PROMOTING NON-DISCRIMINATORY ALTERNATIVES TO IMPRISONMENT ACROSS EUROPE

NON-CUSTODIAL SANCTIONS AND MEASURES IN THE MEMBER STATES OF THE EUROPEAN UNION

Italy

Alessandro Bernardi

Marco Venturoli

Funded by the European Union

Alessandro Bernardi
Professor of the University of Ferrara

Marco Venturoli
Researcher at the University of Ferrara

November, 2021

Published by:

Instituto Jurídico
Faculdade de Direito da Universidade de Coimbra
Colégio da Trindade | 3000-018 Coimbra | PORTUGAL

www.uc.pt/fduc/ij

Funded by the European Union

This report is part of the project ***Promoting non-discriminatory alternatives to imprisonment across Europe*** (PRI Alt Eur), funded by the European Commission under the programme JUST-JCOO-AG-2020 — action grants to promote judicial cooperation in civil and criminal justice.

The project is implemented together by Penal Reform International, the Institute for Legal Research of the University of Coimbra (Portugal) and the Hungarian Helsinki Committee.

ITALIAN REPORT

Alessandro Bernardi, Marco Venturoli
(University of Ferrara)

I. LEGAL FRAMEWORK

1- General profiles of the Italian criminal sanctions system

- **What are the basic features of the system of criminal sanctions?**

In Italy, since 2002, jurisdiction in criminal matters has been divided between the ordinary judge and the justice of the peace. The latter is an honorary magistrate, who exercises his jurisdiction in accordance with the provisions of Legislative Decree No 274 of 28 August 2000. These two different judges have, in fact, two different sanctioning arsenals. The ordinary magistrate's arsenal is still based on the centrality of prison sentences, even though it includes various types of non-custodial penalties; the justice of the peace's arsenal focuses on the negotiated management of conflicts arising from offences and, secondarily, on the provision of non-custodial penalties.

- **What are the main penalties?**

The list of main penalties is contained in Article 17 of the Criminal Code and in Article 52 of the abovementioned Legislative Decree No 274/2000. The first, referring to offences under the jurisdiction of the ordinary judge, provides for life imprisonment (*ergastolo*), imprisonment (*reclusione*) and a fine (*multa*) for crimes (*delitti*); as well as arrest (*arresto*) and a fine (*ammenda*) for contraventions (contravvenzioni). The second, referring to offences falling within the jurisdiction of the Justice of the Peace, provides for a fine, home detention and work in the public interest.

- **What are the limits on the length of a custodial sentence?**

As far as life imprisonment is concerned - given the irreconcilability of life deprivation of personal liberty with Article 27(3) of the Italian Constitution, which expressly assigns to punishment a re-educational purpose - the inderogably perpetual nature of life imprisonment has been eliminated through the extension to lifers of the possibility of enjoying penitentiary benefits allowing them to end their sentence formally for "life". In particular, under Law 663 of 28 October 1986, they are eligible for semi-freedom "*semilibertà*" (after serving at least 20 years) and conditional release "*liberazione condizionale*" (after serving at least 26 years). These time limits can be further reduced if, due to their behaviour in detention, they can take advantage of the reduced sentences (45 days per semester) provided by the early release system (*liberazione anticipata*). The current overall regulation of life imprisonment has been considered legitimate by the Constitutional Court (sentence 264 of 1974), as it respects the multi-functional nature of punishment.

On the other hand, the limit on the duration of imprisonment (*reclusione*) is twenty-four years (thirty years in the case of concurrent offences) and that of arrest (*arresto*) is three years (six years in the case of concurrent offences). These time limits can also be reduced if early release is granted.

- **What is the maximum limit of imprisonment that allows the substitution of a prison sentence by a non-custodial sentence?**

If we exclude the limited universe of the justice of the peace, prison is still the reference sanction in the Italian penal system, although the legislator, in the most recent decades, has repeatedly attempted to circumscribe the application of prison sentences, mainly with the intention of combating the scourge of prison overcrowding.

This process of depowering prison sentences in the context of offences assigned to ordinary jurisdiction has not, however, taken place through the recognition of non-custodial forms of punishment in the catalogue of principal penalties, but by entrusting judicial discretion with the possibility of using suspensive instruments (such as "*sospensione condizionale della pena*") or substitutive instruments (such as alternative penalties) in place of the custodial sentence imposed in the incriminating provision.

Although both alternative sanctions and suspended sentences (*sospensione condizionale della pena)* are designed to combat short prison sentences, they differ in several respects. First of all, as can easily be guessed, alternative sanctions replace the main penalty (directly imposed by the law and imposed by the judge), whereas suspended sentences prevent its enforcement. It is precisely for this reason that in the first case the duration of the alternative sanction is equal to that of the penalty initially imposed, while in the second case the duration of the period of suspension of the penalty is established by law; even if the scope of application of the one and the other is generally the same in Italian law. A custodial sentence may be replaced or suspended up to a maximum of two years (with the exception of the suspended sentence, which may be served for up to two years and six months or three years for particular categories of offender, namely offenders over seventy or under age).

- **Does the law allow the judge not to impose a penalty (waiver of punishment or diversion) in specific cases?**

In the course of time, the Italian criminal legislation has multiplied the hypotheses (which were very limited in the original structure of the 1930 Criminal Code) allowing the judge to exempt from punishment the person found responsible for the offence or, even before that, to prevent the trial itself.

These are institutions that can lead to the extinction of the offender's punishability by virtue of *i*) circumstances intrinsic to the offence (e.g. the minor nature of the offence) or *ii*) circumstances of a "mixed" nature, which, for example, combine limits on the penalty with the offender being subject to a probationary period or to the offender carrying out restorative measures for the benefit of the victim or paying a sum of money to the State.

i) The first category includes:

1) The "*particolare tenuità del fatto*", a juridical institution provided for in Article 131-bis of the Criminal Code (introduced by Legislative Decree No. 28 of 2015 and then amended by Decree-Law No. 53 of 14 June 2019 and Decree-Law No. 130 of 21 October 2020, converted by Law No. 173 of 18 December 2020) which excludes the perpetrator from punishment for offences punishable by a custodial sentence not exceeding a maximum of five years, or by a monetary penalty, alone or jointly with the aforementioned penalty, when, on account of the manner of conduct and the slightness of the damage or danger caused, the offence is particularly tenuous and the conduct of the perpetrator is not habitual.

2) The institution of "*non luogo a procedure per irrilevanza del fatto*" in juvenile criminal law. Pursuant to Article 27 of Legislative Decree 448 of 22 September 1988, during the preliminary investigations, the judicial authority, at the request of the public prosecutor, may pronounce a judgment of non-suit due to the particular tenuousness of the damage or danger caused by the perpetrator, in order to avoid prejudice to the re-educational needs of the child.

3) The exclusion of the possibility of proceeding during the preliminary investigation phase in cases of particular tenuity of the offence, provided for by Article 34 of the aforementioned legislative decree no. 274/2000, concerning the criminal jurisdiction of the justice of the peace. Moreover, the judge's power to declare a lack of admissibility may also be exercised after criminal proceedings have been brought, but "only if the accused or the injured party do not object".

4) Judicial pardon for minors under 18 years of age. Pursuant to Article 169 of the Criminal Code, limited to facts of modest gravity, the judge may abstain from pronouncing the committal for trial or the conviction on the basis of a prognosis of non-recidivism.

ii) The second category includes:

1) The "*sospensione del processo con messa alla prova*" in juvenile proceedings, which may allow the judge to refrain from pronouncing the sentence or imposing the penalty after assessing the personality of the child following a probationary period aimed at the social reintegration of the same, subject to the suspension of the trial also in relation to particularly serious facts (articles 28 and 29 of Presidential Decree no. 448/1988).

2) The "*sospensione del processo con messa alla prova*" for adults, an institution introduced in 2014 on the basis of the experience of juvenile criminal justice, which allows the accused to request, already during the preliminary investigation phase or after the exercise of criminal proceedings, in the presence of particular objective and subjective conditions (e.g. penalty limits for the offence charged), the suspension of the trial and the submission of the accused to a period of probation, during which he will have to comply with certain obligations and/or prohibitions. If the trial is successful, the offender will be exempt from punishment (Article 168-bis of the Criminal Code).

3) The "*sospensione condizionale della pena*", whereby the judge suspends, in the presence of particular objective and subjective conditions, the execution of the penalty (custodial, pecuniary, substitutive and accessory) for a period of time fixed by law, at the end of which the convicted person will see the offence committed extinguished and will therefore be exempt from execution of the penalty if he has refrained from committing the offence during the probationary period (Article 163 et seq. of the Criminal Code).

4) "*Oblazione*" – in its two forms, respectively mandatory and discretionary (Articles 162 and 162-bis of the Criminal Code) – which allows, depending on the case, the extinction of the offence and, therefore, the exemption from punishment of its perpetrator following the payment by the latter of a sum of money to the State coffers in the amount established by law.

5) The institution of the extinction of the offence due to reparatory conduct, introduced in 2017 in Article 162-ter of the Criminal Code, by virtue of which, in offences prosecutable on complaint, the judge declares the extinction of the offence when the defendant has fully repaired the damage by means of restitution or compensation and has eliminated, where possible, the harmful or dangerous consequences of the offence.

6) In the context of the justice of the peace, reparatory conduct in respect of the damage caused by the offence may lead to the extinction of the offence if it is considered by this court to be suitable for meeting the requirements of reproof of the fact and prevention of the offence, after hearing the parties and any victim (Article 35 of Legislative Decree No 274/2000).

7) In several areas of the special part (e.g. environmental, tax and corporate matters), it is also provided that the offender may be exempted from punishment following reparation of the damage caused by the offence.

2- Non-custodial penalties

- **What types of non-custodial penalties are provided by the Italian penal system?**

As already mentioned in the preceding paragraph, Italian legislation provides for non-custodial penalties: A) in the catalogue of principal penalties (whether provided for directly in the criminal legislation or operating by virtue of a general substitution clause laid down by law); B) predominantly in the context of substitution penalties in the strict sense, as types of penalty that can be applied at the discretion of the court at the time of sentencing following a substitution operation for the principal penalty imposed in the first instance

A) Non-custodial principal penalties are

a) "*multa"* for offences, consisting, pursuant to Article 24 of the Criminal Code, "in the payment to the State of a sum not less than €50, nor more than €50,000" (but this maximum limit is often widely exceeded in offences provided for by special laws, which often provide for very high fines or fines proportional to the "size" of the offence committed);

b) "*ammenda*" for contraventions, consisting, pursuant to Article 26 of the Criminal Code, "in the payment to the State of a sum not less than 20 euros, nor more than 10,000 euros" (but also for the maximum limit of the fine what has just been said for the fine is valid);

c) *multa* e *ammenda* are also the penalties that can be applied directly by the justice of the peace for the offences referred to it by Legislative Decree no. 274/2000, both where they are imposed by law and in place of prison sentences with the characteristics laid down in Article 52, paragraph 2, of the aforementioned Legislative Decree no. 274/2000;

d) for offences falling within the jurisdiction of the Justice of the Peace, the following are also provided for: d1) "*permanenza domiciliare"*, consisting in the obligation to remain at one's home or in another place of private residence or in a place of care, assistance or hospitality on Saturdays and Sundays for a period of between 6 and 45 days; d2) "*lavoro di pubblica utilità*", consisting in the performance of an unpaid activity in favour of the community to be carried out with the State or public bodies, or social assistance or voluntary organisations for a period of between 10 days and 6 months. These latter non-custodial penalties are also applied directly by the judge on the basis of the criteria laid down in the above-mentioned Article 52 of Legislative Decree no. 274/2000.

B) With reference to alternative sanctions in the strict sense of the term, Article 53 of Law no. 689 of 24 November 1981 provides that within certain limits the judge may replace a custodial sentence with another less afflictive sanction. More specifically, detention sentences of up to six months may be replaced by a fine (*pena pecuniaria*), those of up to one year by *libertà controllata* and those of up to two years by semi-detention (*semidetenzione*). As far as the substitutive pecuniary penalty is concerned, what has already been said for the principal pecuniary penalty is valid, with the difference that in this case, the legislator in 2003 provided for the criterion of commensuration to be that of daily rates: according to Art. 53 of Law 689/1981, in fact, in order to determine the amount of the pecuniary penalty, the judge must first identify a daily value, taking into account the economic conditions of the offender, and then multiply it by the days of imprisonment. Semi-detention and supervised release, governed by Articles 55 and 56 of the above-mentioned law, are penalties limiting personal freedom and entail, respectively, the possibility of spending a few hours a day outside prison and the restriction of the subject's freedom of movement.

Under Law 689/1981, the applicability of alternative penalties is subject, in addition to the above-mentioned penalty limits, to the absence of certain subjective obstacles. In particular, a person who has been sentenced to more than three years' imprisonment in the five years preceding the new conviction cannot be the recipient of such alternative penalties.

With regard to the modalities of exercising judicial discretion in the application of the substitutive sanctions, Art. 58 of Law 689/1981 establishes that the judge, within the limits fixed by the law and taking into account the criteria of commensuration of the penalty referred to in Art. 133 of the Criminal Code, may choose from among the substitutive sanctions the most suitable for the social reintegration of the convicted person. In addition, Article 58 prevents the judge from substituting the prison sentence when there is a well-founded reason to believe that the prescriptions inherent in the alternative sanctions will not be fulfilled by the convicted person.

The legislator has provided for other hypotheses of substitution in specific matters: reference is made, in particular, to substitution work in matters of road traffic pursuant to Articles 186 and 187 of the Highway Code, to substitution work in matters of narcotics pursuant to Art. 73, paras. 5-bis and 5-ter of the narcotics Act, and to the expulsion of the foreigner provided for in Art. 16 of the immigration Act. It is necessary here to open a brief parenthesis on the role of work in the public interest in the Italian legal system, where this institution has occupied increasingly wide regulatory spaces, although not corresponding - as will be seen more clearly below - to as many spaces in its application practice. In fact, in addition to being a substitute sanction, community service takes on many other configurations. In fact - as we have seen - it can be the principal penalty for crimes within the jurisdiction of the Justice of the Peace; but it can also constitute a service possibly connected to the conditional suspension of the sentence, or a prescription compulsorily imposed on the beneficiary of the suspension of the proceedings with probation, or even a sanction applicable in place of the pecuniary penalty not executed due to the insolvency of the convicted person. It should also be recalled that community service is the only alternative sanction whose applicability is subject to the consent of the offender, in order to ensure compliance with Article 4 of the European Convention on Human Rights, which - as is well known - prohibits the subjecting of human beings to forced labour.

- **Are there accessory penalties?**

The Italian legislation provides that, in the event of conviction, certain accessory penalties may be applied in addition to the main penalties.

Under Article 20 of the Criminal Code, the accessory penalties – consisting of measures of an essentially interdiction nature – are applied where they are automatically provided for following conviction, regardless, therefore, of any express mention of them in the sentence. The indefectible nature of these penalties has, however, been attenuated over time: in fact, the judge may discretionally decide not to apply an accessory penalty. Furthermore, according to the specifications and possible exceptions provided for by Article 166 of the Criminal Code, as modified by Law No. 19/1990, - the accessory penalties fall within the perimeter of the incidence of the conditional suspension of the penalty. Finally, and the pronouncement of the sentence of application of the penalty at the request of the parties (so-called plea bargaining) entails, among other effects, the non-imposition of the accessory penalties provided for the offences covered by the plea bargaining, if the penalty imposed does not exceed two years. In contrast to what happens in other European legal systems (e.g. France), accessory penalties cannot be applied exclusively, i.e. they cannot be applied instead of the main penalty for the offence.

3- The sentencing phase. The commensuration of non-custodial penalties

- **Is there a phase in the Italian criminal trial specifically devoted to the individualisation of punishment?**

The Italian system of criminal procedure is "monophasic": there is therefore no stage in the trial specifically dedicated to the individualisation of the penalty, so that the judge measures the penalty at the same time as he pronounces the defendant guilty.

- **What criteria should the judge follow in choosing the penalty to be imposed?**

The criteria for the judicial individualisation of the penalty are set out in Article 133 of the Criminal Code, which lists a number of criteria relating to the seriousness of the offence and the offender's capacity to commit offences: with regard to the seriousness of the offence, for example, the manner of the action and the circumstances of time and place that characterise the fact must be taken into account; with regard to the offender's capacity to commit offences, the offender's character, his criminal record and his personal and family circumstances must be assessed. With regard to financial penalties, 133-bis of the Criminal Code requires the judge to take into account the offender's financial circumstances when calculating the penalty, which may be increased or reduced by the judge within the limits set by the provision in question depending on the offender's financial situation.

The Italian Criminal Code, however, does not specify in advance the purpose assigned to the penalty, with the consequence that it leaves the judge with a great deal of discretion as to the concrete use of such criteria for the purpose of choosing the penalty: Article 133 of the Criminal Code lists all-encompassing criteria, which are therefore susceptible to different interpretations depending on the purpose assigned to the penalty by the individual magistrate. In addition, the obligation to provide reasons for the choice of penalty imposed on the judge under Article 132 of the Criminal Code is largely ignored by the judge, who limits himself mainly to quantifying it with predefined linguistic formulas (for example, "the penalty is estimated to be fair"), without in any way justifying the penalty imposed in the light of the above parameters. Not even the entry into force of the 1948 Constitution – which, as already mentioned, expressly assigned to the punishment the aim of re-educating the convicted person – has succeeded in conditioning the work of the interpreter in the reading of Article 133 of the Criminal Code. The invitation of a large part of the doctrine to base the exegesis of the codictic norm on the constitutional prescription on the subject of punishment - and therefore to direct the individualization towards the re-socialization of the convicted person - still seems to be little heeded in practice: in fact, in the sentences of conviction the path followed by the judge in the exercise of the sanctioning discretion is often not specified.

On the other hand, with specific reference to the non-custodial substitutive sanctions applicable by the judge of cognition, the law - as already mentioned - while referring to the indicators established in Article 133 of the Criminal Code, prescribes the judge to choose the substitutive sanction more inclined to the resocialisation of the convicted person, probably because of the spirit that animates these types of non-custodial punishments.

Lastly, it should be noted that in Italy there are no guidelines to support the judge in his qualitative (where permitted) and quantitative choice of penalty.

- **Are there non-custodial measures that can be enforced?**

In addition to the above-mentioned alternative sanctions, Italian legislation provides for the possibility that the prison sentence imposed by the conviction may be enforced in an alternative - i.e. extra-custodial - manner, under specific conditions. This refers in particular to the system of alternative measures to detention, which was introduced with the 1975 reform of the prison system (articles 47 et seq. of Law 354/1975) and has been amended several times, with the specific aim of extending its application potential. The nature of these measures has also been transformed by this evolutionary process. In fact, according to the original approach of the above-mentioned law reforming the penitentiary system, the main function of alternative measures was to ensure the flexibility of the executive phase of the sentence, differentiating its content through the admission of prisoners to forms of enforcement "in the community", according to an interpretation of criminal enforcement inspired by constitutional principles and marked by a progressive reduction of recourse to prison. In order to achieve this, specific jurisdictions (the magistrate and the supervisory court) were given the task of modifying the quality and quantity of the sentence on the basis of a judgement relating to the personality of the offender.

On the other hand, following the amendments introduced by Law No 663/1986 and Law No 165/1998, alternative measures can now be granted *ab initio*, i.e. to final convicts who have not yet received a prison order and are therefore at liberty.

Alternative measures can either: 1) avoid the sentenced person staying in prison (such as "*affidamento in prova al servizio sociale*" e "*detenzione domiciliare*") or 2) reduce the time spent in prison (in particular, the "*semilibertà*" allows the sentenced person to stay in prison only at night, while the "*liberazione anticipata*" reduces the length of the sentence to be served).

As regards the types of alternative measures to detention recognised in Italy, new measures have been introduced in the years following their introduction by Law 354/1975. Originally, the alternative measures to detention were "*affidamento in prova al servizio sociale*" (a sort of prison probation), "*semilibertà*" and "", while later they were joined by special forms of "*affidamento in prova al servizio sociale*" (for drug and alcohol addicts) and home detention in different forms.

- **Are there cases of mandatory application of non-custodial sentences?**

With the exception of non-custodial penalties applied by the justice of the peace and of fines imposed as exclusive principal penalties, all other alternative sanctions (probation measures, alternative sanctions, alternative measures to detention and grounds for non-punishment) are applied at the discretion of the judge in the presence of the conditions laid down by law.

- **Are there guidelines concerning the application of non-custodial sanctioning instruments?**

As already mentioned, in Italy there are no guidelines dedicated to the modalities of commensuration of the penalty tout court. However, some local authorities or judicial offices have sometimes adopted guidelines aimed at standardising the application of certain types of alternative sanctions. Examples include the Guidelines adopted by the Court of Bergamo or the Protocol issued by the Court of Rovigo on the institution of "*sospensione del processo con messa alla prova*" for adults; and the Guidelines of the Umbria Region for the integrated management of alternative programs to prison sentences for alcohol and drug addicts.

- **Are there appeals relating specifically to the type and amount of the penalty imposed?**

There are no appeals concerning the type and extent of the sentence imposed, because of the monophasic nature of the Italian criminal trial. However, an appeal may be lodged with the Supreme Court (pursuant to Article 71-ter of Law no. 354/1975) against the orders issued by the Supervisory Courts, the competent jurisdictions - as already mentioned - for the granting of alternative measures to detention; such an appeal may concern the alternative measure denied or applied, as well as its concrete content.

4- Execution of non-custodial sentences and measures and consequences of non-compliance with their requirements

- **Is there a judicial review of the execution of alternative sanctions and measures?**

As already mentioned, a judicial control on the execution of alternative sanctions and alternative measures to detention is specifically foreseen, entrusted depending on the cases to the "*Magistrato di sorveglianza*" and the "*Tribunale di sorveglianza*", respectively monocratic and collegial bodies belonging to the same judicial office.

- **Consequences of non-compliance with conditions related to alternative sanctions and alternative measures to detention.**

The effects foreseen by the law in the event of non-compliance with the requirements inherent in non-custodial sanctions are different depending on the type of alternative penalty or measure considered.

With regard to alternative penalties (applied with a sentence of conviction), the violation of even only one of the prescriptions connected with "*semidetenzione*" and "*libertà controllata*" entails the conversion of the remaining part of the alternative penalty into a prison sentence (Art. 66 Law no. 689/1981); while failure to comply with the substitutive pecuniary penalty is converted into "*libertà controllata*" according to the limits and criteria of comparison established by law (Art. 102 Law no. 689/1981).

With reference, instead, to the alternative measures to detention (applied in the executive phase), the "*Tribunale di sorveglianza*" is, in general, granted fairly wide discretionary powers in the determination of the consequences connected to the non-compliance with the obligations inherent in the same measures, which, however, vary according to the type of alternative measure considered. For example, in relation to "*affidamento in prova al servizio sociale*", the behaviour of the offender "contrary to the law or to the rules" imposed on him may lead to the revocation of the measure. But such revocation must be ordered only if the offence committed by the offender appears "incompatible with the continuation of the probation period", on the basis of an assessment by the court (Article 47(11) of Law 354/1975). Likewise, the "*detenzione domiciliare*" is revoked if the behaviour of the offender, contrary to the law and to the prescriptions laid down, appears "incompatible with the continuation of the measures", as in the case of non-authorised exit of the offender from his home (Article 47-ter, paragraphs 6, 7, 8, 9, Law 354/1975).

- **Can the length of the sentence be changed during the execution? If yes, under what circumstances?**

In the execution phase, an amendment to the measure of the penalty established by the judge of cognition is allowed only in the case where several irrevocable judgments or decrees are pronounced in separate proceedings against the same person (Art. 671 of the Code of Criminal Procedure).

In such circumstances, the execution judge may order, at the request of the convicted person or the public prosecutor, the application of the discipline of formal concurrence of offences or continuing offences (Article 81 of the Criminal Code), which may lead to the infliction of a shorter penalty than that resulting from the sum of the sentences imposed by the various convictions handed down against the same person. At the time of such a recalculation of the penalty, "*sospensione condizionale della pena*" may also be granted if the conditions for its application set out above are met.

5- Early release of offender

The Italian legal system provides for two institutions that can lead to the early release of offenders from prison.

The first is the "*liberazione condizionale*" (articles 177 et seq. of the Criminal Code), which was the only case of extra-custodial enforcement of prison sentences in the original 1930 Criminal Code.

It may be granted only if a minimum period of imprisonment has elapsed: more specifically, the offender must have served thirty months or at least half the sentence imposed on him (three quarters of the sentence in the case of repeat offenders), while for those sentenced to life imprisonment the "*liberazione condizionale*" may be granted after at least twenty-six years have been served. The law also makes the granting of "liberazione condizionale" upon the prior fulfilment of civil obligations arising from the offence by the offender, as well as the verification of the latter's "sure repentance".

The provision of a minimum period of imprisonment as a condition for "*liberazione condizionale*" reveals the legislator's intention to safeguard, through this institution, the retributive content of the prison sentence, as the Constitutional Court itself has stated[1]. In fact, the "*liberazione condizionale*" is the only alternative measure considered inapplicable to short prison sentences[2], and the only one to remain strictly within a logic of progressive treatment and gradualness in the granting of benefits.

The measure in question is therefore the final stage in the process of social reintegration that precedes the complete restoration of the state of freedom and, from this point of view, the judgement as to the "sure repentance" of the offender may be based on the results of the application of any alternative measures granted before "*liberazione condizionale*".

As regards the consequences of "*liberazione condizionale*", offenders on conditional release are subject to "*libertà vigilata*", i.e. requirements limiting their personal freedom. These conditions must be complied with for a period equal to the remaining sentence to be served (in the case of life imprisonment, this period is five years). In any event, the measure may be revoked by the *Tribunale di sorveglianza* "if the released person commits a crime or a misdemeanour of the same nature, or transgresses the obligations inherent *libertà vigilata*". In such a case, the *Tribunale di sorveglianza* may order the execution of all or part of the residual sentence in the light of the seriousness of the behaviour which led to the revocation of the measure and of the period of time spent on "*libertà vigilata*". If, on the other hand, the offender does not commit the offences in question and complies with all the requirements for the period requested, the sentence is cancelled.

The second facility allowing early release from prison is "*liberazione anticipata*" (Article 54 of Law 354/1975). This is a bonus scheme - formally described by the law as an alternative measure to imprisonment - which allows for forty-five days to be deducted from the sentence imposed for each six-month period in which the offender has shown that he "actively participates in rehabilitation". In addition to reducing the length of the sentence to be served, such an institute can bring forward the time at which "*liberazione condizionale*" is granted, as well as the time required by law to take advantage of "*permessi premio*" or to be admitted to the alternative measure of "*semilibertà*".

6- Substitute sanctions and alternative measures to detention for vulnerable groups

Although the judge can generally take into account the psychophysical or social vulnerability of the offender when deciding to replace the short-term prison sentence imposed on him, the only

[1] The Constitutional Court, in its judgment no. 8/1979, pointed out that the fixing of at least 30 months of completed sentence defines the minimum period within which the penalty can freely extend its intimidating and repressive effectiveness.

[2] Excluded from this benefit are offenders who have to serve a sentence of less than two years and six months or four years if they are repeat offenders.

alternative sentence intended expressly for a category of vulnerable persons appears to be alternative work for drug addicts convicted of the offences of possession and distribution of small quantities of drugs.

The catalogue of alternative measures to prison applicable to vulnerable groups is much broader. The Italian legislator is aware of the fact that imprisonment in prison can aggravate the conditions of vulnerability that may characterise convicted offenders and which may have facilitated their propensity to commit offences; the structural deficiencies sometimes found in Italian prisons may also make it difficult for physically or psychologically weak prisoners (e.g. drug addicts and persons suffering from particular pathologies) to receive the necessary medical or social support.

The types of alternative measures for vulnerable offenders are special cases of "*affidamento in prova al servizio sociale*" and "*detenzione domiciliare*":

a) "*Affidamento in prova*" for persons suffering from full-blown AIDS or from serious immune deficiency, as well as for drug and alcohol addicts (Art. 47-quater of Law no. 354/1975 and Art. 94 of Presidential Decree no. 309 of 9 October 1990, Consolidated Law on Drugs). These institutions are characterised both by a broader spectrum of application than the ordinary form of "*affidamento in prova*" and by a different content with respect to the latter: in fact, for persons suffering from full-blown AIDS or serious immune deficiency there is no limit on the number of specific sentences, while for drug and alcohol addicts the limit is raised to six years' imprisonment (including residual or combined with a fine); the content is essentially therapeutic;

b) "*Humanitarian*" "*detenzione domiciliare*" (Article 47-ter(1) of Law no. 354/1975), which allows certain categories of persons (e.g. drug addicts, persons suffering from serious pathologies, mothers with children), for whom (or persons close to them, such as very young children) imprisonment would be seriously prejudicial due to the above-mentioned bio-physiological conditions, to serve their sentence for no more than four years (even if the remainder of a longer sentence is served) at home (or in another place of care or assistance);

c) "*Detenzione domiciliare*" in favour of convicts suffering from full-blown AIDS or serious immune deficiency (art. 47-quater l. no. 354/1975), provided that they are in, or intend to enter into, a programme of treatment and care in appropriate operational units, which is applicable irrespective of compliance with particular penalty limits;

d) "*Detenzione domiciliare*" for mothers with children under ten years of age (Article 47-quinquies of Law no. 354/1975), which also has no concrete penalty limits, provided, however, that there is no concrete danger of further offences being committed, that it is possible to restore cohabitation with the children, and that at least one third of the sentence has been served (or fifteen years in the case of a life sentence);

e) "*Detenzione domiciliare*" for persons aged seventy years or more (Article 47(01) of Law No 354/1974), which is also a measure that does not preclude the size of the sentence to be served (with the exclusion of certain particularly serious offences), provided that the offender has not been declared a habitual, professional or trendy criminal and has never been convicted of recidivism;

f) "*Detenzione domiciliare*" (Art. 47-ter, para 1-ter, Law no. 354/1975) in favour of persons in respect of whom a deferment of sentence may be ordered pursuant to Articles 146 and 147 of the Criminal Code[3], whatever the size of the sentence to be served. This is an instrument which overcomes the lack of constraints traditionally associated with deferment of sentences, thus making it possible to balance the need to neutralize dangerous persons with the humanitarian rationale underlying the institution.

[3] Articles 146 and 147 of the Criminal Code lay down, respectively, certain subjective conditions which, on humanitarian grounds, require the court to obligatorily defer the execution of the sentence of certain categories of sentenced persons (for example, a pregnant woman or a person with children under one year of age, a person with full-blown AIDS or a serious immune deficiency persons suffering from a particularly serious illness as a result of which their state of health is incompatible with imprisonment) or allow discretion to determine whether it is appropriate to defer enforcement of the sentence for other categories of offenders (persons who have applied for pardon, mothers of children under three years old, persons with serious physical infirmity).

No specific forms of "*liberazione condizionale*" are envisaged for vulnerable persons, although the above-mentioned alternative measures can be applied for remaining prison sentences, thus in practice anticipating the release of the offender from prison, who will then be subject to "*affidamento in prova*" or "*detenzione domiciliare*".

II. NON-CUSTODIAL SANCTIONS AND MEASURES IN PRACTICE

1- Some statistical data

As regards the observation of non-custodial penalties and measures in their application dimension, it is appropriate to consider independently the different types of penalties described above, at least with reference to how many of them constitute the object of statistical survey.

1) As for alternative sanctions, they have always been used rather sparingly, despite the fact that their theoretical scope has expanded over time. The data clearly show that, even today, both "*semidetenzione*" and "*libertà controllata*" are practically non-existent sanctions: in 2015, they were applied only 15 and 262 times respectively, and 3 and 268 times from 1 January to 15 August 2021. More recently, as at 15 August 2021, there was 1 person in "*semidetenzione*" and 97 on "*libertà controllata*".

However, it is not possible to find data on financial penalties as alternative sanctions, since the statistics on financial penalties do not disaggregate data on the main financial penalty and on the alternative financial penalty.

Nor is the effectiveness of community service for drug addicts who have committed a minor offence particularly encouraging: for example, in 2015 this sanction was applied only 100 times, while 253 times from 1 January to 15 August 2021. Similarly, it is likely that the expulsion of foreigners, despite the lack of data on it, does not have significant effectiveness rates, mainly due to its narrow scope.

The only exception in this bleak picture is substitution work in road traffic, which in 2015 was applied to 13 355 people, which is certainly a high number when compared with the statistics on other substitution sanctions. More recently, as of 15 August 2021, there were 8,252 convicts sentenced to the "*lavoro di pubblica utilità*" in question. This success is probably due to the fact that, only in this hypothesis, the positive performance of the work activity leads by right to the restitution of the confiscated vehicle.

In any case, the reason for the credible failure to apply the alternative sanctions is the overlap between them and the "*sospensione condizionale della pena*". Both measures can be applied to sentences of up to two years' imprisonment and, of the two, the "*sospensione condizionale della pena*" is certainly more favourable and therefore preferred by the judge of cognition, to whom the choice is referred.

2) On the other hand, the "*sospensione condizionale della pena*" has become in practice a deflationary instrument, a sort of "benefit" automatically applied to mitigate the severity of the abstract penalty frameworks of our Code and consequently to contain the phenomenon of prison overcrowding.

Statistical data testify to the propensity of judges to apply this measure with particular ease: in 2012, the year in which the latest data are available, it was applied in 80,760 cases, which means that 43% of all sentences imposed were suspended, compared with 36% in 2010 and 30% in 2008.

In 2012, "*sospensione condizionale*" was ordered in relation to half of the prison sentences (49.8%) and one third of the financial sentences (36%). If we consider that the percentage is calculated on the total number of sentences imposed and not only on suspended sentences, it's clear that the application of the measure is almost automatic. The tendency is almost constantly to grant "*sospensione condizionale*" solely on the basis of the objective requirements laid down by law, without in fact making any assessment of the offender's personality, thus ignoring the prognostic assessment of non-recidivism that should characterize the application of the institution. It should also be noted that in 98% of cases the suspended sentence is not accompanied by the imposition of

any kind of obligation beyond the prohibition against reoffending, thus remaining an empty measure.

3) As regards the enforcement practice of the main penalties of the Justice of the Peace's jurisdiction, the available statistics show the predominant role played by the pecuniary penalty, which was applied in 99% of the convictions in 2012, in contrast to "*permanenza domiciliare*", which was applied in only 0.8% of cases, and "*lavoro di pubblica utilità*" in 0.2% of cases. The very marginal role played by the latter penalty, which is very interesting from a functionalist point of view, is probably due, on the one hand, to the fact that its application is subject to the request of the sentenced person, who will prefer one of the other two competing penalties, which are undoubtedly less afflictive; and, on the other, to the difficulties that have marked the life of this penalty in Italy. As we have seen, "*lavoro di pubblica utilità*" registers significant application rates only in the field of road traffic, but precisely because its afflictive nature is counterbalanced by the incentives provided by the legislator.

4) Contrary to the mistrust shown by commentators, the "*sospensione del processo con messa alla prova*" for adults has seen its application rates increase considerably over time: from 9,690 applications in 2015 to 19,553 applications between 1 January and 15 August 2021.

5) Turning then to the alternative measures to detention - which represent, as mentioned above, the prevailing share of the universe of alternatives to prison sentences - it must first be noted that the number of beneficiaries of these measures has progressively increased over time. More specifically, with reference to the last fifteen years, after a decrease following the general clemency measure adopted in 2006 (the pardon law), the number of persons undergoing alternative measures has slowly started to increase again. Actually, in the period between 31 December 2009 and 15 December 2020, the number of convicted persons concerned by the application of alternative measures more than doubled: from 21,757 applications in 2009 to 54,435 applications in 2020. In the period considered, on the other hand, the legal framework on the subject was significantly modified as a result of some measures adopted after the Torreggiani "pilot judgment" of January 2013, with which the Strasbourg Court condemned Italy under Article 3 ECHR for the systemic nature of prison overcrowding. As far as alternative measures are concerned, these have essentially been aimed at reducing the number of prisoners: in particular, the abolition of certain preclusions for repeated offenders, the extension of the scope of "*affidamento in prova*" and the stabilization of a form of "*detenzione domiciliare*" initially introduced for a limited time-period by Law No 199/2010. However, from a precise observation of the available data, it seems that most of the beneficiaries of the measures - namely "*affidamento in prova al servizio sociale*" and "*detenzione domiciliare*" - come from freedom, thanks to the already mentioned mechanism of the suspension of the enforcement order issued by the public prosecutor. The number of beneficiaries is higher in the case of ordinary "*affidamento in prova*", the transformation of which into a prison replacement for short prison sentences seems irreversible. On the other hand, the data show a progressive decrease in the number of prisoners benefiting from "*semilibertà*", a measure which, as we have seen, mainly serves the purpose of progressively reintegrating the prisoner into society. In fact, statistics reveal a constant decrease in the number of beneficiaries of this measure from 2010 to the present day. However, a complete analysis of this phenomenon appears to be hindered by the lack of data on "*liberazione condizionale",* the life of which tends to intersect with that of "*semilibertà*". In summary, as of 31 January 2021, "*affidamento in prova*" accounted for 57.3% of the alternative measures applied at the time, while "*detenzione domiciliare*" accounted for 40.2% and "*semilibertà*" for 2.5%.

With regard to the types of alternative measures aimed at "vulnerable" categories (drug and alcohol addicts, mothers and fathers with children, persons suffering from serious pathologies), the available data do not document a particular success of these measures: more specifically, the indices of application of the forms of "*affidamento in prova al servizio sociale*" reserved to the above categories are less than a quarter of the total applications of all the forms of the measure. After all, the number of drug addicts in prison is particularly high: in 2018, there were 16,669 drug addicts in Italian prisons, i.e. 27.94 per cent of the total number of inmates, while five years earlier (in 2013) there were 14,879, i.e. 23.79 per cent of the total. These numbers could be much higher, however,

as the count is limited to drug addicts ascertained by the national health system and does not include those who, despite using substances, do not declare their addiction.

As for foreigners, while there is a high presence of the latter in Italian prisons, roughly equal to one third of the prison population, the number of foreigners admitted to alternative measures to detention is not so high, despite the fact that the Court of Cassation has long since clarified the applicability of such measures to non-EU foreigners. More in detail, as of 15 January 2021, the subjects in charge of the "*Uffici dell'esecuzione penale esterna*" (bodies in charge of controlling the execution of sanctions and alternative measures) were in total 103,772, among whom 18,784 were foreigners.

2- Monitoring the execution of non-custodial sanctions and measures

- **What authorities are in charge of monitoring the execution of alternative sanctions and measures?**

In Italy, the main reference point for the judicial authority in monitoring the execution of non-custodial sanctions and measures, as well as in shaping their prescriptive content, is represented by the already mentioned "*Uffici dell'esecuzione penale esterna*" (UEPE), peripheral structures of the Department of Juvenile and Community Justice distributed throughout the national territory. In particular, they carry out the functions assigned to them by Law No 354/1975, namely: carrying out socio-family surveys on convicted persons prior to the application of alternative measures to detention; proposing to the judicial authority the treatment plan to be applied to offenders applying for "*affidamento in prova*" and "*detenzione domiciliare*"; monitoring of the implementation of social reintegration programmes by those admitted to alternative measures, with communication of the results of such monitoring to the "*Tribunale di sorveglianza*", to which any action to modify or revoke the measures may be proposed; at the request of prison management, the provision of counselling in order to promote successful prison treatment.

The staff attached to UEPE, in addition to the administrative and accounting roles, is predominantly social service; although following the 2015 reform, the staffing of the offices has been enlarged - but still only partially or only formally - to include expert psychologists, educators and mediators, as well as prison police, the latter with a new role in line with the intention of fostering paths of social inclusion and ensuring the control and social security needs of the external community.

Particularly high are the workloads of the "*Uffici dell'esecuzione penale esterna*", which have to cope with significant staff shortages: as of 31 August 2021, they had 115,011 persons in charge, of whom 68,784 for the execution of alternative measures and 46,227 for investigations and consultations.

- **Is the community (NGOs, volunteers, private companies...) involved in the execution of non-custodial sanctions and measures?**

The role played by the "community" - understood as a complex of organisations of a private nature - in the life of sanctions and alternative measures is very relevant. Numerous agreements have been signed by the "*Uffici dell'esecuzione penale esterna*" with private organizations in the voluntary and employment sectors, with which those sentenced to alternative sanctions (in particular "*lavoro di pubblica utilità*") or admitted to alternative measures (in particular "*affidamento in prova al servizio sociale*") may be called upon to cooperate in various ways, with a view to facilitating their social reintegration.

- **Are there plans to use electronic surveillance to monitor offenders sentenced to non-custodial sanctions and beneficiaries of alternative measures to detention?**

In Italy, the "*Tribunale di Sorveglianza*" may order the monitoring of offenders admitted to the alternative measure of "*detenzione domiciliare*" by means of electronic devices (so-called electronic bracelet), which are available to the police (Article 58-quinquies of Law No 354/1975). However, electronic surveillance - although almost ten years have passed since it was introduced as a means

of monitoring offenders admitted to home detention - still takes place in a very limited number of cases. This circumstance is probably due to the administrative difficulties encountered in providing the tools and, more generally, to the slowness with which the Italian penal system as a whole proves capable of adapting to the use of modern technological tools.

- **The impact of alternative sanctions and measures in combating criminal recidivism**

In Italy, few empirical studies have been conducted (moreover, only on limited samples) to measure the recidivism rate among offenders who have served their sentences in alternative regimes and to compare it with the recidivism rate among those who have served their sentences in prison. In addition to the limited sample under observation, the lack of evaluation of the socio-environmental origin of the beneficiaries of the measures and of the offences committed by them has been denounced; this information is particularly useful in reconstructing the criminal history of each offender and, therefore, in assessing the phenomenon of recidivism.

However, although biased, these studies seem to document much lower reoffending rates among those who have served their sentences outside prison than among those who have served their sentences in prison. For example, a survey conducted in 2012 by the Einaudi Institute for Economics Finance (Eief), the Crime Research Economic Group (Creg) and the journal *Il Sole 24Ore* showed that, for the same number of prison sentences, those who had spent a longer time-period in open prison had a lower recidivism rate than those who had spent a longer time in prison, with a difference of 9 percentage points. In the same direction is also the data concerning the revocation of the measures - always provided by the Department of Penitentiary Administration - which involved only 5.92% of the total and an even smaller number if we consider those intervened for committing new crimes (0.71%).

Again, more recently, according to a study carried out in 2018 by the Bologna "*Ufficio dell'esecuzione penale esterna*", out of the 3,100 people in alternative measures in the Emilia-Romagna region, there is a recidivism rate of 4.25%, which instead reaches 70% among those who have served their sentence in prison. However, it should be borne in mind that this difference between the recidivism rates of offenders who have served their sentences in penal institutions and the recidivism rates of offenders sentenced to alternative sanctions and measures is also justified by the different prognosis of recidivism, which conditions upstream the choice between those who are deemed to remain in prison and those who are deemed to be eligible for less constraining forms of punishment.

A survey carried out in 2007 also looked at the relationship between the execution of sentences in open regime and recidivism among offenders addicted to alcohol and drugs. With particular reference to drug and alcohol addicts on probation to the "therapeutic" *affidamento in prova*, the survey in question documented higher recidivism rates than those recorded for "ordinary" *affidamento in prova*[4]. In fact, it seems that addiction to alcohol or drugs encourages criminal recidivism tout court, regardless of whether the offender with such addiction problems is admitted to "ordinary" or "therapeutic" *affidamento in prova*.

- **The relationship between the use of non-custodial sanctions and measures and trends in imprisonment rates**

Data on criminal enforcement in the last twenty years seem to document a *net-widening* trend also in Italy. In fact, comparing the trend of the prison population with that of non-prison sanctions and measures, the overall numbers of imprisoned persons and those under alternative measures tend to proceed along parallel tracks (almost always upwards). The increase in the indexes of application of alternative sanctions and measures corresponds to the increase in the percentage of the prison population, demonstrating that the deflationary function attributed to the extension of alternative measures is often illusory. Only in the period between 2010 and 2015 was there no such trend, as the increase in the number of alternative measures is matched by a decrease in the number of people in prison. In fact, these are the years in which some measures with a strong deflationary imprint

[4] To which, however, are also sentenced persons with drug and alcohol addiction problems.

were adopted because of the declaration of a state of national emergency for prison overcrowding by the Government in 2010 and of the above-mentioned *Torreggiani* judgment of the Strasbourg Court in 2013. However, from 2015 onwards the net-widening trend began to reassert itself and the period between 2010 and 2015 represented only a parenthesis within a general process of penal expansionism. Another, albeit smaller, setback to the phenomenon of the simultaneous increase in imprisonment rates and in the rates of application of alternative measures has recently been observed during the COVID-19 pandemic emergency[5].

III. THE IMPACT OF THE COVID-19 PANDEMIC ON THE SYSTEM OF NON-CUSTODIAL SANCTIONS AND MEASURES

The SARS-CoV-21 health emergency also had repercussions on the Italian prison system, marked by endemic problems of overcrowding, which favoured the spread of the virus within prison facilities.

As for the virus containment strategies implemented, it should be recalled that since the beginning of March 2020, the Prison Administration and the Government have repeatedly adopted notes, circulars and regulatory acts, aimed first at limiting, then prohibiting the entry and exit from prison, through the suspension of interviews, voluntary activities, "*permessi-premio*", "*semilibertà*" and "*lavoro all'esterno*".

Faced with the political impossibility of tackling the scourge of overcrowding at the time of the covid-19 by means of general clemency measures - which would probably have been justified by virtue of the emergency context - the legislator sought to reduce the presence in penal institutions by once again following the path of alternative measures to detention. In particular, Decree-Law no. 18 of 17 March 2020 (the "Cure Italy Decree") introduced a special form of home detention for sentences of up to 18 months, characterised on the one hand by a simplified application procedure, and on the other by new and different preclusive hypotheses[6] and the obligation to provide for electronic surveillance for all adult convicts whose remaining sentence to be served is more than six months.

In any case, it seems that the reasons of humanity, on which a deflationary instrument should be mainly based in times of a pandemic emergency, are recessive compared to the needs of social defence that the legislator is concerned to safeguard in the eyes of public opinion, which is increasingly suspicious of any relegation of prison sentences. In fact, through the enlargement of the range of preclusions and the compulsoriness of the electronic surveillance instruments, as already mentioned, difficult to find in our country, the number of possible users of the measure is necessarily reduced. As a result, the "*Magistratura di sorveglianza*", in order to avoid such limitations, continued to apply the previous version of home enforcement, which does not require mandatory electronic supervision. On the other hand, the "*Magistratura di sorveglianza*" has played a role of substitution in the control of the pandemic in Italian prisons due to the limited nature of the regulatory measures mentioned above. Actually, these magistrates have applied the ordinary tools provided by the penitentiary system in an emergency perspective, trying on the one hand to extend as much as possible the scope of the alternative measures to detention and on the other hand to facilitate the exit from prison of prisoners with health problems, who are exposed to the most serious risks in case of contagion by coronavirus. The "deflationary" legislative and judicial policy in question has undoubtedly contributed to the reduction of prison rates during the last year and a half: the 17th Antigone Report on detention conditions "Beyond the virus", published in March

[5] On this point, see below.

[6] In addition to the hostile causes already provided for by Law no. 199/2010, the following have been excluded from the applicative spectrum of the new measure: detainees sanctioned for disciplinary offences related to riots or disturbances in prison (Art. 123, par. 1, *d*) or detainees in respect of whom a disciplinary report has been drawn up in connection with disturbances and riots since 7 March 2020 (Art. 123, par. 1, *e*) and those convicted of mistreatment of family members and cohabitants or of persecution (Article 123, par. 1, *a*). On the other hand, the exclusion of the measure in cases where there is a danger of the offender absconding or committing other crimes has not been confirmed.

2021, highlighted how in twelve months (from 28 February 2020) there were 7,533 fewer detainees in Italian penal institutions, corresponding to 12.3% of the total. Although it is true that other factors are likely to have contributed to such a fall in the numbers of people in prison, such as the reduced activity of the criminal justice system due to confinement, and more generally the fall in crime produced by lockdown, which has limited the opportunities to commit many types of crime.

IV. REFORM PERSPECTIVES

Finally it should be pointed out that the Italian criminal sanctions system described above is destined to undergo important changes as a result of the so-called "Cartabia reform", approved by Parliament on 23 September 2021. Among the many innovations, the reform in question contains a delegation to the Government - to be exercised within one year - to redesign the system of non-custodial criminal sanctions, with the intention of making prison sentences effectively the last resort in the national arsenal of sanctions, in deference, moreover, to the re-educational purpose recognized to punishment by the Constitution.

This intention is mainly pursued through a strengthening of the institutions that replace/substitute prison sentences already at the trial stage, mainly in order to build a system of really effective alternative penalties, unlike the one introduced by Law No 689/1981.

In short, the scope of alternative sanctions is extended, and they may replace prison sentences imposed by the judge if their duration does not exceed four years.

The typology of alternative sanctions is also changed: "*semidetenzione*" and "*libertà controllata*" - which, as we have seen, have consistently had very low rates of application - have been abolished and "*detenzione domiciliare*", "*semilibertà*", "*lavoro di pubblica utilità*" and financial penalties have been introduced.

About these penalties, the reform also provides for differentiated application criteria, as happens today regarding the alternative sanctions provided for by Law 689/1981.

For sentences of up to one year, all four alternative sanctions may be applied; for sentences of one to three years, "*detenzione domiciliare*", "*semilibertà*" and "*lavoro di pubblica utilità*" (excluding fines); and, finally, for sentences of three to four years, only "*detenzione domiciliare*" and "*semilibertà*" operate.

The applicative spectrum of the substitutive sanctions, following the relative enlargement, no longer coincides with that of the "*sospensione condizionale della pena*", which has remained unchanged within the limit of two years. This limits the tendency of the "*sospensione condizionale della pena*" to be used in conjunction with alternative sanctions, thus limiting their use. It should also be borne in mind that, unlike the current framework, the delegated law appropriately excluded the possibility of applying the "*sospensione condizionale della pena*" to alternative sanctions, a possibility which, as already mentioned, has also contributed to the ineffectiveness of the alternative sanctions themselves.

As regards the exercise of discretion by the judge in replacing prison sentences, the reform contains fairly general guidelines: it merely provides that alternative sanctions may be applied only when, in the judge's opinion, they contribute to the re-education of the offender and ensure, also by means of appropriate prescriptions imposed by the judge, the prevention of recidivism.

The delegation also establishes the possibility of applying alternative sanctions more than once, thus adopting a perspective that seeks to promote the autonomy of alternative sanctions from prison sentence, which will nevertheless continue to maintain its primacy in the catalogue of principal penalties. For understandable reasons of political expediency and technical simplification, the reform in question has refrained from introducing new non-custodial principal penalties (as has long been advocated by the doctrine and by the Council of Europe in the numerous sources adopted about alternative penalties). The *Cartabia* reform therefore continues to favour a system of alternative instruments to prison based essentially on the judge's discretion.