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PRISON OVERCROWDING AFTER TORREGGIANI: A MISUNDERSTOOD SUCCESS IN THE CULTURE OF CONTROL

After the judgment of the European Court of Human Rights, the Italian government tried to solve the problem of prison overcrowding with a short-term policy, which has brought a decrease in the number of inmates in the Italian prisons. The article will analyse the reasons behind that choice and its misunderstood success in the light of the famous theoretical framework of David Garland.

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1. Introduction According to David Garland (1996) the governments' response to crime in the culture of control is moving between two different and opposite assumptions: on the one hand the governments have to do something to control the crime and to show that the criminal justice system is working efficiently; on the other hand, they do not really know how to achieve these results, considering the complexity of the problems that they are facing ^[1]. For these reasons, in front of the prominent problems of the criminal justice system, governments tend to respond with politics of denial: the wish for certain things to be true has become the truth itself ^[2]. Rather than admitting that in front of certain problems they are powerless, governments have chosen to deny their limits and to adopt questionable policies, which are symbol of their potency. It has already been written about more punitive policies in the process of denial ^[3]. However, what we are missing in this conceptual framework is the analysis of a policy that is not punitive itself but that strongly belongs to the main core of Garland's theory.

2. Pilot judgment in Torreggiani: an expected condemnation On January 2013 the Court of Strasburg condemned Italy for violating the article 3 of the European Convention on Human Rights due to the inhuman and degrading treatment in the overcrowded prison of the country ^[4]. According to the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, the minimum space in a prison cell for every inmate has to be 7 square metres ^[5]. In Italian prisons the space provided for every inmate was between 2.7 and 3 square metres, with a shortage of hot water and sufficient lighting in several structures. The ECHR established that the problem of the overcrowded prisons was not only related to the claimants, but it was a widespread problem in all the prisons on Italian territory. This is the reason for which the ECHR chose to adopt a pilot judgment and give to the Italian government one year to solve the problem of prison overcrowding ^[6].

The judgment of the ECHR was not an unexpected judgment ^[7]. The Italian government itself in 2010 declared a "state of emergency of prisons" with a list of changes that needed to be done in order to reduce the inmate population ^[8]. It is a funny coincidence that the government declared the state of emergency exactly in the period in which seven inmates, Torreggiani and others, filed a petition to the ECHR for the degrading treatment while they were imprisoned. After that the state of emergency was declared nothing has effectively been done, but this was not a simple inactivity of Italian government. The overcrowding situation of Italian prisons was really an emergency due to a wide sequence of factors that are not easily resolvable, such as the use of criminal law for not particularly serious offences, the centrality of the imprisonment as a punishment in the Criminal Code,

the large presence in the prisons of immigrants waiting for the (long) expulsion procedure, the high rate of recidivism, etc. This is the reason for which the ECHR chose a pilot judgment: the situation of the seven inmates during their imprisonment was not an isolate case, but was the result of a chronic malfunction of penitentiary system ^[9]. However, after the judgment of the Court of Strasburg, the option to declare a state of emergency was no longer available: something had to be done.

3. The Italian policy: an example of denial According to the data of the Penitentiary Department on January 2013 there were 65.905 inmates for a prison capacity of 47.040 ^[10]. In consequence of the judgement of the ECHR, the Italian government has one year not only to implement a policy in order to solve the problem of prison overcrowding, but also to remedy actual violations (in particular, the inmates who have suffered the degrading imprisonment have to be refunded and the inmates that are suffering the degrading imprisonment have the right to see immediately their imprisonment situation adapted to the European Committee's standards). One may wonder how the Italian government is supposed to solve in one year a situation that is the result of a structural problem in the entire punishment system. In the culture of control, it does not really matter if the government can and how, it has to solve in any possible way this problem because it cannot show its powerless vis-à-vis this penitentiary crisis ^[11]. Especially when not doing anything has a price: the maxi-fine of the Court of Strasburg, an amount of 14.285,00 € for every inmate ^[12]. The threat of the maxi-fine from the ECHR and the necessity to show to the citizens its ability in controlling criminal matters seemed to be good reasons for the government to take an action.

The answer of the Italian government to the overcrowding prisons took the form in the Law ["empty prisons"](#) and it is a policy far away from the structural reform that is necessary to the punishment system. In short, in order to satisfy the first request of the ECHR (a solution for the problem of overcrowding prisons) the government has modified some regulations of the Criminal Code and the Code of Criminal Procedure. Just to give an example of this inadequate policy: the law established that from January 2010 to December 2015 inmates' imprisonment period may be reduced by 75 days for semester (in place of a period of 45 days established before). Another example is the provision on the expulsion of irregular migrants: with a prison sentence of less than 2 years, irregular migrants will no longer serve their term of imprisonment but will be directly forced to leave the country. To define this kind of policy in Italy we use an idiomatic expression hard to translate in English, but that recalls the idea of the spots on leopard skin: we have a structural and chronic malfunction of the system and the government resolves it with limited and not homogeneous interventions (as the small and not homogeneous spots on leopard skin). Along with this first solution, the government needed to satisfy the second request of the ECHR, providing an effective remedy for the violation currently underway. With regard to the inmates who have suffered the degrading imprisonment, the

government has to pay 8,00 € per inmate for every day of imprisonment in conditions not in compliance with the European standards. I strongly doubt that 8,00 € per day is a price even close to repair what the inmates had to suffer during their imprisonment period. With regard to the inmates that are still suffering the degrading imprisonment, the conviction is reduced of 1 day for every 10 ten days in prison. You are still sharing your cell jail of 9 square metres with two other inmates and you are still facing a degrading imprisonment. However, for three days less every month.

4. A misunderstood success The policy adopted by the Italian government to resolve the overcrowding prisons has been strongly criticised by several and different voices as scholars and the Police Labour Union ^[13]. The main critique is the fact that this policy is dealing with the problem of the overcrowding prisons mainly by releasing inmates rather than facing the real causes of this degrading situation. Even if this policy has showed a significant decrease in the number of inmates in the prison population, according to the data of the Penitentiary Department, this is clearly a short-term result ^[14]. Perhaps the government itself is aware of this circumstance: this might explain why the possibility of a general amnesty and pardon, to reduce with a superior extension the number of the inmates, has been discussed recently ^[15]. All these policies are only putting a patch on the several holes in the Italian criminal justice system rather than admitting the inefficiency and inability of the government acting to deal with these complicated problems. A more realistic alternative solution ought to be seen in a global and structural reformation of the punishment system: this solution will cost in terms of money and time but it is the only way to solve once and for all the pathology in the system.

The policy adopted by the Italian government to solve the problem of prisons overcrowding is the outcome of a denial strategy as the one described in Garland's theory ^[16]. Therefore, after this analysis it appears that Garland's theory can be also used to examine policies that are not more punitive themselves but that are the result of a process of denial. Moreover, the above-mentioned policy seems to belong to the new populist current in the criminal policies which gives more credit to the public's opinion rather than taking into account the voices of experts and practitioners. All these short-term and inappropriate solutions give the impression to the public audience that the government knows what is doing and knows how to do it. Unfortunately, looking at the scholars' opinions, this is not the case ^[17]. The decrease in the data of the Penitentiary Department has apparently showed to the general audience that until now this new policy is bringing remarkable results. But even a broken clock is right twice a day.

Note e riferimenti bibliografici

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