

CRIMINAL PROCEEDINGS AND DEFENCE RIGHTS IN ITALY

This leaflet covers:

- Information about FTI
- Definitions of key legal terms
- Criminal proceedings and defence rights in Italy
- Useful links

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About Fair Trials International

Since 1992 Fair Trial International has worked for the better protection of fair trial rights and defended the rights of people facing criminal charges in a country other than their own. Our vision is a world where every person's right to a fair trial is respected, whatever their nationality, wherever they are accused.

Fair Trials International was established to help people arrested outside their own country to defend their right to a fair trial. Every year we help hundreds of people and their families to navigate a foreign legal system by offering practical advice, including contacts of local lawyers; guidance on key issues encountered by people arrested abroad; and basic information on different legal systems and local sources of support. As a charity, we do not charge for any of the assistance that we provide.

We believe that respect for fundamental rights and the rule of law are the hallmarks of a just society and that the right to a fair trial is at the heart of this. Sadly too many shocking cases of injustice demonstrate how, time and again, this most basic human right is being abused. We fight against injustice by lobbying for the legal reforms needed to ensure that the right to a fair trial is respected in practice. Working with our clients and international networks, we also campaign for changes to criminal justice laws which are being abused and overused.

To find out more about how FTI can assist you, please contact our legal team (contact details on the back cover).

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DEFINITIONS OF KEY LEGAL TERMS

Accusatorial or Adversarial System (*Sistema Accusatorio*): A system in which a prosecutor and the lawyer representing the accused present their case before an impartial judge. This system is followed in some countries such as the UK and the USA. Unlike some European countries (such as France), judges are expected to be neutral and do not take an active role in investigating cases.

Appeal (*Appello*): An opportunity to dispute a decision made at trial (either on guilt or on sentence) by asking a higher court to review it. This can result in the decision being overturned or changed.

Bail (*Cauzione*): The temporary release from police custody or from prison of a person accused of a crime and awaiting trial.

Bar Association (*Consiglio dell'Ordine*): An organisation whose role is to represent lawyers and help people in their dealings with lawyers.

Charge/Indictment (*Accusa/Imputazione*): A written statement accusing a person of carrying out an offence.

Consulate (*Consolato*): The section of an embassy whose task is to assist its citizens.

Court of Appeal (*Corte di Appello*): A court that is competent to hear appeals (i.e. challenges) made to decisions of the lower courts.

Court of First Instance (*Tribunale di Primo Grado*): A lower court where a trial is initially heard.

Embassy (*Ambasciata*): The office of a government official who resides in a foreign country and represents his/her government's interests.

European Court of Human Rights (*Corte Europea dei Diritti dell'Uomo*): The Court is based in Strasbourg, France, and hears human rights cases against the 47 countries which make up the Council of Europe (which is different from the European Union).

Fast Track Proceedings or Summary Proceedings (*Giudizio Abbreviato - Giudizio Immediato – Giudizio Direttissimo - Patteggiamento - Procedimento per Decreto*): These are the names given to a number of different proceedings that can take place instead of an ordinary trial. They tend to have shorter timescales and simplified procedures.

File (*Fascicolo*): The name given to your case or case file by your lawyer.

Inquisitorial System (*Sistema Inquisitorio*): A system in which the judge plays an active role in conducting the investigations and seeking the truth. This system is followed in France and many other European countries (but not in the UK). Unlike in adversarial systems such as the UK and the USA, the role of the defence lawyer is to ensure that his/her client's rights are respected, but it is not to investigate the case. An important part of the trial can be based on written submissions.

Investigative Judge (*Giudice delle Indagini Preliminari*): In Italy this judge will decide on your detention or release pending trial and will ensure that the police and prosecutor do not violate your rights during the investigations.

Judge (*Giudice*): A person with authority to hear and decide on cases in a court of law.

Lawyer (*Avvocato*): A person whose profession is to give legal advice and assistance to clients and represent them in court or in other legal matters.

Judgment (*Sentenza*): A decision on a case provided by a judge or jury in a court of law.

Legal Aid (*Patrocinio a spese dello Stato*): Financial assistance provided to a person who needs a lawyer and who cannot afford to pay for one.

Offences (*Reati*)

Plea Bargain (*Patteggiamento*): A procedure which allows the defendant to plead guilty in exchange for a less severe sentence.

Police Custody (*Fermo – Arresto della Polizia Giudiziaria*): Detention of a suspect by the police after arrest.

Power of Attorney (*Mandato / Procura*): Written authorisation provided by one person to another, allowing them to make decisions on their behalf. This can include matters of business or private affairs.

Pre-trial Detention (*Custodia Cautelare*): Detention in police custody or in prison during the investigations (and often during the trial itself as well), which happens before the decision on guilt or innocence is made by the court.

Public Prosecutor (*Pubblico Ministero*): A judge who conducts a case against a person who is accused of a crime

Remand: The act of sending a person accused of a crime into police custody.

Sentence (*Pena/Condanna*): The punishment assigned to a person convicted of a crime as fixed by a court of law.

Supreme Court (*Corte di Cassazione*): The highest court in Italy, competent to hear challenges made to decisions of the appeals court and some decisions of the lower courts.

Surveillance Judge or Tribunal (*Magistrato di Sorveglianza/Tribunale di Sorveglianza*): The judge or panel that (when you are detained after your sentence has become final) guarantees your rights and supervise the application, revocation and modification of the conditions imposed on your release. They also decide on the possible application of alternative measures as well as on all the general benefits that may be granted to you (such as leave permits, leave permits for good conduct, permission to work outside the correctional institution, early release, conditional release, etc.).

Tribunal of Freedom (*Tribunale della Libertà or Tribunale del Riesame*): tribunal competent to decide upon your release pending trial.

Victim (*Persona Offesa*)

Warrant (*Mandato/Ordine*): A document issued by a legal or government official authorising the police to

make an arrest, search premises, or carry out some other action relating to the administration of justice.

Witness (*Testimone*)

INFORMATION ON CRIMINAL PROCEEDINGS AND DEFENCE RIGHTS IN ITALY

We have prepared these notes with the assistance of local criminal lawyers, who tried to describe how things happen in practice, i.e. in the real world. Even within one country, however, practice can vary a lot from one place to another and it is therefore possible that your experience will sometimes differ from the descriptions below. This document does not constitute legal advice and only provides general information. If you need advice in relation to your specific case, or if you are concerned about a possible violation of your rights, you should discuss this with your local lawyer.

1. ARREST AND INVESTIGATION

I. What are my rights upon arrest?

(a) Right to information:

Q1. Will the police inform me of my rights? Will this be done orally or in writing?

After your arrest, the police will inform you (orally) of your rights:

1. Your right to appoint a lawyer of your choice; if you do not know any lawyer in Italy, the investigative police will ask the local bar association (*Ordine degli Avvocati*) for a state appointed lawyer (*difensore di ufficio*) to be

appointed, who is selected from a database. In Italy, you must have a lawyer if you face criminal charges.

2. Your right to inform your family and your consulate of your arrest.

Q2. Do I have a right to be informed of the allegations/charges against me?

When you are arrested in the act of committing a crime, or immediately after a crime (*arresto* or *fermo*) you have no right to be informed of the allegations until an interrogation by the prosecutor or until the hearing for the validation of the arrest (*udienza di convalida*), which is held before a judge within four days of the arrest.

In other circumstances (i.e. when you are not caught in the act of committing an offence), the police will need a warrant for your arrest (a formal document authorising your arrest). They will show you the warrant, which contains information about the allegations against you, the evidence held against you, the reason that led to your arrest, etc.

(b) Right to inform people:

Q3. Do I have a right to have the consulate informed of my arrest?

If you are not Italian, you may ask the police (or the prison staff) to inform your embassy or consulate of your arrest. Some countries have a special agreement with Italy and will be automatically informed of your arrest. You usually will not be allowed to make the telephone call yourself.

Q4. Do I have a right to inform my family of my arrest?

After your arrest, the police, with your consent, will inform your family about your arrest and present location. You usually will not be allowed to make the telephone call yourself.

Note that, depending on which offence you are suspected of having committed, you may be subject to a special detention regime limiting or prohibiting phone calls to relatives or co-habitants for certain periods of time.

Q5. Do I have a right to a lawyer?

Yes, you have a right to a lawyer during all phases of the criminal proceedings. You can appoint one or two lawyers. If you do not know any lawyer, a defence counsel is automatically appointed by the police or by the court from a list prepared by the local bar association.

During the investigations, if you are not under arrest, you cannot be interviewed by the police in the absence of your lawyer. If an interview is conducted in the absence of your lawyer, the evidence obtained during this interview will not be admissible at trial. However, please note that it can be used to help the investigations. If you are under arrest, the interview must be conducted only by a judge or a prosecutor. Your lawyer must be informed but his attendance is not mandatory.

For other investigative acts (such as searches) your lawyer will be notified 24 hours in advance but his/her presence is not mandatory.

Q6. Do I have a right to a translator/interpreter?

If you do not understand Italian, you will be provided with an interpreter (free of charge) for any act/phase of the proceedings that formally requires your presence. Therefore, you do not have a general right to an interpreter appointed by the system.

You do not have a right to have the evidence translated into your mother tongue.

Q7. Do I have to talk to the police or may I remain silent during my interrogation? What consequences can my silence bear?

You should always ask your local lawyer for advice on what information you should share with the police.

If you refuse to answer the questions of the police, the prosecutor or the judge, this will be put on record. You have a right to remain silent and your silence cannot be used as evidence against you. However, if you do not cooperate with the police, this could affect the decision of the court when deciding, not on your guilt or innocence, but on your sentence.

Q8. When will I know about the exact nature of the accusations against me and whether my case will go to trial? Will I be allowed to access a file?

During the early stage of the investigation, you are only allowed to see your file if you need to challenge the decision of a judge to order your detention prior to your trial. Apart from this specific situation, you are not allowed to see the file until the end of the investigation.

You will only be fully informed of the exact charges against you at the end of the investigation (the length of which varies according to the type of crime).

At this stage, the prosecutor will look at all the evidence collected and will decide whether s/he has enough evidence to prosecute you (i.e. to send you to trial) or whether s/he should close the case.

For serious offences, the decision of the prosecutor to proceed with the trial must be confirmed by a judge (called *Giudice dell'Udienza Preliminare* or *G.U.P.*).

Q9. How long can I be kept in prison before my trial starts?

This will vary depending of the nature of the offence you have committed. For minor offences, you cannot be detained for more than six months prior to your trial.

Detention can be longer for more serious offences. By law, if your trial at the first instance has not been concluded within 18 months and you are still in detention, you must be released. In practice however, many people find themselves in pre-trial detention for up

to 36 months, if the offence is particularly serious. Italy has often been criticised by the European Court of Human Rights for the length of pre-trial detention (see Q20).

Q10. What should I expect from an interrogation?

Before any interrogation, you must be warned that anything you say to the police (or to the prosecutor, or to a judge) can be used as evidence against you during your trial.

As said, when you are under arrest or in custody, you can only be questioned by a judge or a prosecutor. When a judge or prosecutor decides to question you, s/he must inform your lawyer in advance (whose presence is allowed, but not necessary for the validity of the interrogation).

The police can only question you if you were invited to come for an interview but are not under arrest (so you have not been shown a warrant for your arrest). In this case a lawyer must be present.

2. LEGAL REPRESENTATION

For general information on how to appoint a lawyer, please refer to our “Arrested in Another Country?” note.

Q11. How can I find a lawyer?

You can find details of Italian lawyers through the bar association. See our useful links for the contact details.

You can also contact your consulate and ask whether they have a list of lawyers who speak your language.

FTI may also be able to assist you by giving you the names of local criminal lawyers.

Q12. What is the role of my lawyer? Will s/he investigate the case?

Your lawyer will give you legal advice and, if needed, s/he will represent you in court. Your lawyer, or his/her substitute, must be present at the trial hearings.

Your lawyer has the right to examine and keep a copy of the investigative measures ordered by the prosecutor and/or carried out by the police, and may also be present during searches and other investigative acts.

Your lawyer can also carry out investigations:

- S/he can call witness which s/he wants to bring to trial.
- S/he can ask for useful information from the people concerned by the case;
- s/he can request useful documents from the Public Administration; and
- s/he can access restricted locations in order to collect evidence and proceed with defence investigations. Note that this will require the authorisation of the judge and the prosecutor.

Q13. I cannot afford to pay for a private lawyer: what should I do? (Is there legal aid? How should I apply? What are the criteria to be eligible? What is covered by legal aid?)

Those earning less than a given amount per year (as of February 2013, it is €10,766.33; approx £9300; approx \$14600) are entitled, on presentation of a written request, to appoint a lawyer of their choice (but already enrolled on a special list kept by the local bar association) who will be paid by the State (at the end of the proceedings).

Applications for legal are made to the court or tribunal that is handling your case, but if you are in detention, you may also hand in your application to the prison staff or the governor.

If legal aid is granted, it covers the preparation of the trial and attendance at trial, and it also covers legal representations during specific investigative acts (such as searches).

There is in principle no legal aid for those suspected of organised crime. The reason given is that there is an assumption that the organisation will pay for legal representation.

If you are a non-EU citizen, in order to apply for legal aid, you have to produce an official statement from your consulate to show your personal income at home. Some consulates may not agree to do so; if this is the case, ask your lawyer for further advice.

Q14. I am unhappy with my lawyer. How can I change lawyer? How can I complain about my lawyer?

A good first step is to speak to your lawyer about your concerns. If that does not resolve the issue, you can complain about your lawyer and seek to have another lawyer appointed.

You can dismiss and change your lawyer at any time. You have a general right to engage lawyers of your choice. In order to change your lawyer, you simply have to revoke (even by an oral statement before the judge/court at the hearing or to the prosecutor/police officer/prison officer) his/her power of attorney. This is the same whether you have a privately appointed lawyer or a state appointed lawyer.

If you would like to complain about your lawyer, you need to complain in writing to the bar association. See the useful links section for contact details.

3. PRE-TRIAL MATTERS

3.1 Pre-trial matters: detention

The information given below is specific to Italy. For general information and tips about how to obtain your release prior to your trial, please refer to our note on “Release Pending Trial”.

Q15. Will I have to stay in prison until my trial starts?

You may have to stay in prison until your trial starts.

Reasons for keeping people in custody are to prevent them from:

- (1) Failing to attend their trial (i.e. absconding);
- (2) Tampering with evidence or interfering with witnesses;
- (3) Committing another offence; or
- (4) Being in danger from others or themselves.

Q16. Are there alternatives to detention pending trial?

Yes, there are alternatives to pre-trial detention: there are custodial measures (i.e. house-arrest *arresti domiciliari*) and non-custodial measures, which offer conditional release pending trial.

Possible conditions include:

- Being prevented from leaving the country,
- Being obliged to report to a specific police office at prescribed times,
- Being prohibited from entering specific places without previous authorisation of the court,
- Being obliged to remain within the boundaries of a specific town, etc.;

- Being obliged to avoid contact with specific persons;
- Being obliged to stay in a mental institution or drug rehabilitation centre;
- A ban on the exercise of parental authority;
- A ban on the exercise of public office or service; or
- A temporary ban on the exercise of a professional activity.

In practice, foreign nationals are virtually always considered a flight risk and it is therefore rare for them to be granted a non-custodial measure. It is similarly unlikely they would be detained under house arrest if they do not have relatives or close friends in Italy willing to house them.

Whether or not you are allowed to return to your home country pending your trial will depend on the conditions imposed on you.

Q17. How and when can I apply for release until trial?

Your detention prior to the trial or the conditions imposed on you are decided by the judge in chamber (i.e. not in open court), and neither you nor your lawyer will be present.

You can apply (within 10 days) to a court called Tribunal of Freedom (*Tribunale della Libertà* or *Tribunale del Riesame*) for a full review of the validity of the conditions imposed on you. Decisions of the Tribunal of

Freedom can be challenged before the Supreme Court (*Corte di Cassazione*) but only upon points of law.

The decision to place you in detention or to impose conditions upon your freedom is not subject to periodic reviews, but you (or your lawyer) may apply at any time for a review by a judge (the judge who has ordered your detention or imposed conditions on you), if you believe that your situation has changed and that the measure imposed is no longer necessary or well-founded.

Q18. Can I go back to my home country while on bail?

Yes you can, unless the judge has imposed conditions to your release pending trial which make it impossible, such as taking your passport.

Q19. What will happen if I breach my bail conditions?

Breaching the conditions imposed by the judge can lead to the application of a harsher measure (imprisonment) and may even be considered a criminal offence.

3.2. Pre-trial matters: timing

Q20. How long can I be kept on remand (i.e. in prison) before my trial starts?

The length of time you can be kept in prison depends on the seriousness and complexity of the alleged offence. According to the law, you cannot be kept in prison for more than 18 months until the end of the proceedings of first instance (i.e. this excludes any appeals).

In practice, however, people are often kept in custody prior to their trial for much longer than 18 months and Italy has been criticised by the European Court of Human Rights for these delays. Investigations and the trial at first instance often take three years.

If your pre-trial detention exceeds the maximum period allowed by the law, make sure to raise this with your lawyer and ask him/her to challenge your detention on that basis.

The period of time spent in detention before the end of your trial is deducted from the sentence to be served.

Q21. There are always delays with my case, does that mean my lawyer is doing a bad job?

No, it does not necessarily mean that your lawyer is doing a bad job. The duration of the trial depends on the complexity of the case and the investigations, on the co-operation of the people concerned, and it may also depend on the actual workload of the court.

3.3. Pre-trials matters: pleading guilty

Q22. Can I plead guilty? What are the consequences of pleading guilty?

In Italy you are not asked to plead guilty/not guilty, but you may opt for a plea bargain (*patteggiamento*).

Plea bargaining allows you to reach an agreement with the prosecutor and usually results in a less severe sentence and no trial. The maximum amount that can be discounted is one-third of the sentence you would otherwise have received. A judge has to validate and

confirm the plea bargain and the same judge, if s/he believes that you are in fact innocent, could also acquit you.

You should always seek advice from a lawyer before trying to obtain a plea bargain as the consequences on the outcome of your case are very serious. As there is no proper trial, you will not be able to present a defence if you enter a plea bargain; you will not be able to appeal on the merits of the case; and can only appeal on limited points of law or procedure.

You need to decide that you want a plea bargain during the investigations or during the preliminary hearings. Once your trial has started, it is usually too late.

Q23. How often will the decision to keep me in custody be reviewed?

There is no automatic review of the decision to keep you in detention but you can apply at any time to request such a review, if you believe that changes in your situation mean that detention is no longer justified.

Q24. What is a fast track trial? Should I opt-in for one?

You should always seek advice from your local lawyer before requesting a fast track trial

A fast track trial, or summary trial (*giudizio abbreviato*) is a procedure where the trial takes much less time as (usually) no witnesses are called and the prosecutor and your defence counsel only argue about the evidence present in the case file. You can appeal against the decision.

The benefit of this short procedure is the discount (one-third) that you will be granted on the sentence in case of conviction.

4. THE TRIAL

Q25. What happens at the trial?

After the closure of the investigations but in advance of the trial, in a timely and confidential manner, you will be given information regarding the nature of, and reasons for, the charges brought against you and you will be informed of the date of the hearing. You should be given the time and means to prepare your defence.

During the trial, both the prosecutor and your lawyer argue their case before the judge/court.

Witnesses are first examined by the party who called them; then cross-examined by the counterparty/ies; and finally re-examined directly by the first party.

It is not uncommon for the alleged victim(s) of the crime to take part in the criminal trial (see below for more information on the role of the victim). In this case, additional questions may be asked by the victim's lawyer. Your defence lawyer and the prosecutor can also question the victim.

The judge can also address questions to the witnesses.

You will be provided with an interpreter if you do not understand or speak the language of the proceedings.

If the court is convinced beyond any reasonable doubt that you are guilty, you will be convicted; if not, the judge will acquit you (and therefore release you if you are detained).

The decision of the court will be given orally on the last day of the trial. The court must also give the factual and legal basis of its decisions in writing, but this will come later (often weeks later and it can take up to three months and in practice sometimes even more).

Q26. Do I have to be present?

No, you have no obligation to be present. It is possible for the judge/court to register your absence (*contumacia*) and your defence counsel will act on your behalf.

Q27. Can I ask for the trial to take place in my home country?

No.

Q28. Are there jurors at trial?

The criminal court competent for hearing serious cases (*Corte di Assise*) is composed of a panel of judges with a majority of laymen (i.e. non-professional) judges.

Q29. Can my lawyer call and cross-examine witnesses?

Yes, s/he can.

Q30. I do not speak the language of the court, do I have a right to an interpreter? Is it free?

Yes, you have a right to an interpreter and it is free of charge.

Q31. Will the written evidence be translated for me?

You are not entitled to have all the documents of the proceedings translated; your interpreter will translate the evidence for you orally. In practice, only the most important evidence will be read aloud at trial and therefore this is all the interpreter will translate. If you want more evidence to be translated, you need to arrange it privately and you have to pay for it.

Q32. Will the interpreter also assist me if I need to talk to my lawyer?

The interpreter appointed by the judge/court will assist you when you talk privately with your lawyer during court hearings. If you are not able to communicate with your lawyer outside of the court or police station, then you must appoint a private interpreter of your choice and you must pay. If you have been granted legal aid, you may also ask to have an interpreter funded by the state to be appointed for you.

Q33. Why is the victim taking part in the trial?

Victims are often called as witnesses.

If the alleged offence has caused damages to the victim, the criminal court can order damages to be paid to the victim without the need for a separate legal case on the

civil courts. For this reason, victims often decide to take an active (although limited) part in the trial, but they have no obligation to do so.

Q34. Can I receive a copy of the judgment in my mother tongue?

You are not entitled to receive the judgment in your language from the court; however, your lawyer/private interpreter may provide that for you. This will not be covered by legal aid.

Q35. I was tried in my absence and was not informed of this, what can I do?

In such a case a lawyer will have been nominated by the system to act on your behalf during the trial.

You may attend your proceedings at any time (as soon as you become aware of it), and if a final sentence was given in your absence and you were not aware of the proceedings, then specific rules are provided for re-opening your case. In practice it may however be difficult to obtain this. The law allows you to appeal against the conviction if you had not been properly informed of the trial.

5. APPEALS

Q36. I am not happy with the decision, can I appeal against it?

You should always seek legal advice if you intend to appeal against your conviction or sentence as appeals

can be very technical and complicated, and there are strict time frames to respect.

It is always possible to appeal against a decision (either against the conviction itself or against the sentence) of the First Instance Court. The prosecutor, the victim and yourself (as well as your lawyer) have the right to lodge an appeal against a court decision. Additionally, a party that has experienced damages as a result of the crime and any person liable for paying the damages can lodge an appeal.

If you appeal against your sentence, you are not usually allowed to submit new evidence. There are, however, some exceptions, which your lawyer should explain.

You do not have a right to have your appeal heard by the appeal court; some appeals are declared inadmissible (e.g. appeals that were not submitted on time, appeal grounds not explained, or lack of information about the initial court decision etc.).

The last resort is an appeal on point of law only and it can be lodged to the Supreme Court (*Ricorso per Cassazione/Corte di Cassazione*).

Q37. How can I appeal?

It is very important that you tell your lawyer as soon as you are made aware of the decision if you intend to appeal. Time frames to appeal are very technical and without the assistance of a lawyer, you may miss them.

In principle, you can appeal yourself or ask your lawyer to do it on your behalf. It is however in practice highly

recommended that you seek the assistance of your lawyer if you intend to appeal.

Your appeal needs to be submitted to the court in writing. Time frames for submitting an appeal vary depending on the procedure and usually are 15 days, 30 days or 45 days after the day when the merits of the decision are published.

Q38. Do I need to pay my lawyer more money if there is an appeal?

Yes, unless your initial agreement stated that the cost of the appeal would be covered. Further, if your appeal fails, you might be ordered to pay the court costs. If you are entitled to legal aid, then this will cover your appeal.

Q39. What is the time frame for the appeal to take place?

It varies a lot from one case to another, depending on the complexity of the case, and how busy the courts are, but the appeal stage normally lasts up to two and a half years.

Q40. Could things get worse during the appeal?

Appeals brought to a court of appeal can result in the decision being upheld (i.e. confirmed) or a different decision can be made (the former decision can be overturned, your sentence can be increased or decreased). The Supreme Court (*Corte di Cassazione*) can make similar decisions, but it can also decide to send the case back to an appeal court.

If the appeal is brought only by you (or your lawyer), the court will review the conviction and the sentence and can acquit you or lower your sentence but not increase it. It is important to note, however, that if the appeal is brought by the prosecutor (or both by you and the prosecutor) the court could increase your sentence.

Q41. Can the prosecution appeal against an acquittal?

The prosecutor is allowed to appeal against a conviction. Prosecutors and victims must respect the same deadlines to submit their appeals as the defendant.

Q42. Is it possible to appeal against a decision of the court of appeal? Are there other ways to obtain the revision of a case?

If you want to challenge the decision made by an appeal court, you can lodge an appeal to the Supreme Court (*Corte di Cassazione*). The Supreme Court is only competent to hear questions about points of law (i.e. it will not review the evidence or discuss the merits of the case).

If the Supreme Court overrules the appeal decision, the proceedings can be referred back to the appeal court, which will have to reach a new decision.

6. PRISON CONDITIONS

Q43. What are prison conditions like?

Prison conditions can vary between different facilities.

The Ministry of Justice's website has a section which provides information about the Italian prison system: <http://www.giustizia.it/>. There is no independent body in Italy which monitors prison conditions.

Q44. Do I have rights as a prisoner? Where can I find out about my rights?

Yes, you have rights as a prisoner, such as the right to security, and the right to food and water.

The prison staff should inform you of your rights (and you may be informed of them in your own language in writing in a document called the Letter of Rights: the s.c. "*Carta dei diritti e dei doveri dei detenuti e degli internati*"). You can also ask your lawyer or your consulate for further information. Some local organisations may also be able to help you, please refer to our useful links section.

Q45. What can I do if my rights are violated?

You can refer to the specific ombudsman for the relevant prison system which takes care of prisoners' rights (*Garante dei diritti dei detenuti*). Please refer to our useful links section for more information.

Q46. Where can I get assistance regarding my welfare issues? Regarding abuse and mistreatment?

Although it is part of the ombudsman's mandate to assist you with welfare issues, in practice, there are very few ombudsmen and they are unable to provide much assistance.

Your government may be able to assist you, so it is worth raising your concerns with your consulate.

Please refer to our useful links section for local organisations which may help.

7. POST-TRIAL MATTERS

Q47. Can I get my sentence reduced?

Yes, you can obtain a reduction of your sentence if you challenge the court decision by way of an appeal to the appeal court or Supreme Court (*Corte di Cassazione*).

Q48. What would help me get an early release?

Early release (*liberazione anticipata*) can be granted if you have participated in a re-educational course, and it consists of a reduction of 45 days for every six months of detention.

You can be granted conditional release (i.e. parole, *liberazione condizionale*) if your behaviour indicates that your release would be successful. Conditional release can only be granted if you have already served 30 months in prison and at least half of the imposed

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sentence, and if the remainder of the sentence does not exceed five years. If you have prior convictions, then you will be expected to serve more time in prison before an early release.

If you are serving a life sentence (*ergastolo*) you can also be granted conditional release, as long as you have served at least 26 years of your sentence.

Conditional release is only granted if you have fulfilled the civil duties resulting from the offence (i.e. paid any damages that were due to the victim) or can prove that it was impossible to do so.

It is possible to apply for early and conditional release. Applications must be made to a special judge/tribunal (*Magistrato di Sorveglianza / Tribunale di Sorveglianza*). Although you don't need a lawyer to make the application, you must have a lawyer at the subsequent hearing.

Q49. I have been sentenced to pay a fine: what will happen if I do not pay it?

If you were convicted to pay a fine and cannot do it, it is a good thing to first try to obtain the authorisation to pay by instalments (i.e. not all at once).

If you fail to pay your fine, a compulsory procedure to force you to pay your debts will begin. In case of insolvency, the monetary penalty that has not been paid may result in some deprivation of liberty (controlled release) or an obligation to do community service for public or private entities.

Controlled release involves the application of strict limitations on your freedom of movement, together with other strict rules such as being prohibited from going beyond a prescribed distance from your place of residence, an obligation to sign in at the local police station at least once a day, the suspension of your driver's licence and/or the seizure of your passport.

Q50. Can I ask for a transfer to my home country?

You can ask to be transferred to your home country, but transfers are usually at the discretion of both the state where you are detained and the state to which you want to be transferred.

Note that transfers are usually only possible if there is an agreement in place between the state where you serve your sentence and your home country (or the state to which you want to be transferred).

If you would like to receive more information about transfers, please request our note of advice on prisoner transfers.

Q51. I have exhausted all legal remedies, is it possible to get my case reviewed?

You may be able to apply for an extraordinary review (*Revisione*) if new evidence of your innocence is found. The court that is competent to hear such reviews is an appeal court located in a different district than the appeal court that previously considered your case.

Q52. I have exhausted all legal remedies: can I apply for a pardon?

A sentence can be commuted following a pardon, amnesty or remission of penalty. The President of the Italian Republic has power to grant an individual pardon. In practice, presidential pardons are extremely rare.

The Parliament can grant amnesties. If they do so, then you may be released from prison but your conviction will still appear in your criminal record.

Q53. Can I be expelled instead of serving my sentence?

You should check your status with your lawyer as this is a very technical matter and it will depend on your individual circumstances.

In some limited circumstances, the judge can replace detention with an alternative measure, such as expulsion, together with a prohibition from returning to Italy. This is only possible if your sentence does not exceed two years and you do not possess a valid permit to stay in Italy (as a result, EU citizens cannot be expelled).

Q54. Is there a risk that I will be deported after serving my sentence?

As a security measure, deportation it is likely to be set. If you violate this order (i.e. you escape and stay illegally in Italy), you can be imprisoned for a period from one to four years.

Q55. Are there alternatives to detention for people who were given a prison sentence?

Yes, there are alternatives, including:

- Probation (*affidamento in prova al servizio sociale*) which allows for your release under some conditions. You will be supervised by the social services.
- House-arrest (*detenzione domiciliare*) allows convicted people to serve part or their entire sentence at home (i.e. you will be prevented from leaving your home). It is usually granted to pregnant women, people older than a certain age, or who are terminally ill, or who are sole carers of young children (e.g. the spouse is dead or unable to care for the children).
- Semi-custody, also called open prison in common law countries (*semilibertà*). It allows you to work outside the prison during the day, but you need to go back to prison at night.

Please note that you will not be allowed to request a prisoner transfer if you are serving a non-custodial sentence. However, new European legislation should allow convicted people to serve their non-custodial sentences (e.g. above mentioned measures) in their home countries. These provisions will only apply to people who live in the European Union and should be implemented in December 2012.

Questions about early release and alternatives to detention are decided by special judges or courts (*Magistrato di Sorveglianza* and *Tribunale di*

Sorveglianza, each with different tasks). These bodies guarantee your rights and supervise the application, revocation and modification of the conditions imposed on your release. They also decide on the possible application of alternative measures as well as on all the general benefits that may be granted to you (such as leave permits, leave permits for good conduct, permission to work outside the correctional institution, early release, conditional release, etc.).

Early release measures are usually granted upon application by the prisoner, unless there is a negative report about you from the prison services (e.g. you are considered to be dangerous, or not ready for rehabilitation etc.).

Q56. I have been acquitted (or an Italian court has ruled that there were no valid grounds for my precautionary custody), may I claim compensation?

You are entitled to compensation if:

- You were wrongly detained (in custody or under house arrest) prior to or during a trial (i.e. either no charges have been pressed, or you were acquitted; or the Tribunal of Freedom has ruled that some legal requirements for your custody/house arrest were missing); or
- You were acquitted after a review of your case (following a final conviction).

Note that compensation for lengthy proceedings may also be available if you make an application to the European Court of Human Rights.

USEFUL LINKS

ORGANISATION	MANDATE	CONTACT DETAILS
LAW GOVERNING BODIES		
National Bar Council	<p><u>Mandate:</u></p> <p>The National Bar Council is the representative public body for Italian lawyers.</p> <p><u>Additional information:</u></p> <p>The body is responsible, among other things, for keeping updated the lawyers' register and taking care of tariffs and fees.</p> <p><u>Languages:</u></p> <p>Italian</p>	<p><u>Website:</u></p> <p>www.consiglionazionaleforense.it</p> <p>E: urp@consiglionazionaleforense.it</p> <p>T: +39 06 977488</p> <p>F: +39 06 97748829</p> <p>Consiglio Nazionale Forense, via del Governo Vecchio, 3 – 00186 Roma</p>
Ministry of Justice	<p><u>Mandate:</u></p> <p>Ministry of Justice is a department of the government of Italy. Headquartered in Rome, it is headed by the Minister of Justice.</p>	<p><u>Website:</u></p> <p>http://www.giustizia.it/</p> <p>F: +39 06 68851</p> <p>Ministero della Giustizia, Arenula 70, 00186 Rome</p>

ORGANISATION	MANDATE	CONTACT DETAILS
Garante dei diritti dei detenuti (Authority for the protection of detainees' rights)	<p><u>Mandate:</u></p> <p>The authority seeks to defend the rights of detainees by asking other relevant authorities for clarifications and prompting them to adopt the necessary actions. This ombudsman is not a national authority, but it has offices at a regional and county level.</p> <p><u>Criteria to receive assistance:</u></p> <p>None</p> <p><u>Additional information:</u></p> <p>The authority can hold talks with detainees and can visit prisons without previous authorisation.</p> <p><u>Languages:</u></p> <p>Italian</p>	<p>Regional Contacts:</p> <p>Campania</p> <p>E: garante.detenuti@consiglio.regione.campania.it T: +39 81 778 3852/3132</p> <p>Lazio</p> <p>E: info@garantedirittidetenutilazio.it T: +39 6 51531120</p> <p>Lombardia</p> <p>E: difensorecivico@consiglio.regione.lombardia.it T: +39 267482 465/467</p> <p>Marche</p> <p>E: Difensore.civico@regione.marche.it T: +39 71 2298 483</p> <p>Sicilia</p> <p>E: info@garantedirittidetutenutisicilia.it T: +39 91 7075 478/107</p> <p>38</p>

ORGANISATION	MANDATE	CONTACT DETAILS
NGOs		
- LEGAL ADVICE		
TDL non-profit	<p><u>Mandate:</u></p> <p>Non-profit association providing useful information and assistance in the areas of Labour Law, Civil Law and Immigration Law.</p> <p><u>Criteria to receive assistance:</u></p> <p>Assistance is provided only for those in real need – e.g. employees, immigrants etc. – and within the remit of the organisation's work.</p> <p><u>Additional information:</u></p> <p>Free legal advice is given through a network of specialised lawyers for those in real need.</p> <p><u>Languages:</u></p> <p>Italian, Spanish</p>	<p><u>Website:</u></p> <p>www.tdlnonprofit.org/</p> <p>E: info@tdlnonprofit.org</p> <p>T: +39 06 6220 6965</p> <p>M: +39 366 5315 985</p> <p>Piazzale Clodio, 00195 Roma</p>
Progetto Diritti	<p><u>Mandate:</u></p> <p>The organisation provides assistance to people in need, including immigrants, people living in deprived communities, disabled people, employees and unemployed.</p> <p><u>Criteria to receive assistance:</u></p> <p>Assistance is provided for those in real need</p>	<p><u>Website:</u></p> <p>http://www.progettodiritti.it/</p> <p>E: segreteria@progettodiritti.it</p> <p>F: +39 06 298777</p> <p>Via E.Giovenale, 79 Roma, Pigneto</p>

ORGANISATION	MANDATE	CONTACT DETAILS
	<p><u>Additional information:</u></p> <p>Based in Rome, the organisation helps immigrants with criminal proceedings and other issues related to family law, labour law, citizenship and VISAs.</p> <p><u>Languages:</u></p> <p>Italian</p>	
Stranieri in Italia	<p><u>Mandate:</u></p> <p>Website offering useful information to foreign people in Italy.</p> <p><u>Additional information:</u></p> <p>The website offers a large amount of information on the rights and legal status of foreign citizens. The website forum could be used to make queries to experts and specialists.</p> <p><u>Languages:</u></p> <p>Italian</p>	<p><u>Website:</u></p> <p>http://www.stranieriinitalia.it/</p> <p><u>Forum:</u></p> <p>http://www.stranieriinitalia.it/forum.html</p> <p>E:</p> <p>redazione@stranieriinitalia.it</p> <p>Via Maroso 50 Roma 00142 Italy</p>

ORGANISATION	MANDATE	CONTACT DETAILS
Italia - Razzismo	<p><u>Mandate:</u></p> <p>Website offering information and materials on immigration law and the rights of immigrants.</p> <p><u>Additional information:</u></p> <p>The website also refers to the Arci legal advice service, which could be used to make queries on immigration law and related matters.</p> <p><u>Languages:</u></p> <p>Italian</p>	<p><u>Website:</u></p> <p>http://www.italiarazzismo.it</p> <p>E: info@italiarazzismo.it</p> <p><u>Arci legal advice:</u></p> <p>T: +39 800 99 77 99 (not available from overseas)</p> <p>E: immigrazione@arci.it</p>
- HUMAN RIGHTS		
Amnesty International (Italy)	<p><u>Mandate:</u></p> <p>Amnesty International is a campaigning organisation. Its aim is to protect people wherever justice, fairness, freedom and truth are denied. AI's campaigns differ from country to country.</p> <p><u>Cost:</u></p> <p>Free</p> <p><u>Additional information:</u></p> <p>If you have concerns about human rights issues in any particular country, or wish to report instances of human rights abuse, you should contact the Amnesty International Secretariat which is the research and policy headquarters, based in London.</p>	<p><u>Website:</u></p> <p>http://www.amnesty.it</p> <p>E: info@amnesty.it</p> <p>T: +39 06 449 01</p> <p>F: +39 06 449 02 22</p> <p>Via Giovanni Battista De Rossi 10 Roma 00161</p>

ORGANISATION	MANDATE	CONTACT DETAILS
	<u>Languages:</u> Italian (Can also contact Amnesty in your own country)	
A Buon Diritto	<u>Mandate:</u> The organisation seeks to promote the enforcement of those fundamental rights that are recognised by our legal system, but are not adequately protected. <u>Languages:</u> Italian	<u>Website:</u> http://www.abuondiritto.it/ Via Lima 22 Roma 00198 T: +39 06 8535 6796 F: +39 06 841 4268
Gruppo Abele	<u>Mandate:</u> The organisation promotes social justice in general and offers help in a number of areas, including immigration, drugs addiction and conflict mediation. <u>Languages:</u> Italian	<u>Website:</u> http://www.gruppoabele.org T: +39 011 3841011 /1066 F: +39 011 3841031 Gruppo Abele Onlus corso Trapani, 91/b 10141 Torino <u>Other contacts:</u> segreteria@gruppoabele.org

ORGANISATION	MANDATE	CONTACT DETAILS
Archivio “Pace diritti umani” – Peace and Human Rights	<p><u>Mandate:</u></p> <p>The organisation seeks to promote research and interdisciplinary studies on the rights of persons and peoples, peace, democracy and good government.</p> <p><u>Languages:</u></p> <p>Italian, English</p>	<p><u>Website:</u></p> <p>http://unipd-centrodirittumani.it</p> <p>Università di Padova - Centro diritti umani / Archivio Pace Diritti Umani</p> <p>Via Martiri della Libertà, 2, 35137, Padova PD, Italy.</p> <p>T : +39 49 827 1817</p> <p>F : +39 49 827 1816</p>
- GENERAL ADVICE FOR PRISONERS		
Cittadinanzattiva	<p><u>Mandate:</u></p> <p>Website offering useful information regarding the Italian Justice system.</p> <p><u>Cost:</u></p> <p>Free</p> <p><u>Additional information:</u></p> <p>The organisation gives information and assistance on cases of injustice and unfairness, on the structure of the legal system, excessive length of the proceedings, family law, labour law, immigration and privacy.</p>	<p><u>Website:</u></p> <p>www.cittadinanzattiva.it/homepage/giustizia.html</p> <p><u>Assistance:</u></p> <p>E: pit.giustizia@cittadinanzattiva.it</p> <p>Via Flaminia, 53 - 00196 Roma, Italy</p> <p>T: +39 06 36718484</p> <p>F: +39 06 36718333</p>

ORGANISATION	MANDATE	CONTACT DETAILS
	<u>Languages:</u> Italian	
PRISONERS' WELFARE		
Research Institute at the University of Florence	<u>Mandate:</u> Research institute at the University of Florence studying penalties, the penitentiary system and prison conditions and helping prisoners. <u>Languages:</u> Italian	<u>Website:</u> www.altrodiritto.unifi.it/ E: adir@altrodiritto.unifi.it c/o Dipartimento di Teoria e Storia del Diritto Via delle Pandette 35 50127 - Firenze Italy

ORGANISATION	MANDATE	CONTACT DETAILS
Associazione Antigone	<p><u>Mandate:</u></p> <p>The organisation seeks to protect the rights of individuals and the guarantees within the justice system. Members of the organisation include magistrates, professors, teachers, MPs and citizens who have an interest in criminal justice.</p> <p><u>Additional information:</u></p> <p>The organisation holds and organises conferences on the functioning and flaws of the criminal justice system and campaigns for changes in the legislation.</p> <p><u>Languages:</u></p> <p>Italian</p>	<p><u>Website:</u></p> <p>http://associazioneantigone.it</p> <p>T: +39 06 44363191</p> <p><u>Queries:</u></p> <p>http://www.osservatorioantigone.it/index.php?option=com_contact&task=view&contact_id=1&Itemid=65</p> <p>Associazione Antigone, Roma, Italy.</p>
Gli Amici di Zaccheo	<p><u>Mandate:</u></p> <p>The charitable organisation mostly works in the Milan Bollate Prison and helps detainees in the process of rehabilitation and reintegration in society. Volunteers pay regular visits to detainees and help them solve some of the problems associated with their detention.</p> <p><u>Additional information:</u></p> <p>The organisation offers visits to detainees and assistance to the families of detainees. It also promotes courses and cultural activities for detainees inside and outside prisons.</p>	<p><u>Website:</u></p> <p>http://www.amicidizaccheo-lombardia.it/</p> <p>T: +39 0233402990</p> <p><u>Queries:</u></p> <p>http://info@amicidizaccheo-lombardia.it</p> <p>Associazione "Gli amici di Zaccheo" Via T. Calzecchi 220133 Milano</p>

ORGANISATION	MANDATE	CONTACT DETAILS
	<u>Languages:</u> Italian	
TRANSLATORS AND INTERPRETERS		
ITALIAN ASSOCIATION OF TRANSLATORS AND INTERPRETERS	<u>Mandate:</u> <u>Languages:</u> Italian	<u>Website:</u> www.aiti.org M: +39 340 697 90 89 c/o Studio Bianchi Viale delle Milizie 9 00192 Roma <u>Regions:</u> Emilia-Romagna: Via Scalabrini 35 F 29121 Piacenza E : www.emilia-romagna.aiti.org T: +39 0523 321 731 M: +39 333 239 40 22 Friuli-Venezia Giulia: Via Petrarca 3 33100 Udine M: +39 339 5758453 Lazio (+ Puglia/Molise): Via degli Artificieri 38 00143 Roma

ORGANISATION	MANDATE	CONTACT DETAILS
		<p>T: +39 774 534565 E : aiti-lazio@aiti.org</p> <p>Liguria (+ Sardegna)</p> <p>Piazza C. Colombo 3/16A 16121 Genova</p> <p>T: +39 10 8970014 F: +39 10 8935857 E : liguria.aiti@aiti.org</p> <p>Lombardia Via Pagliano 1 20149 Milano</p> <p>T: +39 2 49 63 39 62 E : aiti-lombardia@aiti.org</p> <p>Marche (+ Umbria/Abruzzo)</p> <p>Strada della Madonnetta 60 60131 Ancona</p> <p>T : +39 71 280 18 21 F : +39 71 250 99 09 E : aiti-marche@aiti.org</p> <p>Piemonte-Valle d'Aosta</p> <p>c/o Studio Rinaldi Corso Peschiera 229 10141 Torino</p> <p>M: +39 340 700 76 06 E : aiti-pvda@aiti.org</p>

ORGANISATION	MANDATE	CONTACT DETAILS
		<p>Sicilia (+ Calabria/Basilicata)</p> <p>Via Umberto 134 95129 Catania</p> <p>T: +39 95 2166488 F: +39 6 233 219 691 E : aiti-sicilia@aiti.org</p> <p>Toscana</p> <p>Via Slataper 10 50134 Firenze</p> <p>E : aiti-toscana@aiti.org</p> <p>Veneto-Trentino Alto Adige</p> <p>Via Balzana 10 30035 Mirano</p> <p>T: +39 41 570 19 65 E : presidenza@vetaa.aiti.org</p>

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If you think that an important question is not covered in this fact sheet, please let us know.

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wherever they are accused**

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