

# Justice

## Current definitions

### **Adoption**

The matter is regulated by Law no. 184 dated 1983, modified both regarding the adoption of foreign minors by Law no. 476 dated 1998 and for the adoption of Italian minors by Law no. 149 dated 2001. The Juvenile Court declares a child available for adoption if the minor is found to have been abandoned in a state of moral and material abandon from relatives responsible for them, unless in the case of temporary force majeure.

### **Appeal**

A request presented to an administrative judicial authority by an appellant with a direct and current interest in obtaining the cancellation, revocation or reform of an administrative deed. In criminal matters the appeal is the request presented to Appeal Courts to review a ruling of first instance.

### **Appeal Court**

Located in each district capital; the Court is a collegial body and is divided into civil and criminal sections. The Court is competent to decide appeals against sentences issued by criminal or civil Courts, where applicable. The Court is the appeals body for sentences in employment law issued by the court of first instance, following the reform of the single judge. It is also has direct competence in certain subjects, such as the recognition of foreign sentences, rehabilitations, etc. Each Appeal Court has a special juvenile section which passes judgement on appeals of Juvenile Court decisions in both civil and criminal cases. Another special section functions as a Court of Assizes of Appeal and judges appeals against the sentences of the Court of Assizes.

### **Arrest**

The detention measure reserved for those who commit a misdemeanour.

### **Bankruptcy**

The judicial procedure by which the assets of an insolvent entrepreneur are confiscated and destined to be distributed justly among creditors, as well as is concretely possible.

### **Bankruptcy (closed)**

Bankruptcy proceedings are declared closed by the Court with a reasoned decree, on request of the receiver, creditor or by regular procedure. The closure decree can be appealed within 15 days, before the Appeal Court, by any recognised creditor.

### **Centralised judicial register**

The office that collects and archives the required provisions and notes on both criminal and civil proceedings.

### **Charge**

The offence or series of offences of which the person under investigation has been accused at the beginning of criminal proceedings.

### **Civil pre-trial proceedings**

The proceedings held to ascertain the juridical issue in dispute. The proceedings are divided into three phases: the introduction to the case (presenting the claim in the writ of summons), the preparatory inquiry and the sentence.

### **Convention**

An agreement or contract contained in a notarial deed.

### **Council of State**

This judicial body, established in 1861 and disciplined by Royal Decree no. 1054 dated 26<sup>th</sup> June 1924, has a single office in Rome. It is the supreme advisory body regarding legislative proposals and all kinds of business drawn to its consideration by Ministers. Furthermore, the Council of State is responsible for deciding on appeals for incompetence, excess of power or violation of the law, against acts or provisions of administrative authorities or bodies, regarding: the interest of individuals or legal authorities, when the appeal itself does not come under the jurisdiction of the judicial authorities or the jurisdiction or tribunals of special bodies or colleges.

### **Court**

A body usually structured into civil and criminal sections. Before the introduction of the single judge reform, in civil law the Court was competent in first instance for cases relating to taxation (except for those that came under the jurisdiction of Tax Tribunals), the state and legal capacity of persons (except for those that came under the jurisdiction of the Juvenile Court), nobility rights, fraud, some cases of electoral and administrative litigation, personal separations between spouses and the dissolution of matrimonial ties, and cases of unknown value. In second instance the Court was the appeal body for sentences issued in first instance by the Justice of the Peace or District Judge. In criminal law the Court is competent in first instance for the cases that do not come under the jurisdiction of the Juvenile Court or the Court of Assizes. The Court operates mainly under a single judge, except for certain offences specified by law where a collegial body is required. A special section of the Courts is formed by the Court of Assizes, a collegial body with jurisdiction for the most serious felonies (massacre, attack, murder, espionage, etc.). With Legislative Decree no. 1 dated 19<sup>th</sup> February 1998 (regulations on the creation of the first instance single judge) suppressing the District Court, the Court became the only judicial office in first instance.

### **Court of Auditors**

The Court of Auditors – established in 1862 and disciplined by Royal Decree no. 1214 dated 12<sup>th</sup> July 1934 – decides on legal proceedings involving the treasury accounts, receivers, cashiers and agents commissioned to collect, pay, hold or manage public funds or to hold values and materials owned by the State and those who are involved even without legal authorisation in the duties of these agents. The Court also has jurisdiction over the accounts of treasurers and agents of other public authorities, within the limits established by special laws, and regarding the pensions of State and military civil servants, including military pensions. It also performs auditing functions as specified by general accounting regulations for State spending.

### **Court office**

The organisation with specific competency by grade, matter and territory within the legal system.

### **Criminal proceedings**

The whole process, including phases and actions, designed to ascertain and affirm criminal responsibility for a certain behaviour defined as an offence by the law.

### **Criminal prosecution**

The activity of the Public Prosecutor when a criminal report does not meet the requirements for archiving.

### **District Court (Pretura)**

A judicial office with both civil and criminal competency. In civil actions, the District Judge was

competent for the following cases: possessory actions, actions against the erection of structures forbidden by law and fear of damage; leases and loans for use of buildings and business leases; exercise of contracts, compulsory purchase orders for moveable property or credits, court orders; employment disputes, or those regarding obligatory assistance or insurance (in addition to the relative opposition proceedings). The District Judge was also responsible for overseeing the judicial protection of minors and incapacitated adults (judge supervising guardianship). In criminal matter the District Judge was competent for offences carrying a penalty of not more than four years and certain other felonies (such as unintentional homicide) carrying a higher penalty or a fine, of whatever value, on its own or combined with the abovementioned sentence of imprisonment. Legislative Decree no. 51 dated 19<sup>th</sup> February 1998 (regulations on the creation of the first instance single judge) suppressed the District Court as a judicial office from 02<sup>nd</sup> June 1999. The District Judge's Office remained active in Courts and local Court sections until the proceedings already underway had been closed.

### **Felony (Crime)**

A crime carrying the penalty of imprisonment or fines and a series of accessory penalties (for example, being banned from public office).

### **Guardianship**

The entire range of powers and duties attributed to a guardian appointed by the judge to supervise minors who are not subject to parental authority or legally incapacitated. The supervising judge appoints a guardian to the minor when both parents are dead or are not capable of exercising their authority (article 323 of the Italian Civil Code) for other reasons, such as negligence of duty towards their children or mere impediment (illness, distance, etc.).

### **Imprisonment**

The custodial measure prescribed for offenders.

### **Juvenile Classification Homes (CPA)**

The structures hosting minors that have been arrested or detained awaiting a preliminary hearing.

### **Judicial authority**

The authority responsible for administering criminal, civil and administrative justice.

### **Judicial Reformatory**

Structures hosting minors in the cases specified by the Penal code. Minors recognised as not legally responsible for their actions, which resulted in offences punishable by imprisonment of not less than three years, or minors who committed an offence during the execution of a safety measure, were obligatorily assigned to these structures. Currently, the order for rehabilitation in correctional facilities is carried out by placement in a community.

### **Juvenile Court**

This judicial body, founded by Royal Legislative Decree no. 1404 dated 20<sup>th</sup> July 1934 (converted into law by Law no. 835 dated 27<sup>th</sup> May 1935), is located in every district of Appeal Court. In civil law the Court is competent to consider matters relating to the personal condition of minors, particularly regarding the exercise of parental authority and adoption. In administrative issues it can decide regarding irregular conduct in minors.

In criminal law it is competent for all offences committed by minors under the age of 18, according to current legislation, that fall under the jurisdiction of the judicial authority. The Juvenile Court hosts the Office of the Preliminary Investigations Judge, which becomes the Preliminary Hearings Judge in the case of preliminary hearings.

### **Juvenile detention centers**

Structures that ensure the execution of cautionary detention measures or custodial sentences issued by the Judicial Authority for young offenders.

**Liquidator**

The body whose main responsibility in the bankruptcy procedure is to administrate the assets of the bankrupt party under the direction of the delegated judge.

**Misdemeanour**

An offence carrying the measure of arrest and/or a fine and a series of accessory penalties (for example, suspension of the licence to exercise a profession or trade).

**New prisoners**

All those who pass from freedom to any form of imprisonment, legally defined as condemned, imprisoned or accused.

**Notarial deed**

The formal expression of an individual or group, signed before a notary. The deed may be public or authenticated and may contained one or more agreements.

**Notarial register**

Part of the administration of the Ministry of Justice, responsible for archiving the deeds of notaries who no longer practice, controlling the profession of notary, regularising notary deeds filed, publishing testaments, managing the general registry of testaments and issuing copies of the deeds kept on record. There are currently 94 District Notarial Registers in Italy.<sup>1</sup>

**Offences**

A felony or a misdemeanour as defined by the Penal Code or special criminal laws.

**Office of the Justice of the Peace**

This judicial office began its activity on 01<sup>st</sup> May 1995 when Law no. 374/1991 came into force. It is currently competent for issues relating to: moveable property of a value of less than 5,000 EUR, unless the competence is assigned to another judge by law; compensation for damage caused by vehicle or shipping traffic, for a value of less than 20,000 EUR; the measure and method of the use of building association services; the terms and observance of distances for the planting of trees and hedges; the relations between owners or holders of property equipped for civil residence regarding the emission of heat or smoke, exhalations, noise and similar propagations over the normal level of tolerance; cases relating to interest or sanctions on late payments for welfare or obligatory insurance services. With the entry into force of Law no. 479 dated 16<sup>th</sup> December 1999 (the Carotti Law), the Court also acquired competence for civil disputes enrolled at the District Court before 30<sup>th</sup> April 1995 that had not yet reached a conclusion and would now come under the jurisdiction of the Justice of Peace, with the exclusion of those already under decision that had not subsequently been re-started. Legislative Decree no. 507 dated 30<sup>th</sup> December 1999 restored appeals against orders-injunctions to the jurisdiction of the Justice of the Peace up to a certain monetary value. Legislative Decree no. 274 dated 28<sup>th</sup> August 2000, which came into force from January 2002, established that the Justice of Peace may also decide in criminal cases involving some matters regarding simple and low value disputes.

**Offices of Youth Social services (USSM)**

Offices providing assistance to minors found guilty of offences in all stages of criminal proceedings, and which compile the information to ascertain the personality of the minor, providing concrete hypotheses and assisting the Juvenile Judicial Authority's decision-making process.

**Preventive detention institutions**

Penitentiaries where custodial sentences or cautionary detention measures are spent.

**Protest**

The formal act refusing the acceptance of a bill of exchange by the drawee, failure to pay a bill of

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<sup>1</sup> Ministry of Justice decree dated 30<sup>th</sup> July 1997 (published in the Official Gazette in ordinary supplement no.199 dated 01<sup>st</sup> October 1997, general series, no. 229); decree dated 23<sup>rd</sup> December 2009 (published in the Official Gazette dated 28<sup>th</sup> December 2009, general series, no. 300).

exchange or banker's draft.

### **Public Prosecutor's Office (Pubblico Ministero)**

The judicial office held at the Appeal Courts and Courts is represented by the Attorney General (Procuratore generale della Repubblica) and the Public Prosecutors (Procuratori della Repubblica). The Public Prosecutor is responsible for directing and supervising the judicial police in each Court. On receiving the report of an offence, the Prosecutor either initiates criminal proceedings if the report is founded or requests the Preliminary Hearings Judge to archive the case (unless the Judge himself decides otherwise). The Attorney General directs and supervises the judicial police in the district of the Appeal Court and normally performs in appeals the activities carried out by the Public Prosecutor in first instance. (Compare: Italian Code of Criminal Procedure).

### **Regional Administrative Court (TAR)**

The Regional Administrative Courts (TAR) were created as administrative justice bodies in first instance by Law no. 1034 dated 06<sup>th</sup> December 1971. They have regional jurisdiction, including the provinces within each region; they are based in regional capitals. The TAR generally decides on appeals for lack of jurisdiction, excess of power or violation of law against deeds or provisions issued by peripheral and central State bodies or public authorities, either located within the Court's district or on an ultra-regional level. The matters of jurisdiction are set out in detail in the law establishing the TAR.

### **Released (at end of sentence)**

Those who are freed from prison for the various reasons specified by law.

### **Residential community**

A structure which hosts juvenile delinquents subject to cautionary measures placing them in the community; this kind of structure is used to apply the security measure also known as Judicial Reformatory.

### **Residential rehabilitation centres**

Residential rehabilitation centres were one of the services overseen by the Juvenile rehabilitation centre, a decentralised body belonging to the Ministry of Justice, set up at each Appeal Court. These structures were designed to rehabilitate minors found to be irregular in conduct or character, by order of Court. Normally rehabilitation centres provided young people with an employment opportunity at the end of their period of rehabilitation.

### **Sentenced**

A person judged and condemned by final and confirmed sentence.

### **Sentenced prisoners**

People detained in prison following irrevocable sentences for arrest, reclusion or life imprisonment.

### **Sicilian Administrative Justice Council**

The judicial body – established by Legislative Decree no. 654 dated 06<sup>th</sup> May 1948 – is based in Palermo and exercises the advisory and jurisdictional powers of the regional sections of the Council of State as specified in the Sicilian regional statute. The Council is a juridical-administrative advisory body of the regional government.

### **Supreme Court of Cassation**

A collegial judicial body based in Rome, with jurisdiction over the entire Italian State. It is structured in sections, six for civil and seven for criminal cases. In general, it decides on requests of reforms of sentences pronounced in appeal or unappealable sentences issued in first instance. The Supreme Court, as a supreme body of justice, ensures the exact observance and uniform interpretation of the law, the unity of objective law, the respect of limitations in the various jurisdictions and disciplines conflicts of competence and jurisdiction.

**Suspects or defendants currently facing criminal proceedings**

Those against whom the public prosecutor has initiated criminal proceedings formulating formal charges and a request for indictment.