

FOREIGN JUVENILES IN PRISON: A DOUBLE PENALTY? WHAT PROSPECT OF RE-EDUCATION?

Ignazio GRATAGLIANO

Department of Educational Sciences, Psychology, Communication, University of Bari "Aldo Moro", Bari, Italy

Abstract: *Foreigners who are even minors have a "double problem". Because they are foreigners can have problems assimilating into society and tensions are created between them and the society that welcomes them. Conflicts may arise in relation to the culture to which they must be faithful. As young people can be characterized by typical problems of adolescence (internal conflicts, peer conflict identity problems). The result of being both foreign and young often places them in the situation of having less security and less rights than their Italian peers. The purpose of this paper is to provide a look at this situation to provide data on the conditions under which minors are subjected to the justice system with particular emphasis on young foreigners. The data analysis shows an increase in the number of arrests in juvenile delinquents as well as an increase in the percentage of proceedings initiated against young foreigners. In fact, the highest percentage concerns their arrests. The analysis of other data shows that when foreign youths "meet" the law they have a higher probability of being easily placed in detention facilities than Italians of the same age. In the face of this situation, however, we believe that in the absence of forms of inequality and attitudes of discrimination against foreign minors, they should be made subject to the same treatment opportunities reserved to Italian peers. The data allow to record some changes, Especially in the context of the possibility of taking alternative measures of detention. The world of justice must avoid both the risk of double punishment and that of a double right, that is, of an unequal right between Italians and foreigners.*

Keywords: *juveniles; foreigners; penalty; prison; rights*

1. INTRODUCTION

Foreign minors often have problems integrating into Italian society. The two principal reasons for this is their young age, and their different cultural background. As a result, they tend to have fewer rights and less security with respect to their Italian counterparts. The aim of this study is to provide data regarding the treatment of foreign juveniles in the Italian justice system. The authors are of the mind that it is important to create secondary and tertiary prevention services in order to decrease the likelihood of recidivism, as well as to promote positive and appropriate integration of the minor into the social fabric of their adopted country.

The most common reason for which minors leave their homeland is the search for a new way of life (Melossi & Giovanetti, 2002). Persichella (1996) wrote of "advance socialization", a term that refers to the expectations of well being that a foreigner might associate with a particular place. These mental images are often generated by the mass media, as well as by relatives and friends

who have already emigrated. These youngsters are often disappointed upon their arrival in the new country, leaving them in a state of relative deprivation, frustration, and tension, which are significant risk factors for the commission of crimes (Bernstein & Crosby, 1980; Brown, 1995/1997).

The percentage of foreigners convicted of crimes in Italy has increased over the last decade when compared to the number of convicted Italians. This is true for all crime categories: production and dealing of illegal drugs; theft; robbery; receiving of stolen goods (fencing); contraband; rape; and homicide. There are many reasons for this phenomenon. Among them are the conditions in which these immigrants find themselves upon their arrival in Italy; how their previous expectations measure up to the reality of their new existence; how successfully they reintegrate with their families; their ability to enter into the work force; and the influence of both Italian and foreign organized crime groups (Barbagli, 1998; Coluccia *et al.*, 2011; Di Nicola, 2010; Russo *et al.*, 2010). Foreign minors are often

recruited by criminal organizations, or by compatriots who aid them in becoming involved in criminal activity, especially prostitution and drug dealing.

When considering minors' rights (UN Convention on the Rights of the Child, 1989; Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010) the role of cultural mediator takes on a particularly important role within the juvenile prison system (Minister of Justice circular from the Department of juvenile Justice No. 6, 2002 – Guidelines on Cultural Mediation in Juvenile Justice Services). Cultural mediation acts to facilitate relationships between individuals from ethnic minority groups and related social services that are in place to serve them. The cultural mediator aids the foreigner in a variety of ways, for example, by teaching him how to behave appropriately in different situations, and by sensitizing him to the customs and way of life in Italy. The cultural mediator also actively participates at various phases of institutional life, such as helping the minor to communicate with juvenile justice officials, and with relatives. In addition, the mediator also aids the minor's family in navigating the Italian legal system.

Because religion plays such an important role both in Italian, and in other cultures, religious freedom is guaranteed in Italy. Article 58 R.P. and Article 26 O.P. state that detainees are free to profess, study, and practice their own religious faiths. The celebration of Catholic religious rites is guaranteed in Italian detention facilities, and those belonging to other faiths have the right of access to ministers from their own religion in order that they may worship.

Physical activity and social interaction are also two important components when dealing with juvenile delinquents. With the aim of promoting recreational and sport activities within juvenile detention centers (IPMs), the Department of Juvenile Justice has established agreements with numerous sports associations throughout Italy. In addition to this, many individual detention centers have set up collaborative relationships with local voluntary and Third Sector associations, in accordance with Articles 17 O.P. and 68 R.E.

The right to access to medical care by detainees is also stipulated in Italian law:

foreigners are automatically enrolled in the National Healthcare System for the entire time in which they are detained or interned in penal institutions (SSN: Servizio Sanitario nazionale). Such persons have the right to equal treatment and full equality to any free citizen, regardless of their

immigration status [...] detainees and the interned are excluded from having to financially contribute to the SSN.

2. TREATMENT OF FOREIGN JUVENILE DELIQUENTS

Once a foreign minor has entered into the legal system, he must face up to certain realities such as impending incarceration, and many of the factors related to being "an immigrant" (Nathan, 1990; Raison, 1978). It is quite common to find histories of parental abandonment; physical and psychological violence; prolonged separation from loved ones; and forced assimilation into criminal groups when looking into their backgrounds (Augè, 2000; Fabietti & Matera, 1999). There also appears to be a general lack of sensitivity toward these young people and little appreciation for what they go through. If awareness were increased, better overall treatment planning could result. One potentially helpful strategy might be to allow the subject to tell his own story in his own words, allowing him to reassemble any internal breaks, thus aiding integration into his "new world" (Le Breton 2002). In theory, a foreign minor who has a run-in with the law has certain options at his disposal, but due to lack of funding and resources, these minors are often unable to access them.

3. TREATMENT APPROACHES IN ITALY

By analyzing various treatment approaches in several juvenile detention centers, it is evident that IPMs are committed to guaranteeing prisoners' rights, which include the right to education and placement into the job market; religious expression; and access to cultural, recreational, and sport activities, in addition, to maintaining contact with the outside world, including family members. Moreover, all IPMs offer workshops and professional training courses with the aim of promoting integration and cultural exchange. These courses encourage both self awareness, and awareness of others who are different.

IPMs from Catania (Asero, 2010), Catanzaro and Turin report positive experiences regarding the centralized role of cultural mediators and volunteers who act as a support system for these young immigrants through such deeds as arranging telephone calls with family members, and providing access to interpreters.

Other IPMs from Florence and Bologna (Abbiati, 2010), on the other hand, report a lack of resources and funding necessary to create appropriate treatment plans. They cite, for example, the under utilization of cultural mediators

who are often marginalized and relegated to the singular role of interpreter. Cultural mediators are typically only available on an hourly basis, and are not considered to be an integral part of the treatment team. Short stays in IPMs are also reported to be problematic: repeated transfers make it impossible for staff to get to know the minor in order to create an individualized education program. Other related problems include finding employment; learning the language (Italian); becoming autonomous; procuring all necessary documentation needed to live in Italy; and the absence of family. Under present conditions, cultural mediators are unable to formulate an accurate picture of the culture from which a foreign minor comes.

4. CONCLUSIONS

There are many risk factors associated with foreign minors who commit crimes, and intervention is essential in addressing such topics as immigration status; geographical distance from parental figures; lack of permanent housing; involvement in organized crime groups; difficulty in ascertaining true biological age; sense of belonging to his culture of origin; and various cultural-linguistic obstacles. The ability of the public sector to handle these difficulties is limited due to lack of funding and resources in general. By reaching out to local public and private organizations, management and staff attempt to find creative solutions to these challenges.

A foreign minor must go through the process of constructing his own identity. This presents both a risk and a resource for the young immigrant. If he is unsuccessful in finding his own identity, he is in danger of losing it altogether. It is therefore necessary to implement a methodology that joins together criminological treatment and psychological counseling, as well as an anthropological/ ethnographic perspective in order to truly understand the delinquent act and to help the juvenile in constructing a stronger self-identity (Grinberg & Grinberg, 1990). When there is a lack of sufficient time and means needed to establish a true relationship with the juvenile, and the plight of immigrants is generalized in the minds of those who serve them, the creation of pre-packaged responses that are poorly tailored to the specific needs of the minor in question is likely. The difficulties associated with implementing and successfully concluding a treatment program is highly conditioned on mental health services and outside organizations. Collaborating with these organizations is fundamental not only with respect

to scholastic, social, and work integration, but it is also important in guaranteeing continuity of the treatment that was begun at the IPM.

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