



MINISTRY OF JUSTICE

Department of Penitentiary Administration

**The Charter
of Prisoners' and Internees'
Rights and Duties**

Decree of the Minister of Justice of 5th December 2012

The Decree of the Minister of Justice 5th December 2012, provided for the contents of the "**Charter of Prisoners' and Internees' Rights and Duties**" as per art. 69 paragraph 2 Decree of the President of the Republic 30th June 2000, n. 230 (*Regulations containing provisions on the Penitentiary Act and on the measures entailing restrictions on, and deprivation of personal liberty*) as amended by Decree of the President of the Republic 5th June 2012, n. 136.

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The Charter of Prisoners' and Internees' Rights and Duties

The **Charter of prisoners' and internees' rights and duties** is provided by the *Regulations containing provisions on the Penitentiary Act and on measures entailing restrictions on, and deprivation of personal liberty*.

The Charter is given to each prisoner or internee upon arrival to prison – during their first interview with the prison governor or with prison staff. It allows prisoners to exercise their rights at the best and have better knowledge of all rules and regulations relevant to daily life in prison environment.

For the inmate's family to know about the Charter, full-text is available on the <http://www.giustizia.it> website and hand-outs are at disposal in visits halls in each prison facility.

Together with the Charter, inmates are given abstracts of Law 354, of 26th July 1975 (*Penitentiary Act and enforcement of liberty deprivation and restriction measures*), of the Presidential decree No. 230, of 30th June 2000 (*Regulations containing provisions on the Penitentiary Act and on measures entailing restrictions on, and deprivation of personal liberty*), of the internal prison regulations and other acts, even supranational, relevant to prisoner's and internee's rights and duties, to discipline and penitentiary treatment, among which the Convention for the Protection of Human Rights and Fundamental Freedoms. At the same time, any

inmate is informed on where it is possible to find full texts of the abovementioned documents.

Admission to prison from liberty:

The arrival in prison is managed by Penitentiary Police staff working at the Reception and Registration Unit.

Prisoners have the **right to call their family**, if they're entering prison from liberty or have been transferred from another facility.

Inmates have the right to appoint one or two legal advisers of their own choice (if not, a defence counsel will be appointed by the Court). Unless the judicial authority is imposing prohibitions at the moment of the arrest (which cannot exceed 5 days), inmates have the **right to have interviews with their legal adviser** since their admission and during the whole prison term, according to scheduled times and fixed modalities, after having made application through the prison's Reception and Registration Unit.

Inmates are **full searched and their fingerprints detected**. They shall **deposit their valuables and properties, such as money, watches, belts**. They shall also undergo a **medical and psychological screening**, during which they can refer of any personal healthcare problems, addictions, allergies and declare if in need of medicines. **They can also ask for not to live with other inmates** in reason of their personal safety.

Daily life:

Each prison establishment shall be provided with areas for personal life needs and for association activities: those areas shall be sufficiently roomy, well ventilated and heated, and provided with private sanitary installations.

Prisoners have the right to receive personal underwear, clothing and bedding; they shall take care of them, keep their cells in good order and their person clean. Any inmate is given the possibility to have showers, and shall be provided with periodical hair and beard cuts.

Each prisoner or internee has the **right to spend at least two hours outdoor** each day or, under specific prison regimes, a shorter period but not less than an hour.

Any prisoner or internee has the **right to healthy food**, adequate to personal needs. They have the right to three meals each day, distributed at established hours in compliance with internal prison regulations. They have the right to available drinking water and to use personal gas cookers with the adoption of all safety regulations. They are also permitted to buy, at their expenses, food supplies and refreshments (so called “sopravitto”) and they are guaranteed the right to receive food supplies in parcels from outside, within established limits of weight. A delegation of prisoners shall inspect meal preparation and prices of items sold at the prison shop.

Right to healthcare and the provision of any prevention examinations and tests, diagnosis, care and rehabilitation, at essential and uniform levels of assistance, shall be assured.

All services available in each prison facility are itemized in the *Charter of health services available to prisoners and internees*.

The **right to practice one’s own religion** is acknowledged and to make use of spiritual assistance from catholic chaplains and to participate in religious rites in catholic chapels or in dedicated rooms for the use of non-catholic beliefs.

Behavioural duties:

Any prisoner shall observe rules and regulations governing life in prison and any specific provisions given by the penitentiary police staff. Disciplinary

infringements are sanctioned (among which carelessness in tidying up and cleaning, voluntary non-performance of work obligations, possessing or smuggling in unauthorised items, money and tools usable for harming, false communication with the outside or in prison, bullying or general violence, delay in returning to prison when leave has expired, and all other events considered as offences by the law), depending on the seriousness of violation, with warning, admonition, exclusion from leisure and sport activities (up to a maximum of ten days), isolation during outdoor exercise (not over ten days) and exclusion from all association activities (up to a maximum of fifteen days).

Any inmate is obliged to undergo searches whenever it is necessary for security reasons. Prisoners have the **right of not being subjected to any means of coercion for disciplinary aims (such as the use of handcuffs)** and can **make a complaint** to the supervisory judge relevant to the way disciplinary power is exerted.

More generally, they can make a complaint to the supervisory judge to assert all rights acknowledged by the Penitentiary Act, and, for any kind of complaint, they can address to the prison governor, the inspectors, the Minister of Justice, the supervisory judge, the judicial and health authorities visiting the establishment, the President of the regional council and the Head of State.

Education and cultural, sports and leisure activities:

Primary and secondary school courses are available in all prison establishments.

A daily allowance, determined by government decree, can be granted to all prisoners attending high school courses.

All costs to be sustained for school taxes, contributions and books shall be reimbursed to inmates attending high school or higher education courses, if they have succeeded in all yearly examinations and may find themselves in straitened circumstances. A scholarship is also awarded. Some rewards are granted to all prisoners who have been distinguishing in education and vocational training commitment and merit. It is also possible to undertake school learning courses as a private student to get a high school diploma or university degree.

Prison facilities are provided with a library, which is run in collaboration with some prisoners. Access to the library of each prison wing is scheduled in days and hours established in the prison internal regulations.

In prison, cultural, sports and leisure activities are carried out to the purpose of re-educational treatment. A commission, consisting of the prison governor, one or more educators, one or more penitentiary social workers and a delegation of prisoners shall be responsible for the organization of those activities. To participate in courses and in other prison programmes, it is sufficient to fill in an application. During outdoor exercise time, prisoners are allowed to make some physical training.

Prison work:

Prison work is a basic element of prison treatment.

Upon demand, remand prisoners can participate in work activities, both in their prison facility (cook, barber, storekeeper, etc.) or outside. Work outside prison is a modality in the execution of sentences: it is enforceable without any limitation with regards to people convicted for common crimes; it is applicable only when one third of the sentence has been served, if concerning persons sentenced to imprisonment for specific crimes; for inmates

sentenced to life imprisonment, it is applicable after at least 10 years are served. The supervisory judge approves the work plan figured out by the prison governor and lists all obligations and prohibitions to be followed.

All convicted persons and internees subjected to a security measure in penal farms and penal labour colonies are compelled to work.

Prisoners' earning is determined in quantity not inferior to the two-thirds of wages provided for in labour collective agreements.

Rewards:

All prisoners and internees who have demonstrated particular sense of responsibility in work activities, educational courses, in supporting others or in praiseworthy actions, are rewarded with a praise formulated by the prison governor or the proposal – formulated by the disciplinary board – for their pardon, conditional release, early repeal of a security measure or other benefits.

Transfers:

Applications for transfer to another establishment shall be presented, through the prison governor, to the Regional Director of the Penitentiary Administration, when the transfer is requested to a prison within the same district, and to the Department of Penitentiary Administration of the Ministry of Justice, when the transfer is to a facility in a different district.

The principle of transferring inmates to establishments closest to their family's residence shall be preferred. All prisoners have the right not to be transferred *ex-officio*, unless for serious and substantiated security reasons, for reasons relevant to the prison institution and for reasons of justice.

***Peculio* and management of the inmates' financial relations with the institutions:**

Prisoners are forbidden to possess physical money; any money that prisoners have on them upon arrival, plus any money they will further receive via postal order or cash at the prison (*peculio*), is placed in the prisoner's personal account and can be freely used to buy items, for correspondence or for telephone calls.

All prisoners shall pay up their maintenance expenses, covering the cost of food, bedding and kitchenware provided by the penitentiary administration (mattress, sheets, dishes, cutlery, and so on). Upon the prisoner's application, the supervisory judge can order the release of debt if the prisoner is going through financial problems and has behaved correctly.

Relations with the community:

All prisoners and internees have the **right to receive visits** from their relatives, other persons (on reasonable grounds), and also from their legal adviser or from the prisoners' ombudsman. Visits shall take place in dedicated halls, without partitions, and shall be under visual, not auditory, monitoring by the penitentiary police staff: during visiting hours, all prisoners shall behave correctly; if not, they can be excluded from receiving visits. Any inmate, serving a sentence in an ordinary regime, is allowed to have six visits per month, which are held for one hour maximum and limited to three persons.

Any inmate has the **right to phone calls** from relatives and cohabitant partners and in particular occurrences (under verified reasons) from other persons; those calls are allowed for a maximum of one per week, and each are

held for no more than ten minutes, plus one phone call when back to the facility after leaves. All phone calls are charged to the inmate. More rigid regulations are provided for special detention regimes.

Applications for visits and phone calls shall be forwarded to the judicial authority by remand prisoners, and to the prison governor in case of convicted persons (even after a first-degree court sentence) or internees.

Correspondence can be received in jail without limits if the inmates are under ordinary prison regime; correspondence addressed to defence counsels, to members of Parliament, diplomatic or consular representatives from their countries, organisations safeguarding human rights cannot undergo any restriction.

All inmates can receive four parcels per month, not exceeding 20 kilos, both through visits, or being sent via mail service, when they have not received any visits in the fifteen days before the parcel reception.

Prisoners' **contacts with their own family** are guaranteed. Inmates' relatives shall be informed of transfers to other detention facility. Prisoners have the right to list all relatives, whom they would like to timely inform in case of death or serious infirmity, or whom he would like to know about if in similar situations.

All prisoners and internees are granted the **right to vote** in public elections in a special polling station, after presentation of declaration of intent to exercise their right, to the Mayor of the city where the prison establishment is situated, within three days from the election day.

The use of personal radio apparels, as well as of computers and DVD players for study or work purposes, is allowed to prisoners.

Rewards:

Leaves:

They are an integral part of the treatment programme for they allow the prisoner to nurture affective, cultural and work interests.

Bonus leaves can be granted by the supervisory judge to convicted people who are not considered a danger to society, when they have maintained good behaviour and been served a great part of their sentence. Each leave cannot exceed 15-days duration, and cannot be granted for more than a total of 45 days in a year. Limitations and prohibitions to granting leaves have been provided for those prisoners sentenced to custody for serious crimes, for escape or for an alternative measure revoke.

When a relative or a cohabitant partner is about to die, the judicial authority or the supervisory judge can grant all remand and convicted prisoners and internees a leave to visit the sick person.

At the leave expiry time, inmates not returning to prison with unjustifiable reasons will be undergoing disciplinary sanctions, if their absence is within three to twelve hours; in all other cases, the inmates will be charged for escape.

When a leave is denied, the prisoner can make a complaint within very short time.

Early release:

The supervisory judge can grant early release to convicted persons, that is a reduction of 45 days of imprisonment for each six months of sentence served.

Early release is granted only to those who have regularly behaved and have shown participation in observation and treatment activities. In computing the six months of sentence served, all time spent in pre-trial custody or in home detention shall also be taken into account. Early release can be granted, under similar limitations and

conditions, also to inmates who are assigned to the Probation service.

Against the supervisory judge order of rejection, a motivated complaint can be made to the supervisory court within ten days from the rejection notification.

Measures and sanctions alternative to imprisonment:

Offender's assignment to the Probation Service:

If a sentence, or residual prison sentence, does not exceed three years, sentenced offenders, on the basis of the results of their observation of personality, may be assigned to the Probation Service, for the period of sentence still to be served, during which they will be in charge of the local probation services. Prisoners' application for this measure shall be submitted to the supervisory judge and the supervisory court can grant it.

The same court, after having verified that the measure has been successfully fulfilled, shall declare the prison sentence fully served and any other penal effect expired.

Drug-addicts or alcoholics, with a sentence or residual prison sentence not exceeding six years (four years for particular categories of crime), who are following a rehab programme, or are willing to start a new one (agreed with local health service for drug-addicts) can be granted a *therapeutic* assignment.

This measure cannot be granted for more than two times.

Home detention:

The supervisory court shall grant home detention to any inmate aged 70, who was not declared a habitual or professional offender or a criminal by propensity and is a repeated recidivist.

The same measure can be granted, for a sentence of imprisonment not exceeding four years, even when part of a longer sentence, to a pregnant female offender, to imprisoned mothers or fathers of children under the age of ten, to offenders with particularly serious health conditions or aged over 60 (if disabled) or under 21, and to inmates who shall serve a sentence or residual prison sentence not exceeding two years.

The execution of custodial sentences not exceeding eighteen months at the inmate's domicile:

In addition to previous measures, the law provides that a custodial sentence not exceeding eighteen months, even if part of a longer sentence, shall be served at the inmate's personal domicile or different address. This measure is not applicable to those offenders having committed serious crimes as listed in article 4-*b* of law 354/75 (see glossary).

The measure of the execution of sentence at one's personal domicile can be granted to imprisoned mothers with children aged under 10, when one-third of the sentence has been served (15 years if she has been sentenced to life imprisonment), and when it is possible to restore cohabitation with her children.

Semi-liberty:

It allows convicted persons to spend part of the day outside prison to participate in working or educational activities, or any other activity useful to their social re-insertion.

It is granted by the supervisory court to any inmate who is:

- under a security measure;
- under sentence of arrest or imprisonment not exceeding six months;

- serving a sentence over 6 months and has served at least half of his sentence (two-thirds of it for crimes listed in article 4-b, paragraph 1 of the penitentiary act);
- sentenced to life imprisonment and has served 26 years in prison.

Conditional release:

It can be granted to any inmate who served at least 30 months of sentence, and anyway $\frac{1}{2}$ of it, when the residual prison sentence is not exceeding 5 years (if recidivist, at least 4 years of the sentence and not less than $\frac{3}{4}$; if a person is sentenced to life imprisonment, 26 years of sentence shall have been already served).

To be granted a conditional release, inmates should have maintained a behavior showing factual rehabilitation during their serving time. It is subordinated to the fulfillment of the inmates' civic commitments relevant to their crime, unless it is demonstrated their impossibility of fulfilling them.

Suspension of the execution of sentence for drug-addicts or alcoholics:

The supervisory court can suspend the execution of sentence for a period of five years for inmates who have to serve a sentence or a residual prison sentence not exceeding 6 years (four years if inmates are sentenced for specific crimes), if crimes are committed consequently to their state of drug/alcohol addiction, and have succeeded in therapeutic and social rehabilitation programmes in a public or authorized-by-law health facility.

Special prison regimes:

Regime of special surveillance:

The regime of special surveillance can be ordered by the Department of Penitentiary Administration (upon its own

proposal or the prison governor's or the judicial authority's, with favorable advice by the disciplinary board), in relation to reiterated offensive behaviors against prison order and security. It implies specific restrictions relevant to participation in working and association activities, correspondence and phone calls, possession of specific items which are normally accepted. Limitations cannot be applied to the inmate's personal care or health necessities, food, clothing and bedding, books and periodical readings, religious practices, use of authorized radio devices, outdoor exercise for at least one hour, interviews with legal adviser, visits from spouse, cohabitant partner, children, parents and brothers and sisters.

Against the Department of Penitentiary Administration provision, a complaint can be made and addressed, within ten days, to the Supervisory court.

Regime for people sentenced for particular crimes:

All inmates and internees imprisoned for any serious crimes listed in article 4-*b* of the Penitentiary Act (see glossary) can be granted no more than four visits and two phone calls each month, and are subjected to restrictions in the granting of benefits such as the assignment to work outside prison and to sports and cultural activities, bonus leaves and alternative measures and sanctions.

Continued isolation:

It is allowed for health reasons in case of contagious disease; it can be ordered during the sanction of exclusion from association activities (with the prohibition to have contacts with other prisoners), during the phase of preliminary investigations and in precautionary proceedings, as long as this is considered necessary by the judicial authority. Daily meals and ordinary water availability are granted, together with medical check-ups.

During isolation, any inmate can receive visits from political, judicial, administrative and religious authorities, all listed in article 67 of law 354/75.

Temporary suspension of ordinary rules of prison treatment:

The Minister of Justice, in exceptional cases of prison riots or other serious emergency situations, is empowered to suspend the enforcement of the ordinary rules of prison treatment for prisoners and internees, in the prison concerned or in a part of it. That suspension shall aim at restoring order and security and its duration shall be strictly limited to the achievement of the above-mentioned goals.

The Minister of Justice shall also be empowered to fully or partly suspend the enforcement of the ordinary rules of prison treatment with regard to inmates and internees imprisoned for any crimes perpetrated with terrorist aims or with the aim of subverting democratic order and security, for mafia-type crimes, when there is evidence of existing links with a criminal, terrorist or subversive organisation.

This suspension implies those limitations which are necessary to prevent contacts with other criminal organisations (one single visit per month and only with relatives and cohabitant partners; visits are subjected to audio monitoring and recording – unless they are with legal advisers; limitations in sums of money and items coming from the outside; exclusion from any delegation; all correspondence being censored; restricted time for outdoor exercise). It shall be applied for a period of four years and can be extended for subsequent periods, of two years each. Prisoners subjected to this special regime shall be imprisoned in facilities or special wings, exclusively dedicated to them, separated from the inmates’

community, where custody is in charge of penitentiary police special units.

Complaints against the Minister of Justice's applied measure can be made to the supervisory court of Rome within ten days from the notification to the inmate.

Any inmate or internee subjected to the 41-*b* prison regime, law 354/75 (see glossary), shall participate in video-conference hearings, as provided by article 146-*b* of the enforcement rules of the criminal procedure code.

Women in prison, before, during and after childbirth:

Pre-trial custody cannot be ordered, or continued, for pregnant prisoners or mothers with children aged up to six years, unless there are exceptionally relevant precautionary exigencies.

The execution of sentence is postponed if the offender is a pregnant woman or mother of children aged up to one year and also for mothers with children aged up to three years; the execution of the sanction of exclusion from the prison association activities is suspended if the offender is a pregnant woman or a puerpera up to six months, or if she is breast-feeding her child, up to one year; convicted female prisoners and internees can ask for bringing up their children aged up to ten years outside prison; pregnant prisoners and mothers with children in prison are granted adequate care by specialized doctors, midwives and pediatricians and those inmates are allocated in dedicated prison units.

Foreign prisoners:

All foreign prisoners have the right to ask their consular authorities to be informed of their arrest, to receive abstracts of rules and regulations in their language, to

make phone calls and receive visits at the presence of an interpreter.

They have the right to suit their eating habits and religious/spiritual obligations and needs.

Foreign prisoners who shall serve a sentence not exceeding two years, even if part of a longer sentence, have the right to be deported to their own country of origin.

The criminal conviction can also establish the security measure of the expulsion in addition to the conviction, which shall be executed after the inmate has served the whole sentence. In any case, prisoners cannot be deported if in their country of origin they are at risk of persecutions on the basis of race, gender, language, citizenship, religion, political opinions, and so on.

Inmates can ask for transfer in their country of citizenship to serve a sentence (exceeding six months) issued in Italy; the application shall be forwarded to the Ministry of justice in Italy or, when the offense is considered a crime in both countries, to the Ministry of justice of the nation giving citizenship to the inmate.

Release:

All prisoners and internees shall receive a supporting help towards the end of their prison term, through social service interventions and a treatment programme oriented to the solution of specific needs, relevant to life conditions they will face once in the community. Their release will take place in the day indicated in the relevant order, unless a detention security measure is still to be served. Upon release, all properties and *peculio* will be given back to the inmate.

GLOSSARY

Amnesty

Amnesty extinguishes the offence and suspends the enforcement of the sentence and the supplementary penalties relating to the offences for which it has been granted (art. 151 of the criminal code and art. 672 of the code of criminal procedure). It shall be distinguished from clemency and pardon, which suspend the penalty but do not extinguish the offence.

Appellant

The sentenced person in the first degree proceeding against whom the appeal proceeding is pending.

House Arrest

It is a personal coercive pre-trial measure which is applied to persons under investigation and to accused persons during preliminary investigations and during the criminal proceeding. Its maximum length depends on the seriousness of the offence committed and on the stage of the proceeding (art. 284 and 303 of the c.c.p.). House arrest, since it is a pre-trial measure, has not to be confused with home detention.

Article 4b Law no. 353 of 26 July 1975, “Penitentiary Act”

It provides for a special detention regime implying the prohibition to grant specific benefits (assignment to work outside prison, bonus leaves, measures alternative to detention) for offenders sentenced for the following crimes:

- Crimes perpetrated with aims of terrorism or subversion;

- Mafia-type association (art. 416 b of the criminal code);
- Enslavement and trafficking in human beings (art. 600, 601, 602 of the criminal code)
- Kidnapping (art.630 of the criminal code)
- Criminal association with the purpose of tobacco smuggling (art. 291-d of the Decree of the President of the Republic 43/1973);
- Criminal association with the purpose of drug trafficking (art. 74 of the Decree of the President of the Republic 309/1990)
- Any crime committed with the purpose of facilitating the activity of Mafia-type associations, unless the sentenced person has cooperated with justice and provided that there are no links with organized crime.

Penitentiary Social workers

Employees of the Ministry of Justice (not to be confused with the social workers at the Municipality or at the Local Health Care Service) working for the local Offices for the execution of the sentences in the community. They keep the contacts with prisoners' families and with the local bodies, support the persons assigned to the Probation service and play an important role for the granting and execution of law benefits.

Electronic monitoring

In ordering house arrest, the judge may prescribe control procedures by means of electronic devices if the accused person agrees (art.275b c.c.p.). The consent to the possible use of these control procedures is requested to prisoners upon their arrival at the prison (art. 23 of the Regulations).

Office for the Fines Fund

It is a body corporate established at the Department of Penitentiary Administration which finances reintegration programmes in favour of prisoners and internees and of their families as well as projects of prison building aiming at improving prison conditions. Among the incomes contributing to constitute the balance sheet of such Office there are the proceeds from prison manufacture, pecuniary sanctions and the other sanctions connected with the trial.

Sentenced person (or finally sentenced person)

The accused person against whom a final sentence has been passed.

Social cooperatives

Cooperative societies, governed by law 381/1991, managing social-health and educational services and various activities aiming at integrating disadvantaged persons into the labour market.

Court of Assize

The Court of Assize judges the crimes for which the law provides for the penalty of life imprisonment or imprisonment of not less than 24 years, and all the other serious crimes covered by art. 5 of the code of criminal procedure.

The Court of Assize is composed by two stipendiary magistrates and six lay judges.

Department of Penitentiary Administration

It is the structure of the Ministry of Justice carrying out the tasks connected with prison system.

Prisoner

It is a generic term indicating the persons staying in a prison without specifying their legal status.

Clemency

Clemency remits, partially or totally, a sentence imposed or commutes it in another penalty provided for by the law (art. 174 of the criminal code and art. 681 of the code of criminal procedure).

It is an individual measure, differently from the pardon which has a collective nature.

The petition for clemency, signed by the sentenced person or by his/her relative or lawyer, is addressed to the President of the Republic through the Minister of Justice. If the sentenced person is a prisoner or an internee, it has to be submitted to the supervisory judge who will forward it to the Minister of Justice with his own motivated opinion.

Accused person

The suspected person against whom a committal for trial has been ordered (art. 60 of the code of criminal procedure).

Suspected person under investigation

The person against whom preliminary investigations are being carried out (art. 347, para. 2, code of criminal procedure)

Pardon

Pardon remits, totally or partially, the sentence imposed or commutes it in another sentence established by Law (art.174 of the criminal code and 672 of the code of criminal procedure). It is directly applied by the judge issuing the judgment of conviction. In case said judgment provides for

the application of security measures, the possible amendments following the pardon fall under the competence of the supervisory judge. It is a measure of a general character, while clemency is individual.

Internee

A socially dangerous person submitted to security measures within a penal establishment.

Prison

It is a closed place, isolated from society, intended to receive prisoners. Prisons are under the authority of the Department of Penitentiary Administration.

The typologies of prisons are the following:

- Institution for pre-trial detention (remand prison) where persons waiting trial or persons sentenced to penalties not exceeding five years are imprisoned (or with a remaining sentence not exceeding 5 years)
- Institution for the execution of prison sentences, which is the establishment where longer sentences are served.
- Juvenile prisons for the detention of minors (older than 14 years)
- Institutions for the execution of security measures (penal farms, penal labour colonies, prison hospitals, judicial psychiatric hospitals which will be replaced by the structures as per para. 2 art.3 of the legislative decree 22.12.2011 n.211 (converted by law no.9 of 17 February 2012)

Low security level institution for the treatment of drug addicts (ICATT)

Prison where the physical and psychic rehabilitation of drug addicts is carried out, through the implementation of

activity programmes in cooperation with drug addiction public services, Regional Health Service, territorial bodies, third sector, voluntary service and therapeutic communities.

Low security level institution for mothers in prison (ICAM)

Compatibly with precautionary requirements not exceptionally relevant, the judge can order at the low security level institutions (I.C.A.M.), pre-trial custody or the serving of the sentence for pregnant women or mothers with children under 6 years, or for the father where the mother is dead or cannot assist them.

Juvenile prison

It is a prison where minors (older than 14 years) are imprisoned.

Institutions for the execution of security measures

The institutions for the execution of prison security measures are penal farms, penal labour colonies, prison hospital, judicial psychiatric hospitals (art. 62 Law no. 354 of 26 July 1975 (Penitentiary Act)).

Early release

Persons sentenced to imprisonment who have shown effective participation in the re-educational process may be granted a forty-five-day reduction of their sentence in respect of every six months actually served. Early release is requested by the offender and granted by the Supervisory Judge. In prison slang, the granting of the reduction is called granting of “days”. Also the persons

assigned to the probation service and those assigned to the probation service in particular cases such as drug addiction may be granted this benefit when they prove to have done a real social rehabilitation.

Ministry of Justice

It is the Department of the Italian Government dealing with civil judicial Administration, penal and juvenile Administration, penitentiary Administration and the Judiciary.

Personal coercive precautionary measures

They can be applied to suspected or accused persons for crimes for which the maximum sentence provided for exceeds three years' imprisonment, and only if dangers of escape, or of tampering with evidence or of commission of new crimes exist.

The personal coercive precautionary measures are: prohibition of expatriation, obligation to present oneself before the investigating police, removal from family house, prohibition and obligation of abode, house arrest, pre-trial custody in prison or healthcare structure. They are governed by articles 272-286 of the code of criminal procedure and as far as the execution and length of proceedings are concerned, by articles 291-308 of the code of criminal procedure.

Security measures

They are governed by art. 199 and following of the criminal code.

Security measures shall apply:

- to persons considered socially dangerous;
- in case of commission of a crime, or of an impossible attempt as per art. 49 of the criminal code, or in case of agreement or criminal incitement;

- when it is deemed they can commit new facts provided by the law as crimes.

Such measures are ordered by the judge in the judgment of conviction. They not only have a function of control of the social dangerousness, but also a re-educational function, that is they are meant to encourage the reintegration of the individual in the social context. They have an indeterminate length: the law fixes the minimum term of length and then the judge decides, at the expiration of the term, if the person is still socially dangerous.

Security measures are personal when limiting individual freedom (in a penal establishment or in the community), are patrimonial when they weigh upon the property of the person (security for good behavior and forfeiture).

Prison security measures are:

- the assignment to a penal farm or penal labour colony (for habitual or professional offenders or for criminals by propensity);
- the hospitalization in a prison hospital (for sentenced offenders who received a reduction of the sentence for insanity or for chronic intoxication by alcohol or psychotropic substances);
- the hospitalization in a judicial psychiatric hospital (for accused persons acquitted for the above-mentioned reasons; it is not applicable to minors)
- the admission in the judicial reformatory for minors.

Non prison security measures are:

- Supervised liberty (implying the obligation to have a firm working activity or to find one, the obligation to go back home within a certain hour);
- The prohibition to reside (in one or more municipalities or in one or more provinces);

- The prohibition to attend inns and public licensed shops of alcoholic drinks;
- the expulsion of the foreigner from the State.

The supervisory judges supervise the execution of personal security measures; they ascertain if the concerned person is a socially dangerous person; they issue or revoke the declarations of the criminal propensity and of the habitual or professional aspect in offending. Against such measures, the public prosecutor, the concerned person or the defense counsel may file an appeal to the supervisory Court (art. 679 and 680 c.c.p.)

Notification

It is the activity through which the bailiff or another person indicated by law (such as the investigating police) formally discloses an act to the addressee, through the delivery of a certified copy of the original. The addressee, once received the act, has to sign a copy of it upon receipt, which the bailiff will send to the authority issuing it.

Legal aid

It consists in the recognition of legal aid in favour of non wealthy people to act and defend themselves before the prosecutor in the trial and even in supervisory proceedings.

Pecuniary penalty

It is one of the two types of penalty imposed by the judge to the offender (the other one is prison penalty). There are two types of such penalties: the fine, applied for the crimes, and the sanction, applied for misdemeanours. It is one of the sanctions replacing short prison penalties provided for by law 24 November

n. 689 “Decriminalization and amendments to the penal system” (art, 53 and follow.). The pecuniary penalty can be spread over or converted into prison penalty.

Social dangerousness

The persons who have committed crimes are socially dangerous when they are likely to commit other crimes (art. 203 c.c.).

Residence permit

It is the administrative authorization issued to the foreign citizens who are allowed by the Italian State to stay in Italy. The request of permit must be submitted within 8 working days from their entry into the Italian territory at the Single Point of Contact for the Immigration in the case they have already been given the certificate of no impediment to family reunification or to work, or at the police headquarters.

Personal search

Prisoners can be submitted to personal search for security reasons so as not to offend their dignity (Art. 34 P A and art 74 Reg)

Public Prosecutor

The magistrate who acquires the criminal offence report (*notitia criminis*), exercises the prosecution, acts as prosecutor in criminal proceedings and encourages the execution of sentences.

Recidivism

Recidivism is the personal condition of those persons who, after having been finally sentenced, commit another

crime (art. 99 c.c.). It constitutes one of the so-called penal effects of the sentence and has to be considered among the circumstances concerning the guilty person. It implies the possibility of an increase in the penalty.

Imprisonment

Imprisonment is the penalty imposed to the offender for the crimes. It can last 15 days up to 24 years and it is served in prison. The penalty of imprisonment can be converted, when there are the conditions, in pecuniary penalty.

Division of the payment of pecuniary penalty into instalments

In case of a pecuniary penalty or of conversion of imprisonment penalty into pecuniary penalty, in case of situations of insolvency because of the temporary impossibility to effect the payment, the offender may ask for the postponement or the subdivision of the payment into instalments (art. 660 c.c.p.).

The supervisory judge, once considered the economic conditions of the offender, can order that the pecuniary penalty be paid in no more than 30 monthly instalments (art.133 c.c.). The pecuniary penalty can be converted into monitored liberty or into substitutive work.

Rehabilitation

It is a law benefit (art. 178 and following of the c.c. and art. 683 c.c.p.) completely deleting the effects of a judgment of conviction.

The rehabilitation is granted after three years from the day in which the penalty has been served (in prison, or under alternative measure, or expired for pardon or other

benefits). In case of recidivism, 8 years run (art. 99 c.c.) and 10 years in case the offender has been declared an habitual or professional offender or a criminal by propensity.

To obtain rehabilitation it is necessary that offenders, if they have been submitted to a security measure, have obtained the revocation thereof, and have complied with the civil obligations deriving from the crime, and that they have compensated the damage caused.

To obtain rehabilitation it is necessary to preserve a good conduct for all the period considered, not only avoiding to commit crimes but also having a correct and responsible behavior.

The request of rehabilitation is submitted to the Supervisory Court, which collectively decides.

Defendant

The accused offender filing appeal before the Court of Cassation.

Appeal to the Court of Cassation

The accused person and the Public Prosecutor can file appeal to the Court of Cassation against the appellate judgment or against the unappealable sentence of non-suit (art. 697 c.c.p.).

The public prosecutor, the concerned person and, in certain cases, the penitentiary Administration, may appeal to the Court of Cassation against the order of the Supervisory Court (art. 71-c of law 26 July 1975, n.354, "Penitentiary Act").

The reasons for which it is possible to appeal to the Court of Cassation are provided for by art. 606 of the code of criminal procedure and mainly concern, in the case of the Supervisory Court, defects of legitimacy and defects of grounds of the order.

Optional postponement of the execution of the penalty

The execution of the penalty can be postponed (art. 147 of the criminal code and art. 684 of the code of criminal procedure) in the following cases:

- The request for clemency has been submitted;
- The offender sentenced to the deprivation of personal liberty is in conditions of serious physical insanity;
- The offender sentenced to the deprivation of personal liberty is the mother of children aged under three years.

Mandatory postponement of the execution of the penalty

The execution of prison sentences, of semi-detention and of monitored liberty must be postponed (art. 146 of the criminal code and art. 684 of the code of criminal procedure) in case the offender is:

- a pregnant woman;
- a mother of children under 1 year;
- a person suffering from Aids or from other particularly serious diseases, not compatible with imprisonment, provided that the requirement of “non reaction to the treatment” occurs.

Persons who work within prisons with whom every prisoner can ask to speak to:

- the prison governor and deputy governors, who have the responsibility of the correct prison management.
- Penitentiary police commander, inspectors, sergeants, assistenti and agents, who guarantee the order and protect the security within prisons, participate in the observation activity and in the re-educational treatment and carry out the transfer service;
- Penitentiary police staff working at the registration office, who supervises the registration and release of

prisoners, organizes their participation in the hearings, the interviews, the visits by the defence counsels and the investigators and receives the requests of the prisoner addressed to the prison governor;

- The person responsible for the education area and educators who plan, organize, coordinate internal activities concerning school, work, and cultural, recreational and sports activities. They are members of the observation and treatment équipe.
- The staff working for drug addicts Service, who carry out the activity of assistance to the prisoners who have drug addiction and alcohol problems;
- Penitentiary social workers who, within the Office for the Execution of sentences in the community, participate in the activity of observation and treatment, taking care of the relationship between the prisoner and the outside environment even in consideration of the granting of law benefits (alternative measures) or release from prison, also carrying out actions in favour of prisoners' families;
- Volunteers who participate in treatment activities even in organized forms and associations;
- The chaplain and ministers of faith;
- The psychologist, the psychiatrist, the person responsible for the healthcare area, physicians and nurses;
- The person responsible for the administrative-accountancy area and the accountants.

Persons who work outside prison to whom the prisoner may address:

- The Regional Director of penitentiary administration who plans treatment activities, coordinates the

activities concerning work and vocational training, school, cultural and sports activities, and decides on the assignments and transfers within the district;

- The proceeding judge;
- The supervisory judge, who supervises the organization of prisons and, in particular, decides on the requests of the prisoners aimed at getting alternative measures and on the complaints submitted by them against the measures adopted by the penitentiary administration, on the requests of leaves asked by prisoners and for the application and revocation of security measures;
- The European Court of Human Rights to which one can address only after the exhaustion of the jurisdictional remedies before national judges (within 6 months until a final sentence has been passed), when the provisions of the European Convention of human rights dated 4.11.1950 are considered infringed;
- The President of the Republic to whom the request of clemency or of change of penalty can be addressed: the request of clemency measure must be submitted to the Minister of Justice through the supervisory judge.
- The Ombudsman of persons deprived of their personal liberty, in case it is established within the prison jurisdiction; the Ombudsman carries out the activity of public awareness raising on the topic of human rights and on the re-educational aim of the punishment.

Extra food and other products of prison shop

Foodstuffs and other products which the prisoners can purchase at their own expenses within fixed amounts.

Suspension of enforcement of a sentence

If the judge issues a penalty of imprisonment or of arrest for a period not exceeding 2 years, he can suspend the execution thereof.

If for 5 years (or two in case of misdemeanor) the sentenced persons will not commit other crimes, will comply with the obligations imposed on them and will not receive other penalties, the crime will be considered extinguished. In a different case, the suspension will be revoked and the sentence shall be executed.

If the sentenced persons are aged under 18, the suspension of the enforcement of the sentence can be granted even in case of penalties up to three years of arrest or imprisonment. If they are aged between 18 and 21 years, or more than 70 years, the prison penalty which may be suspended must not exceed 2 years and 6 months.

The suspension of enforcement of the sentence may be granted if the judge thinks that the guilty person will no longer commit other crimes, if there are not previous prisons sentences and if personal security measures have not been imposed for the social dangerousness of the sentenced person. The suspension of enforcement of the sentence is governed by art. 163-186 of the penal code.

Justice expenses

They are the costs for the trial and the maintenance in prison, which have to be borne by the accused person. They can be remitted (i.e. eliminated) if the sentenced person is in disadvantaged economic conditions and has held a correct behavior.

Treatment

Prisoners and internees shall receive a re-educational treatment aiming at their social reintegration. Treatment

shall be applied according to a tailoring principle with relation to the specific conditions of the persons, shall be humane and shall ensure the respect of the dignity of the person. Treatment is carried out by mainly availing of education, work, religion, cultural, recreational and sports activities and encouraging appropriate contacts with the outside world and the relationship with the family.

Supervisory Court

The supervisory court has jurisdiction within the district of the Court of Appeal. It is a specialized collective body, composed by ordinary judges and experts in psychology, social service, pedagogy, psychiatry and criminology, as well as of teachers of criminal sciences.

The measures of the supervisory court are adopted by a board composed by 4 persons: the president, one supervisory judge and two experts.

The supervisory court decides either as first instance court or as appeal court. At first instance it decides on the granting or revocation of the assignment to the Probation Service, on home detention, on semi-liberty, and on the suspension of the enforcement of the sentence; on the compulsory or optional postponement of the execution of prison sentences; on the requests of rehabilitation. In second instance, as appeal judge, the Court decides on the challenges lodged against acquittals with contemporary application of security measures issued by ordinary criminal courts and against the orders of the supervisory judges. Besides, it decides in case of complaint against the measures adopted by the supervisory judges in matter of leaves, early release, expulsion from the State and against some measures issued by penitentiary administration. The supervisory court of Rome has the jurisdiction to decide on the complaints against the measure of the application

of the regime as per art. 41*b* para.2 law n.354 of 1975 and for the proceedings concerning the granting or revocation of prison benefits to persons cooperating with justice. Against the orders of the supervisory Court can be filed appeal to the Cassation.

Criminal Court

The criminal Court as a panel (three judges) judges the serious crimes provided for in art. 33*b* c.c. ; as a single judge, it judges the less serious crimes not provided for by art. 33-*b* c.c.

Office for the execution of sentences in the community

The Office for the execution of sentences in the community (established by law n.354 of 1975) is a local office of the Ministry of Justice, Department of Penitentiary Administration. It carries out social service investigations requested by the Supervisory Court to know the actual personal, family, working situation of the sentenced persons or of the persons under security measures, even with the purpose of deciding on the application of measures alternative to detention, or on the measures restricting liberty, or on the treatment programme.

Supervisory Office

The supervisory office has a territorial jurisdiction over several districts. The district is the territorial area of jurisdiction of the ordinary Court.

The Supervisory Office is composed by one or more magistrates. Each magistrate has his/her own prisons and prisoners to deal with. The Supervisory Office is a single body.

The supervisory judge has the task to supervise the organization of prisons.

The supervisory judge has to approve the programme of tailored re-education treatment for each single prisoner (which penitentiary administration is bound by law to draft), the granting of leaves, the assignment to work outside prison, the authorization to be submitted to medical examinations by specialized physicians, hospitalizations for psychic insanity, the decision on early release and on the release of debt for criminal trial expenses or expenses of maintenance in prison.

The law obliges supervisory judges to go frequently to prison and to hear the prisoners who ask to talk to them, and gives them the task to decide on the complaints submitted by the prisoners for disciplinary measures ordered by penitentiary administration or for other reasons. They authorize telephonic interviews of prisoners and the possible control of the correspondence. They also authorize, heard the opinion of the prison Directorate, the entry of persons not belonging to penitentiary administration, such as those carrying out voluntary activity or those who participate in training or working initiatives addressed to prisoners.

The supervisory judges besides, decide on the suspensions and postponement of the execution of the sentence, supervise the execution of measures alternative to detention (assignment to the probation service, home detention, semi liberty).

They re-examine the social dangerousness and the subsequent application, execution and revocation of the security measures ordered by the ordinary Court. They decide on the requests of conversion or payment of pecuniary sentences into instalments. They decide on the expulsions of foreign prisoners and on the prescriptions

concerning monitored liberty. They express an opinion on the requests or proposals of clemency.

Volunteers in prison

Volunteers enter the prisons to give their contribution to the re-educational actions and to the offenders' reintegration into society (art. 17 and 18 of the Penitentiary Act).

Art. 17 gives the opportunity to a single person or to an association to submit to the prison Governance a project that they consider useful in order to bring prison community nearer to free society. Art. 78 allows volunteers to enter prisons in order to provide moral support to prisoners and to encourage their reintegration into society.

The sources of penitentiary law

Constitutional principles

Art. 2: it guarantees the inviolable rights of the person, even if imprisoned.

Art. 3: para 1: it ensures the principle of formal equality either in prison treatment or in supervisory proceedings. Para 2: it disciplines factual or substantial equality.

Art. 10: it provides that the Italian legal system shall conform to international law rules and regulations.

Art. 11: on the issue of justice, it imposes on Italy to give up its sovereignty in favour of the European Union.

Art. 13: para 2: it establishes the exclusive jurisdiction, after which only a motivated order of the judicial authority may deprive or restrict personal liberty.

Art. 24: para 2: guarantees the defense as an inviolable right at every stage and instance of legal proceedings, even in supervisory proceedings.

Para. 3 ensures the poor proper means for action or defense even in the supervisory proceeding.

Para. 4 provides that the law shall define the conditions and forms of reparation in case of judicial errors.

Art. 25 para 1: guarantees that no case may be removed from the court seized with it as established by law.

Para. 2 provides that no punishment may be inflicted except by virtue of a law in force at the time the offence was committed.

Para. 3 provides that no restriction may be placed on a person's liberty save for as provided by law.

Art. 27 para 2: provides that a defendant shall not be considered guilty until a final sentence has been passed.

Para 3 establishes that punishments may not be inhumane and shall aim at re-educating the offenders.

Para. 4 prohibits death penalty.

Artt. 35 and 36: protect work in all its forms and therefore also the work carried out by prisoners.

Art. 79: governs the legislative procedure in matter of amnesty and pardon.

Art. 87: gives the President of the Republic the power to grant pardons and commute punishments

Art. 101: provides that justice is administered in the name of the people and that Judges are subject only to the law.

Art. 104: guarantees the autonomy and the independence of the judiciary.

Art. 111: It guarantees the right to a fair trial, of reasonable duration, governed by law, in adversary proceedings, being the opposing parties entitled to equal conditions before an impartial judge in third party position.

Art. 117: provides that legislative powers shall be exercised in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations.

Supranational sources:

The Universal Declaration of Human Rights approved by the United Nations General Assembly in New York on 10 December 1948

European Prison Rules recently outlined in the Recommendation R(2006) 2 of the Committee of Ministers [of the Council of Europe] to Member States

The European Convention for the protection of human rights and fundamental freedoms, adopted in Rome on 4 November 1950 and entered into force in Italy by law 4 August 1955 n. 848

International Covenant on Civil and Political Rights adopted in New York on 16 December 1966 and entered into force in Italy by law no. 881 of 25 October 1977.

Resolutions and Recommendations of the Committee of Ministers of the Council of Europe to Member States, among which the Recommendation (1999)22 on overcrowding, the Recommendation (2006)13 on the use of pre-trial custody, the Recommendation (2010) 1 on Probation, the Recommendation (2012)12 on foreign prisoners

The standards of the Committee for the Prevention of torture and inhuman or degrading treatment (CPT) published in 2006 and containing the essential and general observations of the Committee reports.

Ordinary Italian laws

Law no. 354 of 26 July 1975, “Provisions on **Penitentiary Act** and on the execution of the measures depriving of and restricting liberty”

Law no. 662 of 10 October 1986 (so-called **Gozzini law**) “Amendments to the Penitentiary Act and on the execution of measures depriving of and restricting liberty”

Law no. 165 of 27 May 1998 (so-called law **Simeone-Saraceni**) “Amendments to the art. 656 of the code of criminal procedure and to the law no. 354 of 26 July 1975 and subsequent amendments”

Law no. 251 of 5 December 2005 (so-called **former law Cirielli**) “Amendments to the criminal code and to the law no.354 of 26 July 1975 in matter of generic extenuating circumstances, of recidivism, of comparison of the circumstances of crimes for recidivists, usury and prescription”.

Criminal code: in force since 1930

Code of criminal procedure: introduced by the Decree of the President of the Republic no. 447 of 1988

Consolidated text on immigration: approved by Decree of the President of the Republic n.286 of 1998 “Consolidated text on the provisions governing immigration and provisions on the conditions of foreigners”

Law no.193 of 2000 (so-called **Smuraglia law**) “Provisions to encourage prisoners’ working activity”

Law no. 40 of 2001 (so-called **Finocchiaro law**) “Measures alternative to detention protecting the relationship between female prisoners and minors”

Decree of the President of the Republic nr 230 of 2000 “**Regulations** containing provisions on the Penitentiary Act and on measures entailing restrictions on, and deprivation of personal liberty”.

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