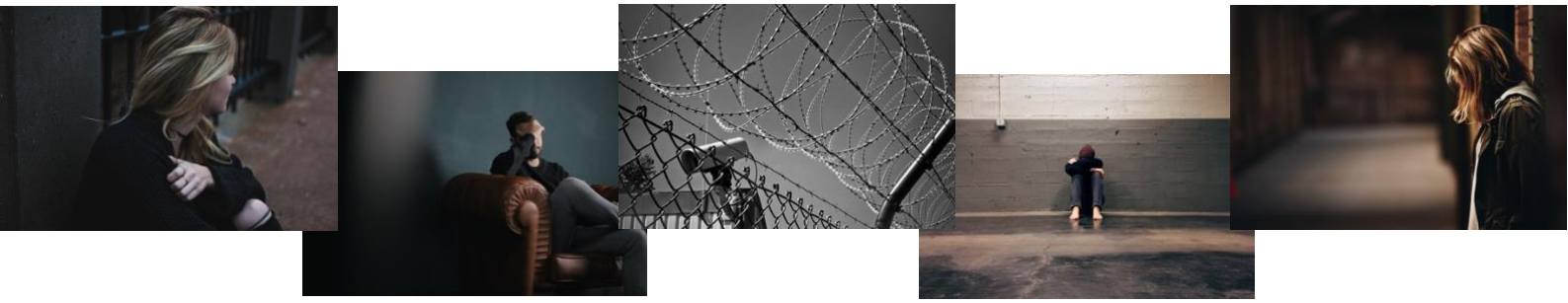

ARISA: Assessing the Risk of Isolation of Suspects and Accused

COUNTRY REPORT ON THE FACTORS AFFECTING THE SOCIAL STATUS OF SUSPECTS AND ACCUSED

ITALY

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1. Research methodology

This report was designed to develop and improve understanding of the process of judicial decision making on pre-trial detention in Italy.

In order to reach a correct development of the country report, a **study of the Italian criminal** law system is necessary. It is crucial to understand above all how the system is developed through laws, regulations and implementation programs (of laws). Furthermore, we made use of some **semi-structured interviews** submitted to lawyers and community operators to complete the research and to show what happens in practice.

Three people agreed to take part in a semi-structured interview. The persons were selected for their professional status and knowledge of an extensive experience in non-custodial measures. Interviewees were informed about the nature of the interview and were provided with an overview of the questions to be addressed in advance. They were also informed that the participation was confidential and anonymous. The interviews were about 1.5 hours in length. The aim of the interviews was to contribute to: integrate the knowledge on the topic; identify and assess different practices of alternative sanctions; gain useful information and criteria to assess the best practices in the field. The opinions of the experts do not represent any official position of any governmental or non-governmental organisation.

2. Desk research

2.1. Context

Italy is a **Parliamentary Republic** from 1946. The **President of Italy**, currently Sergio Mattarella since 2015, is the Italian head of State. The President is elected for a single seven-years mandate by the Parliament of Italy in joint session. Italy has a written democratic constitution, resulting from the work of a Constituent Assembly formed by the representatives of all the anti-fascist forces that contributed to the defeat of the Nazi and Fascist forces during the Civil War. Italy has a parliamentary government based on a proportional voting system. The **parliament** is **perfectly bicameral**: the two houses, the **Chamber of Deputies** and the **Senate of Republic**, have the same powers. The **Prime Minister**, officially President of the Council of ministers, is Italy's head of government. The Prime Minister and the cabinet are appointed by the President of the Republic, but they must pass a vote of confidence in Parliament to come into office. The incumbent Prime Minister is Paolo Gentiloni of the Democratic Party. The prime minister is the President of the Council of Ministers—who holds effective executive power— and he must receive a vote of approval from it to execute most political activities. The office is similar to those in most of the other parliamentary systems, but the prime minister is not authorised to request the dissolution of the Italian Parliament. Another difference with similar offices is that the overall political responsibility for intelligence is vested in the President of the Council of Ministers. By virtue of that, the Prime Minister has exclusive power to: coordinate intelligence policies, determine the financial resources and strengthen the national cyber security; apply and protect State secrets; authorise agents to carry out operations, in Italy or abroad, in violation of the law.[1] With around **61 million inhabitants**, Italy is the 4th most populous EU Member State. Until the early 1980s it was a linguistically and culturally homogeneous society. Then, Italy began to attract substantial flows of foreign immigrants. The present-day figure of about **4.9 million foreign residents**, making up some 8.1% of the total population, includes more than half a million children born in Italy to foreign nationals, the so-called second generation immigrants, but excludes irregular migrants, whose numbers are very difficult to determine. Italy has a developed economy and is a founding member of the EU. It is also a member of the major multilateral economic organisations such as the Group of Seven Industrialised Countries (G-7), the Group of Eight (G-8), OECD, the World Trade Organisation (WTO) and the International Monetary Fund (IMF). Its annual GDP accounts for 12.1% of the European Union's total GDP.

2.2. Judicial and criminal system

The **Italian judicial system** is based on Roman Law modified by the Napoleonic code and later statutes. The Supreme Court of Cassation is the highest court in Italy for both criminal and civil appeal cases. The Constitutional Court of Italy rules on the conformity of laws with the constitution which is a post–World War II innovation. **Criminal law** is divided into two parts: the rules describing the types of crimes are codified both in the **Criminal Code** (*Codice Penale, C.P.*), while the other rules are contained in the **Code of Criminal Procedure** (*Codice di Procedura Penale, C.P.P.*), and they rule the investigations of crimes, the arrest, charging, trial of accused etc., up to the final decision (acquittal or sentence). Italian criminal law is governed by four fundamental principles:

1. Principle of legality. It is sanctioned by Art. 1 of the C.P. according to which "No one can be punished for a fact that is not expressly foreseen as a law offense or punishments that are not due to it". The importance of this principle is strengthened by Art. 25 of the Constitution, which states: "*No one can be punished if a law came into force before the offense*".

[1] Italian Constitution, Art. 55, 83, 92 e 93.

2. Principle of materiality. A crime cannot be identified if the criminal does not manifest itself in external conduct.

3. Offensitivity principle. The criminal must manifest itself in an external behavior that harms or endangers one or more "juridical assets".

4. Guilt principle. A fact can only be criminally attributed if there are grounds for believing that it is objectively attributable to its agent. This principle derives from the provisions of Art. 27, paragraph 1 of the Constitution, according to which "criminal liability is personal".

Among the many principles of law, three are particularly important within criminal procedure:

a) The rule of *presumption of not guilty*, according to which a defendant is innocent until the final conviction (which occurs after 3 degrees of judgment). The cardinal principle on which this rule is based is set in Art. 27 of the Italian Constitution.

b) The *regime of proof* defines that a defendant can be convicted when evidences of the existence of the crime are provided (beyond reasonable doubt).

c) The *proportionality* of the sentence should be in line with the seriousness of the crime and the re-educational function of the sentence.

2.3. Generalities about criminal procedure

Criminal procedure begins when a crime (in Italian "*notizia di reato*" = police report) is reported to the Public Prosecutor's office by the Judicial Police (Polizia Giudiziaria) or by any other means (citizens, press). During the preliminaries investigations phase the Judicial Police and the Public Prosecutor carry out a detailed enquiry into the alleged crime. This phase ends with the request for filing in the archives or the initiation of penal action (Art. 405 C.P.P.). In this second case, a trial starts against a person alleged to have committed the crime. If the accused does not choose any special proceeding, he comes to Court to face the charges (by the means of cross examination) or, if he prefers, he can remain in silence or choose to not make any appearance in Court. In this case, he is represented by his lawyer. The trial ends with the conviction or the acquittal of the accused person, depending on whether he is found guilty or not. Against the Court decision both the Public Prosecutor and the accused can bring an appeal to continue on enforcing their reasons. In Italy, the length of criminal proceedings depends on many factors and cannot be exactly calculated. The average length of proceedings for the first degree is approximately between four and five years. Sometimes the length of a proceeding for all the three degrees of judgment adds up to more than seven years (four years for the first degree, two years for the second degree and one year at least for the Supreme Court), with the consequence that a lot of trials end up with a prescription.

2.4. Generalities about detention facilities

A prison, in Italy, is defined as the complex of penitentiary institutions in the country.

Condemned prisoners may be convicted to serve a sentence in prison, as well as persons awaiting trial in relation to offenses of particular gravity and for crimes of particular alarm or danger for the community. In these two cases, we are talking about preventive detention or custody.

In accordance with Article 59 of Law 26 July 1975, no. 354 ("Penal Law and Execution of Privatives and Limitations measures to the personal freedom") adult penitentiary institutions are divided into four categories:

- Preventive detention institutions;
- Penitentiary institutions;
- Institutes for the implementation of security measures;
- Observation centres (no institute).

Preventive detention institutions

These institutions are directed to prisoners awaiting trial. Article 60 of the Penitentiary Order divides them in circondary and mandatory homes. The first one is aimed to the confiscation of the accused person thus making him available for any judicial authority, the other for those available to the praetor. However, with the abolition of the figure of the praetor for the legislation that established the single judge (Legislative Decree 19 February 1998, n. 51) and with the emptying of the concept of "mandate," the functional distinction between the two types of house has disappeared. Existing institutions are aimed to the custody of the accused people making them available to the judicial authority, to the arrested and the inmates in transit, and also to prisoners with definitive short sentences (up to three years). The old mandatory houses do not longer exist today.

Penitentiary Institutions

Article 61 of the Penitentiary Order set for the arresting houses for the atonement of the sentence of arrest (never instituted) and the detention houses for the punishment of imprisonment.

Institutes for the implementation of security measures

The institutions identified by Article 62 of the Penitentiary Order, are:

farm colonies, work houses, nursing homes, psychiatric hospitals, formally abolished in 2012, but still provisionally in operation (with the number of people detained in it rapidly declining).

Observation Centres

These centres were created in 1961 as autonomous institutes or sections of other institutes with a ministerial circular for the implementation of a trial related to the scientific observation of the personality of prisoners. This experimentation initiated only at the Rebibbia Institute in Rome, and it was later abandoned.

Often, in the same penitentiary institution, there are sections that work as circondary houses with other sections directed at the penitentiary institutions.

The law 26 July 1975 n. 354, which has been amended many times, especially with regard to alternative penitentiary sentences, sets out the general principles to be followed when staying in prison.

Article 1 states that:

"Penitentiary treatment must conform to humanity and must ensure respect for the dignity of the person. The treatment of detainees is based on absolute impartiality, without discrimination on the basis of nationality, race and economic and social conditions, political opinions and religious beliefs. Orders and discipline must be maintained in the institutes. No unjustifiable restrictions may be made against the accused, which are not indispensable for judicial purposes. Detainees and interns are called or named by their name. The treatment of the accused people must be strictly in compliance with the principle that they are not guilty until the final sentence. In case of convicts and prisoners, a rehabilitative treatment must be implemented, which also, through contacts with the external environment, tends to re-integrate them. The treatment is implemented according to criteria of individualisation in relation to the specific conditions of the subjects".

Until today, according to chronicles and testimonies, the implementation of the law in relation to "rehabilitative treatment" and "social reintegration" is very deficient. In particular, prison labour is governed by obsolete rules, which makes it a rare and often arbitrary concession rather than the exercise of a right and a possibility for an effective reintegration.

In order to maintain the rights of detainees which by law should be guaranteed by the penitentiary administration and with the supervision of the supervising magistrates, several regions or municipalities have established a guarantor of prisoners' rights with a function to appeal to the penitentiary administration. Guarantors have been then recognised by law allowing them to visit

prisons and to meet detainees. The Decree-Law of 23 December 2013 n. 146 has established the National Guardian of the Rights of Persons Detained or Freedoms of Freedom, a body with effective powers of control of the state of detention, including the indication of the local guarantors. Meanwhile an effective judicial proceeding is also set up before the competent magistrate for the assessment and remedy for any abuse.[2]

2.5. Legal status of suspects and accused

According to the Italian Code of Criminal Procedure (C.C.P.) we can define as **suspect** a person who is believed by the authorities of having committed a crime. A person becomes suspect when he or she is signed in the relevant register "Notizia di reato" (Art. 335 C.C.P.). Suspects people are subject to preliminary investigations. At the end of the preliminary investigations, if the Judge for the Preliminary Hearing (GIP) decides that there is enough evidence to force the suspect to stand trial, the suspect becomes **accused** and the criminal process begins. An accused person charged of having committed a crime is subject to a criminal process after the preliminary investigations.

According to the Code of Criminal Procedure, the person subject to preliminary investigations, following the finding of a crime offense by the Judicial Authority, is not informed about the investigation. This procedure protects the outcome of the same research, which sometimes requires secrecy, even in terms of future surprise acts. The **citizen ignores** the possibility of being subject to preliminary investigations before a formal communication to the suspect is delivered. The suspect, however, has the **right to ask** whether he is subjected to preliminary investigations and the Judicial Authority is obliged to answer to such question. The suspect has the **right to know** the existence of a Public Prosecutor's file opened against him since he has the right to defend himself in the case of certain acts to be completed, as Guaranteed acts (Art. 369 C.C.P.). In particular, there are circumstances in which the judicial authority must carry out investigations that must necessarily be conducted in conjunction with the person under investigation.

Preliminary investigations have a **maximum duration** of six months from the date on which the name of the suspect has entered in the register of offenses, while for serious offenses or organised crime the term is one year (Art. 405 C.C.P.). Before his expiration, the Public Prosecutor may ask the Judge to extend this deadline for a fair hearing, indicating in the request both the crime and the reasons justifying it. In the event of a particular complexity of the investigation or the objective impossibility of concluding them within the extended period, a new extension may be requested. Each of these may, however, be authorized for maximum of six months and the overall investigation may not last more than eighteen months or twenty-four months if the original maximum duration was one year.

The closure of preliminary investigations is an important moment because the suspect receives an act called Preliminary Hearing Decree. Through this document, the suspect comes to know the day and the name of the judge before which the Preliminary Hearing (*Udienza Preliminare*) will be held. From the notification of the conclusion of preliminary investigations (Art. 415 bis C.C.P.), the suspect has a twenty-days deadline to exercise a number of defensive faculties such as the request to be questioned by the Public prosecutor, the depositing of defensive memories or the request for further investigations. Following the notification of the notice, the suspect appoints a defence lawyer of confidence who can, from a technical point of view, assist him in the choice of the defensive acts to be performed. Clearly, even if the suspect remains inert without appointing any defence lawyer, the proceeding will continue to follow his course. In this case, to the defendant will be assigned an "defence lawyer free of charge" who will represent him and defend him until he is replaced by the appointed defender of trust (the appointment of the defender of confidence can be made at any time). The preliminary hearing, held in front of a judge – called GUP (*Giudice per l'Udienza Preliminare* –

[2] Concas Alessandra, 27/11/2015 - Il Carcere in Italia, Struttura, regole e norme relative – diritto.it

Judge for the Preliminary Hearing) – constitutes a very important moment in the criminal process because it is the place where, for the first time, a Judge will assess the evidences collected by investigators, listening to the technical-legal considerations of the defence lawyer of the accused. The GUP will decide whether the suspect will be subjected to the criminal process where witnesses, advisers and investigators will be heard in front to the Court, or to drop the charges (no process will be made).

2.6. Pre-trial/precautionary measures

Pre-trial/precautionary measures are measures of deprivation of the physical and legal freedom of the suspect or accused person. They are ordered by a judge for the purpose of procedural caution even in the preliminary investigation phase. They are requested by the Public prosecutor to the Preliminary Investigation's Judge (*GIP – Giudice per le Indagini Preliminari*) who decides if apply them or not. The Public prosecutor and the police can not apply precautionary measures but only provisional pre-cautionary measures of the intervention of the Judge of Preliminary Investigation, such as arrest or *"fermo"* (custody)[3].

When we talk of precautionary measures, we first must refer to the right of liberty enshrined in Articles 1, 2, 3, 4 of the Declaration of Human Rights, protected by Art. 5 of the European Convention on Human Rights and by the Italian Constitution.

The **constitutional principles regarding measures restricting personal freedom** are:

a) **Personal freedom cannot be restricted except in the cases and in the manner prescribed by the law, and following the decision of a judge** (Art. 13 and 14):

Art. 13 of the Italian Constitution protects the fundamental right of personal freedom and Art. 14 guarantees the protection of personal freedom establishing that inspections or searches or seizures, cannot be carried out except in the cases and ways established by the law.

b) **The Court Possibility to challenge measures limiting personal freedom for violation of the law**.

Paragraphs 6 and 7 of the Art. 111 of Italian Constitution are dedicated to the criminal trial – or rather to the guarantees due to each person accused of a crime in the preliminary investigation phase and in the process itself, with special reserve to the affirmation of the adversarial principle in the formation of evidence. The 6th par. sets out the need for each measure to be motivated, above all if it has a decisive nature (decision making). This part of the provision is directly connected with the right to challenge the judicial order. According to the 7th par. an appeal to the Supreme Court is always allowed for violation of the law. Suspects can appeal both against the judgments and against the provisions on personal liberty, pronounced by the ordinary or special jurisdictional bodies.

c) **Presumption of innocence**. In law and criminal procedure, the presumption of innocence is the principle according to which a defendant is innocent until proven guilty. In particular, the Art. 27, co. 2 of the Italian Constitution states that "the accused is not considered guilty until final conviction". This principle responds to two fundamental requirements: to affirm the presumption of innocence and to provide for precautionary custody before the irrevocability of the sentence. The accused, in fact, is not assimilated to the guilty until the moment of final conviction. This implies the prohibition of anticipating the sentence, while allowing the application of the precautionary measures. According to the Constitutional Court (para No. 124/1972 the accused must not be considered innocent or guilty, but only "defendant". This rule is better specified in Art. 6, co. 2, of the European Convention on

[3] Arrest is a deprivation of freedom; it is operated by the police officers and is connected to the state of flagrancy. *"Fermo"* is a deprivation of freedom; it is operated by the Public prosecutor o by the police officer when there is a real danger of flight of the person to whom the crime is attributed.

Human Rights, according to which "every person accused of a crime is presumed innocent until his guilt has been legally established". Based on this principle, the task of proving the punishment of the accused falls on the public prosecution; while the defence has the task of proving the existence of facts favourable to the accused. In other words, it is not the latter's duty to prove his innocence, which must be presumed, but rather the accusation of his guilt. Given the presumption of innocence, in order to be able to declare publicly that an individual is guilty, it is therefore necessary to prove, beyond any reasonable doubt, that he is the person responsible for the offense, showing that he was actually the perpetrator. In the cases in which the proof is lacking, either insufficient or contradictory, the judge must issue an acquittal sentence.

Personal precautionary measures are custodial or non-custodial[4].

Custodial precautionary measures are: pre-trial detention (Art. 285 C.C.P.), house arrest (Art. 284 C.C.P.); arrest in a health care facility (Art. 286 C.C.P.). These measures are similar to pre-trial detention in several respects: the time spent under these measures is subtracted from the final sentence and the maximum duration and procedural rules are the same as pre-trial detention. Electronic monitoring is not considered an alternative to pre-trial detention, but a possible means of house arrest. Non-custodial alternatives to detention are: travel ban (Art. 281 C.C.P.), reporting to the police (Art. 282), family restraining order (Art. 282 bis), prohibition of residence (Art. 283 C.C.P.). The judge cannot apply a measure that is more severe than the one requested from the prosecutor. The Code of Criminal Procedure (from Art. 272 to Art. 279) outlines the provisions governing pre-trial detention in more detail. According to the Code of Criminal Procedure (C.C.P.) a pre-trial measure can be applied only in cases of **serious suspicion** of guilt (Art. 273 C.C.P.) and of specific precautionary requirements (Art. 274 C.C.P.). The latter are indicated by the law and are applicable only in case of danger of escape, of suppression of evidence, of re-offending. With regard to the selection of measures, the judge has to follow the criteria set out in Art. 275 C.C.P. (referred to as constrained discretion): the measure must be **appropriate, proportionate** and the **least depriving**.

The law says explicitly that imprisonment can be applied only for specific crimes and when all other measures cannot meet the specific precautionary requirements. In general terms, pre-trial detention cannot be applied for crimes that can be punished with a maximum sentence of less than five years (note: in the past, it was less than 4 years. The amendment to Art. 280 C.C.P. introduced by Decree 94/2013 has a strong impact on drug-related crimes). An exception to this rule is the illegal financing of political parties. For offences under this threshold pre-trial detention is possible in case of violation of house arrest. For more serious offences (more than 5 years) the principles of constrained discretion and of last resort still apply. The recently introduced law 47/2015, came into force on May 8, concerning “Amendments to the Code of criminal procedure relating to precautionary measures”, following the jurisprudence of the Constitutional Court, has severely limited the presumption of absolute suitability of remand in custody, that is the cases when only detention is presumed to meet the precautionary requirements, only to three particularly serious crimes: mafia crimes; terrorist association, including international terrorist association, and subversive association. For other offences (e.g. murder, rape and kidnapping for ransom), pre-trial detention cannot be applied if the precautionary needs can be met with the use of other measures.

According to Art. 278 C.C.P., to determine the seriousness of the offence, and therefore what pre-trial measure can or cannot be used, the code considers the longest term of imprisonment that can be imposed for a given offence (maximum statutory penalty: 5 years). For the determination of the maximum statutory penalty no account is taken of aggravating circumstances such as continuation of the criminal intent, reiteration and other common circumstances, that could increase the length of the sentence, but only of the more serious aggravating circumstances, that could increase the length of

[4] www.fairtrials.org/wp-content/uploads/The-practice-of-pre-trial-detention-in-Italy1.pdf.

the sentence of more than one third. The recently introduced law 47/2015, in line with the requirements with the European Court of Human Rights jurisprudence, amended the Article 275 C.C.P., paragraph 3: pre-trial detention can be ordered only if disqualification or other coercive measures are inadequate; prison, therefore, becomes extrema ratio and the other measures, unlike in the past, may now be applied cumulatively to make pre-trial detention further detain. All other measures have to be considered and ruled to be inadequate, even cumulatively, before pre-trial detention can be applied.

Article 274 C.C.P., paragraph 1, lett. b) and c), has also been amended so that in order to apply pre-trial detention it is required that the danger of escape is not only concrete, but also immediate. It also stipulates that the situations of real and present danger cannot be derived only from the gravity of the offense, but also from other parameters such as previous behaviours, the personality of the accused, etc. It is no longer possible for the court to justify the application of the precautionary measure per relationem (Art. 292 C.C.P., paragraph 2, lett. C and Cbis), by only referring to the file of the prosecutor, whereas an autonomous motivation becomes necessary, that takes into due consideration the arguments of the defence. According to the new version of the Art. 274 C.C.P., motivation has now to be more detailed. The reform limits the discretion of the courts in evaluating the application of the precautionary measures that will guarantee the precautionary requirements pending prosecution, according to both the **requirement of the concreteness** of the risk of escape or of re-offending. Both requirements cannot be assumed "only from the severity of the offense prosecuted" but need to be assessed case by case by the judge. The amendments also eliminate the automatic recourse to custody in prison in the event of infringement of the house arrest (or other private residence). In these cases, in fact, the court may also decide to continue applying the house arrest if the infringement of the measure is considered to be of minor relevance. Law 117/2014 ratifies decree no. 92/2014 and introduces significant changes in the rules governing the application of the pre-trial detention. According to Art. 275 C.C.P. para. 2a part one, pre-trial detention or house arrest cannot be used if the judge believes that a suspended sentence will be applied at the end of the trial (which is the case of sentences of less than 2 years, if the judge believes there is no risk of re-offending).

A new period has been added to the Art. 275 C.C.P. par. 2-bis, relevant only for pre-trial detention in prison: pre-trial detention cannot be applied if the judge believes that in the examined case (not only according to the maximum sentence that can be applied according to the law) the final sentence will be less than three years. This provision will not apply in proceedings for offences under Articles 423-bis, 572, 612-bis and 624 bis of the Criminal Code (such as breaking and entering or forest arson) under Article 4 bis of the penitentiary law (serious crimes such as organised crime or sex offences) and when, assuming the inadequacy of any other measure, the house arrest cannot be applied due to lack of fixed abode. But there are also other exceptions:

- for offences listed in par. 3 of Art. 275 C.C.P. (a long list of other serious offences);
- in case of violation of the house arrest (Art. 276 C.C.P., par. 1-ter C.C.P.);
- in case of violation of other pre-trial measures (Art. 280 C.C.P., par. 3 C.C.P.).

The statutory **maximum length of pre-trial detention** is a consequence of the Art. 13 par. 5 of the Constitution that states that the law must define a maximum length for pre-trial detention. Several limits define maximum length, from the arrest to the moment when the sentence becomes final. Four stages are identified in the Art. 303 C.C.P.: preliminary investigation; first trial; appeal against first sentence; appeal to the Supreme Court (Corte di Cassazione).

- Firstly, **preliminary investigation**: the defendant is released if this stage is not concluded before a time limit that depends on the seriousness of the offence investigated (three months for crimes punishable with prison sentences of up to six years, six months for crimes punishable between six and up to twenty years, one year for crimes punishable with sentences of more than twenty years). The same mechanism applies when precautionary detention

continues also during the other stages of the trial (in Italy sentences can only be carried out when they are final). The periods are additional to the previous ones, and start again from the beginning of every new stage, but with different terms:

- During the **first trial** the terms are: six months if the sentence can be of up to six years, one year if the sentence can be of up to twenty years, one year and a half for more serious offences.
- During the **appeal against the first sentence** the terms are linked to the actual sentence decided during the first trial (and not to the maximum sentence in abstract). The terms are: nine months for sentences of up to three years, one year in case of a sentence of up to ten years, one year and half for sentences of more than ten years.
- The same terms imposed during the appeal period are applied also during the trial before the **Supreme Court**.

Besides these staggered terms, the law also sets an **overall term for the entire proceedings**: pre-trial detention cannot last longer than two years for crimes that can be punished with sentences of up to six years, four years for crimes punishable with sentences of up to twenty years, six years for more serious offences. In some duly justified cases the overall terms can be extended, nevertheless the legislation takes into consideration this possibility: pre- trial detention cannot last longer than twice the maximum period of each stage of the proceeding, and the overall maximum length cannot exceed the two-thirds of the maximum sentence (Art. 304 par. 6 C.C.P.). In these cases, therefore pre-trial detention could theoretically last up to 9 years.

2.7. Pre-trial/precautionary procedures

The first judicial hearing about pre-trial detention takes normally place after the accused is caught in *flagrante delicto* (Art. 382 C.C.P.).

As soon as the decision on confirming the arrest is adopted, the judge decides on the pre-trial measures, after listening to the parties' submissions.

The application of less restrictive measures can be requested by the **prosecutor** (the judge cannot apply a more restrictive measure than the one requested by the prosecutor), by **the judge** (who for instance denies the request of the prosecutor and then applies a less restrictive measure) and by **the suspect**.

As stated above, according to the Italian Constitution (Art. 13) an arrested person has to be immediately presented to the prosecutor, at the latest within 24 hours of arrest, otherwise the arrest is invalid. For his/her part the prosecutor, within 48 hours of arrest, has to ask the judge to validate it. The arrest is invalid if the judge does not validate it within 48 hours from the request.

The suspect in custody, under arrest or other measure, can immediately talk with a lawyer (Art. 104 C.C.P.); for this purpose, a lawyer has to be immediately informed (Art. 293 and 386 C.C.P.). This right can be suspended for a maximum of 5 days for "specific and exceptional precautionary reasons" when the meeting with the lawyer can jeopardise the investigations.

The case file must be provided by the authority that questions the suspect immediately after the arrest. (Art. 390 and 391 C.C.P.)

Three main case scenarios need to be considered.

1) If the suspect has been caught in the act of committing a crime the prosecutor, after informing the lawyer, questions the suspect, explaining to him/her why he/she has been arrested, what is the evidence against him/her and, if this poses no threat for the investigations, the sources of this evidence. At the hearing for the validation, immediately after the decision on validating the arrest, the judge decides on the application of the pre-trial measure. The lawyer can see the file at the hearing or

shortly before the hearing and, in that occasion, can briefly and confidentially discuss the case with the suspect.

2) If the measure is requested by the prosecutor and applied by the judge, later during the investigations and before the beginning of the trial, the file is made available to the lawyer after the execution of the measure, before the validation hearing.

3) When the measure is applied during the trial, the defender has already been able to see the file.

During the entire trial the presence of legal defence is required. If the suspect or accused person does not have a lawyer of choice, a lawyer is instructed *ex officio*. The withdrawal or the modifications of pre-trial measure can be requested by the defendant or by the Public Prosecutor, during the trial hearings or by filing a specific request at the court offices.

Art. 279 C.C.P.: on the **application, withdrawal or modifications of pre-trial** measures the decision pertains to the judge in charge of that stage of the trial (during the investigation, the judge of the preliminary investigations). This strictly follows the Italian Constitution, which according to Art. 13 par. 2 stipulates that restriction of personal freedom is only lawful as a consequence of a "justified decision by the court".

Pre-trial detention is re-examined by the proceeding judge (who may or may not be the same judge who applied the measure, depending on the stage of the trial) usually after a request by the defence (at any moment and with no limits in the number of the requests), or ex officio when the terms of maximum length are going to expire.

2.8. The means of challenging personal precautionary measures.

They are remedies aimed at activating a control by the superior judge, in order to exercise the precautionary power. They are divided into a review, a precautionary appeal and an appeal to the Supreme Court.

- **Review** (Article 309 C.P.P.): proposable by the defendant against the order for the application of a coercive precautionary measure before the Court where the order was issued (called Tribunal of liberty), within 10 days from the execution or from the notification of the measure.

With this medium a wide type of verification is activated. The Court, which has the power to confirm, cancel or reform the contested provision, must check the existence and relevance of all the conditions for the applicability of the measure, being able even to limit itself to correct the motivation. In order to do so, the judge, who does not have powers instructing ex officio, can make use of the acts placed on the basis of the precautionary request, but also of the material produced by the initiative of the parties.

- **Precautionary appeal** (Article 310 C.P.P.): proposable by the Public Prosecutor, the defendant, his lawyer before the Court of Freedom against the orders concerning personal precautionary measures, for different hypotheses than the review; in this case, it is necessary to indicate the reasons for the appeal, even if the Courts have to examine also the points which are linked to the grounds of the appeal and the matters which can be revealed ex officio.

In particular, when there is an appeal by the public prosecutor against the rejection of a measure invoked by him, the Court must independently reconsider also those conditions of applicability, including the actuality of the precautionary requirements, not touched by the grounds of appeal.

- **Appeal to the Supreme Court** (Article 311 C.P.P.): proposed by the Public Prosecutor who requested the application of the measure, the defendant and his lawyer, against the orders issued by the Court following re-examination or appeal, within 10 days from the communication or notification of the notice of deposit of the provision.

The most frequent reasons for appeal is related to the defect of one or more of the conditions that legitimize the measure applied with reference to circumstantial or precautionary needs. These reasons must be introduced in accordance with the legality of legitimacy and, in particular, must highlight a violation of the obligation to state reasons set forth in paragraphs 2 lett. c and c bis and 2 ter of Art. 292 C.C.P. In this context, the object of the control delegated to the Supreme Court can only refer:

- to the logical-legal congruence of the motivation;
- to the possible failure to respond to specific complaints made with the review or with the appeal;
- or hypothesis of misrepresentation of the proof.

Even more restricted would appear to be the appeal *for saltum (art.311 paragraph 2)*, that is the possibility that the accused or his defence choose to renounce the review and precautionary appeal to the Supreme Court for violation of the law that dispose precautionary measures.

2.9. The New Law "Orlando[5]"

In June 2017, the draft law entitled *"Amendments to the penal code, the code of criminal procedure and the penitentiary system"* was finally approved. It contains a wide **delegation of powers to the government** for the reform of the penitentiary system. More commonly the new Law is named as "Orlando reform" from the name of its proposer, the current Minister of Justice, Hon. Andrea Orlando. The main novelties introduced concern the following issues:

a. Eavesdropping rules (punished with imprisonment not exceeding 4 years)
b. Regulation of prescription (Chapter II, ares.7-11)
c. Appeals regime
d. Reform of the penitentiary system
e. Preliminary investigations
f. More severe penalties for burglaries and thefts with consequences for precautionary measures applications.

We focus on points a., e. and f reporting briefly the main novelties introduced.

a. <u>Eavesdropping rules</u>

- The screening by the judicial police of the talks considered relevant, while the other parts will not be transcribed and will be stored (with indication of duration and number intercepted) in an archive available only to the public prosecutor.
- Only "the essential passages" of the conversations captured should be reported and it has been introduced the prohibition of verbalization of random wiretapping of dialogues between assisted and legal (which remain prohibited).
- the use of spy software for computers and mobile phones will be limited, only for ordinary crimes, while it will always be allowed for mafia or terrorism.
- Up to 4 years of detention for those who spread audio-visual filming and communications recordings carried out fraudulently in order to damage "the reputation or image of others".
- The journalists will obtain, for the first time, access to the copy of the order of precautionary custody, once that it has been disclosed to the parties. This aspect will come into force in 2019.

e. <u>Preliminary investigations</u>

- The person offended by the crime may request information on the state of criminal proceedings in which he lodged the complaint, after 6 months from the presentation of the complaint; the information may be provided on the condition that this does not prejudice the confidentiality of the investigation;

[5] Altalex, *Codice Penale e di Procedura: La riforma Orlando – July 2017*.

- At the expiration of the maximum term of the preliminary investigations, the public prosecutor will have to decide within 3 months if to request the filing or to exercise the criminal action, thus forcing the public prosecutor to take a position with respect to the news of crime; otherwise the investigation will be prosecuted by the attorney general at the court of appeal;
- The term granted to the suspect passes from 10 to 20 days to oppose the filing request and request the continuation of the investigations; also for the theft in housing or for burglaries, as well as for crimes committed with violence to the person, the public prosecutor must notify to the offender the request for filing, granting him 30 days (no more than 20) to oppose.

f. More severe penalties for burglaries and thefts [6]

The effects of the increase in the minimum penalty have consequences on the ground for precautionary measures. The application of all coercive personal precautionary measures, including custody in prison, was and remains very possible. However, raising the minimum penalty results in a series of non-marginal consequences. First of all, it should be remembered that the Art. 274 C.C.P. includes, among the precautionary requirements, the danger of escape, if the judge considers that a sentence of more than two years can be imposed.

It is now clear that the increase in the minimum sentence (even for cases of minor gravity) makes it difficult to predict a sentence of 2 years or less. For example, the punishment for aggravated theft (Art. 625 C.P.) as a result of the reform, passes from a minimum of one year to a minimum of two years. For the same reasons, it is reasonable to expect greater use of precautionary measures for these offenses. In fact, since the Art. 275 C.C.P.[7] excludes the possibility of having the house arrest or custody in prison if the judge believes that conditional suspension[8] of the sentence can be granted, the increase in the minimum edicts ends up opening ever more the doors to preventive custody. Therefore, custody in prison could be applied, by hypothesis, even to the person who "only" committed a robbery with a tear in a station (on the luggage of a traveller) a case punished thanks to the reform, with imprisonment from four to ten years and no longer balanced with the mitigating factors, except those mentioned above. It is necessary to remember that according to Art. 275 (paragraph 2-bis, second and third part, C.C.P.) a prison measure cannot normally be applied if it is considered that the final sentence will be no more than three years.

With the draft law, nothing changes under this profile for the Art. 624-bis of the Italian Penal Code, already excluded from the application of the law by virtue of the last part of the same paragraph, but the exacerbation of the minimum sentence of aggravated theft and the "simple" robbery seems to greatly reduce the guaranteeing scope of the law for these crimes, even in reference to facts that until now are not so serious as to merit preventive detention.

[6] *Matteo Piccirillo*, Parola alla Difesa – Riforma Orlando: Le modifiche al trattamento sanzionatorio, 16-06-2017.
[7] Penal procedure code, Art. 275, paragraph 2-bis firts part.
[8] Conditional Suspension: The conditional suspension of the sentence is a legal institution (regulated in the Italian legal system, by Articles 163-168 of the Penal Code in force) by which the defendant, whose sentence does not exceed two years of imprisonment, is suspended execution of the same sentence for five years (in case of crimes) or for two years (in case of contraventions).

3. Interned people and their conditions

3.1. Composition of prisoners in 2017

The table below shows the composition of prisoners at 31st December 2017. The total number of prisoners was 57.608 and about the 34,46 % of them was constituted by people in custody pending trial.

2017							
Juridical status				Gender		Nationality	
Accused[9]	Condemned[10]	Interned[11]	Total	Women	% of the total	Foreigners	% of the total
19.853	37.451	304	57.608	2.421	4,20%	19.745	34,27%[12]

3.2. Latest research of the Ministry of Justice

The department of Prison Administration's data show that the number of prisoners at 31 December 2017 exceeds the total capacity of Italian prisons. This is one of main reasons of the overcrowding of the Italian prison facilities.

Detained in Italy[13]

Regular capacity	Detainees present	Women	Foreigners
50.544	57.608	2.421	19.745

The Ministry of Justice[14] conducted a search for the year 2016 (last update February 2017) on personal precautionary measures issued by Italian offices that responded to the request.

Law no. 47 of 2015, Art. 15 stipulates that, by 31 January of each year, the Government shall present to the Chambers a report containing data, surveys and statistics related to the implementation of personal precautionary measures, of the previous year, broken down by typology, indicating the outcome of the proceedings, when concluded. For this purpose, the General Directorate of Criminal Justice involved all the 136 courts in the national territory.

The new computerised system of the criminal intelligence (SICP) has allowed a quantitative and qualitative improvement in data. On February 28, 2017, 175 offices (89 GIP offices and 86 Debate Sectors) out to 272, the 64 % of the total replied. This percentage refers to the offices that have responded to the monitoring with both concerned joints (GIP and the Debate Sector). The response rate reaches 73 %, including the Courts that provided answers to one of the sectors involved. Among these Offices, involved in the research, there are the most relevant departments to contrast the mafia (Milan, Turin, Bologna, Rome, Naples, Reggio Calabria and Palermo). Therefore, the study has been quite exhaustive.

[9] Accused: People awaiting the final sentence.
[10] People who received the final sentence.
[11] People who serve a sentence in an agricultural colony, work-house; rehab-center; psychiatric hospital.
[12] On 30th June 2017, the percentage of the foreigners detained in Italian prison was 41,4% (Source: Reports on prisons – Antigone. 27th July 2017).
[13] Department of Prison Administration - Head Office of the Department - Statistical Section – 31st October 2017.
[14] Department for Justice Affairs General Directorate of Criminal Justice Office I - Statistical and monitoring department.

Precautionary measures applied in 2016 in Italy[15]

Article of the Code of Criminal Procedure	N. Measure 2016	N. Measure 2015	Change %
Art. 281 - prohibition of expatration	25	10	+ 150
Art. 282 - obligation to appear to the judicial police	7.366	4.481	+ 64
Art. 282 - bis getting away from the family home	1.806	1.269	+ 42
Art. 283 - prohibition and obligation of residence	6.124	3.628	+ 69
Art. 284 - house arrest	12.402	9.163	+ 35
Art. 285 - custody in jail	20.531	16.701	+ 23
Art. 286 e 286 bis - custody in care facility, hospitalisation facility	273	80	+ 241
Total	48.527	35.332	

During the year 2016, 48,527 personal protective measures were issued by the Offices that responded to the request. The custody in jail was considered necessary by the Judicial Authorities in almost half of the cases: the measure envisaged by Art. 285 of the Code of Criminal Procedure, was put into place in 20,531 cases representing the 42 % of the total, decreasing of 5 % with respect to the previous year. In fact, in 2015, 16,701 cases were reported out of 35,332, the 47 %[16].

However, both home arrest (Article 284 C.C.P.), with 12,402 cases, 26 %, as well as the prohibition and obligation of residence (Article 283 C.C.P.), 13 %, are widely utilized when compared to family home (Article 282 bis C.C.P.), 4 %. However, there is a certain increase in the obligation to submit to the judicial police, which is used in 7,366 cases, equal to 15 % (4,481 cases were 13 % in 2015).

3.3. Suspects and accused condition in jail

The arbitrary and excessive use of pre-trial detention around the world is a massive form of human rights abuse that affects 14 million people a year. The right to be presumed innocent until proven guilty is well established. Yet this right is widely and often violated—in the developed and developing world alike—and the violation goes largely unnoticed. Few rights are so broadly accepted in theory, but so commonly abused in practice. It is fair to say that the global overuse of pre-trial detention is one of the most overlooked human rights crises of our time[17]. The European Committee for the Prevention of Torture (CPT)[18] urges the 47 Council of Europe member states to use remand detention only as a measure of last resort and to provide remand prisoners with **adequate detention conditions**. During the visits to the prisons throughout Europe, the CPT has often found that remand prisoners are held under very poor conditions and an impoverished regime. In many European countries, the persistent **problem of overcrowded prisons** is due to a large extent to the high proportion of precautionary custody measures utilized among the total prison population. The CPT stressed the need for member states to ensure the use, to the extent possible, of alternative measures to pre-trial detention such as provisional suspension of detention, bail, house arrest, electronic monitoring, removal of passports and judicial supervision. In the CPT's view, these measures should also be

[15] Personal Precautionary Measures issued in 2016 (Parliament's report by L. April 16, 2015, No. 47).
[16] Personal Warning Measures report issued in 2015.
[17] www.osce.org/odihr/124400?download=true 26 September 2014 PRESUPTION OF GUILT – The Global Overuse of Pretrial Detention.
[18] www.COE.INT - 2017 News.

considered for **foreign nationals**, who are frequently held on precautionary custody because they are considered at higher risk of fleeing and because they do not have a stable residence where apply other measures such as house arrest.

Pending trial and precautionary custody. One of the characteristics of the Italian penitentiary system is the consistent presence of prisoners without a definitive sentence. From the early 1990s, these prisoners constituted over half of the prison population. After a decline of up to 35 % in the years 2004-2005, the pardon of 2006, resulted in the extinguishment of many conviction sentences, and in a new rise of the percentage of defendants (58 % in 2007). In recent years, the laws set limits to preventive detention so that the percentage has dropped to 34 %[19].

In the CPT's experience, **prisoners without a definitive sentence** are too often held in dilapidated and overcrowded cells and are frequently subjected to an impoverished regime. In a number of visit reports, the CPT has taken the view that the detention conditions of remand prisoners were totally unacceptable and could easily be considered to be inhuman and degrading. Moreover, remand prisoners are frequently subjected to various types of restrictions (in particular as regards contacts with the outside world), and, in a number of countries, certain remand prisoners are held in solitary cells by court order (sometimes for prolonged periods).

The CPT also wishes to stress that, detention on remand can have psychological effects on the individuals – suicide rates among remand prisoners can be several times higher than among sentenced prisoners (in total 48 suicides in 2017[20]) – and other serious consequences, such as the breaking up of family ties or the loss of employment or accommodation.

3.4. Drug addicts suspected and accused

In Italy, the legislation concerning the cautionary measures for drug addicts has undergone several changes over the past few years, in particular the change in Article 89 of T.U. (Testo Unico concerning the discipline of narcotics) deserves careful analysis.

Art. 89 of T.U. 1990 stated that "Preliminary custody in prisons cannot be ordered, unless there are exceptional precautionary requirements: when the accused is a drug-addicted or alcohol-dependent person who has undergone a therapeutic recovery program in the public services for the treatment of drug addicts within an authorised structure, and interrupting the program could undermine the detoxification of the accused. With the same provision, or with a successive one, the judge establishes the necessary controls to verify that the addict or the alcohol-dependent continues the recovery programme."

The basic assumption seems to be the belief that the dangerousness of the subject is largely linked to the state of drug addiction, so being in a therapeutic program makes, the criminal predisposition of the suspect fade considerably. In disposing the cautionary measures, for drug addicts, the judge took into account the specific suitability of the therapeutic program, other than the detention in jail. In this context, the therapeutic communities (called "public places of care and assistance") appeared as a tool to evade custody in prison by virtue of the regulatory framework that links the precautionary needs to the particular subjective condition of the addict. This Article provided the prohibition on the application of custody in prison, except for the existence of exceptional precautionary requirements, for the drug addict who has a therapeutic recovery program in progress and for whom the interruption of the program could jeopardize the detoxification, Until 2006, judicial authorities should go beyond the normal criteria of public security and dangerousness that usually require the pre-trial detention in jail, in order to impose the custody in prison. In the case of drug or alcohol addicted

[19] Michela Scacchioli – repubblica.it – 2016 "Dietro le sbarre: nelle carceri italiane 54mila detenuti. Ma i posti letto ancora non bastano".
[20] "Centro studi di ristretti orizzonti" update to 4th December 2017.

persons, there should be a greater threat to the collective security to prevail upon the right to health of the toxic dependent and his rehabilitation, since the interruption of the program could jeopardize the detoxification.

However, in 2006, this article was modified and the new art. 89 of the D.P.R. 309/90 configures house arrest as the only institution to be used in these circumstances. Today, in fact, the possibility of taking into account the specific therapeutic needs, as well as the specific risk indexes, has been deleted. The new regime of the Art. 89, D.P.R. 309/90 is affected by the rigidly rigorous approach and by the prevalently punitive and restrictive approach that the legislators has shown in formulating changes to the text. When deciding the provision of precautionary measures compatible with the rehabilitation program, the judges evaluate only the suitable criteria established by Art. 274 C.C.P., without making any balancing between therapeutic, subjective and objective needs, and precautionary needs.

Furthermore, house arrest with a community-based program, and not domiciliary, is not determined on the basis of therapeutic needs, but on the basis of the precautionary requirements enumerated by art. 274 C.C.P. The judges have to make a therapeutic choice (going beyond his competence) based on a concrete prognostic judgment, stating when the subject, if not subjected to the control resulting from the stay in a residential structure, would reiterate the criminal conduct, would evade or compromise the genuineness of the material evidence through contacts with strangers.

Law 49/2006 has also expanded the list of crimes that exclude the possibility, to substitute custody in prison in favour of the therapeutic ones. These cases are: when choosing the precautionary measures and its revocation. In conclusion, the current Italian precautionary assessment provides the community treatment or other alternative measures, not on the basis of the therapeutic needs but on its containment and punitive value.

4. Experiences and good practices

4.1. Reasons why precautionary measures do not work

The issue of overcrowded prison represents an irreconcilable Italian reality with the protection of the fundamental human rights. The pressure of international organisations has further highlighted a problem that cannot be deceived into dealing with emergent and transitory approaches.

The consequent reflection of the surface induces a part of the public opinion and of the insiders to attribute significant responsibilities to a sort of "abuse" of the criminal trial institute of personal precautionary measures and in particular to the precautionary custody in prison or in any case, to a dysfunctional use of the custodial institution[21].

The consequences of the precautionary measures are not always the expected ones.

As seen above the precautionary measures are among the causes of overcrowded of prisons and therefore of inequality of treatment between persons awaiting the sentence and convicted persons.

In many cases the precautionary measures are abused by the judicial authorities thus proving a violation of the rights and negative psychological effects on the suspect or accused person and their relatives. The system of application of the precautionary measures needs to be strengthened so that it can truly be used as an extreme ratio, and the principle of the presumption of innocence is respected.

A critical point of strengthening the system of application of the precautionary measures is that not all persons awaiting the trial (suspects or accused) can access alternative measures because of the **lack of a stable and controllable domicile**. This applies, even in the presence of suitable legal conditions to take advantage of such measures.

For a large portion of the category “waiting the trial” (primarily foreigners), the lack of this requirement is a source of serious **inequality**. It is necessary to facilitate the use of these facilities meant for this purpose with the collaboration of local authorities and the third sector.[22]

4.2. Good Practices and experiences

There are many small associations in Italy that provide facilities for the social reintegration of prisoners. Some houses receive inmates who use permits or prize licenses, others host families in economic distress who visit family members in detention.

There are also facilities that hold prisoners for the discount of alternative penalties provided for by the Italian regulation. They are very small and often managed by the dioceses and parishes of the Catholic Church. All these services offered are mainly intended for detainees but they can be extended also to accused. Example of these type of association are:

- General Inspectorate of the Chaplains of the Italian Prisons[23];
- Italian Caritas[24];
- Solidarity Forum[25].

Pope John XXIII Community Association (APG23)

For the most part, the experience acquired by APG23 concerns people convicted of various crimes that serve their sentences through alternative measures. In practice, also people under precautionary

[21] David Mancini, Sovraffollamento Carcerario – Unità per la Costituzione.
[22] www.giustizia.it/resources/cms/documnets/documento_finale_SGEP.pdf.
[23] www.ispcapp.org.
[24] www.caritas.it/home_page/tutti_i_temi/00000441_Carcere.html.
[25] www.forumsolidarieta.it/associazioni/volontariato/assistenti-volontari-penitenziari-ricominciare.aspx.

measures benefit from the alternative measures offered by APG23. APG23 often supports people who cannot obtain a precautionary measure other than pre-trial detention because they do not have a domicile or residence (among them a majority percentage is that of foreigners and homeless people). The path that is proposed to the defendants is the same that is proposed to prisoners. This is because most of the defendants are not new to the criminal trial, as the rate of recidivism in Italy is estimated to exceed 67%[26]. In the rehabilitation structures both convicts and accused are present. This can provide help and support for the reintegration of subjects in the social life.

The project that the association carries on is called Convicts Educational Community (**CEC)**.

A **Community** made of inmates as well as volunteers and educators: together they help each other, work, look for new solutions to address the issues encountered on the journey to recovery.

Educational because it wants to discover and develop everyone's potential.

With Convicts and **not for** convicts because an inmate is not the only recipient of the educational activity: the entire society is educated to solidarity and the values of a new humanity through the relationship with volunteers and educators.

The project is addressed to convicted and accused adult subjects of any age, and belonging to any ethnic and religious group, who don't display predominant psychiatric conditions or substance addiction.

Since 1995, through the "Beyond bars" project, APG23 has developed its activity in favour of inmates by multiplying encounter opportunities within prison through the actions of volunteers that were regularly visiting inmates for their moral and spiritual support.

After some years, admission to halfway houses increased. The halfway house "S. Francesco" located near Pontremoli (MS) has welcomed dozens of inmates with an average attendance of 15 convicts or accused. Such a condition motivated further halfway communities to open in other territories. In order to develop guest skills, resources and responsibilities through actual commitments in their everyday life, APG23 implemented ergotherapy activities in dedicated facilities. Particularly prominent is "Il Pungiglione - Soc. Coop. Sociale - Onlus" promoted by APG23 which over the years has also enabled the development of residential lots welcoming inmates in particular, and other kinds of poverty in the "Rebirth" project.

In 2004, in Rimini's territory, APG23 created the first halfway community specifically dedicated to non-drug addicts common inmates in which it was possible to implement personalised education pathways. The "Casa Madre del Perdono" addressed the need to welcome inmates who were willing to be helped in order to remove the root causes that lead to delinquency feelings, attitudes and behaviours. As of 2008, the Pope John XXIII Community Association organised two trips to the state of Minas Gerais in Brazil in order to directly learn about the experience known as "APAC."

Said choice begin with recognising the validity of the APAC method in the rehabilitation of those convicted to prison time. The UN has defined APAC as the most effective rehabilitation method worldwide.

Since then, APG23 developed regular discussion sessions with APAC project coordinators aiming at mutual enrichment. The method is new and detaches from the current criminal justice system. The method mainly takes care of man: Promoting human beings in their essence, evangelising them entirely as brothers who are part of the happiness plan. Nobody is born to be unhappy. Not understanding God's love for mankind which is favoured by ambition, the desire to have it all and now and embarking on uncertain paths fatally lead to a criminal life. When someone else is valued, the beneficiary already gathers through whom benefits him that the love of the Holy Father does not

[26] Federica Lanotte, *La recidiva,* Tesi di Laurea Magistrale in Giurisprudenza, Università di Torino, AA. 2014-2015, pp. 163-187.

discriminate but asks for the happiness of all his children. When this occurs, the evangelisation process is moving quickly, strongly and it's setting roots in a human being's personality while freeing him from all enslaving constraints. This is why APG23 claim that the Method is based on human improvement and therefore evangelisation as the two aspects interact and complement each other.

Despite the adjustments carried out over the years, the spirit of the method has remained the same. Right from the start, Mario Ottoboni (journalist and Doctor in Legal and Social Science) claimed that APAC's objective is to kill the criminal and save the man, unlike the prison system which kills the man and the criminal within him. "This arises from the belief that every man is capable of doing wrong but also of doing good".

Unconditional love and trust are two objectives supporting the entire methodology. These two aspects must always display through practical gestures of acceptance, forgiveness, dialogue, with no distinction made by volunteers and professionals in their relationship with those recovering. Unconditional love and trust overlap with all elements because they must be virtues that are nurtured by using all of the Christian resolution in applying the method. The study of the method, which was then developed and confirmed in the field, identifies twelve fundamental elements that must be applied through common sense and in harmony without neglecting any.

1. Community's contribution;
2. Mutual help and cooperation;
3. Work;
4. Religion;
5. Legal aid;
6. Medical and psychological care;
7. Human development;
8. Family;
9. The volunteer;
10. The Centre for Social Reinstatement (CRS);
11. Merit;
12. Freedom Day with Christ.

The encounter with APAC has permanently steered the path of certain existing environments dedicated to inmate admission. Further welcoming environments were subsequently born on the said model. The CEC project (Convict Educational Community) has also tapped into the experience of the education method developed by the APG23 within the Therapeutic Communities for the rehabilitation of pathologically addicted individuals.

The CEC project represents a form of practical implementation of the larger APAC experience in Italy. In fact, the development and drafting of the CEC method occurred in the "Madre del Perdono" home, and the "Centro Rinascere" which represent the replicable pilot model.

General objectives of the education path.

The objective of any education path is to provide the full accomplishment of the individual. As inferred by the term "EDUCERE", from which stems "to educate", it's a path meant to "manifest" the features of the individual while being convinced that he is singular and unique because created and loved by God. "When the mind opens up to a new dimension, it never returns to the previous one". Change caused by the education path mainly results in opening the mind, the heart and therefore the entire individual to a dimension of new awareness.

The recovering subject completing the CEC path doesn't reach "flawlessness" intended as the ability to never mistake again. He becomes aware of himself, of his individual great value, of the right-duty to respect, love his brothers, and of being loved, respected; reaching this goal allows the recovering individual to accept and admit he is "mistaking", to "mistake" a little less each time and, especially to avoid significantly wrong life choices that can lead to self-destruction.

The main general objectives are:

1. Allowing the admitted individuals to be aware of their abilities and positive aspects of their life so that they can understand the value they bring as they are part of a plan that goes beyond the single individuality, their life has a meaning that doesn't end with physical death.
2. Removing the root causing delinquent and/or anti-social feelings, attitudes and behaviours. In this regard, it is necessary to overcome feelings of resentment, anger, revenge by activating paths of forgiveness and reconciliation.
3. Providing an authentic image of the world, of society, as a place in which anyone wins against evil and that which is negative in man, fighting for a fulfilled life based on truth, on justice and love.
4. Making people fully autonomous, keeping in mind the potential conditions of psycho-pathological issues or missing individual resources.
5. Allowing to reach happiness in life through a complete self-fulfilment, through generously gifting oneself to others, by experiencing the beauty of sharing with the poor, and with those struggling, by searching and building a vital relationship with the Absolute.
6. Allowing the experience of living with one's own identity which is filled with spiritual values, in a society that is based on having rather than being, on the appearance of a person instead of true fulfilment, on pleasure rather than joy; a society ruled by the relentless search for satisfaction through consumerism, by the crave for power, money and sex.

Volunteers and educators training

Training is among one of the most important requirements for people who engage in coaching individual recovery paths. Motivation to engage is one of the fundamental elements and it always needs to be revived and reinforced.

Obviously, we must highlight the requirement for cultural, scientific and professional training for those engaging in rehabilitative education paths in favour of other people.

Saint John Bosco, founder of the Salesian Family often used to say that good must be done well. Precisely in order to provide well-structured rehabilitating opportunities, it is necessary that educators, operators and even volunteers working on the education work take care of their own training through exact tools that are organised in a global education path which should be permanent. The weekly meetings of the educational team must include regular space for discussion and training occasions.

APG23 organises follow-up meetings related to education matters and discussion sessions concerning the issues connected to the type of admission. APG23 guarantees weekly discussion on educational commitment. Professionals who cooperate in the rehabilitating activity (psychotherapists, psychiatrists, etc.) look after educator and volunteer education paths through targeted seminars to deepen the different topics falling under their responsibility.

As seen in the research conducted within the "*Reducing prison Population: advanced tools of justice in Europe - JUST/2013/JPEN/AG4489*" it has been possible to collect information regarding the costs of detention, the arguments for which alternative measures are used to prison, existing programs to protect the life of accused and convicted persons, and their role in designing and implementing alternative measures to detention.

Outcome assessment and cost-benefit report

The CEC project has involved more than 1000 people over the last 10 years and this has allowed for an assessment of the results achieved to date. Though, the study has suffered from the limitations imposed by the existing legislation on privacy. Even on a national level, information on recidivism is based on the plain data of how many people are released from prison and back in within three years: the imperfection of the said element for the purpose of a correct assessment is obvious. According to APG23, the above-mentioned CEC Project, based on the logics of the reparative justice, **permits to reduce recidivism from 70 % (Italian national average) to 8 % (average value of recidivism among detainees who carried out the CEC Project)**.

This Association calculates that a detainee involved in the CEC Project costs only **50 Euro** (per day) compared to the 123 euros per day necessary to sustain a single detainee in 2013 (see table below).

Furthermore, as already remarked above, when sentenced persons are involved in CEC Project recidivism is reduced from 70 % to 8 %. There are several studies dealing with costs of imprisonment. According to the Department of Prison Administration (Directorate-General for Budget and Accounting, Training and Budget Management Office) of the Ministry of Justice, the average cost paid for each prisoner from 2001 to 2013 is calculated as shown in the following table.

Cost per prisoner from 2001 to 2013 **(Average Cost of Holding One Prisoner per Day) (*)**		
Year	Prison population	Average Cost of a Single Prisoner per Day
2001	54,895	€ 131,90
2002	55,670	€ 126,71
2003	56,081	€ 132,61
2004	56,500	€ 131,67
2005	58,817	€ 124,94
2006	51,748	€ 154,84
2007	44,587	€ 190,21
2008	54,789	€ 152,05
2009	63,095	€ 120,95
2010	67,820	€ 116,67
2011	67,405	€ 119,01
2012	66,449	€ 124,73
2013	65,889	€ 123,78

Table 3: Cost per prisoner from 2001 to 2013[27]

[27] More details available at: www.giustizia.it/giustizia/it/mg_1_14_1.wp?previsiousPage=mg_1_14&contentId=SST957890.

Alternative measures (home detention, community sanction, and so on) are cheaper than imprisonment and can permit to save relevant resource that could be invested in other more effective strategies. To date, as there is no institutional and administrative recognition of communities that welcome inmates and accused people who are granted alternative sentences, the costs related to admission fall entirely on the community that takes them in. There are numerous initiatives implemented by APG23 on a regional and national level that aim at overcoming these clearly unjust circumstances which drastically limit the chances of moving beyond prison as the elected response in criminal enforcement. Therefore, the social benefits are extremely high when faced with costs that could be more than halved.

The main arguments (political, social, philosophical, economic, other) used to design and implement alternatives to imprisonment (distinguish between pre-trial detention of suspects and post-trial detention of sentenced persons).

One of the main arguments used to design and implement alternatives to imprisonment is based on the need for reducing prison population, especially after the court case «Torreggiani and others v. Italy», decided by the ECHR (European Court of Human Rights, Council of Europe) with decision dated 8.1.2013.

The inmates are held in overcrowded conditions. So, the alternative measures to detention can be considered the means by which human rights can be assured to them.

Other relevant arguments concern: a) rehabilitative function of punishment (in regard of which detention is surely less effective); b) costs (imprisonment is generally much more expensive than alternative measures); c) impact on victims (alternative measures can hold more benefits to victims of crimes, also in the perspective of restorative justice).

Existent programmes to deal with the following aspects for suspects/sentenced persons.

About the existing programmes related to education, work, psychological and social well-being and other important aspects of the suspects/sentenced persons, the Circular of the Ministry of Justice dated 4 August 2011 appears very relevant. Its subject concerns the «Guidelines about a Transnational and Interregional Project on Social and labour inclusion of sentenced persons» («Progetto interregionale transnazionale 'Inclusione socio-lavorativa dei soggetti in esecuzione penale' - Linee Guida»). The primary aim is to strengthen the public entities' capacity of being involved in the implementation of measures concerning social inclusion and encouraging participatory planning of sentenced persons.

This document established: (1) a «Steering committee» («Comitato di Pilotaggio»), the representatives of the prison administration and other entities exercise coordination and control functions); (2) a «Participatory Planning Committee on Interventions in Social Inclusion» («Tavolo di programmazione partecipata degli interventi di inclusione sociale»): associations, companies, third sector, and so on, may take part in this Committee, in relation to the activities to be programmed; (3) a «Technical Working Group» («Gruppo di lavoro tecnico»), with experts in monitoring and evaluation of projects.

The place of victims in the policies to design and implement alternatives to imprisonment

Victims usually have a marginal role during the trial during the decision and the implementation concerning alternatives to imprisonment.

According to the President of Surveillance Court of Bologna[28], when it is considered the relationship between victims and their offenders during the period of execution of the sentence, «the risk today is that the attention to this relationship during prison term becomes only a technique of paraclinical

[28] F. Maisto, "Il difficile rapporto autore-vittima e il ruolo del Tribunale di Sorveglianza", in *Rivista di Criminologia, Vittimologia e Sicurezza*, 2012, Vol. VI, n. 2, p. 40, www.vittimologia.it/rivista/articolo_maisto_2012-02.pdf.

interview or a generic mediation, neglecting the central themes of truth, responsibility, power and authority», which «are strictly linked to reformation and/or re-education. Even if it is very hard to theorize about the legitimacy of punishment, (…) from an ethical point of view» we can «hope for a change toward restorative justice and reconciliation opportunities coming from mediation mechanisms».

Wider attention is paid to the victim's compensation and to the removal of harmful or dangerous effects caused to the victim by the offender in consequence of the crime (offence).

In any case, in accordance with the Article No. 47.7 of the Italian Penitentiary Act, the offender admitted to a probation period with social services (id est, «affidato in prova al servizio sociale») must be required to activate himself in favour of his victim.

2.3-bis. The offender should compensate his/her victims for loss or injury caused to them, but damages («risarcimento del danno») cannot be considered a condition to obtain alternative measures to imprisonment. So, Surveillance Courts or Judges cannot refuse to grant alternatives to imprisonment on the merely fact that the offender doesn't pay the compensation to his victim (otherwise alternative measures could be accessible only for those who have sufficient economic capabilities to pay the compensation).

Ex *multis*, the judgment N. 2614/2012 of the Italian Supreme Court of Cassation, 1st Criminal Section, excludes the legitimacy of unconditional obligation of full compensation for the damages in case of decision about the admission to alternative measures to imprisonment.

The role of civil society in debates and policies about alternatives to imprisonment.

Civil society, by means of NGOs, are very active in relation to debates and policies about alternatives to imprisonment and to their implementation in specific services for sentenced and accused persons. As mentioned above, APG23 implements actions related to re-education of accused and detainees. APG23 is currently leading: (i) a project named «CEC»; (ii) the working tables with public entities and institutions; (iii) the EU project «Reducing prison population: advanced tools of justice in Europe»[29] and other international projects (since in 1973).

APG23 promotes reparative justice and a Person-Centered Approach in national and international contexts. Other NGOs are very active in the cultural and scientific field. For example, The Italian Society of Victimology» (SIV, «Società Italiana di Vittimologia») promotes reparative justice as a means to assure more protection in favour of victims, stimulating the dialogue among civil society, academics, public authorities, by means of (i) a scientific journal (concerning criminology, victimology and security), (ii) studies and researches, (iii) public events (i.e. national and international congress) and (iv) international, national and local projects (focused on victim protection and other related aspects).

[29] Reducing Prison Population: advanced tools of justice in Europe - JUST/2013/JPEN/AG4489.

5. Interviews Results

From the interviews, some critical points emerged from the experience of those working closely with suspect or defendants.

5.1. The presumption of innocence

As discussed in Section 2 of this research, at the basis of the judicial process there is the principle of the "presumption of innocence" of the accused person. However, this principle is not always respected in practice. In fact, it happens that people against whom a criminal trial begins are considered guilty even if there is no overwhelming evidence and no type of sentence has been issued yet.

Here it is indeed what M. declares to us in the interview we released:

"[…] The constitutional guarantee of the presumption of innocence until final sentence is actually little safeguarded in Italy. In practice, what prevails is the culture of suspect that makes the defendant to be considered as guilty of something, even though there has been no trial that can demonstrate it. […]"

In reality it also happens that public opinion, through the media, becomes aware of some information on the criminal trial. This information is not generally based on evidence; therefore, it could also be false leading to misinterpretation and wrong perception of the person. Not respecting the presumption of innocence important consequences on the suspects and accused. Although they are aware of not being definitively condemned, they lose any hope to be exonerated in the process and to be reintegrated in the social life.

In the experience of G.:

"[…] Information that we usually find on newspapers tend to be false and they rather highlight only some details. Despite that, the accused tends to identify himself with the person described in the article and the point that usually he keeps the article for himself. It could seem weird, but it may happen that one prides himself for a terrible crime committed when it is published in a journal even if the information reported are false.

Others instead feel shame for this kind of articles and they hope for a possible redemption. I think that judges should be left free to declare their sentence without a media interference. […]"

5.2. Stigmatisation of the person

Precautionary measures can cause other consequences, such as compromising the psychological health of the person subjected to them. Their social status and their image within the community can be affected. This process is called by sociologists "stigmatisation" of the person. "Stigmatisation is the social phenomenon that attributes a negative connotation to a community member (or group) in order to declassify it to a lower level.[30]"

This social phenomenon occurs very often to people under criminal prosecution, as G. tell us:

"[…] The publication of some information can alter the physical and psychophysical status. The public acknowledgment of the detainee's crimes is a delicate situation that requires maturity and support to be managed in the proper way.

The relation with the society is compromised by the prejudice related to the crime committed and to the identification of the person with the crime itself (a murder, a thief etc.) These judgments can preclude any possibility for a future reintegration and the detainee can be forced to move in another city […]."

[30] http://dizio.org/it/stigmatizzazione.

5.3. Protection of foreigners

Another crucial problem is the situation of foreigners. Many of them do not have permission to stay and therefore do not have a residence in Italy. Consequentially, many cases of preventive detention are foreigners who do not have access to another precautionary measure (as house arrests). This is the reason why the only precautionary measure to which they are allow to, is the preventive detention. This aspect has serious consequences on their human development:

"[…] Foreign people without residence nowadays remain in jail and the exceptions go in educational community since they require no costs for the government. A problem with foreigners is that, even when they have served their sentence, they remain without residence permit and they risk to be expelled. This fact generates suffering and problems in the personal educational process within the educational communities. […] G."

5.4. Family and work relationships

The life of a person suspected or accused for committing a crime certainly undergoes a change in his life. This happens with strong consequences on his work and family relations. According to the interviews carried out there are no legal bases that allow the employer to dismiss, modify the employment relationship or reduce the salary of a suspect or accused. But in reality, M. tells us that:

"[…] A person deprived of his/her freedom, without a clear probable cause or social dangerousness, can compromise both familiar relationships and possibilities to carry out a social life. It is in fact very easy for the suspect to lose the job. It is evident that this condition can cause many health and psychological problem for the subject in question. […]"

G. adds:

"[…] On work: Most of the time it is difficult to maintain a job. Anyway, the person, when released, finds many difficulties to become economically independent and thus to reintegrate in the society.

On Family's relations: Relations tend to be more real when more conflictual: as a consequence of the supervision measures, these relations can be reinforced or destroyed. […]"

Unlike the consequences on working relationships, which are primarily negative, family relations can change in a positive or negative way. In some cases, the relationships between the suspect and his family can be strengthened, by facing together the painful situations. In other cases, they can be destroyed by causing a great sense of isolation of the accused person. In these cases, the sense of abandonment and the isolation of the suspect and accused persons rises to the maximum power bringing them in a difficult situation to face alone.

5.5. Elements needed to avoid the risk of isolation of suspects or accused

Element	Explanation
Alternative measures to precautionary measures	Give the opportunity to await the sentence in healthy places for person not yet guilty. Through psychological support and an educational work programme jointly carried out by trained personnel and civil society volunteers. With an economic and social support from the state, it is possible to activate and reinforce (thanks to the existing reception experiences) alternatives to pre-cautionary measures.

Families and community involvement	Avoid the risk of stigmatisation by involving the family and civil society in the alternative measures of the accused. The program, with the participation of the family and the civil society volunteers leads to the knowledge of the person as a human being and not for his actions. This involvement: - promotes a positive development of the accused's journey; - avoids the risk of being abandoned, isolated, excluded and thought only as a "waste of humanity".
Coordination to guarantee the presumption of innocence	Through a clear and transparent communication of the news on the criminal trial, it is possible to avoid that the accused feels guilty because the external community considers it so. It is necessary a collaboration between judicial authorities, external communities and public information media because suspects and accused persons are not listed as guilty before the final sentence.
Protection of foreigners and homelessness	The ability to include foreigners and homeless in facilities where they can be subjected to measures other than preventive prison until they have a final sentence (such as house arrest). In fact, they are often subject to the measure of preventive prison for the lack of a domicile. This is necessary to avoid further social isolation, already victims of societal exclusion.

6. Summary of the main findings

Hereafter are reported the main findings of the analysis which can be useful for a a comparative study on the suspects and accused condition in Italy and in the other Member States involved with Arisa project.

1st SERIES OF CHARTS - SUSPECTS & ACCUSED

CATEGORY	DEFINITION	WHEN THE DEFINITION IS APPLIED?	DATA
SUSPECT	According to the Italian Code of Criminal Procedure (C.C.P.), a **suspect** is a person who is believed by the authorities of having committed a crime.	A person becomes suspect when he or she is signed in the relevant register - "Notizia di reato" (art. 335 C.C.P.). Suspects people are subject to preliminary investigations. According to the C.C.P., the person subject to preliminary investigations, following the finding of a crime offense by the Judicial Authority, remains **obscure**. This procedure protects the outcome of the same research, which sometimes requires secrecy. Nevertheless, a suspect becomes formally **"person under investigation"** when he receives a "notice of investigation (*Avviso di Garanzia*)", an act, through which the juridical authority informs the suspect about the charge due to the fact it is necessary the presence of his/her defence lawyer (such as house search and seizure of property).	In 2016, the decisions adopted by GUP (including also the decision adopted by GIP-Judge for the Preliminary Investigations) were 919.308 During the first 6 months of 2017 the decisions adopted by GUP (including also the decision adopted by GIP were 397.387 (Source: Italian Ministry of Justice, 2018)
ACCUSED	According to the C.C.P., at the end of the preliminary investigations, if the suspect is considered guilty, he is defined as **accused** and the criminal process begins.	A person becomes accused of having committed a crime after that the Judge for the Preliminary Hearing (GIP) will assess the evidences collected by investigators, listening also the technical-legal consideration of the defence lawyer of the accused. If the GUP decides that there are enough evidences to force the suspect to stand trial, the suspect becomes accused and the trial begins.	In 2016, the criminal proceedings which reached the 1st level of judgement were 394.985. During the first 6 months of 2017 the criminal proceedings, which reached the 1st degree of judgement, were 167.770. (Source: Italian Ministry of Justice)

2014		
	N°	%
TOTAL NUMBER OF SUPECTS	1,650,235	
TOTAL NUMBER OF PEOPLE ACCUSED	784,188	47.5 %
CRIMES REPORTED BY POLICE TO JUDICIAL AUTHORITIES	2,812,936	
CRIMES CLASSIFICATION		
Massacres	20	0.0007 %
Murders	475	0.016 %
Attempted murders	1,250	0.04 %
Unintentional Homicide	66,178	2.35 %
Criminal Injuries	64,601	2.29 %
Threats	85,211	3.02 %
Insult	64,601	2.29 %
Sexual assaults	4,257	0.15 %
Thefts	1,573,213	55.9 %
Robberies	39,236	1.39 %
Frauds	133,261	4.73 %
Cybercrimes	10,846	0.38 %
Forgeries	7,847	0.27 %
Intellectual property violation	1,069	0.03 %
Damage created	279,277	9.92 %
Arsons	6,855	0.24 %
Organized crime	986	0.03 %
Mafia	89	0.003 %
Misdemeanour	536,598	19.07 %

Source: Delitti, Imputati e Vittime di Reati – Una lettura integrata delle fonti su criminalità e giustizia – ISTAT, 2017.

TOTAL NUMBER OF PEOPLE IN PRISON

2017							
Juridical status				Gender		Nationality	
Accused[31]	Condemned[32]	Interned[33]	Total	Women	% of the total	Foreigners	% of the total
19,853	37,451	304	57,608	2,421	4.20 %	19,745	34.27 %[34]

Source: Department of Penitentiary Administration – Office of the Head of Department – Statistical Office, 2017.

[31] Accused: People awaiting the final sentence.
[32] People who received the final sentence.
[33] People who serve a sentence in an agricultural colony, work-house; rehab-center; psychiatric hospital.
[34] On 30th June 2017, the percentage of the foreigners detained in Italian prison was 41,4% (Source: Reports on prisons – Antigone. 27th July 2017).

2nd SERIES OF CHARTS – CUSTODIAL AND NOT CUSTODIAL MEASURES DURING PRE-TRIAL/PRECAUTIONARY PROCEDURES

Pre-Trial/Precautionary measures are means of deprivation of the physical and legal freedom of the suspect or accused person. They are ordered by a judge for the purpose of procedural caution even in the preliminary investigation phase.

CATEGORY	NAME OF THE MEASURE	CRITERIA FOR APPLICATION	EXCEPTIONS
CUSTODIAL	Pre-Trial detention	The judge must follow the criteria set out in Art. 273-274-275 C.C.P: pre-trial measures can be applied only in case of serious suspicion of the suspect/accused the measure must be appropriate, proportionate and least depriving and only if the following conditions persist: • danger of escape of the suspect; • suppression of evidences; • re-offending. Pre-trial measures cannot be applied for crimes that can be punished with a maximum sentence of less than 5 years. For more serious offences the principle of constrained discretion and of last resort still apply. Remand in custody is presumed to meet the precautionary requirements, only to three particularly serious crimes: • Mafia crimes; • Terrorist association; • Subversive association.	Pre-trial detention can be applied if the judges believes that in the examined case (not only according to the maximum sentence that can be applied according to the law) the final sentence will be less than 3 years. This provision will not apply in proceedings for offences under Articles 423-bis, 572, 612-bis and 624bis of the Criminal Code (such as breaking and entering or forest arson).
CUSTODIAL	House arrest		It cannot be applied due to the lack of fixed abode. House arrest cannot be applied for: - offences listed in par. 3 of Art 275 C.C.P.; - previous violation of house arrest; - previous violation of other pre-trial measures.
CUSTODIAL	Arrest in a health care facility		
NOT CUSTODIAL	Travel ban		
NOT CUSTODIAL	Reporting to the police		
NOT CUSTODIAL	Family restraining order		
NOT CUSTODIAL	Prohibition of residence		

TIME LIMITS FOR SUSPECTS/ACCUSED DETENTION BEFORE THE FINAL SENTENCE

Stages of the Penal Procedure	Preliminary Investigation	First Trial	Appeal against the first sentence	Appeal period before the Supreme Court
Max detention limits	- 3 months for crimes punishable with prison sentences up to 6 years - 6 months for crimes punishable between 6-20 tears of prison - 1 year for crimes punishable with sentence of more than 20 years	- 6 months for sentences up to 6 years - 1 year for sentences up to 20 years - 1 year and a half for more serious offences	- 9 months for sentences up to 3 years - 1 year in case of a sentence of up to 10 years - 1 year and a half for sentences of more than 10 years	Same as the previous column
General rules	Pre-trial detention cannot last longer than 2 years for crimes that can be punished with sentences of up to 6 years, 4 years for crimes punishable with sentences up to 20 years, 6 years for more serious offences. In some duly justified cases the overall terms can be extended, nevertheless the legislation takes into consideration this possibility: pre-trial detention cannot last longer than twice the maximum period of each stage of the proceeding, and the overall maximum length cannot exceed the two-thirds of the maximum sentence (Art. 304 par. 6 C.C.P.).			

PRECAUTIONARY MEASURES APPLIED IN 2016 IN ITALY[35]

Article of the Code of Criminal Procedure	Total number in 2016	Total number in 2015	Change %
Art. 281- Prohibition of expatration	25	10	+ 150
Art. 282 - Obligation to appear to the judicial police	7,366	4,481	+ 64
Art. 282/bis - Getting away from the family home	1,806	1,269	+ 42
Art. 283 - Prohibition and obligation of residence	6,124	3,628	+ 69
Art. 284 - House arrest	12,402	9,163	+ 35
Art. 285 - Custody in jail	20,531[36]	16,701	+ 23
Art. 286 - 286 bis - Custody in care facility, hospitalization facility	273	80	+ 241
Total	48.527	35.332	

[35] Personal Precautionary Measures issued in 2016 (Parliament's report by L. April 16, 2015, No. 47).
[36] In 2017, the total number of people in custody in jail were 19.853 (Source: Italian Ministry of Justice).

3RD SERIES OF CHARTS - CONFIDENTIALITY OF INVESTIGATIONS AND PROCEEDINGS

NAME	DEFINITION	SANCTIONS FOR ITS VIOLATION	EVENTUAL EXCEPTIONS
CONFIDENTIALITY OF THE INVESTIGATIONS	According to the Art. 329 of C.C.P., the investigative acts carried out by the public prosecutor and by the judicial police are subjected to secrecy until that the accused (or the suspect) can have knowledge of it and, in any case, not beyond the closure of the preliminary investigations. This restriction applies to all the people who are aware of the act of investigation. The secrecy performs the function of protecting the genuine acquisition of evidences. The acts remain subjected to secrecy until the conclusion of the investigations ex Art. 415 bis.	Detention from 6 months until 3 years if the accused person is a member of the public authority. Anyone who publishes, in whole or in part, acts or documents of a criminal proceeding, whose publication is forbidden by law, is punished with arrest for up to thirty days or with a fine from 51 euros to 258 euros (Art. 684 C.C.P.).	If necessary for the continuation of the investigations, the public prosecutor may allow the publication of individual acts or parts of them through a motivated decree. In this case, the published documents are filed with the secretariat of the public prosecutor.
CONFIDENTIALITY OF PROOCEEDINGS	According to Art. 114 C.C.P., it is forbidden: - The publication, even partially, of the documents covered by the secrecy or even of their contents is forbidden. - The publication, even partial, of acts no longer covered by secrecy until the preliminary investigations are completed or until the end of the preliminary hearing. - If the trial is taking place, it is not permitted to publish, even partially, the	Detention from 6 months until 3 years if the accused person is a member of the public authority. Anyone who publishes, in whole or in part, acts or documents of a criminal proceeding, whose publication is forbidden by law, is punished with arrest for up to thirty days or with a fine from 51 euros to 258 euros (Art. 684 C.C.P.)	

	documents in the file for the hearing, if not after the ruling of the first instance, and those of the public prosecutor's file, if not after the ruling is able to appeal. It is always permitted to publish the documents used for the complaints.		

DISCLOSURE OF INFORMATION TO THE MEDIA

NAME	DEFINITION	EVENTUAL EXCEPTIONS AND SANCTIONS
FREEDOM OF THE PRESS	The freedom of the press is defined within the Art. 21 of the Italian Constitution which states: Everyone has the right to freely express its thoughts with words, writing and any other means of communication. The press cannot be subjected to authorisations or complaints. Press requisition can be allowed only by a motivated act of the judicial authority in the case of crimes, for which the press law expressly authorises it, or in case of violation of the rules that the law prescribes for the indication of those responsible.	The art. 21 of the Italian Constitution forbids also to publish material which offends the *public decency.* It includes also the measures to confiscate the published material which offends the public decency (Art. 528 C.C.P.). The freedom of the press has certain limits in order to avoid abuses. These abuses can be summarized in the following criteria: - *incitation to disobey to the laws of the State (Art. 266 of the Penal Code);* - *incitation to commit crimes (Art. 414-415 of the Penal Code);* - *incitation to commit crimes against State offices (Art. 303 of the Penal Code);* - *using the press as a mean to promote subversive and anti-nationalist propaganda (Art. 272 C.C.P.);* - *defense of criminal acts (Art. 272-303 C.C.P.);* - *violation of freedom of worship (Art. 402-403 C.C.P.).* Sanctions for punishing these crimes may vary considerably; generally, it can be punished with detention (generally from 1 year up to 12 years) and fines (from 256 Euro).
RIGHT TO REPORT	It is not explicitly nominated within the Italian law but it can be considered as included in the Art. 21 of the Italian Constitution. It consists in the right to inform the public opinion regarding	1) The fright to report is limited by the privacy of the people involved in the happenings reported. Only information of public interest must be reported. 2) The information provided by the press can be considered lawful even if:

	happenings that are considered of public interest. The right to report is also linked with the obligation for the journalists to respect the "professional confidentiality": Journalists are obliged to not disclose the source of information when this is required by the fiduciary nature of the information revealed (Law n.69 of 1963).	- it may refer to private facts and conduct provided they have a public interest; - it reports details and circumstances contained within the limits of essentiality, understood both as a necessity of the news and as a mode of representation; - it must refrain from disseminating non-essential details, avoiding media hounding. 3) Freedom of the press is limited by the crime of defamation (Art. 595 C.C.P.). Defamation is the communication of a false statement that harms the reputation of an individual person, business, product, group, government, religion, or nation (it can be punished with a sentence of up 2 years of detention and a fine up to 2,065 Euro). 4) Not respecting the "professional confidentiality" may be punished with a fine up to 516 Euro and with a sentence up to 1 year of detention.
PUBBLICATION OF IMAGES AND PERSONAL DETAILS	The public interest in knowing a fact is given by its gravity or exceptionality. It is the importance of the fact itself that legitimises the concern by the public and thus its diffusion. The publication of images and personal details is defined within the Art. 8 of the Code of Conduct of the Journalists: *1. Except for the essentiality of the information, the journalist does not provide news or public images or photographs of subjects involved in events relating to the personal dignity of the person, nor he focuses stop on details of violence, unless he recognizes the social relevance of the news or image.* *2. Unless there are significant public interest or proven judicial and investigative purposes, the journalist does not take or produce images and photographs of people*	There is a considerable diversity of images and personal details treatment between perpetrator and victim. In general, the image of the perpetrator can be used by journalists for the most clamorous cases and whenever its dissemination may take place for the interest of the community or other people. Instead, the image of the victim can be published only for its exclusive interest, when this is prevalent on the need to protect its dignity. If a journalist infringes upon the Code of Conducts of the journalists is subjected to a disciplinary proceeding by the General Council of the Journalists Association. The disciplinary proceeding can be activated even upon request of the General Prosecutor (*Procuratore Generale*). The sanctions (according with the law n. 69 of 1963) that can be imposed to a journalist found guilty of misconduct are: - Warning: is inflicted for small violation and consists in a rebuke to the journalist inviting him to the observance of his duties (Article 52 Law No. 69/1963);

	in detention without the consent of the person concerned. *3. Persons may not be presented with knitting needles or cuffs, unless this is necessary to report abuses.*	- Censure: the complaint is connected to serious abuses and consists in the formal reprimand for the detected violation; - Suspension from professional practice: it can be imposed in cases where the journalist has compromised his professional dignity with his conduct; - Expulsion from the Journalists Association: it is directed to sanction the conduct of the journalist who seriously compromised his professional dignity, thus becoming incompatible the Association of journalists. The law provides for re-enrolment, upon request by the interested, after five years from the day of the expulsion.

4th SERIES OF CHARTS – ECONOMIC CONSEQUENCES CAUSED BY CUSTODIAL MEASURES

CUSTODIAL MEASURES	EFFECTS ON THE JOB		POSSIBILITY FOR A REPARATION
	PRIVATE SECTOR	PUBLIC SECTOR	
HOUSE ARREST **PRE-TRIAL DETENTION**	There is any legal provision providing specific sanctions in case of house arrest or detention. It is regulated by the collective agreement and by the law n. 604/1966, which provides that the layoff of the employee can happen only in case of "justified dismissal" or "justified reason". According to the law the detention or the arrest of a workers (or in any case of personal restriction of the personal freedom of the employee) does not represent a breach of contractual obligation leading to a justified dismissal. However, it can constitute an objective fact for a justified dismissal if the temporary and partial impossibility to carry out the work performance by the employee occurs. In other terms: the dismissal of the worker will be legal if it responds to reasons related to the production activity, taking into account the	The DPR n. 3/1957 (Decree of the President of the Italian Republic - *Decreto del Presidente della Repubblica*) with the Art. 91 obliges to suspend the employee of the public sector subjected to a restrictive measure of his personal freedom. According to comparative examination of the new national collective agreements of the main categories of civil servants, the tendency which prevails is, once that state of restriction of the personal freedom of the employee has been ceased, to prolong the period of suspension from work until the issue of the final sentence.	**PRIVATE SECTOR** Art. 24 of Law No. 332 of 1995 which provides: "Anyone who has been subject to the measure of custody in accordance with Article 285 of the C.C.P. or to the measure of house arrest in accordance to Article 284 of the C.C.P. and having been dismissed for that purpose from the job he occupied before the application of the measure, has the right to be reinstated in the workplace if the sentence of acquittal or non-proceeding is

	duration of the worker absence (Source: Court of Appeal sentences n. Cass. civ. 4.05.90 n° 3690; Cass. 9.06.93 n° 6403; Cass. 30.03.94 n° 311; Cass. 28.07.94 n° 7048). It must be reported also that **unpaid leave** (from 1 to 6 months), for serious personal reasons (no need to specify which reasons) can always be requested), even if the employer is not obliged to grant it.		pronounced in its favour, or a provision for filing is ordered by the judge ". **PUBLIC SECTOR** Art. 97 of DPR n.3/1957 establishes that, if a sentence of acquittal or acquittal occurs, the precautionary suspension must be revoked and all the wages not received during the period of absence from work must be refunded.
DETENTION BEFORE THE FINAL SENTENCE (AFTER 3 LEVELS OF JUDGEMENT)			

Source: www.ristretti.it/areestudio/lavoro/utili/licenziamento.htm.