al. 2006; Ward & Beech, 2006). In addition to this, relationship issues worsen, post release from prison, with sexual offenders (Veglia & Castellino, 2013; Xella, 2016).

The introduction of the "Security Decree", Law 34 (2000), resulted in a further worsening of the conditions of detention for sex offenders. Following an increase in the social concern for interpersonal crimes, especially related to interpersonal violence, (mob-related homicides, domestic violence, femicide, sexual aggression and others) the Italian Government established rules that limit the use of alternative measures in detention for these offenders. From then on, sex offenders can only access alternative measures (i.e., conditional release, probation, parole) after a year of a '*scientific observation of the personality*' conducted by an expert psychologist who attests to a reduction in their dangerousness.

Unfortunately, in Italy psychologists are still a very small number, it is estimated that each detainee has one hour a month with one, and they have a large workload. In addition, they have no specific training or skills in respect to sex offender risk assessment or, more generally, on the management of sex offenders. The year of observation is often delayed for months. Most of all, even if the impact of denial on recidivism is far from proved (Brown et al., 2010, Zara, 2016; Zara, 2018a, Zara 2018b; Zara 2018c), crime's disclosure is generally considered by the supervisory magistrate as a proof of reduced risk, then a *sine qua non* condition to grant such measures. For these reasons the majority of sexual offenders spend all the time of their sentence in prison.

## Italian Criminal Justice and Sexual Aggression: After the release

In 2012, Italy incorporated the Lanzarote Convention via Law 172; but as with previous legislation no new non-punitive strategies, only purely retributive ones. A number of new types of crime were included, such as the production and distribution of child pornography via the Internet. Interestingly, Article 7 calls the signatory States to establish preventive measures as well as specific assessment and treatment programs; but this is a non-binding resolution that states do not have to enforce.

A critical issue with Law 172 concerns security measures. The new personal security measures imply restrictions on certain rights, such as the movement or choice of job or specific requirement,

which have nothing to do with the personal need of any therapy, treatment or operation to reduce risk of recidivism (Bertolino, 2014; Xella, 2011; 2014). Nothing is proposed in the sense of an effective risk assessment or treatment for those who have committed, or are at risk of committing, a sexual offence; however, measures are introduced that do not facilitate recovery through treatment. In addition, the law does not permit the possibility of imposing security measures that provide for a mandatory treatment for sexual abusers at high risk of recidivism. The Surveillance Court is not equipped with legal policies to prevent new offences after the execution of the sentence, because precautionary measures are not mandatory, even with people that have socially dangerous profiles (Carabellese et al. 2012, Petrini 2013, Giulini & Scotti 2014).

Currently, in Italy there is policy directive regarding research and treatment of sexual offending; therefore there is no bespoke Italian evidence base for what works in sex offender treatment and management. No treatment is currently provided by law to sex offenders, either in prison or in the community. Sex offenders usually serve long sentences and are restricted in special wards, they are rarely admitted to probation or parole for community management/reintegration. Post release they have no registry, no treatment, no follow-up. In Italy sexual offence prevention, never mind recidivism or release prevention, is no existence in policy band practice.

## Public opinion relating to sexual aggression

Public opinion towards sex crimes and sex offenders is often paradoxical. On one hand, sex crimes are seen as the worst types of offences ever and severe punishments are invoked as the perpetrators are perceived to be at constant risk of reoffending. However, on the other hand, the victims' voice is rarely heard, and, more often than not, the blame is placed on them for their own sexual victimization. The case of Asia Argento is a good example of this, she was blamed and called names ONLY on her own Country's (i.e., Italy's) social media for revealing the abuse she suffered (Boezi, 2017 Nov. 22.); despite this example debate about sexual abuse and treatment of offenders over the media is open and ongoing ("Le donne del cinema italiano contro le molestie" 2018, Jan 02; Barducci, 2017, Dec 06;).

Societal attitudes in Italy are starting to change in regard to sexual abuse, believing that perpetrators of sexual abuse against children should receive both punishment and rehabilitation. Calvanese & Coluccia(2003) carried out research with members of the public on attitudes to perpetrators of child sexual abuse and found that:

- 57% claimed that people convicted for sex offences against children are people in need of care;
- 12% claimed that only victims should be treated;
- 30% were favourable to treatment only after the assessment of the convict's real interest for treatment.

The belief that treatment is needed, even regarding people who are at risk of committing sexual offences, begins to spread, but, as mentioned above, no public action has been taken about that (Romanelli, 2017, Sep. 24; Pronzato 2018, Jul 11; "Vittime e carnefici", 2017, July 27).

## Something is moving on...

At the moment, the Italian criminal legal system does not provide for any national treatment intervention that will prevent that will be prevent first time or repeat sexual abuse.

The training demand related to sex offender risk assessment by professionals is very high: with penitentiary educators and psychologists, who are responsible for observing the offender's personality in order to apply for alternative measures to detention, feel completely unprepared for the task. The most commonly used risk assessment tools, as STATIC 99R and STABLE 2007, have not been translated into Italian. Risk Matrix 2000 has been translated and validated, but it is too often used only as a sort of "triage" to identify the prisoners who are the most at risk (Garombo et al., 2015). Hence, risk assessment is all about the personal 'clinical' opinion of the professionals in charge and not about a detailed actuarial assessment.

In recent years there have various local treatment initiatives funded by European or other regional funds, but in many cases they are temporary and do not allow continuity or sustainability in treatment (Carabellese et al, 2012). The first Italian initiative in this regard was the WOLF project (Working On Lessening Fear) in 1999 -2000, promoted by the Italian Penitentiary Administration within the context of the European STOP Program. The purpose of this project was to carry out a study on the current situation of those convicted of sexual crimes in Italy, detained, interned and in alternative measures as well as to promote training exchanges with some European countries on this specific topic (Robuffo, n.d.). Consequentially, some treatment programs were developed in Italy, such as the one developed at the Prato (Tuscany) prison (Ciappi et al 2006), but these were generally short-lived because they lacked funding. Recently, the Italian Ministry of Justice reviewed all the sex offender treatment programs in the country and identified that only 10 existed, and of these 10 only 3 were based upon evidence from international research and guidelines (Ciompi, 2016): Milan-Bollate, Rome, Vercelli.

In respect to sex offender treatment programs in the community, sex offenders on probation can be referred by Probation Officers (who usually, as mentioned above, don't have any specific training) to some, mostly private, services; but rarely there is an agreement established between organizations: this is usually done on a case-by-case basis. In recent years, the field of offender management and treatment in Italy has seen a number of local agencies, judges, lawyers and prison officers trying to use and implement international guidelines. The Centro Italiano per la Promozione della Mediazione (CIPM) is one of these Agencies.

The CIPM was developed in the mid 1990's with the aim of introducing in Italy the good practices of Restorative Justice in use in neighboring countries, especially France, and has become a point of reference for the treatment of offenders, including the ones who committed sex crimes. Also thanks to the contact with French and Belgian colleagues professional visits have started to Canada, at the Philippe Pinel Institute of Montreal and other detention or community centers, designated to the treatment of perpetrators of sexual offense.

As a consequence of Law 354 (Giulini et al., 2003) and on the basis of international treatment guidelines and the Risk-Need-Responsivity model, the Milano Bollate Intensified Treatment Unit was born (Giulini & Xella, 2011) The treatment program last approximately 1 year and the STATIC 99R and STABLE 2007 are used for the assessment of both the risk of recidivism and individual criminal needs (Xella, 2011, 2014) as a basis for successful risk assessment prior to engagement with treatment.

In 2009 the District Criminological Centre was established in Milan, governed by C.I.P.M. and funded by the Municipality. The District Criminological Centre offers risk assessment and treatment programs to sex offenders and Domestic Violence offenders in the community, which they mostly participant with on a voluntary basis. Some offenders, from local prisons, choose to attend because this is the condition of their parole, and in many cases keep attending at the end of their sentence.

The C.I.P.M. of Milan has also in charge 12 Circles of Support and Accountability for high risk sexual offenders (Giulini & Scotti, 2017) and one group for sex offenders' relatives (Garbarino e Giulini, 2017). The C.I.P.M has various agencies over the Country, and a treatment program has been also organized at the prison of Rome-Rebibbia, but it lasted only two years, due to lack of funds. This program was built taking in special account the Good Lives Model, and a fruitful exchange has been established with the University of Liege (Xella 2016). Last October, 2017, the C.I.P.M. organized a congress in Rome about first offence's prevention ("*Fermarsi prima*" [Stop before]), with the participation of experts from Finland, Switzerland and Canada.

In addition, the C.I.P.M. has been working the last 10 years to change public policy and attitude toward sexual offending, and now we can see some results:

- An agreement has been established between the Police Department of Milan and the C.I.P.M. stating that DV offenders not yet sentenced, but already known by the Police, are referred to the District for a treatment program whose outcome will be reported to the judge.
- Some judges are beginning to consider the high risk of relapse as a social threat and to refer some high risk sexual offenders to the above mentioned Service for a mandatory treatment or order a restrictive measure as a residential treatment, supervised by the C.I.P.M. (Giulini & Scotti, 2014; "Milano, pedofilo recidivo", 2018, Apr 03).
- The Service is beginning to be known and some people who perceive themselves at risk of committing a sexual offense come to search help.
- The Juvenile Justice Department has asked C.I.P.M to build a program for juvenile sex offenders in probation, to be implemented in two major Italian cities (Rome and Milan).
- The Italian Ministry of Equal Opportunities, along with the Carabinieri force, has charged the C.I.P.M. to do the Italian translation and validation of STATIC 99R and STABLE 2007. This should be the first step toward a practice of risk assessment finalized to the treatment and management of sexual offenders.

Recently, professionals and agencies engaged in treatment and research about sexual offending have begun to share experiences and practices. A national association, named CoNTRAS-TI (in English: National Coordination of Treatment and Research about Sexual Offending - Italian Experiences) has been founded in Italy with the aim of sharing research and best practices, among its members and with members other similar international associations (i.e., ATSA and IATSO). The first goal of CoNTRAS-TI is to press Italian institutions to review relapse prevention initiatives (in Italy, we don't have any data!); second, to promote the Italian validation of tools such as STATIC-99-R and STABLE 2007 (which, as mentioned above, we have succeeded to attain); third, to provide risk assessment and case management training for people involved in managing sex offenders; fourth, to formalize agreements with accredited private associations already working with sex offenders, in order to implement treatment programs where possible, both in prison and in the community.

## Conclusions

The prevention of sexual abuse should increasingly become a public health issue and all relevant professionals should be trained to better understand and work within this reframing of sexual abuse. As we have seen in Italy the debate is ongoing and public Institutions are slowly becoming aware that a new policy is needed that takes into account the perpetrators' so that we can better understand the causes of sexual abuse preparation so that we can prevent new crimes and to protect the victims.

We are aware that there is still a long way to go: for example, proofs of effectiveness and studies on recidivism are needed, and, again, they can only be carried out through close cooperation with public institutions. We need, as professionals, to build contacts and cooperation with international Associations who are working in this field and have had, in their past, the same experiences: this is an essential way to be up to date with what's going on in the rest of the world. This is also a way to share our experience of working in a very difficult and non-supporting context and showing how, despite this, it's possible to create new possibilities of change for people, Institutions, and even public opinion.

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