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delle persone private
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Guide for foreign citizens deprived of their personal liberty

**IMMIGRATION LAW (RESIDENCE, EXPULSIONS AND INTERNATIONAL
PROTECTION) - REMARKS ON PENITENTIAL LAW FOR CERTAIN INSTITUTES**

coordinated by
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INTRODUCTION

This Guide has been produced thanks to the collaboration among the ASGI APS-Association for Juridical Studies on Immigration, the Law clinic: Detention and Rights II of the Department of Law of the University of Turin, the Office of the Guarantor for the Rights of Persons Detained or Deprived of Liberty of the City of Turin and with the contribution of the Compagnia di San Paolo Foundation.

This is an appendix to the “Guide for the person deprived of personal liberty” addressed to all detainees. The need has emerged from the observation of the high number of foreign detained people who seek information on obtaining or maintaining the legality of their residence in Italy. To meet this need, it has been deemed useful to provide brief information in relation to the main legal instruments, with a view to the coordination among administrative, criminal and immigration provisions. Both guides are primarily aimed at detained people, but they can also be a valid guidance tool for all operators who, for various reasons, perform services in penitentiary institutions.

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Chapter I PERMIT OF STAY

1.1. GENERAL CONSIDERATIONS CONCERNING THE PERMIT OF STAY FOR NON-EUROPEAN CITIZENS

The permit of stay (*permesso di soggiorno*) is the document issued by Police Headquarters that foreign, non-EU citizens must obtain in order to remain legally in Italy.

Possessing a permit of stay allows you to work, obtain a health card (*tessera sanitaria*) and tax code (*codice fiscale*), have residence (*residenza*), an identity card (*carta d'identità*) and access to your rights (for example, medical care, housing, state benefits).



When are you entitled to request the permit?

- If you entered Italy with a study, work or family visa;
- If you live with an Italian citizen of second degree of kinship (spouse, children, brothers/sisters);
- If your spouse has a permit of stay;
- If you are waiting for a response to an application for international protection presented in Italy;
- If you have obtained recognition of any form of protection from the Italian State;
- If you are stateless;
- If you have obtained authorization to stay in Italy from the Juvenile Court because you have a child under the age of 18.



Do you already have a permit of stay?

- The permit of stay has a limited duration. **It is important to request renewal of the permit before its expires and in any case no later than 60 days after its expiry. You can do this from prison.**
- After this deadline, you can still submit your application but it is difficult for it to be accepted by the competent offices. In any event, it becomes even more unlikely that Police Headquarters will provide a positive response. There is the risk of receiving an expulsion order and confinement at a CPR (repatriation detention centre).
- It is important to apply for renewal of the permit of stay while in detention: in some cases, you can renew the permit you already have; in other cases, you should check whether you can request a permit for another reason.



DO YOU NOT HAVE A PERMIT TO STAY or did your permit expire a long time ago?

There are certain situations in which you can apply for a permit to stay even if you have never had one before or have not had one for a long time. Here are some examples:

- **If you have any health problems** > check whether you can obtain a permit for stay for **medical treatment** (*permesso di soggiorno per cure mediche*) (see 1.3.3.);
- **If you are afraid of returning to your own country** because you fear that your life is in danger > check whether you meet the conditions needed to **apply for asylum** (*domanda di asilo*) (see Chapter II);
- **If you have family members (Italian or foreign) in Italy** > check whether you can apply for a permit of stay for **family reasons** (*permesso di soggiorno per motivi familiari*) (see 1.3.2.);
- **If you have children under the age of 18 and have not lost your rights and obligations in their regard** > talk to the lawyer to find out if you can lodge an appeal with the Juvenile Court (see 1.3.2.);
- **If you are in genuinely unusual conditions in Italy or your own country** > check whether your situation case falls within the special cases for permits of stay envisaged by law by talking to the lawyer, operators, volunteers or the Ombudsman's Office (*Ufficio del Garante dei detenuti*).

ATTENTION! If you DO NOT have a permit of stay, you may be expelled back to your country of origin, while you are in prison or after completing your prison sentence (at any time) (see chapter III). If you have a permit to stay but did not apply for renewal within 60 days of its expiry, your position becomes illegal and you may also be expelled (see chapter III).



What should you do when your permit is about to expire?

The renewal procedure must start 3 months prior to the expiry of the permit itself. The time involved for requesting renewal when in an Institute can be extremely long. Consequently, you must inform yourself and act in good time.



How can you renew your permit of stay?

- You will usually have to ask the Command Office for a **RENEWAL KIT** (but procedures may change, **so you should contact Institute staff for more practical information or the Ombudsman**).
- **The procedure will then be supervised by the Matriculation Office (*Ufficio Matricola*)** of the Institute where you are located, which will take the kit to the Post Office for delivery to Police Headquarters.
- The Matriculation Office must give you a **POSTAL RECEIPT** for the kit: keep that document safely because it proves that everything is in proper order.
- **You must fill in the kit yourself.** You can ask your lawyer, an operator, a volunteer or the Ombudsman's Office for assistance with compilation.
- Do not worry if you do not receive an answer immediately: **the application ensures that you are in a legal position** in Italy until you receive a reply from Police Headquarters. You can appeal against a negative answer by talking immediately to your lawyer (see below).

You must attach certain **DOCUMENTS** with the renewal application:

- **A copy of your current (expiring) permit of stay**
- **A copy of your passport**
- **A copy of your Italian identity card and health card** showing your tax code (you can still send the kit even if you do not have these items)
- €16 stamp duty
- You will also have to pay fees through a post office order (usually €30.46 + €30)

Depending on the type of permit of stay you are applying for, you may also have to present additional documents. **For example**, if you are requesting renewal of your permit for family reasons, you must include documents detailing your family members. If you request renewal of your permit of stay for medical treatment, you must enclose health-related documents.

For some types of permit, renewals must be requested directly through Police Headquarters. If the Matriculation Office notifies you of this requirement, contact your lawyer, a trusted operator, a volunteer or the Ombudsman's Office for more information.



NEGATIVE DECISION OVER AN APPLICATION FOR A PERMIT OF STAY

If you receive a negative response to your application for a permit of stay, you should contact your lawyer IMMEDIATELY. You can go together before a judge who will review your situation.



ASSISTANCE OF A LAWYER AND FREE LEGAL AID

In all administrative proceedings that take place before a judge (APPEAL against a negative decision for a permit of stay, APPEAL against an expulsion decision), you can be assisted by a lawyer.

A lawyer will NOT be appointed by the court to supervise these appeals: if you do NOT have a trusted lawyer, ask for help from an educator or the Ombudsman.



If you cannot pay a lawyer because you have no or low income, you have the right to free assistance ("free legal aid" – *gratuito patrocinio*); the lawyer's fees will be covered by the State.

Free legal aid can be obtained for administrative procedures (permit of stay, expulsion) as well procedures before a Magistrate or Supervisory Court for penitentiary benefits (Chapter IV).



Do you still have rights in prison even if you do not have a valid permit?

You can work, obtain medical treatment and, if you possess other requisites, request and obtain benefits and alternative measures to detention. However, when you finish serving your sentence, you will lose your right to work.

1.2. THE QUESTION OF IMPEDIMENT OFFENCES (ARTICLE 4, ITEM 3 OF THE CONSOLIDATED IMMIGRATION LAW – TUI) (*TESTO UNICO IMMIGRAZIONE*)



Is being accused of committing an offence, (even if you have not yet received a definitive SENTENCE), a problem as regards the permit of stay?

Yes, it may be a problem. In general, **you cannot obtain a permit of stay (and if you have one, it may also be revoked) if:**

a) you are considered to be a threat to public order or the security of the Italian State or other European Union countries

b) **you have been convicted, even only in the first instance and therefore not yet in definitive terms**, or a plea-bargaining sentence (*sentenza di patteggiamento*) for one of the offences referred to in Article 380, items 1 and 2 of the Code of Penal Procedure (if the punishment envisaged by law is particularly serious and for some crimes including robbery, aggravated theft, extortion, aggravated receipt of stolen goods, enslavement, sexual violence);

c) **you have been convicted, even only in the first instance and therefore not yet in definitive terms**, or a plea-bargaining sentence for certain specific offences:

- involving narcotics;
- against sexual freedom;
- aiding and abetting illegal immigration or emigration to other countries;
- intended to recruit people for prostitution or minors to be employed in illegal activities.



Is receiving a definitive sentence a problem as regards a permit to stay?

Yes, in all cases seen above and if the sentence is for:

- Offences relating to intellectual and industrial copyright protection;
- Article 473 of the Penal Code (counterfeiting or alteration of distinctive signs, trademarks);
- Article 474 of the Penal Code (trade in products with false marks or signs);
- Obstruction of railways and roads, as well as waterways to prevent navigation.

1.3. THE RULE OF IMPEDIMENT OFFENCES (ARTICLE 4, ITEM 3 CONSOLIDATED IMMIGRATION LAW - TUI) IN RELATION TO CERTAIN TYPES OF PERMIT OF STAY

The rule indicated in relation to impediment offences (*reati ostativi*) at point 2 applies in general but **its effective application depends on the type of permit of stay requested**; for some types of permit, the rule of impediment offences is **less severe**. In other cases, you may have a permit of stay even in the presence of impediment offences (see 1.3.2., 1.3.3., 1.3.4., 1.3.5., 1.3.6.)

1.3.1. PERMIT OF STAY FOR WORK / AWAITING EMPLOYMENT

You cannot apply for this permit (*permesso di soggiorno per lavoro/attesa occupazione*) if you have never been given a permit to stay; it is also the most difficult to renew.

If you have NOT committed the offences listed above, **are about to finish your sentence and have a permit of stay that is due to expire**, you can apply for renewal of the permit **for work reasons** when you can prove that you are in contact with an employer willing to hire you and that you have family ties in Italy. **You can contact the Ombudsman or your lawyer for assistance.**

1.3.2. PERMIT FOR FAMILY REASONS

There are many instances in which a permit can be issued for family reasons (*permesso per motivi di famiglia*). The rules for issue and renewal differ depending on individual cases.

The existence of an offence is NOT a sufficient reason for a negative decision concerning an application for a permit to stay for family reasons.



If you already have a permit of stay for family reasons, can you apply for renewal?

Yes, you can request renewal but if you have committed serious crimes, **Police Headquarters may decide not to renew the permit. It is not an automatic decision** because your family ties in Italy must be taken into consideration as well as the seriousness of the offence committed.

The permit of stay is requested by means of a POSTAL KIT (**you must ask the Matriculation Office for the kit and your lawyer or volunteers to help you fill it in.**).



If you do NOT have a permit for family reasons BUT you have family members in Italy, can you request a permit?

In some cases, yes, but only **IF your permit expired less than one year ago**; in other cases, always. Once again, **Police Headquarters may decide not to renew the permit**

if you have committed serious crimes. In addition, you must be able to prove that you have sufficient INCOME.



If you have **UNDER-AGE CHILDREN**, check with your lawyer if you can **appeal before the Juvenile Court pursuant to Article 31, item 3 Consolidated Immigration Law - TUI**

If you have **ITALIAN RELATIVES** (wife/husband, children, parents, brother/sister) **WHO YOU LIVED WITH BEFORE BEING SENT TO PRISON**, you may apply for a permit of stay for family reasons as per **Article 19, item 2, letter c) Consolidated Immigration Law - TUI**

1.3.3. PERMIT OF STAY FOR MEDICAL TREATMENT (ILLNESS)

Even if you have committed **impediment offences**, if your **health conditions are particularly serious** you can apply for a permit of stay for medical treatment (*permesso di soggiorno per cure mediche (malattia)*). This type of permit can also be requested if you have never had a permit of stay before or if the one you had expired some time ago (**Article 19, item 2 letter dbis**)

Reasons for issuing this kind of permit of stay:

- a **particularly serious** illness must be involved (such as a tumour);
- the illness must be **certified by an official Local Health Authority (ASL) document** (you must attach documents issued by a doctor certifying the disease with the Postal KIT >> to obtain such certification, contact the Health Department of your Institute);
- treatment for the illness **may not be available in your country of origin** and therefore it would be dangerous for you to return.

1.3.4. PERMIT OF STAY FOR MEDICAL TREATMENT (PREGNANCY)

You can apply for a permit of stay for medical treatment also if you are female **in a confirmed state of pregnancy** (*permesso di soggiorno per cure mediche (gravidanza)*) and for up to 6 months after the birth of the child (**Article 19, item 2 letter d**).

Even the father of an unborn child can request this permit: **ask your lawyer** > the procedure differs depending on whether you are married to the future mother or not.

In these cases, **the rule of impediment offences does not apply** unless you are considered a threat to the security of the Italian State or other member states of the European Union.

1.3.5. PERMIT FOR STAY FOR VICTIMS OF TRAFFICKING AND DOMESTIC VIOLENCE (FOR HUMANITARIAN REASONS)

If you are a victim of trafficking or have suffered from domestic violence, you might be entitled to a permit of stay for humanitarian reasons (*permesso di soggiorno per vittime di tratta e violenza domestica (per motivi umanitari)*). **Contact your lawyer, an operator or the Ombudsman to get in touch with the institutions able to provide you with assistance in such matters.**

VICTIM OF TRAFFICKING. If you are a **victim of enslavement or trafficking in human beings** (for example, you came to Italy and you were forced into prostitution to pay the debt and were not free), you will be able to apply for a permit of stay which also includes assistance programs that ensure food, accommodation and health care.

DOMESTIC VIOLENCE. You are considered to be a victim of domestic violence if you have suffered: acts of physical violence (kicks, punches, slaps, bites, etc.), or acts of sexual, psychological (threats) or economic violence, and such violence occurs within the family, or marriage or an emotional relationship. To obtain this permit, it is NOT necessary for the person who committed the violence to live with the person who suffered it.

1.3.6. PERMIT OF STAY FOR SOCIAL PROTECTION OF MINORS (ARTICLE 18, ITEM 6 CONSOLIDATED IMMIGRATION LAW - TUI)

This permit (*permesso di soggiorno per protezione sociale ex minore*) can be issued to **WHOSOEVER HAS RECENTLY COME OF AGE, even in the event of committing impediment offences.**

If you are in prison because you have committed a crime **while you were still a minor** and, after committing the offence (when you were in a Penal Institute for Minors or when you entered the Institute for Adults) **you were involved in a SOCIAL ASSISTANCE AND INTEGRATION PROGRAMME** (programmes financed by the state and organized by social entities), you can request that your permit for minors be converted into a permit for social protection (*permesso per protezione sociale*).



This permit can also be issued on the proposal of the Public Prosecutor or the **Supervisory Judge of the Juvenile Court**, to whom you can **write a letter presenting your request.**

Chapter II INTERNATIONAL PROTECTION

2.1. ASYLUM APPLICATION AND TYPES OF PROTECTION

If you are in prison and believe that **returning to your country is dangerous for your life**, you can decide whether to apply for asylum, with the help of your lawyer, the Ombudsman and the Legal Clinic of the International University College (IUC).

You can apply for asylum (*domanda di asilo*) when:

- a. You may suffer violence in your country for reasons related to your race, religion, nationality or political opinion, or because you are part of a group of people sharing particular characteristics (**REFUGEE STATUS**). This situation may arise, **for example**:
 - if you have refused military service and risk facing trial;
 - if you are wanted by the police because you have committed offences for political reasons;
 - if you can be discriminated against/subjected to violence for your sexual orientation.

- b. If you may suffer serious harm to your person in your country. This occurs when: **there is a war**; or you were sentenced to death; or if, on returning to your country, you may be **beaten and subjected to violence or torture (SUBSIDIARY PROTECTION)**.



Which subjects may cause you harm?

Does the violence you are afraid of suffering come from state officials (for example **police or military**) or private individuals (for example **people belonging to a criminal group**, a political or religious group other than yours, but even family members or neighbours). In the second case, however, you must demonstrate that the state (police, judges, etc.) CANNOT protect you.

ATTENTION! Once you have applied for asylum, **you will have to cease contact with the authorities of your country of origin** (such as Embassy, Consulate, etc.) and if you have a passport, you will have to consign it temporarily to Police Headquarters. If you obtain refugee status, you will no longer be able to return to your country of origin. If you do, you will lose your refugee status and therefore your permit of stay.

2.2. HOW IS THE PROCEDURE CARRIED OUT?

To apply for asylum, **report your situation to an educator and/or the Ombudsman and they will help you in the procedure**. You may meet students of the Legal Clinic of the IUC University of Turin, who will help you understand if you can apply and prepare for asylum. The application will be sent by the Matriculation Office to Police Headquarters.

In the application form, you must briefly indicate the reasons why you are applying for asylum. The form must be completed **with the help of an interpreter** of a language you know. It is also important to consign **any documentation you may obtain** in order to demonstrate the reasons for your request.

If you have presented an application, you cannot be expelled until your situation has been examined. However, you must always carry with you a copy of the form you filled in to present your request (ask the Matriculation Office). While waiting for the decision, you will be issued with a **permit of stay for asylum application**.

After presenting the asylum application, you will be interviewed by a member of the Territorial Commission. The Commission is a public body but is DIFFERENT from the Judge and the Police. **What you say to the Commissioner is CONFIDENTIAL.**

The interviewer **will ask you questions about your life in your country of origin and your life in Italy** in order to understand your situation and assess what dangers may face you in your country should you be deported. An interpreter who speaks your language will be present during the interview.

2.3. WHAT RESPONSES CAN THE COMMISSION PROVIDE?

2.3.1. REFUGEE STATUS AND SUBSIDIARY PROTECTION

If your asylum application is successful, you will be granted **refugee status (*status di rifugiato*)** or **subsidiary protection (*protezione sussidiaria*)**. You will be given a **permit of stay which lasts for 5 years** and thereby remain in Italy legally.

2.3.2. SPECIAL PROTECTION

If the Commission believes that there are NO conditions for international protection BUT in any case:

- there is a risk that you may be **persecuted or tortured not the least because human rights are continuously and seriously violated in your country**,

- acknowledges that **your life is deeply-rooted in Italy** (because of **strong family ties or having been away from your country of origin for a long time and by now integrated in Italy**)

it may recognize SPECIAL PROTECTION (*PROTEZIONE SPECIALE*). In this case, **you will be able to obtain a two-year permit of stay.**

The Commission can also indicate that Police Headquarters issue the permit of stay for other special reasons.

2.3.3. NEGATIVE RESPONSE

If your asylum application is NOT accepted and you are NOT granted special protection, you may be deported. **You can always make an APPEAL within 15 or 30 days of receiving the negative response (*risposta negativa*) to your application: ask a lawyer for help to make an appeal.**

ATTENTION! If you have committed SERIOUS OFFENCES, this may be a problem for the recognition of protection. It is important that you know this when presenting your application.

Chapter III. EXPULSIONS

If you do not have a valid permit of stay or have not presented an application for one, or in other special cases, **you may be in a situation which makes it impossible for you to remain in Italy.**

You may receive an expulsion order: the decision to repatriate you can be made while you are still in prison or after your release. Expulsion may therefore be either administrative or penal.

3.1. EXPULSION AS AN ALTERNATIVE OR SUBSTITUTE MEASURE FOR DETENTION (ARTICLE 16, CONSOLIDATED IMMIGRATION LAW - TUI)



[When is expulsion possible instead of serving the sentence in prison?](#)

This measure may be arranged as a **SUBSTITUTE MEASURE** (*espulsione come misura sostitutiva della detenzione*) of the sentence when:

1. **You are in situations described by Article 13, item 2 Consolidated Immigration Law - TUI: you are in Italy illegally** (see 3.3.) **AND**
2. The judge sentenced you to a prison sentence of **LESS THAN 2 years** **but** there are no conditions for ordering a suspended sentence.

If it is decided to replace detention in prison by expulsion, Police Headquarters may repatriate you at any time, even if you have appealed against the first instance sentence.

On the other hand, expulsion may be ordered as an **ALTERNATIVE MEASURE** (*espulsione come misura alternativa alla detenzione*) to the sentence whenever you:

1. **Are in the situations described by Article 13, item 2: you are in Italy illegally** (see 3.3.) **and**
2. **You are serving your sentence in prison and there are LESS than 2 years left to serve.**

In this case, the management of the Institute where you are located will ask Police Headquarters to proceed with your identification (identity and nationality). The expulsion order is decided by the SUPERVISORY MAGISTRATE (*magistrato di*

sorveglianza): you can **OPPOSE** the decision of the judge personally or **through your trusted lawyer WITHIN 10 DAYS**.

Attention! An official lawyer is NOT appointed for the opposition procedure.

If you oppose the decision, there will be a hearing before the Supervisory Magistrate: at this time, if you do not have a trusted lawyer, you will be assigned an official lawyer for the hearing,

? Is it possible to return to Italy after being expelled?

No, because the expulsion order also includes a ban on returning to Italy. If you are expelled, the duration of the **prohibition of re-entry** into Italy will depend on the type of offence you committed (**from 3 to 5 years for offences punished with fines and less serious sentences; in other cases, no less than 5 years**).

? When may expulsion NOT replace a prison sentence?

Expulsion does NOT replace the prison sentence if:

- **you are in prison because you committed particularly serious offences** (those defined in Article 407, item 2, letter a) of the penal procedure code, such as mafia-like association, crimes with terrorist purposes, extortion, murder, kidnapping and others); or
- you are in prison because you committed one of the offences envisaged by the Consolidated Immigration Law - TUI punished with a maximum sentence of more than 2 years of imprisonment; or
- **when the law prohibits your expulsion because you are in a particular situation** (see 3.5.).

ATTENTION! If you return illegally to Italy after being expelled, the provision is revoked and **you will then spend the rest of your sentence in prison**.

3.2. EXPULSION AS A SECURITY MEASURE (ARTICLE 15 OF THE IMMIGRATION CONSOLIDATION LAW)

Expulsion as a security measure (*espulsione come misura di sicurezza*) may be ordered by the Judge in the sentence if you are socially dangerous and have committed particularly serious offences (pursuant to Articles 380 - 381 Penal Procedure Code).

In this case, after being taken to prison during penal proceedings or after the definitive sentence, the Chief of Police and the Consular Authority will be notified and will then initiate the identification procedure. When your detention period is over, you will be expelled.

ATTENTION! At the end of detention, the Surveillance Magistrate must in any case verify the relevance of social dangerousness before its application.

3.3. ADMINISTRATIVE EXPULSION (ARTICLE 13, CONSOLIDATED IMMIGRATION LAW - TUI)



In which cases can a person be expelled?

You can be expelled with an administrative measure (*espulsione amministrativa*) if:

1. You **entered Italy illegally**;
2. If **you no longer have a permit of stay** because: it has expired and you did not request renewal in good time, or you requested renewal but was refused, or Police Headquarters have revoked your permit;
3. If you **are qualified as "socially dangerous"** because you are routinely involved in illegal trafficking and maintain yourself through illegal activities; you habitually commit offences against minors, health, safety or public order; you are suspected of the crime of mafia-like criminal association (as hypothesized in Articles 1, 4 and 16 of Italian Legislative Decree D. Lgs. 159/2011).

ATTENTION! If you have exercised your right to family reunification or have family ties in Italy or have lived in the country for a long period of time, **the authorities must assess your family situation before issuing an expulsion order.**



How is expulsion implemented?

Expulsion is a **decision taken by the Prefect** through Police Headquarters. If, after being released from prison, the Police stop you and ascertain your illegal situation, you can be accompanied to Police Headquarters and receive an expulsion order (*decreto di espulsione*).



When you receive an expulsion order, you can appeal to a Justice of the Peace within 30 days. You must find a lawyer in order to present an appeal. If you are unable to pay a lawyer, you are **entitled to legal aid paid for by the State.**

After receiving an expulsion order:

- **you may be accompanied immediately to the border** (although this rarely happens);
- **you may be taken to the repatriation centre (CPR - *centro per il rimpatrio*)** - where you will be detained in order to organize your departure back to your country of origin;
- if you have a passport and a domicile, the Chief of Police may decide to apply an **alternative measure to detention** in the Repatriation Centre (CPR) (e.g. obligation for daily sign-in - *obbligo di firma*);
- the Chief of Police may give you a deadline to leave voluntarily (e.g. from 7 to 15 days) and release you (**voluntary departure**). If you do not meet this deadline, you can be sent to the Repatriation Centre (CPR) in order to implement repatriation.
- If it is not possible to accompany you immediately to the border (to the airport) or there are no places in the Repatriation Centre (CPR), the Chief of Police may order you to leave independently within 7 days and release you. **If you do not respect this, you may face penal proceedings and be detained in the Repatriation Centre (CPR).**

REPATRIATION DETENTION CENTRE

If you are taken to a Repatriation Detention Centre (CPR), **a hearing will be held and the judge will have to decide whether to confirm your detention or not.** You can be assisted by your trusted lawyer or, if you do not have one, an official lawyer will be assigned to you. During your detention, Police Headquarters will have to identify you and obtain repatriation documents.

Ombudsmen for the rights of inmates also operate in the CPR. You may contact them during your detention to request a meeting and explain your problems and violations of your rights, even in writing.



[How long will you have to stay in the Repatriation Centre \(CPR\)?](#)

- If you are sent to a Repatriation Centre (CPR) immediately after release you may be detained there for up to a **maximum of 45 days**.
- If, on the other hand, you receive the expulsion order after being released from prison, you may be detained in the Centre for 30 days, up to a maximum of 90 days.
- In both cases (after 45 days or 90 days), **for persons from certain countries of origin, an additional period of 30 days (for 120 days in total) may be envisaged.**

PROHIBITION OF RE-ENTRY (*DIVIETO DI REINGRESSO*)

If you are expelled, you CANNOT return to Italy or to another European Union country.



What happens if you return to Italy without authorization?

- You may be sentenced to a custodial sentence in prison of 1 to 4 years;
- You are expelled again with immediate accompaniment to the border;
- If, after being expelled a second time, you enter Italy illegally AGAIN, you can be sentenced to a prison term of between 1 and 5 years;



How long is the ban on re-entry into Italy after expulsion?

- **It is usually no less than 3 years and not more than 5 years.**
- A duration of more than 5 years may be set if you belong to one of the categories indicated by the law: subjects considered socially dangerous who have committed serious crimes such as terrorism.



If you have returned to your country but you are a defendant or a claimant in an ongoing trial in Italy, can you return to attend court proceedings?

If you are called for the date of the hearing, you must ask Police Headquarters, personally or through a lawyer, for **authorization** to return. This will be issued through the Italian Consulate or Embassy in your country of origin.

3.4. EXPULSION BY THE MINISTRY OF THE INTERIOR (ARTICLE 13, ITEM 1 CONSOLIDATED IMMIGRATION LAW - TUI)

This type of expulsion (*espulsione del Ministero dell'Interno*) is very rare and may be ordered for reasons of public order and state security or reasons relating to the prevention of terrorism. If you receive such an order, speak to a lawyer immediately,

since there is a high probability that this type of deportation will be carried out immediately with escort to the border.

3.5. CASES IN WHICH EXPULSION IS FORBIDDEN (ARTICLE 19 CONSOLIDATED IMMIGRATION LAW - TUI)

What we have outlined so far holds true in general. However, there are circumstances in which you **CANNOT be expelled**:

- a) **If there is a risk of persecution in your country** for reasons of race, sex, language, citizenship, religion, political opinions, personal or social conditions (even if you have never applied for asylum);
- b) **If you risk being subjected to torture or inhuman or degrading treatment in your country** (in assessing these reasons, widespread violations of human rights in the country of origin are also taken into account);
- c) **When expulsion means violating your right to private and family life.** This means that **when your life is rooted in Italy because you have family ties in Italy or have lived and worked here for a long time**, etc., you cannot be deported;
- d) When co-habiting with relatives up to second degree (parents, children, brother/sister) or with an **Italian spouse**.
ATTENTION! you must prove your co-habitation (with family status or other documents);
- e) When you are **pregnant** and for 6 months after the birth of your child;
- f) When you are the **father of the unborn child** and for 6 months after the birth of your child;
- g) If your **health conditions are very serious** and cannot be treated in your own country.

ATTENTION! If there are any risks to **national security or public order and security reasons** (e.g. you have committed very serious crimes), the Prefecture may still decide to deport you BUT must also take into consideration your family ties and your private life in Italy: **expulsion is not automatic**.

In cases of prohibition of expulsion, you **are entitled to a permit of stay** for special protection (cases a and b), for family reasons (case d) or medical treatment (cases e, f and g).



If you do not fall within the cases indicated above but have nevertheless **suffered physical, psychological and sexual violence or are being treated for physical or mental health problems**, contact your lawyer and an educator since your situation may be INCOMPATIBLE with expulsion and/or **detention in the repatriation detention centre (CPR)**.

If you cannot be expelled then you **CANNOT** be detained in the Repatriation Centre CPR either: if you are in the Centre, communicate with your lawyer or the Ombudsman to inform them that there is a ban on expulsion.

3.6. VOLUNTARY ASSISTED REPATRIATION

This is a programme (*Rimpatrio Volontario Assistito*) for the definitive return to your country of origin and to help you resume your life project.

Attention, you cannot access this programme if:

- You have received a ministerial expulsion order (*provvedimento di espulsione ministeriale*) (Article 13, item 1, Consolidated Immigration Law - TUI);
- You have received an expulsion order for reasons of social dangerousness (Article 13, item 2, letter c) Consolidated Immigration Law - TUI);
- You have received an expulsion order as a security measure (Article 15, Consolidated Immigration Law - TUI);
- You have received a deportation order as a substitute or alternative sanction.

Chapter IV. PENITENTIAL BENEFITS

INTRODUCTION

While serving your sentence, you can access various benefits (*benefici penitenziari*): these include the possibility of permits to work inside and outside the prison and to access alternative measures to detention. We indicate ONLY SOME of the various benefits below; for more information about such aspects, consult the “Guide for persons deprived of personal freedom”, which discusses daily life in the Institute. The Guide is available in Italian, English, French and Arabic.

To access a benefit, you can apply for it directly and obtain from the educator or ask for the assistance of your lawyer. The Supervisory Magistrate or the Supervisory Court will decide on the request. **If you do not consider the Judge's decision to be correct, you can lodge a complaint:** contact your lawyer to do this.

ATTENTION!

LIMITS FOR ACCESS TO BENEFITS - SPECIAL OFFENCES (Article 4bis Penitentiary Ordinance)

If you have committed one of the offences envisaged by Article 4bis of the Penitentiary Ordinance, obtaining benefits is more difficult. In some cases, benefits will not be granted or additional requirements will have to be met.

If you have committed an offence referred to **in Article 4bis, item 1 Penitentiary Ordinance** (e.g. **crimes related to terrorism, criminal conspiracy for drug trafficking, kidnapping for the purpose of extortion, trafficking in human beings and others**), access to benefits is very limited.

Generally, in order to access benefits, you must have collaborated with the courts (or prove that such collaboration is impossible or ineffective) **and, in any case, it must be shown that there are no longer any links with the criminal organization to which you belonged, nor will there be in the future.**

If you have committed an offence as per **Article 4bis, item 1 quater Penitentiary Ordinance** (such as **child prostitution, child pornography, sexual violence, etc.**) you may receive a bonus permit **only** on the basis of the results of **scientific observation of your personality (an evaluation made by experts about your progress)**

In any case, benefits are granted **AFTER SERVING A LONGER PERIOD OF PUNISHMENT** compared to "ordinary" offences.

Applicable regulations are very complex and change in relation to the crime committed; contact a lawyer, the Ombudsman's office or the educator for further clarification regarding your individual situation.

4.1. BONUS PERMITS

A bonus permit (*permesso premio*) allows you to cultivate cultural, emotional and work interests (e.g. **you can visit your family, carry out activities related to your work, etc.**).

Attention! If you are eligible to apply for a bonus permit but have no close family members or do not know a suitable place where to spend days on special leave, **ask for information from educators, volunteers or the Ombudsman's office.**

The bonus permit can be issued by the Surveillance Magistrate for no more than 15 consecutive days and for **a maximum of 45 days** for each year of detention.



[When is it possible to obtain a bonus permit?](#)

You will be able to obtain this bonus permit only if you have already been convicted with a definitive sentence and your conduct has been appropriate (i.e. you have demonstrated a **constant sense of responsibility and fairness**) in prison and provided you are NOT considered socially dangerous.

If you have to serve a sentence of less than **4 years, you will be able to apply for bonus permits immediately. For sentences, or punishment to be borne, exceeding 4 years, a certain period of time must pass.** In particular, you can ask for a bonus permit IF:

- You have been sentenced to punishment of more than **4 years but have already served at least ¼** (e.g. if your sentence is 16 years, in order to access a bonus permit, you must have already served at least 4 years in prison);
- You were sentenced to imprisonment because you committed an offence referred to in article 4BIS Penitentiary Ordinance and have already served **at least half the sentence (or at least 10 years)**;
- You were sentenced to life imprisonment (*ergastolo*) and have served **at least 10 years.**

Attention! If you have committed a crime while serving your sentence, in order to obtain a bonus permit, **at least 2 years from the matter must pass.** If you have committed a crime referred to in Article 4bis, for which a maximum sentence of 3 years or more is envisaged, you **cannot** receive a bonus permit **for 5 years.**

Attention! If you return late from a bonus permit, you may be subject to **disciplinary sanction** and, if the delay is more than twelve hours, you will be reported for the offence of **evasion** (*reato di evasione*).

4.2. PERMIT OF NECESSITY

This type of permit (*permesso di necessità*) may be granted even if you have not received a definitive sentence. A permit is issued to visit a **family member or partner whose life is in imminent danger because of serious illness**. The request is made to the Surveillance Magistrate and **the bond with the ill person** and the effective life-threatening condition must be proven.

The permit must be requested:

- through the Supervisory Magistrate in the event of a definitive sentence;
- through the Judge of the court proceedings (e.g. Preliminary Judge, Court, Court of Appeal) if the trial is still in progress.

Granting a permit is assessed on a case-by-case basis, and has also been granted for other particularly serious family events or exceptional but happy events (e.g. for the birth of a child).

4.3. WORK INSIDE PRISON

Work inside prison (*lavoro all'interno*): While in prison, you may have the opportunity to **work for the Penitentiary Administration or other employers inside the Institute**.

Given the scarcity of available jobs, assignment to work is essentially made on a rotating basis. Ask your reference educator for more information.

4.4. WORK OUTSIDE PRISON

Work outside prison (*lavoro all'esterno*) (Article 21 Penitentiary Ordinance): This type of benefit allows you to work in a job outside prison. The measure is ordered by the Institute's Management with the approval of the Supervisory Magistrate.

Attention! If you are in prison for one of the crimes referred to in Article 4 bis, you may access work outside prison **ONLY** if:

- you have already served **at least 1/3 of the sentence** or, in any case, at least 5 years.
- you have already served **at least 10 years** if you were convicted to **life imprisonment**.



You may be allowed work inside and outside prison **EVEN** if you **DO NOT** have a **permit of stay** or if it has expired.

4.5. EARLY RELEASE

Your prison sentence may be discounted by **45 days for every six months already served** (*liberazione anticipata*). It may be granted by ALSO including periods spent in custody in prison or under house arrest during the trial, home detention and probation.

There are **NO** punishment limits: In addition, early release may be granted to persons convicted of any crime, including those covered by Article 4bis Penitentiary Ordinance.



Early release may be recognized if you maintain "**good behaviour**" in the Institute but this must also be accompanied by **active involvement in the rehabilitation procedures** (as regards this aspect, ask the educator for more information)

If you have been sentenced to **life imprisonment**, good conduct and involvement in rehabilitation projects will in any case allow you to access early release. The 45 days granted every 6 months are considered as if effectively served: in this way, you will be able to access bonus permits more quickly.

In order to obtain early release, you must **present a written request to the Surveillance Magistrate**. The application must contain certain information (you can ask your reference educator for assistance):

- Your general details; are you serving your sentence in prison or in an alternative measure (specify which one); details of the sentence (e.g. number, or date, issuing judicial authority). If you do not know the latter information, you can still present a request.
- The six-month periods for which you are applying for the benefit, with the start and end dates of each such period;
- The place where you are serving your sentence.

The Magistrate will decide to grant early release when the conditions are met and on the basis of a **report on your conduct in the Institute**.

Attention! Early release may be **revoked** if you are convicted of committing a crime while serving the sentence.

4.6. TRIAL PROBATION WITH SOCIAL SERVICES

Probation with social service work (*affidamento in prova ai servizi sociali*) is an alternative measure to detention that allows you to **serve your sentence outside prison**, following a schedule agreed with the External Criminal Enforcement Office (*Ufficio per l'esecuzione penale esterna*).

You can access probation if the sentence still to be served is **less THAN 4 YEARS**.

The measure must be requested in writing from the Supervisory Court, which sets a date for a hearing and decides whether to grant the measure; it also indicates the activities that must be carried out during probation and the obligations and prohibitions to be respected. Your trusted lawyer will be able to attend the hearing and if you don't have one, an official lawyer will be appointed by the court.

Special cases (persons with addictions)

If you are addicted to alcohol or drugs, you may be admitted to probation if:

- the sentence which you must serve is LESS THAN 6 YEARS (4 in case of conviction for an offence referred to in Article 4-bis) and
- you have started or agreed a recovery program (in agreement with the SERD service of your Local Health authority (ASL)): if you do not know how to do this, ask the educator for assistance.

When making the request, **you must attach** the treatment programme and a document certifying your state of addiction.

Attention! This measure can be **SUSPENDED and/or REVOKED**:

In the case of probation for persons with addictions (*affidamento per persona con dipendenze*), they will have to undergo regular checks: if it emerges that they have used alcohol or drugs, the measure will **most likely be revoked**.

The general probation procedure, on the other hand, may initially be suspended/revoked if:

- during the probation period **another sentence becomes definitive and the 4 year limit is exceeded**;
- **if you have violated the regulations** (obligations and prohibitions imposed on you) and your conduct is against the law.

In these cases, the Supervisory Court will set a date for a hearing to decide whether or not to revoke the measure: contact your lawyer immediately.



You may be admitted to probation and follow the programme defined by UEPE EVEN if you have never had a permit of stay or your permit has expired. **You can still work during your probation period, even if he you do not have a permit of stay.**

4.7. HOME DETENTION

Home detention (*detenzione domiciliare*) is an alternative measure to detention which allows you to spend the time envisaged by the sentence outside prison but **in a specific place, which may be where you are domiciled or an assistance or reception facility.**

The measure must be requested by writing to the Supervisory Court, which sets a date for a hearing and decides whether to grant the measure. If you do not have a trusted lawyer, the court will appoint one for you.

Standard home detention (*detenzione domiciliare ordinaria*): You may access home detention when the sentence or the time remaining of it **to be served is LESS than 4 years, if:**

- you are a **pregnant woman or mother** of children under the age of ten (provided you have parental responsibility over them);
- **you are the father** of children under the age of ten, provided you have parental responsibility and their mother cannot take care of them;
- you are a **person suffering from particularly serious health conditions** which require constant care that cannot be performed in prison (e.g. if you have to undergo transfusions; if you have contracted HIV);
- **you are over 60 years old** and are unable to look after yourself, even partially;
- **you are less than 21 years of age** and there are **proven health, study, work and family needs.**

Generic home detention (*detenzione domiciliare generica*): You can access home detention **EVEN** when the **SENTENCE STILL TO BE SERVED IS LESS THAN 2 years**, if:

- conditions for probation with social services are not met;
- your conduct in the Institute has been good;
- you have not committed particularly serious offences such as those envisaged in article 4bis, item 1 (e.g. **mafia-like criminal association, kidnapping for purposes of extortion, illicit trafficking in narcotic drugs or psychotropic substances, crimes committed for purposes of terrorism**).

Special home detention (*detenzione domiciliare speciale*): you can obtain this measure if **you are the mother of children under the age of 10** and have served 1/3 of your sentence. If you have been sentenced to life imprisonment, you must have served at least 15 years.

You can access this measure even if you are the father of children under 10 years of age, when the mother is deceased or otherwise absolutely unable to assist them (and consequently you are the only guardian).

Home detention for health problems (*detenzione domiciliare per problemi di salute*): It is also possible to access home detention in cases when **mandatory and optional postponement** of the sentence is envisaged.

- **Postponement is required** for pregnant women, women who have given birth 6 months ago and persons with HIV (when detention is not possible because the illness is too serious).
- **Postponement is optional** in the event of a request for pardon, conditions of serious physical infirmity and for women who have given birth more than 6 months ago when the child can only be entrusted to the mother.

Attention! This measure can be **SUSPENDED and/or REVOKED**:

- if you commit any action contrary to the law or the prescriptions imposed by the Supervisory Court which are incompatible with the continuation of the measure;
- if you are reported for evasion;
- if the Social Service informs the Supervisory Magistrate that the conditions for proceeding with home detention are no longer valid.

In these cases, the Supervisory Court will set a date for a hearing to decide whether or not to revoke the measure: contact your lawyer immediately.

4.8. DAY RELEASE

This measure (*semi-libertà*) allows you to **spend part of the day outside prison to work**, attend education or training courses or **activities that are useful for social re-integration (such as volunteering)**.

It may be granted when **good progress has been seen in your re-education** and it is believed that you can gradually re-enter society because there is no danger that you will commit new offences.

If your sentence is less than 4 years, **you can ask for the measure immediately**. If you still have to serve a sentence of more than 4 years, you can ask for this if you have already served at least half of the total sentence (and 2/3 in the case of crimes as per Article 4 bis Penitentiary Ordinance). If you are sentenced to life imprisonment, you can apply after 20 years.

The measure is requested through the Supervisory Court which reaches its decision after a hearing attended by your trusted lawyer or, if you do not have one, the official lawyer appointed for the purpose.

Attention! As for probation, day release can be **SUSPENDED and/or REVOKED** if:

- You do not respect the obligations and duties imposed on you and do not engage sufficiently in the activities required;

- If, during the course of the measure, another sentence becomes definitive that, when added to the one already being served, exceeds the sentence limit.

Chapter V. CONVERSATION MEETINGS

5.1. FACE-TO-FACE CONVERSATION MEETINGS

You may be allowed to have conversation meetings (*colloqui in presenza*) with your family or third parties. Family members are: spouse; co-habitant; fourth degree relatives. "Third persons" refers to people, other than relatives, who have a **well-founded reason** for conversation meetings with inmates.

You are allowed:

- 6 conversation meetings/month if you are in prison for committing an ordinary crime;
- 4 conversation meetings/month, if you are in prison for having committed one of the crimes listed in Article 4 bis, item 1 Penitentiary Ordinance;

Each conversation meeting lasts 1 hour but in some cases they may be extended to 2 hours.

The conversation meetings are held **under the visual control** of Penitentiary Police personnel. The Police, however, cannot listen to conversations with your family members.



Conversation meetings with children in special cases: when a decision of the Juvenile Court has limited your parental responsibility, or there are ongoing proceedings involving your parental responsibility > you can meet your children in a private room in the Institute (if so authorized by the judge).

? [Who do you ask for such authorization?](#)

To be able to organize such a meeting, you must obtain **authorization**, which is granted:

- by the Director of the Institute when you have already been given a sentence in the first instance;
- by the Judge of the Court if you are awaiting a sentence in the first instance.

? [What documents are required?](#)

Identity documents are always required (e.g. identity card, permit of stay, passport). In some cases, a self-certification (*autocertificazione*) (written and signed by your relative) is sufficient, whereas in others you may need a document issued by the Consulate of your country of origin.

ATTENTION! Self-certifications will be thoroughly checked. **Making a false statement is an offence** and you may be accused of misrepresentation.

Italian spouse and family members or EU citizens

1. Valid identification document;
2. **Self-certification** of the existence of a family relationship.

Spouse and family members who are not EU citizens

1. Valid identification document (permit of stay, passport);
2. Document issued by the Consulate of the country of origin **translated into Italian proving kinship**.

Attention! If the spouse or family member is a foreigner but **resident in Italy** and the marriage/kinship relationship is proven by documents already known to the Administration, a self-certification is sufficient (e.g. if you married or registered your marriage in Italy, self-certification is sufficient).

Italian co-habitant or EU citizen

1. Valid identification document;
2. Self-certification of co-habitation status or family status;

Foreign co-habitant who is not an EU citizen

1. Valid identification document (permit of stay, passport);
2. Certificate of Italian domicile where you lived uninterruptedly until the time of arrest;
3. If **co-habitation occurred Italy**, certification issued by the Consulate of your country of origin, or a certificate issued by another foreign country where co-habitation took place, certifying the relationship. Documents must be translated into Italian.

Third person

1. Valid identification document (if not a EU citizen: permit of stay or passport);
2. **Certification of the absence of pending charges**, penal convictions or being subject to preventive measures.

ATTENTION! Before starting the conversation meeting, the documents of the visiting person will be checked and a search will be carried out (personal check): visitors must leave their personal items in a place indicated by the Penitentiary Police and will be able to collect them on leaving.

5.2. TELEPHONE CONVERSATIONS

You may have telephone conversations with co-habitants and relatives and, in the presence of acceptable reasons, with other people.



Who do you ask for such authorization?

- If the accused is awaiting a sentence in the first instance, authorization must be issued by the Authority in charge of proceedings;
- If you have already been convicted with a sentence in the first instance, authorization will be issued by the Director of the Institute.



How many telephone calls can you make?

If you are an ordinary inmate, you can make **one call per week having a maximum duration of 10 minutes**. If you have committed one of the offences referred to in Article 4 bis of the Penitentiary Ordinance, on the other hand, you will be entitled to **2 calls per month**.

You may also be allowed additional telephone calls to talk to your children if they are under the age of 10 or when you have recently been transferred from another prison.



How does the service work?

If you want to make telephone calls, you have to present a **written request** to the competent Authority (Director or Judicial Authority), indicating the number of telephone calls, **the people you wish to talk to** and the telephone number to be called (see below).

ATTENTION! Telephone calls are at your own expense. It will be possible to purchase **prepaid cards** in the Institute in order to make telephone calls. If you do not have money to pay for telephone calls, try asking your educator, the chaplain or volunteers for help.

MOBILE TELEPHONE CALLS

You can make **mobile telephone calls** when there is no other way to contact relatives, co-habitants or other people.

- If you are a EUROPEAN CITIZEN and wish to use your mobile phone, you must provide **self-certification indicating the family relationship** and a copy of the SIM card contract.
- If you are a FOREIGN CITIZEN, you will have to provide a **Consulate document certifying the family relationship** as well as a copy of the SIM contract of the relative you wish to contact, **even this relative is abroad**.

E-MAIL SERVICE

You can take advantage of the **Zero mail subscription service** (coordinated by the Zero Grafica cooperative) at your own expense. This service allows you to send and receive emails. You can ask for the forms needed to access the service at the Command Office of the Hall where you are located.

Chapter VI. STRICT REGIME PRISON (ARTICLE 41 bis, PENITENTIARY ORDINANCE)

The rules of "strict regime prison" (*carcere duro*) are special and very stringent. They can be applied **only if there are serious reasons of public order and safety and if you have committed one crime** indicated by Article 41 bis of the Penitentiary Ordinance (which refers to Article 4 bis, Penitentiary Ordinance). For example, they include: **crimes committed for purposes of terrorism** or with the intention of subverting the democratic order; mafia-like association or crimes committed to facilitate mafia-like association or in accordance with mafia methods.



What measures can be applied to it?

- **Isolation** from other prisoners. **You will not be allowed contact with** prisoners who are not subject to this regime. You will be subjected to **constant surveillance**;
- Outgoing and incoming email will be controlled and there will be limitations regarding sums of money, goods and objects that can be received from the outside;
- **Limits will be imposed on conversation meetings. In particular:**

FACE-TO-FACE CONVERSATION MEETINGS

- **You may have one conversation meeting per month**, scheduled at regular intervals and in rooms equipped to prevent the possibility of exchanging objects. It will be separated from visitors by a glass partition (unless they are children or grandchildren less than twelve years old);
- **You will only be allowed to meet your close relatives, spouse or co-habitant** (there may be exceptions that will be evaluated on a case-by-case basis);
- The conversation meeting will be checked and videotaped.

TELEPHONE CONVERSATIONS

If you do not have face-to-face meetings, after at least 6 months of strict regime prison you will be able to have **one monthly telephone conversation, but:**

- Only with close relatives, spouse or co-habitant;
- The conversation may last a maximum of 10 minutes.
- The telephone call will be recorded.

LAWYER: You are allowed to have **weekly conversations with you lawyer**, both face-to-face and by telephone.

OMBUDSMAN: You are always allowed to **have face-to-face conversation meetings with an Ombudsman** without any limitation. You will still be able to have your monthly conversation meeting with your family members even if you have already had one with the Ombudsman.

Chapter VII. TRANSFER TO ANOTHER MEMBER STATE OF THE EUROPEAN UNION TO FINISH THE SENTENCE

ATTENTION! This only concerns **citizens of another Member State of the European Union** or citizens of third countries (non-EU) **who have their customary residence in another Member State of the European Union.**



Transfer: what is involved?

Prisoners who are citizens of or resident in certain states of the European Union may be transferred **to serve their sentence** in an Institute in another Member State of the European Union. **On some occasions, inmates may express their consent, while at other times transfer may take place even without consent.**

In any case, you can be involved in the procedure and express your opinion about the transfer: to do so, it is important for you to contact a lawyer.

It is always advisable to be supported by a trusted lawyer in this procedure: if you do not have your own lawyer, you may contact the Ombudsman. Reference legislation is provided in the *Gai Decision 2008/909 (Decisione Gai 2008/909)* and *Delegate Law 88/2009 (Legge delega 88/2009)*.



Who can be transferred?

You can be transferred if you are an **inmate citizen of the European Union**, or a citizen of another country, even outside the European Union, and have lived on a long-term basis and have habitual residence in another Member State of the European Union. In addition, you must be in the Institute following a definitive decision concerning penal proceedings (**e.g. final sentence**).



Does the type of offence committed affect the transfer?

If you are in prison because you have committed a crime considered to be particularly serious (including but not limited to: **involvement in criminal organizations, corruption, fraud, voluntary homicide, trafficking in stolen vehicles, kidnapping, sexual violence, etc.**) and you have to serve a sentence of more than **3 years**, you can always be transferred.

ATTENTION! If, on the other hand, you are in prison because you have committed **other offences**, transfer requires that the country of destination considers your conduct as punishable under its criminal law.

ATTENTION! In the event that the sentence you are serving in Italy has to be adapted to align with the laws of the country of transfer, **the "new sentence" cannot be more severe** (as regards duration and the type of sentence) than the one you are serving in Italy.



Is transfer always implemented?

It is not certain whether the country of destination will accept the transfer: this is especially the case for Romania, given the high levels of prison overcrowding.

The criterion for transfer is that of your own **SOCIAL RE-INTEGRATION**: you cannot be transferred if your country (e.g. Romania) does not provide the possibility of social re-integration (for example, if your family is no longer there, you have no other acquaintances and you have no possibility of finding work).



To which member states can you be transferred?

- The **State** of which you are a citizen and **where you lived**; or
- The **State** of which you are a citizen and to which you must be expelled, if an expulsion or rejection order has been issued against you; or
- The **State** of which you are a citizen, even though you have not lived there and there is no rejection order to that country.



What can you do if you want to be transferred?

The country where you are serving your sentence (Italy) and the country of destination usually communicate with each other, **BUT you can directly ask competent authorities in Italy or the country of destination** to begin the procedure to notify your conviction and the certificate required for such transfer. Be informed that **transfer procedures can be very lengthy**: if you have less than 2 years of your sentence to serve, it may be that you cannot be transferred before the end of the sentence.

ATTENTION! since **every member country has its own rules** as regards transfers, it is not possible in this guide to indicate exactly what procedure to follow.

For this reason, **if you have several years left in prison and you wish to be transferred, before starting the procedure** contact your lawyer, a trusted operator or the Ombudsman's Office.