

Spring 1936

Italian Surveillance Judge

Elio D. Monachesi

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Elio D. Monachesi, Italian Surveillance Judge, 26 *Am. Inst. Crim. L. & Criminology* 811 (1935-1936)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in *Journal of Criminal Law and Criminology* by an authorized editor of Northwestern University School of Law Scholarly Commons.

THE ITALIAN SURVEILLANCE JUDGE

ELIO D. MONACHESI¹

Suggestions have been frequently made in penological literature with reference to the desirability of having courts participate in the execution of sentences imposed upon criminal offenders. The proponents of such ideas believe that the judge ought to participate in the execution of the treatment he prescribes. This participation would give the court an opportunity to see whether its recommendations were bringing about desired modifications in the behavior of the offender. Although it may be argued that the purposes of sentences are varied, there seems to be some agreement that one of the chief purposes of sentences is the reformation of the individual offender. This reformation is supposed to be brought about by subjecting the individual to a prescribed regime. The realization of this regime is usually entrusted to an administrative body separate and distinct from the institution that prescribes the regime. Many people argue that such a division is not only illogical but actually unnecessary. At present the sentencing judge might be thought of as a physician who after examining the patient prescribes certain treatment and then gives to some other person the task of carrying out the treatment he has prescribed. One wonders how many patients would recover if such conditions actually existed in the medical profession. Such procedure would make it impossible for a physician to have knowledge of the effectiveness of his prescriptions and further he would be at a loss to know what prescriptions ought to be discarded as well as the type of reaction the sick individual has demonstrated by reason of certain recommendations. The judicial function in criminal cases is such in nature that even when provisions are made for indeterminate sentences, judges have little knowledge of how well their sentences bring about the desired responses. In fact, if we are to be guided by the results gathered together by such students of the problem as the Gluecks, we are led to conclude that much of what we have regarded as efficient and desirable in our penal system is worthless. In the face of such studies, however,

¹Assistant Professor of Sociology, University of Minnesota; Fellow, Social Science Research Council, 1932-34. Grateful acknowledgment is made to the Social Science Research Council, on whose fellowship the author was able to spend a year in Italy for the purpose of studying the Italian penal system.

judges continue to make the same prescriptions and legislative bodies perpetuate the same system in the handling of offenders.

With the enactment of a new penal code and a new code of criminal procedure in 1930 Italy made possible the participation of the judiciary in the execution of sentences in criminal cases. This has been done by the creation of a *Surveillance Judge*² (*Giudice di Sorveglianza*). This unique official was created in order to make possible the more efficient reformation of the individual offender and to better protect society from individuals who are deemed to be socially dangerous.³ The surveillance judge plays two roles; he is the guardian of society as well as the guardian of the individual offender. He functions as the connecting link between the court on the one hand and the several institutions for the punishment and reformation of criminals on the other hand.

The work of the surveillance judge may be discussed under two headings: his work in the field of execution of imposed sentences, and his work in connection with the execution of measures of security (*misure di sicurezza*).⁴ In regard to the execution of sentences, the surveillance judge has three distinct functions: inspective, deliberative and consultative. Through the exercise of these three functions it might be said that the surveillance judge completely supervises the work connected with the execution of sentences.

I. *Inspective Functions*⁵

The penal code provides that the surveillance judge must visit the penal establishments of his district at least once in every two months. These visits are for the purpose of ascertaining whether the regime of the institutions is conducted in accordance with the law, and the judge must make reports of these visits to the Ministry of Justice. In the exercise of this function the surveillance judge has an opportunity to observe the effect of the various types of treatment

²*Codice Penale* (Penal code), Article 144, 1931. The new penal code although enacted by royal decree on October 19, 1930, did not go into effect until July 1, 1931. For a general discussion of the new penal code and code of criminal procedure see: Cantor, Nathaniel, "The New Prison Program of Italy," *The Journal of Criminal Law and Criminology*, Vol. 26, July, 1935, pp. 216-227.

³For reasons behind the creation of the *giudice di sorveglianza* see: *Lavori Preparatori del codice penale e del codice di procedura penale*, Tipografia delle Mantellate, Roma 1930. This important work is published in 23 volumes and contains pertinent material on the innovations of the new Italian penal code and code of criminal procedure. Of special interest in volume VII of the *Lavori*. In it is found Minister Rocco's report on the new penal code to the King of Italy.

⁴Penal code, article 144. Code of criminal procedure, articles 585, 634-655.

⁵*Regolamento per gli istituti di prevenzione e di pena*. (Regulations for penal and preventive institutions) article 4.

prescribed for individual offenders, and further, on these visits he has the opportunity to observe the work of the administrative personnel of the establishments. His visits, however, are not limited to one in every two months, but he may make as many visits as he desires. In this way there is created in the Ministry of Justice an official who checks the work of the prison personnel, and who at the same time safeguards the rights and privileges guaranteed to the offender by the criminal code. The latter is of importance because it acts as a means of preventing the growth of abuses. The Italian penal code recognizes the fact that an offender, even though he may be the just recipient of a sentence, still remains a person with some rights. Thus he has the right to receive compensation for his work, he has the right to be housed in reasonably attractive quarters, he has the right to be heard when grievances arise, he has the right to receive visits from his friends and relatives, he has the right to correspond with friends and relatives, etc. It is within the province of the surveillance judge to see that the individual offender gets the rights provided for him by the penal code.

II. *Deliberative Functions*

This function is exercised when, in the course of the execution of a sentence, it becomes necessary to modify or change the treatment prescribed for the offender, or when it becomes necessary to guard against infringements on the rights possessed by the individual offender.

The Italian penal code provides for several types of institutions specialized in their organization for the treatment of the various categories of offenders. Although the sentencing judge orders that the offender must spend his sentence in some specific establishment, this order may be modified during the course of the execution of the sentence. Such modifications in the original sentence may be proposed by the surveillance judge after making a study of the factors involved. Thus, as an example, an individual may be sentenced to an institution for habitual drunkards or drug addicts, and if after a certain period the individual demonstrates that he can get along without such stimulants, he can be moved to another type of establishment at the proposal of the surveillance judge.

Article 29 of the *Regolamento per gli istituti di prevenzione e di pena* provides that offenders between the ages of eighteen and twenty-five who have not previously served a sentence must be assigned to special sections of adult establishments. When in the course of the

execution of sentence juveniles reach the age of eighteen, the surveillance judge at the proposal of the disciplinary committee of the institution may transfer such juveniles to the special section reserved for individuals between the ages of eighteen and twenty-five in adult institutions.⁶ This transfer, however, can only be made if the individual has given assurance by his conduct that he is worthy of such consideration, and it is limited to individuals who still have three or more years of their sentences unexpired.

The *Regolamento* provides that as soon as each individual offender is admitted to an establishment he be isolated in what is known as an observation cell for a period not to exceed one month. During this period of isolation he is to be visited by the directing personnel of the establishment (warden or director, physician and chaplain). At the end of the month, if the director of the establishment does not believe that the individual will adapt to congregate life, he refers him to the surveillance judge who then makes the final decision as to what disposition is desirable in such a case. The judge may dispose of the case in the following manner: first, he may grant the offender an additional period of observation, this period, however may not exceed three months; second, he may order that the individual be allowed to take part in the life of the establishment for a probationary period; third, he may order that the offender be transferred to an institution for rebellious offenders or to an institution for the care of mental and physical defectives; and finally, he may simply act contrary to the opinion of the director of the establishment and order that the individual be admitted to the common life of the institution.

Another important phase of this work of the surveillance judge is that connected with the transfer of offenders to special institutions whose function it is to gradually ease the offender back into society. The Italian penal code provides for institutions whose purpose it is to give the offender an opportunity to behave in an atmosphere that progressively approaches normal social life. These establishments are known as institutions of social re-adaptation. When an offender has been given a sentence which does not exceed five years in length and when no provision has been made for his subjugation to detentive measures of security at the expiration of that sentence, he may be admitted to one of these special institutions. This transfer is limited, however, to individuals who have served one-third of the original sentence. During this period the offender must have been classified

⁶Individuals thought unworthy of such consideration are transferred to the ordinary sections of adult institutions.

by the prison administration as "good." An order for such a transfer must be made by the surveillance judge after having been proposed by the director and disciplinary committee of the institution. If, after the transfer has been made, the individual proves unresponsive to the new regime, the surveillance judge may revoke the privilege granted and order the return of the offender to his former institution.

Article 148 of the penal code provides that if during the execution of a sentence the individual offender becomes mentally ill so as to impede the execution of the sentence, the surveillance judge may suspend the sentence and order the transfer of the offender to a hospital for the criminally insane, or to an establishment of cure and custody. The prerogative of the surveillance judge in this matter is limited by the fact that such transfer must be approved by the Ministry of Justice.

The admission of offenders to work in penal agricultural colonies constitutes another important phase of the surveillance judge's work. One interesting aspect of the new Italian penal code is the importance it attaches to the reformatory effect of work in the open country. Italy has many penal agricultural colonies, and the nature of the work provided in these colonies is such in character as to warrant careful consideration of offenders who are to be allowed to participate in such activity. Only those offenders who give assurance of being adapted to the comparative freedom of agricultural labor are admitted to these colonies. The directors of the several establishments send to the surveillance judge a list of those offenders who in the opinion of the administrative officials of these establishments give promise of adaptability to work in the open. This list also includes the type of work that the directors think the offender suitable for. After a study of such lists the surveillance judge submits to the Ministry of Justice his recommendations and an order for the transfer of promising offenders is issued.

The most important deliberative function performed by the surveillance judge is in connection with the conditional release of offenders. When the provisions of Article 176 of the penal code are met, the offender is allowed to present a request to the director of the establishment for conditional release. The director must then submit such request to the surveillance judge accompanied by a record of the conduct of the individual while an inmate of the institution. To this request is attached the written opinion of the disciplinary committee in regard to the feasibility of granting such a request. In the request the offender must state the locality in which

he expects to live and with whom he expects to establish residence when released. As soon as the request has been studied by the surveillance judge he initiates an investigation, the purpose of which is to scrutinize the possibilities conducive to a favorable adjustment on the part of the offender if the request is granted. Upon the completion of this investigation the surveillance judge transmits to the Ministry of Justice the request and his approval of such request. The Ministry of Justice then orders the conditional release of the offender.

Article 145 of the penal code provides that the offender shall be paid for the work he does while serving his sentence. The nature of the remuneration for the various tasks performed is specified in Article 25 of the *Regolamento*. It is a function of the surveillance judge to make certain that the offender gets paid in accordance with the type of task he performs. In this capacity the surveillance judge acts as a court of appeals for the offender and in so doing makes possible the creation of an impression upon the offender that he is being treated with due regard for the rights granted to him by the State.

III. *Consultative Functions*

The surveillance judge exercises these functions in connection with the granting of conditional releases and pardons. In both of these cases the penal code provides that the surveillance judge must be consulted. His work in connection with conditional release has already been described, but it might be well to add at this point that when conditional release is granted by the Ministry, the surveillance judge is entrusted with the task of gathering information pertaining to the conduct of the individual liberated. Unfortunately, Italy has no parole personnel and must rely for the supervision of liberated offenders upon police or upon Councils of Patrons.⁷ Since it falls upon the police to supervise liberated offenders, persecution is in many instances the inevitable result, and offenders are detained at the least provocation. The surveillance judge, however, may act as a mitigating influence in this respect, due to the fact that one of his functions is to review the evidence, and if it is warranted he can propose the continuation or revocation of conditional release to the Ministry.

The surveillance judge performs analogous work in the matter

⁷For a brief description of Councils of Patrons, see Cantor, Nathaniel, "Council of Patrons," *The Journal of Criminal Law and Criminology*, Vol. 24, Nov.-Dec., 1933, p. 768.

of granting pardons. Proposals for granting of pardons are made by the director of the establishment to the judge who reviews the evidence and transmits his opinion to the Ministry of Justice.

IV. *Measures of Security*

In addition to the aforementioned three types of functions performed by the surveillance judge, the code gives him a vital role to play in the administration of measures of security (*misure di sicurezza*).⁵ These measures of security have as their primary purpose the protection of society against dangerous criminals. The authors of the new code believed that certain specified classes of offenders could not be reformed by ordinary penal methods. The code sets aside three classes of offenders for special consideration: the habitual criminal, the professional criminal and the "criminal by tendency." The code defines an habitual criminal as an individual who has committed three major offenses. Four major offenses plus the knowledge that the individual lives in part or totally from the proceeds of criminal activities places him in the professional criminal class. One offense is enough to place an individual in the category "criminal by tendency"; the code specifies, however, that before such classification is possible an intensive study of the mental, physical and social background of the individual must have been made. On the basis of such study the judge may then declare the individual a "criminal by tendency."

Sentences imposed upon these three classes of offenders are believed to be insufficient, and at the expiration of their respective sentences they are subjected to measures of security. These measures are either detentive or non-detentive; that is, the individual may be detained in special institutions provided for such purposes or he may be allowed to return to life in a community under supervision.

Measures of security may also be applied to another category of individuals. The code provides that offenders who are mentally defective may also be subjected to these measures. In reality, then, these measures constitute an effective means of preventing further law infractions on the part of those whom the courts believe give little promise of responding favorably to institutional treatment.

The surveillance judge plays an active part in the practical operation of the measures of security. The sentencing judge usually imposes measures of security on the offender, but when no such provision is made the surveillance judge has the power to propose the infliction of such measures. It is assumed that because of his close contact

⁵Penal code, Articles 215 and 236.

with the offender during the period of incarceration he is in position to know how dangerous the offender may be to society at the time of his liberation. The surveillance judge may only propose that measures of security be imposed; the final decision rests with the Ministry of Justice. After the individual has been subjected to the measures of security, the surveillance judge again comes into the process by supervising the actual execution of such measures. The functions of the surveillance judge in this respect are similar to those he performs in connection with the execution of ordinary sentences, and they too are consultative, inspective and deliberative in nature. He may thus be considered as a case supervisor to whom is entrusted the task of keeping a record of the effectiveness of the various types of treatment provided for by the penal and criminal codes.

V. *The Surveillance Judge at Work*

In the performance of his duties the surveillance judge is continuously moving from institution to institution and from place to place observing the progress or lack of progress made by individuals incarcerated or subjected to measures of security. These observations must be transmitted in the form of formal reports to the Ministry of Justice at stated intervals. Intensive study and analysis of these reports should serve in the future as a means of varying treatment on the basis of success or failure experienced with certain types of offenders treated in a specific manner. If such use is made of these records Italy will have taken a decided step forward in building a precise foundation for the science of penology.

Although the office of surveillance judge has been in existence for several years much remains to be done to make this official an efficient and integral part of the administration of criminal justice. Code provisions are one thing and actual practice may be an entirely different thing. There is little doubt that the motives behind the creation of the surveillance judge were inspired by a desire to render more efficient and scientific the efforts directed towards the prevention and treatment of crime, but in order to carry out the letter of the law it is necessary to have adequately trained persons in sufficient numbers in addition to the financial means to make code provisions reality. This unfortunately has not been realized in Italy. Italy is comparatively poor in resources, and this has considerably curtailed the practical realization of many provisions of the penal code. It is no secret that the majority of the surveillance judges are extremely overworked and must necessarily become "rubber stamps" to the administrative personnel of the penal institutions. An examination

of the formal reports made by each surveillance judge to the Ministry of Justice will serve to support this contention. These reports seldom become public, but the *Rivista di Diritto Penitenziario* occasionally devotes some space to some of these reports. Thus, the September-October, 1932, issue of the *Rivista* contains the reports of the surveillance judges of Florence and Genoa.⁹ The data presented in these two reports may help to reveal to some extent the amount of work entrusted to the judges. The surveillance judge of Florence reported that he had under his jurisdiction an average of approximately 650 offenders serving sentences in four penal establishments during the year 1931-32. During this same year one offender was transferred to an establishment for rebellious offenders; two offenders were transferred to institutions for the mentally ill; 108 offenders were recommended for transfer to establishments providing agricultural work; the requests of 21 offenders for conditional release were acted upon; the sentences of 158 mentally ill offenders were suspended. A major portion of his time was consumed by individuals subjected to measures of security. During the year 1931-32 he supervised 210 offenders subjected to measures of security. In addition he acted as supervisor for the police officers in whose care conditionally liberated offenders were placed. In this connection he had to act in the case of 110 alleged violators of conditional release. The Genoa surveillance judge was as overworked as the Florence judge. In connection with his inspective function this judge granted over 300 interviews to offenders in 1931-32. Twice he was called upon to act in a deliberative capacity. Again the major portion of the judge's time was consumed by the execution of measures of security. From July 1, 1931 to June 30, 1932, he supervised 299 offenders subjected to measures of security. These two reports may not be typical but the writer believes that the majority of the surveillance judges are working under conditions similar to those in Genoa and Florence. Case loads are by far too heavy to permit anything but superficial work.¹⁰ The

⁹"Relazioni dei Giudici di Sorveglianza," *Rivista di Diritto Penitenziario*, Vol. III, No. 5, 1932, pp. 1216-1227.

¹⁰Unfortunately the writer was unable to secure statistics on the case load of all the surveillance judges. Data on this subject could have been obtained only by having them compiled from the files of the Ministry of Justice. From conversations with several judges and directors of penal establishments the writer, however, believes that the innovation created by the new code in the person of the surveillance judge was until 1934 purely a "paper" innovation in many respects. It was the writer's privilege to be present at the hearings conducted by several judges in matters pertaining to conditional releases, pardons, transfers, subjection to measures of security, etc., and in most instances the judge had to rely upon the information presented to him by the directors of the institutions for his decisions. It seems probable that the usual two or three days in every two months that the judge spends in the institution is not sufficient to make possible intimate and necessary knowledge of the assets and liabilities of

time at the disposal of the judge is too brief to allow him to make a thorough examination of the response that each individual offender makes to treatment, and consequently he must rely upon the opinion of the directors of the institutions for information on this question. Unless something is done to remedy this situation the surveillance judge amounts to little more than an additional official duplicating the work of the administrative personnel of the several penal institutions. It seems desirable to limit the work of the judge to one or two institutions and to reduce his case load in the field of measures of security to the point where it is possible for him to aid in the realization of the aims of the penal code.

The fact that the surveillance judge must depend upon police officers for reports on conditionally liberated offenders and on individuals placed under non-detentive measures of security further prevents the realization of the aims of the code. Practical considerations have made it impossible for Italy to create specialized parole and probation services. To be sure, it makes use of the Councils of Patrons to aid in the supervision of liberated offenders, but it relies for the most part upon the police to perform this important and delicate task. It has been the experience of America and of other countries that police officers do not have the training nor do they possess the necessary attitude to adequately supervise individuals granted parole. Too often, when police officers are used for this work, parole amounts to little more than a period of ruthless persecution. An already overburdened surveillance judge could do little toward mitigating the disadvantages of such a system. It is probably true that the most critical period in the life of an offender begins at the moment that he is returned to society. If conditions are not made favorable, so that the offender can take part in normal community life under the guidance and supervision of friendly individuals, the reformatory work of the penal institutions can be easily erased. The usual policeman in the role of a friendly counsellor is difficult to imagine. His function is primarily to detect and apprehend criminals. The surveillance judge in order to adequately perform the duties entrusted to him should be provided with a staff of trained social workers whose function it would be to supervise and guide parolees and individuals placed under non-detentive measures of security. Italy has gone a long way in the incorporation of penological innovations in her penal code, but these innovations will be little more than paper innovations unless conditions are created which are favorable to their practical realization.

the offender. This belief was shared by the majority of the directing personnel of approximately 60 penal institutions visited by the writer.