



Incarceration Trends in Italy Between Rising ‘Punitiveness’ and ‘Penal Moderation’

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Abstract

The article analyses Italian incarceration trends and the impact of prison population increases on the criminal punishment system as a whole. “[Correlating prison and community justice trends: an outline of net-widening](#)” presents the interpretative framework and illustrates four events in recent Italian history that can be considered ‘breaking points’ if compared to the ordinary prison expansionism observed since the 1990s. Moreover, in comparing prison population and alternatives to imprisonment trends, it describes how the considerable expansion of community justice measures in the last ten years can contribute to shaping a net-widening scenario. “[Imprisonment trends in Italy: restraint after the boom?](#)” analyses the specificities of the Italian prison system compared to those of other European countries: overcrowding, pre-trial detention rates, migrants’ penal control, and short-term sentences. In the conclusions, we consider the extent to which the recent evolution of prison trends and some Italian specificities can be read in terms of increasing ‘punitiveness’ or, conversely, ‘penal moderation’.

Keywords Prison trends · Italian prison system · Net widening effect · Alternatives to imprisonment

Introduction

In the last twenty years, incarceration rates have been on the decline in a large number of Global North jurisdictions. The US punitive system is broadly considered a paradigmatic (and widely studied) example: after at least three decades of expansion (starting in the early 1970s), American mass incarceration began a phase of transformation and the carceral system entered a state of structural crisis (De Giorgi, 2015). According to the Bureau of Justice Statistics data between 2011 and 2021, the total incarcerated population in the USA dropped by 21.2%, that is, from 2.25 to 1.79 million (Cullen, 2023).

Scholarly analyses have focused on a wide array of explanations, ranging from cultural shifts that put mass incarceration ‘on trial’ for being fundamentally incompatible with the safeguarding of human rights (Simon, 2014) to cost arguments linked to the Great Recession (Aviram,

2015), which made possible—for fiscal reasons—previously unacceptable ‘cheap on crime’ discourses and penal policies. Even if the prison drop is not a global phenomenon and is not homogeneous across the jurisdictions involved, it has affected various Global North countries, thus warranting close attention (Brandariz, 2022). Moreover, reasoning ‘beyond mass incarceration’ (Loader & Sparks, 2014) raises various questions for both theory and strategy as regards, in particular, possible scholar–activist collaboration and the role of criminological theories in the present conjuncture (De Giorgi, 2015).

It is in this general scenario that the Italian case is analysed in the present article.

To what extent Italy has experienced some ‘penal moderation’ (Loader, 2010) or, otherwise, increasing ‘punitiveness’ (also in terms of prison population increase)? Has Italy actually experienced a ‘climate change’ in the penal landscape (Matthews, 2014)? Trying to answer these questions, by comparing prison and community justice trends, this article proposes a ‘breaking points’ pattern, which is used to read the fluctuations of prison and alternatives to imprisonment trends in the last three decades. The tendency over time for the prison population to increase in Italy is interspersed with more drastic declines. In our view, these ‘breaking points’—the results of political choices or the

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N. of prisoners: data series 1991-2023

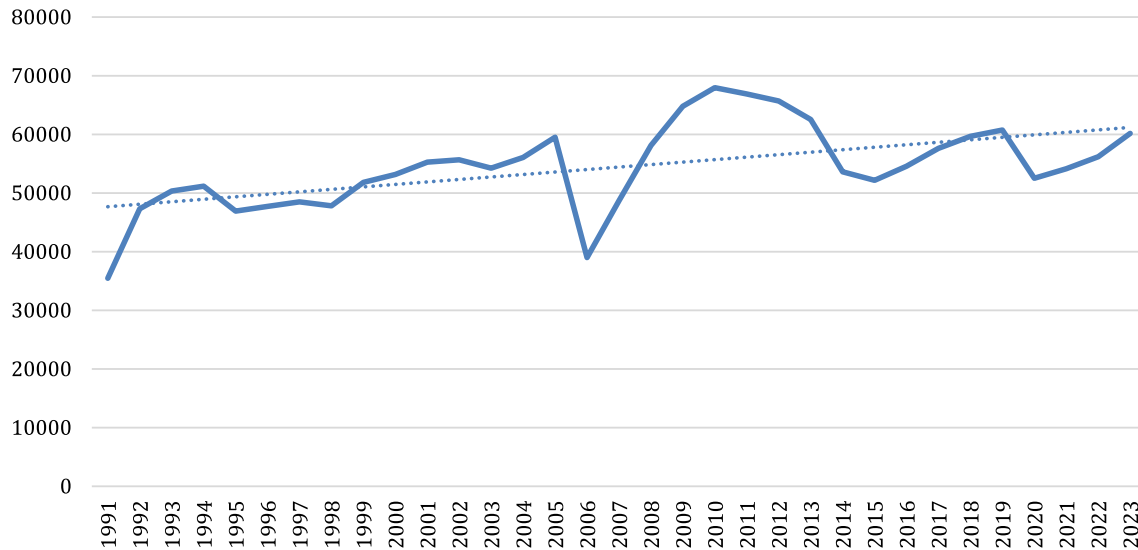


Fig. 1 Prison population trends (source: Ministry of Justice—inmates on 31st December)

consequences of external factors—correspond to exceptional crises in the prison system when the need to rapidly reduce the prison population has become pressing.

We focus on Italian incarceration trends and the impact of the increase in the prison population on the criminal punishment system as a whole. In particular, we analyse the specificity of the Italian prison system compared to those of the other European countries, with particular attention to the overcrowding and pre-trial detention rates. Especial focus is on the impact of migrants' criminalisation on the prison system: since the mid-1990s, in fact, migrants have become one of the main targets of the criminalisation process in Italy, and this phenomenon has produced a strong overrepresentation of foreigners in prison.¹

Correlating Prison and Community Justice Trends: An Outline of Net-Widening

The Italian prison system is regulated by the Penitentiary Act (Law 354/1975), which has been modified many times in recent Italian history, also according to the political climate and various real or supposed crises. There are 190 prison facilities throughout the country, hosting, on 31st December 2023, 60,166 prisoners (for a total capacity of 51,179).

¹ According to the last Space I report (2022), 25% of inmates in European prisons are foreigners, on average, but this percentage varies significantly across countries. With 31% of foreign detainees, Italy is therefore classified among the European countries in which foreigners are overrepresented if compared to the European average. See <https://wp.unil.ch/space/space-i/annual-reports/>.

Women represent 4.4% of the total prison population and foreigners 31%. The average age has increased in the past decade (almost 30% of the total prison population is over 50). People are detained mainly for crimes against property or against the person or for drug-related offences. The main features of the Italian prison system, at least within the European context, are structural overcrowding, an overrepresentation of foreign detainees, and the frequency of pre-trial detention.

The Italian prison population has been marked by a structural increase in the past 30 years (see Fig. 1) and so too has that in many other Western countries, which have followed, several years later, the trend in the USA (De Giorgi, 2006, 2013a, 2013b; Wacquant, 2009). On 31 December 1991, there were 35,469 prisoners; on 31 December 2022, there were 56,196.² The peak occurred in 2010, when more than 68,000 offenders were in prison (more precisely, 68,246 on 30th June). The increase has not been regular, however. Some authors describe some sort of co-existence and alternation between punitiveness and moderation (Gallo, 2015, 2018), referring to the repeated clemency provisions (like amnesties and pardons) enacted in Italy at least until the 1990s. Such measures long made it possible to control the level of overcrowding in Italian prisons.³ Nevertheless, aside

² Last year (2023) there was a new major increase amounting to almost 4,000 more prisoners in less than 12 months (from 56,196 on 31 December 2022 to 60,116 on 30 November 2023—Ministry of Justice Official Data).

³ For details on how and to what extent clemency provisions have been utilised in Italy to regulate detention flows, see Pavarini (2013), pp. 54ff.

from the collective pardon enacted in 2006 (not without raising various issues as regards political consensus, as we will see later), the system's reaction to the periodic increase in the prison population has changed significantly since the 2000s, and the 'penal moderation' approach (Loader, 2010) has been replaced by a more punitive one. The social, political, and economic situation may have favoured the implementation of a penal harshness approach (Lacey, 2008) mostly directed at certain social groups (migrants in particular, see "[Moderation in the use of migrants' imprisonment?](#)").

Moreover, the increase in the prison population has not been stopped by the introduction of several alternatives to imprisonment. Those measures, established since 1986, seem to have favoured a general net-widening framework in the area of penal control (Aebi, 2015; Cohen, 1985; McMahon, 1990) rather than a limitation in the use of prison as the main instrument of punishment. This structural increase has been interrupted when, due to extraordinary situations, the system has undergone sudden phases of decrease in the prison population. At present, in fact, it is difficult to find in Italy signs of a structural decline in the prison population, unlike what is happening in other Global North countries. On a global scale, after the 2008 financial crisis a "gradual consolidation of new discourses, rationales, policies, and even actors favouring penal moderation" (Brandariz, 2022, p. 352) can be observed. In Italy, on the contrary, phenomenon like penal populism (Anastasia et al., 2020; Mosconi, 2000) or the pursuit of security (Drake, 2016) seems to still have a hold on public opinion and to ensure electoral success for the political parties that present themselves as paladins of law and order policies.⁴

Italy is an interesting case with which to point out how crimes and criminal policies are traditionally at the core of myths, rites, and various symbolic forms of communication that shape public opinion and policies. Within this framework, the Italian context and the changes in the punitive attitude can be properly analysed by referring to Edelman's theorisation on the symbolic use of politics (Edelman, 1985). The function of the most 'democratic' institutions is, according to Edelman, largely symbolic and expressive. The process of law making, in this sense, is deeply involved in the legitimisation of power. Observing politics therefore also means discovering the symbolic processes that bind political authorities to their supporters in the pursuit of consensus.

Analysis of the fluctuations, in both incarceration and alternatives to imprisonment trends, entails consideration of the political environment in which these oscillations

take place. Not by chance, the 'everlasting emergency' has always been the rhetorical strategy underpinning security policies in Italy (Moccia, 2000), where the political system typically makes extensive use of the decree law, an instrument overused to respond to a great variety of real or supposed crises. The 'emergency' paradigm can thus be usefully linked to the temporary 'breaking points' crisis.

Furthermore, we can observe in Italy a marked gap between rhetoric and practices concerning the punitive response. The scenario consists, on the one hand, of policies and political discourses oriented to punitive populism, and on the other, a widespread awareness among practitioners that certain limits should not be exceeded in order to prevent the implosion of the whole system. This gap, as we discuss at the end of the article, is crucial for understanding the causes and dynamics of imprisonment and alternatives to imprisonment trends in Italy in the last three decades.

We refer to an 'exogenous-shock' explanation about the 'breaking points' in order to understand some distinctive phases of prison population decline. Conversely, the symbolic use of politics and the related persistence of punitive response is useful, in our view, for understanding the increase in prison trends in the 'ordinary' phases, as a long-term effect of the persistent punitive turn in the Italian context.

Prison Population Trends: An Attempt at Explanation Focused on 'Breaking Points'

The fact that for some time clemency provisions have not been applied in Italy does not mean that we have started to observe a regularity in prison trends. We continue to observe phases of growth followed by (briefer) ones of decrease, as shown in Fig. 1.

On observing Fig. 1, it is possible to detect a tendency over time for the prison population to increase interspersed with more drastic declines. These 'breaking points' correspond to exceptional crises in the prison system when the need to drastically reduce the prison population has become imperative.

We can observe four main breaking points in recent Italian history: approval of the collective pardon (2006); the institutional declaration of a 'prison emergency' (2010); the 'Torreggiani judgement' (2013); and the onset of the Covid pandemic (2020). In all these cases, the Italian government took measures to rapidly reduce the prison population, in particular by releasing prisoners and/or making increasing use of non-custodial sentences. Those measures were bound, however, to exhaust their effects in the short and very short term and their impact disappeared as soon as the crisis seemed to be under control or was described as such in a symbolic use of politics (Edelman, 1985). Although in-depth analysis of all these phases would require more

⁴ Italy is obviously not the only European country in which one observes the persistence of populist policies and rhetoric: for a recent reflection on this matter, focused on resurgent nationalistic and populist views specifically linked to crimmigration processes, see Koulis and van der Woude (2020).

detailed data, it can be useful to start from a quick description of the above-mentioned four ‘breaking points’.

The last collective pardon was approved in 2006 (Law 241/2006). Enacted at the end of July, the law provided for a three-year sentence reduction (for inmates convicted for crimes not impeding the clemency provision). It thus produced the largest release of prisoners of recent decades in Italy: the prison population decreased from 60,710 (at the end of July) to 38,847 at the end of August, only one month later. But the law also impacted on the alternatives to imprisonment (involving mainly offenders serving sentences—or remainders of sentences—of less than three years). Even if research has shown a general recidivism rate among the beneficiaries of the pardon that was lower than the ordinary level (Manconi & Torrente, 2015), the political impact of the law was dramatic, above all from a symbolic point of view. The moral panic provoked by implementation of the clemency measure prevented the approval of further structural reforms of a prison system that was particularly distressed (due to the high number of inmates and awful structural conditions).

In 2010 the centre-right Italian Prime Minister, Silvio Berlusconi, declared a ‘prison emergency’ precisely because of overcrowding (which had reached the level of 151%). That scenario generated much debate on how to intervene to reduce this rate: on the one hand, the government proposed the building of new prison facilities; on the other, many experts, third-sector activists, and NGOs pressed for the implementation of alternatives to imprisonment.⁵ While the building of new prisons turned out to be a symbolic use of politics and difficult to achieve because of both economic costs and long lead times, one legislative intervention was the approval of Law 199/2000, which allowed the use of home detention as the main sentence for offenders with less than one year of imprisonment to serve. After the law’s approval, the total number of inmates released from prison amounted to 33,528, of whom 11,247 were foreigners and 2,449 women.⁶

But the general condition of imprisonment did not change significantly, with the consequence that the European Court of Human Rights intervened in the deadlock with the

‘Torreggiani judgement’ of 2013. The Court in Strasbourg condemned Italy for violating article 3 of the European Convention on Human Rights (prohibition of torture or inhuman or degrading treatment) because of the conditions experienced by seven detainees in the Busto Arsizio and Piacenza prisons (in the North of Italy) and the Court underlined the structural and systemic nature of prison overcrowding in Italy. It stated: “The Court deems that the applicants have not enjoyed a living space that complies with the criteria that it has considered acceptable through its jurisprudence. In this context, it wishes to recall, once again, that the norm regarding living space in collective cells that has been recommended by the Committee for the Prevention of Torture (CPT) is four square metres” and, moreover, “The Court then observes that the serious lack of space suffered by the seven applicants for periods lasting between 14 and 54 months... which represents, per se, a treatment that contravenes the Convention, appears to have been rendered worse by other treatments that the people concerned have alleged. The lack of warm water in both establishments for long periods, which the Government has recognised, as well as insufficient light and ventilation in the cells of Piacenza prison, about which the Government has not expressed its view, have produced additional suffering for the applicants”. The Italian government reacted to this pilot judgement, on the one hand, by adopting the dynamic security model,⁷ and on the other, by implementing opportunities to obtain an alternative to imprisonment. To be stressed, however, is that the number of prisoners started to decrease before the adoption of these normative measures and, moreover, that this reduction may have been largely due to the reduction of prison admissions (see “[Overcrowding and pre-trial detention: the end of the Italian emergency?](#)”).

A last ‘breaking point’ on which we would like to focus is the impact of the Covid pandemic on the Italian prison system.⁸ In March 2020, the Italian government approved two decrees to counter the risk of Covid-19 spreading within prison facilities. The decrees simplified access to measures alternative to imprisonment (in particular, home detention, and semi-liberty), thereby contributing to a decrease in the prison population of almost 8,000 people in three months (at the end of February 2020 there were 61,230 prisoners; by the end of May 2020 the number had fallen to 53,387). But as highlighted by the National Guarantor for the rights of persons detained or deprived of personal liberty, this reduction was only partly due to the implementation of new legal provisions: it was mostly linked to a significant decline in

⁵ Different political coalitions, however, have not always translated into significantly different penal policies. If, regarding the overall management of the migration issue, there has been a certain distance between right-wing and left-wing Italian governments, such distance has significantly narrowed when it comes to security-related issues, at least in the last three decades. A significant example of this is the approval by both right-wing and left-wing governments of numerous security decrees (“Pacchetti sicurezza”) which have progressively implemented repressive policies towards an increasing number of behaviours deemed anti-social (Mosconi 2017).

⁶ Ministry of Justice, data as of 31st May 2023 (https://www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2&contentId=SST431169&previousPage=mg_1_14).

⁷ The dynamic security system adopted in Italy is an open cell regime aimed at the humanization of prison security (see Santorso, 2023).

⁸ For a comparative analysis of how different national prison systems reacted to the pandemic see Marietti and Scandurra (2020).

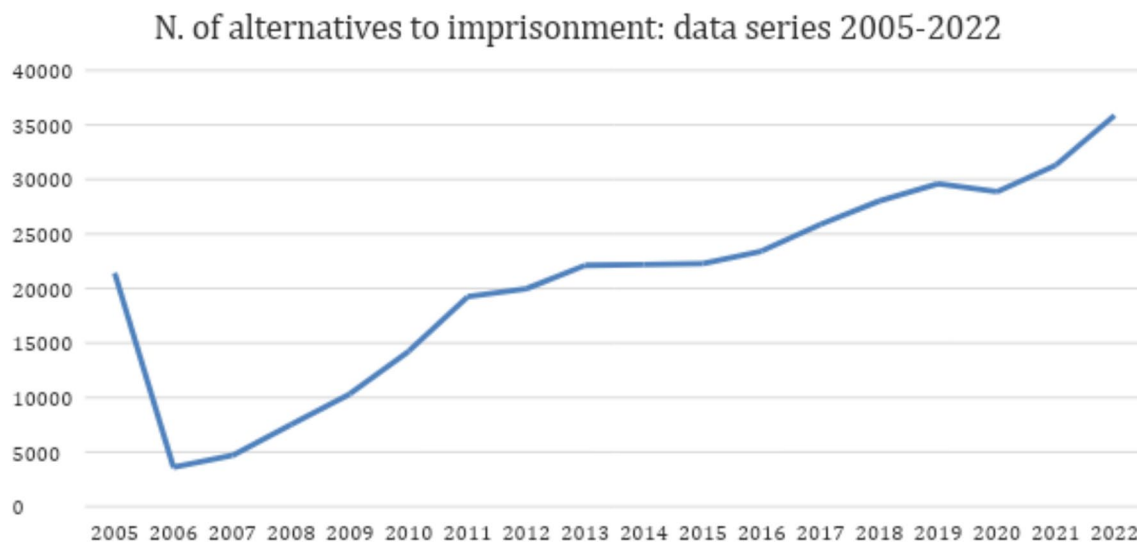


Fig. 2 Alternatives to imprisonment trends (source: Ministry of Justice, people affected at 31/12)

prison intake and, probably, to an acceleration of releases of inmates that could have been released without changing the law (maybe because of a more accommodating attitude by the surveillance judges called upon to decide on the granting of alternative sanctions). The pandemic's impact on the prison system powerfully exemplifies how a crisis may produce an urgent and pressing need to use the alternative to imprisonment system as a means to quickly and considerably reduce the total amount of prison inmates and, correspondingly, to improve prison living conditions.

These examples allow us to reflect on two aspects. Firstly, quite obviously, when analysing prison population trends, one must consider the penal execution field as a whole, comparing the numbers of detainees with those of offenders subject to alternatives to detention. Secondly, the correlation between the two trends is anything but consistent and self-evident: more variables have to be considered, such as the number of entries into prison or the general political climate when specific law measures enter into force.

The Alternatives to Imprisonment Between Traditional Measures and More Recent 'Community Justice' Strategies

To better understand prison population trends, it is therefore useful to compare them with alternatives to imprisonment trends. The helpfulness of this comparison is one of the reasons why in the first instance we choose to concentrate on *trends* rather than *rates*. Incarceration rates are obviously more useful and interesting when one is conducting an international comparison, even if it is acknowledged that they are anyhow incomplete indicators of the degree of punitiveness (Nelken, 2005; Sozzo, 2018; Tonry, 2007). The use of the

concept 'punitiveness' in the sociology of punishment literature has been criticised in particular by Matthews (2005), as highlighted by Sozzo (2018, p. 49), for "not being clearly defined". While imprisonment rates may be basic indicators with which to compare various penal systems, reference to prison trends seems to be a more powerful means to compare prison and alternatives to imprisonment data in a national dynamic perspective.

There are three main and *traditional*⁹ alternatives to imprisonment measures applied in Italy: involvement in social service programmes, semi-liberty, and home detention. They were first introduced, from a normative point of view, by Law 354/1975 (the Italian Penitentiary Act) and then considerably modified by Law 165/1998 (which extended the possibility to obtain an alternative to imprisonment directly from liberty, without being imprisoned). The involvement in social service programmes takes place entirely in the community and for a duration equal to that of the prison sentence. The person is under the supervision of the social service and s/he has to comply with the requirements set out by the judge. In the case of semi-liberty, the offender spends some hours of the day out of prison in order to attend vocational, educational, or other activities aimed at his/her social reintegration. Finally, in the case of home detention the offender serves his/her sentence at home or in a private or public domicile, in some cases with electronic monitoring.

⁹ Here the term *traditional* is used to refer to the specific Italian experience: the traditional alternatives to imprisonment are those that were first introduced by the Prison Law and that therefore have the longest history in the Italian prison system.

Prison population and alternatives to imprisonment trends

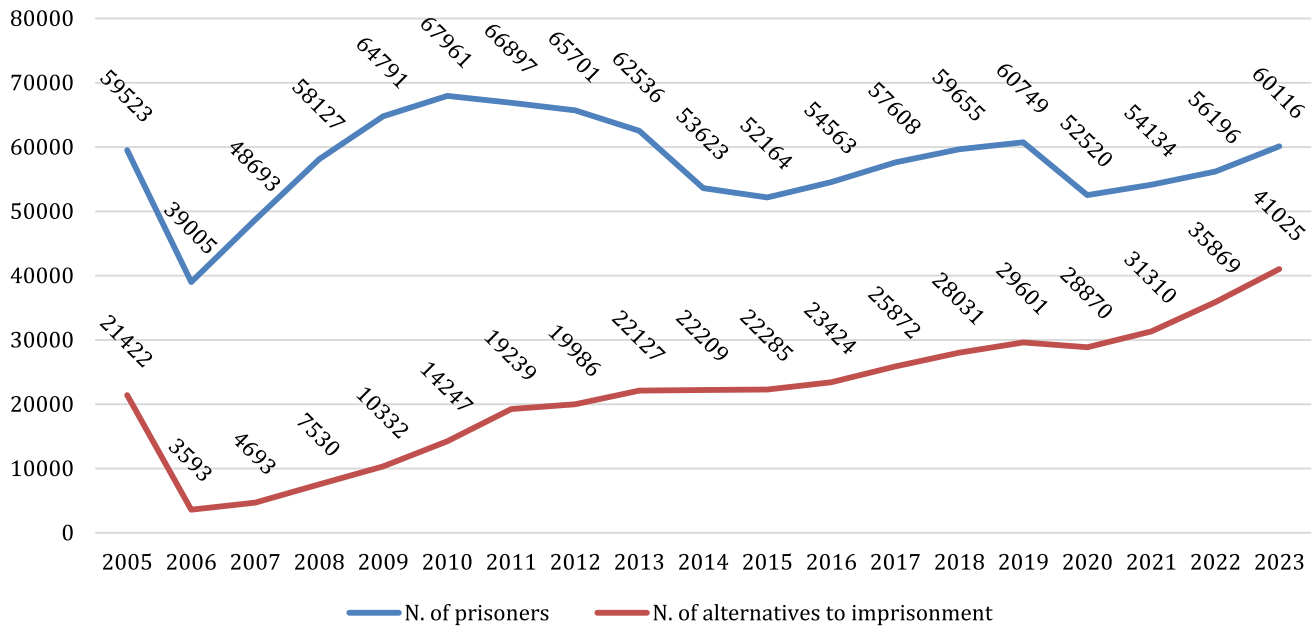


Fig. 3 Prison population and alternatives to imprisonment trends (source: our processing of Ministry of Justice official data)

As shown in Fig. 2, there was a huge increase in the total number of alternatives to imprisonment from 2000 onwards.

With the exception of 2006, when approval of the collective pardon caused a substantial reduction in the alternatives to imprisonment numbers (releasing those prisoners serving sentences or residues of sentences of less than 3 years—the penalty limit for access to an alternative measure—that is, almost the entire population serving an alternative sentence), we observe a continuous growth in the use of alternatives. Did this expansion produce a reduction in the prison population? This question recalls one of the two *normative* functions ascribed to the alternatives to imprisonment (Firouzi et al., 2016): their effectiveness in terms of rehabilitation and in reducing the prison population (Fig. 3).

Joint observation of prison and alternatives to imprisonment trends shows that, in crisis situations, the alternatives seem indeed to play a role in shrinking the prison population. As we discussed in the previous section, this happened, for example, after the 2010 declaration of the prison emergency due to severe overcrowding or after the 2013 European Court of Human Rights ruling which recognised Italy’s violation of Article 3 of the European Convention on Human Rights (stating the prohibition of torture and inhuman or

degrading treatment or punishment) precisely because of the Italian conditions of imprisonment.¹⁰ Moreover, the implementation of alternatives produced a huge decrease in the prison population also during the Covid pandemic, where the need to ‘clear space’ inside prisons was mainly due to sanitary reasons.

In ordinary phases, conversely, the data show a net-widening effect (Aebi, 2015; Cohen, 1985; McMahon, 1990), according to which, when the number of offenders serving an alternative measure increases, the prison population does not decrease, thus evoking the idea that prison crowding is a deliberate policy to regulate life behind bars (Santorso, 2023). What we observe in ordinary circumstances is an increase in the total number of people involved in the criminal justice system or, in other words, an expansion of penal control as a whole, as shown by comparative research at the European level (Firouzi et al., 2016). The correlation coefficient between prison trends and alternatives to imprisonment assumes a value greater than 0, specifically 0.29. Although not excessively high, this value seems to suggest that, overall and generally, the ‘positive’ effects of phases in which an increase in alternative measures corresponds to a reduction in the incarcerated population are outweighed by the negative effects of net-widening phases.

To better understand these trends, a useful datum to consider is the condition from which people involved in alternatives to imprisonment have obtained the measure: liberty or detention. The most interesting case here is the social service programmes, which can be considered the ‘widest’ measure

¹⁰ The steps taken by the Italian government to comply with the decision of the European Court of Human Rights came into force in 2014. Whilst they initially produced slight effects in raising alternatives to imprisonment numbers, these effects progressively became more important.

Social service programmes - Data series 2010-22

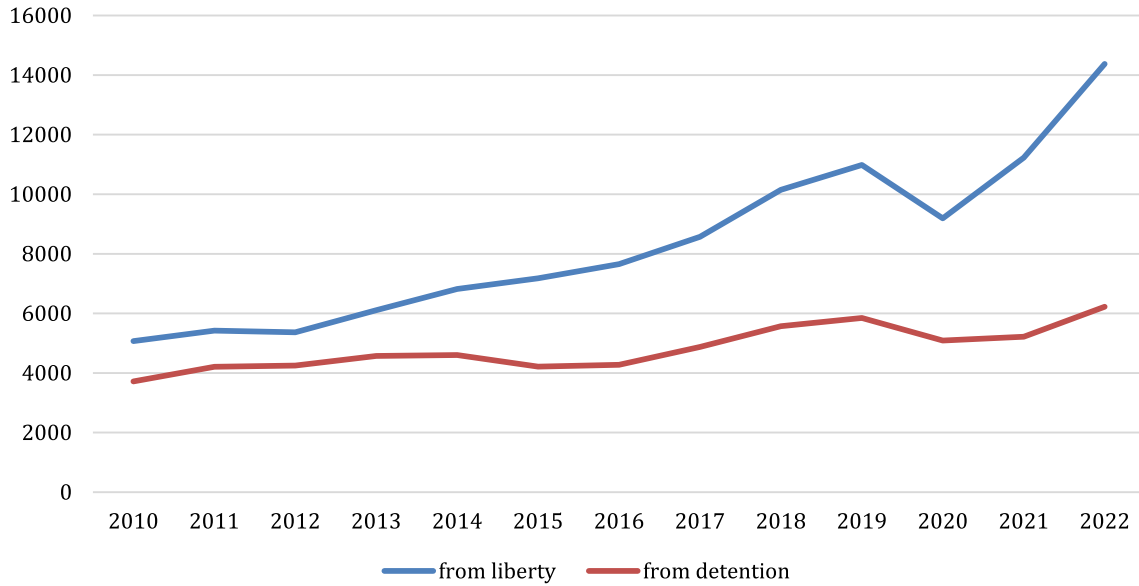
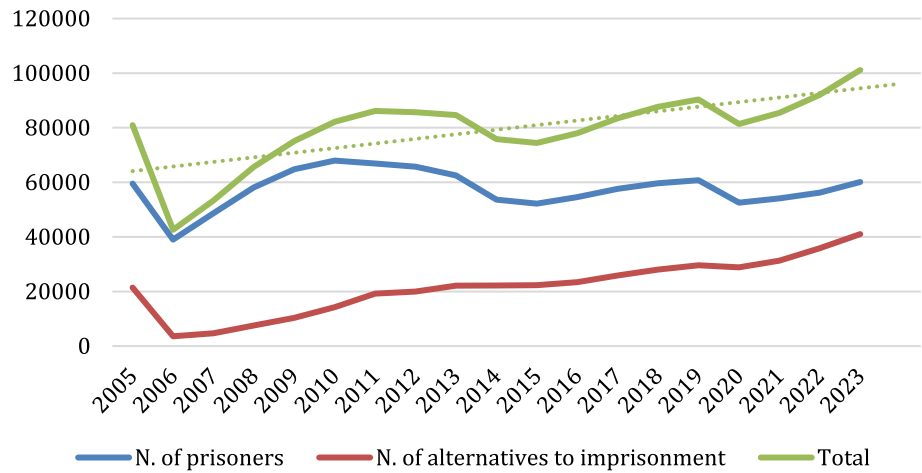


Fig. 4 Social service programmes trends (source: our processing of Ministry of Justice official data)

Fig. 5 Penal control (source: our processing of Ministry of Justice official data)

Penal control: data series 2005-2023



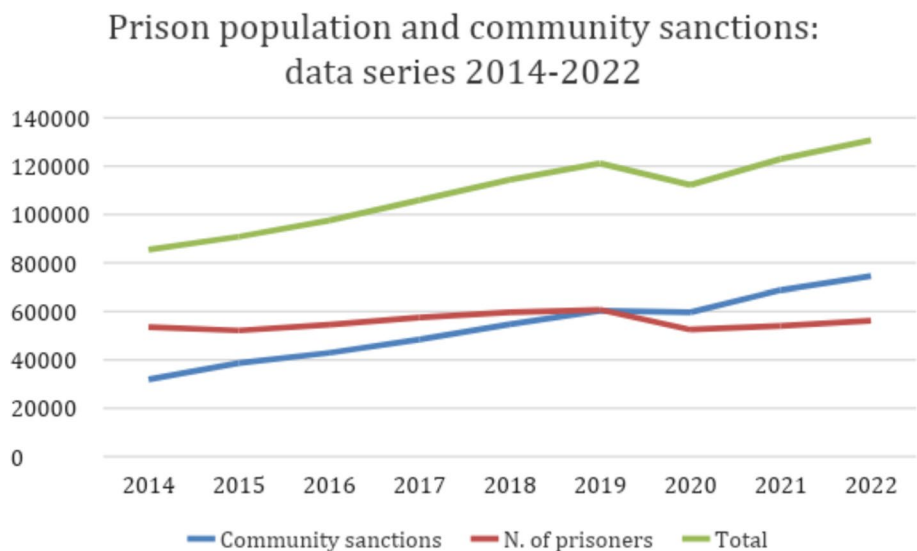
in terms of freedom granted. Figure 4 depicts this traditional alternative to imprisonment, distinguishing between the cases initiated from liberty and those initiated from prison.

Figure 4 clearly shows the increasing expansion of the more important alternative to imprisonment in Italy. Not necessarily, therefore, does this expansion reflect a reduction in the length of detention (the growth in the access to the measure from prison is far less remarkable than the growth in the access to it from liberty)? Therefore, it does not function as an alternative to imprisonment, but rather as an alternative to liberty, giving rise to an expansion of

Table 1 Number of adult offenders on probation (Law 67/2014) (source: Ministry of Justice)

	Adult probation
2014	503
2015	6557
2016	9090
2017	10,760
2018	14,980
2019	18,227
2020	17,677
2021	24,256
2022	24,863

Fig. 6 Prison population and community sanctions trends (Source: our processing of Ministry of Justice official data)



the prison system rather than its reduction, in a typical net-widening framework.

The following Figure summarises instead the expansion in the use of alternatives to imprisonment (reported in their broader sense), comparing them with the prison population trends (Fig. 5).

This expansion seems to continue until a crisis is reached, when the need to set limits on the system again becomes compelling.

All these aspects are graphically represented by two lines that, in ordinary circumstances, run in parallel (in most cases, both the prison population and the alternative measures increase), while immediately after a ‘breaking point’ the two lines diverge (when the alternative measures increase, one observes a reduction in the prison population).

A way to more explicitly point out the net-widening phenomenon is to analyse the more recent introduction of a set of various community justice mechanisms. We refer in particular to a probation measure (“Messa alla prova”) introduced by Law 67/2014 also for adult offenders (it was already widely used for minors) according to which, in the case of crimes punishable with no more than four years of detention, the defendant can ask for suspension of the criminal proceeding and to be put on probation under the control of the social services, having a specific programme to follow (Scivoletto, 2022). If this path is approved by the judge, the crime is considered extinguished (otherwise the offender is put on trial). It thus can be considered a form of *diversion*,¹¹ being an alternative to pre-trial detention. The number of

offenders involved in this kind of measure sharply increased between 2014 and 2022, as shown by Table 1.

Together with community service (rising from 5,606 in 2014 to 9,355 in 2022) and supervised liberty (rising from 3,373 in 2014 to 4,549 in 2022), this probation measure produced a sharp increase in community justice as a whole, as shown by Fig. 6.

The pattern that we propose of ‘ordinary/breaking point’ phases can also be read as a material expression and one of the facets of the inconsistency of the relationship between criminality and the prison population (Snacken, 1995),¹² thus refuting, following Melossi (1985), the ‘legal syllogism’ among social structure, crime and punishment. This is the idea, derived from the classic school of criminal law and then taken for granted in common-sense representations, according to which punishment is simply the consequence of crime, or, in other words, “social structure explains crime and crime explains punishment” (Melossi, 1989, p. 311). As asserted by Snacken (2010, p. 287), “penal policies are not directly related to crime rates, but are social constructions resulting from the interaction of many factors, including decision-making by policy-makers and practitioners”. The selectivity of the criminalisation process is in fact the link between the social constructionism paradigm (and in particular the interactionist approach) and the conflictual approach which is at the roots of critical criminology as the ‘grounded labelling theory’ proposed by Melossi (1985). As we shall see below, in Italy, as in many other Global North countries, one of the specific targets of the aforementioned

¹¹ The term ‘diversion’ was first used by Lemert (1971). For a recent review of the international literature on diversion (among various alternatives to the criminalization of drug possession) produced in a realist criminology approach see Stevens et al. (2019).

¹² The data illustrating the lack of correspondence between incarceration rates and criminality are analysed in “The fall in the Italian crime rate”, where we consider the crime drop observed in Italy in the last twenty years. The decline of reported crimes has actually concerned several types of offence.

Table 2 Detention rates 1980–2023 (source: World Prison Brief)

Country	1980	1992	2001	2010	2015	2023
Italy	56	81	95	112	86	96
UK	87	90	127	153	148	141
France	66	84	75	98	100	106
Germany	N.A	71	98	88	78	67
Spain	48	105	114	166	139	116
Greece	33	63	76	104	111	102

selectivity has long consisted of migrants, who are among the most marginalised social groups caught in the penal control net. The variation in the number of migrants imprisoned thus helps to explain the overall variation in prison trends in Italy over the past two decades.

Imprisonment Trends in Italy: Restraint After the Boom?

As introduced in the previous paragraphs, since the early 1990s Italy has recorded a progressive increase in its prison population. In 1991, there were just over 35,000 inmates; in 2010 the prison population reached 68,000 units. Meanwhile, the detention rates rose from 56 detainees per 100,000 inhabitants in 1980 to 112 in 2010. A structural increase of the prison population of similar size occurred in other European countries in the same years (Table 2).

Many Italian scholars have interpreted the increase of the Italian prison population using explanations not unlike those given by the international literature that has studied the mass incarceration phenomenon in the USA. In particular, they have focused on several changes in security policies that have affected all criminal justice practices and, consequently, the prison population: the establishment of penal populism in the political discourse (Anastasia et al., 2020; Mosconi, 2000); the marginalisation and criminalisation of migrants (Dal Lago, 1999; Melossi, 2003); structural changes in the labour market; and the crisis of the Fordist model of production (De Giorgi, 2002, 2005). All these approaches agree that the increase in the Italian prison population has not been strictly correlated with a structural increase in crime. Rather, the Italian system seems to have lost its traditional ‘non-punitive’ approach (Nelken, 2005). Traditionally, in Italy, the low prison population rates were maintained thanks to the large use of amnesties and pardon. Indeed, these measures were periodically approved by the Italian parliament with the specific goal of reducing the prison population. So, for many years, the uncertainty of punishment was not considered a real problem either in the political debate or in public opinion. Since the early 1990s, this approach has been progressively replaced by a previously unknown punitiveness focused on specific social categories labelled as

Unpersonen (Pavarini, 2006). Not by chance, the crowding of the penitentiary system has almost entirely involved the various dangerous categories that have characterised Italian populist rhetoric of the past 30 years: migrants, drug addicts, marginalised people, and members of the underclass.

The increase in the prison population continued almost without interruption from the early 1990s to the first years of the new century (Fig. 1). What has occurred in the past 15 years, instead, is rather ambivalent, especially if compared with developments in other European countries (Table 2). At first glance, Italy seems to be experiencing a reduction in its prison population like the one occurring in Spain, Germany and, to a lesser extent, Greece. A closer look, however, shows a more ambiguous framework.

As described in the previous sections,¹³ the phases of decrease in the prison population that have characterised recent years seem to be strictly connected with specific crises. In Italian prison policies, in fact, it is not possible to find a clear choice to pursue de-incarceration. Rather, it is possible to find some specific events—those that we have called ‘breaking points’—that have required the Italian authorities to find remedies for emergencies.

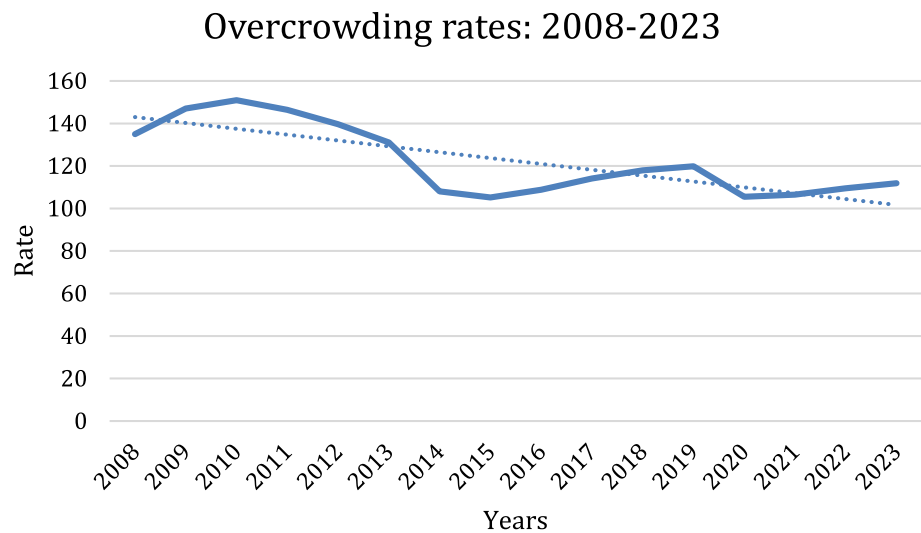
- In 2006, a collective pardon was approved following agreement among catholic circles, leftist political parties, and some right-wing liberals. The measure was strongly criticised and it was taken as an opportunity to adopt new law and order policies by the next government (Manconi & Torrente, 2015).

Table 3 Overcrowding rates 2013–2023 (source: World Prison Brief)

Country	Overcrowding 2013 (%)	Overcrowding 2023 (%)
Italy	139.7	110.4
UK	105.2	109.8
France	118.1	119
Germany	84.9	78.1
Spain	98.7	73.7
Greece	136.5	105.4

¹³ See “Prison population trends: an attempt at explanation focused on ‘breaking points’”.

Fig. 7 Overcrowding rates
2008–2023 (source: Ministry of
Justice)



- In 2013, a decrease in the prison population was imposed by the ECHR ‘Torreggiani judgement’, which sentenced Italy for the poor structural conditions of its prisons. The measures adopted by the Italian government as a consequence produced a major decrease in the prison population. Nevertheless, after 2016, when the Council of Europe declared its satisfaction with the Italian measures adopted after the ‘Torreggiani judgement’, and actually closed the procedure against Italy, the prison population immediately began to increase again. From 2016 to 2019 it grew by more than 6,000 units.
- In 2020, the Covid-19 pandemic forced the Italian authorities to adopt measures in order to favour a reduction of cell overcrowding. But, after the pandemic emergency had passed, the prison population once again started to increase and, from the end of 2021 to the end of 2023, the Italian prison population grew by more than 6,000 units.

Are these breaking points mere illusions or are there signs of a new moderation in the use of imprisonment?

Of course, the situation is complex and, as said, the most evident feature of current Italian prison policies is their ambiguity. In fact, the recurrent crises seem to be able, alternatively, to favour zero tolerance policies or a downsizing in punitiveness.

As a consequence, if, on the one hand, one must emphasise the temporary nature of the periods of decline in Italy’s prison population, on the other hand, one cannot ignore that there are signs of restraint in the use of imprisonment that seem to liken the Italian case to that of other countries that are probably experiencing a decline in their prison populations (Brandariz, 2022; Sozzo, 2022).

Specifically, despite fluctuating trends in the prison population, there are signs of moderation in criminalization practices that affect those features of the Italian prison

population that have traditionally distinguished the growth of incarceration in Italy. In particular, in the next sections we will show that there are recent signs of a restraint that affects overcrowding levels, the pre-trial prison population, the imprisonment of migrants, and, finally, short-term detention.

Overcrowding and Pre-trial Detention: The End of the Italian Emergency?

Italian scholars (Vianello, 2019) have written that, if we must use one word to describe the Italian penitentiary system, that word should be ‘overcrowding’. Indeed, when Italy was found guilty by the ECHR, its prison overcrowding level was almost 140%, which was unknown in the great majority of the Global North countries (Table 3). This was the result of a progressive exacerbation of the problem, which reached the maximum level in 2010 when the Italian prison population exceeded 150% of the prison system’s capacity (Fig. 7).¹⁴ After the ECHR’s sentence, the Italian government addressed the problem, taking measures to reduce the phenomenon, which today is consistent with the situation in other European countries.

This reduction of the problem has not been achieved with a drastic increase in the prison system’s capacity. Indeed, in the past ten years, the latter has increased only by less than 4,000 units. Rather, what has happened is a progressive reduction of the number of entries into prison from freedom (Fig. 8). This is a phenomenon that, in the past thirty years, has drastically affected the Italian prison population. Indeed, in the early 1990s the number of Italians incarcerated every year was between 65,000 and 75,000; today, little more than 20,000 Italians are imprisoned every year. At the same time,

¹⁴ For a description of the impact of overcrowding on Italian prison practices see Torrente (2018).

Prison entry from freedom. Italian and foreigners

1991 - 2023

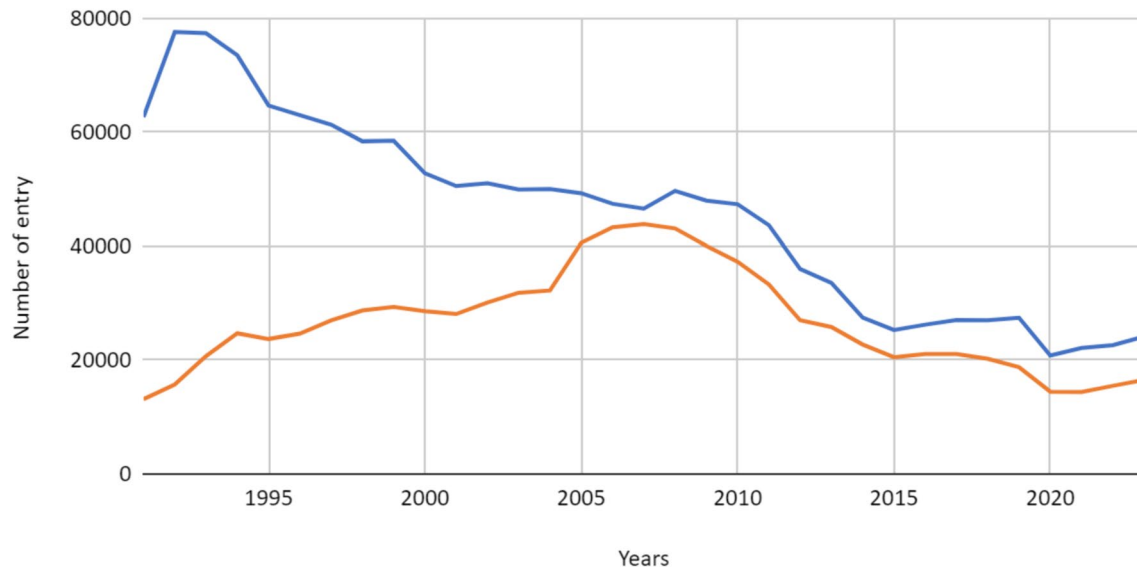


Fig. 8 Prison entry from freedom: Italians (blue line) and foreigners (red line) 1991–2023 (source: Ministry of Justice) (Color figure online)

after a progressive increase in the number of non-Italians imprisoned between the early 1990s and 2010, today there is also a decrease in the number of migrants imprisoned every year.

This decrease has been achieved with both formal and informal practices. Among the formal ones, there is the progressive increase of alternative measures granted directly from freedom, without the offender's entry into the prison system.¹⁵ Among the informal practices, there are several non-explicit procedures adopted by the police and by the public prosecutor offices in the phases of crisis. During these phases, where the explicit goal is to reduce the prison population, the agencies of social control are adapted, among other means, by reducing the number of arrests and restricting the use of pre-trial detention.¹⁶

These practices have also affected the level of pre-trial detention in the Italian prison system, which has progressively decreased from more than 50% of the total prison population in 2008 to the 27% of last year (Fig. 9). Moreover, at the European level it is possible to observe the impact of this moderation in the use of pre-trial detention. In 2013, when Italy was censured by the ECHR, the Italian levels of pre-trial detention were almost unknown in other countries,

with the exception of Greece (Table 4). Today, Italy is experiencing a level of pre-trial detention in line with that of many European countries.

Moderation in the Use of Migrants' Imprisonment?

The growth of the Italian prison population has been characterised by a structural change in its composition. The traditional framework of Italian detainees—often natives of the South of Italy¹⁷—has been, since the early 1990s, progressively substituted by migrants who in those years started to arrive in Italy from North Africa or Eastern Europe. In this regard, the statistical data show that from 1991 to 2010 the number of non-Italian prisoners progressively increased (Fig. 10); at the same time, there was also an increase in

¹⁵ For statistical data on this phenomenon, see the previous subsection “The alternatives to imprisonment between traditional measures and more recent ‘community justice’ strategies”.

¹⁶ For an example of the use of these practices in the concrete interpretation of Italian mandatory prosecution, see Sarzotti (2007).

¹⁷ Italy's ‘Southern Question’ is a historical feature of the country which originates from Italian unification. The South of Italy has a low level of industrialisation, high unemployment rates, and very poor social services. This structural condition has fostered the birth and development of specific forms of organized crime like the mafia, camorra and ‘ndrangheta. Moreover, the 1950s–1960s migration from the south to the industrialized cities of the north of Italy has historically favoured the criminalisation of those young migrants unable to integrate into the labour market of the industrial cities. For a description of the Italian ‘Southern Question’, in relation to the theories of crimes and social control, see Dario Melossi (2002).

Fig. 9 Pre-trial detention rates 2008–2022 (source: Ministry of Justice)

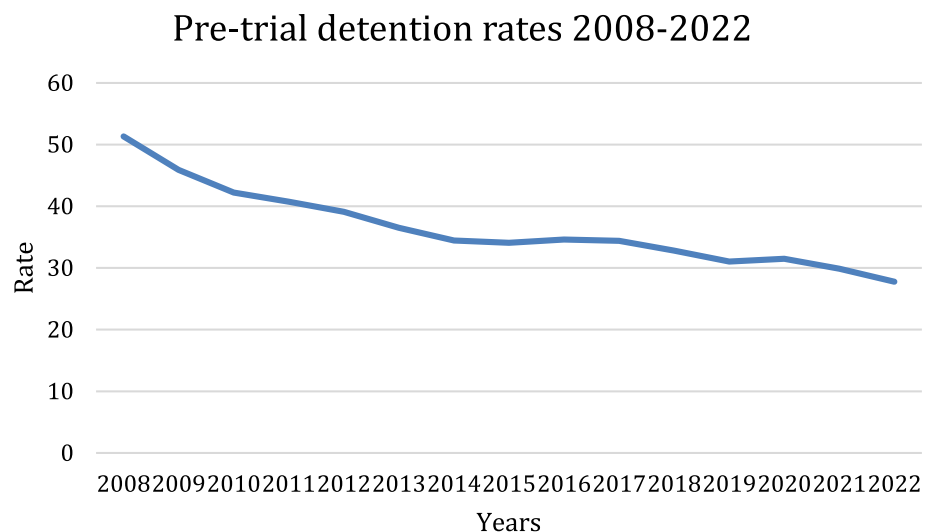


Table 4 Pre-trial detention rates 2013–2023 (Source: World Prison Brief)

Country	Pre-trial detention 2013 (%)	Pre-trial detention 2023 (%)
Italy	39.11	26.2
UK	12.7	17.3
France	25	30.3
Germany	16.7	20.6
Spain	15.4	16.1
Greece	31.2	23.5

the proportion of non-Italians in the total prison population, which in 2009 reached 37% of the total¹⁸ (Fig. 11).

This is a phenomenon widely studied by Italian scholars, not without heated debate among different theoretical positions.¹⁹ What is apparent is that Italy has used the criminal justice system as a device with which to control migrants. Although several administrative measures are available, like migrant detention centres, deportation, or refoulements, they have not been widely used, and the control and incapacitation of migrants have in fact been delegated to the criminal justice system (Scomparin & Torrente, 2020).

¹⁸ To be noted is that the distribution of the non-Italian prison population is not homogenous, since the foreign prison population is concentrated in the north. As a consequence, in the years considered, in many north Italian prisons the rate of non-Italian prisoners often exceeded 70%.

¹⁹ Here, suffice it to recall the radically different positions of scholars who have tried to demonstrate a connection between immigration and an increase of criminality (Barbagli, 1998, 2008) and of others who have radically contested a connection between criminality and immigration, disputing both the methodological tools adopted by the former (Ferraris, 2021) and the conclusions reached (Dal Lago, 2010; Melossi, 2010).

In the past 10 years, signs of moderation have become apparent in this respect as well. Indeed, there has been a slight decrease in the non-Italian prison population rate, which today stands at around 31%. As said above, for a number of years Italy has recorded a decline in entries into prison by non-Italians. In fact, if we again consider Fig. 8, we can appreciate the extent of the shift in the Italian prison population. The drastic reduction of entries into prison by Italians has for 20 years been largely off-set by an increase in migrants' incarceration. Since 2008 something has started to change, with a progressive decrease of entries into prison also by non-Italians.

This is a phenomenon that, on the one hand, should not be overvalued. Indeed, the percentage of non-Italian prisoners in the total prison population is still very high. Moreover, there is a great deal of evidence that, once imprisoned, migrants find it very difficult to leave prison and to obtain alternatives to detention.²⁰ As a result, they often spend their entire sentence in prison, also for very short periods.²¹

On the other hand, the progressive reduction in the imprisonment of migrants suggests changes in the formal and informal practices of immigration control. Unfortunately, these changes have not been fully studied by Italian scholars. However, some research suggests that there are no signs of more efficient administrative practice in either custody or deportation (Fabini, 2021; Ferraris, 2021). Therefore, we can hypothesise a first period of moderation in the criminalisation of migrants, perhaps connected with

²⁰ For a description of actuarial justice practices adopted by prison staff, and their impact on the management of migrant detainees, see Torrente (2018).

²¹ On this topic, see one of the last reports of the Italian NGO, Antigone, <https://www.rapportoantigone.it/diciannovesimo-rapporto-sulle-condizioni-di-detenzione/>.

Fig. 10 Number of non-Italian detainees 1991–2022 (source: Ministry of Justice)

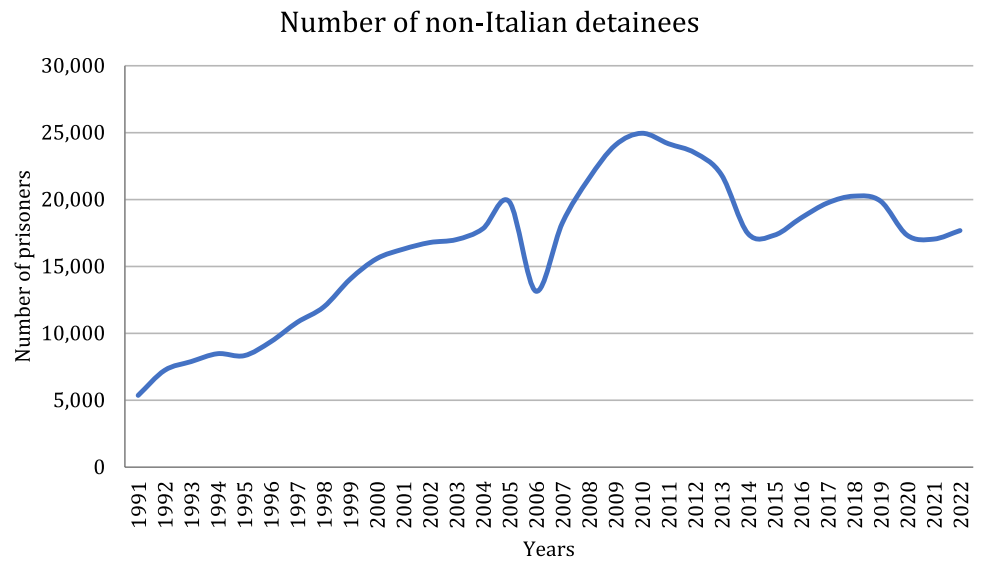


Fig. 11 Non-Italian prisoners in the total prison population 1991–2022 (source: Ministry of Justice)



a—partial—consolidation of foreign presences on Italian territory.

A (Little) Moderation in Short-Term Detentions

The third stage where it is possible to discern signals of moderation in the use of imprisonment concerns the so-called ‘short-term detentions’.

The high percentage of prisoners sentenced to short-term detention, and/or with a brief period to serve before the end of their punishment, is a criticism frequently made

of the Italian system.²² In particular, the high percentage of offenders sentenced to less than three years of imprisonment—or with less than three years to be served—has been traditionally interpreted as being the result of a selectivity in the provision of alternative measures which specifically penalises subjects with fewer resources, both individual and relational (Mosconi, 2014). From another perspective, the high percentage of offenders sentenced to a shorter term of imprisonment has been interpreted as a signal of the real composition of the prison population, the part of criminality

²² Most recently, we cite the observations of the Italian National Preventive Mechanism against Torture which, in its 2023 report to Parliament, stigmatized this feature of the Italian prison system (Palma et al., 2023).

Prisoners sentenced to less than 3 years of imprisonment: 2005-2022

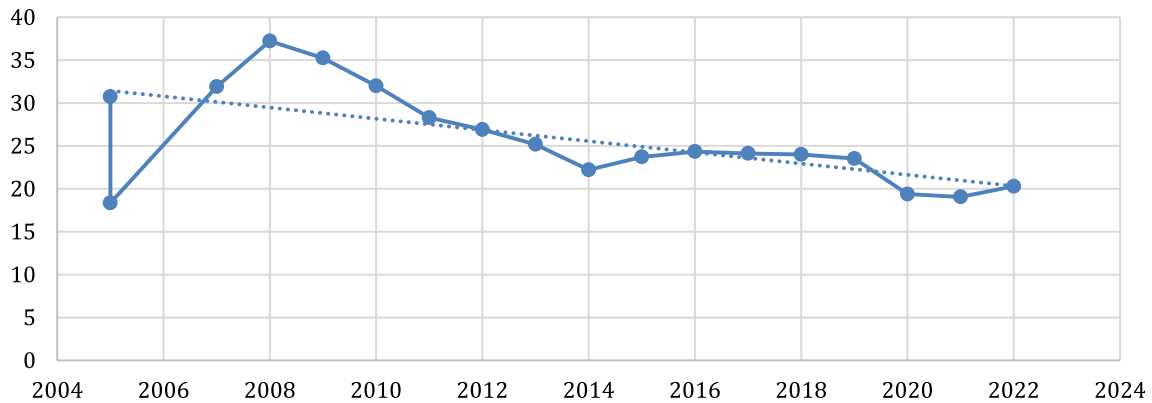


Fig. 12 Rates of prisoners sentenced to less than three years of imprisonment 2005–2022 (source: Ministry of Justice)

Prisoners with less to 3 years to be served: 2002-2022

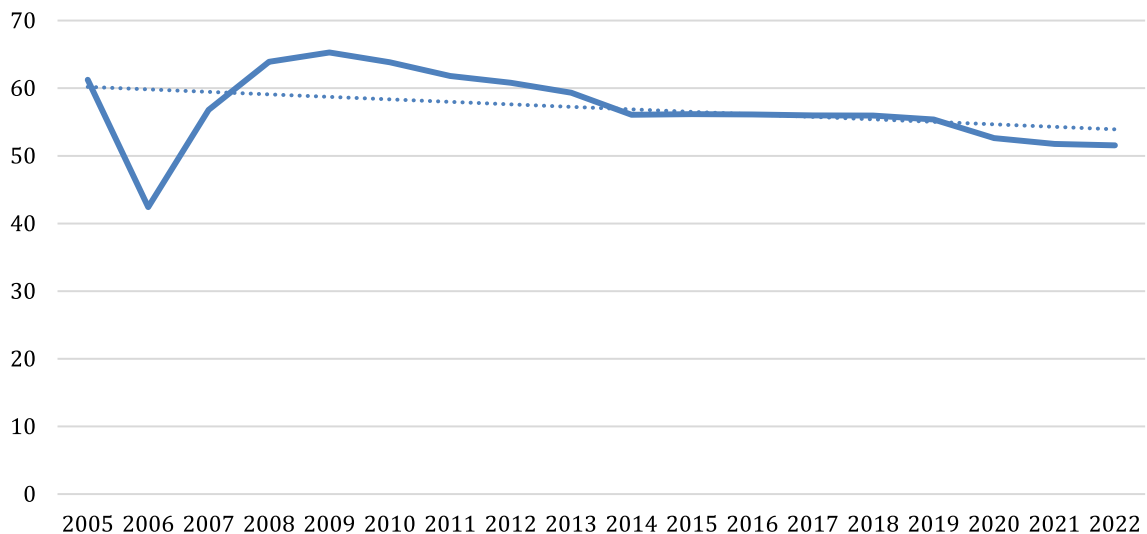


Fig. 13 Rates of prisoners with less than 3 years to be served 2005–2022 (source: Ministry of Justice)

really punished, even if not necessarily the most dangerous one (Pavarini, 1977).

What has happened in the last few years is a decrease in the percentage of offenders sentenced to fewer than three years of imprisonment (Fig. 12). Specifically, this rate was around 35–37% in the early 2000s; in the past ten years, there has been a progressive decline in the number of offenders sentenced to a short detention that go to prison, and the current rate is around 20%.

At the same time, the rate of offenders with a short period of imprisonment to be served is still very high (Fig. 13). Also in this case there has been a reduction, but still today

more than half of the Italian prison population has to spend less than three years in detention.

Even in this case, the data seem to depict a well-known feature of the Italian criminal execution system. As said, apparent in recent years has been a ‘dual track’ in the concession of alternatives to imprisonment: on the one hand, an increase of opportunities to obtain the measure for offenders at the beginning of their criminal careers, and who can ask for the measure directly for freedom; on the other, severe treatment of offenders with previous convictions, who frequently spend their entire sentences in prison without being able to benefit from any kind of alternative to imprisonment.

Homicides reported 2006-2021

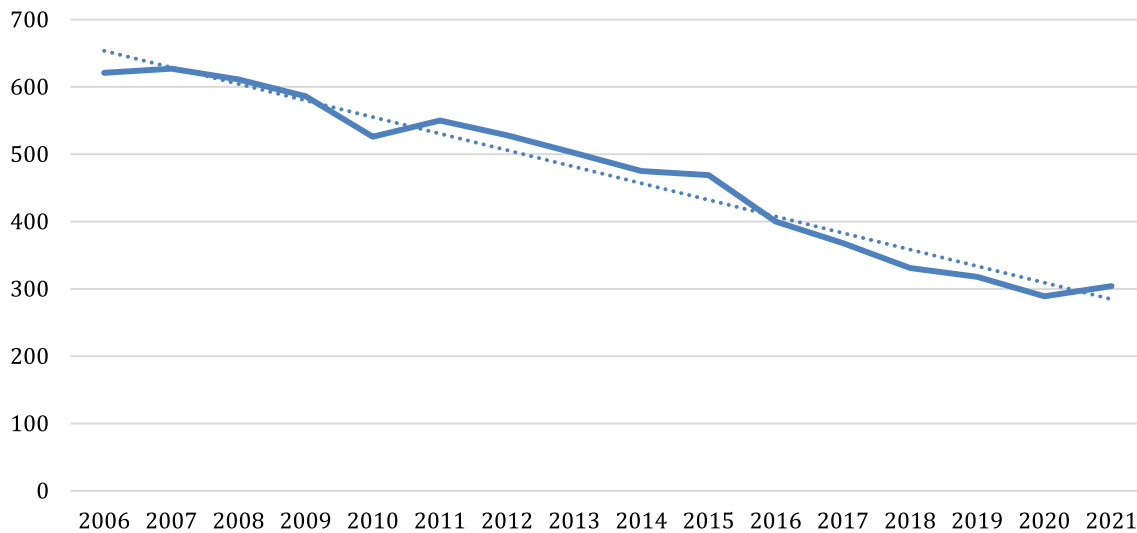


Fig. 14 Homicides reported 2006–2021 (source: ISTAT)

Thefts reported: 2006-2021

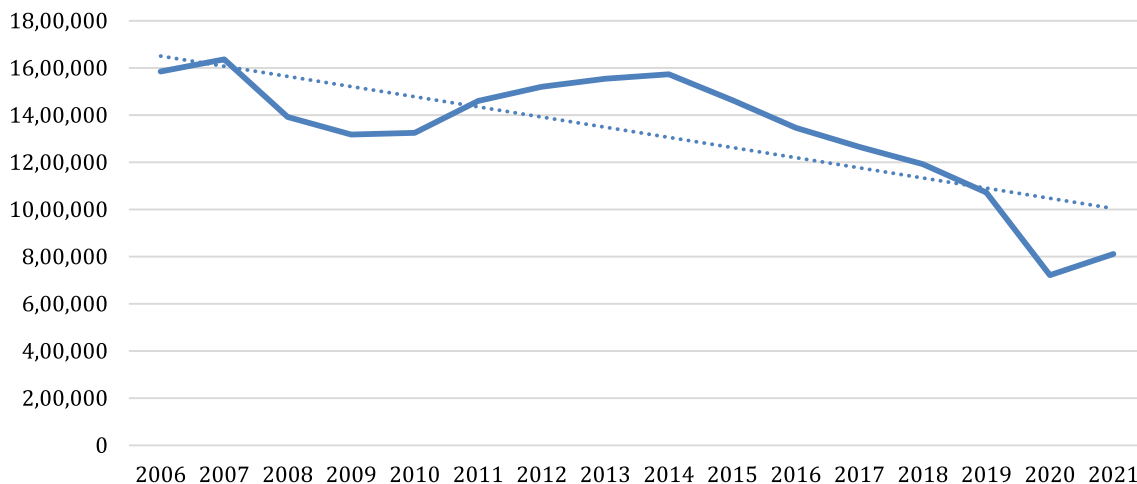


Fig. 15 Thefts reported 2006–2021 (source: ISTAT)

The Fall in the Italian Crime Rate

As known, the connection between crime rates and prison flows is rather problematic. For many years, scholars who conducted their analyses from a critical perspective denied a direct connection between crime rates and imprisonment, since they consider prison rates to be a consequence of the social structure (Baratta, 2019; Rusche & Kirkheimer, 1939). More recently, some scholars (Garland, 2002) have pointed out that crime rates flows are able to affect criminal policies. According to Garland, ‘law and order’ policies are more successful, in terms of popularity, in periods when the

crime threat is perceived more seriously by public opinion.²³ Conversely, the success of criminalization policies should be less obvious in periods characterised by a reduction of criminality. Following this approach, the prison decline of recent years in the USA should be considered also in the light of

²³ Following Pierre Bourdieu (1973), we use this definition from a constructivist point of view. In this sense, the public opinion is the final result of a process of construction where modes of definition adopted by several agencies (mass media, opinion polls, moral entrepreneurs etc.) contribute to the collective definition of social phenomena.

Robberies reported: 2006-2021

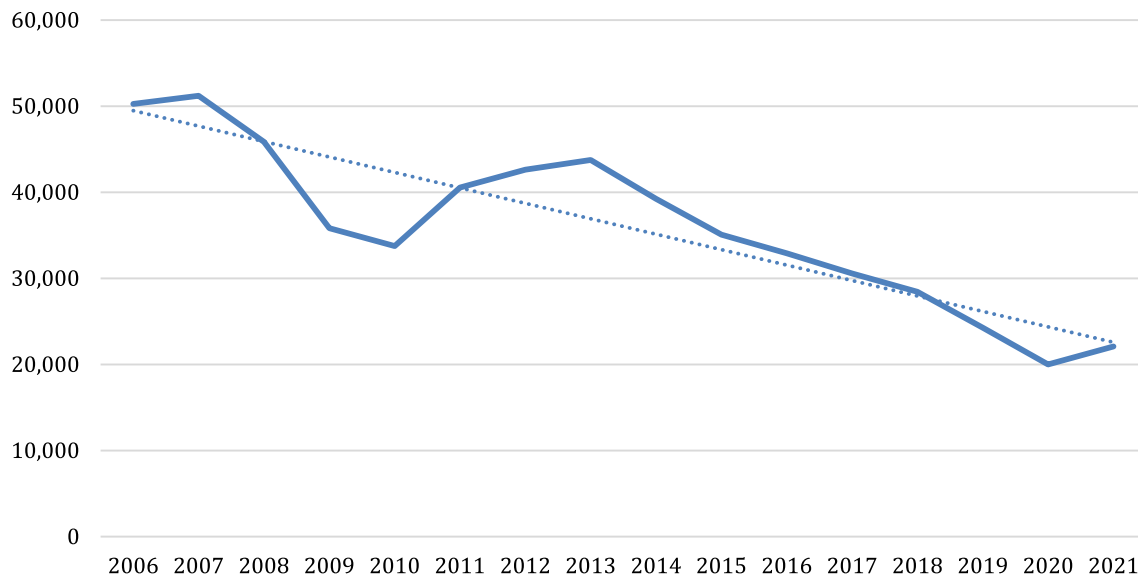


Fig. 16 Robberies reported 2006–2021 (source: ISTAT)

the crime drop now characterising that country (Brandariz, 2022).

Also Italy is experiencing a crime drop. As shown by the following Figs. 14, 15, and 16, for several years, the decline of reported crimes has concerned several types of offences. Specifically, in the last 15 years, Italy has known a reduction in both crime against persons (mainly homicide) and in property offences (theft and robbery). Of course, we are aware of the problematic use of statistics in order to explain the real trends in crime. Moreover, this problem is particularly serious in a country, like Italy, characterised by a large ‘dark number’ that involves so many offences.²⁴ Nevertheless, we think that the steady and sustained decline in the reported crime rate is a significant phenomenon that should be considered in the interpretation of criminal policies. Specifically, it is necessary to discuss whether this decline has affected the rhetoric about crime and criminalisation and whether it has favoured a moderation of imprisonment.

Conclusion

We started this article by wondering if Italy could be considered as exemplifying a new ‘moderation’ in the use of imprisonment. The data collected show many ambiguities which make it difficult to definitively resolve the question.

²⁴ For a review of attempts to reconstruct the crimes not reported in Italy, see Franco Prina (2019).

In order to address this issue more deeply, we now introduce a last topic of discussion, one that is decisive for understanding the complex dynamics of the Italian criminal justice system. We refer to the usual distance between public rhetoric and the concrete, real implementation of policies. In Italy, this distance has always been very wide, probably more so than in other Global North countries. In particular, one should consider that in recent years, dominated by a radical populist approach adopted by a large number of political leaders, there have been several campaigns for law and order and zero tolerance. These campaigns have been characterised by announcements of new laws, new forms of control, cancellation of all kinds of benefits, etc. As said above, these policies have been often justified after moral panic campaigns addressed to specific crises (mainly illegal immigration but also, more recently, juvenile delinquency).

In actual fact, only in some situations have new laws been approved, and the measures necessary to apply the new laws or amendments have very rarely been implemented. The floor of migration policies is an effective example of the phenomenon. For more than 15 years several political parties have repeatedly announced their determination to fight illegal immigration with administrative measures like deportation, rejection, and the greater use of detention centres. Nevertheless, after many years we are not witnessing the real institution of an administrative body effectively able to put into practice what has been repeatedly announced. Not by chance, as said, the control of migrants has been largely delegated to the criminal justice system.

At the same time, the implementation of zero tolerance policies has known several periods, in which the law and order slogan has been paired by practices of the administrative body tasked with implementation of the law and conversely characterised by prudence and restraint. This self-restraint of control agencies in implementation of the law can be interpreted, sometimes, as a form of resistance or, at least, prudence in periods when effective application of the norms might have an impact not easily manageable by the Italian institutions (Minetti, 2020). Undoubtedly, this is partly due to the inefficiency and disorganisation of the Italian administrative system (Zan, 2013). But this is not sufficient to explain the great differences among official policies, laws, and implementation. Probably, there are several factors connected with the legal and professional culture of the various agencies of social control that produce some form of pragmatism or, better, realism, that permits, at specific times, the pursuit of pragmatic goals different from the official ones announced by politicians during press conferences.

In our view, these last times represent this phenomenon. On the one hand, the political debate is still focused on law and order campaigns, without significant differences from previous years. The emphasis on criminality—often associated with migration—is still a main topic of discussion during election campaigns; not by chance, all the last elections have rewarded those politicians that have been better able to present themselves as paladins of law and order. It is curious how this phenomenon persists in Italy even in a period characterised by a decline in reported crime (“[The fall in the Italian crime rate](#)”). In this regard, we can state that in Italy, contrary to what is probably happening in the USA, the emphasis on in-security is still an efficient means to acquire electoral consensus.

On the other hand, social control agencies seem to be experimenting with various forms of mitigation and pragmatism in their practices and decisions. Specifically, since the ECHR ‘Torreggiani judgement’, it seems that Italy has developed at various levels—public administration, judiciary, and ministry officials—a new form of awareness about the necessity not to exceed certain limits, since it could have serious negative consequences for the entire system. Hence, it is possible to find evidence of moderation in the use of prison in several practices that, very slowly, are being consolidated by various actors of the criminal justice system: moderation in the use of pre-trial detention, a greater provision of alternative measures for less serious crimes, disregard of crimes perceived as not prioritised,²⁵ etc. Of course, the concrete adoption of these practices has in recent years

been favoured by the crime drop, and it is silently accepted by the government as well.

Finally, we may conclude by stating that the Italian criminal justice system has achieved a balance between populist rhetoric and the practical needs of the system. But, in our view, one should not be overly optimistic. In fact, this is a precarious balance that could very quickly enter into crisis. For instance, an increase of reported crimes, or the escalation of pressure on some social category, may produce a new punitive turn with results that at present are unpredictable. In this regard, last year’s rapid increase in the prison population, in concomitance with the establishment of the new right-populist government, is indicative of how this balance is unstable.

The tension between rhetoric and practice makes Italy a case study of particular interest for law and society scholars. Now more than ever, Italy provides fertile ground for research on populism and moral panics but also on realism and—relative—self-management by social control agencies.

Author Contributions Daniela Ronco wrote paragraph Introduction, Correlating Prison and Community Justice Trends: An Outline of Net-Widening, Prison Population Trends: An Attempt at Explanation Focused on ‘Breaking Points’, The Alternatives to Imprisonment Between Traditional Measures and More Recent ‘Community Justice’ Strategies; Giovanni Torrente wrote paragraph Imprisonment Trends in Italy: Restraint After the Boom? Overcrowding and Pre-trial Detention: The End of the Italian Emergency? Moderation in the Use of Migrants’ Imprisonment? A (Little) Moderation in Short-Term Detentions, The Fall in the Italian Crime Rate, Conclusion.

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²⁵ For an example of the selection of crime reports adopted by an Italian Public Prosecutor Office, we refer to Blengino and Torrente (2016).

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