prison surroundings

guidelines on the relevant regulations

Preface

These guidelines are intended to be a tool for those who live and work in prison, in order to help prisoners understand the rules governing the prison system.

Sometimes the period of incarceration might be reduced or the restriction of the personal freedom be terminated, if only there were more information on possible actions to be taken inside and outside of the prison.

Persons subject to restrictions on their freedom, and all the more so foreign nationals in these conditions, face the problem of understing the world around them; they don't often manage to enjoy the rights recognized by the legislation.

They are not aware of study, training and work opportunities.
The restriction of the personal freedom should not translate into other rights being denied, inlcuding the right to information.
Please bear in mind that imprisonment should always be human and the respect of human dignity be guaranteed, without discriminations of nationality, race, sex, economic and social conditions, political and religious beliefs.

These guidelines will be available in 6 languages: Italian, Albanian, Arab, French, English and Spanish

Desi Bruno

guarantor of the persons deprived of their personal freedom

European Prison Rules

Approved by the Committee of Ministers of the 46 European Member States on 11th January 2006

Fundamental Principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.
2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them to custody.
3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.
4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.
5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.
6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.
7. Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged.
8. Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.
9. All prisons shall be subject to regular government inspection and independent monitoring.

Constitution of the Italian Republic

Main articles of reference

Art. 2
The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled.

Art. 3
All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.
It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisationof the country.

Art. 24
Anyone may bring cases before a court of law in order to protect their rights under civil and administrative law.
Defence is an inviolable right at every stage and instance of legal proceedings. The poor are entitled by law to proper means for action or defence in all courts.
The law shall define the conditions and forms of reparation in case of judicial errors.

Art. 25
No case may be removed from the court seized with it as established by law. No punishment may be inflicted except by virtue of a law in force at the time the offence was committed. No restriction may be placed on a person's liberty save for as provided by law.

Art. 26
Extradition of a foreign national may be granted only if expressly envisaged by international conventions.
In any case, extradition may not be permitted for political offences.

Art. 27
Criminal responsibility is personal. A defendant shall be considered not guilty until a final sentence has been passed.
Punishments may not be inhuman and shall aim at re-educating the convict. Death penalty is prohibited.

Art. 111
Jurisdiction is implemented through due process regulated by law. All court trials are conducted with adversary proceedings and the parties are entitled to equal conditions before an impartial judge in third party position.
The law provides for the reasonable duration of trials.
In criminal law trials, the law provides that the alleged offender shall be promptly informed confidentially of the nature and reasons for the charges that are brought and shall have adequate time and conditions to prepare adefence. The defendant shall have the right to cross-examine or to have cross-examined before a judge the persons making accusations and to summon and examine persons for the defence in the same conditions as the prosecution, as well as the right to produce all other evidence in favour ofthe defence. The defendant is entitled

to the assistance of an interpreter in the case that he or she does not speak or understand the language in which the court proceedings are conducted.
In criminal law proceedings, the formation of evidence is based on the principle of adversary hearings. The guilt of the defendant cannot be established on the basis of statements by persons who, out of their own free choice, have always voluntarily avoided undergoing cross-examination by the defendant or the defence counsel.
The law regulates the cases in which the formation of evidence does not occur in an adversary proceeding with the consent of the defendant or owing to reasons of ascertained objective impossibility or proven illicit conduct.
All judicial decisions shall include a statement of reasons.
Appeals to the Court of Cassation in cases of violations of the law are always allowed against sentences and against measures affecting personal freedom pronounced by ordinary and special courts. This rule can only be waived in cases of sentences by military courts in time of war.
Appeals to the Court of Cassation against decisions of the Council of State and the Court of Accounts are permitted only for reasons of jurisdiction.

Convention for the Protection of Human Rights and Fundamental Freedoms

Signed in Rome on the 4th of November 1950 - Fundamental articles of reference

Article 2 - Right to life
1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
a. in defence of any person from unlawful violence;
b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
c. in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 - Prohibition of torture
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 - Prohibition of slavery and forced labour
1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional discharge from such detention;
b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
d. any work or service which forms part of normal civic obligations.
Article 5 - Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
a. the lawful detention of a person after conviction by a competent court;
b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 6 - Right to a fair trial
1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 - No punishment without law
1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 - Right to respect for private and family life
1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 - Freedom of thought, conscience and religion
1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 - Freedom of expression
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 - Freedom of assembly and association
1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12 - Right to marry
Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13 - Right to an effective remedy
Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 - Prohibition of discrimination
The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 17 - Prohibition of abuse of rights Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

NOTE
The following legislative updates:
- Law No. 62 of 21 April 2011 "Amendments to the criminal code and to Law No. 354 of 26 July 1975, and other provisions for the protection of the relationship between women convicts and their underage children.
- Law No. 199 of 26 November 2010, "Provisions on house arrest for serving sentences under 18 months" – as amended by Decree Law No. 211 of 22 December 2011, which was given force of Law, amendments included, with Law No. 9 of 17 February 2012.
- Legislative Decree No. 161 of 7 September "Provisions to conform the national law to the Framework Decision 2008/909/GAI on the implementation of the mutual recognition principle in criminal sentences imposing sentences of imprisonment or deprivation of liberty, in order to enforce such principle within the European Union".
- Decree Law No. 89 of 23 June 2011 amended and converted into Law No. 129 of 2 August 2011 establishing urgent provisions to fully implement Directive 2004/38/EC on the free circulation of EU citizens and to give force of law to Directive 2008/115/EC on common standards and procedures for returning illegally staying third-country nationals.
- Decree Law No. 211 of 22 December 2011 amended and converted into Law No. 9 of 17 February 2012.
- Law No. 172 of 1 October 2012 – Ratification and enforcement of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, signed in Lanzarote on the 25 October 2007 and of the laws for entry into force in the national law.
- Presidential Decree No. 136 of 5 June 2012 amending Presidential Decree 230/2000, on the Chart of the rights and obligations of prisoners and inmates.
Abbreviations
The following abbreviations will be found in the text:
- cc = criminal code
- ccp = code of criminal procedure
- op = Law No. 354 of 26 July 1975 on the penal system

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Reasons for being in prison

Reasons for being in prison may include:

1) Having been arrested in flagrante delicto[1]: when you are caught in the act of committing a crime or chased by the police immediately after committing a crime or caught with objects or traces suggesting a crime was just committed;
   NOTE In the case of summary judgement you will be put in prison provided the public prosecutor ordered with justifiable warrant that the arrested be transferred to the local prison of the place where the arrest took place (or, should this be of major detriment to the ongoing investigation, to another prison close-by) in case of lack, unavailability or unsuitability of the facilities at the disposal of the officers who performed the arrest or where handed the arrested in custody, or should any other urgent needs or reasons arise [2] (article 558 paragraph 4bis ccp).

2) Being stopped for being seriously suspected of having committed a crime[3], when the police think that the accused has committed a crime and that, given the impossibility to identify the suspect, there is a risk of flight

3) Arrested on court orders: when the judge believes that the accused committed a crime and that, if released, the suspect might commit other crimes, contaminate the evidence or flee;

4) Arrested to serve a final sentence and detention in prison: when the accused was being prosecuted in a criminal trial which ended with a final sentence.

1 The text of Article 380 ccp - mandatory arrest in flagrante delicto and Article 381 ccp can be found in the Appendix at the end of chapter I.
2 Decree Law No. 211 of 22 December 2011, amended and converted into Law No. 9 on 17 February 2012 added commas 4 bis and 4ter to article 558ccp.
3 The text of Article 380 ccp - custody of a suspect of a crime can be found in the Appendix at the end of chapter I.

Arrest validation hearing - Art. 391 cpp

The arrest validation hearing is scheduled within 96 hours following the arrest or custody. At the hearing the accused is questioned by the Judge and the Preliminary Hearing Judge at the mandatory presence of an attorney.

After questioning the suspect and hearing the public prosecutor (who might not appear) and the defence lawyer, the judge decides whether the arrest or custody were carried out lawfully, if so he confirms the arrest or custody, otherwise he does not validate it.

Then, if the judge validated the arrest or custody, the prosecutor conducting the investigation (the public prosecutor) can ask the judge to order that the suspect be held in prison or released on conditional liberty.
Such request depends on the estimated risk that the suspect, while waiting for the trial, might:

a) contaminate evidence;
b) flee;
c) commit other crimes.

Considering the request made by the public prosecutor and after hearing the observations and requests of the defence, the judge decides whether to remand the suspect in custody pending trial (so called provisional detention), mitigate the custody (house arrest) or release the suspect on certain conditions (obligation to appear before the criminal police office to sign, obligation to have a certain residence, prohibition of expatriation).

Viceversa the immediate release of the person arrested or in custody has to be ordered:

a) if the arrest or custody were unlawful;
b) the term for holding the hearing was not met;
c) the judge believes that the evidence against the suspect does not prove him guilty.

Similarly, after the arrest has been confirmed, the accused cannot be hold in prison if he can benefit from probation measures (that is if the judge believes that the accused will not be sentenced to more than two years of time and that he will not commit other crimes).
The following subjects cannot be held in prison, unless under special circumstances for the safety of the community:

a) pregnant women or mothers living with children under three years of age;
b) persons over-seventy;
c) persons suffering from a disease which makes them incompatible withdetention or persons living with full-blown Aids;
d) fathers of children under three years of age whose mother is dead orincapable of taking care of them.

If the Preliminary Hearing Judge, after validating the arrest/custody, decides that the accused shall stay in prison, the Judge shall issue a warrant for detention in jail pending trial and, within 10 days following notification, an opposition can be lodged against the judgement before the Court of Review, sitting as a united bench of 3 judges, requiring a review of the warrant ordering the coercive measure (article 309 ccp.). If no decision is taken, regarding the appeal for a review, within 10 days from the transmission of the acts to the court, the warrant ordering the arrest looses effect.

Arrest consequent to warrant for preventive custody

What written above concerning the representation by hired counsel or, if unavailable, by one appointed by the court also applies to this case.
The law establishes that an interrogation be scheduled (so-called custodial interrogation) within five days from the arrest; viceversa, should the term be exceeded, the accused shall be released.
The accused is given a copy of the warrant with which the judge orders the arrest (warrant of arrest).
The warrant reports the following information:

1) the judge issuing the warrant;
2) proceeding number;
3) personal information of the person arrested;
4) the facts being investigated;
5) indicative evidence against the accused and and respective sources;
6) reasons supporting the judge's decision to hold the accused in custody;
7) the judge's order dated and signed;

During custodial interrogation and with an attorney present the accused can present its case or, similarly to what happens during examination at the sentence hearing, avail himself of the right to remain silent.
The interrogation aims at verifying that the circumstances, which led to the arrest, hold.
The judge can also decide whether the accused shall be set free, held in house

arrest or released on parole.
In any case, the criminal proceedings follow their course and, when preliminary investigations are concluded, if the Public Prosecutor believes there is enough evidence to make the case hold in court he asks that the accused be tried.
Even in the hypothesis of release it is therefore important that the accused keeps in touch with his lawyer.

Legislative Decree no. 271 of 28 July 1989 -concerning enforcement, coordination and transitional procedures of the Code of Criminal Procedure- in Chapter VII (provisions concerning pre-trial detainment), article 94 (admission to prison) establishes that the public officer assigned to a prison cannot receive or hold anyone without an order of the court or a notice of admission from a Judicial Police Officer.

Under paragraph 1bis a copy of the order of detention shall be annexed in the personal file of the prisoner and the Prison Manager or a prison officer appointed by him, with an interpreter if needed, shall make sure that the prisoner is fully aware of the judgement ordering his incarceration and, if necessary, explain the content of the order to him.

Appointment of a hired counsel

Any person arrested, in custody, receiving a punishment enforcement order or a warrant for pre-trial detainment can hire a private lawyer both at the moment of the arrest and while in prison. Any prisoner can hire a maximum of two private lawyers. In Italy you cannot represent yourself before the court, therefore until appointment of a hired counsel the accused is compulsorily represented by a court-appointed defence lawyer.

When a hired counsel is appointed the court-appointed defence lawyer is automatically removed from the proceedings. The prison is entitled to see his lawyer immediately, unless upon the arrest the court orders a time restriction of no longer than 5 days. Both the hired counsel and the courtappointed defence lawyer shall be paid, unless the accused qualifies for legal aid, if in economic distress.
When arrested in flagrante delicto, held in custody because accused of committing a crime or when a pre-trial detainment order is being enforced, the person deprived of his freedom is immediately asked to indicate the name of his lawyer, viceversa the court appoints a defence lawyer, whose name and personal contacts are indicated in the proceedings handed to the accused.

NOTE
Please bear in mind that you can always appoint a hired counsel at any time, thus immediately removing the court-appointed defence lawyer from the proceedings.
In accordance with article 25 of Presidential Decree 230/2000 the registry of lawyers practising in the administrative district shall be displayed in every prison, so that prisoners and inmates can consult it. Judicial Officers are forbidden to influence, directly or indirectly, the choice of the lawyer.

Legal aid

It consists in the possibility of being represented by a lawyer and by a technical consultant, without being charged any defence and consultancy costs. Legal aid is invokable in criminal, civil, administrative, accounting and fiscal proceedings and in non-litigious jurisdiction. When qualifying for legal aid, this is available for all instances and appeals and throughout the proceedings. To qualify for legal aid, the applicant must be considered needy at the moment of application, if this condition persists throughout the proceedings.

If the applicant lives alone, his total income must not exceed 10,628.16 Euros (the income bracket is updated every two years). The total includes all taxable income valid for the calculation of the income tax on individuals (Irpef) earned during the last year, such as employment income, pension, self-employment income, etc.
The total income also includes Irpef exempt incomes (i.e.: military pension, helplessness allowance, etc.), or income with an amount deducted at source as tax or as substitute tax.

If the applicant lives with his family, his income adds up to that of his spouse and other cohabiting family members. Conversely, the sole income of the applicant is considered when he is involved in proceedings against the other family members.
In criminal proceedings the income bracket is increased by 1,032.91 euros er cohabiting family member. In criminal proceedings legal aid is granted to Italian citizens, foreign citizens, also underage, or stateless persons living in Italy. Legal aid cannot be granted, in criminal proceedings, to those accused or convicted for tax evasion crimes and to those represented by more than one lawyer.
Only the person directly concerned can apply for legal aid, under penalty of inadmissibility, and the signature shall be certified by the officer receiving the

application or by other public officer.

The application can be filed by the person concerned or by his lawyer, also with registered letter, before or during the trial; however it will be effective from the date of the application forwarded through the prison management.

NOTE For applicants incarcerated or interned in a prison under arrest or on house arrest or held in a care facility, article 123 of the ccp applies[4]. The prison manager or prison officer who received the application file or send it, by registered letter, to the office of the judge who is dealing with the proceedings.

NOTE Foreign citizens must also present a copy of an ID and a certification from consulate authorities attesting their income abroad. If the consulate authorities do not reply to the request of such certification a self-certification will do.

The right to an interpreter for foreign prisoners

Prisoners who do not master the Italian language have the right to be assisted for free by an interpreter to understand the charges against them and follow the proceedings in which they are involved.

Similarly, those who do not understand the Italian language have the right to a translation of the proceedings in the language of their knowledge or, should it not be available, in English, French and Spanish, in order to guarantee that the rights of the defence are fully enjoyed.

NOTE As reminded earlier, paragraph 1bis of article 94 of Legislative Decree no. 271 of 28 July 1989, on coordination and transition rules of the code of 4 The text of Article 123 ccp declarations and requests of incarcerated or interned persons can be found in the appendix at the end of Chapter I. criminal procedure in Chapter VII concerning the provisions on protective measures establishes that a copy of the arrest warrant shall be added to the prisoner's file and that the prison manager, or officer appointed by the prison manager, shall verify, assisted by an interpreter, that the prisoner concerned has a full knowledge of the warrant ordering his arrest and, if necessary, explain the contents to him.

4 The text of art. 123 ccp declarations and requests of incarcerated or intened person can be found in the appendix at the endo of chapter 1

The court of review

The order for detention pending trial issued by the examining judge (Gip) and the arrest validation order can be appealed within 10 days from the communication of such order before a Court of three judges, the Court's indictment division.

This court shall review the proceedings based on which the order limiting the personal freedom was issued and it examines and considers whether the conditions exist for this person to stay in prison or whether he should be released (article 309 ccp).

The Court's indictment division can be addressed also to appeal all of a judge's orders dismissing prisoner's applications for revocation or substitution of sentence of imprisonment (article 310 ccp).

Release - choice of address

When a person is released it must choose an address, meaning that it must indicate the place where all documents concerning the trial shall be sent to.
After choosing the adress, all documents concerning the proceedings shall be forwarded to the address indicated; it is therefore important that the person involved actually live there or, at least, that there be someone who can receive the documents.
As all documents and communications are sent to that address it is possible that, should the court officers not find anyone at the door, the proceedings take place without the person actually knowing it, the proceedings being however valid.
It is possible, and sometimes preferrable, that the person involved decide to receive the documents and communications concerning the proceedings at his lawyer's (so called choice of address by the defence); in this case the person shall keep in touch with his lawyer.

The trial

After the investigation is concluded, if the public prosecutor believes that there

is enough evidence to support the charges he shall demand to start the trial.
For some crimes there is first a hearing (so-called preliminary hearing) before the preliminary judge. The purpose of the preliminary hearing is to establish, during crossexamination between the parties (public prosecutor and defence), whether there is enough evidence to bring the case to court. It is here that the accused shall, if he wants, ask for a plea-bargain or for shortened proceedings, thus deciding to carry out the proceedings during the preliminary hearing.

If the preliminary judge (GUP) believes that the evidence presented by the prosecutor is enough he shall issue an order to start the trial indicating the date, time and Court where the trial shall take place, or he shall issue and order to dismiss the proceedings (so called indictment of acquittal).

For other crimes, on the contrary, there is no preliminary hearing and the accused is called to appear directly before the Court judge with a subpoena order.
Also in this case before the trial starts, the accused, assisted by his lawyer, can decide whether to chose shortened proceedings or to proceed with a plea-bargain.
It is also possible that the preliminary hearing is skipped because the accused is notified with an immediate judgement order. Indeed, if the public prosecutor and judge believe that the evidence of guilt is clear, they can use the immediate judgement to avoid the preliminary hearing and go directly to trial.
After the notification of the order of immediate judgement it is fundamental to immediately contact your lawyer, as the application for alternative proceedings which can entitle to a reduced sentence shall be filed n**ecessarily within 15 days upon receiving the immediate judgement order**.
Although it is possible for the accused to apply directly, it is always best to consult with the lawyer.

Summary proceedings article 558 ccp

In cases of flagrante delicto the public prosecutor can ask for summary proceedings; the arrested is brought directly before the trial judge to validate the arrest and relative sentence within 48 hours. The validation hearing takes place, in thie case, in court (rather than before the preliminary judge). In case of validation of the arrest the trial starts immediately afterwards. The defence attorney can ask for a continuance to prepare the defence and the trial is postponed by a few days.

It is still possible to proceed with one of the so-called alternative judgements (shortened judgement or "plea-bargain") which entitle to a reduced sentence in case of a guilt verdict.
When the judge does not hold a hearing the criminal police which enforced the arrest shall notify the judge immediately and bring the arrested to the hearing set by the judge within 48 hours from the arrest.

In these cases (paragraph 4bis) the public prosecutor orders that the arrested be held in custody in one of the places indicated in article 284 paragraph 1 of the ccp (at home or in other private house or public care facility or in a protected group home, where available).
Should any one of said places be lacking, unavailable or unsuitable or located outside of the jurisdiction where the arrest took place, or if the arrested represents a danger, the public prosecutor shall order custody in a suitable facility available to the court and police officers who carried out the arrest or who received the arrested in custody.

Should any one of said facilities be lacking, unavailable or unsuitable, or for any other reason or urgent matter, the public prosecutor shall order that the arrested be held in the prison of the place where the arrest was made (or, if it might severely jeopardize the investigation, in another prison close-by).

Under the circumstances foreseen in article 389 ccp (mandatory arrest in flagrante delicto) paragraph 2, letters e-bis) and f), the public prosecutor shall order that the arrested by held in a suitable facility available to the court officer or crime police who have carried out the arrest or who had custody of the arrested. Similarly to what has been written earlier in the text, in case such facilities are lacking, unavailable or unsuitable or in case of any other reasons or urgent matters, the public prosecutor shall order with a motivated warrant that the arrested be held in custody in the prison of the place where the arrest was made (or if it might severely jeopardize the investigation, in another prison nearby).

So-called alternative judgements

In order to speed up proceedings times the legislator, as indicated earlier,introduced and encouraged the use of so-called alternative judgements (more specifically, in our case, shortened proceedings and "plea-bargain").
The suspect or accused can, directly or in the person of his lawyer with special proxy, decide within a certain term (for instance at the preliminary hearing,

when there is one, or before the trial), to avail himself of this alternative form of trial.
The judge cannot deny shortened proceedings, if requested by the accused immediately; in case of a guilty sentence the punishment is reduced by 1/3.
With the shortened proceedings there is no cross-examination and the sentence is issued by the judge based on the deeds, that is to say on the bases of the deeds and facts present in the file of the public prosecutor; this does not exclude the possibility of a non-guilty sentence and the guilty verdict can however be appealed.
The so-called "plea-bargain" (application of a punishment upon request as defined by the criminal code) consists, instead, in an agreement between the parties (public prosecutor and defence) on the interpretation of the facts and severity of the punishment; as for shortened proceedings it entails a reduction of the punishment by 1/3 but it denies the possibility to appeal the sentence; it only admits a recourse before the Court of Cassation.
In case of plea-bargain, the judge shall only verify that the facts presented by the parties are correct and that the punishment bargained is fair, without exploring the matter any further, although reserving the right to reject the agreement if he does not agree on the legal interpretation of the facts or if he does not think the punishment is fair.

The appeal

Guilty sentences can be appealed by submitting an application to the Tria lCourt Registry within the term, also through the prison administration.
The Appeal Judge is the Court of Appeal.
The reasons to appeal a sentence can have to do both with the reasons of the sentence and with an excessive punishment or failure to take mitigating circumstances into account.
Law no. 125/2008 abrogated article 599 paragraph 4 ccp thus eliminating the possibility to have a plea-bargain during this phase of the proceedings by agreeing with the public prosecutor on one or more grounds for appeal, renouncing to other grounds, with a consequent reduced sentence (so called plea-bargain in appeal).

Appeal in Cassation art. 606 and following of ccp

The defendant can appeal in cassation in case of second instance guilt sentences in some cases where the law was violated or where the grounds for the decision is clearly wrong.
The Court of Cassation, located in Rome, judges the legality of the proceedings; it cannot decide on the substance of the sentence being appealed, but only on its regularity.
The defence appealing the sentence shall be registered in the ad-hoc register.

Appeal to the European Court of Human Rights

With the entry into force of theTreaty of Lisbon (1st December 2009) theEuropean Union adheres to the European Convention for the Protection of Human Rights and Fundamental Freedoms.
The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) has established a system of protection of fundamental legal rights based on the European Court of Human Rights (to guarantee, amongst other things, the prohibition of torture - art.3-; the right to liberty and security – art.5-; the right to a fair trial – art.6-).

The European Court is based in Strasbourg and it follows the subsidiarity principle with Member States having to respect and protect effectively the rights and freedoms acknowledged and listed in the Convention with their national legislation.
The citizens of the Member States can address to the Court as individuals, if they believe they were direct victims of one or more violations on the part of one or more Member States.
Before addressing the Court, it is fundamental the appellant has already brought the case before the Court through all the instances available according to the national legislation. Failing this, the appellant shall demonstrate that following the normal course for judicial proceedings would have been ineffective.

The plaintiff, therefore, shall already have a sentence from the Italian Court of First Instance, the Court of Appeal and the Court of Cassation.
The appellant shall address the Court within 6 months from the moment in which the highest national Court - Court of Cassation - has issued its sentence on the case.

After establishing that a violation of one or more rights protected by the Convention and its protocols occurred, the Court of Strasbourg can condemn the faulty State to compensate for the damage, to restore the situation to the conditions preceding the violation or, if it is impossible to eliminate the consequences of the violation, to a fair satisfaction.

Appendix chapter 1

Mandatory arrest in flagrante delicto article 380 ccp

The court and police officers shall arrest anyone who is caught in flagrante delicto of an offence committed with criminal intents, either committed or attempted, punishable by law with a life sentence or with a sentence of penal servitude from a minimum of five to a maximum of twenty years.
2. Court and Police Officers shall arrest anyone who is caught in flagrante delicto, -even outside of the cases established in accordance with paragraph 1-, of one of the following offences committed with criminal intent, either committed or attempted:

a) crimes against the State in accordance with chapter I volume II of the criminal code punishable with a sentence from a minimum of 5 to a maximum of 10 years;
b) crime of devastation and looting in accordance with article 419 of the criminal code;
c) crimes against public safety in accordance with chapter VI volume II of the criminal code punishable with a sentence of incarceration from a minimum of three to a maximum of ten years;
d) crime of forced slavery in accordance with article 600, crime of child prostitution in accordance with article 600-bis, child pornography in accordance with article 600-ter, first and second paragraph, also concerning pornographic material in accordance with article 600-quater.1, and crime of child sex tourism in accordance with article 600-quinquies of the criminal code;
d-bis) crime of sexual assault in accordance with article 609-bis, with the exception of the case described in accordance with the third paragraph, and crime of group sexual assault in accordance with article 609-octies of the criminal code;
e) crime of theft, when the aggravating circumstance in accordance with article 4 of Law no. 533 of 8 August 1977 and in accordance with article 625 first paragraph number 2), first hypothesis, of the criminal code, unless the mitigating circumstance is also verified in accordance with article 62, first paragraph, number 4) of the criminal code;
e-bis) crimes of theft in accordance with article 624-bis of the criminal code, unless the mitigating circumstance occurs in accordance with article 62, first paragraph, number 4), of the criminal code;
f) crime of robbery in accordance with article 628 of the criminal code and crime of extortion in accordance with article 629 of the criminal code;
g) crimes of illegal production, introduction inside the national borders, sale, exchange, possession and carry in a public place or a place open to the public of military or military-like weapons or weapon components, explosives, illegal weapons and common fire arms with the exception of those listed in accordance with article 2, paragraph three of law no. 110 of 18 April 1975;
h) crimes related to narcotic drugs of psychotropic substances punishable in accordance with article 73 of the consolidated law approved with Presidential Decree no. 309 of 9 October 1990, unless in case of occurrence of the circumstance in accordance with

paragraph 5 of the same article;

i) crimes committed for terrorism or eversion of the constitutional order punishable by law with a period of incarceration of a minimum of four and a maximum of ten years;

l) crimes of promotion, establishment, management and organisation of secret associations in accordance with article 1 law no. 17 of 25 January 1982, of military associations in accordance with article 1 law no. 561 of 17 April 1956, of associations, movements and groups in accordance with articles 1 and 2 of law no. 645 of 20 June 1952, of organisations, associations, movements or groups in accordance with article 3, paragraph 3, of law no. 654 of 13 October 1975;

l-bis) crimes of participation, promotion, management and organisation of mafia-type activities in accordance with article 416-bis of the criminal code;

m) crimes of promotion, management, establishment and organisation of a criminal association in accordance with article 416 paragraphs 1 and 3 of the criminal code, if the association is aimed at committing one or more crimes among the ones listed under paragraph 1 or under letters a), b), c), d), f), g), i) of this paragraph.

If the crime can be prosecuted in accordance with criminal law, the arrest in flagrante delicto is made if there is a complaint, even if made only orally to the court or police officer present at the place. If the claimant drops the charges, the arrested is immediately released.

Optional arrest in flagrante delicto in article 381 ccp

The court and police officers can arrest anyone who is caught in flagrante delicto committed with criminal intent, either committed or attempted, punishable by law with incarceration for a maximum sentence of no less than 5 years.

The court and police officers can also arrest anyone who is caught in flagrante delicto of any of the following crimes:

a) misappropriation by profiting of someone else's mistake in accordance with article 316 of the criminal ode;

b) corruption for acts against official duties in accordance with articles 319 paragraph 4 and 321 of the criminal code;

c) violence or threats against a public officer in accordance with article 336 paragraph 2 of the criminal code;

d) sale and administration of expired drugs and noxious food in accordance with articles 443 and 444 of the criminal code;

e) corruption of minors in accordance with article 530 of the criminal code;

f) assault in accordance with article 582 of the criminal code;

f-bis) trespassing in accordance with article 614, first and second paragraph, of the criminal code;

g) theft in accordance with article 624 of the criminal code;

h) aggravated malicious mischief in accordance with article 635 paragraph 2 of the criminal code;

i) fraud in accordance with article 640 of the criminal code;

l) embezzlement in accordance with article 646 of the criminal code;
l-bis) sale, exchange or possession of pornographic materials in accordance with articles 600-ter, fourth paragraph, and 600-quater of the criminal code, also when concerning pornographic materials under article 600-quater 1 of the criminal code;
m) alteration of weapons and production of illegal explosives in accordance with articles 3 and 24 paragraph 1 of law no. 110 of 18 April 1975;
m-bis) production, possession or use of false identification documents in accordance with article 497-bis of the criminal code.
m-ter) false certification or statement to a public officer concerning one's own identity or personal details or that of others, in accordance with article 495 of the criminal code;
m-quater) fraudolent alterations to prevent the dentification of ascertation of identity in accordance with article 495-ter of the criminal code.

If the crime can be prosecuted in accordance with criminal law, the arrest in flagrante delicto is made if there is a complaint, even if made only orally to the court or police officer present at the place. If the claimant drops the charges, the arrested is immediately released.
In the hypothesis envisaged in this article the arrest in flagrante delicto is made only if such measure is justified by the seriousness of the fact.
A person asked by the criminal police or by the public prosecutor to reveal information cannot be arrested for crimes concerning the content of the information or for refusing to reveal such information.

Article 384 ccp Arrest of a suspect of a crime

Besides the cases of flagrante delicto, when specific elements occur concerning the impossibility to dentify the suspect which make the risk of flight plausible, the public prosecutor can arrest the person being seriously suspected of a crime punishable by law with a life sentence of with a period of incarceration of a minimum of two and a maximum of six years or of a crime involving military weapons and explosives or of a crime committed for terrorism, also with criminal intent, or for subversion of the democratic order.
Under the circumstances envisaged in paragraph 1 and before the public prosecutor is assigned to the investigation, the court and police officers proceed with the arrest on their initiative.
The criminal police proceed with the arrest on their initiative after identifying the suspect when specific elements are discovered, such as possession of false identification documents, which make the risk of flight of the suspect plausible and because of the urgent nature of the situation it is impossible to wait for the orders of the public prosecutor.

Article 123 ccp Declarations and requests of prisoners or inmates.

The defendant incarcerated or hold in an institute for the enforcement of safety provisions can present appeals, declarations and requests with deeds received by the prison manager. Such applications are recorded in a specific register and the competent authority is immediately

notified; they are effective as if directly received by the court authorities.
When the defendant is arrested or on house arrest or held in a care facility, he can present appeals, declarations and requests with deeds received by a police officer who will immediately transmit it to the competent authority. Appeals, declarations and requests are effective as if directly received bythe court authorities.

The provisions under paragraph 1 apply to claims, appeals, declarations and requests presented by other private parties or by the victim.

The enforcement phase - Arrest consequent to an enforcement order - Enforcement judge

Arrest consequent to an enforcement or incarceration order - Art. 656 cpp

As already explained earlier, this is in the hypothesis that the arrest was made for the facts for which a definitive sentence shall be served (either because all the instances of a trial have been addressed or because the appeal or review was not filed within the term).
Therefore, the arrested is handed a copy of the proceedings with the name of the lawyer hired or appointed by the court.
It is important, also in this case, to contact the lawyer as soon as possible, as there exist a number of remedy actions against the order of incarceration.
It is important to recall the suspension of the enforcement order under article 656 paragraph 5 ccp.

When it is possible:

When the sentence of imprisonment -also in case of residual time of a longer sentence-, is shorter than 3 years or 6 years for cases falling under articles 90 and 94 of the consolidated law approved with Presidential Decree no. 309 of 9 October 1990 and later versions, the public prosecutor shall suspend the enforcement, with the exceptions of cases falling under paragraphs 7 and 9.

The convict and the lawyer who followed the execution phase, or if he is not available, the lawyer who assisted the arrested during the trial, are notified with the orders of enforcement and suspension together with the notification that it is possible within 30 days to apply with all the necessary documents and information in order to be granted one of the alternative measures to imprisonment in accordance with articles 47 (probation in the custody of social services), 47ter (house arrest) and 50 (semi-custodial arrangements), paragraph 1 of law no. 354 of 26 July 1975 and later versions, and in accordance with article 94 (probation in special cases) of the consolidated law approved with Presidential Decree no. 309 of 9 October 1990 and later versions, or to be granted suspension of the enforcement of the sentence in accordance with article 90 of the same consolidated law.

The notification also informs that if no application if filed or if said application

is inadmissible under article 90 and following of the consolidated law, the sentence shall be enforced immediately.
Under article 656 paragraph 7 ccp suspension cannot be granted more than once for the same sentence, also if the convict files a new application both for another alternative measure, or the same alternative measure adducing different reasons, and for the suspension of the enforcement of the sentence in accordance with article 90 and following of the consolidated law approved with Presidential Decree no. 309 of 9 October 1990 and later versions, as well as -in cases where the Surveillance Court issues a verdict beyond the term- when the rehabilitation programme in accordance with article 94 of the same consolidated law was not started within 5 days from filing of the application or when it is interrupted.

When it is not possible:

There are cases in which if the imprisonment, also in case of residual time of a longer sentence, is shorter than 3 years or 6 years for cases falling under articles 90 and 94 of the consolidated law approved with Presidential Decree no. 309 of 9 October 1990 and later versions, the enforcement of the sentence cannot be suspended in the case of:

a) those convicted for the crimes under article 4bis[1]1of law no., 354 of 26 July 1975 and later versions, as well as under article 423 bis (forest fire), 624 (theft), when 2 or more circumstances indicated under article 625 (aggravating circumstances) occur, 624bis (burglary and snatching) of the criminal code, with the exception for those who are on house arrest in accordance with article 89 (dispositions about drug addicts or alcoholics who are under treatment) of the consolidated law approved with Presidential Decree no. 309 of 9 October 1990 and later versions;
b) those who, for the crime punished by the sentence to be enforced, are under provisional detention when the sentence becomes definitive;
c) those convicted for repetition of offences in accordance with article 99 paragraph 4 of the criminal code[2].

1 The text of the article 4bis of law no. 354 of 26 July 1975 and later versions is available in the appendix at the end of Chapter II.

2 The text of article 99 of the criminal code is available in the appendix at the end of Chapter II. Under article 4 paragraph 2 of the Law Decree no. 272 of 30 December 2005, transposed and amended
with law no. 49 of 21 February 2006 The provisions under letter c) paragraph 9 article 656 of the code of criminal procedure does not apply to convicted persons, drug addicts or alcoholics who, when the definitive sentence is issued, are following a rehabilitative programme with the public services for the assistance to drug abusers or with an authorised facility when interrupting the programme could jeopardize detoxification . In this case the public prosecutor shall decide an assessment to verify that the drug addict or alcoholic follows the rehabilitative programme until the verdict of the Surveillance Court and shall revoke the suspension of the enforcement when it is proven that the person has left the programme.

For further details on alternative measures please go to the specific section in Chapter IV.

The enforcement judge

According to the judicial system cognizance of the enforcement of the sentence is assigned to a judge called Enforcement Judge.
In fact, he has jurisdiction on all the matters concerning the validity of the enforcement order of the sentence for which one has been convicted.
Under the code of criminal procedure the judge of enforcement shall be the judge issuing the guilt sentence or, when the sentence in the first instance trial was modified by the appeal sentence but not only with regard to the punishment, the appeal judge.

For instance, the enforcement judge has jurisdiction on the matters concerning amnesty, pardon and the legality of the order of imprisonment, the application of the continued offence principle, the request for a new term when the convict was not able to file an application within the term set, in the case of more than one sentence issued for the same crime.

Pardon

On the 1st of August 2006 the law granting pardon entered into force.
Pardon implies the extinction of the punishment (differently from the amnesty which extincts the crime), in the case of this pardon law the extinction is for a time of three years and pecuniary penalties of 10,000.00 euros.
It applies to guilt sentences for crimes committed before 2 May 2006, with the exception of some crimes (e.g. sexual assault, child abuse, kidnapping, mafia-type association or terrorist association and other crimes).
Pardon is revoked to those who in the five years after they were granted pardon commit a culpable offence for which they are sentenced to more than two years in prison.
Application of the pardon law shall be enforced by the enforcement judge and it can result in immediate release when the punishment, by effect of the pardon measure, is entirely served.
Under article 79 of the Constitution pardon and amnesty shall be granted with

a law approved with a majority of 2/3 of the members of each Chamber in each of its articles and in the final vote.
The law granting pardon or amnesty sets the terms for their enforcement.
In any case, pardon and amnesty do not apply to crimes committed after the draft law was presented.

Postponement of the term aricle 175 ccp

If the judgement was given in default of appearance or in case of an order of conviction, the defendant has the right to the postponement of the term, upon his request, to appeal the judgement or object the order, provided that the defendant was notified of the proceedings and he willingly renounced to appear in court or to file for appeal or objection. The Court carries out all necessary checks to this end.

The appeal/objection shall be presented within thirty days from when the defendant was actually notified with the proceedings, otherwise being null and void.

The judge decides on the appeal/objection by immediately issuing a court order. If a sentence of order of conviction were already issued, the decision is taken by the judge who shall have jurisdiction on the appeal or objection of the sentence/conviction.
The order denying the request for a postponement of the term can be appealed in the Court of Cassation.
When the judge grants a postponement of the term to appeal a sentence, if necessary, he orders the release of the accused incarcerated and adopts all the necessary measures to restore the situation as it was before expiry of the term.

Compensation for wrongrul incarceration art. 314 ccp - Sentence recondieration art. 629 ccp - compensation for miscarriage of justice

It is useful to know that the judicial system provides for compensation in case of incarceration deemed wrongful, with the possibility to file to the Court of Appeal for monetary compensation in relation to the time served, as long as the crime committed by the person in custody was not wilful or seriously culpable.
It is also possible, if the requirements are met, to ask for a reconsideration of the sentence deemed wrongful by going before the Court of Appeal in the jurisdiction of the judge who issued the sentence.
In case of sentence reconsideration with consequent acquittal, the acquitted is entitled to a fair compensation in relation of the time served and to the personal and family consequences.

The Strasbourg convention

With regard to foreign citizens in custody in the Italian prisons it is important to underline the possibility under the international convention of Strasbourg (21 March 1983), ratified by the Italian Republic in 1988, to serve the sentence in their country of origin, provided said country signed the Convention.

The request to serve a sentence issued by the Italian Courts abroad implies that said sentence be definitive, that it concerns facts considered as a crime in both countries, that the time to be served be longer than 6 months and that the two States involved agree.
Under no circumstances can Italian authorities allow for a sentence issued in Italy to be served in a country where there is an actual risk for the person convicted to be subject to inhuman or degrading treatment. A specific form is available at the prison administration office for those foreign prisoners who wish to benefit from the opportunity offered under the Strasbourg Convention.

Legislative Decree no. 161 of 7 September 2010

Provisions to give force of law to Framework Decision 2008/909/JHA on the enforcement of the principle of mutual recognition of criminal judgements pronouncing imprisonment or measures depriving of the personal freedom for the purposes of their enforcement in the European Union.

This recent piece of legislation aims at easing the enforcement of sentences of imprisonment or of measures depriving of the personal freedom in the countries of origin of EU citizens based on the principal of mutual recognition of sentences issued by Member States.
The purpose is to ease reintegration of foreign prisoners in their country of origin.
In the case of a definitive sentence with which punishment and/or restrictive

measures are adopted against a natural person, if the residual punishment or restrictive measures to be served is longer than 6 months and the crime for which the sentence was issued is punished with a maximum sentence of at least 3 years, the public prosecutor following the enforcement of the sentence can order that the person convicted be transferred abroad to the EU Member State of citizenship where said person lives, or to the EU Member State of citizenship of the person convicted where he shall be deported -after exemption of the enforcement of the sentence subsequently to a deportation or expulsion order part of the conviction sentence or of a ruling or administrative decision or of any other measure adopted subsequently to a sentence of conviction- or to the EU Member State accepting the transfer upon consent, in this case, of the person convicted.

The decision on the transfer falls within the jurisdiction of the Court of Appeal under article 9 of the law.
The person convicted, however, must not undergo any other criminal proceedings or be serving any other sentence or restrictive measures, unless differently decided by the authority in charge of the case.
With regard to the enforcement of personal restrictive measures of incarceration, the public prosecutor in charge of the transfer abroad is appointed in accordance with article 658 of the code of criminal procedure.

Appendix chapter 2

Article 4-bis Law 354/1975

Prohibition to grant benefits and assessment of social dangerousness of those convicted for certain crimes.
1. Assignment to work outside the prison, good behaviour permissions and measures alternative to incarceration under chapter VI, with the exception of early release, can be granted to prisoners and inmates for the following crimes and only in the cases in which those prisoners and inmates cooperate with the justice under article 58-ter of this law: crimes committed for terrorism, also international, or crimes of eversion of the democratic order through the performance of acts of violence, crime under article 416-bis of the criminal code, crimes committed exploiting the conditions envisaged by the same article or to facilitate the activity of associations under said article, crimes under articles 600, 600-bis, first paragraph, 600-ter, first and second paragraph, 601, 602, 609-octies and 630 of the criminal code, under article 291-quater of the consolidated law on legislative provisions concerning custom issues, in accordance with Presidential Decree no. 43 of 23 January 1973, and under article 74 of the consolidated law regulating drugs and psychotropic substances, prevention, care and rehabilitation of drug addictions in accordance with Presidential Decree no. 309 of 9 October 1990. Without prejudice to the provisions of articles 16-nonies and 17-bis of law decree no. 8 of 15 January 1991, given force of law by law no. 82 of 15 March 1991 and later versions.
1-bis. The benefits under paragraph 1 can be granted

to prisoners or inmates in custody for one of the crimes envisaged by the law as long as there is no evidence of relationship with the organized crime, terrorist or eversive activities, also in cases where the limited participation to criminal activity, ascertained in the guilt sentence, or the full examination of the facts and responsibilities with absolute judgement make cooperation with justice impossible, as well as in cases where -despite the cooperation offered being objectively irrelevant- one of the mitigating circumstances is applied to prisoners or inmates under article 62, number 6), also when compensation for the damages occurred after the conviction sentence, in accordance with article 114 or article 116, paragraph 2 of the criminal code.

1-ter. The benefits under paragraph 1 can be granted to the prisoners or inmates -as long as there is no evidence of relationship with the organized crime, terrorist or eversive activities- for the crimes under articles 575, 600-bis, paragrphs two and three, 600-ter, third paragraph, 600-quinquies, 628, paragraph three, and 629, paragraph two of the criminal code, and article 291-ter of the consolidated law as per Presidential Decree no. 43 of 23 January 1973, article 73 of the consolidated law as per Presidential Decree no. 309 of 9 October 1990 and later versions, only with regard to the aggravating circumstances under article 80, paragraph 2 of the same consolidated law, and under article 416, first and third paragraph of the criminal code for the purposes of committing a crime under articles 473 and 474 of the criminal code and article 416 of the criminal code for the purposes of committing a crime under volume II, chapter XII, section I of the criminal code articles 609-bis, 609-quater and 609-octies of the criminal code and article 12, paragraphs 3, 3-bis and 3-ter of the consolidated law on regulations governing immigration and provisions on the status of foreign nationals as per legislative decree no. 286 of 25 July 1998 and later versions.

1-quater. The benefits as per paragraph 1 can be granted to prisoners or inmates for the crimes under articles600-bis, 600-ter, 600-quater, 600-quinquies, 609-bis, 609-ter, 609-quater, 609-quinquies, 609- octies and 609-undecies of the criminal code only on the basis of the results of scientific observation of the personality carried out in a team of experts as per article 80, paragraph four of said law. The regulations mentioned above apply to the crime as per article 609-bis of the criminal code, unless a mitigating circumstance applies as envisaged by the same article.

1-quinquies. Without prejudice to the dispositions of paragraph 1, for the purposes of granting benefits to prisoners or inmates for crimes under articles 600-bis, 600-ter, also in crimes concerning pornographic materials in accordance with article 600-quater 1, 600-quinquies, 609-quater, 609-quinquies and 609- undecies of the cirminal code, as well as under articles 609-bis and 609-octies of the same code, if committed against minors, the surveillance judge or court shall examine the positive participation to a programme for specific rehabilitation as per article 13-bis of said law .

2. For the purposes of granting benefits under paragraph 1, the surveillance judge or court shall decide after acquiring detailed information through the provincial committee for public policy and safety competent according to where the person convicted is serving the sentence. In any case, the judge shall decide after thirty days from the request of information. The manager of the

prison where the person convicted is serving the sentence might be called to take part in the above- mentioned provincial committee.
2-bis. To the purposes of granting the benefits under paragraph 1-ter, the surveillance judge or court shall decide after acquiring detailed information from the Chief of Police. In any case, the judge shall decide after thirty days from the request of information.
3. When the committee believes that there are special safety needs or that there is a possibility of the prisoner or inmate being in touch with organizations operating locally or internationally it shall notify the judge who shall have an extra thirty days beyond the term under paragraph 2 to acquire all the necessary evidence and information from the competent central authorities.
3-bis. Work outside of the prison, permissions for good behaviour and restrictive measures alternative to incarceration under chapter VI cannot be granted to prisoners or inmates in custody for crimes committed with criminal intent when the anti-mafia national prosecutor or the district attorney communicate, on the initiative or upon notice of the competent provincial committee for public policy and safety in the place of imprisonment or custody, the existence of current contacts with the organized crime, regardless, in this case, of the provisions established under paragraphs 2 and 3.

Article 99 cc - Relapse into crime

A person who, after being convicted for an offence committed with criminal intent relapses into crime can be subject to an increase by one third of the punishment for the new culpable offence.
The punishment can be increased by as much as fifty per cent:
1) if the new offence committed with criminal intent is of the same nature;
2) if the new offence committed with criminal intent was committed within five years from the previous sentence;
3) if the new offence committed with criminal intent was committed during or after the enforcement of the sentence, or during a time in which the person convicted voluntarily eludes enforcement of the punishment.
In the occurrence of one or more circumstances listed under paragraph two, the punishment is increased by 1/2.
If the persistent offender commits another offence committed with criminal intent the punishment is increased by 1/2 in the cases envisaged in paragraph one, and by two thirds in the cases envisaged in paragraph two.
In case of one of the crimes under article 407, paragraph 2, letter a) of the code of criminal procedure, the punishment shall be mandatorily increased for second offences and, for crimes under the second paragraph, the punishment shall be increased at least by one third for the new offence.
Under no circumstances the increase of punishment for second offences shall exceed the total of the punishments for the crimes committed before the last offence with criminal intent.

Safety and danger to society measures

Article 215 of the criminal code establishes a number of personal safety measures defined as custodial and non-custodial measures

The following are defined as custodial measures:
1) admission to a prison farm or resettlement unit;
2) admission to a sanatorium or custodial facility;
3) admission to a psychiatric prison;
4) admission to a reformatory home.

The following are defined as non-custodial measures:
1) probation;
2) prohibition to stay in one or more municipalities, or in one or more provinces;
3) prohibition to enter premises licensed to sell alcohol;
4) expulsion of foreign citizens from the State.

When the law establishes a restrictive measure without specifying which exactly, the judge shall decide for probation, unless -in the case of a person convicted for a crime- he shall opt for the admission of the convicted to a prison farm or resettlement unit.
Restrictive measures can be adopted by the judge within the same sentence of conviction (as well as acquittal) only against socially dangerous subjects who have performed actions which by law are identified as crimes.
The criminal law establishes in which cases restrictive measures can be decided against socially dangerous subjects for actions which are not identified as crimes by law (article 202 cc).
Restrictive measures can also be ordered in a second time with a court order in case of conviction during enforcement of the punishment or during a time in which the person convicted voluntarily eludes enforcement of the punishment and, in compliance with the law, at any time.
For the purposes of the criminal law, a person is defined as socially dangerous, although not chargeable or punishable, when said person committed one of the actions mentioned above and it is likely that he shall commit new actions identified by law as crimes (article 203 cc).
The definition of socially dangerous subject is based on the circumstances indicated in article 133 cc[1]

1 Article 133 cc Seriousness of the crime: evaluation based on the effects of the punishment. In

Restrictive measures can be revoked if the person subject to such measures is still socially dangerous (article 207 cc).
The revocation can be ordered also if the minimum time required by law for each restrictive measure has not passed yet, according to the case law of the Constitutional Court sentence no. 110/1974.

After such minimum time, required by law for each restrictive measure, the judge shall review the conditions of the person subject to such restrictive measures to establish whether he is still a danger to society by reviewing his dangerousness.
In case this person is still a danger to society, the judge shall set a new term for further review. Also, when it is reasonable to think that the danger has ceased, the judge can proceed at any time with new assessments.

Restrictive measures. in addition to a custodial punishment, are enforced after that the punishment has been served or it has expired (article 211 cc).
Restrictive measures, in addition to a non-custodial punishment, are enforced after that the sentence has become absolute.
Custodial restrictive measures are enforced in facilities dedicated to this purpose.
In each facility a special corrective or treatment and work regime is adopted; work is assigned based on the personal and criminal inclinations of the person and, in general, on the social danger posed by that person (article 213 cc).

Article 216 cc establishes that all subjects shall be assigned to a farm prison or resettlement unit who:
1) have been declared habitual offenders; professional offenders or criminals by nature;
2) having been declared habitual or professional offenders or criminals by nature, and no longer being subject to any restrictive measure, commit a new crime, with criminal intent, thus confirming once again the habitual, professional and natural inclination to crime;

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the exercise of the discretionary power, as indicated in the previous article, the judge shall take into account the seriousness of the crime inferred from:
1) the nature, kind, means, object, time, place and any other characteristic of the action;
2) the seriousness of the damage or danger caused to the victim of the crime;
3) the intensity of the criminal intent or the seriousness of the misconduct.
The judge shall take into account also the inclination to crime of the person convicted, inferred from:
1) the reasons to commit a crime and the personality of the offender;
2) the criminal and judicial record and, in general, the behaviour and life of the offender prior to the offence;

3) have been convicted or acquitted in other cases specifically indicated by law.

Article 217 cc establishes a minimum period of one year to be served in farm prisons or resettlement units. Such period is of a minimum of two the offender's behaviour at the time or after the offence;the quality of the offender's personal, family and social life: years for habitual offenders, three years for professional offenders and fouryears for criminals by nature.

The surveillance judge shall monitor the enforcement of personal restrictive measures.
When a restrictive measure, other than sequestration, which falls out of the cases envisaged by article 312 cc (removal or deportation of a foreign nationals from the State), has been or has to be ordered, the surveillance judge -upon request of the public prosecutor or office- verifies that the person involved constitutes a danger to society and , where necessary, the declaration of the habitual or professional attitude towards crime (article 679 ccp).

The provisions adopted by the surveillance judge concerning restrictive measures and the declaration of habitual or professional attitude or natural inclination towards crime can be appealed to the surveillance court by the public prosecutor, the person concerned and the defence under article 680 ccp.

The surveillance court, for cases falling outside of article 579 paragraphs 1 and 3 ccp, decides also on appeals against sentences of conviction or acquittal concerning provisions on restrictive measures.

Article 53 of law 354/1975 establishes that inmates are entitled to a sixmonth licence immediately before the expiry of the term for the review of dangerousness.
They can also be granted, for serious personal or family reasons, a licence of a maximum of fifteen days; a licence not exceeding thirty days can also be granted, once a year, in order to favour social reintegration.
During the licence the inmate is on strict probation.

Probation article 228 cc

Surveillance of a person on probation is assigned to the law enforcement authorities.
The individual on probation has to follow a number of restrictions imposed by the judge in order to avoid opportunities to commit new crimes.

Such orders can be later modified or restricted by the judge.
Surveillance shall always be carried out to encourage, through work, social reintegration of the individual.
Probation cannot be shorter than one year.

Hospitalization in a psychiatric prison article 222 cc

When a person is acquitted for mental disability, chronic alcohol or drug intoxication, or deaf-mutism the defendant is always hospitalized in a psychiatric prison for at least two years.

The minimum hospitalization period in the psychiatric prison is ten years for actions punished by law with a life sentence, or five years for actions punished with imprisonment for no shorter than ten years.
When the person hospitalized in a psychiatric prison must serve a sentence depriving of the personal freedom, enforcement of the sentence is postponed as long as the person stays in the psychiatric prison.
Under article 111 of Presidential Decree 230/2000 psychiatric prisons shall admit not only those who are subject to a provisional or definitive custodial restrictive measure, but also defendants, convicts and inmates under articles 148 (occurred mental disability of the convicted person), 206 (enforcement of provisional restrictive measures) and 212 paragraph two of the criminal code (suspension or conversion of restrictive measures -in the case of person subject to custodial restrictive measures affected by occurred mental disability).

NOTE
Pursuant to the ruling of the Constitutional Court 253/2003 it is possible that the judge adopts, instead of the hospitalization in a psychiatric prison, a different restrictive measure in compliance with the law, fit to ensure suitable care to the insane person and to deal with his social dangerousness.

NOTE
Law Decree no. 211/2011, as amended by the ratification law no. 9/2012, establishes that – by 31 March 2013 – the restrictive measures of hospitalization in a psychiatric prison and admission to a care facility and remand home shall be enforced only in health facilities which meet the structural, technological and organization requirements (also with regard to safety) envisaged by the non-regulatory decree of the Ministry of Public Health adopted in conjunction with the Ministry of Justice and with the agreement of the Permanent Committee for the relationship between State, Regions Autonomous Provinces.

Admission to a psychiatric hospital or remand home article 219 cc

The person convicted for an offence committed with criminal intent to a reduced sentence by reasons of mental disability or of chronic alcohol or drug intoxication, or of deaf-mutism shall be hospitalized in a psychiatric hospital or remand home for a period not inferior to one year, when the punishment by law is not inferior to a minimum of five years of imprisonment.
If the crime committed is punishable by law with a life sentence, or with imprisonment for a minimum of ten years, the restrictive measure shall be ordered for at least three years.

NOTE In these cases, pursuant to the ruling of the Constitutional Court no. 249/1983, hospitalization in a psychiatric hospital or remedial home of the defendant convicted, for an offence committed with criminal intent, to a reduced sentence by reasons of mental disability is conditional upon verification by the judge of the persistent social danger represented by his mental disability at the time when the restrictive measure is enforced.
For other crimes, punishable by law with imprisonment, where the convict constitutes a danger to society, the hospitalization in a psychiatric hospital or remedial home is ordered for at least six months; however, the judge can order probation instead of the restrictive measure. Such possibility does not exist in the case of individuals convicted to a reduced sentence by reason of chronic alcohol or drug intoxication.
When it is necessary to order the hospitalization in a psychiatric hospital or remedial home, no other custodial restrictive measure shall be ordered.

NOTE In this case, pursuant to the ruling of the Constitutional Court no.1102/1988, it was established that the order of hospitalization in a psychiatric hospital or remedial home is conditional upon assessment of the social danger represented by the partial mental disability of the convict not only when the restrictive measure is ordered but also at the moment of the enforcement.

Surveillance judge - Prison benefits

Fundamental principles and detention

Article 1 Law no. 354 of 26 July 1975 - Detention and rehabilitation

Detention shall be human and ensure the respect of the dignity of the individual. Detention shall be absolutely impartial, without discrimination of nationality, race economic and social conditions, political and religious beliefs.

Prisons shall be governed by order and discipline. No restrictive measure can be adopted unless justifiable by the above-mentioned requirements or, when involving defendants, for the sake of the trial.

Prisoners and inmates shall be called or referred to by their names. Defendants shall be always treated acknowledging the fact that they are innocent until proven guilty with absolute sentence. Convicts and inmates shall undergo a correctional programme encouraging, through contact with the out-of-prison environment, social reintegration of the individuals. Such programme is carried out based on a criteria of identification of the specific conditions of each subject.

Article 15 of Law no. 354 of 26 July 1975 - Elements of the programme

The re-education programme for convicted persons and inmates is based mainly on education, work, religion, cultural, recreational and sports activities and on encouraging appropriate contacts with the out-of-prison world and the relationship with the family.
For the purposes of the re-education programme, unless actually impossible, the convict and inmate is guaranteed a job.

Defendants are allowed, upon their request, to take part in educational, cultural and recreational activities and, unless for a justifiable reason or by order of the court, to carry out work activities of professional training, possibly of their choice and, in any case, in conditions which are adequate to their legal status.

The surveillance judge and court

Law no. 354 of 26 July 1975 regulates the function and jurisdiction of the surveillance judge and court.
The surveillance judge, as per article 69 op, monitors the organization of prisons and reports to the Ministry of Justice all the needs of the various services, with particular reference to the implementation of the re-education programme. Furthermore, he directly makes sure that the enforcement of the custody of the defendants be compliant with the laws and rules and he supervises personal restrictive measures.

He approves, with an order, the re-education programme and, if he finds that there are elements which violate the rights of the convict or inmate, he rejects it with observation in view of a modification of the programme.
He approves, with an order, the admission to outside-of-prison work.
During the re-education programme, he gives direct orders to eliminate any violations of the rights of the convicted and inmates.

He has the power to decide with an order on the appeals of the prisoners for early release and on the claims filed by prisoners to the prison administration.
The surveillance judge also decides, with a motivated order, on the requests for permits and licenses filed by prisoners and inmates.
The surveillance judge has jurisdiction also on the enforcement and revocation of restrictive measures.

Under law 354/75 establishes there shall be a surveillance court in any appeal court district with jusrisdiction on deciding for probation under the supervision of a social worker, house arrest, conditional discharge and parole, suspension of the enforcement of the sentence under the circumstances established by articles 146 and 147 cc[1], as well as on the revocation or termination of such measures and on the requests for permits.

The surveillance court is made up of the President, a second surveillance judge and two professional experts in psychology, social services, pedagogy, psychiatry and forensic psychology.

NOTE
Foreign prisoners without residence permit and identity documents also qualify, when all the other criteria are met, for outside-of-prison work and alternative measures to imprisonment.
Identification is performed based on the personal details contained in the absolute sentence. The competent offices shall release the fiscal code and a special authorization for work, valid until the end of the restrictive measure.

1 The texts of articles 146 and 147 cc are available in the appendix at the end of Chapter IV

Outside of prison work - Art. 21 op

It is a way to enforce a punishment which allows to leave the prison premises to carry out work activities or attend professional training classes.

It is available to:
- prisoners with an absolute sentence for common offences without any limitation of the judicial status and period of detention;
- those convicted with a sentence of imprisonment for one of the crimes indicated in paragraph 1 article 4 bis op after serving 1/3 of the sentence and, in any case, never sooner than 5 years;
- those convicted with a life sentence after serving at least 10 years.

It is an administrative provision, granted by the prison manager and approved by the surveillance judge: after approval, a re-education programme is drafted to be approved by the surveillance judge. The provision shall indicate the rules to be followed outside of the prison.

Early release - art. 54 op and art. 103 presidential decree 230/2000

It is granted by the surveillance judge.
It consists in a sentence reduced by 45 days for every 6 months of servedsentence. It is granted to those who adopted a good behaviour and haveproven to take part in the re-education programme.
It is awarded also for pre-trial detention and house arrest.

The decision of the surveillance judge can be appealed to the surveillancecourt within 10 days upon notification of the denial indicating the reasons for the appeal in the application.

Conditional discharge - art. 48 op, art. 50 op, 50bis op and art. 101 presidential decree 230/2000

It is granted by the surveillance court.
It enables the convict to spend part of the day outside of the prison to take part in work and education activities or activities which are, in any case, useful for his social reintegration.

Requirements to qualify for conditional discharge:
- being subject to a restrictive measure (at any time);
- being convicted to the arrest or imprisonment for no longer than 6 months (at any time);
- being convicted to a sentence of more than 6 months and serving half the sentence (2/3 for crimes under article 4 bis, paragraph 1 op);
- being convicted for habitual offences as per article 99 paragraph 4 cc after serving 2/3 of the sentence and, in the case of person convicted for any of the crimes under paragraphs 1, 1ter and 1quater of article 4bis op, after serving ¾ of the sentence.
- being convicted to a life sentence and having already served 20 years in prison.

Conditional discharge is granted based on progress made during the reeducation programme, when the conditions are there for a gradual reintegration in society.

The person on conditional discharge leaves the prison in the morning and comes back at the hours arranged by the re-education programme decided by the prison manager and approved by the surveillance judge.

Prisoners and inmates who are granted conditional discharge are assigned to special institutes or to specific autonomous sections of the regular prison.

House arrest - art. 47 ter op and art. 100 presidential decree 230/2000

It is granted by the surveillance court.
The person convicted with an absolute sentence who is over 70 can serve the sentence on house arrest at his home or in other public care facility, nursing or shelter home provided he was not declare a habitual or professional offender or an offender by nature and provided that the was not convicted with aggravating circumstances as per article 99 paragraph 4 cc. With the exception of those who committed crimes under volume II, title XII, chapter III, section I (crimes against the person) and articles 609bis (sexual assault), 609 quater (sexual assault on a minor) and 609 octies (group sexual assault) of the criminal code and article 51 paragraph 3bis ccp and article 4bis op.

Furthermore, conditional discharge is granted to those who shall serve a sentence or a residual sentence of less than 4 years in case of:
- pregnant woman; mother or father (the father must have the legal guardianship of the child, when the mother is dead or absolutely incapable to assist the child) of children under 10 years of age who live with her and/or him (also in a protected group home);
- person with particular health conditions which require constant contacts with local hospital or person over 60 (if disable, even partially disable) or 2 The list of crimes under article 51 paragraph 3-bis ccp are available in the appendix at the end of chapter IV. under 21 for proven reasons of health, study, work and family;

Under said circumstances the person convicted for second offence as per article 99 paragraph 4 cc can be granted conditional discharge if the sentence of imprisonment, although a residual part of a longer sentence, is shorter than 3 years.

The sentence can be served on house arrest for those who were sentenced, or are serving a residual sentence, of less than 2 years regardless of the requirements listed above if the conditions are there to obtain probation under the supervision of a social worker, provided that such measure is able to avoid the risk for the convict to relapse into crime, that the person was not convicted for crimes under article 4 bis op or with repeated relapse under article 99 paragraph 4 of the criminal code.

Special house arrest - art. 47 quinquies op

It is granted by the surveillance court.

When the requirements are not met under article 47 ter, the mother of a child under 10 who has served one third of her sentence (15 years in case of life sentence), special house arrest can be granted if there is a possibility to restore cohabitation with her children and there is no real risk of relapsing into crime.

With the exception of mothers convicted for one of the crimes as per article 4bis op, one third of the sentence or at 15 years can be served in a mild correctional facility for convicted mothers or, if there is no real risk or relapsing into crime or of flight, at home or in other private house or care facility, nursery or shelter home in order to take care of her children.
In case of impossibility to serve the sentence at home or in other private house, the sentence can be served in protective group homes, where available.

Under the same circumstances for the mother, the same measure can be granted to the convicted father when the mother is dead or incapable and there is no one else available to take care of the children.

NOTE
With regard to convicted mothers please be reminded that article 11 paragraph 9 op establishes that mothers can keep their children with them until they are 3 years old.
At the same time law no. 62 21 April 2011 (with the specification that such provisions apply from the date of the complete implementation of the extraordinary prison plan, and in any case from 1 January 2014, without prejudice to the possibility to use the beds already available in compliance with the governing law in mild correctional facilities) on custodial measures has established that when the defendant is a pregnant woman or the mother of children under six years of age who live with her, or a father when the mother is dead or absolutely incapable to take care of the children, custody in prison cannot be ordered or confirmed, unless in cases of extreme restrictive measures being required.

In these cases the judge orders custody in a mild correctional facility. House arrest can be ordered in a protected group home, where available. The same law introduced in law no. 354 of 26 July 1975 article 21-ter, (visits to ill minors), establishing that in case of immediate danger for the life or of serious health conditions of an underage child, also when not living together, the convicted, accused or confined mother, or the father who is in the same conditions of the mother, are authorized with an order of the surveillance judge or, in case of absolute emergency, of the prison manager, to pay visit to the ill child, with all the necessary precautions taken in compliance with the regulatory standards.

The woman convicted, accused or confined mother of a child under the age of ten, also when not living with the mother, or the father convicted, accused or confined when the mother is dead or absolutely incapable of taking care of the children, are authorized, with an order issued within 24 hours prior to the date of the visit following the protocol established by said order, to assist the child during specialist visits, concerning the serious health condition of the child.

Out of prison care of minor children - art. 21bis op

The women convicted and confined can be authorised to take care of their children under the age of ten outside of the prison under the conditions established by article 21.

Out-of-prison care of minor children can be granted, at the same conditions, also to the convicted father when the mother is dead or incapable and there is no one else available to take care of the child.

Law no. 199 of 26 November 2010, and later versions. Provisions on house arrest for sentences of imprisonment shorter than 18 months.

Until full implementation of the extraordinary prison plan and in any case by 31 December 2013, sentences of imprisonment shorter than 18 months, also when part of a residual longer sentence, can be served on house arrest at the premises of the convicted person or in other public or private care facility, nursery or shelter home.
The surveillance judge shall decide without delay on the request when he has all the necessary information available.

Such decision does not apply:
a) to subjects convicted for any of the crimes as per article 4bis of law no. 354 of 26 July 1975 and later versions;
b) to habitual or professional offenders or offenders by nature, in compliance with articles 102, 105 and 108 of the criminal code;
c) to prisoners subject to special surveillance under article 14bis of law no. 354 of 26 July 1975 provided that the claim filed under article 14 ter of the same law has been accepted;
d) when there is a real risk of flight of the convicted person or when there are specific reasons to think that the convict might relapse into crime or when the house is unsuitable or not actually existent also by reasons of the need to protect the victims of the crime.

The prison management, also pursuant to the request of the prisoner or of his lawyer, submits a report on the behaviour of the prisoner during detention to the surveillance judge, together with an assessment report of the suitability of the house.
The denial of the measure can be appealed before the surveillance court.

Probation under the supervision of a social worker in special cases - art. 94 presidential decree 309/90 and art. 99 presidential decree 230/2000

The request shall be addressed to the surveillance court.

Drug addicts and/or alcoholics can be granted such restrictive measure who have been sentenced or are serving a residual sentence of less than 6 years (4 for crimes under article 4 bis op), and who are currently in a rehabilitation programme or who are willing to undergo such treatment (in agreement with the drug addiction department of the local health unit AUSL).
Such measure gan be granted no more than twice.

Suspension of the sentence of imprisonment for drug abuser or alcoholics - art. 90 and following of presidential decree 309/90

The surveillance court can suspend the enforcement of a punishment for five years to those who have to serve a sentence or a residual sentence inferior to 6 years (4 for those convicted of crimes under article 4 bis op) for crimes committed in connection with the status of drug or alcohol abuser if the person undergoes a therapeutical and social rehabilitation programme in a public facility, or in a private facility authorized by law.

In this case the punishment is suspended for 5 years and it terminates, and so are all the effects of the sentence, provided that the convict does not relapse into a crime punishable with imprisonment (otherwise the measure shall be revoked).

Probation under the supervision of a social worker - art. 47 op and articles from 96 to 98 of presidential decree 230/2000

The request is addressed to the surveillance judge and granted by the surveillance court.
If the conviction or the residual sentence if shorter than three years, after evaluating the results of the personality assessment, the subject can be released on probation under the supervision of a social worker for the remaining of the sentence to be served, when it is plausible that this measure contributes to the reintegration of the offender and that it prevents him from relapsing into crime: in such period he shall be followed by the office for outside-of-prison punishment enforcement.

The positive outcome of the period under supervision of a social worker extincts the punishment and all the effects of the sentence with an order of the surveillance court.
Early release can be granted if the subject has proven to be socially reintegrated.

When the subject is indingent, the surveillance court can declare the criminal fine not yet paid as extinct.

Suspension on probation of the enforcement of the sentence - so-called "partial pardon bill" - Law 207/03

Those who have served at least half of their sentence and must still serve a maximum of 2 years for an absolute sentence issued prior to 22 August 2003 can benefit from the so-called "partial pardon bill", that is to say early release from prison, although under several conditions. There are a number of restrictions (for instance those who have been convicted for certain crimes cannot apply). The decision is taken by the surveillance judge.

IMPORTANT: If the decision is deemed unfair it shall be appealed within 10 days before the surveillance court upon receipt of the deed rejecting the application, with indication of the reasons.

Parole - art. 176 cc and art. 682 ccp

Parole can be granted to those who have served at least 30 months and no less than 1/2 of the sentence issued if the residual sentence is shorter than 5 years (at least 4 years and no less than 3/4 of the sentence for habitual offenders; at least 26 years if sentenced to life).

To be granted parole the prisoner or inmate shall have adopted a good behaviour while serving the sentence so as to make repentance safe.
Parole is subject to meeting certain civil requirements resulting from the crime as per articles 185 and following of the criminal code (repayment and compensation for damages), unless proving the impossibility to meet such requirements.
The decision is taken by the surveillance judge.
The enforcement of the imprisonment decided with the conviction sentence or subsequent judgement against the convict who has been granted parole is suspended.
Parole is revoked if the person commits another crime of the same nature, or if it violates the obligations of probation. In this case the time on parole does not count has time served and the convict can never be granted parole again.
After serving the entire sentence, or 5 years from the probation order in case of life sentences, without any cause for revocation having occurred, the sentence shall be considered as extinct and all other personal restrictive measures, ordered by the judge with the conviction sentence or with a subsequent judgement, revoked.

Deportation as un "unusual" measure alternative to incarceration

Non-EU citizens illegally living in Italy and incarcerated with an absolute sentence -or residual sentence to be served- of less than two years (with the exception of exceptionally severe crimes), can apply to the surveillance judge for deportation from the national territory.
The surveillance judge can operate automatically.
It is an alternative measure to incarceration under article 16, paragraph 5, of the consolidated law on immigration (Legislative Decree no. 286 of 25 July 1998 and later versions).

Deportation cannot be ordered when the sentence concerns one or more exceptionally severe crimes (as listed in details under article 407, paragraph 2 letter a of the code of criminal procedure) or vandalism, looting and mass murder; civil war; mafia-type association; organized crime aimed at smuggling of tobacco; murder; aggravated robbery and extortion; kidnapping; terrorism and eversion; trafficking or possession of military weapons; trafficking or possession of drugs in a criminal association or aggravated; crimes related to prostitution and child prostitution and to child pornography; sexual crimes; crimes concerning the rules of immigration (Legislative Decree no. 286 of 25 July 1998).
Deportation is ordered by the surveillance judge who decides with a motivated order which can be appealed by the foreign national within 10 days before the surveillance court.
Deportation cannot be enforced until the end of the term or, if the decision was appealed (and it can be attested that the person is in a condition of undeportability) until the surveillance court has decided on the matter.

As a preliminary requirement, the identity of the person must have been absolutely verified and the authorities of the country of origin must have issued the documents necessary for repatriation.
It might be necessary, if the foreign national has asked to be deported, that he produces the necessary identification documents in his possess to try and speed the decision on the proceeding.

This kind of expulsion shall always be enforced by immediate deportation and the foreign national shall remain in prison until the expulsion can be enforced, or until the travel documents are available.
If the sentence has been entirely served in prison, the expulsion can no longer be enforced (however the chief of police can order the administrative deportation of the foreign national living illegally in the country).
After enforcement of the expulsion order the foreign national is banned from returning to Italy for ten years; after ten years, if the foreign national has not returned to Italy, the punishment is extinct (namely it is considered as entirely served). If, on the contrary, the foreign national returns to Italy illegally before the term of ten years the sentence to be served is immediately resumed (the foreign national is brought into custody to serve the residual sentence that had been replaced with the expulsion).

NOTE There is also the hypothesis of deportation ordered by the judge during the proceedings at the moment of the ruling under article 16 paragraph 1 of the consolidated law on immigration or -in case of suspended sentence when the sentence is shorter than two years - deportation as an alternative measure to incarceration.

NOTE Non-EU nationals cannot be deported (article 19 Legislative Decree 286/1998) if they are at risk of being persecuted, in their country of origin, for reasons of race, religion, political beliefs, social or personal conditions or if they run the risk of being deported to a third country where they would be persecuted. Foreign nationals cannot be deported when they are under the age of 18, in possession of a residence card issued by the Italian authorities, living with Italian relatives or spouse, pregnant women or women with children born within the past six months.

Special licences - Art. 30 ter op

Special privileges can be requested by prisoners who have adopted a good behaviour and who are not considered as socially dangerous in order to nourish personal, cultural and work relations.

Request- it shall be addressed to the surveillance judge who, after receiving the mandatory but not binding opinion of the prison manager, can grant special privileges for a period of maximum 15 days and under no circumstances of more than 45 days for each year served.
The experience of special licences is an integral part of the re-education programme and it shall be supervised by educators and prison social workers in cooperation with local social workers.

Requirements- licences can be granted:
a) to those convicted to imprisonment for no more than 3 years, also when in addition to other sentences to be served;
b) those convicted to imprisonment for more than 3 years after serving at least one fourth of the sentence, for crimes under article 4 bis paragraph 1 op;
c) to those convicted to imprisonment for crimes under article 4 bis paragraph 1, 1ter and 1quater op, after serving half of the sentence and never more than 10 years;
d) to those convicted to a life sentence after serving at least 10 years.

The decision concerning special licences is subject to complaint within 24 hours upon communication to the surveillance court.

Granting special licences to habiutal offenders - art. 30 quater op

This article has been introduced by law no. 251 of 5 December 2005 (socalled former Cirielli law).
Special licences can be granted to prisoners who are habitual offenders as per article 99, paragraph four of the criminal code in the following cases:
a) when convicted to imprisonment or arrest for no more than 3 years, also when in conjunction with the arrest after serving one third of the sentence;
b) when convicted to imprisonment for more than 3 years for crimes falling outside of article 4 bis paragraph 1 op after serving half of the sentence;
c) when convicted to imprisonment for crimes under article 4 bis paragraph 1 op and when convicted to a life sentence after serving two thirds of the sentence and never more than fifteen years.

Prison leave for important family reasons - art. 30 op

In the case of immediate life threat to a family member or cohabiting partner the surveillance judge can grant a prison leave to prisoners and inmates to visit the person ill, with the necessary precautions established by the prison rules and with an escort as a precautionary measure.
For defendants, during the first instance trial, the leave can be granted by the judge of the trial, and after the first instance ruling by the President of the Appeal Court.

Leaves can exceptionally be granted for especially important family events. The prisoner who at the end of the leave does not return to prison without a justifiable reason is punished with a disciplinary punishment if the absence is between 3 and 12 hours.
Otherwise he is punishable for break-out as per article 385 cc.

Legal modification under approval

Draft law no . 5019

Presented by the Ministry of Justice Severino Di Benedetto in charge of "Proceedings decriminalization and suspension with assessment for out-of-prison custodial punishments, as well as suspension of the proceedings against the untraceable".

Assessment

Article 3 envisages the suspension of the proceedings with assessment, until the opening statement of the trial, no more than twice, in the case of proceedings concerning fines or crimes punished with a pecuniary penalty or with incarceration, alone or combined with a pecuniary penalty, of no more than 4 years, when requested by the defendant, to be requested to the judge.

The assessment consists in an unpaid work performance of public interest to be carried out for the State, regions, provinces or municipalities or in bodies or organizations doing social or volunteer work, as well as in following a number of possible obligations in the relationship with the social services or with the health care system concerning the house, freedom of movement, prohibition to enter certain premises or removal of the detrimental effects of the crime.

In case of serious or repeated violation of the obligations set, of refusal to work in a facility of public interest or of a new crime being committed with criminal intent during the assessment or of relapsing into a crime of the same nature the assessment itself is interrupted and the trial is resumed.
For the purposes of calculating the punishment five days of assessment count as one day of incarceration and as 250 euros of pecuniary penalty.
At the end of the assessment the judge shall declare the punishment served with a judgement if he deems that the assessment had a positive outcome.

Suspension of trial for the untraceables

Article 4 establishes the suspension of the trial when the defendant is not present.
More specifically, it establishes that if the defendant is not present at the first day of trial, when the summoned papers where not delivered in person to the defendant or to a person living with him or at the lawyer's address when chosen as notification address, the judge shall summon again the defendant and if it is still impossible to notify the defendant he shall suspend the trial, unless the judge shall issue a pronouncement of acquittal.

Unless the defendant proves he had not been informed of the proceedings, not for his fault, further summons and suspension of the proceedings do not apply in the following cases:

a) when the defendant is arrested, stopped or placed under protective measure during the proceedings;
b) when there is evidence that the defendant has been informed of the proceedings against him or that he voluntarily avoided to be informed of the proceedings;
c) in proceedings for crimes under article 51, paragraphs 3bis and 3quater, ccp. (3-bis establishes the crimes, committed or attempted, in accordance with articles 416, paragraphs six and seven, 416, crimes committed to commit other crimes under articles 473 and 474, 600, 601, 602, 416-bis and 630 of the criminal code, for crimes committed making use of the conditions established by article 416-bis and in order to facilitate the activities of the associations listed in the same article, as well as for crimes under article 74 of the consolidated law approved with Presidential Decree no. 309 of 9 October 1990, article 291-quater of the consolidated law approved with Presidential Decree no. 43 of 23 January 1973 and article 260 of legislative decree no. 152 of 3 April 2006, and article 3-quater establishing crimes committed or attempted for terrorism.

When the defendant is not present at the first day of trial and the circumstances do not allow for a suspension of the trial, the judges orders to proceed without the defendant.
New proceedings in the appeal trial are provided for in case the defendant, absent during the first instance trial, so requests and proves that he had not been able to be present during the trial for an act of providence, for force majeur or for a valid excuse, provided that those circumstances were not caused by the defendant. In this case the defendant shall benefit from new terms to apply for alternative proceedings.

New out of prison custodial sentences

Article 5 establishes the introduction in the criminal cod of ourt-of-prison custodial sentences (when suitable to avoid the risk for the convict of relapsing into crime). In particular, for crimes punishable with imprisonment for a maximum of 4 years it establishes that the main custodial sentence shall be house arrest or custody at other private address, also for specific hours of the day or days of the week for a minimum of 15 days and a maximum of 4 years, with the exception of crimes under article 612bis of the criminal code (stalking).
The judge shall decide special methods of control to be enforced through electronic or other technical devices.

Appendix chapter 4

Article 146 cc Mandatory Postponement of the enforcement of the sentence

The enforcement of a non-pecuniary punishment is postponed:
1) when involving a pregnant woman;
2) when involving a mother of a child under the age of one;
3) when involving a person living with AIDS or with severe immunodeficiency confirmed in accordance with article 286-bis, paragraph 2, of the code of criminal procedure, or involving a person affected by other particularly severe disease which make the person's health status incompatible with incarceration, when the disease has progressed to a point where all available treatment and care has proven inefficient according to the prison or national health system.

In the cases provided for by numbers 1) and 2) of the first paragraph the postponement of the sentence is not available, or revoked, if the pregnancy terminates, if the mother is denied custody of her child as per article 330 of the civil code, if the child dies or is abandoned or placed in the custody of others, provided that the termination of pregnancy or the delivery took place at least two months before.

Article 147cc Optional postponement of the enforcement of the sentence.

The enforcement of a sentence might be postponed:
1) when a request for pardon was made, and when the enforcement of the sentence cannot be postponed under the previous article;
2) when a restrictive measure shall be enforced against someone who is in a condition of severe physical disability;
3) when a punishment depriving of the personal freedom shall be enforced against a mother of a child under the age of three.

In the first case the enforcement of the sentence cannot be postponed for more than six months overall, starting from the day in which the judgement becomes absolute, also when the request for pardon is renewed.

In the case provided for by number 3) of the first paragraph the proceedings are revoked, when the mother is denied custody of her children under article 330 of the civil code, when the child dies, when the child is abandoned or placed in the custody of others.
The measure under paragraph one cannot be adopted or, when previously adopted, is revoked in case of serious risk of relapsing into crime.

Crimes under article 51 paragraph 3-bis ccp

Crimes, committed or attempted, under articles 416, paragraph six (criminal association aimed at enslavement or slavery; human trafficking; purchase or transfer of slaves; promotion and organization of illegal immigration

under particular circumstances), 416, crimes committed with the intent of committing crimes under articles 473 (counterfeiting, distortion or misappropriation of trademarks or of distinguishing features, patents, models and designs) and 474 (smuggling into the state and sale of counterfeited products), 600 (enslavement or slavery), 601 (human trafficking), 602 (purchase or transfer of slaves), 416-bis (mafia-type associations, also foreign associations) and 630 (kidnapping) of the criminal code, for crimes committed under the circumstances established by article 416-bis or to promote the activity of associations defined by the same article, as well as for the crimes under article 74 (association for the illegal sale of narcotic drugs and psychotropic substances) of the consolidated law approved with Presidential Decree no. 309 of 9 October 1990, under article 291-quater (criminal association aimed at the smuggling of foreign tobacco) of the consolidated law approved with Presidential Decree no. 43 of 23 January 1973 and under article 260 (organization for illegal traffic of wate) of legislative decree no. 152 of 3 April 2006.

Rights and obbligations of the prisoner

The first contact with the prison is with the prison administration, where they take fingerprints, personal data and pictures.
The subject shall also declare if he has any problems living with other prisoners to safeguard his personal safety.
Then money, watch, belt, valuable objects (rings, necklaces, etc.) and any other object needing to be checked are collected: the watch and belt can be handed back later to the prisoner, if not valuable, upon written request to the prison manager.

The money collected shall be deposited on a bank book indicating the sum owned by the prisoner and which later shall be updated with all payables and receivables. The money shall be received through post office money order or deposit and it shall be used to buy extra board goods;L make telephone calls, etc.

Medical exam and session with the psychologist

A medical exam is performed where it is important to tell the physician every information, providing all the documents available, on:
- any drugs taken regularly;
- any health problems, allergies or other conditions;
- any addiction to narcotic drubs and/or alcohol;
- any food intolerances or need for specific diets.

After the medical exam there is a session with the psychologist to assess any problems related to the imprisonment experienced.
The medical exam and psychological assessment conclude the admission operations and the new prisoner is escorted to his cell.
At this point the prison police officer shall have the prisoner sign a document describing the conditions of the cell: it is necessary to verify that all the objects are in the conditions actually described as any damage reported during or at the end of the period of imprisonment shall be charged to the prisoner.
Upon admission to the facility, also in case of transfer, the prisoner has the right to inform his family that he is in a specific prison and he shall do so with a telegram or letter.

Post charges are charged to the prisoner but, if he does not have enough money the prison administration shall pay to send the letter or telegram. The necessary materials (stamp and paper for the letter or sending the telegram) shall be requested with a written form specifying the lack of money.

If the new prisoner has not hired a lawyer, he can appoint one through the prison administration where he shall find the register of local lawyers.
The prison administration shall communicate to the consulate of embassy of the country of origin of a foreign prisoner his incarceration upon consent of the prisoner himself, consent which is not required for countries where such communication is mandatory.

Prison staff

Inside the prison work different members of staff:

- prison manager;
- assistant managers;
- chief of the criminal police unit;
- head of the education unit and educators;
- psychologist;
- psychiatrist;
- operators of the Ser.T. (drug addiction services);
- chaplain and ministers of religion;
- head of the health unit, physicians and nurses;
- head of the administrative-accounting unit and accountants;

Management

It consists of the prison manager and of its staff of assistant managers:
they are in charge of the organization and correct management of the sentences.
The prison manager, through the prison staff, ensures safety and respect of the op (article 2 Presidential Decree: no. 230 30 June 2000) and he exercises his powers of organization, coordination and control of prison activities. He also decides on initiatives suitable to ensure the development of programmes in the prison, on internal and external intervention and on directions for the prison operators (article 3 paragraph 2 Presidential Decree no. 230 of 30 June 2000) It is possible to ask to speak with the prison manager or assistant anagers via letter or specific form called "domandina" to present any personal problems or complaints concerning the imprisonment.

Criminal police

The prison safety and custody service is assigned to the Criminal Police (article 2 paragraph 2 Presidential Decree no. 230 of 30 June 2000)
The criminal police is also in charge of supervising and enforcing restrictive measures, participating, also within work groups, in assessment and reeducation activities of prisoners and of the stakeout service of prisoners in care facilities outside of the prison and of those subject to a custodial restrictive measure.

Professional educator and re-education programme

It is the person in charge of arranging, organizing and coordinating internal activities concerning the school, work, cultural, recreational and sports initiatives in cooperation with other operators.
He takes part, within the assessment and re-education staff, in the identification of a programme aimed at helping the prisoner find a new role in society. The assessment is carried out by a staff of several operators who adopt an integrated approach and which generally includes prison manager, educator, social worker, expert as per article 80 op (psychologist, criminologist etc.) and criminal police officers. The assessment and reeducation activities benefit from the cooperation also of volunteers, chaplain and teachers within the framework of an enlarged group called Assessment and Re-education Group (G.O.T. - Gruppo di osservazione e trattamento). The educator works in cooperation with the rest of the staff in charge of re-education activities and helps in the management of the library and in the distribution of books, magazines and newspapers (article 82 paragraph 3 op).
As provided for by article 1 op, imprisonment shall:

- be human
- respect the dignity of the individual
- not discriminate
- be based on re-education and social reintegration
- be enforced based on a criterion of personalization according to the specific characteristics and conditions of the subject.

In particular article 13 of the above-mentioned law establishes that the reeducation programme shall take into account the special needs of the personality of the subject and that it shall be prepared based on scientific assessment to be integrated or modified according to the needs which shall emerge during its development.

General and specific indications for the re-education programme, its developments and outcomes shall be reported in prisoner's personal file.
Article 15 op identifies the elements of the re-education programme in as being

education, work, religion, cultural, recreational and sports activities, proper contacts with the world outside of the prison and relationship with the family and it specifies that the convict and inmate is granted a job for re-education purposes, safe when impossible.
The methods to be adopted for the re-education programme in each prison are governed by the internal rules (article 16 op).

Law no. 172 of 1 October 2012 has added article 13bis to law no. 354 of 26 July 1975 – Psychological treatment for those convicted of sexual offences against minors – establishing that individuals convicted for crimes under articles 600bis (child prostitution), 600 ter (child pornography), even when involving pornographic materials as set forth in article 600quater.1 – virtual pornography), 600 quinquies (child sex tourism), 609 quater (sexual assault on a minor), 609 quinquies (corruption of minors), 609 undecies (child grooming) of the criminal code, as well as in articles 609bis (sexual assault) and 609 octies (group sexual assault) of the criminal code when perpetrated against minors, can undergo a rehabilitative and supportive psychological treatment. Involvement in the treatment programme is assessed by the surveillance judge or court that monitor the positive participation to the programme for specific rehabilitation as per article 4bis, paragraph 1 quinquies of this law, for the purposes of qualifying for prison benefits.

The operator of the Drug Addiction Service
The operators is employed by the local health unit but he also works in prison every day to assist prisoners with drug and alcohol addiction problems. This operator performs health care and rehabilitation through tutoring and arrangement of specific treatment protocols also in agreement with the competent drug addiction service.

External - uffici di esecuzione penale esterna
The U.E.P.E. deals with the relationship between prisoners and the world outside of the prison (family, work, house etc) and with any problems which might occur in such context. In this sense, the U.E.P.E. promotes contacts with external resources and local services to help0 the prisoner face the relative challenges, both in view of benefits being granted (alternative measures) and in view of the release from the prison by also carrying out actions in favour of the families of the prisoners. In case of alternative measures being granted, the benefiting prisoner shall be followed outside of the prison by the External Sentence Enforcement Service (U.E.P.E. - Ufficio esecuzione penale esterna).
Prisoners' relatives can address the UEPE directly to ask for an intervention of the social workers.

Furthermore, the U.E.P.E. is responsible by law towards convicts who go directly from being free to being subject to alternative measures.

In addition, in compliance with article 72 op those offices also:
- conduct inquiries, upon request of the court, to gather useful information for the application, modification, extension and revocation of restrictive measures;
- conduct social and family inquiries for the application of alternative measures;
- present to the court the re-education programme for convicts who applied for probation under the supervision of a social worker and house arrest;
- supervise the implementation of programmes by convicts subject to alternative measures and propose possible interventions of modification and revocation;
- provide consultancy services to promote re-education programmes, upon request of the prison administration.

Social worker
Social workers carry out the activities listed in the previous paragraph in social service centres; they monitor and assist convicts subject to alternative custodial measures, and support and assist convicts on probation, they take part in assistance activities to released convicts (article 81 op), and are part of the assessment and re-education staff together with other professionals.

Psychologist
It is a professional figure hired by the prison administration for assessment and re-education purposes. The psychologist is, indeed, one of those expert professionals available to the prison administration for assessment and re-education activities falling under article 80 op.

Also present, although not employed by the prison administration, are:

Volunteer assistants
These persons are fit to provide assistance and education and, upon proposal of the surveillance judge and with the authorization of the prison administration, work together with the prison administration to give moral support to prisoners and cooperate in education activities aimed at future social reintegration. They also deal with problems such as: clothes, wedding documents, cashing cheques, pension documents; they can contribute to recreational and cultural activities under the supervision of the prison manager. Such activities carried out by volunteers cannot be remunerated.

Volunteer assistants keep regular contacts with the other professional figures, in particular with educators, and can cooperate with social service centres for probation under the supervision of a social worker, for conditional discharge and for assistance to released convicts and their families (article 78 op).
Volunteer prison assistants can be contacted by special request.

Cultural mediators

The presence of this figure is guaranteed through the cooperation with local bodies and, in particular, with the municipal and regional authorities.
It represents a bridge across different cultures, both for prisoners and operators during their assessment and re-education activities; it provides support to foreign prisoners based on their specific needs (language, understanding of the rules, religion, administrative practices, etc.).
An ad-hoc office is established inside the prison.
A meeting can be requested in writing with the prison operators, and with the surveillance judge and the regional prison superintendent; these latter, together with the prison manager, can also be addressed with written claims and complaints

The guarantor of the rights of persons deprived of their personal freedom

It is a professional figure employed when it is reported that a right was restricted or failed to be exercised; the guarantor intervenes with the competent authorities to urge useful actions. Article 67 op lists the guarantors of the rights of prisoners among the groups of people who are allowed access and visit to the prisons without prior authorization.

The guarantor carries out also an activity of public awareness on the issue of human rights and re-education purposes of punishment, thus bringing the local community and the prison closer together.

Article 67 of law no. 354 of 26 July 1975 - Visits to the prisons

Prisons can be visited without prior authorization by:

a) The Prime Minister and the President of the Constitutional Court;
b) Ministers, judges of the Constitutional Court, State Secretaries, members of the Parliament and members of the Supreme Council of the Judiciary;
c) The President of the Court of Appeal, the Prosecutor General at the Court of Appeal, the president of the court and the prosecutor of the court, the surveillance judges, within their jurisdiction;
d) The regional councillors and the government ministerial representative for the region, within their district;
e) The priest in the exercise of his ministry;
f) The prefect and the chief of police of the province; the provincial physician;
g) The managing director of prison and care facilities and the magistrates and officers appointed by him;
h) The inspector-general of the prison administration;
i) The chaplains inspector;
l) Criminal Police Officers;
l bis) the guarantors of the rights of prisoners however called:
l ter) The members of the European Parliament.

Article 67 bis of law no. 354 of 26 July 1975, Visits to the vaults

Provisions as set forth in article 67 apply to vaults as well
With the regional law no. 13 of 27 September 2011 amending the Modified version of the regional alw no. 3 of 19 February 2008, the Emilia-Romagna Region has established the Office of the Guarantor for the rights of prisoners and persons deprived of their personal freedom, whose activity, in compliance with the constitution and within the powers of the Region, is aimed at protecting the rights of the persons in prisons, youth detention centres, healthcare facilities undergoing involuntary treatment, in initial reception centres, in temporary detention centres for foreign nationals and in other facilities restrictive or depriving of personal freedom.

The Guarantor fosters initiatives for the promotion of a culture of rights for prisoners, in cooperation with the competent regional departments and with public and private operators. He also works in cooperation and in connection with the competent regional departments and with public and private stakeholders, as well as with guarantee institutions in the municipality.
In the Region there are three municipal guarantee institutions in Bologna, Ferrara and Piacenza.
For any report the address of the Guarantor of the persons deprived of their personal freedom in the region Emilia Romagna, Mr Bruno Desi (lawyer), is:
Viale Aldo Moro, 50 40127 BOLOGNA

Written request

The written request is a form used by the prisoner to inform the administration of all his social needs. Such form shall be requested to the unit writer, filled out in all the sections for the applicant and submit it to the administration by placing

it in the ad hoc box present in every prison unit.

With this form the prison can request:
- to send a telegram or registered letter;
- to pick up a postal parcel;
- to receive goods needing prior authorization on the occasion of visits;
- a subsidy, if he is without money;
- to borrow books from the library;
- to change cell or unit;
- to speak with his family or cohabitant both in person and on the telephone;
- to have and interview with prison operators and with prison operators and other members of staff;
- to take part in sports, recreational, cultural and other kinds of activities;
- request a copy of the deeds and proceedings.

Transfers - art. 42 op

The applications for transfer to another facility shall be addressed, through the prison, to:
- the regional prison superintendent for transfers to a prison in the same region;
- the prison administrative department, for transfers to a prison outside of the region.

Please be reminded that transfers are ordered for severe and proven safety reasons, for prison needs, for justice, health, study and family reasons and the chosen prison shall be the closest one to the residency of the prisoner's family (article 42 op).

NOTE In compliance with article 62 of Presidential Decree 230/2000 immediately after admission to the prison, both in case of previously free individuals and of transferred prisoners, the prisoner and inmate are asked by the prison operators whether they want to inform a relative or other person and whether they want to use the ordinary mail or a telegram to do so. A report of the declaration is written. The communication, contained in a letter in an open envelope or in a form for a telegram is limited to the only new concerning first admission to the prison or the transfer; such communication is presented to the administration which immediately forwards it chargeable to the prisoner. When the prisoner is a minor or an inmate without economic means, the costs are paid by the administration. In case of foreign prisoners, admission to the prison is communicated to the consulate in the cases and with the protocols envisaged by the current legislation.

Prisoner transport

With regard to the transport of prisoners, defined by law as forced escorting from one place to another of persons under custody, prisoners, inmates, suspects, arrested or, in any case, persons deprived of their personal freedom.

During transport of individual prisoners handcuffs are mandatory when imposed by the dangerousness of the prisoner of by the risk of flight or when the environmental circumstances make transport difficult (article 42 bis op). In all other cases it is prohibited to use handcuffs or any other means of physical coercion.
The dangerousness or risk of flight are assessed during transport by the competent court or by the prison administration which shall decide the necessary safety measures.
During group transport of prisoners the use of waist chain with modular front handcuffs is mandatory in compliance with the ministerial decrees.
During transport, all necessary measures shall be adopted to protect the prisoners from the curiosity of the public and from any publicity, as well as to prevent them from pointless discomfort. Failure to comply with such provision shall be considered as punishable behaviour.

As confirmed by the circular letter M.G.G.AFF.PEN (Ministry of Justice - Department of Criminal Affairs) no. 558 of 8 April 1993 – Transport of persons deprived of their personal freedom – article 42bis op – the legislation is inspired by the principle of transporting prisoners in the way that most respects human rights with forced escorting neither being nor appearing degrading or detrimental to the dignity of the human being. The divulgation, especially on television, of scenes showing defendants or suspects wearing handcuffs who are literally assaulted by photographers and journalists while being transported to the prison or to court shall be avoided.

Visits and telefhone calls - art. 18 paragraph 1 of law no. 354 of 26 July 1975 – Visits, letters and information

Prisoners and inmates are entitled to visits and letters with their relatives and other people, as well as with the guarantor of the rights of the prisoners, also for the accomplishment of legal acts.

Visits are governed by article 18 of the law on prison rules and article 37 of the regulation on prison system standards, Presidential Decree 230/2000;

telephone calls, instead, are governed by article 39 of the same regulation.
Prisoners are entitled to six monthly visits with their relatives or cohabitants of one hour each. Only those with relatives who don't live in the same municipality of the prison and who the week before did not come to the ordinary visit can extend the time of the visit. Prisoners under article 4 bis of law 354/1975 first paragraph first sentence are entitled to four visits per month.

Visits can be between a maximum of three persons at a time. Relatives are defined under article 307 paragraph 4 of the criminal code as: ascendants, descendants, spouse, brothers and sisters, in-laws in the same degree (with the exception of the in-laws when the spouse is dead or there are no children in the matrimony), uncles and ants, nephews and nieces.

Cohabitants are defined as those registered on the same civil status certificate. Common prisoners are entitled to visits with their relatives within the fourth degree while prisoners under article 4 bis of law 354/1975 first paragraph first sentence are entitled to visits with relatives within the third degree.

Under special circumstances (specifying the reason for the request) visits can be granted also with other people.
Until the first instance trial has taken place, visits are authorized by the competent court; afterwards they are authorized by the manager of the prison where the prisoners is detained.
Family members can enter the prison by showing an ID and a document proving their degree of relationship (civil status certificate or a certificate of family history issued by the municipality). Italian citizens can use a selfcertification of their degree of relationship at the entrance. For foreign nationals, the prison shall acquire a declaration of the consulate certifying the degree of relationship.

Prisoners are also entitled to extraordinary visits and to the possibility to spend the day or part of the day with their family to preserve the relationship with their family upon authorization of the prison manager after consulting with the assessment and re-education group (article 61 Presidential Decree 230/2000). Once foreign nationals have been authorized to pay visit to a family member in prison no other document shall be requested to prove their immigration status.
Access to visits with family members in prison is a right - both for the prisoners and the relatives - not a public service.

Criminal Police Officers shall refrain from asking the foreign nationals accessing the prison to produce any document certifying their legal immigration status; similarly, foreign nationals shall not be required to prove their legal immigration status in any way. The fact that public officers are not required to verify the legal immigrant status of the foreign national when entering the prison premises does not imply -the public officers become aware in any way of the crime of illegal immigration- that they are not required, in general, to immediately report the crime to the judicial authorities.
Prisoners are entitled to one telephone call a week with their relatives or cohabitants.
Prisoners under article 4 bis, first paragraph first sentence of law 354/1975 are entitled to only two telephone calls a month. The telephone call shall last 10 minutes.
The authorization to telephone talks shall be requested to:

- the competent court, until the first instance ruling;
- the prison manager for prisoners and inmates; the surveillance judge for appellants and plaintiffs.

The request shall always be submitted to the prison administration which, where possible, shall forward it to the competent authority after verifying the degree of relationship and that the telephone number actually belongs to the relative with whom the prisoner wishes to speak.

After obtaining the authorization, a written request shall be submitted to request to make the telephone call, specifying the date and time of the call.
When coming from another prison, where the prisoner already had the authorization to call his family members, a new request of authorization shall be filled in and submitted to be authorized to make telephone calls in the new prison.

Authorization to call mobile phones under special circumstances

The circular letter of the Prison Administration Department no. 0177644 of 26 April 2010 - New interventions to reduce the discomfort produced by the deprivation of freedom and to prevent self-aggressive episodes - issued by the General Directorate for prisoners and re-education, has established that only common prisoners in the medium security units shall be entitled to call mobile phones provided that certain criteria are met: the prisoner shall not have had visits or made telephone calls in the 15 days before.

Thus the prisoner, with ad hoc request indicating the impossibility to contact his relatives on a fixed-line number and indicating the mobile phone number and

producing the necessary documents showing that the mobile phone number belongs to one of his relatives, shall be authorized to make calls to mobile phones. If the prisoner cannot produce the necessary documents showing that the mobile number belongs to his relative, the necessary controls shall be set forth to verify the owner of the mobile phone number.

In any case, after fifteen days from the application, during which it is proven that the prisoner neither received any visits nor talked on the telephone on fixed-line numbers for the entire period, the authorization to call mobile phone numbers shall be granted upon submission by the prisoner of a selfcertification stating that the mobile phone number belongs to a family member, regardless of any information requested to and obtained from the competent authorities to confirm the owner of such mobile phone number.

Of course, the authorization shall be revoked should the information provided by the prisoner turn out to be false.
The same circular letter has established that, in view of ensuring full protection of the right to the defence, the prisoner is entitled to telephone calls to his lawyer in addition to the number of calls allowed to his family members; the same goes for visits.

Letters and authorized belongings

The prisoner is entitled to receive four parcels per month during family visits for a total of 20 kg per month.
The parcels can also be mailed, in which case they can be delivered to the prisoner only if he did not receive any visits in the previous 15 days.
The prisoner is also entitled to sending and receiving letters without restrictions; if the prisoner does not have the necessary tools to write the letters, the administration shall provide it. It is possible to send letters in a closed envelope; however in this case the name of the addressee (to whom the letters shall be sent) and the sender's name and surname on the back, shall be written clearly.

Restrictions can be imposed to the right to correspondence for investigation purposes and for safety and internal order reasons (according to the protocols and limitations under article 18 ter op).
No restrictions shall be imposed when the letters are addressed to a member of the Parliament, members of the diplomatic body or consulate of the country of origin, organizations for the protection of human rights and lawyers.
Article 18 ter paragraph 2 legge no. 354 of 26 July 1975 – restrictions and controls of the correspondence
No restrictions shall be imposed on letters and telegrams addressed to awyers, to the court and authorities under article 35 op (prison manager, supervisors, managing directors of correction and care facilities, Minister of Justice, surveillance judge, judicial and health authorities, chairman of the regional council, head of the State), to the members of Parliament, to the representatives of the diplomatic body or consulate of the country of origin of foreign nationals and to the administrative or judicial international organizations for the protection of human rights of which Italy is a signatory.

Shopping, cooking and kitchen use

Prisoners are allowed to cook food inside the cell on a camping-style selffuelled gas hob, safe in the prison units where there are prisoners for health reason (see infirmary and diagnostic and treatment centres)

Only comfort goods and food listed in a specific price list can be purchased with a specific form.
The circular letter of the Prison Administrative Department of 21 October 2011 issued by the Head of the Department on the total sum available to prisoners to be spent for their shopping and correspondence and to be sent to their family member and cohabitants has increased the expenditure limit for shopping and expenditure to 800,00 euros per month (200,00 euros per week), to buy all the products on the shopping list, with the specific form, and to sent telegrams and make telephone calls. The amount that can be sent to family members and cohabitants is established in Euros 350,00 per month.

School

In prison it is possible to attend several school classes at the level of compulsory eduction and of secondary school. It is also possible, for applicant prisoners, to study as an external student for the high school diploma and university degree.
There are also courses of Italian language.

Work inside the prison is compatible with the attendance to school classes. Prisons shall encourage prisoners' access to the consultation of book in the library of their prison unit; this service shall be managed by educators with the cooperation of volunteer assistants and representatives of the prisoners. Access

to the library premises is allowed in specific days and time for each section.

Professional training

Professional training courses are organized inside the prison.
Prisoners are informed of such courses with by posting on specific noticeboard in the sections together with the information notice on the type of the course, number of participants, minimum admission requirements (for example proficiency in Italian or professional experience coherent with the course to be attended) and duration of the courses. In order to attend the courses the prisoner shall fill in a specific application form. Participants shall be selected by the Prison Administration which shall take into consideration also previous professional, training, and school experiences of the applicant.

At the end of the professional training courses, if the outcome is positive, the participant is given a certificate of attendance specifying the activities carried out and the prisoner is added to the list of qualified workers based on the training received.

Work inside the prison

Prisoners are assigned to work inside the prison based on two fix lists:
- one for access to unqualified work
- one for access to qualified work (builder, labourer, painter, cook, typographer, etc.)

When first entering the prison, every prisoner is added to the unqualified ork list and from that moment he starts accruing unemployment seniority.
Access to the list of qualified work is based on professional qualification, previous documented experience, professional inclination and judicial status. It is not possible to be listed for more than one qualified work.
To be admitted to work, it is necessary to apply to the prison administration and specify whether to be added to the list of qualified or unqualified work.

Workers are then chose based on:
- family dependents
- professional experience and education
- professional qualification
- neediness
- unemployment seniority accrued from the first day of imprisonment.

If the prisoner does honour his work tasks and obligations, he is excluded from the lists, unless there is a justifiable and documented reason. By appealing the decision the prisoner can be readmitted to the work lists.

Exclusion and readmission to work shall be decided by the prison manager, after consulting with educators, members of staff and experts.
Prisoners working for their family dependents shall receive dependency benefits in compliance with the law. Such benefits shall be paid directly to the dependents.

Recreational and sports activities

In prison a number of cultural, sports and recreational activities are organized; they are part of the re-education treatment.
In developing such activities the prison administration can cooperate with volunteer assistants. The application to all prisoner's activities shall be presented in writing.

Associations operationg inside the prison

There are several associations cooperating with prisons and they operate both inside, with workshops, and outside with reception of individuals. Prisoners can contact these associations with a written request to obtain a meeting with a volunteer.

Cell, hygiene and prevention

The cell shall be kept tidy and when the prisoner cannot do so, for health reasons, the task is performed by prisoners in charge of cleaning services and remunerated for the activity as per article 6 Presidential Decree 230/2000.
The necessary equipment to clean the cell shall be made available for free by the prison administration in compliance with article 8 Presidential Decree 230/2000 and article 8 of law 354/1975, every prisoner is also allowed to buy at his expenses other products in the prison sales point.
Article 5 op also establishes that prisons shall be equipped with rooms for the development of community activities.

In prison, reduced space and forced cohabitation can cause serious health risks.
It is therefore essential to strictly follow common hygiene standards to reduce the risk of contamination by microorganisms (bacteria, viruses,protozoa), fungi and parasites.

The standards to be adopted are very simple:

- request cleaners and detergents to the prison administration, to clean the washbasin and bathroom fittings (it is best to clean them at every use when in common with other people);
- it is advisable to use liquid soap with dispenser and not cakes of soap as these are often a vehicle of infections (some microbes reproduce inside the cakes of soap and the surface of the washbasin where they rest on become cultures of germs);
- towels, toothbrushes, razors, combs and brushes shall never be exchanged to avoid contracting diseases such as hepatitis, scabies, skin fungi etc.;
- kitchenware provided by the prison is often in plastic material and scarcely hygienic.

It is advisable to wash them carefully with hot water and rinse them to eliminate any trace of detergent.

Right to health in prison

With Prime Ministerial Decree 1 April 2008 all health-related tasks performed by the Prison Administration Department and by the Juvenile Justice Department of the Ministry of Justice have been assigned to the national health system. Hence, after the reform, health care in the regional prisons is provided by the Emilia Romagna Region.
This reform of the prison health care system has established the principle that prisoners and inmates have the same right to basic and uniform prevention, diagnosis, care and rehabilitation as free citizens.

In the report on health care provided in the regional prisons in the year 2011, commissioned by the competent regional department, it emerges that the punishment shall take into account the human needs of the convict in view of his future possible reintegration in society; among the primary "human" needs there is of course the right to health. Social reintegration of prisoners will be successful if the individual is psychologically and physically healthy. The Constitutional Court, with a number of rulings, has expressed the concepts of "right to health" interpreted as a serious of personal circumstances: right to psychological and physical integrity; right to a healthy environment; right to free health care for the needy; right to be informed of one's health conditions and of the treatments that the physician intends to administer; right to participate in decision-making; right to access to facilities; right of the patient to communicate with his family; right to give an informed consent to the medical exams and treatments offered.

Medical services are organized in the prison to provide primary health care, and for mental health, pathological addictions and for specialist's exams. In accordance with article 11 of law 354/1975 whenever a treatment or diagnostic exam is necessary which cannot be administered by the prison medical services, the prisoners shall be transferred to a civil hospital or to other external care facility.
When first entering the prison the subjects undergo a medical exam to diagnose any psychological or physical illnesses and to test for infectious diseases. Information on the health is privileged and physicians are bound by doctor-patient confidentiality. Health care is provided with regular visits regardless of the requests of the individuals concerned.

The health care system provides the drugs for the treatments prescribed: the nurse cannot modify the dosage prescribed by the physician and it is prohibited to store drugs and administer them to other prisoners. Prisoners are entitled to purchase drugs, prescribed by the physician.
Prisoners can request, with an application addressed to the prison management, to be visited at their expenses by their own doctor. Prisoners waiting for first-instance trial shall address their applications to the competent court. The prison health department shall be informed about it.

In order to be examined by the doctor the visit shall be booked the evening before by leaving name and survey to the officer assigned to that unit: the doctor shall come the next forming for the visit.
In case of sudden symptoms the officer on duty in the unit immediately who shall call the doctor right away for an urgent visit.
Article 11 of law 354/1975 establishes that health care shall be provided, during incarceration, with regular and frequent visits, irrespective of the prisoners requests.
The health professional shall visit the patients every day and those who request to see a doctor; he shall inform immediately of any diseases which might require further examination and special care; he shall also check regularly the subject's fitness for the work they are assigned to.

Food

Food is guaranteed by the prison administration based on the age, sex, health condition, work, season, weather (article 9 op) and it shall consist of three meals a day (article 11 Presidential Decree 230/2000).
Food quantity and quality is decided based on specific charts approved with a ministerial decree.
Prisoners can request, with specific application, to receive food which respects their religious beliefs.

NOTE
By law, the every prison shall have a committee of prisoners and inmates representatives chosen randomly by drawing every month to check implementation of the charts and food preparation.
The committee -made up of three prisoners with the participation of an assistant of the manager- oversees the "withdrawal of food products, checks for quality and quantity, verifies that the food withdrawn is entirely used for the preparation of the meals" (article 9 op and article 12, Presidential Decree 230/2000).
This committee is also in charge of checking the quality and prices of the food sold in the prison outlet which, under no circumstances, shall exceed the prices usually paid in the municipality where the prison is located. The prices are checked regularly by the administration and publicized to the prisoners.
The representatives of the prisoners have the right to present their observations to the prison manager.

Persons with health issues are entitled to a specific diet, the same goes for pregnant women and women who have recently given birth. To request a diet specific for the health condition of the applicant, it is important to speak with the doctor who can prescribe a proper diet which the administration shall provide.

Legal costs and costs for maintenance in prison

These costs, which might be extinct, amount to the expenses paid by the State to hold the trial and maintain the prisoner in prison. The daily cost of maintenance is currently set at around 1.80 euros and it includes the cost of meals and of the use of the personal effects provided by the administration (mattress, sheets, dishes, cutlery, etc.).
To be granted an extinction of the debt, the applicant must be indigent and have had a good behaviour during the incarceration period; if the application is accepted the prisoner is no longer required to pay for those costs but to repay only the costs of maintenance for the months of imprisonment during which the prisoner worked.
The application for the extinction of the debt shall be addressed to the surveillance judge as soon as the advice of payment is received; this entails a temporary suspension of the proceedings for the recovery of the debt.

When the punishment will have been entirely served, the surveillance judge shall decide whether the conditions are there to actually grant the extinction of the debt. The pay for prisoners with an absolute sentence for the work carried out in prison shall be divided between the available deposit (four fifths) and the term deposit (one fifth).
The money in the term deposit shall become available after serving the punishment; however in case of justifiable needs which cannot be met with the available deposit, it is possible to request to the prison manager with a specific form, available in the unit, that the sum on the term deposit be made available.

Right to vote

Persons living in prison or custody facilities, both serving a sentence or subject to detention pending trial, who maintained their right to vote shall be able to exercise this fundamental democratic right.
To this end the prison managers shall organize in advance, as soon as the electoral campaign has started, a widespread system of communication with the prisoners, extended also to those who shall enter the prison, to give prisoners all the necessary information to exercise the right to vote.
As already known, persons who are incarcerated at the moment of the elections can exercise their right to vote in prison, under articles 8 and 9 of law no. 136 of 23 April 1976 with the establishment of a special polling station However, the exercise of this right is subject to certain prerequisites which need time and which cannot be fulfilled unless known in advance.

In particular, the prisoner shall send a document to the mayor of the municipality of the election list where he is registered, to declare his will to exercise the right to vote where he is, with the declaration of the prison manager at the bottom of the page confirming his imprisonment, in order to allow the mayor to register the applicant in the election list and to give him his election card.
The application shall be delivered to the Mayor at least three days before the elections; it is however crucial to inform the prisoners of the need to fulfil such requirements so that they can take the necessary actions.

Prompt information can encourage prisoners, who now more than ever need to have their right to citizenship acknowledged, to enjoy the fundamental right to participate in the political life of the Italian Republic.

Religion and practising faith - art. 26 op

Prisoners and inmates have the right to practise their faith and religious rites freely and to learn about their religion. Prisons guarantee the celebration of the Catholic rite. Every prison has at least one chaplain.

Those who practice a different religion from the Catholic religion, have the right to receive, upon their request, the assistance of the minister of their faith and to practise their religious rites.

Behaviour rules

Under article 69 – information on the rules and provisions governing life in prison - of Presidential Decree 230/2000 every prison shall have in the library or other room accessible to prisoners, the texts of law 354/1975 (on the prison system) and of Presidential Decree 230/2000, of the internal prison rules as well as of the provisions concerning the rights and obligations of prisoners and inmates, the regulations and treatment. Paragraph 2, as amended by Presidential Decree no. 136 of 5 June 2012, modifying Presidential Decree 230/2000, on the chart of rights and obligations of prisoners and inmates, establishes that every prisoners or inmate entering the prison is handed a copy of the chart of the rights and obligations of prisoners and inmates, indicating all the rights and obligations, the facilities and services available to them (by law the content of the chart shall be decided with a decree of the Ministry of Justice to be adopted within 180 days from the date of entry into force of such provision).

The respect of the rules and provisions governing life in prison by the prisoners shall be obtained also by explaining such rules and provisions.
Prohibited behaviours punishable with disciplinary sanctions are listed under article 77 of Presidential Decree 230/2000, representing the set of rules for the enforcement of the prison system.
Rules established under such decree shall be abided by. In particular, it is fundamental to:

- comply with the rules governing life in prison;
- comply with the provisions adopted by the staff;
- adopt a respectful behaviour towards others

Disciplinary Breaches - article 38 op and 77 Presidential Decree 230/2000

Prisoners and inmates cannot be punished for something which is not expressly defined as a breach of the rules.
All sanctions shall be adopted with a justified measure after notification of the complaints to the person concerned who shall be able to explain his reasons.
When applying disciplinary sanctions, it shall be taken into account not only the nature and seriousness of the facts, but also the behaviour and personal conditions of the subject.
The sanctions shall be enforced respecting the personality.

Article 77 of Presidential Decree 230/2000 establishes in particular that disciplinary sanctions are adopted against prisoners and inmates who are responsible for:

1) negligent care of the person or cell;
2) unjustified abandonment of the assigned post;
3) voluntary breach of work obligations;
4) bothering attitudes and behaviours towards the community;
5) games or other activities prohibited by the internal rules;
6) simulation of illness
7) trafficking of authorized belongings;
8) possession or trafficking of unauthorized goods or money;
9) illegal communication inside or outside the prison, in the cases listed in numbers 2) and 3) paragraph one, article 33 op;
10) obscene behaviour or behaviour against public decency;
11) intimidation or bullying of fellow prisoners;
12) forgery of documents issued by the prison administration in the custody of the prisoner or inmate;
13) misappropriation or damaging of the property of the administration;
14) possession or trafficking of aggression tools;
15) offensive attitude against criminal officers or others accessing the prison for their work or for a visit;
16) nonobservance of orders or obligations or unjustified delay in their execution;
17) unjustified delay in returning to prison as per articles 30, 30-ter, 51, 52 and 53 op;
18) involvement in disturbance or riots;
19) incitement of disturbance or riots;

20) evasion;
21) facts defined by law as crimes, committed against fellow prisoners, criminal officers or visitors.

The disciplinary sanctions are adopted also for attempted breach of the above-mentioned rules. The sanction of the exclusion from joint activities cannot be adopted to discipline breaches from 1) to 8) of paragraph 1, unless such breach was committed within three months from a previous breach of the same kind.
Sanctions adopted against the defendant are notified to the competent court.

Disciplinary sanctions - art. 39 op

Any breach to the prison rules shall be sanctioned with:

- warning of the prison manager(it is the mildest sanction);
- admonition;
- exclusion from recreational and sports activities for a maximum of 10 days;
- isolation during outdoor time, for a maximum of ten days;
- exclusion from joint activities for a maximum of fifteen days (it is the most severe sanction).

Warnings and admonitions are enforced by the prison manager; the other sanctions are decided by the discipline committee which includes the prison manager, a health professional and an educator.

Isolation - art. 73 Presidential Decree 230/2000

Prolonged isolation for health reasons shall be prescribed by the physician in case of infectious diseases. It is enforced, according to the circumstances, in a special section of the infirmary or in a hospital ward.
During isolation, the diseased is provided with special care from the staff also for moral support. Isolation shall end as soon as the diseased has ceased being contagious.
Prolonged isolation during the enforcement of the sanction of exclusion from joint activities is carried out in a simple room, unless the behaviour of the prisoner or inmate is disturbing or detrimental to the order and discipline. 3. During the period of exclusion from joint activities, as set forth in paragraph 2, prisoners and inmates are precluded from communicating with their fellow mates.

Isolation during the day for life convicts does not exclude access to work activities, education and training different from regular school classes and from religious rites. Regular meals and water are guaranteed.
The treatment of persons subject to preliminary investigation and who are in isolation shall not differ from those of other prisoners, in compliance with any restrictions imposed by the competent court.

The condition of isolation of prisoners and inmates shall be the object of special attention, with proper daily controls in the place of isolation both from a physician and from a member of the assessment and re-education group, and with ongoing and proper surveillance by criminal police officers.
Isolation sections or units shall not be used for purposes other than those established by law.

Searches - art. 74 Presidential Decree 230/2000

Search operations under article 34 op shall be conducted by criminal police officers with an officer of the Criminal Police present with a rank at least equivalent to deputy superintendent. The officers carrying out the search and those supervising it shall be of the same sex of the person being searched.
The body search is avoidable when the controls can be carried out with the use of control devices.

Searches in the cells of prisoners and inmates shall be carried out respecting their dignity and belongings. The prison rules have established the situations in which, together with circumstances under article 83 Presidential Decree 230/2000, ordinary searches are carried out.
Searches in non-ordinary cases shall be authorized by the prison manager.
For general search operations the prison manager can, under exceptional circumstances, avail himself of the cooperation of police officers and of other law enforcement bodies at the disposal of the prefect, as per comma 5 of article 13 law no. 121 of 10 April 1981.
In particularly urgent cases, the staff autonomously proceeds with the search, immediately notifying the prison manager and explaining the reason justifying the urgency.

Use of physical force and coercion - art. 41 op

The use of physical force against prisoners and inmates is prohibited unless absolutely necessary to prevent or prevent acts of violence, to prevent attempts of evasion or to win over resistance, also passive, to the enforcement of the orders given.
Members of staff who, for any reason, have resorted to the use of physical force against prisoners or inmates shall immediately notify the prison manager who shall order, without delay, a medical exam and open the necessary

investigation.
No means of physical coercion is allowed unless specifically envisaged by the prison rules and, in any case, such means shall not be used to enforcediscipline but only to avoid personal injuries or damage to property and to ensure physical integrity of the subject.
The use of physical coercion shall be limited to the time absolutely necessary and under the strict supervision of a health professional.
Officers on duty in prisons are not authorized to carry weapons, safe in exceptional cases when ordered by the prison manager.

Precautionary disciplinary measures - art. 78 Presidential Decree 230/2000

In absolutely urgent cases, given the need to prevent personal injuries or damage to property, as well as to avoid the rise and diffusion of riots, or when exceptionally serious facts jeopardizing the security and order of the prison have occurred, the prison manager can order as a precaution, with a justified measure, that the prisoner or inmate responsible of a breach of the rules sanctionable with the exclusion from joint activities -which usually cannot be enforced without a written consent of the health professional declaring that the subject can bear isolation - be placed in a single cell while waiting for the disciplinary committee to meet.

Immediately after ordering this precautionary disciplinary measure, the health professional shall examine the subject and, if possible, issue the certificate necessary by law.
The prison manager shall order and enforce as soon as possible the disciplinary measure by applying the provisions under paragraphs 2 and following, article 81 Presidential Decree no. 230 of 30 June 2000.
The precautionary disciplinary measure can never last more than ten days.
The time spent under precautionary disciplinary measure shall count as part of the overall sanction, when one is ordered.

Disciplinary action - art. 81 Presidential Decree 230/2000

When a prison operator shall witness directly or be informed that a rule was breached he shall write a report indicating all the circumstances of the fact.

The report shall be submitted to the prison manager through the official channel.
The prison manager (of a member of the administration) with the chief of the section of the criminal police present, shall notify the breach to the accused, immediately and no later than 10 days from the fact, by simultaneously informing him of the right to present exonerating facts.
The prison manager, in person or through a member of staff, shall verify the facts.

When the prison manager believes that the sanction of a warning of the prison manager shall be enforced (no. 1 paragraph 1 article 39 op - disciplinary sanctions) and of the admonition at the presence of members of the staff and of a group of prisoners and inmates (no. 2 first paragraph article 39 op) he shall call the accused before himself for the disciplinary sanction within 10 days from the notification of the breach. Otherwise, with the same protocol, he shall set the date and time of the convocation of the accused in front of the disciplinary committee. The accused is informed of the convocation with the protocol indicated in paragraph 2.
During the hearing of the disciplinary committee, the accused is entitled to speak and present any exonerating facts. If during the proceedings it becomes evident that the facts are different from the accusations and that they entail a sanction to be adopted by the disciplinary committee, the proceedings are referred to this latter.
The sanction shall be decided and notified during the meeting or in the summary formal report of findings.
The prison administration shall immediately communicate the definitive measure ordering the disciplinary sanction to the prisoner or inmate and to the surveillance judge and the proceedings shall be recorded in the personal file of the prisoner or inmate.

It is worth specifying, therefore, that the proceeding for the enforcement of the sanction follows several steps: notification of the breach by a prison operator who becomes aware of the infraction. The prison operator submits a report on the facts to the prison manager. The prison manager, once informed of the breach, is obliged to notify the breach to the subject involved, at the presence of the chief of the criminal police.

During the notification the prison manager shall also inform the prisoner of his right to present exonerating facts; the prison manager can also investigate the matter further to decide the proper sanction. In this case, the prison manager shall summon the accused for an hearing before him or before the disciplinary committee. The prison manager, therefore, has both investigating and judging

powers. During the hearing the prisoner shall be entitled to present any exonerating facts,thus ensuring a true right to defence. The notification of the breach, in compliance with the prison legislation, acquires a specific value within the due process and it represents an obligation for the prison manager for the purposes of the full implementation of the cross-examination during the disciplinary proceedings.

The notification, as specifically established by law, requires the presence of two subjects, the prison manager and the chief of the criminal police, to guarantee that the content of the report is truthful, and the prisoner can immediately exonerate himself.
The prison manager can delegate this task, though still ensuring the presence of two persons, in the respect of the prison system so as not to put the same person in charge of several incompatible tasks.
When the notification is not carried out in compliance with the protocol established by law it is invalid and the disciplinary sanction enforced can be appealed to the surveillance judge and revoked.

NOTE
It has been verified in prison that sometimes during the hearing of the disciplinary committee -and in particular when the accused presents exonerating facts and tells what happened in his experience- criminal police officers are present, sometimes even the officer who filed the disciplinary report.
With regard to this procedure, which is not common however, it is worth specifying that unless for specific and serious safety concerns, it is best that the entire hearing proceed with the only members of the disciplinary committee and the accused present.

Complaint to the surveillance judge - art. 69 paragraph 6 op

The prisoner or inmate is entitled to file a complaint to the surveillance judge who shall decide with an order appealable only before the Cassation Court, concerning the rules and enforcement of disciplinary measures, the establishment and jurisdiction of the disciplinary committee, the notification of breaches and the enjoyment of the right to the defence.
The prisoner, as per article 14 ter op, can file a complaint within 10 days from when he is notified with a disciplinary sanction.
It is worth specifying that article 69 paragraph 6 of law 354/1975 acknowledges the possibility for the surveillance judge only to verify the lawfulness of the disciplinary sanction and not to carry out an inquiry on the enforcement of the disciplinary power by the authorities in charge of discipline in the prison.
The consequence of this principle is that if the complaint is based not on the lawfulness but on the merits of the disciplinary measure, which cannot be investigated, the judge shall define the complaint as non-actionable.

With reference to the legislation on the matter, here are some examples of the controls of the surveillance judge concerning only the lawfulness of the actions and not the merits, as previously specified:
- conditions of enforcement of the disciplinary power (e.g. the complainant infers a disciplinary sanction for a fact which is not expressly considered as a breach of the rules; the complainant infers the lack of justification of the proceeding with which the enforcement of the disciplinary sanction was decided against him);
- establishement of the disciplinary committee (e.g. unlawful establishement of the disciplinary committee which must be made up of the prison manager who shall chair the committee or, if he is unavailable of the most senior employee, of an educator and of a health professional);
- powers of the disciplinary committee (e.g. sanctions which fall within the jurisdiction of the disciplinary committee ordered by the prison manager);
- notification of the breaches (e.g. failure to notify the facts of the breach which are going to be the object of a sanction).
- right to self-exoneration (e.g. when the right to present exonerating facts is violated).

The prisoner shall ask the prison amdinistration to access the deeds of the disciplinary profeedings, with particular reference to the copy of the disciplinary report and of the minutes of the meeting of the disciplinary committee (with the due omissions, concerning names and surnames of the criminal police officers who filed the disciplinary reeport and of the members of the disciplinary committee).
The request to have access to the deeds is legitimized by the fact that it is in the prisoner's legal interest to appeal the disciplinary measure.

A complaint can be filed to the surveillance judge also with regard to the compliance with the rules concerning the assignment of work, the compensation and remuneration as well as stage and work activities and social insurance.

Foreign prisoners

Legislative Decree no. 286 of 25 July 1998 and following versions applies to Non-EU foreign citizens..

Foreign prisoners without resident permit

Non-EU citizens are foreign nationals.
Foreign nationals are without resident permit when:
- they came to Italy violating the immigration law;
- they came to Italy in compliance with the immigration law but than did not apply for a resident permit;
- the resident permit has been revoked;
- the resident permit expired.

According to the Italian law foreign prisoners shall be deported both when released and when having to serve an absolute sentence of more than two years (in which case the deportation is ordered by the surveillance judge and the prisoner can appeal the order within 10 days from the judgement).
Deportation can occur also at the end of the pre-trial detention.

Before deportation is enforced the foreign national can be held for a maximum period of 18 months in a detention centre (Centro di Iidentificazione ed Espulsione - CIE).
In this case a hearing is set before the Justice of the Peace with an attorney present who can request the suspension of the deportation order and appeal the deportation order. According to the law, the attorney shall be paid by the State, also when it is a hired attorney.

Deportation can also consist in an order to leave Italy within the next seven days and is the foreign national does not leave the country and he is found, he shall be sentenced to a pecuniary penalty.
This deportation order can also be appealed to the Justice of the Peace and in this case too the law establishes that the attorney shall be paid by the State.
There are a number of cases in which the foreign national without resident permit cannot be deported.
These are:
1) when in the State of origin the person might be subject to persecution for

race, sex, language, nationality, religion, political beliefs, personal and social conditions;
2) when the person is under 18;
3) when the person lives with an Italian relative within the second degree or with an Italian spouse;
4) when the person is married and the wife is pregnant or with a child of less than 6 months of age.

If the foreign national falls into this category of people he can apply for the resident permit and appeal the deportation.
Another case in which the foreign national can be granted the resident permit is when he proves that he is escaping from organized crime associations and, therefore, he is in danger. In this case, usually upon request of the public prosecutor, a resident permit valid for six months is granted; the permit can be extended if the foreign national follows the reintegration programme previously agreed.
Foreign nationals who find themselves in a condition of severe work exploitation can also be granted a resident permit upon request of the public prosecutor or with his favourable opinion.
The resident permit is issued -after the sentence is served- also to the foreign national who has served a sentence for a crime committed when he was minor and who has proven to participate in the assistance and integration programmes agreed with the educators.

Foreign nationals subject to pre-trial detention can be granted noncustodial restrictive measures such as house arrest, obligation to have a certain residence or obligation to show to a police post. In this case the foreign national cannot be deported and he can live in Italy all throughout the protective measure.

The foreign prisoner who is serving an absolute sentence can, if the legal requirements are met, ask and obtain to serve the sentence with an alternative measure such as house arrest or probation under the supervision of a social worker. Also in this case the foreign national cannot be deported and can stay in Italy all throughout the sentence to be served.

Foreign prisoner with resident permit

If a foreign national with resident permit is arrested or convicted this does not automatically entail that his resident permit is revoked.
However, the law establishes that the chief of police can revoke or deny the renewal of the resident permit when he believes the foreign national to be dangerous. The consequence of such decision is expulsion from Italy.
The foreign national convicted (also in case of plea-bargain) for some kinds of crimes cannot be granted the renewal of the resident permit, unless other circumstances exist that should be assessed by the police.
Article 4 of the consolidated law on immigration lists all such crimes (including crimes related to drug abuse, sexual assault, procuring, illegal immigrant smuggling). Absolute sentences for crimes related to copyright (for instance: sale of illegally duplicated CDs or of counterfeited bags or clothes) result in the revocation of the resident permit.

The revocation or denial to renew the resident permit can be appealed. The appeal shall be filed by a lawyer to the Regional Administrative Court (Tribunale Regionale Amministrativo).
If the resident permit expires during the period of detention, the prisoner shall ask for the renewal. The police often rejects the application for renewal, by implementing an outdated circular letter of the ministry of internal affairs; it is however best to present the application anyway.

Resident permit for reasons of justice

The resident permit for reasons of justice can be granted, upon request of the court, when the presence of the foreign national is deemed absolutely necessary to hold a trial for serious crimes. This permit is valid for three months and it is extendible.
The foreign national who is abroad and wants to come to Italy to take part in a trial against him or in which he is the interested party can request, even when previously deported, the authorization to come back to Italy. The authorization shall be limited to the time of the tiral and it is granted by the chief of police where the trial is held.

prison surroundings

appendix

update made by the decree law of 1 july 2013 no. 78, as modified by the law of conversion of 9 august 2013 no. 94

Summary of the Decree law of 1 July 2013 no. 78 converted – with modifications – by the Law of 9 August 2013 no. 94

(Official Gazette 19.8.2013 no. 193 – in force from 20.8.2013)

Changes to art. 280 of the penal procedure code

The norm concerns the applicability of precautionary personal coercive measures.
Specifically, the law of conversion establishes that precautionary custody in prison is only applicable for crimes – committed or attempted – for which a custodial sentence at most of not less than 5 years (previously 4) and for the crime of illegitimate financing of the political is contemplated.

Changes to art. 656 of the penal procedure code

1. When the prison sentence, even if constituting a residue of a longer sentence, is not superior to 3 years (or 6, in the cases contemplated by arts. 90 and 94 of the Unified Code on drugs), the public prosecutor gives an order of execution and at the same time suspends it in order to allow the convicted person to ask – from a state of liberty – for the application of an alternative measure.
   The Cancellieri decree today establishes that the public prosecutor - before ordering the arrest to be carried out – transmits the documents to the Surveillance Judge so that s/he can provide for possible application of anticipated discharge. In virtue of this benefit, 45 days can be taken off the person's sentence for each single six-month period of custodial sentence served.
   What changes: the 3-year "threshold" for being able to request the alternative measure from a state of liberty rises in proportion to all the days taken off for anticipated discharge.
   ! This rule is NOT applied to persons convicted under art. 4 bis of the Prison Regulations

2. The 3-year limit of custody due to suspension of the order of arrest is raised to 4 years in the cases contemplated by art. 47 ter of the Prison Regula

tions, paragraph 1: i.e. in cases in which it is possible to obtain so-called house arrest for humanitarian reasons (for persons in particularly serious health conditions requiring constant contacts with local health bodies,…).
What changes: an anomaly of the system is eliminated that contemplated the possibility of asking for house arrest for sentences up to 4 years, but suspension of the arrest order to ask for the measure from a state of liberty for sentences up to 3 years. Now the two things go hand in hand.

3. Suspension of arrest is NOT possible in some cases identified in paragraph 9.
   Among these, before the Cancellieri decree some crimes were identified that precluded the possibility of suspending arrest (woodland arson, aggravated burglary,…).
   Further, suspension of arrest was not allowed for convicted persons that were repeat offenders.
   What changes: the catalogue of crimes precluding suspension of arrest is revised. Woodland arson, burglary and breaking and entering remain, but aggravated burglary disappears. Two other crimes are inserted: that of maltreatments committed to the detriment or in the presence of a relative or a cohabitant minor and that of persecutory acts against minors, pregnant or disabled woman or with weapons or by a perverted person. Preclusion for repeat offenders also disappears.
   ! The text of the decree law also suppressed the parenthesis "except for those persons that are under house arrest in virtue of article 89 of the Unified Code on drugs", which made reference to drug addicts or alcoholics charged with crimes that have ongoing therapeutic programmes.
   In virtue of art. 89 of the Unified Code on drugs, during an ongoing trial and when the presuppositions would apply for custody, these persons accused of crimes can be granted house arrest: in two hypotheses, even if they are convicted of one of the crimes contemplated by art. 4 bis of the Prison Regulations (specifically, in the case of aggravated robbery and aggravated extortion), obviously on condition that no connections exist with organized crime.
   Hence it was not clear whether the decree law had intended to take a step back in relation to an already consolidated legislative choice, in contrast with the policy of freeing of prison space that inspires the whole provision. Appropriately, the conversion law faces the problem and again inserts the parenthesis in the text of art. 656 of the Penal Procedure Code.

Changes to the penitentiary system (Law no. 354/1975)

1. A new paragraph is added to art. 21 of the Prison Regulations, regulating outside work by inmates, with the evident purpose of broadening its meshes.
   What changes: it is contemplated that inmates can be called on to work voluntarily and without pay in the execution of projects of public utility for the collectivity to be carried out in the state, the regions, the provinces, the communes or with bodies or organizations for welfare and volunteer work.
   The conversion law also inserts the possibility for inmates (with the sole exception of persons convicted for the crime of association of a mafioso type) to carry out activity – voluntarily and without pay – in support of the families of the victims of the crimes committed by them.

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2. With reference to house arrest:
   a) So-called house arrest for humanitarian motives is applied to repeat offenders with the common rules (previously, only if the residual sentence did not exceed 3 years).
   b) House arrest for two years (for freeing prison space, in the presence of a residual sentence not above 2 years) today can also be granted to repeat offenders (previously it could not).
   c) The text of the decree law repealed the measure whereby "an accusation for the crime of prison breaking involves suspension of the benefit and conviction involves its revocation" (art. 47 ter paragraph 9 of the Prison Regulations).
      In this connection, with sentence no. 173/1997, the Constitutional Court had declared the constitutional illegitimacy of the norm in the part in which it makes the suspension of house arrest automatically derive from the presentation of an accusation of the crime of prison breaking.

      The decree law, suppressing the whole paragraph, had also extended the rule established by the Constitutional Court to conviction for the crime of prison breaking. The conversion law goes back, establishing automatic revocation of the benefit only in the case of conviction for the crime of prison breaking, but "unless the matter is serious".

3. With reference to day release: the terms for the concession to repeat offenders became the same as those contemplated for other prisoners

(previously they were higher).

4. With reference to leave for good conduct:
   With respect to the text of the decree law, the conversion law introduces ex novo some changes to the regulation of leave for good conduct, broadening its meshes:
   a) It increases the duration of the leave for minors (it increases from 20 to 30 days for each single period of leave and from 60 to 100 days overall in each year served).
   b) It increases the punishment threshold beginning from which leave for good conduct can be granted to adult prisoners. The concession of leave is admitted today:
      - For convicts with a custodial sentence of not more than 4 years (previously it was 3), even if joined with the arrest.
      - For convicts with a custodial sentence of not more than 4 years (previously it was 3), after serving at least a quarter of the sentence and saving what is foreseen ad hoc for convicts coming under art. 4 bis of the Prison Regulations
   c) The text of the decree law contemplates abrogation of the measure under which the granting of leave for good conduct to repeat offenders was possible after a longer period of time in comparison to that of other prisoners.
      The conversion law has however reintroduced the original rule (art. 30 quater of the Prison Regulations).

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5. The decree law abandoned the rule whereby "entrustment on a trial basis to the social services, house arrest and day release cannot be granted more than once to a repeat offender" (art. 58 quater paragraph 7 bis of the Prison Regulations).
   The conversion law reintroduces it.

Changes to the unified code on drugs (Decree of the President of the Repubblic 309/1990)

There is greater scope for applying work of public utility in the place of a custodial sentence or monetary sanction when the crime is committed by a drug addict.
What changes: Previously there was a catalogue of crimes for which this possibility was admitted. It is also possible today in the case of "different crimes" committed by a drug addict, with the exclusion of some (very serious) crimes categorically indicated: devastation, looting and slaughter; civil war, association of a mafioso type,…
But! In comparison to the text of the decree law, the conversion law partially limits the operation of the new measure. The fact is that the concept of "different crime" is defined:
a) Apart from the very serious crimes of devastation, looting and slaughter,… it must NOT be a crime "against the person."
b) The "different crime" must have been committed "only once."
c) The "different crime" must not only have been committed by a drug addict, but also "in relationship to his/her condition of addiction or as a habitual consumer."

Measures for favouring work activity by inmatess

Tax relief and tax credit are increased for firms that hire inmates.

Extraordinary mesures

Commissarial management for special actions for prison building is postponed to 31.12.2013 and entrusted to Mr Angelo Sinesio.

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