

# Restorative justice and criminal proceedings in Italy

LUCIA PARLATO

*Associate Professor, University of Palermo*

**Summary:** 1. Inputs from European Union: the Directive 2012/29/EU. – 2. An Overview of Italian Regulation. – 2.1. Restorative Justice and “ordinary” penal proceeding concerning adults. – 2.2. Restorative Justice and “processual microsystems”: juvenile rite, proceeding at the justice of the peace and execution stage. 3. Final Considerations.

## **Inputs from European Union: the Directive 2012/29/EU**

In recent years, there has been a growing interest in Italy towards *restorative justice*<sup>1</sup> also due to inputs coming from European Union.

---

<sup>1</sup> Amongst the many, Ciavola, *Il Contributo della Giustizia Consensuale e Riparativa all'Efficienza dei Modelli di Giurisdizione*, Torino, 2010; Certosino, *Mediazione e Giustizia Penale*, Bari, 2015; Eusebi (ed.), *Una Giustizia Diversa. Il modello riparativo e la questione penale*, Milano, 2015; Mannozi, *La Giustizia Senza Spada. Uno studio comparato su giustizia riparativa e mediazione penale*, Milano, 2003; Mannozi (ed.), *Mediazione e Diritto penale. Dalla punizione del reo alla composizione con la vittima*, Milano, 2004; Mannozi, Ruggieri (ed.), *Pena, Riparazione e Riconciliazione. Diritto penale e giustizia riparativa nello scenario del terzo millennio*, Como, 2007; Mannozi & Lodigiani (eds.), *Giustizia Riparativa, Ricostruire legami, Ricostruire persone*, Bologna, 2015; Parisi, 'I confini della *restorative justice* nella più recente normativa europea a tutela della vittima: ragionevole attuazione di una *victim-centred justice* o inevitabile condanna al destino di Sisifo?', in Cortesi, La Rosa, Parlato & Selvaggi (eds.), *Sistema Penale e Tutela delle Vittime tra Diritto e Giustizia*, Milano, 2015, 123 *et seq.* (<http://labdirpen.wixsite.com/diplap>); VV.AA., 'La giustizia riparativa nella prospettiva comparata, Speciale', in *Riv. It. Dir. Proc. Pen.*,

At a supranational level, many sources have come in succession.<sup>2</sup> In particular, within European Union, framework decision concerning the position of the victim in penal proceedings commended, in 2001, that all member States of the Union should promote “mediation” in penal proceedings for those crimes considered “appropriate”.<sup>3</sup>

In 2012, the framework decision was replaced by Directive 2012/29/EU, which legal ruling are more binding and accurate.<sup>4</sup> In compliance with EU competencies,<sup>5</sup> the Directive, as well as framework decision, has approached *restorative justice* from a victim’s protection standpoint.

The Directive consists of three articles referring to *restorative justice*. Art. 2, n. 1 lett. d), provides a definition of it, in line with other international texts. Art. 4 includes a compulsory catalogue of basic information victims have the right to be provided with, among which those ones regarding available *restorative justice* services. However, the real core of the discipline in object is art. 12, which foresees protection measures for a victim who is involved in mediation procedures and imposes member States to assure the victim has appropriate access to safe and skilled in services.

---

2015, n. 4, 1899 et seq.

<sup>2</sup> ECOSOC Resolution 2002/12, ‘Basic principles on the use of restorative justice programmes in criminal matters’, in *www.un.org; Handbook on Restorative Justice Programmes*, United Nations Office on Drugs and Crime (Vienna, January 30-31, 2006 ([www.unodc.org](http://www.unodc.org)); Recommendation N° R (99) 19, concerning Mediation in Penal Matters, adopted by the Committee of Ministers of the Council of Europe on 15 September 1999 (<https://wcd.coe.int>); Guidelines for a Better Implementation of the Existing Recommendation, concerning Mediation in Penal Matters, European Commission for the Efficiency of Justice, Council of Europe, Strasbourg, December 7, 2007, CEPEJ (2007)13 (<https://wcd.coe.int>).

<sup>3</sup> Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA).

<sup>4</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

<sup>5</sup> Art. 82 (2) TFEU.

Art. 12 rises different issues that need to be resolved internally.

First, according to the disposition, the discussion is all about whether a proper “right to mediation” has to be acknowledged to the victim or not.<sup>6</sup> Furthermore, what comes out from the norm is that restorative justice tools can be basically utilized only in case they correspond with the victim’s interests. In this regards, this could result into a contrast with one of *restorative justice* basic principles, which is impartiality, or, in other words, equal consideration of all “parts”.<sup>7</sup> The question arises as to whether admitting disputed facts is necessary or not and this because, according to a thorough reading of the text, one might think a confession is strongly required.

Lastly, a basic profile concerns protection of “confidentiality” and, specifically, the kind of confidentiality assured in regards to anything happening within a mediation environment compared with a judicial one. This type of confidentiality is usually assured according to the Directive, unless primary reasons of public interest might occur, which is to say that public interest in penal persecution of the crime could prevail towards confidentiality requirements. For countries provided with a more advanced mediation system, these type of critical profiles might expose to risk of a general lowering of warranties’ standards.<sup>8</sup>

For those member States in which *restorative justice* is still not well known, the Directive can only improve. Although the Directive has a one-sided perspective, essentially focused on the victim, for the first time in theme of *restorative justice*, it offers a binding legal effect for the entire European Union as well as it sets a series of parameters and commitments to respect. Among these last ones, for instance, informing the victim on the possibility of obtaining mediation is now foreseen

---

<sup>6</sup> Kilchling, in Kilchling, Parlato, *Nuove prospettive per la Restorative justice in seguito alla direttiva sulla vittima: verso un “diritto alla mediazione? Germania e Italia a confronto*, in *Cass. pen.*, 2015, 4188 et seq.

<sup>7</sup> Kilchling, *Nuove prospettive*, 4188 et seq.

<sup>8</sup> By reference to Germany, Kilchling, *Nuove prospettive*, 4188 et seq.

by Italian law in art. 90 *bis* c.p.p., which was introduced by d.lgs. 212/2015 precisely during Directive implementation.<sup>9</sup>

### **An Overview of Italian Regulation**

According to Directive's indication, in regards to *restorative justice*, Italian judicial system is one-step behind in respect to other systems. Penal trial today still leads towards imposition of a sentence and not to "alternative outcomes". Conflict is traditionally based on an authoritative model, which is slowly and gradually opening up to a conciliation-kind model. Our system also, which is still strongly based on penal action compulsoriness principle, is starting to be acquainted with these different models.

At a legislative level, *restorative justice* is still not fully recognized.<sup>10</sup> By considering *restorative justice* as a tool including any conciliation or reparation formality, there are other institutions, foreseen and disciplined by Italian code of criminal procedure, that lead back to it.

Within a judicial setting, however, Italian system is limited to predicting some kind of processual outcomes in order to enhance results of a successful mediation activity. On the contrary, norms do not linger on regulating or foreseeing restorative justice procedures, neither, in most cases, they show a will of connecting with it. Therefore, it is clear that the use of mediation tools is inevitably limited and occasional.

In this way, *restorative justice* is reflected by a series of heterogeneous and uncomplete hypothesis. For significant reasons, it is preferable to start approaching hypothesis regarding "ordinary" cognition proc-

---

<sup>9</sup> Del Vecchio, *La nuova fisionomia della vittima del reato dopo l'adeguamento dell'Italia alla direttiva 2012/29/UE*, in [www.penalecontemporaneo.it](http://www.penalecontemporaneo.it), 11.04.2016.

<sup>10</sup> From a reforming perspective: Consolidated text of draft laws (Camera dei Deputati-House of Representatives, n. 4368) approved by Republic Senate on March 15th, 2017, "Modification to criminal code, code of criminal procedure and penitentiary regulation", where a new institute is foreseen (through the introduction of art. 162 *ter* c.p.), which implies dismissal of crimes that are prosecutable on lawsuit, following restorative conducts. Institute's sphere of application is residual in respect to the one related to remission of lawsuit, but, however, the normative is significant.

ess towards adults which, so far, are very limited and have started to develop only recently. Then, those concerning peculiar procedural systems, which have wider experimentation.

### 1. Restorative justice and “ordinary” penal proceeding concerning adults

In referral to restorative justice, the most relevant tools in “ordinary” penal proceeding towards adults, mainly consists of three type of cases. The first, regulated since 1988 criminal procedure code’s formulation. The second and third were included only recently, following the two reforms of 2014 and 2015, which have made mediation between private processual subjects (accused and victim) possible by reproducing already existing institutes within juvenile proceeding. These innovations, born with the intent of reducing judiciary load as well as prison overcrowding,<sup>11</sup> have implied the introduction of processual systems that lead to accepting mediation or conciliation procedures’ results.

Beside these three hypothesis some other tools, with more limited case law impact are available, such as conciliation activities carried out by forces of law and order and in front of a single judge.<sup>12</sup>

A) For a long time the main processual connection, in respect to mediation’s activity, has been remission of lawsuit (art. 340 c.p.p.), or so called *contrarius actus*, through which a submitted lawsuit can be revoked by the victim itself. In order to make remission of lawsuit effective, acceptance by the accused is required (he could be interested in proving his innocence in respect to the facts he was contested for).<sup>13</sup>

<sup>11</sup> ECHR, Torreggiani and others vs. Italy, 08.01.2013.

<sup>12</sup> Art. 1, comma 2, R.D. 18.06.1931, n. 773 (T.U.L.P.S.); artt. 5, 6 R.D. 06.05.1940, n. 635; Certosino, *Mediazione*, 201 et seq. Art. 555, comma 3, c.p.p.; Grillo, ‘Gli spazi operativi della mediazione penale nel procedimento penale davanti al giudice di pace ed al tribunale in composizione monocratica’, in *Giur. mer.*, 2013, 10 et seq.

<sup>13</sup> Montagna, ‘Condizioni di procedibilità’, in Garuti (ed.), ‘Indagini preliminari e udienza preliminare’, in Spangher (directed by), *Trattato di Procedura Penale*, III, Torino, 2009, 120 et seq.; Potetti, ‘Remissione di querela, accettazione, non rifiuto: la soluzione delle Sezioni unite e i problemi pratici che ne conseguono’, in *Cass. Pen.*, 2012, 4043-4052; Cass., Sez. un., 13.07.2011, n. 27610.

Actually, it is possible that the offended individual decides to submit this action, which retracts the previous one, exactly after the carrying out of mediation activity between victim and accused.

Nevertheless, determining a frame of reference for this kind of “ordinary” penal proceeding is required. The affected environment is clearly the one related to offences prosecutable on lawsuit, for which an expression of will by the victim is required for penal investigation purposes,

Crimes, for which the victim can choose whether to activate a penal proceeding or not are, on one side those related to minor cases, on the other side those ones affecting a specific sphere of intimacy of the victim (sexual violence crimes etc...). For these last ones, however, in order to protect the victim from any possible pressure or threat, it is not possible to renounce or revoke the lawsuit.

Therefore, the field regarding remission of lawsuit is restricted only to the first group of crimes. Once proposed (and accepted), remission of lawsuit determines the extinction of the crime and the pronouncement of a provision, which, depending on current stage of the procedure, will result into a dismissal, a non-suit decision or an acquittal.

B) The second tool, foreseen by the reform of 2014, is a “probation” model (*messa alla prova*).<sup>14</sup> In particular, the person accused for minor crimes may ask probation by providing restorative and compensatory damages conducts through specific programs and public utility working activities. Potential dismissal, through probation, opens an unprecedented “window” to mediation. In fact, the Legislator has expressly considered this last one to outline the “treatment program” that has to be attached to the accused request and represents the “core” of this new type of case.

In fact, mediation is counted within those situations which, “when possible”, are included in this program (art. 464-*bis*, comma 4, lett. c),

---

<sup>14</sup> L. 28 aprile 2014, n. 67. Marandola, ‘La messa alla prova dell’imputato adulto: ombre e luci di un nuovo rito speciale per una diversa politica criminale’, in *Dir. Pen. Proc.*, 2014, 674 et seq.; Triggiani (ed.), *La Deflazione Giudiziaria. Messa alla prova degli adulti e proscioglimento per tenuità del fatto*, Torino, 2014.

c.p.p.). As a brief aside, “when possible” implies that probation, within a mediation process is not automatic, although, given that Legislator is always quite reluctant in nominating it, this does not reduce systematic value of the provision, at least as a recognition of mediation norm itself.

This clear stand, although shyly, practically matches with art. 141-ter disp. att. c.p.p. According to the norm, external criminal enforcement offices, in charge of arranging treatment program also based on a social-familiar investigation, transmit indication to the judge on the possibility of carrying out a mediation activity through private or public structures or centers within the territory.

C) Lastly, positive outcome of a mediation activity may be used during proceedings in order to obtain non-punishment for the “particular tenuity of the fact”, *ex art. 131 bis c.p.* This type of pronouncement was foreseen by reform of 2015,<sup>15</sup> in accordance with previously disciplined cases for juvenile rite and proceedings at the justice of the peace. Norms introduced in 2015, unlike the one on probation, do not include specific reference to mediation. Nevertheless, this does not exclude that an out-of-court moment, with possible sending out of the case to appropriate mediation offices, could fit within interstices of the proceeding.<sup>16</sup>

All the above is important especially considering that the law, in order to obtain a non-punishment pronouncement, requires a comparison between victim and accused.<sup>17</sup>

---

<sup>15</sup> D.lgs. 16 marzo 2015, n. 28. Caprioli, ‘Prime considerazioni sul proscioglimento per particolare tenuità del fatto’ ([www.penalecontemporaneo.it](http://www.penalecontemporaneo.it)), 8.07.2015; Mangiaracina, ‘La tenuità del fatto ex art. 131-bis c.p.: vuoti normativi e ricadute applicative’ ([www.penalecontemporaneo.it](http://www.penalecontemporaneo.it)), 28.05.2015; Parlato, ‘Il volto processuale della particolare tenuità del fatto’, in Baccari, La Regina & Mancuso (eds.), *Il Nuovo Volto della Giustizia Penale*, Padova, 2015, p. 225 *et seq.*

<sup>16</sup> Ruggieri, ‘Giudizio penale e «restorative justice»: antinomia o sinergia?’, in Mannozi & Lodigiani (eds.), *Giustizia Riparativa*, p. 83 *et seq.*

<sup>17</sup> Cass., Sez. V, 05.09.2016 n. 36857; Cass., Sez. un., 06.04.2016, n. 13681.

Positive outcome of a mediation procedure, started in the occasion of such a comparison, could support judge's discretionary decision who, according to the law, recognizes the "particular tenuity of the fact" and consequently pronounces, depending on the stage of the proceeding, provision dismissal or acquittal.

2. *Restorative Justice and "processual microsystems": juvenile rite, proceeding at the justice of the peace and execution stage*

There are three main environments, up to this moment, where *restorative justice* offers a wider experimentation and they characterize for being "peripheral" in respect to cognition process towards investigated/accused adults.

In fact, the first lies within juvenile proceeding foreseen for who was a minor when he committed the crime; the second within proceeding in front of the Peace Officer (*giudice di pace*), foreseen for minor crimes, so called "insignificant"; the third within executive stage, that is to say after a final conviction.

A) Juvenile rite can be a fertile ground for *restorative justice* institutes, as its carrying out is affected consistently by educational purposes. The need of pursuing recover and self-empowerment for the young person makes processual outcomes, which do not result "socially stigmatizing" for the young, particularly desirable.

Therefore, these "alternative" terminations of proceeding options respond to a particular attentiveness not really towards the victim, but towards the accused, as the intention is to limit his permanence into penal justice circle.<sup>18</sup>

According to d.P.R. n. 448/1998, which regulates juvenile proceeding, *restorative justice* tools are used mainly during initial phase of the proceeding. A prompt access to mediation, within preliminary investigation is highly recommended. In fact, due to the quick evolution of young subjects, it could be worthwhile to allow them rapidly become conscious of consequences of their crime. Given that mediation proce-

---

<sup>18</sup> Certosino, *Mediazione*, p. 111 *et seq.*



ture still implicates taking on responsibility, on the other hand, this prompt access is at risk of compromising respect for presumption of innocence.

This is the reason why the trend is to enhance as much as possible “confidentiality” regarding the procedure: in fact, mediation office/department communicates procedure’s outcomes to the judge but always without going into details regarding mediation activities that have brought to these results.<sup>19</sup>

That said, within juvenile rite, on one hand it is possible to identify various occasions for a mediation approach between victim and “offender” while, on the other hand, within judicial environment, identify different possible processual outcomes which could make potential positive result of these experiments spendable.

According to what foreseen by art. 9 d.P.R. n. 448/1998, on one side a mediation tentative can take place, for instance, during assessments related to personality of the young person. These assessments were included in order to allow prosecutor and judge to acquire data on resources and social condition of the young in order to verify his level of responsibility and impeachment as well as to evaluate social relevance of the fact.

Within this specific environment, it is possible to activate a mediation pathway: judicial authority can ask mediation department operators to collect information in order to verify this opportunity.

Shall there be options for the young to receive prescriptions, according to art. 20 d.P.R. n. 448/199, other occasions for mediation can show out in site of application of precautionary measures that might also imply a contact between accused and victim, as well as activities tending to reparation of damages.

On opposite side, at a processual level, positive outcome of mediation is recognized through different tools, foreseen by law, which ob-

---

<sup>19</sup> Ruggieri, *Obbligatorietà dell’azione penale e soluzioni alternative nel processo penale minorile*, in Picotti (edited by), *La mediazione nel sistema penale minorile*, Padova, 1998, p. 195; Certosino, *Mediazione*, p. 121.

jective is to accomplish process's "minimal offence" towards the young and to "avoid" that process itself has to take place when superfluous or prejudicial for the young.<sup>20</sup> Among these mechanisms there are about three to mention.

The first is the one disciplined by art. 27 d.P.R. n. 448/1998 that is the declaratory regarding "irrelevance of the fact" which was regarded as a model for already mentioned "particular tenuity of the fact", now foreseen for adults. Mediation or conciliation results might affect jurisdictional evaluation of "irrelevance". Once assessed, "irrelevance" becomes a condition obstructing "admissibility".

The second one is judicial release, according to art. 169 c.p. which allows nonsuit. In fact, a good mediation outcome can be determining in view of such a benefit concession, especially according to evaluation of factors referred to in art. 133 c.p. (in particular, guilty party's criminal capacity) for the purposes of a prognosis on future commission of other crimes.

The third is *probation* (*messa alla prova*), according to art. 28 d.P.R. n. 448/1998. Also considered as a model for the institute then introduced for adults, this tool implies subject's foster care to juvenile services with the intent of carrying out an observation program, treatment and supporting activities helpful in evaluating subject's personality. It is about a social reintegration pathway within which, if it is the case, "conciliation between young subject and offended individual" is recommended. Really, *probation* itself is an occasion as well as a solution of a particular form of *restorative justice*. In case of positive outcome, probation can result into a non suit declaration. This solution is particularly suited to recognize mediation practices' results. However, unfortunately it often happens that the victim shows a "closure" and refusal attitude in respect to mediation, not managing to metabolize what occurred and not satisfying his natural desire of "recognition".

---

<sup>20</sup> Colamussi, Mestitz, 'Messa alla prova', in *Dig. Disc. Pen. Agg. V*, Torino, 2010, p. 559; Certosino, *Mediazione*, p. 142; Bouchard, 'Vittime e colpevoli: c'è spazio per una giustizia riparatrice?', in *Quest. Giust.*, 1995, 887 *et seq.*

After all, for what concerns juvenile proceeding, the main goal is rehabilitation of the “reo”.<sup>21</sup>

**B)** Proceeding at the justice of the peace, where proceeding’s different alternative outcomes mainly match processual economy’s needs, is a separate issue.

Considering the “theft” nature of criminal cases, entrusted to the judge of the peace’s cognition, the goal is to reach judicial load deflation. Although beside this goal, it is also possible to catch sight of special-preventive kind purposes aimed at discouraging the subject from committing further similar crimes.<sup>22</sup>

Within proceeding at the justice of the peace, it is also possible to identify opportunities of comparison between victim and “offender” as well as processual outcomes that might result from a mediation activity. According to the first profile, a peculiar “conciliatory spirit”, highlighted by art. 2 d.lgs. n. 274/2000, enlivens the proceeding and represents the common denominator of various institutes.<sup>23</sup> First of all, in this framework it is foreseen a mandatory attempt at conciliation, for those crimes prosecutable on lawsuit. This case implies court hearing delay and possible carrying out of «mediation activities by mediation public or private centers and structures within the territory». Therefore, it is clear that the discussion could be referred to an expert mediator. The norm that regulates these stages, that is art. 29 d.lgs. n. 274/2000, includes a clear textual reference to mediation activity which is usually omitted by the legislator. However, an effective mediation activity can be influenced by different factors. In particular, on one side, the carrying out of conciliation attempt is always very connected

---

<sup>21</sup> Colamussi, Mestitz, *Messa alla prova*, p. 558; Renzetti, ‘La mediazione nel microsistema penale minorile’, in *Riv. Dir. Proc.*, 2014, 656; Certosino, *Mediazione*, p. 151.

<sup>22</sup> Ciavola, *Il Contributo della Giustizia Consensuale e Riparativa*, p. 326.

<sup>23</sup> Picotti, ‘Giudice “di pace” e nuovi strumenti di diritto penale sostanziale per una giustizia conciliativa. Considerazioni introduttive’, in Picotti & Spangher (eds.), *Verso Una Giustizia Penale ‘Conciliativa’? Il volto delineato dalla legge sulla competenza penale del giudice di pace*, Milano, 2002, p. 140.

to the site where public hearing takes place, with consequent compromising of dialog's spontaneity between victim and accused; on the other side, carrying out of this attempt is often "managed" by judicial authority, without involving mediators who are extraneous to the processual activity. Therefore, a normative intervention, able to arrange such activity in a more "protected" site together with a judicial practice preferring the employment of experts in mediation would be advantageous.<sup>24</sup>

Should conciliation tentative fail, all the above would be useful, within proceeding's continuation, in avoiding that collected statements influence the judge, despite the ban.

Under the second profile (regarding mediation activity outcomes), even in the proceeding at the justice of the peace, mediation activity may be of particular relevance to the purposes of the declaratory of "irrelevance of the fact", here defined as "particular tenuity of the fact" *ex art. 34 d.lgs. n. 274/2000*. This possible proceeding outcome, that looks a lot like the one related to juvenile rite inspired the introduction of the "particular tenuity of the fact", now also foreseen for adults, clearly expresses predicted deflation purposes.

Furthermore, as foreseen by art. 35 d.lgs. n. 274/2000, mediation activity can result into case dismissal after proving reparation conducts. In fact, out of court mediation activity can be carried out in order to reach this purpose. As reparation can be considered by the "offender" expression of awareness, related to facts and to one's own responsibility, this kind of case is fully ascribable to the field of mediation.<sup>25</sup>

---

<sup>24</sup> Cesari, *Le Clausole di Irrilevanza del Fatto nel Sistema Processuale Penale*, Torino, 2005, p. 92; Bonini, *Sub art. 29*, in Chiavario & Marzaduri (eds.), *Giudice di Pace e Processo Penale, Commento al d.lg. 28 agosto 2000, n. 274 e alle successive modifiche*, Torino, 2002, pp. 257, 262; Varraso, *Il Procedimento Davanti al Giudice di Pace*, Milano, 2006, p. 82.

<sup>25</sup> Certosino, *Mediazione*, pp. 188, 195; Fidelbo, 'Giudice di pace (dir. proc. pen.)', in *Dig. Disc. Pen., Agg. II*, Torino, 2004, p. 242; Cesari, *Le Clausole di Irrilevanza*, p. 95.

In case of mediation's negative outcome, also within this type of environment there can rise an issue related to "confidentiality" and judge's final decision could be influenced by declaration given by different subjects during mediation failed tentative.

C) Above mentioned "special-preventive" purpose, is the main reason related to the third among the environments here treated, initially referred to as "peripheral".

This specific environment concerns sentence enforcement's stage and it is exactly following final court decision that, so far, conciliation/mediation tools have been mainly employed. At this stage, the main purpose is re-habilitation and re-entry of the "offender", while compensatory or protection perspectives for the offended remain in the background.<sup>26</sup>

Conflict composition is appreciable also after a final judgment; both from victim and community stand points, but above all under a practical profile, where conflict composition detects granting of prison benefits for the "offender".

During execution stage, mediation procedures are carried out fluently by working with opportunities related to rehabilitation programs.

Always at this same stage, according to art. 47, comma 7, ord. penit., the main procedural junction is *probation*.<sup>27</sup> although also other institutes are considered particularly important. For instance, according to art.176 c.p., conditional release is a form of suspended custodial sentence, for which it is required that the accused has held a reforming attitude.<sup>28</sup> Also significant is art. 48 ord. penit., which provides for the

---

<sup>26</sup> Fiorentin, 'Riparazione e mediazione dopo il giudizio nel quadro dell'esecuzione penitenziaria e delle misure alternative alla detenzione', in *Leg. Pen.*, 2004, p. 389; Mannozi, *La Giustizia Senza Spada*, p. 332.

<sup>27</sup> Certosino, *Mediazione*, pp. 243, 247.

<sup>28</sup> Rispoli, 'Liberazione condizionale e finalità rieducative. Limiti ed estensione del concetto del 'sicuro ravvedimento' alla luce di una lettura costituzionalmente orientata delle pene', in *Riv. It.*, 2007, p. 1244.

semi-liberty as an alternative to detention.<sup>29</sup> Moreover, of particular importance is disposition *ex art. 21, comma 4-ter, ord. penit* (introduced by 1. 9 August 2013, n. 94, in order to contrast prison overcrowding), which foresees the opportunity for the convicted of providing, voluntarily and on a free basis, supporting activities to victim's families. Clearly, this option means a previous and fruitful carrying out of a mediation activity.<sup>30</sup>

### Final Considerations

Observing at this regulatory framework, what rises is heterogeneity within the different existing type of cases, which differ one from the other for some highlights related to mediation. However, what comes to notice, above all, is the lack of a general discipline acting as a junction between the different hypotheses. Also according to the Directive, a model that could be adapted to specific procedural environments should be required.<sup>31</sup>

No matter what idea of *restorative justice* is adopted, there are basic issues to face.

Next to already mentioned issue related to procedure's confidentiality, the most urgent matters concern: identification of those crimes for which restorative justice can take place; the role of the offended, especially according to his protection and "satisfaction"; the role of the "of-

---

<sup>29</sup> Mannozi, 'La reintegrazione sociale del condannato tra rieducazione, riparazione ed empatia', in *Dir. Pen. Proc.*, 2012, p. 833 *et seq.*

<sup>30</sup> Agliata, 'Il lavoro carcerario in Italia alla luce dei recenti interventi normativi e del rispetto dei diritti fondamentali a tutela della persona', in *I Diritti dell'Uomo*, 2014, p. 519 *et seq.*; Bernardi, 'Il progetto di ricerca "prison overcrowding and alternatives to detention": contesto e linee programmatiche', in *Riv. It. Dir. Proc. Pen.*, 2014, 1739 *et seq.*; Mannozi, 'Le aperture alla giustizia riparativa nell'ambito delle misure alternative alla detenzione', in *Giur. It.*, 2016, pp. 1530-1535; Mastropasqua, 'La mediazione penale nei procedimenti di sorveglianza: se ci sei batti un colpo!', in *Mediases*, 2008, n. 11, p. 86; Sechi, 'Contrasto al sovraffollamento carcerario e misure alternative alla detenzione: un primo bilancio', 2015, in *Riv. It. Dir. Proc. Pen.*, 2015, 199 *et seq.*

<sup>31</sup> Parlato, in Kilchling & Parlato, *Nuove Prospettive*, p. 4188 *et seq.*

fender”, especially considering presumption of innocence, possible needs related to minors and, during execution phase, to rehabilitation purposes.

Regardless the way mediation wants to be interpreted and beyond “humanistic” approach,<sup>32</sup> finding a balance between these different factors could mean abstracting oneself from a logical approach towards “results” and therefore give up processual economy purposes as well as appeasement between stakeholders.

Mediation success doesn’t necessarily have to coincide with above mentioned planning and the idea that simple comparison between stakeholders can however be a goal to reach should be accepted even if just in order to pour out emotions or to establish new common law of social cohabitation.<sup>33</sup> In this sense, results not strictly related to processes could be useful. But, all that said requires high tolerance of processual system compared to longer and unpredictable length of times, free from “impatience related to judiciary procedure”.<sup>34</sup>

---

<sup>32</sup> Morineau, *L'esprit de la Médiation*, Ramonville Saint-Agne, 1998; Parisi, I Confini della Restorative justice, p. 123 *et seq.*

<sup>33</sup> Giuffrida, ‘Giustizia riparativa e mediazione penale. Un percorso sperimentale fra trattamento e responsabilizzazione del condannato’, in *Aut. Loc. Serv. Soc.*, 2013, 491 *et seq.*

<sup>34</sup> Di Chiara, ‘La premura e la clessidra: i tempi della mediazione penale’, in *Dir. Pen. Proc.*, 2015, 377 *et seq.*

