

Evaluating social dangerousness for granting home detention: an empirical analysis of orders from the Varese Court in 2022

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Abstract

This article presents an empirical analysis aimed at examining the impact of dangerousness indicators in the investigative activities conducted by the probation office of the Varese Court when evaluating applications for home detention. Through the examination of orders issued in 2022, the study explores the effect of dangerousness indicators on the assessment of requests for this alternative measure, categorizing and analyzing the issued measures along with the underlying rationales.

The findings highlight that, despite the introduction of criminological criteria aimed at making prognostic judgments more objective and standardized, the probation office occasionally relied on discretionary factors within the examined sample. This analysis contributes to a deeper understanding of the complexities involved in applying legal principles related to social dangerousness and home detention, with significant implications for policies and practices within the criminal justice system.

Keywords: House arrest, public safety, risk assessment, surveillance court, Italy

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Evaluating social dangerousness for granting home detention: an empirical analysis of orders from the Varese Court in 2022

Introduction

Since the enactment of the Rocco Code in 1930, the Italian legal system has operated under the dual-track system, which introduced security measures alongside penalties (Antolisei, 2003; Manzini, 1985; Petralla, Lobascio & Regina, 2011). Central to this system is the concept of social dangerousness, which serves as a prerequisite for the application of security measures against individuals deemed socially dangerous based on a prognostic judgment executed by the judge (Catanesi, 2017; Mantovani & Flora, 2023). Social dangerousness, as a legal concept, finds its definition within the Penal Code, particularly in Article 203, which closely associates it with the risk of recidivism. The assessment of social dangerousness has always been a particularly intricate and risky technical field, to the point of questioning over time the scientific foundations on which it is based, with all the dangers that derive from the subjectivity of judgment (Barbieri, 2017). Its current assessment involves analyzing an individual's personality based on elements outlined in Article 133 of the Criminal Code and formulating a criminal prognosis. Despite the legislative framework, the circumstances listed in Article 133 of the Penal Code have sometimes proven inadequate for prognostic judgments on dangerousness (Merzagora & Travaini, 2015). Many authors have made significant contributions to clarifying and refining the concept of social dangerousness by identifying indicators that allow for greater objectivity and standardization in the assessment process. Out of all, psychiatrist Ugo Fornari (2004) developed indicators classifying them into different categories according to their area of relevance. Specifically, he identified external indicators, individual indicators, family indicators, internal personality indicators (mostly related to psychopathology), and psychic indicators. The institute of home detention for sentences of up to eighteen months, introduced by Law 199/2010, is situated within this broader context of assessing the social dangerousness of convicted individuals. While the law aims to alleviate prison overcrowding and facilitate rehabilitation (Bolzoli & Romano, 2009), it is crucial to carefully consider the social dangerousness of potential beneficiaries, as it directly impacts public safety (Fiorio, 2011). Given that individuals exist within a dynamic and ever-changing context, it's essential to adapt the punishment and its implementation accordingly (Carillo, 2007). Thus, a thorough analysis based on objective and standardized criteria is necessary. This article focuses on an empirical analysis of indicators of dangerousness in the decision-making process of the parole office of the Varese

Court regarding requests for home detention, aiming to illuminate the factors influencing the evaluation of applications for home detention. Through categorization and analysis of these measures and their underlying reasons, the empirical findings presented herein contribute to understanding the complexities of judicial decision-making in social dangerousness assessments, with implications for criminal justice policy and practice.

Method

The empirical investigation aimed to examine the impact of risk indicators in the investigative activity carried out in evaluating applications for home detention sentences. Specifically, the analysis was conducted based on the orders issued by the parole office of the Varese Court during the year 2022. As provided for in Article 1, paragraph 5 of Law 199/2010, the parole office, upon receiving a request for the execution of a home detention sentence under Article 69 bis of Law 354/1975, provides, by order, for the same, after obtaining the opinion of the public prosecutor, expressed within 5 days.

Results

Classification of committed offences

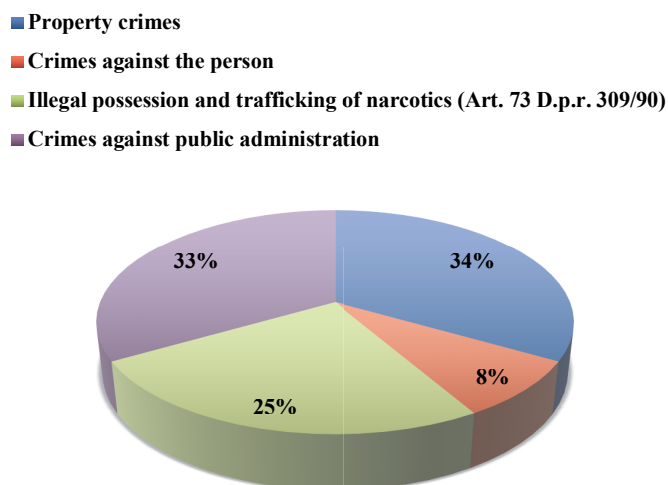
From the analysis of the data collected for the year 2022, a total of 177 orders issued by the Varese Court concerning applications for the execution of home detention sentences were counted. The orders were first categorized by type of content: rejection, acceptance, non-actionable, inadmissibility. From Table 1., it emerges that, numerically, acceptance orders slightly exceeded rejection orders: out of a total of 177 orders, there were 60 rejections and only 72 acceptances. The remaining orders constitute either inadmissibility or non-actionable decisions.

Tab 1. Categorization of the orders

REJECTION	ACCEPTANCE	NON-ACTIONABLE	INADMISSIBILITY	TOTAL
60	72	17	28	177

Subsequently, individual rejection orders were analyzed. In this regard, the orders were classified based on the offense committed by the applicant and the reasons for rejection (Fig 1.). As for the first classification, it

Fig 1. Classification of committed offences



emerged that the main offenses committed fall into the following categories: property crimes; crimes against persons; illegal possession and trafficking of narcotics (Presidential Decree 309/90); crimes against public administration. Of the individuals requesting the measure, 26.6% are repeat offenders.

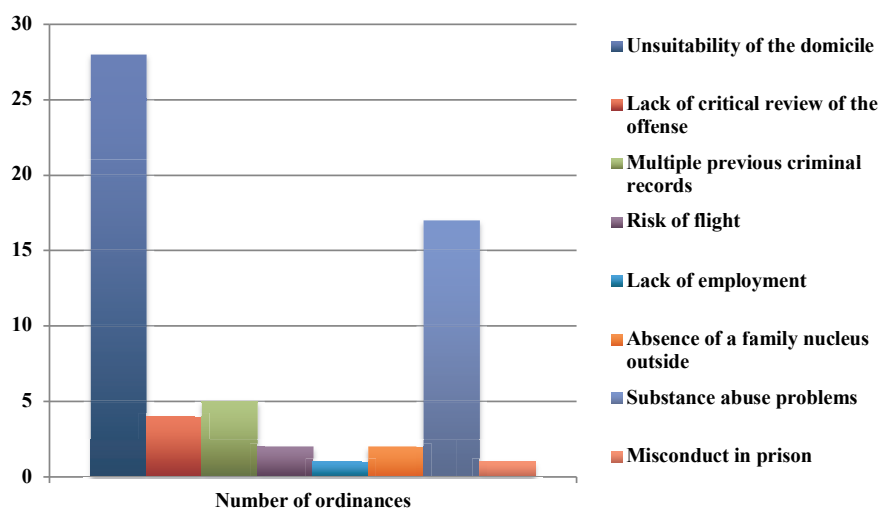
The main reasons for rejection, instead, are as follows:

- Unsuitability of the domicile;
- Lack of critical review of the offense;
- Multiple previous criminal records;
- Risk of flight;
- Lack of employment;

- Absence of a family nucleus outside;
- Substance abuse problems (continuous abuse of narcotics);
- Misconduct in prison.

More specifically, there is a significant number of rejections due to unsuitability of the domicile and continuous substance abuse (Fig 2.). Only sporadic rejections were observed due to lack of critical review of the offense and a few due to absence of a family nucleus outside.

Fig 2. Classification of reasons for rejection



Risk indicators in the reason for rejecting

During the investigative phase, the parole office articulates the assessment of social danger in two stages: analyzing the personality of the subject considering the indicators indicated by Article 133 of the Criminal Code; formulating a criminal prognosis. From the analysis of the rejection orders, the use emerged, entrenched in jurisprudential practice, of indicators of danger more specifically criminological in the evaluative phase of social danger. Therefore, the first phase of the empirical research focused on the mere identification of the main indicators of danger used by the parole office. Specifically, the research drew on the generic rejection formula - in use at the Varese Court - *"specific and motivated reasons that the convicted person may commit other crimes"* to understand if it was possible to deduce, using the aforementioned indicators, a method of assessing danger that was more objective. From the reading of the rejection orders, the multiple application of individual, external, and family indicators was noted, sometimes separately, sometimes (in most cases) together.

The unsuitability of the domicile

One of the main reasons for rejection, namely the unsuitability of the domicile, effectively amounts to a mere application of external indicators, linked to the offender's family and social context. Moreover, the absence of a suitable housing solution has been observed in cases where the family context was entirely inadequate.

The absence/inadequacy of the family nucleus

Similar evaluations have been made in analogous cases, where the characteristics of the family environment and the social context have been grounds for rejection due to lack of a suitable housing solution. In most cases, indeed, the detainee has applied for the execution of the sentence at a domicile located within their social context, and thus, in some cases, where the victim of the crime is present, and in others, where the crime was committed. Furthermore, the existence of a criminal social context is, in fact, a principal and objective indicator of social danger. From the reading of rejection orders, this element has repeatedly been a reason for rejection, as it is an objective indicator of danger. The characteristics of the family nucleus and the social context of belonging are among the most used external indicators, in practice, to concretely assess the risk of committing further crimes.

The lack of employment

During the empirical research, it emerged that the lack of employment, especially when coupled with emotional deprivation and thus, the absence of a reference family nucleus, constituted an objective element of presumed social danger.

Drug addiction

In other circumstances, especially in cases of drug trafficking or possession (offenses covered by Presidential Decree 309/90), one of the main indicators of danger used has been identified in the inadequacy of services, within the territory (in the residential area), for assistance and therapeutic support. In the case of individuals with con-

firmed substance or alcohol addiction, the absence of a network of support, therapeutic monitoring at home has been objectively established: an indicator not suitable for preventing the risk of reoffending. Indeed, the therapeutic treatment path initiated in prison would be circumvented with the return home, considering, moreover, the evident vulnerability of such individuals who require therapeutic support to address addiction-related issues and prevent the risk of relapse.

Failure to critically review the offense

Indeed, there are rejection orders for "poor critical review" of the offense, reproached by the individual during observations and criminological interviews. The failure to critically review the offense, therefore, presupposes a criminological observation and, for this reason, although it finds no confirmation in the danger indicators formulated by Fornari (2004), it complements them. Furthermore, in justifying the rejection, the absence of a critical review is put forward by the parole office considering the offender's behaviors during incarceration and considering the observations made by experts. Furthermore, the requested measure (serving the sentence at home), aimed more at deflating rather than rehabilitating, does not seem suitable for promoting the convict's reintegration process.

The risk of flight

The risk of flight is indeed one of the elements underlying the discretionary assessment of the parole office in the application of the alternative measure of serving the sentence at home. Moreover, in another case, it was the evaluation of the risk of flight that led the magistrate to reject the request, given *"the existence of deep and entrenched ties to the country of origin"*.

Multiple prior criminal records

Another reason for rejection lies in the subject's marked propensity to commit crimes, deduced from their significant "criminal record". Indeed, although numerically fewer, rejections are determined by multiple prior criminal records.

The examination of pending charges, moreover, represents a clear indicator of objective social danger, allowing the parole office to proceed, applying a standardized methodology, in the evaluative process.

Misconduct in prison

The last reason for rejection is found in the irregularity of the individual's conduct during the period of incarceration. The parole office, in fact, during the investigative phase, attributes particular relevance to the inmate's behavior within the prison walls, excluding the applicability of serving the remaining sentence at home when the individual has exhibited improper and irregular behavior. Moreover, among the individual danger indicators coined by Fornari (2004), attention is given to the relational and affective interaction of the individual within both external and prison environments, and thus, to some extent, to the conduct exhibited within the prison. From readings of re-

1 Ref. Order no. 1644/2022

jection orders motivated in this regard, it has indeed emerged that the Magistrate, in evaluating the behavior of the inmate, also takes into consideration adherence to treatment programs and the individual's interaction with the staff and other inmates, assessing affective and relational interaction. Emotional isolation, in fact, constitutes one of the main indicators of social danger.

Discussion

The examination of individual rejection orders has illuminated the parole office's reliance on criminological indicators, alongside legal ones, to assess social dangerousness, which offer a more objective perspective. An illustrative case is the determination of domicile unsuitability, underlining the significance of social and familial context as the predominant criminological indicator of social dangerousness. Additionally, the lack of employment signals potential social danger, reflecting contemporary societal challenges and the nexus between crime and social structures, which significantly penalizes foreigners. Moreover, the inability to continue treatment outside of prison due to a lack of support networks is another significant marker of dangerousness, extensively considered by the parole office. However, analysis suggests that the application of risk indicators does not invariably result in purely objective evaluations. In instances where the offense is not critically reviewed, Fornari's (2004) indicators complement a more subjective evaluation during the investigatory phase. While these indicators may assist in identifying the risk of recidivism, the judgment remains somewhat variable. Another important point concerns the absence of rejection orders based on internal indicators, namely, according to Fornari (2004), internal personality, and psychological factors. This could be due to either the actual lack of such criteria in the sample of applicants for home detention or a neglect of the importance of thorough clinical assessment. It is well established that severe personality disorders, particularly those in cluster B, and personality traits such as psychopathy are associated with a high risk of general recidivism (Moretti et al., 2024). Therefore, it would be advisable to pay attention to clinical criteria (i.e., internal personality, psychological) as much as legal-criminological ones (i.e., external, individual, familial). In conclusion, the impact of risk indicators on the evaluative phase by the parole office is evident. Empirical findings indicate that in many cases, these indicators have facilitated the identification of relapse risk in standardized situations, but in certain contexts, their application supplements a broader subjective evaluation. The research focused on orders related to requests for home sentence execution, allowing an assessment of dangerousness concerning individuals serving short sentences. Out of 177 orders issued in 2022, rejections were almost equal to acceptances, indicating that even minor convictions do not presume the absence of social dangerousness.

Conclusion

The concept of social dangerousness, as defined in Article 203 of the Penal Code, remains ambiguous in its practical application. The prognostic judgment, largely probabilistic, relies on external, legal, and often discretionary factors. To streamline and objectify this judgment, criminological indicators have been introduced. However, it's been noted that the evaluation by the parole office during the investigative phase may not always be entirely objective or standardized. Certainly, criminological indicators play a crucial role in the assessment of dangerousness, alongside legal factors identified by the legislature, especially concerning alternative measures like home detention, introduced with deflationary intent. The case study focused on orders issued under Article 1 of Law 199/2010, demonstrating how the assessment of dangerousness impacts the long-standing issue of the relationship between crime and detention. This institute was introduced to address prison overcrowding, yet empirical analysis reveals that this problem persists despite the introduction of deflationary and non-rehabilitative measures. Interestingly, the number of rejections equals the number of acceptances in the analyzed sample, highlighting a significant issue considering the deflationary purposes of the alternative measure. Furthermore, the increasing prison population despite a decrease in the demographic population underscores the challenge of assessing dangerousness. While this assessment remains subjective, the research suggests that the parole office tends to use criminological indicators to standardize the evaluation. In conclusion, while the institute introduced by Law 199/2010 aimed at deflationary purposes, it hasn't effectively addressed prison overcrowding due to the subjective nature of assessing social dangerousness. Achieving desired results would require a legal system anchored in objective indicators, which is not the case in our current system. Nonetheless, empirical analysis indicates a trend towards standardization in the assessment process by the parole office. Given the limited sample size, confined to the analysis of a single year, a single parole office, and within a specific geographical area, the study aims to serve as a starting point for future research on this topic.

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References

- Antolisei, F. (2003). *Diritto penale. Parte speciale I*. Giuffrè.
- Barbieri, C. (2017). La valutazione tecnica della pericolosità sociale in rapporto al mutato assetto normativo. *Rassegna italiana di criminologia*, (3), 167-172.
- Bolzoli, C., & Romano, C. A. (2009). Attualità ed opportunità delle alternative al carcere fra diffidenze e risorse del territorio. *Rassegna italiana di criminologia*, (2), 213-237.
- Carillo, B. F. (2007). Riflessioni sul problema dell'efficacia della pena fra il principio di individualizzazione e rispetto della dignità dell'uomo. *Rassegna italiana di criminologia*, (3), 77-95.
- Catanesi, R. (2017). La responsabilità professionale dello psichiatra ai tempi delle REMS. *Rassegna italiana di criminologia*, (3), 182-192.
- Fiorio, C. (2011). La nuova disciplina della detenzione domiciliare "annuale": una risposta efficace al sovraffollamento carcerario?, *Studium iuris*, 9, 917.
- Fornari, U. (2004). *Trattato di Psichiatria Forense*. III edizione. Utet.
- Mantovani, F. & Flora, G. (2023). *Diritto penale. Parte generale*, 12a edizione. Cedam.
- Manzini, V. (1985). *Trattato di diritto penale*, III, 5a aggiornata da P. Nuvolone e G. D. Pisapia.
- Merzagora, I., & Travaini, G. (2015). *Il mestiere del criminologo. Il colloquio e la perizia criminologica*. Franco Angeli.
- Moretti, G., Flutti, E., Colanino, M., Ferlito, D., Amoresano, L., & Travaini, G. (2024). Recidivism risk in male adult sex offenders with psychopathic traits assessed by PCL-R: A systematic review. *Medicine, Science and the Law*, 64(1), 41-51.
- Petralla, E. V., Lobascio, D., & Regina, S. F. (2011). L'evoluzione del sistema dell'esecuzione penale esterna: nuovi approcci di gestione—nuove prospettive di studio. *Rassegna Italiana di Criminologia*, (3), 30-48.