



Prison Overcrowding in Italy: From an Empirical Analysis to Potential Solutions for an Evolving Correctional System

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Abstract

This paper aims to describe the current state of Italian prisons in terms of overcrowding, using descriptive statistics to investigate the current composition of the prison population, highlight trends, and shed light on notable facts within correctional facilities. The paper concludes with the formulation of possible solutions to reduce the problem of prison overcrowding in Italy.

Keywords: prison's overcrowding; human rights; prison; crimes.

1. Introduction

As a starting point, we define prison overcrowding as the condition that arises when the number of inmates exceeds the regulated capacity of correctional facilities. The issue has gained increasing prominence in the Italian public debate, both from the perspective of the economic management of prisons and the sociological implications that prison overcrowding generates. This problem undermines the very essence of the constitutional values enshrined in article 27 paragraph 3, stating that "*punishments may not consist of inhuman or degrading treatment but must aim at the re-education of the convicted person*", compromising both the detention and rehabilitation capacities of prisons and

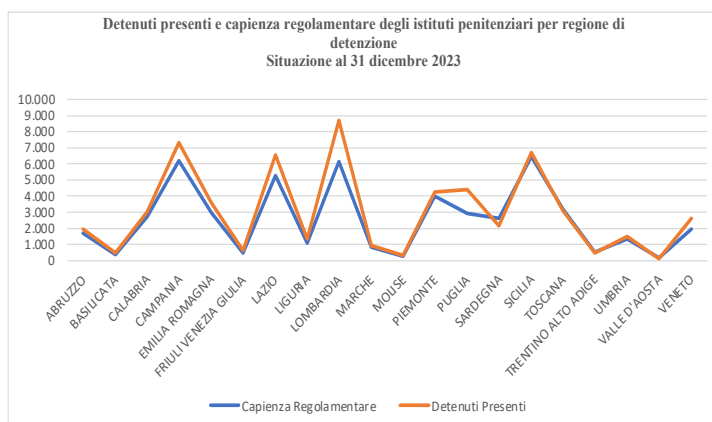
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creating challenging physical and psychological conditions for inmates. Given the centrality of the issue, this article intends to study in detail the composition of the prison population with the aim of defining its main contours, possible trends, or recurring effects. The attention of the legislator to the humane conditions of prisoners took a turning point after the inclusion in the Constitution of article 27 paragraph 3, when in 1975 the Penitentiary Order Reform (Law no. 354/1975) came into force with the aim of introducing principles that placed humanity and the re-education of the convicted person at the center, further endorsing the purposes that our legal system attributes to the concept of detention itself, namely the re-education of the inmate aimed at their reintegration into society. A necessary condition to achieve this goal is to have prisons capable of fulfilling the fundamental task that the legislator assigns to the penitentiary system. Today, from the first summary statistics, we can already notice how the physical capacity conditions that prisons should have in order to pursue the legislator's objective do not exist. We find, in fact, prison overcrowding in Italy amounting to 117.55%, data as of December 31, 2023.

2. Data description

The Italian prison system, with its 51,179 places and 60,166 inmates, shows an overcrowding rate of 117.55%. Analyzing in detail individual correctional facilities, we are faced with an even more alarming picture, with a presence of inmates exceeding the average capacity spread across the entire national territory, with few facilities meeting capacity parameters. As shown in Figure 1, except for Sardegna, we can observe how widespread the problem of overcrowding is at the regional level. Leading the ranking of prison overcrowding are the prisons in Lombardia, Puglia, Lazio, and Campania.

Figure 1

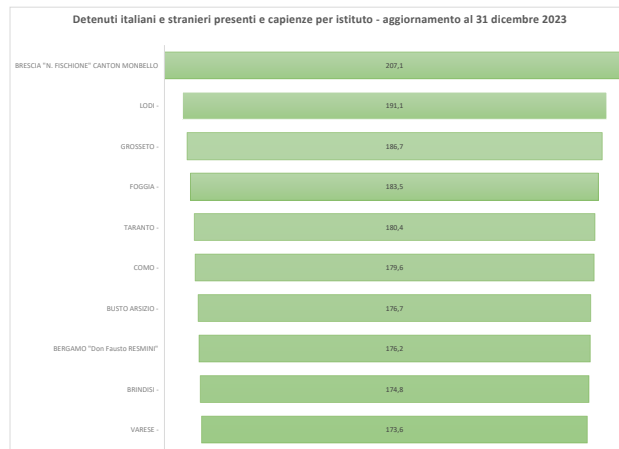


Source: Self-generated based on data from the Ministry of Justice



Descending to the level of individual correctional facilities, in an even more detailed analysis (Figure 2), considering the data of each structure, we observe that in some prisons, the overcrowding rate reaches even over 180%, with peaks of 207.1% for the Brescia "N. Fischione" Canton Monbello prison.

Figure 2



Source: Self-generated based on data from the Ministry of Justice

To fully understand the state of overcrowding, we will examine demographic data such as the age of inmates, the type of crime committed, geographic origin, and educational attainment.

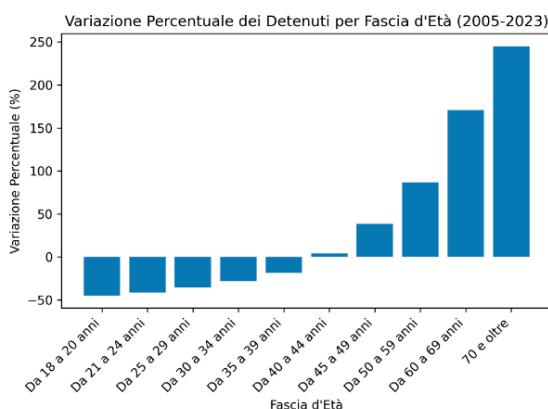
We can observe how in the last two decades, the prison population has changed enormously (Figure 3), with significant percentage variations, both in the younger age group (we find reductions of around 50% in the age group from 18 to 24 years) and in the older age group (with variations in the order of three digits for inmates over 60 years old, with peaks of over 200% in the oldest age group).

This trend highlights a crucial point in the descriptive analysis of the prison system, which must be taken into account by the legislator even before setting any attempt at penitentiary reform: *the prison population is aging*. With the current data available, it is not yet possible to determine whether this phenomenon is due to aging in

prison or to an increase in crimes committed by people over 50 years old (in the future, we will dedicate further research to this relationship).

The basic information remains crucial, showing us the image of an older prison system, with all the limitations and problems that arise, especially in terms of rehabilitation. While it is socially positive to observe the reduction of young inmates, on the other hand, we cannot ignore how an aging prison system does not facilitate the achievement of the objectives that the legislator set during the regulatory phase of detention.

Figure 3



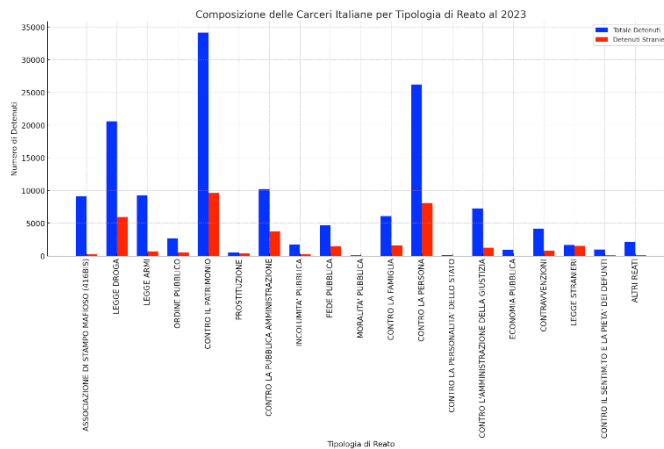
Source: Self-generated based on data from the Ministry of Justice

At the same time, what is alarming is the composition of the prison population by the type of offense committed by inmates (Figure 4). We observe how, as of 2023, the most representative offenses among inmates are serious crimes, ranging from crimes against property to crimes against persons, up to nearly eight thousand inmates for mafia association. This data complicates the legislator's work in decriminalizing offenses and managing prison overcrowding, as it limits legal action, unable to break the social pact between citizens, the prison system, and security, by releasing unrehabilitated inmates who have committed serious offenses, jeopardizing the sustainability of the deterrent penal system itself, significantly reducing the risk of spending a long time in prison in case of committing one of the aforementioned crimes. Inmates and non-inmates would have an additional incentive (the lack of a deterrent penalty) to commit crimes. We also observe that the only strand of offenses, committed enough to incentivize a public intervention that does not break this social pact, is represented by the so-called "drug law." However, this type of offense hides a pitfall linked to the narrative about drugs and their illegal trade that has developed in the country in the last 9 years. A narrative that today clouds the public debate on the issue, polarizing opinions and making it difficult to reach a synthesis solution at the level of social debate that, while always taking into account the social pact between citizens, detention, and security, allows, without



sacrificing the latter, to effectively decriminalize and significantly reduce the prison population.

Figure 4

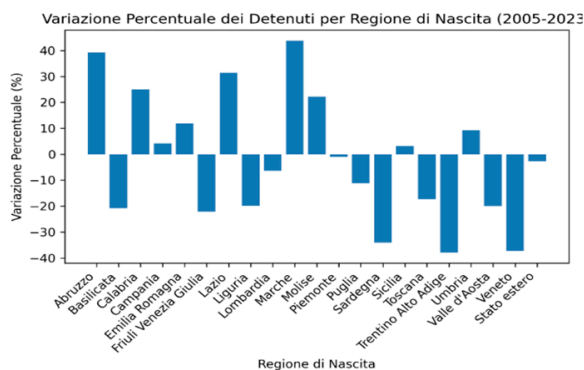


Source: Self-generated based on data from the Ministry of Justice

Adding another level of analysis (Figure 5), we can observe how in the last two decades there has been a significant variation in the geographic origin of Italian inmates, with a notable increase of over 40 points in inmates coming from the Marche region, followed closely by Abruzzo, Lazio, Calabria, Molise, Emilia-Romagna, Campania, Umbria, and Sicily, offset by a reduction in regions such as Veneto, Sardegna, Basilicata, Friuli-Venezia Giulia, Toscana, Valle d'Aosta, Puglia, and Trentino.

These data indicate an important trend: *the prison population is increasingly composed of inmates from central-southern Italy and fewer from northern Italy*. More precisely, there is a worrying increase in inmates from contiguous regions such as Lazio, Umbria, Marche, Abruzzo, Molise, Campania, and Calabria, and fewer from northern Italy. This is symptomatic of a criminally active central Italy, which is effectively replacing northern Italy from this perspective, as it was more active up to twenty years ago, demonstrating that *the criminal geography of Italy is changing*.

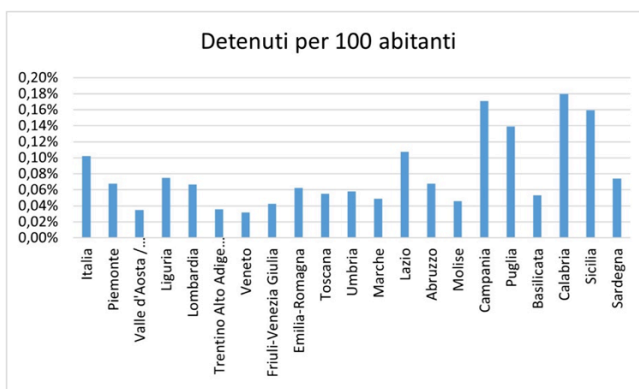
Figure 5



Source: Self-generated based on data from the Ministry of Justice

Furthermore, we observe that the presence of inmates throughout the national territory, as of 2023, is heterogeneous. Although the Italian average is one inmate per thousand inhabitants, we see how this figure almost doubles in Calabria, Campania, Sicilia, and Puglia, and decreases to almost halve in regions like Valle d'Aosta, Veneto, Trentino-Alto Adige, and Molise (Figure 6).

Figure 6



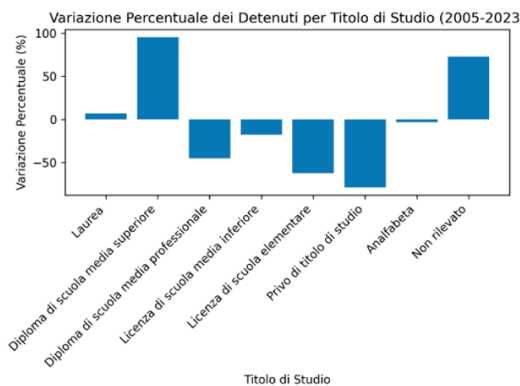
Source: Self-generated based on data from the Ministry of Justice

We can also notice how the composition of inmates, divided by educational attainment (Figure 7), has undergone significant changes over the past two decades, with a noticeable increase in inmates with a high school diploma and a small increase in graduates, alongside a sharp decrease in lower levels of education, considering illiteracy and unreported data as inconsequential. This picture can be interpreted in two different ways, with equally different repercussions on the prison system. On one hand, we can interpret



the data as a success of the educational system within prisons, which manages to academically educate inmates over the two decades under examination. On the other hand, we can interpret it as a change in the type of inmates who commit crimes, with a reduction in inmates with low levels of education in favor of an increase in "white-collar" offenders and inmates with higher levels of education. Both potential implications would deserve greater attention, unfortunately impossible with the data from this research.

Figure 7



Source: Self-generated based on data from the Ministry of Justice

To conclude the descriptive analysis of the composition of the prison population, we can observe some interesting facts, once again related to the changing geography of inmates. Compared to 2007, in 2023, we observed a reduction of approximately eight percentage points in foreign inmates from European countries, contrasted with an increase in inmates from Africa, Asia, and the Americas, respectively by 4%, 3%, and 1%.

From the graph in Figure 8 (b), we can see how in the last two decades, the proportion of inmates from the Middle East has exponentially increased, along with sustained growth in foreign inmates from Nigeria, Asia, sub-Saharan Africa, and Central America, at the expense of a decrease in inmates from North Africa, the former Yugoslavia, and other Asian countries. This is indicative of the fact that, as seen above, our prison system has also changed in its ethnographic composition.

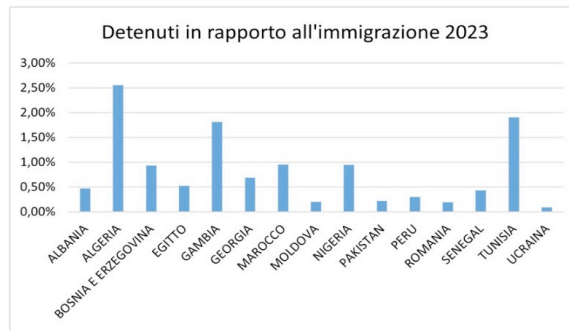
In the graphs in Figure 8 (c) and Figure 8 (a), the percentage of foreign inmates in Italy is compared to the total number of foreign inmates and total immigration, highlighting

important facts that policymakers should consider when crafting educational, rehabilitative, and detention policies.

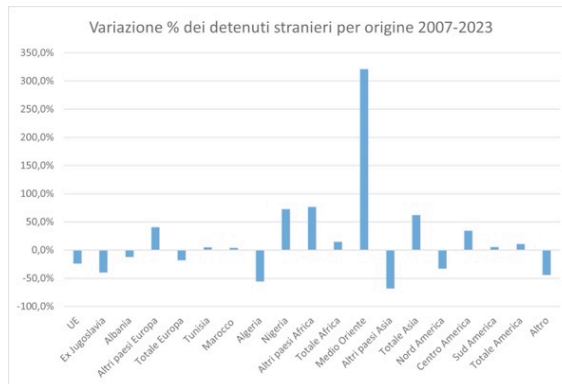
A prison that changes in its ethnographic composition must simultaneously and proportionally adapt the orientation of inclusion and educational policies. While on one hand, we observe that inmates from Marocco represent one-fifth of foreign inmates in Italian prisons, closely followed by Algeria, Romania, and Tunisia, with Nigeria showing growth, on the other hand, we observe an interesting fact: inmates from Marocco are much fewer than those from Algeria, Gambia, Tunisia, and Nigeria when measured in relation to immigration. This should serve as a warning for the public decision-maker when proposing to intervene comprehensively on the issue.

Figure 8

a)

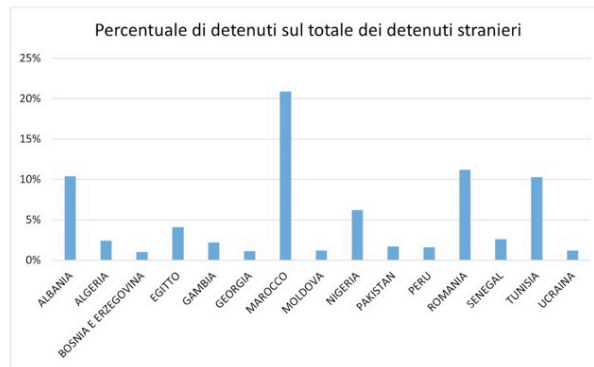


b)





c)



Source: Self-generated based on data from the Ministry of Justice

3. Where do the causes of prison overcrowding reside?

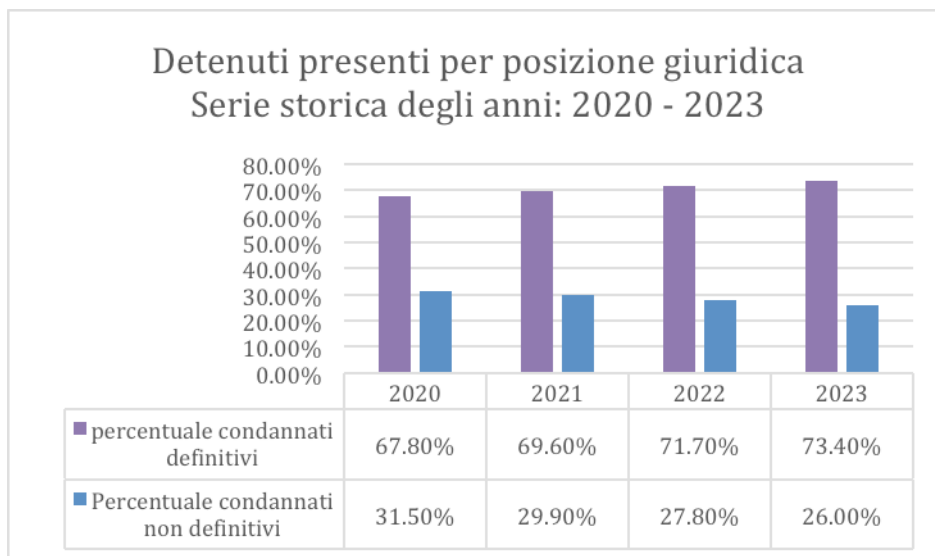
Prison overcrowding, as observed, brings about problems both in terms of prison organization, with a lack of available space, and on a psychophysical level, undermining the well-being of inmates. Investigating the causes of overcrowding is of considerable importance as it allows us to proactively address the aforementioned issues. The causes of prison overcrowding can be attributed to three elements: penitentiary construction, the lack of implementation of alternative measures to detention, and excessive use of pre-trial detention in prison.

Firstly, regarding penitentiary construction, whose goal is to design, improve, and build prison structures that are humane and efficient, often fails to achieve the set goal. The lack of adequate spaces and unavailable cells leads to the growth of inmates who cannot be safely and dignifiedly accommodated, thus compromising the maintenance of order and security within prisons. The lack of space also results in limited access to both vocational and educational pathways, denying inmates their fundamental rights.

Secondly, concerning the lack of implementation of alternative measures, which aim to prevent inmates from being imprisoned, reference is made to the fact that these measures are often not correctly applied. For example, they are often implemented late due to problems with the length of the legal process.

Finally, regarding the excessive use of pre-trial detention¹, it refers to the continuous resort to pre-trial incarceration. However, this aspect could be addressed immediately with the adoption of additional measures such as electronic monitoring or house arrest. Regarding this last aspect, it is worth noting that in 2020, Italy was considered the fifth country in Europe with the highest rate of inmates in pre-trial detention². As seen in Figure 9, the detention rate even reaches 31.50%.

Figure 9



Source: Self-generated based on data from the Ministry of Justice

This laxity towards prison overcrowding has led Italy to suffer numerous convictions from the European Court of Human Rights, which is "*a judicial body responsible for enforcing the European Convention on Human Rights*"³ to all signatory states. The Convention, on the other hand, "*is an international treaty that aims to protect human rights*"⁴. The Italian state has been convicted for the inhuman and degrading conditions of its prisons and for violating the human rights of detainees. In this case, there has been a violation of Article 3

¹ Art. 285 cpp "Art. 285 cpp: "1. Con il provvedimento che dispone la custodia cautelare, il giudice ordina agli ufficiali e agli agenti di polizia giudiziaria che l'imputato sia catturato e immediatamente condotto in un istituto di custodia per rimanervi a disposizione dell'autorità giudiziaria.

2. Prima del trasferimento nell'istituto la persona sottoposta a custodia cautelare non può subire limitazione della libertà, se non per il tempo e con le modalità strettamente necessarie alla sua traduzione.

3. Per determinare la pena da eseguire, la custodia cautelare subita si computa a norma dell'articolo 657, anche quando si tratti di custodia cautelare subita all'estero in conseguenza di una domanda di estradizione [722] ovvero nel caso di rinnovamento del giudizio a norma dell'articolo 11 del codice penale."

² XIII Rapporto Associazione Antigone – sezione Custodia Cautelare

³ "Il sistema CEDU – La Presidenza del Consiglio dei ministri" - Dipartimento Affari giuridici e legislativi - Ufficio contenzioso, per la consulenza giuridica e per i rapporti con la Corte europea dei diritti dell'uomo

⁴ Mettere in pratica i diritti e le libertà, Consiglio d'Europa e Convenzione europea dei diritti dell'uomo - Aprile 2012



of the Convention ("Prohibition of torture"), which states, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Among the most important judgments, we certainly remember the *Sulejmanovic* judgment⁵ in the Rebibbia prison and the *Torreggiani and others* judgment⁶ in the prisons of Busto Arsizio and Piacenza. In both cases, the applicants complained about inhuman and degrading conditions within their prisons. Among the problems that emerged, we find: minimum space per person not meeting standards, lack of lighting, lack of ventilation, and lack of hot water. And it is for this reason that the Court has condemned the Italian state for violating Article 3 of the Convention, urging it to adopt urgent measures to address this issue.

4. Solutions to Overcrowding

We have seen how overcrowding manifests as a real problem in our country; therefore, it is necessary to observe what solutions can be implemented in this regard. The issue of prison overcrowding has become a central point in the socio-political debate of our country in recent decades due to the relevance and severity of the problem.

Contrary to what might seem at first glance, solving this problem requires complex solutions that go well beyond the construction of new structures or the decriminalization of certain offenses. While overcrowding is indeed a capacity issue within the judicial system, simply decriminalizing offenses outright does not represent an effective tool for solving the problem. As we have seen throughout this paper, the problem of prison overcrowding, by its nature, can only be addressed through the expansion of existing facilities and the depenalization of offenses.

Expanding existing facilities requires not just social investigation but also analysis of penitentiary construction. On the other hand, depenalizing offenses implies a thorough and meticulous analysis of the composition of the prison population, which I have attempted to undertake in this paper.

Specifically, the composition of the prison population exhibits interesting characteristics. Over the past decade, the prison population has changed significantly in its main characteristics. It has aged, changed in terms of foreign population, with shifts in the countries of origin of detainees, and is notably different in terms of the offenses committed by detainees. At first glance, this suggests that the sociological solution to

⁵ Corte Europea dei diritti dell'uomo, Sez. II, - CASO Sulejmanovic c/Italia - (Ricorso n. 22635/03) – Sentenza - Strasburgo, 16 luglio 2009

⁶ Corte Europea dei diritti dell'uomo, Sez. II, Causa Torreggiani e altri c. Italia, 8 gennaio 2013 (Ricorsi nn. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 e 37818/10)

deterrence from committing crimes should not exclusively target new generations but must increasingly include the over-50 population in the socioeconomic system.

Regarding the foreign population, it is undoubtedly necessary to implement policies for the inclusion and integration of immigrant populations that take into account the geographical origin of the main nationalities of foreign detainees in Italy. If in the 1990s, the main migration involved Eastern Europe, particularly Albania, Romania, Bulgaria, and the Balkans in general, the epicenter of migration in the 21st century has shifted southward, increasingly involving North African and Sub-Saharan African populations. Therefore, to at least partially counter this phenomenon, it is necessary to massively invest in the education of broader segments of the population, thus providing more opportunities for social inclusion to these individuals.

This shift in the composition of the prison population should prompt reflection on two main considerations:

The limitations of alternative measures to prison as a deterrence and justice tool. The concerning picture that emerges regarding the crimes committed within the country. A country that sees a constant increase in the number of detainees and crimes such as association with criminal organizations raises concerns not only from a prison perspective but also from a broad social perspective.

In light of these considerations and the elaboration presented, it is necessary to act on parallel fronts. On the one hand, where possible, for minor offenses and those with little social impact, it is necessary to reduce, modify, or find alternative penalties that compensate for the crimes committed. This can be achieved through depenalization, which can be implemented with minimal risks to the stability of the social system by providing access to alternative solutions for first-time offenders or those with a low likelihood of reoffending. On the other hand, where depenalization alone cannot reduce the prison population, it is necessary to build or enhance new or existing facilities to ensure adequate space for incarcerated individuals.

Conclusions

What we have seen in the preceding paragraphs leads us to consider how the Italian prison system is currently in difficulty, does not meet the technical requirements of detention, and entails serious deficiencies in both penal and penitentiary administration. We have been able to discern within the prison system what the characteristics of the prison population are by examining the individual characteristics of detainees in detail. It is noted that numerically alone, Italian facilities struggle to contain detainees and are almost always, most distressingly, undersized in relation to the prison population itself, not to mention the dilapidation of the structures themselves, as well as the workplace of the staff, too often overlooked.

While the construction of new prisons represents a social cost in terms of economics and damage to the cities that host them, outright decriminalization of offenses does not represent a viable solution. It is necessary to simultaneously act to ensure the sustainability of the prison system not only in the immediate future following the measures taken but also in the long term. It is also desirable to reform detention facilities and the process of imposing penalties to take into account the sustainability of the structures in general.



To the immediate and intuitive reasoning mentioned above, complex considerations derived from the in-depth analysis of the data taken into consideration in this paper must be added. On one hand, we observe the characteristics of the prison population, while on the other hand, we analyze the results, also in terms of measures taken by the European Union against Italy. We have observed how the current prison population is more educated, multiethnic, and dangerous in terms of the severity of offenses charged compared to that of the early 2000s and how this, at times, poses an obstacle to action on the lever of decriminalizations.

On the contrary, the awareness of the need to invest in new structures, their maintenance, and management creates great uncertainty in the public decision-maker, which in turn leads to an immobilism that crystallizes the situation, which worsens year by year. The objective of this paper was to show the current situation of Italian prisons, analyze their characteristics and main features, delve into legal issues related to judgments and infringement procedures, and thus provide an immediate, actionable, and precise tool on the state of Italian prisons in order to structure hypotheses that solve or at least mitigate the problem.

To date, given what emerges from this study and the state of the prisons themselves, it is difficult to think of solutions that, going beyond the banal levers of demand and supply of cells, can definitively solve the problem without resorting to simplistic solutions that have little to do with the reality of the facts.

The country's social situation, a growing organized crime, an explosion of crimes against individuals and gender, the poor socioeconomic integration of foreign and non-foreign minorities, and the country's cultural level are all matrices of a resurgence of crimes that drive part of the problem. On the other hand, the lack of political debate on the issue prevents decisive positions from being taken to stem the problem itself. It would be necessary for the theme addressed here to be common sense and involve daily debate in order to leverage the public decision-maker and lead to greater investments in more humane structures and living conditions for detainees and sector operators. In summary, it is necessary to invest more in structures, both new and existing, in the daily living conditions of detainees and sector operators; it is necessary to invest in deterrence from committing criminal acts through the economic and cultural integration of the country and to increasingly integrate people who, fleeing from situations far worse than prison itself, risk being sucked into its vortex due to endemic weaknesses in their living conditions. Finally, it is necessary to rethink and improve legal processes so that courtroom inefficiencies do not impact structures and weigh on them. To date, the state of the structures remains worrying everywhere and deserves to be addressed as soon as possible.

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