



Garante dei diritti
delle persone private
della libertà personale
della Città di Torino

ASGI
ASSOCIAZIONE
PER GLI STUDI GIURIDICI
SULL'IMMIGRAZIONE



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Ministero della Giustizia
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TORINO



Guide for foreign citizens deprived of their personal liberty

Immigration Law
Residence, Expulsions and International Protection
Remarks on Penitentiary Law

by

ASGI APS, Association for Legal Studies
on Immigration

Legal Clinic Prison and Rights II
(Department of Law, UniTo)

Office of the Ombudsman for the rights
of persons deprived of their liberty in Turin

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SUMMARY

INTRODUCTION	3
CHAPTER I THE PERMIT OF STAY	4
1.1 General indications on permit of stays for non-european citizens	4
1.2 I have a permit of stay. How do i renew it?	4
1.3 I do not have a permit of stay or it expired a long time ago	8
1.4 The question of impediment offences (reati ostativi) to the issuance or renewal of a permit of stay	9
1.5 Types of permits of stays	10
1.5.1 The permit of stay for work/waiting employment	10
1.5.2 The long-term permit of stay	10
1.5.3 The family permit of stay	11
1.5.4 Permit of stay for medical treatment (illness)	12
1.5.5 Permit of stay for medical treatment (pregnancy)	13
1.5.6 Permit of stay for victims of trafficking and domestic violence ("casi speciali")	13
1.5.7 The permit of stay for victims of labour exploitation	14
1.5.8 The permit of stay for social protection of minors	14
CHAPTER II INTERNATIONAL PROTECTION	15
2.1 Asylum applications and types of protection	15
2.1.1 Refugee and subsidiary protection status	17
2.1.2 Special protection (protezione speciale)	17
2.1.3 Negative response	17
CHAPTER III EXPULSIONS	20
3.1 Expulsion as an alternative or substitute measure for detention	20
3.2 Expulsion as a security measure	22
3.3 Administrative expulsion (espulsione amministrativa)	22
3.3.1 Expulsion by the ministry of the interior	22
3.3.2 Expulsion of the prefect	22
3.4 Alternative measures to detention	24
3.5 Detention centre for repatriation	24
3.6 Prohibition of re-entry	25
3.7 Cases in which expulsion is prohibited	26
3.8 Assisted voluntary return	27

CHAPTER IV PENITENTIARY BENEFITS	28
4.1 Bonus permits	29
4.2 The permit of necessity	30
4.3 Work inside the prison	30
4.4 Work outside the prison	31
4.5 Early release	31
4.6 Trial probation with social services	32
4.7 Home detention	33
4.8 Day release	35
CHAPTER V THE PRISON VISITS	37
5.1 Face-to-face prison visit	37
5.1.1 Video calls	39
5.2 Telephone calls	39
CHAPTER VI TRANSFER TO ANOTHER MEMBER STATE OF THE EUROPEAN UNION TO SERVE THE SENTENCE	41
CHAPTER VII RIGHT TO HEALTH, CIVIL REGISTRATION, TAX CODE FOR WORKERS	44
ANNEX LEGAL FRAMEWORK	46

INTRODUCTION

The initial edition of this Guide was created through the collaboration of ASGI APS, the Association for Legal Studies on Immigration, the Legal Clinic Carcere e Diritti II of the Department of Law at the University of Turin, the Office of the Ombudsman of the Rights of Persons Deprived of their Liberty in Turin, and with support from the Compagnia di San Paolo Foundation. The current version has been updated by the Association for Legal Studies on Immigration (ASGI).

The decision for creating this Guide stemmed from recognizing the large number of foreign detainees who require information on how to obtain or maintain legal residency in Italy.

To address this need, the Guide provides a summary of the main legal institutions, focusing on the coordination between administrative, criminal, and immigration law.

Primarily intended for prisoners, the Guide also serves as a valuable resource for personnel working in various roles within penal institutions. The appendix of the updated Guide includes a list of the primary standards referenced in the text.

CHAPTER I

THE PERMIT OF STAY

1.1 GENERAL INDICATIONS ON PERMIT OF STAYS FOR NON-EUROPEAN CITIZENS

The permit of stay is the document that all foreigners must have in order to stay legally in Italy.

Having a permit of stay allows one to obtain a health card (*tessera sanitaria*) and tax code (*codice fiscale*), to have residency, an identity card (*carta d'identità*) and to have access to your rights (e.g. medical care, housing, state benefits).

Outside the prison, the permit of stay is also needed to work regularly.



When can someone apply for a permit of stay?

Those who are in Italy and **already have a permit of stay** can apply to renew it, or request a permit for a different purpose, even if they are in prison ([SEE Chapter I, section 1.2.](#)).

Those who entered Italy irregularly and have **never had a permit of stay** can apply for one only under specific circumstances, even while in prison ([SEE Chapter I, Section 1.3.](#)).

If you do not have a permit of stay at the time of your release, you may be issued a deportation order and deported immediately, or you may be taken to a detention and repatriation center – “CPR” ([SEE Chapter III, Section 3.5.](#)).

1.2 I HAVE A PERMIT OF STAY. HOW DO I RENEW IT?

If you already have a permit of stay, it's important to remember that it needs to be renewed. You must apply for renewal before it expires: you can do this starting 60 days before the expiration date, and no later than 60 days after it expires. You can do this from prison. If it has been **expired for more than 60 days, seek advice from a lawyer.**

In some cases, you can renew your current permit, while in others, you may need to apply for a permit for a different reason. For instance,

renewing a permit of stay for work is more challenging after a period of imprisonment. However, if you have family members in the country, you can check if you qualify for a permit of stay for family reasons ([SEE Chapter I, Section 1.5.3](#)). You can ask for assistance from a cultural mediator, your lawyer, an educator, a volunteer, or the Ombudsman for the rights of persons deprived of their liberty.

CULTURAL MEDIATOR OFFICERS AND THE OMBUDSMAN OF THE RIGHTS OF PERSONS DEPRIVED OF THEIR LIBERTY

Cultural Mediation Officers, often referred to as ‘mediators’ (*mediatore/mediatrice*), are employees of the Ministry of Justice who work within the institution mainly in contact with foreign detainees, and **act, among other things, as mediators and provide support in immigration matters**. They are different from the Legal Pedagogical Officers (called “*educatore/educatrice*”), but work closely with them. Mediators speak the most common languages and may be assisted by additional interpreters for less common languages or rare dialects. You will typically meet a mediator during your initial entry interview, and they can be approached for questions regarding your stay in prison or your release.

The **Ombudsmans for the Rights of Persons Deprived of their Liberty are independent authorities (Garante)**. They do not work for the Ministry of Justice or the prison administration. They are different and separate entities from the police and prison staff, focusing on monitoring detention conditions and ensuring the rights of detainees are upheld.

There is a National Ombudsman, as well as Regional and Municipal Ombudsmans for each city with a prison. If you need support while in the institution, you can contact either the Regional or Municipal Ombudsman. You can request a personal and private interview with one of them using Form 393 or file a non-judicial complaint under Article 35 of the Penal Code to the National, Regional, or Municipal Ombudsman. For more information, refer to the ‘Guide for Persons Deprived of their Liberty’.

For simplicity, within this Guide we will refer to Cultural Mediation Officials as ‘mediators’ (*mediatrice*), to Pedagogical Legal Officers as ‘educators’ (*educatore/educatrice*), and to the Ombudsman of the Rights of Persons Deprived of their Liberty as “Ombudsman” (*Garante*).



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

- ▶ Start the renewal process at least **3 months before your permit expires**. The application process within the institution can take a long time, so ensure you act well in advance.
- ▶ Seek assistance from the cultural mediator with Form 393. The mediator will provide you with the POSTAL KIT and help you fill it in.
- ▶ Procedures may change; *so confirm the current process with the ombudsman of the rights of persons deprived of their liberty*.
- ▶ **The procedure will then be supervised by the Matriculation Office (Ufficio Matricola)** of the institution where you are located, which will take care of delivering the KIT to the Post Office to send it to the Police Headquarter (*Questura*).
- ▶ Ensure the Matriculation Office (*Ufficio Matricola*) gives you the POSTAL KIT SENDING RECEIPT: keep this document as proof of your valid application.
- ▶ You must fill in the kit yourself. You can ask for help from the cultural mediator, your lawyer, an educator, a volunteer or the ombudsman of the rights of persons deprived of their liberty (*Garante*).
- ▶ Don't worry if there is no immediate response: your application allows you to remain legally in Italy until you receive an answer from the Police Headquarter (*Questura*).
- ▶ Usually, sending the POSTAL KIT includes scheduling an appointment at the Police Headquarter (*Questura*). If you are still detained on that date, request a new appointment upon release. Bring your detention certificate to explain your missed appointment.
- ▶ If you do not receive a reply to your application, go to the Police Headquarter (*Questura*) as soon as you are released with your detention certificate to get a response or schedule an appointment.
- ▶ You may receive a negative response from the Police Headquarter (*Questura*) while still in detention.

ATTENTION! If you receive a negative response, **you have only a few days to file an appeal**. *CONTACT YOUR LAWYER IMMEDIATELY OR ASK THE MEDIATOR FOR HELP FINDING A LAWYER.*

IMPORTANT! You must attach certain **documents** with the renewal application:

- ▶ Copy of your current (expiring) permit of stay
- ▶ Copy of your passport (it should be valid).

- ▶ **If your passport has expired**, ask for support from the mediator or volunteers to apply for help in renewing it, which you can include in the KIT. If the Matriculation Office (*Ufficio Matricola*) prevents you from sending the KIT because you do not have a valid passport, contact your lawyer or the Ombudsman for the rights of persons deprived of their liberty (*Garante*).
- ▶ Copy of Italian identity card and health card showing tax code (you can still send the KIT even if you do not have these items)
- ▶ **16 euro stamp duty**
- ▶ You will also have to pay the fees through a **post office order** (usually €30.46 + 30 € but may also be higher)

Depending on the type of permit of stay you are requesting, you will have to submit 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 treatments, you must enclose health-related documents.

IMPORTANT! For some types of permits, renewal must be requested directly through the Police Headquarter (*Questura*): for instance, you need to visit the Police Headquarter (*Questura*) for permits related to medical treatment, special protection, and other specific cases.

Generally, if the criteria are met, **the following permit of stays can be renewed via the KIT system**: “fostering”, “adoption”, “religious reasons”, “elective residence”, “study”, “mission”, “political asylum” and “statelessness” (renewal), “training internship”, “procedure to gain citizenship”, “unemployment”, “foreign residence card” (now called ‘EU long-term resident permit’), “self-employment”, “sub-employment”, “sub-seasonal employment”, “family reason”, duplicate of the permit of stay (e.g., in case of loss), and updates to the permit/residence card (e.g., adding children).

To determine whether your permit can be renewed through the POSTAL KIT or by direct application to the Police Headquarter (*Questura*), consult a mediator, your lawyer, a volunteer, or a Ombudsman of the rights of persons deprived of their liberty (*Garante*).

LEGAL AID AND LEGAL AID

In all administrative proceedings before a judge (APPEAL against a negative decision on a permit of stay, APPEAL against a decision on expulsion) **you may be assisted by a lawyer**.

A court-appointed lawyer will NOT be appointed to make these

appeals: **if you do NOT have a trusted lawyer**, ask the mediator, an educator or the Ombudsman (Garante) for help.

In all proceedings before a judge, you may request **free** legal assistance from your lawyer if your income is lower than approximately **EUR 12,000**. To calculate income, consider all earnings (both from regular and undeclared work) during the year preceding the appeal.

The lawyer must inform you of this right (referred to as “*patrocinio a spese dello Stato*” o “*gratuito patrocinio*”).

Free legal aid can be obtained in criminal proceedings as well as in administrative proceedings concerning permit of stays, such as appeals against the refusal of a permit, against an expulsion decision, or against a negative decision on an asylum application.

1.3 I DO NOT HAVE A PERMIT OF STAY OR IT EXPIRED A LONG TIME AGO

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

- ▶ **If you have family members** (Italian or foreign) in Italy > check whether you can apply for a permit of stay for family reasons ([SEE Chapter I, section 1.5.3.](#))
- ▶ **If you have children under the age of 18** and have not lost your rights and duties towards them > talk to your lawyer about whether you can file an appeal with the Juvenile Court ([SEE Chapter I, Section 1.5.3.](#))
- ▶ **If you have health problems** > check whether you can have a permit of stay for medical treatment ([SEE Chapter I, Section 1.5.4.](#));
- ▶ **If you are afraid to return to your country** because you fear your life is in danger > check if you meet the conditions to apply for asylum ([SEE Chapter II](#));
- ▶ **If you were well-integrated in Italy before entering prison**, or if you have undergone a positive course of resocialization, and your fundamental rights may be endangered in your country of origin, consult with your lawyer, operators, volunteers, or the Ombudsman (*Garante*) to see if you can apply for a permit of stay for special protection.

ATTENTION! If you do NOT have a permit of stay you can be deported to your country of origin, either while in prison or after the sentence (at any time). If you have a permit of stay and do not apply for its renewal within

60 days of its expiration, you become irregular and can still be deported (SEE Chapter III).

1.4 THE QUESTION OF IMPEDIMENT OFFENCES (*REATI OSTATIVI*) TO THE ISSUANCE OR RENEWAL OF A PERMIT OF STAY



Is being accused of committing a crime (even if you have not yet been finally convicted) a problem for your permit of stay?

Yes, this can be a problem. In general, **you CANNOT have a permit of stay (and if you already have one, it can be revoked) if:**

- ▶ You are considered to be a threat to the public order or security of the Italian State or of the other countries of the European Union
- ▶ **You have had a conviction**, even if only at first instance and not yet final, or a plea-bargaining sentence, for certain offences such as **robbery, aggravated theft, extortion, aggravated receiving of stolen goods, enslavement, sexual violence**, and in other offenses punishable **with a high penalty**.
- ▶ **You have had a conviction, even if only at first instance** and not yet final, or a plea bargaining sentence, for certain specific offences (even if the penalty is not very high), including:
 - Narcotics -related offenses;
 - Offenses against sexual freedom;
 - aiding and abetting illegal immigration or emigration to other countries;
 - Recruiting persons for prostitution or minors for unlawful activities

For more information on the specific offenses, [SEE APPENDIX \(Art. 4 Legislative Decree 286/98, Consolidated Immigration Act - Testo Unico Immigrazione, and Art. 380 of the Criminal Code – Codice Penale\)](#).



Is having a **DEFINITIVE conviction** a problem for a permit of stay?

Yes, in all the cases mentioned previously. And even if the conviction is for:

- ▶ Copyright protection offenses;
- ▶ Article 473 of the criminal code (counterfeiting or alteration of distinctive signs, trade marks);
- ▶ Article 474 of the Criminal Code (trading in products with false signs);
- ▶ Obstruction of rail and ordinary roads, of waters to impede navigation.

IMPORTANT! Following a decision of the Constitutional Court (no. 88/2023), **the rule of impediment offences no longer applies** to those who have been convicted even only at first instance, or with a plea bargain, **of the offence of Art. 73 co 5 Presidential Decree 309/90** (production, possession and transfer of minor drugs). If you have only been convicted of this offence, contact your lawyer, mediator, an educator or the Ombudsman of the rights of persons deprived of their liberty (*Garante*).

The rule on impediment offences (*reati ostativi*) applies in general, but **its application in practice depends on the type of permit of stay applied for**. For some permits, the rule on impediment offences is less strict.

In other cases, a permit of stay may be granted even in the presence of impediment offences ([SEE Chapter I, paragraphs 1.5 et seq.](#)).

The impact of a criminal offence on the possibility of obtaining a permit of stay depends very much on the individual's resocialization path within the institution: if the resocialization path is positive, it will be easier to prove that the individual no longer constitutes a threat to public order, making it easier to obtain a permit of stay.

1.5 TYPES OF PERMITS OF STAYS

1.5.1 THE PERMIT OF STAY FOR WORK/WAITING EMPLOYMENT

You cannot apply for it if you have never had a permit of stay, and it is the most difficult to renew.

You may NOT ask for it if you have committed the offences indicated above.

If you have NOT committed the above-mentioned offences, and you are nearing the end of your sentence and your permit of stay is expiring, you can apply for a renewal of your work permit **if you already have contacts with your previous employer or others willing to hire you**. Contact the Ombudsman of the Rights of Persons Deprived of their Liberty (*Garante*) or your lawyer for assistance.

1.5.2 THE LONG-TERM PERMIT OF STAY

The EU long-term permit of stay, also known as 'carta di soggiorno', is issued to individuals who have lived in Italy for more than five years and have sufficient income.

Even if you hold an unlimited permit of stay, the Poliche Headquarter (Questura) can request its revocation. If this happens, you can appeal within 30 days through your lawyer.

Those who have committed the offenses mentioned above may still retain their long-term permit of stay if they can prove that they no longer pose a danger to public order, **meaning the danger is no longer present.**

In any case, the Poliche Headquarter (Questura) must consider **the presence of family members and connections to the territory.** Therefore, it is important to gather all documents proving the presence of family members and that you have worked and lived in Italy in the past.

1.5.3 THE FAMILY PERMIT OF STAY

There are many cases in which a permit for family reasons may be issued. The rules change if your family members are Italian or EU citizens or are foreign nationals.

If your family members are present in Italy, discuss your personal situation with the mediator, your lawyer or the Ombudsman (*Garante*) to find out whether you can apply for a permit for family reasons.



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

Yes, you can apply for renewal, but if you have committed serious offences **the Poliche Headquarter (Questura) may decide not to renew your 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 ([check how to do it in section 1.2.](#))



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

RELATIVES WHO ARE ITALIAN CITIZENS

If during or after serving your sentence you **GO TO LIVE WITH** a relative who is an **ITALIAN CITIZEN**, you may apply for a permit for family reasons provided your relative is: your spouse (husband/wife), your parent, your brother or sister or your grandparent or grandmother.

You may also apply for a permit even if your **SON OR DAUGHTER** is an

ITALIAN citizen, if you have *not* lost parental responsibility and do *not* have a conviction (even if not final) for family-related offences.

RELATIVES WHO ARE CITIZENS OF THE EUROPEAN UNION

If you have a spouse (husband/wife) or a minor child who is a citizen of the **EUROPEAN UNION**, you are entitled to a permit of stay. In this case you must also prove that your family has sufficient INCOME.

In any case, if you have another relative (e.g. a de facto cohabitee, or a parent) who is a citizen of the European Union, contact the mediator, your lawyer, or the Ombudsman (*Garante*) to find out whether you can still apply for a permit of stay for family reasons.

LEGALLY RESIDING RELATIVES FROM OUTSIDE THE EU

If you have a legally resident **non-EU SPOUSE** (husband/wife) (with permit of stay) >> you can apply for a permit of stay for family reasons, provided your permit expired less than a year ago. You must prove that you have **sufficient income**.

If you have **CHILDREN** born or raised in Italy but who **do not have Italian citizenship** >> you can apply for a permit for 'MINOR ASSISTANCE' (also called "Articolo 31") at the Juvenile Court. Ask the mediator or your lawyer for advice on sending the application.

In all the cases mentioned, the Poliche Headquarter (Questura) cannot automatically refuse to grant you a permit of stay because of your criminal record. It must always consider family ties and your resocialization efforts in prison.

1.5.4 PERMIT OF STAY FOR MEDICAL TREATMENT (ILLNESS)

Even if you have committed impediment offences you may apply for a permit of stay for medical treatment **if your health condition is particularly serious**. This type of permit (*permesso di soggiorno per cure mediche – malattia*) can also be requested if you never had a permit of stay before or if the one you had expired some time ago.

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 >> 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;

In these cases **the rule of impediment offences does not apply**, unless you are considered a serious danger to the security of the Italian State or other EU States.

ATTENTION: this permit CANNOT be requested by POSTAL KIT and will have to be requested directly at the Police Headquarter (*Questura*) when you leave the prison, or if you are on alternative measures or semi-release. *Ask the mediator, the Ombudsman (Garante) or your lawyer for support.*

1.5.5 PERMIT OF STAY FOR MEDICAL TREATMENT (PREGNANCY)

You may apply for a permit of stay for medical treatment if you are a female in a **confirmed state of pregnancy** (*permesso di soggiorno per cure mediche – gravidanza*) and **up to six months after** the birth of the child. Even if you are the **father** of the child to be born, you can ask for this permission after the birth of your child. If you want to ask for it before the birth, the procedure is different depending on whether you are married to the mother-to-be or not. *Please consult your lawyer.*

In these cases, **the rule of impediment offences does not apply**, unless you are considered a serious danger to the security of the Italian State or other EU States.

ATTENTION: this permit CANNOT be requested by POSTAL KIT and must be requested directly at the Police Headquarter (*Questura*) when you leave the prison or if you are on alternative measures or semi-release. Ask the mediator, the Ombudsman (*Garante*) or your lawyer for support.

1.5.6 PERMIT OF STAY FOR VICTIMS OF TRAFFICKING AND DOMESTIC VIOLENCE (“CASI SPECIALI”)

If you are a victim of trafficking or have suffered domestic violence, you may be able to obtain a permit of stay for ‘special cases’ (“*casi speciali*”). Contact your lawyer, an educator or the Ombudsman of the Rights of Persons Deprived of their Liberty (*Garante*) to get in touch with institutions able to provide you with assistance in such matters.

VICTIM OF TRAFFICKING

If you have been subjected to behavior that severely restricts your freedom, such as being forced to work against your will or into prostitution to repay a travel debt (e.g., coming to Italy and being forced into prostitution to pay off the debt), you can apply for a permit of stay. This permit also provides access to assistance programs that guarantee food, accommodation, and healthcare.

DOMESTIC VIOLENCE

A victim of domestic violence includes anyone who has suffered physical violence (kicking, punching, slapping, etc.), sexual violence, psychological violence (threats), or economic violence within the family, marriage, or a romantic relationship. To obtain this permit, it is NOT necessary for the perpetrator of the violence to live with the victim.

1.5.7 THE PERMIT OF STAY FOR VICTIMS OF LABOUR EXPLOITATION

If you have experienced labor exploitation and are prepared **to provide authorities with information about illegal work or report your employer**, you may be eligible for a permit of stay specifically for victims of labor exploitation.

Labor exploitation includes situations where you have worked without a contract, not been paid, received less pay than agreed upon in your contract, worked more hours than stated, worked under poor conditions, or experienced mistreatment.

Contact the mediator, your lawyer, an educator or the Ombudsman (Garante) to connect with organizations that can support you throughout this process.

1.5.8 THE PERMIT OF STAY FOR SOCIAL PROTECTION OF MINORS

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

If you are in prison because you committed a crime **while you were still a minor** and, after committing the crime (when you were in a Penal Istituto for Minors - IPM or when you entered an institution 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 social protection permit.

IMPORTANT! This permit may also be issued on the proposal of the public prosecutor or the **Supervisory Judge of the Juvenile Court**, to whom you may **write a letter presenting your request**.

CHAPTER II

INTERNATIONAL PROTECTION

2.1 ASYLUM APPLICATIONS AND TYPES OF PROTECTION

If you are in prison and feel that **returning to your country would be dangerous for your life**, you can consider applying for asylum, *with the help of your lawyer, the Ombudsman of the rights of persons deprived of their liberty (Garante) and the Legal Clinic of the International University College (IUC)*.

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

- ▶ 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 – *status di rifugiato***). 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.
- ▶ 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 – *protezione sussidiaria***).



Which subjects may cause you harm?

The violence you fear may come either from **state officials** (e.g. police or military) or from **private persons** (e.g. people from a criminal group, a political or religious group different from his own, but also family members or neighbours).

In the latter case, however, you must prove that the state (the police, the courts, etc.) CANNOT protect you.

ATTENTION! Once you applied for asylum, you will **have to cease contact with the authorities of your country of origin** (e.g. Embassy, Consulate, etc.) and, if you have a passport, you will have to consign it

temporarily to the Police Headquarter (*Questura*). 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.



How is the procedure carried out?

To apply for asylum, **present your situation to the mediator and/or the Ombudsman (*Garante*)**. You could meet students from the Legal Clinic of the IUC University of Turin, who will help you understand whether you can apply for asylum and prepare the application.

You will need to complete a form with your personal details (such as your name, nationality, year of arrival in Italy, and reasons for seeking international protection). This internal document will be submitted by mediators or educators to the institute's matriculation office (*Ufficio Matricola*), which will then initiate the process with the Poliche Headquarter (*Questura*).

Later, you may be taken to the Police Headquarter (*Questura*) outside the institute for photo identification, or *Questura*'s officials might visit the institute. During this time, you will be fingerprinted and asked to complete a more detailed form known as 'C3,' which covers your personal history and reasons for applying for international protection. An **interpreter** who speaks a language you understand will assist you in filling out this form. Additionally, make sure to provide **any documentation you have** that supports your application.

IMPORTANT: **once you have submitted your application, you cannot be deported until your case has been examined.** However, you should always carry a copy of the form on which you made your application (which you can ask for at the Matriculation Office – *Ufficio Matricola*). Typically, after submitting your asylum application, you will be interviewed by a member of the Territorial Commission (*Commissione Territoriale*). This Commission is a public body, distinct from the Judge and the Police. **What you share during the interview is CONFIDENTIAL.** The interviewer **will ask questions about your life in your home country and in Italy** to understand your situation and assess any risks you might face if returned to your country. An interpreter will be present to assist you in your language.

The outcome of your application will be communicated to you at the prison or, if you provided a different address during the interview, at your lawyer's office.



What responses can the commission provide?

2.1.1 REFUGEE AND SUBSIDIARY PROTECTION STATUS

If your asylum application is accepted, you are granted **refugee status** or **subsidiary protection**. You will be able to obtain a **five-year permit of stay** and thus remain legally on Italian territory.

2.1.2 SPECIAL PROTECTION (*PROTEZIONE SPECIALE*)

If the Commission determines that you do not meet the criteria for international protection but acknowledges the following conditions:

- ▶ There is a risk of **persecution or torture** due to severe and ongoing human rights violations in your country,
- ▶ **You have significant ties to Italy** (such as strong family connections or long-term integration into Italian society),
- ▶ They may grant you SPECIAL PROTECTION. In this case **you may obtain a two-year permit of stay**.

The Commission may also indicate to the Police Headquarter (*Questura*) the issuance of a permit of stay in two cases:

- ▶ **for health reasons**, if you have serious medical condition (SEE Chapter I, Section 1.5.4.),
- ▶ **for 'natural disasters'**, if it comes from a country affected by major natural disasters (such as earthquakes, floods).

2.1.3 NEGATIVE RESPONSE

If your asylum application is NOT accepted and you are NOT granted special protection, you could be deported at the end of your detention. In fact, at the same time as issuing the negative decision, the Territorial Commission will certify the obligation to return you and the subsequent ban on re-entry into the national territory. These measures can be challenged jointly: **you can always fill an APPEAL within 15 or 30 days from the day you received the negative response from the Commission.**

To do so, ask a lawyer for help. If you do not have a lawyer, ask the mediator or an educator for advice.

IMPORTANT: Even if you commit very serious offences, you still have the right to apply for international protection. The decision

on the type of permit of stay you receive is determined solely by the Territorial Commission, not by the Police Headquarter (*Questura*) or the Matriculation Office (Ufficio Matricola).

ATTENTION! In certain cases, your application for international protection may be examined through an accelerated procedure. This procedure has three main consequences:

- ▶ Your request will be examined more quickly, as determined by law. The Italian Supreme Court (Judgment No. 11399 of April 29, 2024) has indicated that if these timelines are not respected, the process may transition from the accelerated procedure to the regular procedure.
- ▶ Any appeal against a negative decision must be filed within a shorter timeframe (either 7 or 15 days).
- ▶ Filing an appeal does not automatically grant you the right to remain in Italy. Your lawyer must submit a specific request to the Judge to authorize your stay in the country.

The accelerated procedure can be applied in several situations, with the most common being:

- ▶ Applicants coming from a country considered a “safe country of origin.”
The list of so-called safe countries can be modified and updated (the last update was in 2024). Currently, the countries considered safe are: Albania; Algeria; Bangladesh; Bosnia and Herzegovina; Cape Verde; Ivory Coast; Egypt; Gambia; Georgia; Ghana; Kosovo; North Macedonia; Morocco; Montenegro; Peru; Senegal; Serbia; Sri Lanka; Tunisia.
- ▶ Applicants who have submitted a second asylum application following a previously filed application (so-called repeated asylum applications).
- ▶ Applicants who have committed certain serious crimes (as defined in Article 12, paragraph 1, letter c of Legislative Decree No. 251/07 [SEE APPENDIX](#)).
- ▶ Applicants who have submitted an application while a deportation order or detention in a C.P.R. is being enforced.
- ▶ Applicants who submitted their application more than 90 days after entering Italy.

The accelerated procedure cannot be applied to minors, women, or vulnerable individuals due to health conditions or because they are victims of torture.

If your application for international protection is rejected after being examined under the accelerated procedure, the timeframes for filing an appeal are 7 or 15 days instead of 30. Moreover, filing an appeal does

not automatically suspend the obligation to return to your country of origin, meaning you are still at risk of deportation. Contact a lawyer for assistance.

IMPORTANT: REPEATED APPLICATION

If you have previously applied for asylum, and the request was rejected or another form of protection was granted, you can always submit a new application for asylum. For the new application (repeated application) to be admissible, it must provide new elements related to your personal circumstances or the conditions in your country of origin. Alternatively, you must demonstrate that you were unable to adequately present these elements during the first application.

CHAPTER III

EXPULSIONS

If you do not have a valid permit of stay or have not presented application for one, or in other special cases, you **may receive a deportation order**.

The decision to deport you can be taken while you are still in prison, or after your release. Expulsion may therefore be either administrative or criminal.

3.1 EXPULSION AS AN ALTERNATIVE OR SUBSTITUTE MEASURE FOR DETENTION



When is expulsion possible instead of serving the sentence in prison?

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

- ▶ You are in the situation described by Art. 13, c. 2 T.U.I.: **you are irregular in Italy** ([SEE chapter III, paragraph 3.3.](#)) AND
- ▶ The judge sentenced you to a prison term of **LESS than 2 years**, but there were no conditions for ordering a suspended sentence.

If it is decided to replace detention in prison with the measure of deportation, the Police (*Questura*) can deport you at any time, even if you have appealed against the first instance sentence.

Instead, deportation can be ordered as an **ALTERNATIVE MEASURE** (*espulsione come misura alternativa alla detenzione*) to punishment when:

- ▶ You are in the situations described in Art 13, c. 2: **you are irregular in Italy** ([SEE chapter III, paragraph 3.3.](#)) AND
- ▶ **You are serving your sentence in prison and there are LESS than 2 years left to serve.**

In this case, the Institute's Direction (*Direzione*) where you are located asks the Police (*Questura*) to proceed with your identification (identity and nationality).

The expulsion order is decided by the SUPERVISORY MAGISTRATE (*magistrate di sorveglianza*): against the judge's decision **you may lodge an OPPOSITION personally or through your lawyer within 10 DAYS.**

ATTENTION! You will not be assigned a court-appointed attorney to file an objection. If you choose to file an objection, a hearing will be scheduled before the Supervisory Court. If you do not have a trusted lawyer at that time, one will be appointed to represent you during the hearing. **This hearing is crucial for presenting to the judge any reasons why expulsion should not be enforced** ([SEE Prohibitions on Expulsion, Chapter III, Section 3.7](#)).



Can you return to Italy after deportation?

No, you cannot return to Italy because along with the expulsion order there is also a prohibition to return to Italy without special authorization from the Ministry of the Interior. If you are expelled, the duration of **the prohibition to return to Italy** will depend on the type of offence you committed (**3 to 5 years in the case of less serious crimes; in other cases, not less than 5 years**).

Re-entering Italy during the pendency of the ban is an offence punishable by imprisonment from one to four years, and once traced in the territory you will be subject to a new expulsion (SEE further, chapter III, paragraph 3.6.).



When may expulsion NOT replace a prison sentence?

Expulsion is NOT a substitute for a custodial sentence if:

- ▶ you are in prison because **you committed particularly serious offences** (those defined in Art. 407(2)(a) of the Code of Criminal Procedure, such as mafia-type association, offences with terrorist aims, extortion, murder, kidnapping and others); or
- ▶ you are in prison because you committed one of the offences under the Consolidated Immigration Act (*Testo Unico Immigrazione*) 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 Chapter III, Section 3.7).

ATTENTION! If you re-enter Italy illegally after being deported, the order is revoked and **you will therefore spend the rest of your sentence in prison.**

3.2 EXPULSION AS A SECURITY MEASURE

Expulsion as a security measure (*espulsione come misura di sicurezza*) can be ordered by the judge in a judgment **if you are socially dangerous** and have committed particularly serious offences. In this case, after being taken to prison during the criminal proceedings or following the final conviction, the Chief of the Police Headquarter (il Questore) 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! The Supervisory Magistrate will have to **verify the actuality of the social dangerousness** for the application of the security measure. You can always request a review of dangerousness. A hearing will be set and, if you are not already assisted by a lawyer, a public defender will be appointed.

During the hearing it is important to point out one's social and family ties in the territory, or one's state of health, in order to make the magistrate understand whether there are any expulsion prohibitions ([SEE chapter III, paragraph 3.7](#)).

The Magistrate may revoke the security measure or, if there is a ban on expulsion, apply a different one.

On the other hand, if the security measure of expulsion is confirmed, the Police (Questura) may deport you at any time, without validation of this measure by a new judge.

3.3 ADMINISTRATIVE EXPULSION (*espulsione amministrativa*)

3.3.1 EXPULSION BY THE MINISTRY OF THE INTERIOR

Expulsion is a decision made by the Ministry of the Interior, typically issued for reasons related to public order, state security or for reasons relating to the prevention of terrorism. It is a very rare decision. If you receive it, contact a lawyer immediately, because there is a high probability that this type of deportation will be **executed immediately with accompaniment to the national border**.

3.3.2 EXPULSION OF THE PREFECT

Expulsion is a decision made by the Prefect (Prefetto), through the

Police Headquarters (Questura). This decision can also be enforced **immediately upon your release from prison** or if you are stopped within the territory once you are free.

You may face expulsion through an administrative measure in the following situations:

- ▶ If you entered Italy irregularly and have never regularized your status.
- ▶ If you **no longer hold a permit of stay** because it has expired and you did not apply for renewal in time, or your renewal application was denied, or the Police Headquarter (Questura) has revoked your permit.
- ▶ If you are deemed **'socially dangerous'** due to habitual involvement in illegal activities such as trafficking or offenses against minors, health, safety, or public tranquility (as outlined in Articles 1, 4, and 16 of Legislative Decree 159/2011).

IMPORTANT! If you have exercised your right to family reunification or have family ties in Italy or have lived there for a significant period, **the authorities must assess your family situation before issuing an expulsion order.**

ATTENTION! When you are notified of an expulsion decree, **you may appeal within 20 days to the Justice of the Peace (*Giudice di Pace*).** However, **this appeal does not automatically suspend the expulsion process.** You could still be expelled while waiting for the judge's decision. It is crucial to seek a lawyer to file the appeal. If you cannot afford one, **you are entitled to legal aid** ([SEE Chapter I, Section 1.2.](#)).

After receiving the deportation decree:

- ▶ **you can be taken immediately to a police station or airport and repatriated immediately;**
- ▶ **you can be taken directly to the return detention center (CPR)** where you will be detained in order to organize your departure to your country of origin;
- ▶ if you have a passport and an address, the Questore may decide to apply an **alternative measure to detention** in the CPR (e.g. a signature requirement);
- ▶ if it is not possible to accompany you immediately to the border (at the airport) or there are no places in the CPR, the Questore may order you to leave the country independently within 7 days, and let you go. **If you do not comply with this order, you may face criminal proceedings and be detained in the CPR** ([SEE Chapter III, paragraph 3.6.](#)).

3.4 ALTERNATIVE MEASURES TO DETENTION

Instead of detention in a CPR (Center for Repatriation), the following alternative measures may be applied:

- ▶ surrender of your passport;
- ▶ obligation to report regularly to the police;
- ▶ obligation to remain at a specified residence.

If you receive a decision to apply one of these alternative measures, contact a lawyer immediately.

3.5 DETENTION CENTRE FOR REPATRIATION

If you are taken to a detention centre for repatriation (CPR) there will be **a remote hearing via video link with the Justice of the Peace (*Giudice di Pace*) who will have to decide whether to confirm the detention or not**. You may be assisted by your trusted lawyer or, if you do not have one, you will be assigned a court-appointed lawyer.

During your stay, the Police Headquarter (*Questura*) will have to identify you and obtain your repatriation documents.

Currently, the CPRs in Italy are located in Rome ('Ponte Galeria'), Milan ('Corelli') and Turin ('Brunelleschi', currently closed), in Apulia, in Bari ('Palese') and Brindisi ('Restinco'), in Sicily, in Caltanissetta ('Pian Del Lago') and Trapani ('Milo'), in Basilicata, in Palazzo San Gervasio (Potenza), in Friuli Venezia Giulia, in Gradisca d'Isonzo (Gorizia) and in Sardinia, in Macomer (Nuoro).

ATTENTION! This list may not be up-to-date, as CPRs may be temporarily closed for renovations or other issues.

In some CPRs, the use of mobile phones is forbidden. Your phone may be confiscated at the entrance or the camera may be broken. However, telephone booths or service mobiles are available, which you can use to contact your lawyer or family members.

The Ombudsman for the Rights of Detained Persons (*Garante*) also operate in the CPRs. You can address them during your detention, asking for a meeting and explaining your problems and violations of your rights, either in person or by submitting a formal written **complaint**.



How long will you have to stay in the Repatriation Centre (CPR)?

- ▶ If you are taken to a CPR immediately after your release and have already served more than 6 months in prison, you can be detained in the CPR for up to **12 months**.
- ▶ However, if you receive a deportation order once you are free, you can be held in the CPR for up to **18 months**.

Before entering the CPR and during your stay there, **you will undergo a medical examination** to determine your suitability for detention. It is important to inform the health professional, your lawyer, and the centre staff about any chronic illnesses, ongoing medications or therapies, and your overall health condition, including psychological health. Additionally, disclose any past experiences of torture or physical, psychological, or sexual violence, as these factors might affect your suitability for detention in the CPR.

ATTENTION! You can also submit an application for international protection from the Centre ([SEE Chapter II](#)). While your application is being processed, **you cannot be expelled**, and your detention may last up to a maximum of **12 months**. If the Territorial Commission issues a **negative decision**, you may appeal to the Court. If the Court does not permit your stay in Italy during the appeal process, you will remain in the Centre, may face deportation, and your detention could be extended up to **18 months**.

3.6 PROHIBITION OF RE-ENTRY

If you have been expelled you CANNOT re-enter Italy or another EU country, without a specific authorization.



What happens if you return to Italy without authorization?

- ▶ You may be sentenced to a **prison** term of 1 to 4 years;
- ▶ You may be **again deported** with immediate accompaniment to the national border;
- ▶ If, after being deported a second time, you enter Italy illegally AGAIN, you may be sentenced to a prison term of 1 to 5 years.



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

- ▶ Usually, not less than 3 years and not more than 5 years;
- ▶ A term of more than five years may be ordered if you are considered socially dangerous or have committed serious crimes, such as terrorism.



If you have returned to your country but 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 the Police Headquarter (*Questura*), personally or through a lawyer, **for authorization to return**. This will be issued through the Italian Consulate or Embassy in your country of origin.

3.7 CASES IN WHICH EXPULSION IS PROHIBITED

There are cases in which you **CAN NEVER be deported (absolute ban on deportation)**:

- ▶ **If there is a risk of persecution in your country of origin** on the grounds of race, sex, language, nationality, religion, political opinion, personal or social conditions (even if you have never applied for asylum);
- ▶ **If you risk being subjected to torture or inhuman or degrading treatment in your country** (widespread human rights violations in the home state are also taken into account when assessing these grounds);
- ▶ **When expulsion means violating some of your fundamental human rights, such as 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;

On the other hand, there are cases in which you **CANNOT BE EXPELLED**, unless you are considered a serious danger to public order and state security (e.g. you have committed serious crimes):

- ▶ When **co-habiting** with relatives up to second degree (parents, children, brother/sister) or with the spouse, **of Italian nationality**.

ATTENTION! you must prove your co-habitation (with family status, self-certification or other documents);

- ▶ When you are **pregnant** and for six months after the birth of the child;
- ▶ When you are the **father of the unborn child** and six months after the birth of the child;
- ▶ If your **health conditions are very serious** and he cannot be treated in your own country.

IMPORTANT! In cases where expulsion is prohibited, you are **entitled to a permit of stay for protection** ([case a and b, SEE Chapter II](#)), for family reasons ([case d, SEE Chapter I, Section 1.5.3](#)) or for medical treatment ([case e, f, g, SEE Chapter I, Section 1.5.4](#)).

If you do not fall within the above-mentioned categories but you **have experienced physical, psychological or sexual violence, or are being treated for physical or mental health problems**, you should contact your lawyer: your situation may be INCOMPATIBLE with deportation and/or detention in the detention centre for repatriation (CPR).

If you cannot be deported, you CANNOT be detained in the CPR either: if you are in the centre (CPR), inform your lawyer, the staff member of the Centre, or the Ombudsman (Garante) about the ban on deportation.

3.8 ASSISTED VOLUNTARY RETURN

It is a programme for the definitive return to the country of origin, which includes help in restarting your life project there.

ATTENTION: you **cannot access it if you:**

- ▶ received an expulsion order as a substitution or alternative sanction ([SEE paragraph 3.1](#));
- ▶ received a deportation order as a security measure ([SEE paragraph 3.2](#));
- ▶ received a ministerial deportation order ([SEE paragraph 3.3.1](#));
- ▶ received an expulsion order for social dangerousness ([SEE paragraph 3.3.2](#)).

CHAPTER IV

PENITENTIARY 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. In this Guide are indicated ONLY SOME of the various benefits. For more information on these, please consult the 'Guide for persons deprived of their liberty', 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.

LIMITS TO ACCESS TO BENEFITS - PARTICULAR OFFENCES (Art. 4bis O.P.)

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 (Garante) or the educator for further clarification regarding your individual situation.

4.1 BONUS PERMITS

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

ATTENTION! If you are eligible to apply for a permit but do not have any family nearby or do not know of a suitable place where you can spend your days on leave, *ask the educators, volunteers or the ombudsman of the rights of persons deprived of their liberty (Garante) for information.*

The bonus permit may be granted by the Supervisory 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 $\frac{1}{4}$ (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 commit an offence while serving your sentence, you will be temporarily barred from access to the benefit. If you return late from a bonus permit you may be subject to a **disciplinary sanction** and, if you are more than twelve hours late, you will be reported for the offence of **evasion**.

Permission must be requested from the Supervisory Magistrate, who will then consult with the Prison Director for their opinion.

4.2 THE PERMIT OF NECESSITY

You may be granted this type of permit (*permesso di necessità*) even if you have not been sentenced to a final 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 THE PRISON

While in prison you may have the opportunity to **work for the Prison 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 or the coordinating ward inspector (Coordinatore di Padiglione) for further information.

4.4 WORK OUTSIDE THE PRISON

Work outside prison (lavoro all'esterno - Art. 21 PO)

This type of benefit allows you to **work in a job outside prison**. The measure is ordered by the Institute's Direction, with the approval of the Supervisory Magistrate.

ATTENTION! If you are in prison for one of the offences referred to in Art. 4 bis, you may only be allowed to work outside 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**.

IMPORTANT! You can be admitted to work inside and outside prison **EVEN if you DO NOT have a permit of stay or if it has expired**.

- ▶ Typically, your salary for work performed is deposited into the postal passbook opened in the institution and should be paid by the time of your release.
- ▶ If there are delays or issues in **retrieving your funds**, request that your reference educator contact the Institute's Direction (Direzione) or the Ombudsman for the Rights of Persons Deprived of Liberty (Garante) before your release.

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.

ATTENTION! You may be granted early release if you maintain "**good behaviour**" (*buona condotta*) in the Institute and have actively participated in re-educational treatment (as regards this aspect, ask the educator for more information).

If you have been sentenced to life imprisonment, good behaviour and participation in the re-educational project will still 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 the bonus permit more quickly.

In order to obtain early release, you must present a written request to the Supervisory 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 imprisonment that allows you to **serve your sentence outside prison**, following a programme agreed with the External Criminal Enforcement Office (*UEPE – Ufficio per l'esecuzione penale esterna*).

You may be granted direct access to probation if the sentence to be served is **NOT EXCEEDING 3 YEARS**. You may also have access to probation if the sentence still to be served is not exceeding **4 YEARS** and in the year preceding the request you behaved properly, meriting application of the measure.

The probation shall be requested in written form addressed to the Supervisory Court, which sets a hearing to decide upon it and can prescribe the activities to be carried out during probation and the obligations to comply with. In the hearing it will be present your lawyer, and if you don't have one, you will be assisted by the court-appointed lawyer.

SPECIAL CASES (PERSON 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 may 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.

IMPORTANT! You may be admitted to probation and to the programme decided by the UEPE even if you have never had a permit of stay or your permit has expired. **During probation, you can still work, even if you do not have a permit of stay.**

4.7 HOME DETENTION

Home detention (*detenzione domiciliare*) is an alternative measure to imprisonment that allows you to spend the time envisaged by your 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 hearing and decides whether to grant the measure. If he does not have a trusted lawyer, the court will appoint one for you.

Home detention may be granted if you are over 70 years of age and you have not been classified as a habitual, professional, or recidivist offender, or your conviction does not involve serious offenses under Article 4bis of the Penal Code (PO) and certain crimes against individuals.

Other cases of home detention are:

STANDARD HOME DETENTION (DETEZIONE 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 (DETEZIONE 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 (DETEZIONE 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 (DETEZIONE 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 (*semilibertà*) allows you to **spend part of the day outside prison in order to work**, attend education or vocational training courses or to **carry out activities useful for social reintegration** (such as voluntary work).

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

If your sentence to be served is not more than 4 years, **you can apply for the measure right away** [note: this does not apply if you have been convicted of one of the offences in Art. 4 bis co 1 OP]. 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 and decided by the Supervisory Court, after a hearing attended by your trusted lawyer or, if you do not have one, a lawyer is appointed by the court.

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.

- ▶ If you return late without a justified reason, you may face a disciplinary sanction and, if you are more than twelve hours late, you will be reported for the crime of evasion.

ATTENTION! Probation, home detention and day release may not be granted more than once to a convicted person who has been convicted of a recidivism offence under Article 99(4) of the Criminal Code (so-called *recidiva reiterata*).

IMPORTANT! While you are in one of these alternative measures, you can go independently to the Police Headquarter (Questura) or the Consulate for the paperwork relating to your stay in Italy. However, you need the authorization of the Magistrate. Ask your educator to get the authorization.

CHAPTER V

THE PRISON VISITS

5.1 FACE-TO-FACE PRISON VISIT

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.

IMPORTANT! Interviews with children in special cases: when a decision of the Juvenile Court has limited your parental responsibility, or there are ongoing proceedings concerning your parental responsibility > you may have interviews with your children in a private room in the Institution (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! Checks will be made on self-certifications. **Making false declarations is an offence** and you may be accused of misrepresentation.

ITALIAN SPOUSES AND FAMILY MEMBERS OR EU CITIZENS

- ▶ Valid identification document;
- ▶ **Self-certification** on the existence of the family relationship.

SPOUSE AND FAMILY MEMBERS WHO ARE NOT EU CITIZENS

- ▶ Valid identification document (permit of stay, passport);
- ▶ 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 **has residency in Italy**, and the marriage/kinship relationship results from documents already known to the administration, a self-certification is sufficient (e.g. if you married or registered your marriage in Italy, a self-certification is sufficient).

ITALIAN CO-HABITANT OR EU CITIZEN

- ▶ Valid identification document;
- ▶ **Self-certification** of co-habitation or family status.

FOREIGN CO-HABITING NON-EU CITIZEN

- ▶ Valid identification document (permit of stay, passport);
- ▶ **Certificate** of the Italian residence where you lived continuously until the time of the arrest;
- ▶ If the **cohabitation took place abroad**, certification issued by the Consulate of your country of origin, or a certificate issued by another foreign State where the cohabitation took place, attesting to the relationship. The documents must be translated into Italian.

THIRD PERSON

- ▶ Valid identification document (if non-EU citizen: permit of stay or passport);

- ▶ **Certification of the absence of pending charges**, criminal convictions or being subject to preventive measures

ATTENTION! Before starting the interview, the documents of the visitor will be checked and a search (personal check) will be carried out: visitors must leave their personal belongings in a place indicated by the Penitentiary Police and may collect them on their way out.

5.1.1 VIDEO CALLS

Face-to-face interviews can be REPLACED with video calls, to be made at specific locations and via the Microsoft TEAMS system, or other system in use at the Institution. To carry out the video call, **the same formalities as for the interviews** are required (prove the family relationship, provide identity documentation). The person with whom you will have the meeting must identify him/herself at the beginning of the call, showing his/her identity document. In fact, only the authorized person may participate in the video call, no other persons must be present.

5.2 TELEPHONE CALLS

You may have telephone conversations with cohabitants and relatives and, if there are reasonable grounds, with other persons.



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** (Direzione).



How many phone calls can you make?

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

You may also be allowed more phone 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 must make a **written request** to the competent authority (Director or Judicial Authority), where you indicate the number of telephone calls, **the persons you want to speak to** and the telephone to be called (see below).

ATTENTION! Phone 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

It is possible to call on **mobile phones** when there is no other way to contact relatives, cohabitants or other persons.

- ▶ 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 (Comandante del padiglione) where you are located.

CHAPTER VI

TRANSFER TO ANOTHER MEMBER STATE OF THE EUROPEAN UNION TO SERVE 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 (Garante). 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**. 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 (Garante).

CHAPTER VII

RIGHT TO HEALTH, CIVIL REGISTRATION, TAX CODE FOR WORKERS



What rights do I have while in detention?

Detention is a condition of compulsory residence. For this reason, for the period of serving your sentence you are entitled, **even in the absence of a valid permit of stay** and regardless the detention period:

- ▶ to **be registered** (*iscrizione anagrafica*) with the institution, upon request or if necessary. You can then apply for a certificate of civil registration;
- ▶ the issuance of a **tax code** (*codice fiscale*);
- ▶ compulsory registration with the **National Health Service** (SSN) and exemption from co-payments for services.

ATTENTION! Registration at the institute is only valid until the end of your sentence. Once you are released, you must provide your new address to maintain your civil registration or apply for registration with a fictitious residence at 'via della Casa Comunale'. This will prevent you from being removed from the register due to unavailability.



What happens at the end of my sentence if I attend treatment in an institution?

At the end of your detention, you will be issued with a release form by the institution's medical management (*Direzione sanitaria*). If you follow a specific therapy, it will be noted on the discharge form.

The care provided in the institution may be different from that offered to citizens without a permit of stay outside prison.

- ▶ If you have a permit of stay and a valid tax code, remember to choose

a general practitioner (*medico di base*) when you leave, if you do not already have one. This choice can be made at the local ASL office of your residence or on the 'Salute Piemonte' portal.

- ▶ If you do not have a stay permit at the end of your sentence, you must take your detention certificate, which includes the date of release, to the CENTRO ISI and request the issuance of the **STP CODE** (Straniero Temporaneamente Presente - foreigner temporarily present). Italian immigration law guarantees that foreign nationals without a regular stay permit are entitled to urgent or essential outpatient and inpatient treatment, including continuous treatment, for illness and injury, at public and accredited hospitals.

ISI CENTRE

It is located at Lungo Dora Savona no. 24.

Access: Telephone and direct per counter - By appointment per outpatient clinic

Telephone: 011.2403625

Email: centro.isi@aslcittaditorino.it;

Hours: Monday to Friday 08.30-12.00 and 13.00-15.00.

For access to outpatient services: Monday to Thursday 09:00-14:00

At the end of your detention, you will be provided with the drugs you have purchased or the drugs you need for the first few days after release from the institution.

ANNEX

LEGAL FRAMEWORK

IL PERMESSO DI SOGGIORNO

RINNOVO DEL PERMESSO DI SOGGIORNO

Art. 5, D. Lgs 286/1998 (Testo Unico Immigrazione)

Art. 10, co 4, D.P.R. n. 394/1999 (Regolamento attuativo del Testo Unico Immigrazione)

REATI OSTATIVI

Art. 4, co 3, D. Lgs 286/1998 (Testo Unico Immigrazione)

IL PERMESSO DI SOGGIORNO PER LAVORO

Art. 22 e ss. D. Lgs 286/1998 (Testo Unico Immigrazione)

Art. 29 e ss. D.P.R. n. 394/1999 (Regolamento attuativo del Testo Unico Immigrazione)

IL PERMESSO DI SOGGIORNO PER ATTESA OCCUPAZIONE

Art. 22, co 11 D. Lgs. 286/1998 (Testo Unico Immigrazione)

Art. 37, co 5, D.P.R. n. 394/1999 (Regolamento attuativo del Testo Unico Immigrazione)

IL PERMESSO DI SOGGIORNO UE PER LUNGO SOGGIORNANTI (CD. "CARTA DI SOGGIORNO")

Art. 9, D.Lgs. 286/1998 (Testo Unico Immigrazione)

Art. 16 e 17, D.P.R. n. 394/1999 (Regolamento attuativo del Testo Unico Immigrazione)

IL PERMESSO PER MOTIVI DI FAMIGLIA

Art. 19, 29 e 30 D.Lgs. 286/1998 (Testo Unico Immigrazione)

IL PERMESSO DI SOGGIORNO PER CURE MEDICHE (MALATTIA E GRAVIDANZA)

Art. 19, co 2, lettera d) bis, D. Lgs. 286/1998 (Testo Unico Immigrazione)

IL PERMESSO DI SOGGIORNO PER VITTIME DI TRATTA E VIOLENZA DOMESTICA

Art. 18, Art. 18 bis D. Lgs. 286/1998 (Testo Unico Immigrazione)

IL PERMESSO DI SOGGIORNO PER SFRUTTAMENTO LAVORATIVO

Art. 22, co 12 quater, quinques D. Lgs. 286/98

IL PERMESSO DI SOGGIORNO PER PROTEZIONE SOCIALE EX MINORE

Art. 18, co 6, D. Lgs. 286/1998 (Testo Unico Immigrazione)

LA PROTEZIONE INTERNAZIONALE

STATUS DI RIFUGIATO

Art. 2, D.Lgs 251/2007 e Capo III, D.Lgs 251/2007

PROTEZIONE SUSSIDIARIA

Art. 2, D.Lgs 251/2007 e Capo IV, D.Lgs 251/2007

PROTEZIONE SPECIALE

Art. 19, co 1 e 1.1., D.Lgs 286/1998 (Testo Unico Immigrazione) e Art. 32, c.3, D.Lgs 25/2008

PROCEDURA PER IL RICORSO

Art. 35 e ss. D.Lgs 25/2008

PROCEDURA ACCELERATA PER L'ESAME DELLA DOMANDA

Art. 28 bis e ss., D.Lgs 25/2008

PAESI DI ORIGINE SICURA

Art 2 – bis, D.Lgs 25/2008

REATI GRAVI CHE POSSANO IMPEDIRE IL RICONOSCIMENTO DELLO STATUS DI RIFUGIATO O DETERMINARE L'APPLICAZIONE DELLA PROCEDURA ACCELERATA

Art. 12. D.Lgs 251/2007

1. Sulla base di una valutazione individuale,

lo status di rifugiato non è riconosciuto quando:

- a) in conformità a quanto stabilito dagli articoli 3, 4, 5 e 6 non sussistono i presupposti di cui agli articoli 7 e 8 ovvero sussistono le cause di esclusione di cui all'articolo 10;
- b) sussistono fondati motivi per ritenere che lo straniero costituisce un pericolo per la sicurezza dello Stato;
- c) lo straniero costituisce un pericolo per l'ordine e la sicurezza pubblica, essendo stato condannato con sentenza definitiva per i reati previsti dall' articolo 407, comma 2, lettera a), del codice di procedura penale ovvero dagli articoli 336, 583, 583-bis, 583-quater, 624 nell'ipotesi aggravata di cui all'articolo 625, primo comma, numero 3), e 624-bis, primo comma, del codice penale. I reati di cui all'articolo 407, comma 2, lettera a), numeri 2), 6) e 7-bis), del codice di procedura penale, sono rilevanti anche nelle fattispecie non aggravate 18.

DOMANDA REITERATA

Art. 29, c. 1, lett. b e 1-bis, D.Lgs 25/2008

1. La Commissione territoriale dichiara inammissibile la domanda e non procede all'esame, nei seguenti casi:

- a) al richiedente è stato riconosciuto lo status di rifugiato o lo status di protezione sussidiaria da uno Stato firmatario della Convenzione di Ginevra e lo stesso possa ancora avvalersi di tale protezione;
 - b) il richiedente ha reiterato identica domanda, dopo che sia stata presa una decisione da parte della Commissione stessa, senza addurre nuovi elementi o nuove prove, in merito alle sue condizioni personali o alla situazione del suo Paese di origine, che rendano significativamente più probabile che la persona possa beneficiare della protezione internazionale, salvo che il richiedente allegghi fondatamente di essere stato, non per sua colpa, impossibilitato a presentare tali elementi o prove in occasione della sua precedente domanda o del successivo ricorso giurisdizionale.
- 1-bis. Nei casi di cui al comma 1, la domanda è sottoposta a esame preliminare da parte del presidente della Commissione territoriale, diretto ad accertare se emergono o sono stati adottati, da parte

del richiedente, nuovi elementi o nuove prove rilevanti ai fini del riconoscimento della protezione internazionale e che il ritardo nella presentazione di tali nuovi elementi o prove non è imputabile a colpa del ricorrente, su cui grava l'onere di allegazione specifica. Nell'ipotesi di cui al comma 1, lettera a), il presidente della Commissione procede anche all'audizione del richiedente sui motivi addotti a sostegno dell'ammissibilità della domanda nel suo caso specifico.

LE ESPULSIONI

MISURA ALTERNATIVA O SOSTITUTIVA DELLA DETENZIONE

Art. 16, D. Lgs. 286/1998 (Testo Unico Immigrazione)

MISURA DI SICUREZZA

Art. 15, D. Lgs. 286/1998 (Testo Unico Immigrazione)

ESPULSIONE AMMINISTRATIVA ADOTTATA DAL MINISTERO DELL'INTERNO

Art. 13, co 1, D. Lgs. 286/1998 (Testo Unico Immigrazione)

ESPULSIONE AMMINISTRATIVA ADOTTATA DAL PREFETTO

Art. 13, D. Lgs. 286/1998 (Testo Unico Immigrazione)

MISURE ALTERNATIVE AL TRATTENIMENTO

Art. 14, co 1-bis, D.Lgs 286/1998 (Testo Unico Immigrazione)

CENTRO DI PERMANENZA PER IL RIMPATRIO (C.P.R.)

Art. 14, D.Lgs 286/1998 (Testo Unico Immigrazione)

Art. 20, 21 e 22, D.P.R. n. 394/1999 (Regolamento attuativo del Testo Unico Immigrazione)

Direttiva recante criteri per l'organizzazione dei centri di permanenza per i rimpatri previsti dall'articolo 14 del decreto legislativo 25 luglio 1998, n. 286 e successive modificazioni, adottata il 19 maggio 2022.

CASI DI INESPELLIBILITÀ

Art. 19, D. Lgs. 286/1998 (Testo Unico Immigrazione)

RIMPATRIO VOLONTARIO ASSISTITO

Art. 14 - ter, D. Lgs. 286/1998 (Testo Unico Immigrazione)

CENNI SULL'ORDINAMENTO PENITENZIARIO

DIVIETO DI CONCESSIONE DEI BENEFICI

Art. 4 -bis, L. 354/1975 (Ordinamento Penitenziario)

I PERMESSI PREMIO

Art. 30 - ter, L. 354/1975 (Ordinamento Penitenziario)

IL PERMESSO PER NECESSITÀ

Art. 30, L. 354/1975 (Ordinamento Penitenziario)

LAVORO ALL'INTERNO

Art. 20, 20-bis e 20-ter, L. 354/1975 (Ordinamento Penitenziario)

LAVORO ALL'ESTERNO

Art. 21, L. 354/1975 (Ordinamento Penitenziario)

LA LIBERAZIONE ANTICIPATA

Art. 54 e 69-bis, L. 354/1975 (Ordinamento Penitenziario)

AFFIDAMENTO IN PROVA AI SERVIZI SOCIALI

Art. 47, L. 354/1975 (Ordinamento Penitenziario)

DETTENZIONE DOMICILIARE

Art. 47-ter, quater, quinquies e sexies, L. 354/1975 (Ordinamento Penitenziario)

SEMILIBERTÀ

Art. 48 e ss, L. 354/1975 (Ordinamento Penitenziario)

I COLLOQUI

Art. 18, L. 354/1975 (Ordinamento Penitenziario)

IL TRASFERIMENTO VERSO UN ALTRO STATO MEMBRO DELL'UNIONE EUROPEA PER SCONTARE LA PENA

Decisione Quadro 2008/909/GAI e Legge delega 88/2009

DIRITTO ALLA SALUTE, ISCRIZIONE ANAGRAFICA, CODICE FISCALE PER I LAVORATORI

Art. 1, co 5 e 6, D. Lgs. 230/99

Art. 45, co 4, L. 354/1975 (Ordinamento Penitenziario)

Art. 2, 6, 34 e 35, D. Lgs. 286/1998 (Testo Unico Immigrazione)

Art. 15, 42, 43 D.P.R. n. 394/1999

(Regolamento attuativo del Testo Unico Immigrazione)

RIFERIMENTI NORMATIVI DEI PRINCIPALI ELENCHI DI REATI RICHIAMATI NEL TESTO

REATI OSTATIVI AL RILASCIO/RINNOVO DEL PERMESSO DI SOGGIORNO (CAP. I)

Art. 4, co 3, D.Lgs. 286 /98 chiunque risulti "condannato, anche con sentenza non definitiva, compresa quella adottata a seguito di applicazione della pena su richiesta ai sensi dell'articolo 444 del codice di procedura penale, per reati previsti dall'articolo 380, commi 1 e 2, del codice di procedura penale, per i reati di cui all'articolo 582, nel caso di cui al secondo comma, secondo periodo (lesioni personali gravi), e agli articoli 583-bis (pratiche di mutilazione degli organi genitali femminili) e 583-quinquies del codice penale (deformazione dell'aspetto della persona mediante lesioni personali al viso), ovvero per reati inerenti gli stupefacenti, la libertà sessuale, il favoreggiamento dell'immigrazione clandestina verso l'Italia e dell'emigrazione clandestina dall'Italia verso altri Stati o per reati diretti al reclutamento di persone da destinare alla prostituzione o allo sfruttamento della prostituzione o di minori da impiegare in attività illecite" o chi, "con sentenza irrevocabile, per uno dei reati previsti dalle disposizioni del titolo III, capo III, sezione II, della legge 22 aprile 1941, n. 633, relativi alla tutela del diritto

di autore, e degli articoli 473 e 474 del codice penale, nonché dall'articolo 1 del decreto legislativo 22 gennaio 1948, n. 66, e dall'articolo 24 del regio decreto 18 giugno 1931, n. 773".

REATI DI CUI ALL'ART. 380 CO 1 E CO 2 C.P.P.

1. Gli ufficiali e gli agenti di polizia giudiziaria procedono all'arresto [Cost. 13] di chiunque è colto in flagranza di un delitto non colposo [c.p. 43], consumato o tentato [c.p. 56], per il quale la legge stabilisce la pena dell'ergastolo o della reclusione non inferiore nel minimo a cinque anni e nel massimo a venti anni.

2. Anche fuori dei casi previsti dal comma 1, gli ufficiali e gli agenti di polizia giudiziaria procedono all'arresto di chiunque è colto in flagranza di uno dei seguenti delitti non colposi, consumati o tentati:

a) delitti contro la personalità dello Stato previsti nel titolo I del libro II del codice penale per i quali è stabilita la pena della reclusione non inferiore nel minimo a cinque anni o nel massimo a dieci anni;

a-bis) delitto di violenza o minaccia ad un Corpo politico, amministrativo o giudiziario o ai suoi singoli componenti previsto dall'articolo 338 del codice penale 1;

b) delitto di devastazione e saccheggio previsto dall'articolo 419 del codice penale;

c) delitti contro l'incolumità pubblica previsti nel titolo VI del libro II del codice penale per i quali è stabilita la pena della reclusione non inferiore nel minimo a tre anni o nel massimo a dieci anni;

d) delitto di riduzione in schiavitù previsto dall'articolo 600 [c.p. 600], delitto di prostituzione minorile previsto dall'articolo 600-bis, [c.p. 600-bis] primo comma, delitto di pornografia minorile previsto dall'articolo 600-ter, [c.p. 600-ter] commi primo e secondo, anche se relativo al materiale pornografico di cui all'articolo 600-quater.1, e delitto di iniziative

turistiche volte allo sfruttamento della prostituzione minorile previsto dall'articolo 600-quinquies del codice penale 2;

d.1) delitti di intermediazione illecita e sfruttamento del lavoro previsti dall'articolo 603-bis, secondo comma, del codice penale 3;

d-bis) delitto di violenza sessuale previsto dall'articolo 609-bis, escluso il caso previsto dal terzo comma, e delitto di violenza sessuale di gruppo previsto dall'articolo 609-octies del codice penale 4;

d-ter) delitto di atti sessuali con minorenne di cui all'articolo 609-quater, primo e secondo comma, del codice penale 5;

e) delitto di furto quando ricorre la circostanza aggravante prevista dall'articolo 4 della legge 8 agosto 1977, n. 533, o taluna delle circostanze aggravanti previste dall'articolo 625, primo comma, numeri 2), prima ipotesi, 3) e 5), nonché 7-bis), del codice penale, salvo che ricorra, in questi ultimi casi, la circostanza attenuante di cui all'articolo 62 [c.p. 62], primo comma, numero 4), del codice penale 6 2);

e-bis) delitti di furto previsti dall'articolo 624-bis del codice penale, salvo che ricorra la circostanza attenuante di cui all'articolo 62 [c.p. 62], primo comma, numero 4), del codice penale 7;

f) delitto di rapina previsto dall'articolo 628 del codice penale e di estorsione previsto dall'articolo 629 del codice penale;

f-bis) delitto di ricettazione, nell'ipotesi aggravata di cui all'articolo 648, primo comma, secondo periodo, del codice penale 8;

g) delitti di illegale fabbricazione, introduzione nello Stato, messa in vendita, cessione, detenzione e porto in luogo pubblico o aperto al pubblico di armi da guerra o tipo guerra o parti di esse, di esplosivi, di armi clandestine nonché di più armi comuni da sparo escluse quelle previste dall'articolo 2, comma terzo, della legge 18 aprile 1975, n. 110 9;

h) delitti concernenti sostanze stupefacenti o psicotrope puniti a norma dell'Art. 73 del testo unico approvato con D.P.R. 9 ottobre 1990, n. 309, salvo che per i delitti di cui al comma 5 del medesimo articolo 10;

i) delitti commessi per finalità di terrorismo o di eversione dell'ordine costituzionale per i quali la legge stabilisce la pena della reclusione non inferiore nel minimo a quattro anni o nel massimo a dieci anni 11;

l) delitti di promozione, costituzione, direzione e organizzazione delle associazioni segrete previste dall'articolo 1 della legge 25 gennaio 1982, n. 17 [della associazione di tipo mafioso prevista dall'articolo 416-bis comma 2 del codice penale] 12, delle associazioni di carattere militare previste dall'articolo 1 della legge 17 aprile 1956, n. 561, delle associazioni, dei movimenti o dei gruppi previsti dagli articoli 1 e 2, della legge 20 giugno 1952, n. 645, delle organizzazioni, associazioni, movimenti o gruppi di cui all'Art. 3, comma 3, della L. 13 ottobre 1975, n. 654 13;

l-bis) delitti di partecipazione, promozione, direzione e organizzazione della associazione di tipo mafioso prevista dall'articolo 416-bis del codice penale 14;

l-ter) delitti di violazione dei provvedimenti di allontanamento dalla casa familiare e del divieto di avvicinamento ai luoghi frequentati dalla persona offesa, di maltrattamenti contro familiari e conviventi e di atti persecutori, previsti dagli articoli 387-bis, 572 e 612-bis del codice penale 15;

m) delitti di promozione, direzione, costituzione e organizzazione della associazione per delinquere prevista dall'articolo 416 commi 1 e 3 del codice penale [c.p. 416], se l'associazione è diretta alla commissione di più delitti fra quelli previsti dal comma 1 o dalle lettere a), b), c), d), f), g), i) del presente comma;

m-bis) delitti di fabbricazione, detenzione o uso di documento di identificazione falso previsti dall'articolo 497-bis del codice penale 16;

m-ter) delitti di promozione, direzione, organizzazione, finanziamento o effettuazione di trasporto di persone ai fini dell'ingresso illegale nel territorio dello Stato, di cui all'articolo 12, commi 1 e 3, del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286, e successive modificazioni 17;

m-quater) delitto di omicidio colposo stradale o nautico previsto dall'articolo 589-bis, secondo e terzo comma, del codice penale, salvo che il conducente si sia immediatamente fermato, adoperandosi per prestare o attivare i soccorsi, e si sia messo immediatamente a disposizione degli organi di polizia giudiziaria 18;

m-quinques) delitto di resistenza o di violenza contro una nave da guerra, previsto dall'articolo 1100 del codice della navigazione 19.

REATI CHE LIMITANO L'ACCESSO AI BENEFICI PENITENZIARI (CAP. IV)

Art. 4 bis, co 1, L. 354/1975

1. L'assegnazione al lavoro all'esterno, i permessi premio e le misure alternative alla detenzione previste dal capo VI, esclusa la liberazione anticipata, possono essere concessi ai detenuti e internati per i seguenti delitti solo nei casi in cui tali detenuti e internati collaborino con la giustizia a norma dell'articolo 58-ter della presente legge: delitti commessi per finalità di terrorismo, anche internazionale, o di eversione dell'ordine democratico mediante il compimento di atti di violenza, delitti di cui agli articoli 416-bis e 416-ter del codice penale, delitti commessi avvalendosi delle condizioni previste dallo stesso articolo ovvero al fine di agevolare l'attività delle associazioni in esso previste, delitti di cui agli articoli 600, 600-bis, primo comma, 600-ter, primo e secondo comma, 601, 602, 609-octies e 630 del codice penale, agli articoli 12, commi 1 e 3, e 12-bis del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio

1998, n. 286, e successive modificazioni, all'articolo 291-quater del testo unico delle disposizioni legislative in materia doganale, di cui al decreto del Presidente della Repubblica 23 gennaio 1973, n. 43, e all'articolo 74 del testo unico delle leggi in materia di disciplina degli stupefacenti e sostanze psicotrope, prevenzione, cura e riabilitazione dei relativi stati di tossicodipendenza, di cui al decreto del Presidente della Repubblica 9 ottobre 1990, n. 309. Sono fatte salve le disposizioni degli articoli 16-nonies e 17-bis del decreto-legge 15 gennaio 1991, n. 8, convertito, con modificazioni, dalla legge 15 marzo 1991, n. 82, e successive modificazioni. La disposizione del primo periodo si applica altresì in caso di esecuzione di pene inflitte anche per delitti diversi da quelli ivi indicati, in relazione ai quali il giudice della cognizione o dell'esecuzione ha accertato che sono stati commessi per eseguire od occultare uno dei reati di cui al medesimo primo periodo ovvero per conseguire o assicurare al condannato o ad altri il prodotto o il profitto o il prezzo ovvero l'impunità di detti reati.

1-bis. I benefici di cui al comma 1 possono essere concessi, anche in assenza di collaborazione con la giustizia ai sensi dell'articolo 58-ter, ai detenuti e agli internati per delitti commessi per finalità di terrorismo, anche internazionale, o di eversione dell'ordine democratico mediante il compimento di atti di violenza, per i delitti di cui agli articoli 416-bis e 416-ter del codice penale, per delitti commessi avvalendosi delle condizioni previste dall'articolo 416-bis del codice penale ovvero al fine di agevolare l'attività delle associazioni in esso previste, per i delitti di cui agli articoli 12, commi 1 e 3, e 12-bis del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286, e per i delitti di cui all'articolo 291-quater del testo unico delle disposizioni legislative in materia doganale, di cui al decreto del Presidente della Repubblica 23 gennaio 1973, n. 43, e all'articolo 74 del testo unico delle leggi in materia di disciplina degli

stupefacenti e sostanze psicotrope, prevenzione, cura e riabilitazione dei relativi stati di tossicodipendenza, di cui al decreto del Presidente della Repubblica 9 ottobre 1990, n. 309, purché gli stessi dimostrino l'adempimento delle obbligazioni civili e degli obblighi di riparazione pecuniaria conseguenti alla condanna o l'assoluta impossibilità di tale adempimento e alleghino elementi specifici, diversi e ulteriori rispetto alla regolare condotta carceraria, alla partecipazione del detenuto al percorso rieducativo e alla mera dichiarazione di dissociazione dall'organizzazione criminale di eventuale appartenenza, che consentano di escludere l'attualità di collegamenti con la criminalità organizzata, terroristica o eversiva e con il contesto nel quale il reato è stato commesso, nonché il pericolo di ripristino di tali collegamenti, anche indiretti o tramite terzi, tenuto conto delle circostanze personali e ambientali, delle ragioni eventualmente dedotte a sostegno della mancata collaborazione, della revisione critica della condotta criminosa e di ogni altra informazione disponibile. Al fine della concessione dei benefici, il giudice accerta altresì la sussistenza di iniziative dell'interessato a favore delle vittime, sia nelle forme risarcitorie che in quelle della giustizia riparativa.

1-bis.1. I benefici di cui al comma 1 possono essere concessi, anche in assenza di collaborazione con la giustizia ai sensi dell'articolo 58-ter, ai detenuti o internati per i delitti di cui agli articoli 600, 600-bis, primo comma, 600-ter, primo e secondo comma, 601, 602, 609-octies e 630 del codice penale, purché gli stessi dimostrino l'adempimento delle obbligazioni civili e degli obblighi di riparazione pecuniaria conseguenti alla condanna o l'assoluta impossibilità di tale adempimento e alleghino elementi specifici, diversi e ulteriori rispetto alla regolare condotta carceraria e alla partecipazione del detenuto al percorso rieducativo, che consentano di escludere l'attualità di collegamenti, anche indiretti o tramite terzi, con il contesto nel quale il reato

è stato commesso, tenuto conto delle circostanze personali e ambientali, delle ragioni eventualmente dedotte a sostegno della mancata collaborazione, della revisione critica della condotta criminosa e di ogni altra informazione disponibile. Al fine della concessione dei benefici, il giudice di sorveglianza accerta altresì la sussistenza di iniziative dell'interessato a favore delle vittime, sia nelle forme risarcitorie che in quelle della giustizia riparativa.

1-bis.1.1. Con il provvedimento di concessione dei benefici di cui al comma 1 possono essere stabilite prescrizioni volte a impedire il pericolo del ripristino di collegamenti con la criminalità organizzata, terroristica o eversiva o che impediscano ai condannati di svolgere attività o di avere rapporti personali che possono portare al compimento di altri reati o al ripristino di rapporti con la criminalità organizzata, terroristica o eversiva. A tal fine il giudice può disporre che il condannato non soggiorni in uno o più comuni, o soggiorni in un comune determinato.

1-bis.2. Ai detenuti e agli internati, oltre che per taluno dei delitti di cui al comma 1-bis.1, anche per il delitto di cui all'articolo 416 del codice penale finalizzato alla commissione dei delitti ivi indicati si applicano le disposizioni del comma 1-bis.

1-ter. I benefici di cui al comma 1 possono essere concessi, purché non vi siano elementi tali da far ritenere la sussistenza di collegamenti con la criminalità organizzata, terroristica o eversiva, ai detenuti o internati per i delitti di cui agli articoli 575, 600-bis, secondo e terzo comma, 600-ter, terzo comma, 600-quinquies, 628, terzo comma, e 629, secondo comma, del codice penale, all'articolo 291-ter del citato testo unico di cui al decreto del Presidente della Repubblica 23 gennaio 1973, n. 43, all'articolo 73 del citato testo unico di cui al decreto del Presidente della Repubblica 9 ottobre 1990, n. 309, e successive modificazioni, limitatamente alle ipotesi aggravate ai sensi dell'articolo

80, comma 2, del medesimo testo unico, all'articolo 416, primo e terzo comma, del codice penale, realizzato allo scopo di commettere delitti previsti dagli articoli 473 e 474 del medesimo codice, e all'articolo 416 del codice penale, realizzato allo scopo di commettere delitti previsti dal libro II, titolo XII, capo III, sezione I, del medesimo codice, dagli articoli 609-bis, 609-quater e 609-octies del codice penale e dall'articolo 12, commi 3, 3-bis e 3-ter, del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286, e successive modificazioni.

1-quater. I benefici di cui al comma 1 possono essere concessi ai detenuti o internati per i delitti di cui agli articoli 583-quinquies, 600-bis, 600-ter, 600-quater, 600-quinquies, 609-bis, 609-ter, 609-quater, 609-quinquies, 609-octies e 609-undecies del codice penale solo sulla base dei risultati dell'osservazione scientifica della personalità condotta collegialmente per almeno un anno anche con la partecipazione degli esperti di cui al quarto comma dell'articolo 80 della presente legge. Le disposizioni di cui al periodo precedente si applicano in ordine al delitto previsto dall'articolo 609-bis del codice penale salvo che risulti applicata la circostanza attenuante dallo stesso contemplata.

1-quinquies. Salvo quanto previsto dal comma 1, ai fini della concessione dei benefici ai detenuti e internati per i delitti di cui agli articoli 583-quinquies, 600-bis, 600-ter, anche se relativo al materiale pornografico di cui all'articolo 600-quater.1, 600-quinquies, 609-quater, 609-quinquies e 609-undecies del codice penale, nonché agli articoli 609-bis e 609-octies del medesimo codice, se commessi in danno di persona minorenni, il magistrato di sorveglianza o il tribunale di sorveglianza valuta la positiva partecipazione al programma di riabilitazione specifica di cui all'articolo 13-bis della presente legge.

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