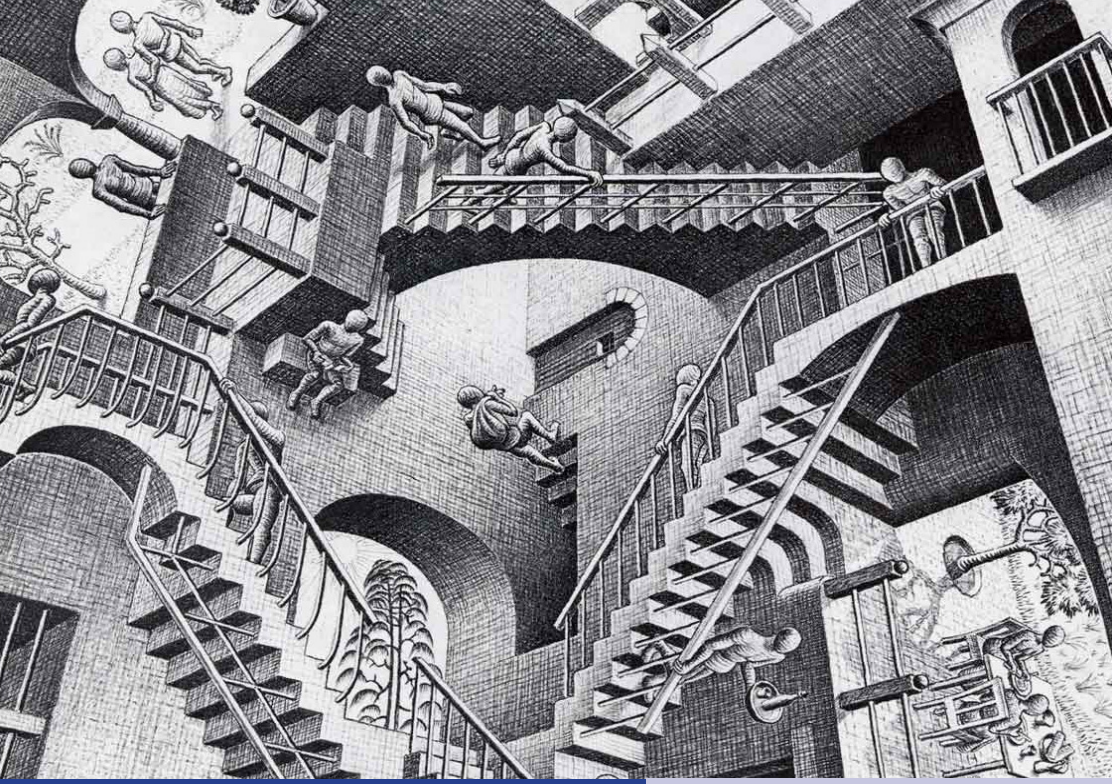

prison and surroundings

guidelines on the relevant regulations

updated to include the legislation into force on March 2015

RegioneEmilia-Romagna
Assemblea legislativa

Garante delle persone
sottoposte a misure restrittive
o limitative della libertà personale

L'ASSEMBLEA dei DIRITTI

prison and surroundings

guidelines on the relevant regulations
updated to include the legislation into force on March 2015

Preface

These guidelines are intended to be a tool for those who live and work in prison, in order to help prisoners understand the Italian laws and rules governing the prison system.
Under certain circumstances, the period of incarceration could be reduced or the restriction of the personal freedom even be terminated, if only there was more information available on possible actions to be taken inside and outside of the prison.
Persons subject to restrictions on their freedom face the problem of understanding the world around them, and this is all the more true for foreign nationals. People living in these conditions often cannot enjoy the rights that the Italian legislation recognizes them;
they are not aware of study, training and work opportunities.
Restriction of personal freedom should not translate into other rights being denied, the right to information included.
Please bear in mind that imprisonment should always be human, and respect of human dignity should be guaranteed, without discriminations of nationality, race, sex, economic and social conditions, political and religious beliefs.

Prison and surroundings is available in 6 languages: Italian, Albanian, Arabic, French, English and Spanish

In view of the important reforms implemented following the now well-known "Torreggiani ruling" of 8 January 2013, the text of the guidelines has been revised and updated to include the legislation into force on March 2015.

Desi Bruno

guarantor of the persons deprived of their personal freedom

Emilia-Romagna Region

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 the rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be reduced to what is strictly 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 out-of-prison 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 work conditions shall enable them to maintain high standards in their care of prisoners.

9. All prisons shall be subject to regular government inspections and independent monitoring.

Constitution of the Italian Republic

Main articles of reference

Art. 2

The Republic recognizes and guarantees the inviolable rights of man, as an individual, and in the social groups where he expresses his personality, and demands the fulfilment of the duties of political, economic, and social solidarity which cannot be transgressed.

Art. 3

All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, and political opinions, personal and social conditions.
It is the duty of the Republic to remove those obstacles of an economic and social nature which, really limiting the freedom and equality of citizens, impede the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country.

Art. 24

Everyone can take judicial action to protect individual rights and legitimate interests.
The right to defence is inviolable at every stage and moment of the proceedings.
The indigent are assured, through appropriate institutions, the means for action and defence before all levels of jurisdiction.
The law determines the conditions and the means for the reparation for judicial errors.

Art. 25
No one may be moved from the normal judge pre-established by law.
No one may be punished except on the basis of a law already in force before the offence was committed.
No one may be subjected to security measures except in those cases provided for by law.

Art. 26
Extradition of a foreign national is permitted only in cases expressly provided for in international conventions.
In no case may it be permitted for political offences.

Art. 27
Criminal responsibility is personal.
The defendant is not considered guilty until final judgment is passed.
Punishment cannot consist in treatment contrary to human dignity and must aim at rehabilitating the condemned.
The death penalty is not permitted.

Art. 111
The law shall be administered by means of a fair trial governed by Act of Parliament.
The parties to all trials may speak in their own defence in the presence of the other parties, with an equal status, before an independent and impartial court. An Act of Parliament shall lay down provisions to ensure that trials are of a reasonable length.
In the criminal process, all individuals charged with a criminal offence have the statutory right to be notified promptly and confidentially of the nature and cause of the charges made against them; they shall be given adequate

time and conditions to prepare their defence; they have the statutory right to examine, or have examined, the witnesses testifying against them in court and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them, and to obtain all other evidence on their behalf; they shall be assisted by an interpreter if they cannot understand or speak the language used during the trial.

The criminal process is governed by the principle that all the parties may speak in their own defence in the presence of the other parties during the taking of evidence.

Guilt shall not be established on the basis of statements made by anyone who has freely chosen not to submit to questioning by the defendant or the defendant's Counsel ad litem.

An Act of Parliament shall govern the cases in which evidence is not to be taken in the presence of both parties with the consent of the defendant or when it is objectively proven to be impossible, or as a result of proven unlawful conduct.

All judicial decisions must be motivated.

Appeals to the Court of Cassation in cases of violations of the law are always allowed against sentences and against measures on 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 Cassation against decisions of the Council of State and the Court of Accounts are permitted only for motives arising from judicial flaws.

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 make a lawful arrest or to prevent the escape of a person lawfully detained;
c. in actions 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:
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;

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;
any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
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
This booklet is updated to include legislation into force on March 2015.
New or amended text compared to the first edition is marked in blue.

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, by means of a 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 in the case of any other urgent needs or reasons arising[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 transposed into Law No.9 on 17 February 2012 added commas 4 bis and 4ter to article 558ccp.
3 The text of Article 384 ccp - custody of a suspect of a crime can be found in the Appendix at the end of chapter I.

NOTE

Decree Law no. 92 of 26/06/2014 transposed into Law no. 117 of 11/08/2914 amended article 24 of Legislative Decree no. 272 of 28 July 1989 establishing that custodial measures, alternative measures to imprisonment, incarceration and security measures shall be implemented in compliance with the law and regulations applying to minors, also for those who shall turn eighteen while serving their sentence, but only until they turn twenty-five, provided that - for those who already turned twenty-one years old- no particular security concerns are identified by the competent judge, all while taking into account any rehabilitative purposes.

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 with 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 the arrest or custody is confirmed, otherwise it is not validated.
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 in-prison pre-trial 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).
Vice versa the immediate release of the person arrested or in custody has to be ordered if:

a) the arrest or custody were unlawful;
b) the term for holding the validation hearing was not met;

c) the judge believes that the evidence against the suspect does not prove him/her guilty.

Similarly, after the arrest has been confirmed, the accused cannot be held in prison if he/she 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/she 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 3 years of age;
b) persons over 70 years of age;
c) persons suffering from a disease which makes them incompatible with detention or persons living with full-blown Aids;
d) fathers of children under 3 years of age whose mother is dead or incapable 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 within 10 days from the transmission of the acts to the court no decision is taken regarding the appeal for a review, the warrant ordering the coercive measure loses effect.

NOTE

Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014 amended article 275bis ccp and established that, when deciding for house arrests (even when as an alternative to in-prison pre-trial detention), the judge shall order that control measures be taken by means of electronic devices or other technical devices, upon verifying the availability of such devices with the police, unless the judge deems such measures to be unnecessary based on the nature and severity of the precautionary requirements to be met in a specific case.

This provision pertains specifically to the use of the electronic tag, namely a form of control exercised through the use of electronic devices ordered by the judge when granting house arrests, unless deemed unnecessary - upon evaluating the precautionary requirements to be met in the specific case.

However, the use of the electronic tag is conditional upon verifying with the police that the device is, in fact, available.

With the same provision, the judge shall order in-prison pre-trial detention in case the accused does not agree to the use of the devices and tools mentioned above

Arrest consequent to a warrant for pre-trial detention

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; Vice versa, 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 respective sources;
6) reasons supporting the judge's decision to hold the accused into 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 him/herself of the right to remain silent.
The interrogation aims to verify that the circumstances leading to the arrest hold.
The judge can also decide whether the accused shall be set free, held in house arrest or released on conditional liberty.
In any case, criminal proceedings follow their course. When preliminary investigations are concluded, if the Public Prosecutor believes there is enough evidence to make the case hold in court, he/she asks that the accused be tried.
Therefore, even in case of possible release, it is important for the accused to keep in touch with his/her lawyer.

Chapter VII (provisions concerning pre-trial detainment), article 94 (admission to prison) of Legislative Decree no. 271 of 28 July 1989 -concerning enforcement, coordination and transitional procedures of the Code of Criminal

Procedure- 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 to 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/her incarceration and, where necessary, explain to him/her the content of the order.

NOTE

Legislative Decree no. 92 of 26/06/2014 transposed into Law no. 117 of 11/08/2014 replaced paragraph 2-bis of article 275 of the code of criminal procedure establishing that, neither in-prison pre-trial detention or house arrests can be ordered if the judge believes that the judgment may result in a suspended sentence.
Except as required by article 3, and without prejudice to the applicability of articles 276, paragraph 1-ter (possible revocation of house arrests in case of breach of the obligation not to leave one's home or private residence to be replaced with in-prison pre-trial detention) and 280, paragraph 3 (pre-trial detention can be ordered only in case of attempted or actual crimes for which the maximum sentence is no less than 5 years of detention and in the case of illegal party funding, as per article 7 of Law no. 195 of 02/05/1974 as subsequently amended, although the provision does not apply to those who violated precautionary requirements), in-prison pre-trial detention cannot be ordered if the judge believes that the punishment established by the final ruling will not exceed three years.
The provision does not apply in case of proceedings for offences referred to in articles423-bis (wildfire), 572 (abuse against family members and co-habiting partners), 612-bis (stalking) and 624-bis (house burglary and bag snatching) of the criminal code, as well as in article 4-bis of Law no. 354 of 26 July 1975 as subsequently amended. Similarly, it does not apply when, upon verifying that any other measure is inadequate, house arrests cannot be ordered due to failure to indicate any of the places referred to in article 284, paragraph 1 (home or other private residence or public healthcare establishment or, where available, protected family home) for the execution of the custodial sentence.

Paragraph 3 of article 275 of the code of criminal procedure establishes that in-prison pre-trial detention can only be ordered when any other measure proves to be inadequate.
When there is significant evidence of culpability for offences referred to in

article 51, paragraphs 3-bis and 3-quater, as well as for offences referred to in articles 575 (murder), 600bis (child prostitution), paragraph 1, 600-ter (child pornography), paragraph 4 excluded, and 600-quinquies (child sex tourism) of the criminal code, pre-trial detention applies, unless there is any indication that no precautionary measures are required. The regulations mentioned above apply to the offences referred to in article 609-bis (sex abuse), 609-quater (sexual assault on a minor), and 609-octies (gang rape) of the criminal code, unless mitigating circumstances apply as envisaged by the same articles.

Readers are reminded that a number of Constitutional Court rulings (which will be discussed later on) have declared article 275 paragraph 3 ccp constitutionally unlawful, with regards to the part establishing that, without prejudice to the precautionary requirements, pre-trial detention shall be mandatory in case of a number of offences explicitly referred to (art. 416 bis cc, art. 630 cc, art. 609 octies cc, art. 600 bis paragraph 1, art. 609 bis, 609 quater cc, art. 575 cc, art. 74 of Presidential Decree No. 309/1990, etc...).

The list of attempted or actual crimes under paragraphs 3-bis and 3-quater of article 51 ccp includes:

- art. 416 bis, paragraph 2, criminal code (mafia-type associations, also foreign associations, and in particular those who promote, lead or manage it);
- art. 416 cc (criminal association) crimes committed with intent under articles 473 cc (counterfeiting, distortion or misappropriation of trademarks or of distinguishing features, patents, models and designs); 474 cc (smuggling into the state and sale of counterfeited products); 600 cc (enslavement or slavery); 601 cc (human trafficking); 602 cc (purchase or transfer of slaves); 416-bis cc (mafia-type associations, also foreign associations) and 630 cc (kidnapping);
- for crimes committed under the circumstances established by article 416-bis cc or to promote the activity of associations defined by the same article;
- attempted or actual crimes under article 74 of the consolidated law approved with Presidential Decree no. 309/1990 (association for the illegal sale of narcotic drugs and psychotropic substances);
- article 291-quater of the consolidated law approved with Presidential Decree No. 43/1973 (criminal association aimed at the smuggling of foreign tobacco);
- article 260 of Legislative Decree No. 152 of 2006 (organization for illegal traffic of waste);
- crimes committed or attempted for terrorism.

NOTE

The rulings of the Constitutional Court have declared constitutionally unlawful article 275, paragraph 3 of the code of criminal procedure, as amended by article 2, paragraph 1 of Decree Law No. 11 of 23 February 2009, transposed into Law No. 38 of 23 April 2009, with regards to the part with prejudice to the hypothesis of specific elements being acquired, with reference to a specific case, where precautionary requirements can be met with other measures, establishing that:

- when there is significant evidence of culpability for crimes committed under the circumstances established by article 416-bis (mafia-type associations, also foreign) of the criminal code, as well as in order to facilitate the activities of the associations referred to by said article, pre-trial detention applies, unless there is any indication that no precautionary measures are required (Constitutional Court, ruling No. 57 of 29 March 2013);
- when there is significant evidence of culpability for the crime referred to in article 416 (criminal association) of the criminal code, with the aim of committing the crimes referred to in articles 473 and 474 of the criminal code, pre-trial detention applies, unless there is any indication that no precautionary measures are required (Constitutional Court, ruling No. 110 of 3 May 2012);
- when there is significant evidence of culpability for crimes committed under the circumstances established by article 630 of the criminal code, pre-trial detention applies, unless there is any indication that no precautionary measures are required (Constitutional Court, ruling No. 213 of 18 July 2013);
- when there is significant evidence of culpability for crimes committed under the circumstances established by article 609-octies of the criminal code, pre-trial detention applies, unless there is any indication that no precautionary measures are required (Constitutional Court, ruling No. 232 of 23 July 2013);
- when there is significant evidence of culpability for crimes committed under the circumstances established by article 600-bis (child prostitution), paragraph 1, 609-bis (sexual assault on a minor) of the criminal code, pre-trial detention applies, unless there is any indication that no precautionary measures are required (Constitutional Court, ruling No. 265 of 21 July 2010);
- when there is significant evidence of culpability for the crime referred to in article 575 (homicide) of the criminal code, pre-trial detention applies, unless there is any indication that no precautionary measures are required (Constitutional Court, ruling No. 164 of 12 May 2011);
- when there is significant evidence of culpability for the crime referred to in article 74 (association for the illegal sale of narcotic drugs and psychotropic substances) of Presidential Decree No. 309 of) 9 October 1990 (Consolidated Law regulating drugs and psychotropic substances, prevention, care and rehabilitation of drug addictions) pre-trial detention applies, unless there is any

indication that no precautionary measures are required (Constitutional Court, ruling No. 231 of 22 July 2011).

Amendments to the consolidated law on drugs (Presidential Decree No. 309/1990 - art. 73 Paragraph 5)

Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014 as first amended - with subsequent amendments being implemented by Decree Law 36/2014 transposed into Law 79/2014 - art 73 paragraph 5 of Presidential Decree 309/90, namely the hypothesis of transferring narcotics for profit (and other acts referred to in article 73, transfer, sale, cultivation) which, under the circumstances and way with which the act was committed, and by reason of the quality or quantity of the narcotic substances, is considered to be a minor violation (in which cases the mandatory arrest in flagrante delicto by the judiciary police does not apply): in particular, the punishment is more favourable, with the maximum sentence being reduced from 6 to 5 years, while the minimum sentence continues to be one year of detention (with the fine unchanged at Euro 3,000 to 26,000). More importantly, the attenuated offence has been made into an autonomous offence, not subject to judiciary assessment and other aggravating circumstances, which might result into a more serious sentence. The fact that the attenuated offence is now an autonomous offence also reduces the prescription limits.
The purpose of the amendment would be to reduce prison overcrowding, especially when the offence involves drug pushing by drug users, although the crime is still punishable with detention.

NOTE

During the process of transposing Decree No. 146/2013 into law, the Constitutional Court (ruling no. 32/2014) has declared article 73 of the consolidated law on drugs, as amended by Law Decree no. 272/2005 (the so-called Fini-Giovanardi Law) transposed into Law 49/2006, constitutionally unlawful, due to excessive power being granted under article 77 of the Constitution, thus reinstating Law 162/90 (so-called Jervolino-Vassalli Law) and the relevant distinction between soft and hard drugs, as well as the punishment measures previously into force, thus raising delicate transitional law issues.
Decree Law 36/2014 transposed into Law 79/2014 has, once again, amended paragraph 5 of article 73 of the consolidated law on drugs, establishing that, without prejudice to instances of serious crimes being committed, anyone who is found guilty of any of the offences referred to in

article 73 which -by reason of the means and circumstances of the act and of the quality and quantity of the substances- is a minor offence, shall be punished with detention from 6 months to 4 years and a fine of Euro 1,032-10,329.
The legislator has thus reinstated the previous punishment limits applying to minor offences involving so-called "soft" drugs based on the original text of the consolidated law (the so-called Jervolino-Vassalli Law), extending it as well to similar circumstances involving "hard" drugs, for which the punishment established by the original consolidated law was 1 to 6 years of detention.
Thus, under article 280 paragraph 2 ccp, pre-trial detention for acts referred to in paragraph 5 is, de facto, inapplicable in all the cases mentioned above.
The new maximum punishment is set to 4 years of detention, thus granting those accused of committing offences under paragraph 5 the possibility of asking that the new provision of suspended sentence with provision be applied under the new articles 168-bis and following articles cc, introduced by Law no. 67/2014.

With reference to the recalculation of punishments established for crimes involving drugs and enforced under the law that was declared constitutionally unlawful, the orientation of the United Sections of the Court of Cassation is, for those convicted - by a final judgement - by virtue of the repealed legislation, to allow the punishment being served to be restructured and recalculated, thus recognising to those finally convicted the potestative right to require the restructuring of a punitive measure based on a punishment which, as previously stated, has been found to be unlawful.

NOTE
Article 19 paragraph 5 relating to juvenile trials was also amended (Pr. Decree 448/1988), establishing that when calculating the punishment in order to decide for any precautionary measures, age shall be considered as a factor for enforcing a decreased penalty, with the exception of the crimes referred to in article 73 paragraph 5 of the Consolidated Law on drugs, in order to preserve the possibility to enforce precautionary measures, where necessary.
The new rule raise doubts in terms of its constitutionality, creating an unfavourable condition based solely on the type of offence which, furthermore, refers to the punishment of minor crimes.

Appointment of a hired counsel

Any person arrested, in custody, receiving a punishment enforcement order or a warrant for pre-trial detention 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 prisoner is entitled to see his/her lawyer immediately, unless a time restriction of no longer than 5 days is ordered by the court upon the arrest. Both the hired counsel and the court-appointed 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 detention order is being enforced, the person deprived of his/her freedom is immediately asked to indicate the name of his/her lawyer, vice versa 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, a copy of 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 an expert assessor, without any defence and consultancy costs being charged. Legal aid is invocable 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, where this condition persists throughout the proceedings.
If the applicant lives alone, his/her total income must not exceed Euro 11,369.24 (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/her family, his/her income adds up to that of the spouse and other cohabiting family members. Vice versa, the applicant's sole income is considered when he/she is involved in proceedings against the other family members.
In criminal proceedings the income bracket is increased by Euro 1,032.91 per 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 by means of a 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 arrests or held in a healthcare establishment, article 123 of the ccp applies[4].
The prison manager or prison officer who received the application file , shall submit or send said application file, via 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 for such certification, a self-certification will do.

4 The text of Article 123 ccp declarations and requests from incarcerated or interned persons is available in the appendix at the end of Chapter I.

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, in order 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.

On this matter, a Directive of the European Parliament and of the Council was adopted in 2010 (Directive 2010/64/EU) on the right to interpretation and translation in criminal proceedings.
The Directive (applying the principle of mutual recognition of decisions in criminal matters, under article 6 ECHR and article 47 of the Charter of Fundamental Rights of the European Union) regulates the right to interpretation with all related implications: assistance necessary in the first proceedings of the trial, translation of all the documents considered to be fundamental in order to ensure the right to defence, Member States' obligation to remedy in case of any complaints regarding the quality of the interpretation, when this is deemed insufficient to guarantee a fair trial.

The Italian State gave effect to the Directive with Legislative Decree no. 32 f 4 March 2014.
Article 104 ccp relating to lawyer's visits to the accused held in pre-trial detention has thus been amended, as well as article 143 ccp, now entitled "right to an interpreter and to the translation of fundamental documents".

First of all, the legislation establishes the right to an interpreter, free of charge, for any person stopped, arrested or held in pre-trial detention that does not speak and understand Italian, so that they can speak with their lawyer.
Prisoners who do not master the Italian language have the right to be assisted by an interpreter for free, so that they can understand the charges against them and follow the proceedings in which they are involved.

Similarly, the right to the **written translation of** the fundamental documents of the criminal proceeding (notice of investigation, information on the right to legal counsel, any documents ordering personal precautionary measures, notice of conclusion of preliminary investigations, summons fixing the preliminary hearing and subpoena, judgements and criminal sentences) within a reasonable time, to ensure the exercise of the accused's right to defence, is

expressly established.
The translation, free of charge, of any other legal documents or of part of those documents, which may be deemed essential in order to inform the accused of the charges against him/her, may be ordered by the judge, also upon motion presented by the defence, with a motivated reason which may be appealed together with the judgement.
Legislative Decree No. 32/2014 does not envisage any specific procedural sanctions for non-compliance to the above-mentioned provisions.
However, it is generally agreed, also in case law, that in such a case the proceedings may be declared invalid under article 178 paragraph 1 letter c) of the ccp, related to failure to comply with the provisions on the assistant to and intervention of the defendant.

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 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/her arrest and, if necessary, explain the contents to him/her.

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; the court shall also examine and consider whether the conditions exist for this person to stay in prison or whether he/she 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 a sentence of imprisonment (article 310 ccp).

Release - choice of address

When a person is released, he/she must choose an address, meaning that the place where all documents concerning the trial shall be sent to must be indicated.
After choosing the address, 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, should the court officers not find anyone at the door, the proceedings may take place without the person actually knowing it with the proceedings being however valid.
It is possible, and sometimes preferable that the person involved decide to receive the documents and communications concerning the proceedings at his/her lawyer's (so called choice of address by the defence); in this case the person shall keep in touch with his/her lawyer. Therefore, even in case of possible release, it is important for the accused to keep in touch with his/her lawyer.

The trial

After the investigation is concluded, if the public prosecutor believes that there is enough evidence to support the charges, he/she shall demand to start the trial.
For some crimes, a first hearing (so-called preliminary hearing) takes place before the preliminary judge.
The purpose of the preliminary hearing is to establish, during cross-examination 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/she 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/she shall issue an order to start the trial indicating the date, time and Court where the trial shall take place, vice versa he/she 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 choose 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 notification of the order of immediate judgement, it is fundamental that you immediately contact your lawyer, as the application for alternative proceedings entitling to a reduced sentence shall be filed necessarily **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 Judgment (art. 558 ccp)

In cases of flagrante delicto, the public prosecutor can ask for summary proceedings, in which case the arrested is brought directly before the trial judge to validate the arrest and relative sentence within 48 hours. In this case, the validation hearing takes place 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: in this case 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, in case of a guilt verdict, entitle to a reduced sentence.

When the judge does not hold a hearing, the criminal police having 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 referred to in article 284 paragraph 1 of the ccp (at home or in other private house or public healthcare establishment 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 should the arrested represent 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 should any other reason or urgent matter intervene, the public prosecutor shall order that the arrested be held in the prison of the place where the arrest was made (or, may this severely jeopardize the investigation, in another prison close-by).
Under the circumstances foreseen in article 380 ccp (mandatory arrest in flagrante delicto) paragraph 2, letters e-bis) and f), the public prosecutor shall order that the arrested be 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 issue a motivated warrant ordering that the arrested be held in custody in the prison of the place where the arrest was made (or, may this severely jeopardize the investigation, in another prison nearby).

So-called alternative proceedings

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/her lawyer with special proxy, decides within a certain term (e.g. at the preliminary hearing, when there is one, or before the trial), to avail him/herself of this alternative form of trial.
If timely requested by the accused, the judge cannot deny shortened proceedings; 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 public prosecutor's file; this does not exclude the possibility of a non-guilty sentence or of appealing the guilty verdict.
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; similarly to shortened proceedings, a plea-bargain entails a reduction of the punishment by 1/3, although it denies the possibility to appeal the sentence and 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/she does not agree on the legal interpretation of the facts or if he/she does not think the punishment is fair.

Suspension of proceedings with probation

Law no. 67 of 28 April 2014 introduced, among other elements, the possibility for adults to request the suspension of proceedings with probation.
The following additions were made: art 168 bis, ter and quater of the criminal code; a new Title V bis in Volume VI of the ccp (related to "special proceedings") and a new Section X bis in Title I of the implementing, coordination and transition rules of the ccp.

The defendant can request the suspension of proceedings with probation:
- In proceedings for crimes punishable with a pecuniary penalty as maximum sentence;
- In proceedings for crimes punishable with a maximum sentence not exceeding 4 years (whether alone, combined or alternative to a pecuniary penalty);
- For crimes referred to in paragraph 2 of article 550 ccp (violence or threats against a public officer, resistance to an officer of the law; aggravated theft; receiving stolen goods;...).

Probation entails following a punishment plan established in agreement with the Out-of-Prison Punishment Enforcement Office which consists in verifying that certain criteria are met, including:
1) The rules of conduct regarding the residence, freedom of movement, relations with social services, etc.;
2) Specific commitments that the defendant undertakes to remove or alleviate the harmful consequences of the crime, as well as - where possible - to compensate damages. Furthermore, rules of behaviour are established to encourage, where possible, mediation with the victim of the crime (also recurring to this end to any public or private facilities present in the area);
3) Doing community service, or any non-remunerated job (for a minimum of 10 days) in favour of the community, to be served at the Government, Regional, Provincial or Town bodies, local health authorities or any institutes or organizations, even international, operating in Italy in the field of social welfare, healthcare and voluntary work.

4) Where necessary and possible, the main ways of including not only the defendant but also his/her family members and living environment in his/her process of social reintegration.

The request for suspension of proceedings with probation can be submitted as early as during the preliminary investigation and until the final findings are formulated under articles 421 and 422 ccp (or any other stage indicated, in case of special proceedings); Suspension of the proceedings is ordered by the judge with his/her ruling, unless a judgement acquitting the defendant shall be pronounced under article 129 ccp.

The judge orders the suspension of proceedings with probation, on the basis of the parameters laid out under article 133 of the criminal code, when he deems that the alternative punishment plan to be adequate and that the defendant will refrain from committing any other crimes (taking into account also the suitability of the residence to guarantee the victim's right to protection).
Suspension of the proceedings with probation does not apply to instances of habitual or professional attitude towards crime, or criminal nature (articles 102, 103 and 108 of the criminal code).

In the decree ordering suspension of the proceedings with probation, the judge sets the term within which to comply with the provisions and obligations established. In any case, the proceedings shall not be suspended for a period:
» Exceeding 2 years, when trying crimes punishable with incarceration (alone, combined or alternative to a pecuniary penalty);
» Exceeding 1 year, when trying crimes punishable with sole pecuniary penalty.

During the period of suspension of the proceedings with probation, the statute of limitations for the crime is also suspended.

The defendant and the Public Prosecutor, also on behalf of the offended party, can appeal the decision on the suspension of proceedings with probation to the Court of Cassation.
The offended party can independently challenge the ruling for failure to notify the offended party of the hearing or for failure to hear the offended party, although present at the hearing.
If dismissed, the application can be submitted again before the judge, before the trial is declared open.

The suspension of proceedings with probation for the defendant can only be granted once.

The probation period can terminate with two possible outcomes:

» Successful: the offence being persecuted is no longer punishable (without prejudice to the possibility of accessory pecuniary penalties being ordered, where the law so prescribes).
» Unsuccessful: the judge issues a decree ordering that the proceedings shall be resumed.

The suspension of proceedings with probation can be revoked, by order of the judge:

» In case of serious or reiterated breach of the punishment plan or of the provisions enforced, or when the defendant refuses to do community service;
» When, after the probation period, a new non-culpable crime, or a crime similar to the one being persecuted, is committed.

The revocation order can be appealed in the Court of Cassation alleging infringement of legal proceedings. When the revocation order becomes definitive, the proceedings resume from where they had been suspended and any statues of limitations and obligations established no longer apply.

In case of revocation or of unsuccessful probation, the Public Prosecutor - when calculating the penalty to be enforced - subtracts the period corresponding to the actual period of probation served.
For the purposes of calculating the punishment, three days of probation count as one day of incarceration or arrest and as Euro 250 of pecuniary penalty.

Suspension of proceedings against unavailable persons

Law no. 67 of 28 April 2014 (and subsequent law no. 118/2014, containing the transition rules) introduced, among other things, the new rules on "suspension of proceedings against unavailable persons" in the ccp.

Firstly, "in absentia" rules are no longer applicable to criminal proceedings.
The new provisions are based on three fundamental hypothesis:

1) There is certain proof that the defendant is informed of the trial hearing being held (preliminary hearing or oral arguments). In which case the trial takes place without the defendant being present.

2) It is presumed that the defendant is informed of the hearing taking place for proceedings of which he/she was certainly informed.
In which case the trial takes place without the defendant being present, but the decree ordering that the trial take place in the absence of the defendant is revoked, even ex officio, if the defendant appears before the court before the decision is taken.
A number of provisions are established for those cases in which the defendant can prove that his/her absence was due to innocent lack of knowledge that the trial was taking place.
Similar provisions apply to defendants who can prove that their absolute impossibility to appear before the court is due to circumstances beyond their control, force majeure or other legitimate impediment, the notification of which was delayed without any fault on the defendant's part.

3) Lack of knowledge of the hearing and proceedings taking place.
In this case, the judge orders the judiciary police to carry out the first attempt to notify the defendant.
Should the attempt fail (and unless the judge shall issue a pronouncement of acquittal under article 129 ccp), the judge orders the suspension of the trial in absence of the defendant. During the suspension, non-deferrable evidence can be obtained.
After one year (or earlier, if necessary), the judge orders new attempts to locate the defendant, and shall do so annually thereafter.
If the defendant is successfully located or if evidence if found that the defendant is informed of the proceedings taking place against him/her, the judge shall set a date for a new hearing resuming trial.
During the suspension of the trial in absence of the defendant, the status of limitations are suspended (within the limits laid down under article 161 paragraph 2 ccp).

The person convicted or sentenced to security measures by final judgement, in a trial at which he/she was absent for the entire course of the proceedings, can request res judicata cancellation if he/she can prove that the absence was due to an innocent lack of knowledge of the trial taking place.

Community service for people dependent on drugs

The legislation of reference is article 73 of the consolidated law on drugs (Presidential Decree no. 309/1990, paragraphs 5, 5 bis and 5 ter.

When the crimes of "illegal manufacture, trade and possession of narcotic drugs and psychotropic substances" are considered to be "minor" offences by virtue of the means, ways or circumstances of the illegal acts or by reason of the quality and quantity of the substances, and when such crimes are committed by a person dependent on drugs or by a user of narcotics or psychotropic substances, the judge - with the conviction sentence or order of implementation of the punishment at the request of the parties under article 444 of the ccp - at the defendant's request and after hearing the Public Prosecutor, can, unless the suspended sentence applies to the case, order that the incarceration or pecuniary penalty be served as hours of community service as per article 54 of Legislative Decree No. 274/2000, for a period of time equivalent to the detention punishment imposed.

In case of violation of the obligations involved in community service, and by way of derogation of article 54of Legislative Decree No. 274/2000 mentioned above, at the request of the Public Prosecutor or ex officio, the trying or implementation judge, providing all formalities mentioned in article 666 of ccp, and taking into account the grounds and circumstances of the violation, orders the cancellation of the alternative punishment with subsequent restoration of the original punishment.

The revocation sentence can be appealed at the Court of Cassation, without the appeal having suspensory effects.
Community service can replace the punishment for a maximum of two times.

NOTE

Under Decree Law No. 78/2013 as subsequently amended during conversion from Law no. 94/2013, the rules mentioned above apply also in case of an offence "other" than those referred to, provided it was committed **only once**:

- by a person who is dependent on drugs of habitual user of narcotics or psychotropic substances and in relation to his/her condition of drug addict or habitual drug user;
- for which the judge established a punishment not exceeding one year of incarceration;
- with the exception of some of the crimes expressly indicated in article 407 paragraph 2, letter a) of the code of criminal procedure (vandalism, looting and mass murder, civil war, mafia-type association, etc…) or of a personal crime.

The appeal

Guilty sentences can be appealed by submitting an application to the Trial Court 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).

Court of Cassation Appeal (art. 606 ccp and following)

The defendant can appeal in cassation in case of second instance guilt sentences, in some cases where the law was violated or where grounds for the decision are 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.

Addressing to the European Court of Human Rights

With the entry into force of the Treaty of Lisbon (1st December 2009) the European 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 that 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 Court of Cassation (Italy's highest Court) has issued its sentence on the case.

After establishing that one or more rights protected by the Convention and its protocols were violated, 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, when the consequences of the violation cannot be eliminated, to a fair satisfaction.

Delegating matters of out of prison custodial punishment and reform of penalty system to the government

Law No. 67 of 28 April 2014 introduced, among other elements, a number of principles and criteria on matters of out-of-prison custodial punishments and reforms of the penalty system to be implemented by the government.

With regards to out-of-prison custodial punishments, the law classifies life imprisonment, incarceration, house imprisonment and house arrest, fines and pecuniary penalties as the main forms of punishment.
House imprisonment and arrests are served at the convict's residence or in other public or private healthcare establishment , ("the residence"), on a continuous basis or only for certain days of the week or parts of the day.

Special provisions are envisaged for:

» Crimes punishable with the arrest or incarceration for a period of not more than 3 years: in which case, the punishment consists in house imprisonment or house arrests.
» Crimes punishable with 3-5 years of detention: in which case the judge, taking into account the criteria referred to in article 133 of the criminal code, can order house arrests.

In both cases:

1) The provisions examined do not apply to instances of crimes committed by people proven to be habitual or professional criminals or to have a criminal nature (articles 102, 103, 105 and 108 of the criminal code).
2) The judge shall decide special methods of control to be enforced as per article 275 bis ccp (electronic tag).
3) The judge can replace the punishments thus established with incarceration or arrest in prison when failing to provide a suitable residence to ensure the convict's custody or when the behaviour of the convict, having violated any of the provisions established or having committed other crimes, is incompatible with those measures, also taking into account the right to protection of the offended party.
4) Unauthorized departure from the residence where the sentence is being served will result in the criminal offense of fleeing legal custody.
5) Community service (namely any non-remunerated job done for a minimum of 10 days, in favour of the community, to be served at the Government, Regional, Provincial or Town bodies, local health authorities or any institutes or organizations, even international, operating in Italy in the field of social welfare, healthcare and voluntary work) can also be ordered, upon consulting the defendant and the Public Prosecutor.

Moreover, the delegated law exempted from criminal proceedings behaviours punishable only with a pecuniary penalty or with imprisonment for a maximum of 5 years, when the offence is proven to be particularly tenuous and the behaviour is not habitual, without prejudice to the possibility of seeking compensation for the damage with civil proceedings.

The delegated law fixed the deadline at 8 months for the entry into force of the law implementing the delegated powers.

With regards to the reform of the penalty system, the legislator entrusts the Government with the decriminalising a series of crimes referred to both in the criminal code and in the special legislation.

In particular, all crimes punishable only with a fine or pecuniary penalty will be transformed into misdemeanours, with the exception of some fields of application (construction and urban planning; environment, territory and landscape; food and beverages; health and safety at the workplace; etc.).
Decriminalisation will concern also some crimes in the criminal code punishable with imprisonment (such as the crime of obscene behaviour), as well as crimes (such as illegal immigration under article 10 bis of the consolidated law on immigration) with a strong political impact.
In addition to the cases mentioned above, the legislator identified other possible decriminalisation hypothesis (i.e. cancellation of the subject matter of the offence from criminal offences without it being transformed into a misdemeanour), such as in the case of defamatory acts.

The law fixed the deadline at 18 months for the entry into force of the law implementing the delegated powers.

Provisions regarging exemption of punishment of "particularly tenuous" crimes

In implementing the delegated power in Law no. 67/2014, Legislative Decree no. 28 of 16 March 2015 containing the "Provisions regarding exemption of punishment of particularly tenuous crimes" was published on the Gazzetta Ufficiale (the Italian Official Journal) on March, 18 2015.
The decree will enter into force on April, 2 2015, thus amending both the criminal code and the code of criminal procedure.
A new article is introduced, art. 131 bis cc, under which:

- Crimes punishable with imprisonment, for a maximum of 5 years, or a pecuniary penalty (alone, or joined with the imprisonment punishment mentioned before) shall not be punishable when, by reason of the behaviour and tenuousness of the damages and danger, as examined under article 133, paragraph 1, the crime is particularly tenuous and the behaviour is not habitual.
  These provisions apply also when the law accepts the particularly tenuous nature of the damage or danger as a mitigating circumstance.
- The offence shall not be considered as particularly tenuous in the following cases: when the perpetrator acted for vile or futile reasons, with cruelty, also against animals, or abused the victim or even profited of the victim's diminished capacity to defend him/herself, also by reason of the victim's

age, or when the behaviour caused, or resulted in, also when involuntarily, the very severe injuries or to the death of the victim.

» The behaviour shall be deemed "habitual" when the perpetrator has been declared a habitual or professional criminal or having a criminal nature, or when he/she has committed multiple crimes of the same type, even when each instance of the crime, considered separately, is particularly tenuous, as well as in case of crimes multiple, habitual, reiterated crimes.

» For the purposes of calculating the punishment of "imprisonment not exceeding 5 years", circumstances are not taken into account, with the exception of those circumstances which lead to a different punishment being enforced other than the ordinary punishment for that crime and of circumstances with special effect. In this last case, for the purposes of implementing the first paragraph of article 69, the balancing judgement weighing the circumstances referred to in said article is not taken into account.

From a procedural standpoint, the following rules are introduced:

» When, by reason of the particularly tenuous nature of the offence, the motion to dismiss is submitted, the Public Prosecutor shall notify the person under investigation and the offended party.
The notice shall specify that, within 10 days, all the proceedings will be available for consultation and that the decision may be appealed indicating, on penalty of inadmissibility, the reasons for appealing the motion to dismiss.

» The irrevocable criminal judgement of acquittal delivered in light of the particularly tenuous nature of the crime has force of res iudicata with regards to establishing the actual occurrence of the facts, their illegal nature and with regards to proving that the defendant committed the fact, in civil and administrative proceedings concerning repayment and/or compensation for the damages instituted against the convict and the party being held civilly liable that was called to appear or that actually appeared in the criminal trial.

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 5 to a maximum of 20 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 Title 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 Title VI Volume II of the criminal code punishable with a sentence of incarceration from a minimum of 3 to a maximum of 10 years;
d) crime of forced slavery in accordance with article 600, crime of child prostitution in accordance with article 600-bis, paragraph 1, 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 paragraph 3, and crime of group sexual assault under article 609-octies of the criminal code;

e) crime of theft, when aggravating circumstances under article 4 of Law no. 533 of 8 August 1977 and article 625, paragraph 1, number 2), first hypothesis, of the criminal code apply, unless the mitigating circumstance is also verified as per article 62, paragraph 1, number 4) of the criminal code;

e-bis) crimes of theft under article 624-bis of the criminal code, unless the mitigating circumstance occurs under article 62, paragraph 1, number 4), of the criminal code; f) crime of robbery under article 628 of the criminal code and crime of extortion under 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 referred to in article 2, paragraph 3 of Law no. 110 of 18 April 1975;

h) crimes related to narcotic drugs or psychotropic substances punishable under article 73 of the consolidated law approved with Presidential Decree no. 309 of 9 October 1990, unless in case the circumstances referred to in paragraph 5 of the same article apply;

i) crimes committed for terrorism or eversion of the constitutional order, punishable by law with a period of incarceration of a minimum of 4 and a maximum of 10

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 of Law no. 561 of 17 April 1956, of associations, movements and groups under articles 1 and 2 of Law no. 645 of 20 June 1952, of organisations, associations, movements or groups under 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 under article 416-bis of the criminal code;

m) crimes of promotion, management, establishment and organisation of a criminal association under 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.

In case of crimes that can be prosecuted under 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 as per article 316 of the criminal code;

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

c) violence or threats against an officer of the law under article 336 paragraph 2 of the criminal code;

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

e) corruption of minors under article 530 of the criminal code;

f) assault under article 582 of the criminal code;

f-bis) trespassing under article 614, paragraph 1 and 2, of the criminal code;

g) theft under article 624 of the criminal code;

h) aggravated malicious mischief under article 635, paragraph 2 of the criminal code;

i) fraud under article 640 of the criminal code;

l) embezzlement under article 646 of the criminal code;

l-bis) sale, exchange or possession of pornographic materials under 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 under articles 3 and 24 paragraph 1 of Law no. 110 of 18 April 1975;

m-bis) production, possession or use of false identification documents under article 497-bis of the criminal code;

m-ter) false certification or statement to an officer of the law concerning one's own identity or personal details or that of others, under article 495 of the criminal code;

m-quater) fraudulent alterations to prevent the identification or verification of identity under article 495-ter of the criminal code.

In case of crimes that can be prosecuted under 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 or by the dangerous nature of the perpetrator, based on the perpetrator's personality and on the circumstances 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 identify 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 or with a period of incarceration of a minimum of 2 and a maximum of 6 years or of a crime involving military weapons and explosives or of a crime committed for terrorism, also at international level, 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.
Upon identifying the suspect or when specific elements are discovered, such as possession of false identification documents, which make the suspect plausibly at risk of flight and when, because of the urgent nature of the situation, waiting for the public prosecutor's orders is impossible, the criminal police proceed with the arrest on their initiative.

Article 123 ccp Declarations and requests of prisoners or inmates.

The defendant incarcerated or held in an institute for the enforcement of security measures 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 as effective as if directly received by the court authorities.
When the defendant is arrested and held in custody, house arrest or in a healthcare establishment, he/she can present appeals, declarations and requests with deeds received by a police officer who will immediately transmit them to the competent authority. Such appeals, declarations and requests are as effective as if directly received by the court authorities.
The provisions under paragraph 1 apply to claims, appeals, declarations and requests presented by other private parties or by the offended party.

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 4 years for cases falling under article 47 ter paragraph 1 of Law no. 354/1975, 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); in which case, 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 should he/she not be available, the lawyer who assisted the arrested during the trial, are notified with the orders of enforcement and suspension, together with the notification stating the possibility, within 30 days, to submit an application, accompanied by all the necessary documents and information, in order to be granted one of the alternative measures to imprisonment under 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 under 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 under article 90 of the same consolidated law. The notification also informs that, if no application is submitted or if said

application is inadmissible under article 90 and following of the consolidated law afore mentioned, 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 submits 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 as per 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 referred to in article 94 of the same consolidated law was not started within 5 days from filing of the application or when the programme is interrupted.

NOTE

Decree Law No. 78/2013 (transposed into Law no. 94/2013) raised to 4 years the limit of a custodial sentence envisaged for suspension of the order of enforcement of the sentence under the cases referred to in article 47 ter criminal law, paragraph 1: or in cases punishable with house arrests because of so-called humane reasons (for persons with particularly serious health conditions requiring ongoing contacts with the local healthcare facilities, etc.).
This solves an inconsistency present in the old system which envisaged the possibility to apply for house arrests for custodial sentences of a maximum of 4 years, as opposed to the suspension of the enforcement order in order to apply, when charged and released from custody, for the same alternative measure for custodial sentences of a maximum of 3 years. The same provisions apply now for both cases.
Currently, the same problem arises now with regards to probation in the custody of social services, as Decree Law No. 146/2013, transposed into Law No. 10/2014, has widened - in some cases - the grounds to apply for probation in the custody of social services for custodial sentences, also for residual punishments, of no more than 4 years.

NOTE

Decree Law No. 78/2013 (transposed into Law no. 94/2013) established that -before issuing the enforcement order- the Public Prosecutor forwards the proceedings to the Surveillance Judge so that he/she can decide on whether to order the early release.
Thus, the "threshold" of 3 years (or 4 or 6, in the cases indicated) to be able to apply for an alternative measure, when charged and released from custody, is increased by the number of days subtracted as part of the order of early

release.
! This rule does NOT apply to convicts under article 4 bis of Law No. 354/1975.

When it is not possible:

In some cases, the suspension of the enforcement CANNOT be ordered (even if the custodial sentence, while being a residual part of a greater punishment, does not exceed 3 years, or 4 or 6 years in the cases indicated above).
These cases are referred to in article 656, paragraph 9 of the code of criminal procedure, substantially amended after the latest update implemented by Law Decree No. 78/2013 transposed into Law no. 94/2013.
The prohibition to suspend the enforcement order apply:

a) To persons convicted of crimes under article 4bis11 of Law no. 354/1975; wildfire (art. 423 bis cc); abuse against family members and co-habiting partners in the offences referred to in article 572 paragraph 2 cc; stalking against minors, pregnant women or persons with disabilities or while bearing arms or in disguise (art. 612 bis paragraph 3 cc); burglary and snatching (art. 624 bis cc).
   ! The prohibition does not apply, however, to those who are on house arrest under article 89 of the consolidated law on drugs (Presidential Decree no. 309/1990) or to defendants who are dependent on drugs or alcohol and who are under treatment;
   By virtue of this provision, during the trial and when there are grounds for pre-trial detention, the defendants mentioned here above can be granted house arrests: in two cases, also when the person is committed of a crime under article 4 bis op (more precisely, in case of aggravated robbery and aggravated extortion), with the sentence being served always in a residence facility, provided that no proof of any connection whatsoever with the organised crime emerges.

b) To those who are under provisional detention, for the crime punished by the sentence to be enforced, when the sentence becomes definitive.

NOTE

Currently, the prohibition NO LONGER applies to convicts to whom the repeated relapse provision was applied under article 99 paragraph 4 of the criminal code[2].

1 The text of article 4 bis 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.

For further details on alternative measures, please refer 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.
He/she has jurisdiction on all the matters concerning the validity of the enforcement order of the sentence for which a person has been convicted. Under the code of criminal procedure, the Enforcement Judge shall be the judge issuing the guilt verdict or the Appeal Judge, when the sentence in the first instance trial is modified by the appeal sentence not solely with regard to the punishment.

For instance, the Enforcement Judge has jurisdiction on the matters concerning amnesty, pardon and the legality of the order of imprisonment, the enforcement of the continuing offense, and the request for a new term when the convict failed to file an application within the term set, in the case of more than one sentence having been issued for the same crime.

Pardon

On the August, 1 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 Euro 10,000.00.
It applies to guilt verdicts for crimes committed prior to May, 2 2006, with the exception of some crimes (e.g. sexual assault, child abuse, kidnapping, mafia-

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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 persons convicted or dependent on drugs or alcohol who, when the definitive sentence is issued, are enrolled in a rehabilitative programme with the public healthcare services specialised in assisting drug abusers or with an authorised facility, in those cases where interrupting the programme may jeopardize detoxification. In this case, the public prosecutor shall decide the implementation of a monitoring program to verify that the person dependent on drugs or alcohol follows the rehabilitative programme until the ruling of the Surveillance Court, revoking the suspension of the enforcement order when it is proven that the person has interrupted the rehabilitative programme.

type association or terrorist association and other crimes).
Pardon is revoked to those who, in the five years following granting of the pardon, are found guilty of a nonculpable offence for which they are sentenced to more than 2 years in prison.
Application of the pardon law shall be enforced by the Enforcement Judge and it can result in immediate release when, by effect of the pardon measure, the punishment 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 is presented.

Postponement of the term (art. 175 ccp)

If the judgement was given in default of appearance or in case of an order of conviction, the defendant is entitled, upon his/her request, to the postponement of the term to appeal the judgement or object the order, except when the defendant was notified of the proceedings and he/she willingly renounced to appear in court or to file for appeal or objection. The Court shall carry out all necessary checks to this end.
The appeal/objection shall be presented within 30 days from the moment the defendant was actually notified, the proceedings being otherwise null and void.
The judge shall decide on the appeal/objection by immediately issuing a court order. If a sentence or 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, he/she shall order, if necessary, that the accused incarcerated be released and that all the necessary measures be adopted, so as to restore the situation as it was before expiry of the term.

Compensation for wrongrul incarceration (art. 314 ccp), sentence reconsideration (art. 629 ccp), compensation for miscarriage of justice

It is useful to know that the judicial system envisages compensation in case of wrongful incarceration, with the possibility to address 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, provided the requirements are met, to ask for a reconsideration of the wrongful sentence by addressing the Court of Appeal in the jurisdiction of the judge having issued the sentence.
In case of sentence reconsideration resulting in an acquittal, the acquitted is entitled to a fair compensation calculated based on the time served and taking into account any consequences to the personal and family life.

The Strasbourg Convention

With regard to foreign citizens held in custody in Italian prisons, readers are reminded of the possibility to serve the sentence in their country of origin under the international convention of Strasbourg (21 March 1983), ratified by the Italian Republic in 1988, 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 both States involved agree to it.
Under no circumstances, can Italian authorities allow for a sentence issued in Italy to be served in a country where the person convicted runs an actual risk of being subjected 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 exceeds 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/she 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 conviction sentence- 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.
However, the person convicted shall not be currently undergoing any other criminal proceedings or 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 as per 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 out-of-prison work, 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 crimes described here after, 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 terrorism, or crimes of eversion of the democratic order through the performance of acts of violence, crimes 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, paragraph 1, 600-ter, paragraphs 2 and 3, 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, transposed into 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, provided that there is no evidence of any relationship whatsoever with the organized crime, terrorist or subversive activities, also in those cases where the limited participation to criminal activity -ascertained in the guilt verdict- 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), even when compensation for the damages occurred after the conviction sentence, under article 114 or article 116, paragraph 2 of the criminal code.

1-ter. TThe 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 subversive activities- for the crimes under articles 575, 600-bis, paragraphs 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.

1-quater. The benefits as per paragraph 1 can be granted to prisoners or inmates for the crimes under articles 600-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 by a team of experts for no less than one year, as per paragraph 4 of article 80 of said law. The regulations mentioned above apply to the crime referred to in 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 criminal code, as well as under articles 609-bis and 609-octies of the same code, when committed against minors, the surveillance judge or court shall examine the positive participation to a specific rehabilitative programme 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 competent provincial committee for public policy and safety, depending on where the person convicted is serving the sentence. In any case, the judge shall decide after 30 days from the request of information. The manager of the prison where the person convicted is serving the sentence

may be called to take part in the above-mentioned provincial committee.
2-bis. TFor 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 30 days from the request of information.
3. When the committee believes that special safety concerns arise or that there is a possibility that the prisoner or inmate is in touch with organizations operating locally or internationally, the committee shall notify the judge, thus postponing the term set in paragraph 2 of an extra 30 days, to acquire all the necessary evidence and information from the competent central authorities.
3-bis. Out-of-prison work, 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 their 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 non culpable offence.

The punishment can be increased by as much as fifty per cent:
1) if the new offence committed without criminal intent is of the same nature;
2) if the new offence committed without criminal intent was committed within 5 years from the previous sentence;
3) if the new offence committed without 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 2, the punishment is increased by 1/2.
If the persistent offender is found guilty of another offence committed without criminal intent, the punishment is increased by 1/2 in the cases envisaged under paragraph 1, and by 2/3 in the cases envisaged under paragraph 2.
If the crime committed falls under article 407, paragraph 2, letter a) of the code of criminal procedure, the punishment shall be mandatorily increased for reiterated offences and, for crimes referred to in paragraph 2, it shall be increased by at least 1/3 for the new offence.
The increased punishment for second offences shall not, under any circumstances, exceed the total of the punishments for the crimes committed before the last non culpable offence.

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 a restrictive measure is established by law, without specifying its exact nature, the judge shall decide for probation, unless -in the case of a person convicted for a crime- he/she 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 conviction sentence (as well as acquittal sentence) only against socially dangerous subjects who have performed actions identified as crimes by law.
The criminal law establishes the cases in which restrictive measures can be decided against socially dangerous subjects for actions which are not identified as crimes by law (article 202 cc).
In case of conviction during enforcement of the punishment or during a time in which the person convicted voluntarily eludes enforcement of the punishment, restrictive measures can also be ordered at a later time with a court order 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 he/she is likely to commit new actions defined as crimes by law (article 203 cc).
The definition of socially dangerous subject is based on the circumstances

indicated in article 133 cc[1].

Restrictive measures cannot be revoked, unless the person subject to such measures is no longer a danger to society (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 the restrictive measures to establish whether he/she is still a danger to society, thus reviewing his/her dangerousness.
In case this person is still a danger to society, the judge shall set a new term for further review. Furthermore, when it is reasonable to think that the danger has ceased, the judge can proceed with new assessments at any time.

Restrictive measures in addition to a custodial punishment are enforced after the punishment has been served or has expired (article 211 cc).
Restrictive measures, in addition to a non-custodial punishment, are enforced after 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 person's criminal inclinations and behaviours and, in general, on the danger that this person poses to society (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;

1 **Article 133 cc** Seriousness of the crime: evaluation based on the effects of the punishment. In 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 convict's inclination to crime, 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) the offender's behaviour at the time of the offence and afterwards;
4) the quality of the offender's personal, family and social life.

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, without criminal intent, thus providing new confirmation of their habitual, professional and natural inclination to crime;
3) have been convicted or acquitted in other cases specifically indicated by law.

Article 217 cc establishes a minimum period of 1 year to be served in farm prisons or resettlement units. Such period is of a minimum of 2 years for habitual offenders, 3 years for professional offenders and 4 years for criminals by nature.

The surveillance judge shall monitor the enforcement of personal restrictive measures.
When a restrictive measure, other than sequestration, with the exception 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 ex officio- verifies that the person involved constitutes a danger to society and adopts the necessary measures with mention, where necessary, 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 six-month licence immediately before the expiry of the term for the review of dangerousness.
They can also be granted a permit, for serious personal or family reasons, of a maximum of 15 days; a permit not exceeding 30 days can also be granted, once a year, to favour social reintegration.
During the permit the inmate is on strict probation.

Probation (art. 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 of encourage, through work, social reintegration of the individual.
Probation cannot be shorter than one year.

Hospitalization in a psychiatric prison (art. 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 2 years.
The minimum hospitalization period in the psychiatric prison is 10 years for actions punished by law with a life sentence, or 5 years for actions punished with imprisonment for no less than 10 years.
When the person hospitalized in a psychiatric prison is sentenced serve a custodial punishment 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 2 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).

Pursuant to the ruling of the Constitutional Court 253/2003, as an alternative to hospitalization in a psychiatric prison, the judge may adopt a different restrictive measure in compliance with the law, fit to ensure suitable care to the insane person and to deal with his/her social dangerousness.

NOTE

Law Decree no. 211/2011, as subsequently amended and transposed into Law no. 9/2012 established that -by March, 31 2013- alternative measures to imprisonment such as hospitalization in a psychiatric prison or remedial home shall be served solely in healthcare establishments which meet the structural, technological and organisational requirements (including in terms of security) set in the non-regulatory decree by the Ministry for Health, adopted in

agreement with the Ministry for Justice and with the Permanent Representative Committee formed by State, Regions and Special Autonomy Provinces.
The term, first extended to April, 1 2014, has been further postponed to March, 31 2015 with Law Decree no. 52/2014 -as subsequently amended- transposed into Law no. 81/2014.
This last piece of legislation introduces also other important provisions:

- Until psychiatric prisons (OPG - ospedali psichiatrici giudiziari) are definitely closed, the judge shall order hospitalization into a psychiatric prison only when no other alternative measure can ensure adequate care while, at the same time, addressing the danger to society posed by the offender. The surveillance judge, asked to assess the offender's dangerousness towards society, shall act accordingly.
- The extent of the danger posed to society shall be assessed based on the person's subjective qualities and without taking into account the circumstances under article 133 cc (the quality of the offender's personal, family and social life).
- The mere lack of individual treatment programmes is not a sufficient element, per se, to prove that the offender is a danger to society.
- The transposing law has introduced the principle for which "*provisional or definitive custodial measures, including hospitalization in remedial homes to enforce alternative measures to imprisonment, shall not exceed the time of the custodial measure ordered as a punishment for the crime committed, without prejudice to the maximum applicable sentence*".

This provision does not apply to crimes punishable with a life sentence.

By virtue of an agreement signed on February, 26 2015 at the Unified Committee (combining the State-City Committee and the Local Authorities Committee), the rules to be implemented inside the new care homes are established.
In particular, the following is clarified:

- *"Jurisdiction is based on confirmed residence"*. In the case of homeless persons and foreign nationals, the principles established under the previous Agreements of the Unified Committee (of 2009 and 2011) continue to apply.
- The staff of the care home is exclusively entrusted with the management of the inside premises of the care homes. On the contrary, *"the security services and surveillance of the perimeter of the facility are assigned based on agreements with the prefecture, also on the basis of information contained in the inmate's file"*.

Admission to a psychiatric hospital or remand home (art. 219 cc)

The person convicted for an offence committed without criminal intent to a reduced sentence, by reasons of mental disability, 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 1 year, when the punishment by law is not inferior to a minimum of 5 years of imprisonment.
If the crime committed is punishable by law with a life sentence, or with imprisonment for a minimum of 10 years, the restrictive measure shall be ordered for at least 3 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 to a reduced sentence for an offence committed without criminal intent, by reasons of mental disability, is conditional upon verification by the judge of the persistent social danger represented by the defendant's 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, hospitalization in a psychiatric hospital or remedial home is ordered for at least 6 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.

NOTE

The process of overcoming psychiatric hospitals concerns remedial homes as well.

For any new elements, please refer directly to the paragraph on psychiatric hospitals.

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 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, the surveillance judge directly makes sure that the enforcement of the custody of the defendants be compliant with the laws and rules and he/she supervises personal restrictive measures.
The surveillance judge approves, with an order, the re-education programme and, if any elements violating the rights of the convict or inmate are found, he/she rejects the programme with observation, pending a new version of the programme to be submitted.
The judge approves, with an order, the admission to out-of-prison work. During the re-education programme, the surveillance judge gives direct orders to eliminate any violations of the rights of the convicted and inmates.
The surveillance judge has the power to issue an order deciding on the prisoners' appeals 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.
Law 354/75 establishes that there shall be a surveillance court in any appeal court district with competence to decide on matters of 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

Differently from the past, the Surveillance Court and Judge, in some of the matters under their jurisdiction (such as the conversion of pecuniary penalties,

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

extinction of the debt, enforcement of probation and conditional discharge for the Surveillance Judge, rehabilitation and assessment on the outcomes of supervised probation for the Surveillance Court), can issue the order without hearing, with the party involved having the faculty to oppose such decision, in which case chamber proceedings shall take place.
The simplified provisions intend to confine adversary proceedings to issues relating to fundamental rights, while recourse to faster proceedings as per article 667 paragraph 4 of ccp should balance out the excessive load borne by Surveillance Offices as a result of the amendments implemented by the new legislation.
Article 51 bis of the Prison System is amended, so that in case of new detention measures being implemented the Surveillance Judge shall be entrusted with continued enforcement of the alternative measure being served, while the Court shall only be entrusted in case of opposition.
Finally, the new legislation regulates the derogations to the requirements set for persons convicted and sentenced to an alternative measure of detention, resulting in an increased workload for the Surveillance Court, in some cases due to amendments of a minor nature.
Article 47 paragraph 8 of the prison system, as subsequently amended, establishes that temporary derogations to the requirements are authorized, at the request of the Director of the Out-of-Prison Punishment Enforcement Office, by the Surveillance Judge, also orally in urgent cases.

NOTE
Foreign prisoners without residence permit and identity documents also qualify, when all the other criteria are met, for out-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.

Out-of-prison work (art. 21 op)

It is a way to enforce a punishment which allows leaving 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, 1ter and 1 quater of 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. The provision shall indicate the rules to be followed outside of the prison.

The defendants can be assigned to out-of-prison work with the prior authorisation of the competent judicial authority.

NOTE

Decree Law No. 78/2013, transposed into law no. 94/2013, has added paragraph 4ter to article 21 op, in order to widen its scope of application.
Currently, prisoners and inmates can be assigned to community service, doing non-remunerated jobs in favour of the community, to be served at the Government, Regional, Provincial or Town bodies, local health authorities or any institutes or organizations operating in the field of social welfare, healthcare and voluntary work.
They can also do volunteer work to support the families of the victims of the crimes they committed.

These provisions do not apply to prisoners and inmates convicted for the crime referred to in article 416 bis cc (mafia-type association, also when foreign) and for crimes committed under the circumstances established by the same article or to promote the activity of associations defined by said article.

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 served sentence. It is granted to those who adopted a good behaviour and have proven 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 surveillance court within 10 days upon notification of the denial indicating the reasons for the appeal in the application.

NOTE

Special Early Release

Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014, established that, for two years following the entry into force of the decree, the deduction of the punishment granted with early release as per article 54 under Law no. 354 of July, 26 1975 shall be equal to 75 days for each semester of punishment served, in case of good conduct (and no longer 45 days). When transposing the law, persons convicted for crimes under article 4bis op, namely crimes posing the greatest danger to society, were excluded from the provisions (despite the Decree Law including them, albeit with more severe requirements), thus generating, according to some, inequalities in treatment. The law also establishes that convicts having already benefited from the new provision, starting from January, 1 2010, shall be entitled to a and additional reduction of 30 days per semester of detention, provided that, even after such benefit being granted, they continue to show active participation in the re-education programme. The competent judge remains the Surveillance Judge.

Semi-custodial arrangements (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/her 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 to a life sentence and having already served 20 years of inprisonment.

NOTE

Under Law Decree no. 78/2013, transposed into Law no. 94/2013, the previous provision in accordance to which all persons convicted with repeated

relapse, as per article 99 paragraph 4 cc, may be granted semi-custodial arrangements only after serving longer periods of detention (2/3 of the sentence and, in the case of persons convicted for any of the crimes under paragraphs 1, 1ter and 1quater of article 4bis op, after serving ¾ of the sentence) no longer applies.
Semi-custodial arrangements are granted based on progress made during the re-education programme, when the conditions are there for gradual reintegration in society.
The person on semi-custodial arrangements 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 semi-custodial arrangements are assigned to special institutes or to specific autonomous sections of the regular prison.

NOTE
Decree Law no. 78/2013, in the original text, abrogated the rule set in article 58 quater paragraph 7 bis op, according to which semi-custodial arragnements cannot be granted more than once to persons convicted with repeated relapse as per article 99 paragraph 4 cc. However, when transposed, Law no. 94/2013 did not confirm abrogation of the provision.

House arrests (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/she was not declared a habitual or professional offender or an offender by nature and provided that he/she 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 ccp2 and article 4bis op

House arrests are also 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 Law Decree no. 78/2013, transposed into Law no. 94/2013, said provisions also apply to the person convicted for second offence as per article 99 paragraph 4 cc (unlike before, when they applied only if the definitive sentence of imprisonment, although a residual part of a longer sentence, was shorter than 3 years).

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 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.
The provision does not apply to persons convicted of crimes referred to in article 4 bis op

Vice versa, under Law Decree no. 78/2013, transposed into Law no. 94/2013, said provision applies to the person convicted with repeated relapse as per article 99 paragraph 4 cc (unlike before).

House arrests are revoked if the subject's behaviour, contrary to the law or any other legal prescriptions, is incompatible with the custodial measure continuing with tis course, or when the conditions required by law are no longer there.

Unauthorized departure from the residence where the sentence is being served shall result in the criminal offense of fleeing legal custody.

A sentence of fleeing legal custody shall result in the benefit being revoked, with the exception of tenuous actions.
The provision is thus formulated based on amendments implemented with Decree Law no. 78/2013, transposed into Law no. 94/2013.

Previously, the "report of the crime of fleeing legal custody resulted in the suspension of the benefit and, when found guilty, its revocation".
However, with ruling no. 173/1997, the Constitutional Court had declared the provision constitutionally unlawful, with regard to its automatically implementing the suspension of house arrests as soon as the crime of fleeing legal custody was reported.
Law Decree no. 78, in its original text, abrogated the whole provision, thus implementing not only the ruling of the Constitutional Court but also eliminating the principle according to which house arrests are revoked if the person on house arrests if found guilty of fleeing legal custody. The transposition law, however, restored this last point, re-implementing the automatic revocation of the benefit in case of a guilt verdict for fleeing legal custody, with a new element: "with the exception of tenuous actions".

NOTE
Decree Law no. 78/2013, in the original text, abrogated the rule set in article 58 quater paragraph 7 bis op, according to which house arrests and other benefits cannot be granted more than once to persons convicted with repeated relapse as per article 99 paragraph 4 cc. However, when transposed, Law no. 94/2013 did not confirm abrogation of the provision.

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, 1/3 of the sentence (or a minimum of 15 years) can be served in a mild correctional facility for convicted mothers or, if there is no real risk of 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 has amended law no. 354 of 26 July 1975 with 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 convicted, accused or confined mother of a child under the age of 10, also when the child is not living with the mother, or the convicted, accused or confined father (when the mother is dead or absolutely incapable of taking care of the child), 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.

Special surveillance measures in the enforcement of house arrests (art. 58 quinquies op)

With regards to surveillance during the enforcement of house arrests, Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014

has introduced a specific article in the prison justice system, art. 58 quinquies, establishing that the Surveillance Judge or Court shall have the faculty to order surveillance to be enforced also through electronic devices or other technical devices, provided they are available to the police (similarly to surveillance for house arrest as an alternative measure to pre-trial detention.

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 10 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

Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014 has confirmed the measure establishing the possibility to serve a custodial sentence not exceeding 18 months at house arrests; the measure would, otherwise, have become inapplicable starting from January, 1 2014, as it had originally been implemented temporarily until full implementation of the extraordinary prison plan and, in any case, no later than December, 31 2013. The special provision had been introduced with Law no. 199/2010 (limiting the punishment initially to 12 months, later extended to 18 months with Decree Law no. 211 of 2011 transposed into Law no. 9/2012).
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 (residence being defined as the home or other public or private care facility, nursery or shelter home).

The surveillance judge shall decide without delay on the request when he/she

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/her 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 decision to deny 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.

Persons dependent on drugs/alcohol can be granted such restrictive measure when they have been sentenced or are currently serving a residual sentence of less than 6 years (4 for crimes under article 4 bis op), and who are currently enrolled 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).

The measure cannot be granted more than twice.
Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014 has amended art. 94 of the Presidential Decree 309/90, abrogating paragraph 5 establishing that probation under special surveillance under special circumstances could not be order more than twice.

By abrogating the prohibition to order probation under the special custody of the social services to undergo treatment more than twice, this amendment tries to rehabilitate persons dependent on drugs who are more likely to fail complying with the rules of the alternative measure to detention, by reason of their fragile condition.

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 5 years to those who have to serve a sentence or a residual sentence of less than 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 treatment and socially rehabilitative 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, as do 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 shall be addressed to the Surveillance Court.

If the conviction or the residual sentence is shorter than 3 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 into society of the offender and that it prevents him from relapsing into crime: in such period he shall be followed by the office for out-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 indigent, the surveillance court can declare the criminal fine yet to be paid as extinct

NOTE

In addition to setting the limit for the custodial sentence to 3 years of imprisonment, including residual sentences, Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014 has introduced the possibility to be granted the benefit of probation also when the punishment, also for residual time to be served, is equal to 4 years, in all the cases in which the good conduct of the convict during the previous year can be taken into account, regardless of the time having been served in prison, or with other measures alternative to detention or while released from custody.
In order to encourage the enforcement of the measure of probation under the supervision of a social worker, the surveillance judge shall have the faculty to order that the person be held in the custody of the social services as an emergency provision, when continued imprisonment would be highly detrimental and when there is no flight risk, without prejudice to the decision of the Surveillance Court.

Suspension on probation of the enforcement of the sentence - so-called "indultino" (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 "indultino" (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 court.
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 he/she 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 2 years (with the exception of exceptionally severe crimes), can apply to the surveillance judge for deportation from the national territory.

The decision can be taken by the surveillance judge ex officio.
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 (or attempted murder); kidnapping (or attempted kidnapping); terrorism and subversion; 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; as well as crimes referred to in the Consolidated Law on immigration under article 12, paragraphs 1, 3, 3 bis, 3 ter).

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/she produces the necessary identification documents in his/her possession to try speeding up 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 10 years; after 10 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 10 years, the sentence to be served is immediately resumed (the foreign national is brought into custody to serve the residual sentence originally 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 2 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.

NOTE

Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014 also governs matters of expulsion as an alternative measure to detention, to be granted to prisoners who are non-EU nationals. In fact, the measure is not entirely equivalent to an alternative measure to detention, as it can be enforced ex officio, without the consent of the party involved and without any other assessment being necessary. It can be a useful tool to reduce the prison population.
The amendment concerns article 16 paragraph 5 of Legislative Decree no. 286/1998.
A protocol is implemented for the positive identification of the foreign national from the moment of his/her arrest, in order to facilitate the decision by the judicial authorities and making the enforcement of expulsion possible, provided the foreign national is correctly identified, which is not always simple due to the lack of cooperation from the countries of origin.
This should avoid the identification process to take place in the CIE (Centres of Identification and Expulsion).
The scope of the measure has been widened to include expulsion for Non-EU nationals when the residual punishment is equal or inferior to 2 years of detention, also for less serious crimes as per the consolidated law on immigration and crimes, attempted or actual, of aggravated robbery (art. 628, paragraph 3, cc) and aggravated extortion (art.629, paragraph 2, cc).
The issue, which is controversial in case law, is solved on the possibility to order the expulsion, after cancelling the cumulative sentence, in case of impeding crimes. In case of concurrent offences or of cumulative concurrent sentences it shall still be possible to order the expulsion, when the part of the sentence served for crimes which impede expulsion has been served, thus increasing the frequency with which this tool is used

Special permits (art. 30 ter op)

Special privileges can be requested by prisoners who have adopted a good conduct 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 permits 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 – this part of the legislation on special permits was amended by Decree Law no. 78/2013, transposed into Law no. 94/2013.
Currently, special permits can be granted to:

a) those convicted to be held in custody or detention for a period not exceeding 4 years (3 years before the amendment), even when cumulative with the arrest;
b) those convicted to imprisonment for more than 4 years (3 years before the amendment) after serving at least 1/4 of the sentence, for crimes under article 4 bis op;
c) 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) those convicted to a life sentence after serving at least 10 years.

Decree Law no.78, transposed into Law no. 94/2013 has extended the time limit for special permits granted to minors (from 20 to 30 days per permit and from 60 to 100 days in total for each year served).

The decision concerning special permits can be opposed 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 (so-

called former Cirielli law) and it regulates special licences to be granted to prisoners who are habitual offenders as per article 99, paragraph 4 cc, only after a certain amount of additional time served compared to other prisoners.
Decree Law no. 78/2013, in its original text, had abrogated this measure which was then reintroduced, with the original restrictions, by the transposing law.
Therefore, special permits can be granted to prisoners who are habitual offenders in the following cases:

a) when convicted to imprisonment or arrest for no more than 4 years, also when in conjunction with the arrest after serving 1/3 of the sentence;
b) when convicted to imprisonment for more than 4 years after serving half of the sentence and in compliance with the provisions established for those convicted of crimes under article 4 bis op;
c) when convicted to imprisonment for crimes under article 4 bis paragraph 1, 1ter and 1quater op, after serving 2/3 of the sentence and never more than 15 years;
d) when convicted to serving a life sentence, after having served 2/3 of the sentence and never more than 15 years.

Prison leave for important family matters (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 ill person, 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/she is punishable for break-out as per article 385 cc

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 paragraph 1, 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 3.
In the first case, the enforcement of the sentence cannot be postponed for more than 6 months overall, starting from the day on which the judgement becomes absolute, also when the request for pardon is renewed.
In the case provided for by number 3) of paragraph 3, 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 1 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 6 (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 waste) 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/she has any problems living with other prisoners to safeguard his/her 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; make telephone calls, etc.

Medical exam and session with the psychologist

A medical exam is performed where it is important to tell the physician all 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/her 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/she is in a specific prison and he/she 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/she can appoint one through the prison administration where he/she 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/her incarceration, upon consent of the prisoner him/herself, 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/she exercises his/her powers of organization, coordination and control of prison activities. He/she 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 managers 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 are also in charge of supervising and enforcing restrictive measures, participating, also within work groups, in assessment and re-education activities of prisoners and of the stakeout service of prisoners in out-of-prison care facilities 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/she 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 re-education 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 paragraphs 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 re-education 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 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, except when the 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 600 quater.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 609 bis (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 are 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.

Out-of-Prison Sentence Enforcement Service (U.E.P.E. - Ufficio esecuzione penale esterna)

The Out-of-Prison Sentence Enforcement Service (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 help 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 Out-of-Prison 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.
Furthermore those offices, as per article 72 op:

- 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 who, 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 (territorial)

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 includes the guarantors of the rights of the prisoners who can access and visit the correctional facilities without 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 protected rooms

Provisions as set forth in article 67 apply to protected rooms as well.

With **regional law no. 13 of 27 September 2011 amending the Modified version of regional law no. 3 of 19 February 2008, the Emilia-Romagna Region**, 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 for involuntary treatment, initial reception centres, temporary detention centres for foreign nationals and 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. The Guarantor 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 5 municipal guarantee institutions in Bologna, Ferrara, Parma, Piacenza and Rimini.
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

National Guarantor of Prisoners

Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014 has established the professional figure, at the Ministry of Justice, of the Guarantor of persons imprisoned or deprived or their personal freedom (to the date on which this note is being drafted, the Guarantor has yet to be appointed), also in light of the Additional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment ratified and transposed into Law no. 195 of 9 November 2012, establishing that each Member State shall have a surveillance body, although with different requirements of independence from the political powers than those established by the new legislation.
The Guarantor is a body composed of three members, including a Chairperson with a term of office of five years (which may not be extended) and chosen for their independence and knowledge of matters pertaining to the protection of human rights and who shall not be eligible to take office.
The appointment, following the amendment implemented with Decree Law no. 146, is by decree of the President of the Republic.
The Office uses the resources made available by the Ministry of Justice, including human resources, and a regulation shall be adopted at a later stage to regulate the organization of the Office of the Guarantor.
The National Guarantor shall coordinate with the Local Guarantor already appointed and shall supervise on all the places where there are people deprived of their personal freedom, including CIE, Centres of Identification and Expulsion.
The Guarantor shall have the faculty to examine, upon consent of the party involved, the personal files and ask the Surveillance Judge to issue an order to produce those documents which were not produced by the administration within 30 days, as well as formulate recommendations in case of proven violations of the legislation or after confirming the valid grounds of the complaints submitted under article 35 op with the administration involved which, in case of denial, shall notify the reasoned dissent within 30 days.
The Guarantor shall present an annual report on the office's work to the Chamber of Deputies and to the Senate and to the Ministries of Justice and Internal Affairs.

Written request

TThe 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 prisoner 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/she is without money;
» to borrow books from the library;
» to change cell or unit;
» to speak with his/her family or cohabitant both in person and on the telephone;
» to have and interview 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 telegram form is limited to the only item of news concerning first admission to the prison or 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 is 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

PPrisoners 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 6 monthly visits of one hour each with their relatives or cohabitants. Only those with family members who don't live in the same municipality of the prison, and who were not at the ordinary visit the week before, can extend the time of the visit. Prisoners under article 4 bis, paragraph 1, sentence 1 of law 354/1975 are entitled to only two telephone calls a 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 aunts, 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 self-certification 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, paragraph 1, sentence 1 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 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 self-certification 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 authorisation shall, of course, be revoked if the information provided by the prisoner/inmate turn out to be untruthful.
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 4 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/she 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 Law no. 354 of 26 July 1975 – restrictions and controls of the correspondence.
No restrictions shall be imposed on letters and telegrams addressed to lawyers,

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 self-fuelled 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 using 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 (Euro 200.00 per week), to buy all the products on the shopping list, with the specific form, and to send telegrams and make telephone calls.
The amount that can be sent to family members and cohabitants is established in Euro 350.00 per month.

School

In prison it is possible to attend several school classes at the level of **compulsory education** 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.
Italian language courses are organised as well.
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 by posting on specific noticeboard in the sections together with the information notice on the type of 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 the applicant's previous professional, training, and school experiences.ù

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 fixed 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 unskilled work list and, from that moment onwards, he/she 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 skilled work position.

To be admitted to work, it is necessary to apply to the prison administration and specify whether to be added to the list of skilled or unskilled work. Workers are then chosen based on:
» **family dependents**
» **professional experience and education**
» **professional qualification**
» **neediness**
» **unemployment seniority accrued from the first day of imprisonment.**

Prisoners who do not honour their work tasks and obligations, are excluded

from the lists, unless there is a justifiable and documented reason. By appealing the decision, prisoners 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 of Presidential Decree 230/2000.
The equipment necessary 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 the prisoner's 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.

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/her 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, 72 during incarceration, with regular and frequent visits, irrespective of the prisoner's 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.

Rules of conduct

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) non-observance 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) break-out;
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.

Breaches from 1) to 8) of paragraph 1 cannot be punished with exclusion from joint activities cannot be adapted to discipline , 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; during outdoor cime, 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 (rt. 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 him/herself 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 enforce discipline 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.

Pre-trial 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 can be sanctioned 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 10 days. The time spent under precautionary disciplinary measure shall count as part of the overall sanction, when one is ordered.

Disciplinary proceedings (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/her 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/she 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/she 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

Right of complaint (art. 35 op)

Prisoners and inmates can address oral or written requests or complaints, also in a closed envelope to:
1) the prison manager, the regional superintendent, the head of the prison management department and to the Minister of Justice;
2) the judicial and health authorities visiting the premises;
3) the National and Regional or Local Guarantors of the rights of the prisoners;
4) the President of the regional council;
5) the Surveillance Judge;
6) the President of the Republic.

NOTE
Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014 has amended art. 35 op by instituting the territorial guarantors among the recipients of "generic" complaints submitted by the prisoners.

Judicial complaint (art. 35 bis op)

Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014 has introduced art. 35bis op, regulating the decision of the surveillance judge during the proceedings on matters relating to the conditions for the enforcement of disciplinary actions, the constitution and jurisdiction of the disciplinary body, the opposition to the sanctions and possible exonerating circumstances - art. 69 paragraph 6 letter a) op -; the judge also decides on complaints with regard to non-compliance by the managing bodies of the provisions established by the regulation, resulting in the rights of the prisoner or inmate being actually and severely jeopardised, as per art. 69 paragraph 6 letter b) op, as subsequently amended by the legislation here examined.

With regards to disciplinary actions, the terms for filing a complaint is 10 days from notification of the disciplinary action.
If the complaint is accepted, the Surveillance Judge orders the cancellation of the disciplinary action.
The decision of the Surveillance Judge can be opposed with a complaint addressed to the Surveillance Court within 15 days of the notification or communication of the deposit receipt for the decision.
The decision of the Surveillance Court can be opposed addressing the Court of Cassation, alleging infringement of legal provisions, within 15 days of the notification or communication that the appeal has been filed.

In case of complaints for acts deemed prejudicial, the judge -after verifying that such prejudice actually exists- orders the management body involved to remedy such prejudice within the time indicated in the decision.

When failing to implement the provision, no longer open to challenge, the party involved or their lawyer with special power of attorney can demand that the provision be complied by addressing the Surveillance Judge who can issue an order indicating the ways and times for compliance, taking into account the implementation plan laid out by the managing body in order to enforce the provision, provided that such plan is compatible with the fulfilment of the law.
The Judge can also declare any acts breaching or circumventing the unimplemented provision as null and void.
He/she can also appoint an Acting Commissioner.
The decision issued during the proceedings filed to obtain enforcement can always be appealed in cassation alleging infringement of legal provisions.

The proceedings related to the complaint take place in the hearing chambers

with higher guarantees than in the previous proceedings, as this time the procedural scheme followed is the one typically envisaged under articles 666 and 678 ccp. The managing body involved, having been notified of the date of the hearing, has the right to appear or to submit any observations and requests.

Complaint to the surveillance judge (art. 69 paragraph 6 op)

Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014 amended paragraph 6 of article 69 op, establishing that the Surveillance Judge in compliance with article 35-bis decides on the complaints of the prisoners and inmates concerning: a) conditions for the enforcement of disciplinary actions, the constitution and jurisdiction of the disciplinary body, the opposition to the sanctions and possible exonerating circumstances; in the cases referred to in article 39, paragraph 1, numbers 4 and 5 (on the disciplinary sanction of solitary confinement during out-of-cell time for a maximum of 10 days and on the disciplinary sanction of exclusion from activities in group for a maximum of 15 days), the merits of the provisions adopted are also taken into account; b) non-compliance by the managing bodies of the provisions established by the current law and relevant regulation, resulting in the rights of the prisoner or inmate being actually and severely jeopardised.

Please note that art. 69 paragraph 6 of Law no. 354/1975 empowers the Surveillance Judge with supervision exclusively on the lawfulness, and not on the specific matters, of the exercise of disciplinary powers by the authorities in charge of disciplinary actions in correctional facilities. In practice, since the Surveillance Judge can only decide on the lawfulness of a disciplinary action, this means that if a complaint is based on the merits of a sanction, which cannot be investigated, the Surveillance Judge shall declare such complaint as inadmissible.
Without prejudice to the cases referred to in article 39, paragraph 1, numbers 4 and 5 (i.e. on the disciplinary sanction of solitary confinement during out-of-cell time for a maximum of 10 days and on the disciplinary sanction of exclusion from joint activities for a maximum of 15 days), for which, as established by the new amended version of article 69, paragraph 6, op introduced with Decree Law no. 146 of 23/12/2013 transposed into Law no. 10 of 21/2/2014, the Surveillance Judge can base his/her decision also on the merits of the provisions adopted.

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/her);
- establishment of the disciplinary committee (e.g. unlawful establishment of the disciplinary committee which must be made up of the prison manager, who shall chair the committee or (if he/she is unavailable) of the most senior employee, of an educator and of a healthcare 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 management body to access the deeds of the disciplinary proceedings, 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 report and of the members of the disciplinary committee).
The request to access the deeds is legitimized by the fact that appealing the disciplinary measure is in the prisoner's legal interest

Remedial actions following breach of article 3 of the European convention for the protection of human rights and fundamental freedoms of prisoners or inmates (art. 35 ter op)

Decree Law no. 92 of 26/06/2014 and transposed into Law no. 117 of 11/08/2014 established that when the prejudice referred to in article 69, paragraph 6, letter b) – namely concerning failure on the part of the managing body to comply with the provisions set under the current legislation (Law

354/75) and relevant regulation (Presidential Decree 230/2000) resulting in the rights of the prisoner or inmate being actually and severely jeopardised- consists in being detained, for not less than 15 days, in such conditions as to violate article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (under which no one shall be subjected to torture or to inhuman or degrading treatment or punishment) ratified and transposed into Law no. 848 on 4 August 1955, the Surveillance Judge -upon complaint filed by the prisoner/inmate in person or through his/her legal counsel with special power of attorney, and based on the interpretation of the European Court of Human Rights- shall order, as compensation for the prejudice suffered, that the remaining sentence to be served be reduced by 1 day for each 10 days during which the claimant suffered the prejudice.
When the period of time yet to be served is such that the sentence can only be reduced by a fraction of the remedial action under paragraph 1, the Surveillance Judge shall also order that the claimant be compensated for the remaining part of the remedial measure with an amount of Euro 8.00 for each day during which he/she suffered prejudice. The Surveillance Judge proceeds in the same way also when the detention period served under conditions which do not fulfil the requirements set out in article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms was less than 15 days.
Those who suffered the prejudice while in pre-trial detention not treatable as time served when determining the punishment, or who have finished serving their time in prison can bring their case, personally or through their legal counsel with special power of attorney, before the court of the chief town of the area where they have their domicile.
The case must be filed within 6 months of being released from imprisonment or in-prison pre-trial detention, on pain of forfeiture. The court shall decide as a single judge in the forms referred to in articles 737 and following of the code of civil procedure. The decree that defines the proceedings cannot be opposed. Compensation for the prejudice suffered is calculated in Euro 8.00 for each day of detention during which the prisoner suffered the prejudice.
Those who finished serving detention time, or who were no longer in in-prison pre-trial detention, on the date on which Decree Law no. 92 of 26/06/2014 and transposed into Law no. 117 11/08/2014 entered into force, can file legal proceedings with the court under article 35-ter, paragraph 3, of Law n. 354 of 26 July 1975, within 6 months from that same date.

Within 6 months from the date on which Decree Law no. 92 of 26/06/2014 and transposed into Law no. 117 of 11/08/2014 entered into force, prisoners and inmates having lodged an appeal with the European Court of Human Rights, on grounds of failure to comply with article 3 of the Convention

for the Protection of Human Rights and Fundamental Freedoms, ratified and transposed into Law no. 848 of 4 August 1955, can submit a request under article 35-ter, Law no. 354 of 26 July 1975, if the Court has not yet taken a decision on the admissibility of the appeal. In which case, under penalty of inadmissibility, the request must report the date on which the appeal to the European Court of Human Rights was lodged. The registry of the seized Judge notifies without delays the Ministry for Foreign Affairs of all the claims submitted, within the term of 6 months from the entry into force of Decree Law no. 92 of 26/06/2014 and transposed into Law no. 117 of 11/08/2014.

Foreign prisoners

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

Foreign prisoners without resident permit

A foreign national is a citizen from a state that is not a member of the European Union.
Foreign nationals are without residence permit when:

- they came to Italy violating the immigration law;
- they came to Italy in compliance with the immigration law but that did not apply for a residence permit;
- the residence permit has been revoked;
- the residence 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.

Law no. 161 of 30 October 2014 has reduced the maximum terms for custody in CIEs, establishing that the foreign national can be held in an identification and expulsion centre (Centro di Identificazione ed Espulsione - CIE) for no longer than 90 days, before deportation is enforced.
In which case, a hearing is set before the Justice of the Peace with an attorney present who can request that the detention be suspended and appeal the deportation order. According to the law, the attorney shall be paid by the State, also when it is a hired attorney.

Law no. 161 of 30 October 2014 also establishes that foreign nationals who have already been detained in prison facilities for a period of 90 days cannot be held in the centre for more than 30 days. The management body of the prison facility shall request information on the identity and nationality of the foreign national detained, under whatever circumstances, to the Chief of Police. In the same cases, the Chief of Police shall start the identification process, engaging the relevant diplomatic authorities.

Deportation can also consist in an order to leave Italy within the next 7 days and, if the foreign national does not leave the country and is found, he/she 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 a foreign national without residence 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 residence permit and appeal the deportation.
Another case in which the foreign national can be granted the residence permit is when he/she proves that he/she is escaping from organized crime and is, therefore, in danger. In this case, usually upon request of the public prosecutor, a 6-month residence permit is granted; the permit can be extended if the foreign national follows the reintegration programme he/she previously agreed to.
Foreign nationals finding themselves in a condition of severe work exploitation can also be granted a residence permit, upon request of the public prosecutor or with his/her favourable opinion.
The residence permit is issued -after the sentence is served- also to the foreign national who has served a sentence for a crime committed when under 18 and who has proven to participate in the assistance and integration programmes agreed to with the educators.
Foreign nationals subject to pre-trial detention can be granted non-custodial 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/she can live in Italy all throughout the protective measure.
The foreign prisoner who is serving an absolute sentence can, if 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 residence permit is arrested or convicted, this does not automatically entail revocation of his/her residence permit.
However, the law establishes that the chief of police can revoke or deny the renewal of the residence permit when he/she believes the foreign national to be dangerous. The consequence of such decision is expulsion from Italy.
The foreign national convicted for some specific crimes (also in case of plea-bargain) cannot be granted the renewal of the residence 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 burnt CDs or of counterfeited bags or clothes) result in the revocation of the residence permit.

The revocation or denial to renew the residence permit can be appealed. The appeal shall be filed by a lawyer to the Regional Administrative Court (Tribunale Regionale Amministrativo).
If the residence 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 residence permit for reasons of justice can be granted, upon request of the court, when the presence of the foreign national is deemed absolutely necessary in order to hold a trial for serious crimes. This permit is valid for three months and it is extendible.
Even when previously deported, the foreign national who is abroad and wants to come to Italy to take part in a trial against him/her, or in which he/she is the interested party, can request the authorization to come back to Italy. The authorization shall be limited to the time of the trial and it shall be granted by the chief of police of the place where the trial is being held.

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