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Know your rights

A short guide to your rights
when dealing with the police

ASSOCIAZIONE ANTIGONE

via Monti di Pietralata, 16 – 00157 ROME – www.associazioneantigone.it



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Rights concerning the checking of personal documents, identification and arrest

(ART. 11 L. 191/1978 E ART. 349 C.P.P.)

If you are stopped by a plainclothes police officer/agent:
you have the right to ask them to identify themselves, in other words, to ask them
to which branch they belong and to show their identification card.

If the plainclothes officer refuses to identify themselves properly:
you are not obliged to follow their orders.

If the officer/agent is properly identified and/or is wearing a uniform, as far as
a police check is concerned, you cannot refuse to identify yourself and must show
a valid identification document.

Only when there are sufficient clues to believe that the name and documents
you have provided are false, or if you refuse to identify yourself and show a valid
identification document, can you be brought to the police station.

The police officers/agents who bring you to the central police station
for identification must:

- immediately inform the Public Prosecutor;
- hold you only for the time necessary for identification and release you within
24 hours of communication to the Prosecutor.

In these cases the right to a lawyer is not provided for.





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Rights concerning personal inspections and searches

(ARTT. 244 E 352 C.P.P.)

Officers and Agents of the Judicial Police can proceed to personal inspections and searches without a court-issued warrant:

- if they consider the chance of finding weapons, explosives, ammunition, or narcotic substances on you or in the place you are well grounded (D.L. 306/1992 and D.P.R. 309/1990);
- if you are caught committing a crime or if an arrest warrant, detention order, or warrant as a suspect of a crime has been issued against you.

If agents find weapons, explosives, ammunition, or narcotic substances, they must draw up a seizure report and ask for its verification by the Public Prosecutor within 48 hours.

You have the right:

- to ask that such measures are completed in the presence of a defense lawyer or other trusted person available upon short notice;
- to receive a copy of the search report, even if nothing is seized, which must state the operations conducted, the reason(s) for carrying out the search without prior authorisation from the court, the name(s) and qualification(s) of the officers who conducted the search;
- to have an interpreter if you are a citizen who speaks a different language and neither speaks nor understands Italian.





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If Officers and Agents of the Judicial Police proceed to a search and personal inspection they must:

- carry out such operations with respect for the person's dignity and discretion;
 - not use methods or techniques aimed at weakening the person's ability to make decisions;
 - use only female personnel when searching women.
-
- If the Agents do not wait until the lawyer arrives, it is recommended that you personally comply with all search procedures and pay attention to the creation of the search and eventual seizure report.

This report must be read carefully to verify that all procedures were carried out as reported.

If this is not the case, you do not have to sign it.

In any event, in these situations it is always advisable to refer to a lawyer.

In all other cases, that is to say, if they are not looking for weapons and/or narcotics, or if you are not caught committing a crime, or there is no detention order in force, the police can neither search you nor enter your house or any other private place or your car without a court-issued warrant.

On such occasions, you have the right:

- to have a copy of the warrant before the start of the search;
that the house search not be carried out before 7:20 a.m. or after 8 p.m.
- It may be conducted outside these hours only if authorised in writing by the court;
- to the same rights provided for as far as inspection and search without a court-issued warrant are concerned.





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Rights concerning arrest and custody

(ARTT. 380 E SS C.P.P.)

Arrest and custody are temporary measures that restrict personal freedom adopted by the police in urgent cases and in the absence of an order by a judge, who only intervenes at a later stage.

Arrest consists of the temporary deprivation of personal freedom, which is ordered by the Judicial Police against whomever is caught committing a crime or in the act of pursuing a serious offence.

Custody is the deprivation of personal freedom ordered by the Public Prosecutor, even if one has not committed a crime, when there are specific factors, relating to the impossibility of identifying the suspect as well, causing him or her to consider the risk of flight for a person suspected of a serious crime well grounded.

The Judicial Police who carried out the arrest or custody must:

- immediately inform the Public Prosecutor of the arrest or custody;
- immediately put the person arrested or in custody at the disposal of the Public Prosecutor in charge within 24 hours of the arrest or custody;
- immediately inform the accused's defense lawyer or the public legal representative appointed by the Public Prosecutor of the arrest or custody.

You have the right:

- to appoint a trusted lawyer;
- to have information on access to free legal aid if you have an annual income lower than around 11,000 euros;
- to be informed of the charges against you;





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- to have linguistic assistance from an interpreter and the translation of the essential documents if you do not speak Italian;
- to remain silent;
- to inform, subject to your consent, the consular authorities and your relatives;
- to have access to urgent medical assistance;
- to be brought before the Judicial Authority for verification within 96 hours of the arrest or custody;
- to appear before the court to formalise the interrogation and give notice of an appeal to the Court of Cassation against the deciding order on the confirmation of the arrest or custody;
- to be granted assistance by a lawyer possibly appointed by a close relative or by the public legal representative if you are unable to appoint a trusted lawyer;
- to talk to your lawyer immediately after the arrest or custody except in the case when the court - in accordance with a request from the Public Prosecutor - delays the conversation up to 5 days because of specific and exceptional reasons for caution.





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Right to be informed about your rights in writing

(ART. 386 C.P.P.)

In the case of custody, arrest, or enforcement of a detention order, you have the right to receive all the information about your rights in writing.

You must be given what is known as *Letter of rights*.

The delivery into your hands of the written communication of your rights as a person under arrest or in custody must be recorded in the arrest or custody report.

If you are a speaker of a language other than Italian, it must also be reported whether the information has been translated for you, in a language that you know, only verbally due to the impossibility of translating the *Letter of rights*.

Your rights to information are the same even if you have been served a custodial supervision order (Art. 293 c.p.p.) or a European Arrest Warrant (Art. 12 L.69/2005).



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Rights during custody in a police station

(LETTER OF RIGHTS, adopted by the Minister of the Interior in 2007 following recommendations by the European Committee for the Prevention of Torture)

If you are held in custody in a police station you also have the right:

- to be able to carry out essential acts of personal hygiene;
- to receive meals if you spend over six hours in the custody room and at hours normally intended for dining;
- to be held in a space separate from where persons of a different gender are being held;
- to obtain a receipt of the personal belongings withdrawn from your person before entering the security room and to be given them back at the moment of release;
- to be held in a clean cell and provided with a bed with blankets and bedsheets;
- to keep children under the age of 3 with you if you are a woman with children.





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Rights in the presence of the public prosecutor

(ARTT. 388-390 C.P.P.)

If you are arrested or taken into custody, the Public Prosecutor must:

- question you after providing timely notification to your lawyer, informing him or her of the facts related to the proceedings and the reasons for your being held as well as any incriminating evidence and their source so long as the latter do not impede investigations;
- order your release: a) if either the arrest or custody have been carried out due to mistaken identity or lie outside of the cases provided for by law b) if the related report has not been made available to the Prosecutor within 24 hours of the arrest or custody, or if the Prosecutor him or herself did not ask the court for verification within 48 hours of the arrest or custody c) if he or she does not intend to ask the court for the application of a coercive measure for the person arrested or taken into custody;
- request that the judge confirm the preliminary investigations in relation to the place of arrest or custody within 48 hours of the arrest or custody if he or she does not intend to release you;
- convey to the court requests related to personal freedom and the evidence upon which they are grounded if you do not take part in the confirmation hearing.



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Rights concerning the confirmation hearing

(ARTT. 390-391 C.P.P.)

The Judge for Preliminary Investigations or the ordinary judge (if summary procedure is in force) must set the confirmation hearing within 48 hours of the verification request by the Public Prosecutor and notify the Prosecutor, the lawyer, and you in the case that you have already been released.

The hearing is held in chambers and your lawyer must be present.

The Prosecutor, if present, will outline the reasons for the arrest or custody and will forward any and all requests regarding the application of supervision measures.

If you are present, the Judge will question you and hear from your lawyer.

At this point, the Judge can either:

- validate the arrest or custody with an order;
- choose not to validate the arrest or custody.

In both cases the order may either be challenged by you (in the case of validation) or by the Prosecutor (in the case of failed validation), through an appeal to the Court of Cassation.

In either case, arrest or custody ceases to be effective against you if the validation order is not stated or filed within 48 hours of the person arrested or taken into custody being put at the Judge's disposal.

If the Judge does not demand the application of a coercive measure, he or she must order your immediate release.



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FAQs

Rights of persons arrested or in custody

Therefore, both in the case of a failed validation and in the case of a validation without the application of a coercive measure, the Judge will have to order your release.

When and why can I be arrested or taken into custody?

Arrest and **custody** are temporary measures which restrict personal freedom and are adopted by the police in urgent cases and in the absence of an order from a Judge, who only intervenes at a later stage.

These are extreme measures which imply a **restriction of one's personal freedom** and therefore need to be validated by a Judge within the terms regulated by la (96 hours), and, if not respected, shall cause the withdrawal of the restrictive measure.

ARREST is the temporary deprivation of personal freedom ordered by Judicial Police against “one who is caught committing a crime” (i.e. in *flagrante delicto*) or “one who, immediately after an offence, is chased by the police, by the victim of the offence, or by other persons or who is caught with things or traces that suggest he or she has committed the crime immediately before” (i.e. *flagranza impropria*).

You cannot be arrested for just any crime; you may only be arrested for those provided for in Art. 380 c.p.p. (mandatory arrest) for crimes with lifelong imprisonment or detention for a minimum of 5 years and a maximum of 20 years or other crimes listed in the same clause.

In other cases, provided for by Art. 381 c.p.p., you may be subject to arrest (discretionary arrest).





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CUSTODY, as in the case of arrest, is a restriction of personal freedom enacted by the police “even outside cases of *flagrante delicto* when there are specific factors, relating to the impossibility of identifying the suspect as well, causing them to consider the **risk of flight**” against “**someone seriously suspected** of a crime for which the law provides for lifelong imprisonment or detention for a minimum of 2 years and a maximum of 6 years, or of a crime concerning military weapons and explosives, or of a crime committed with the purpose of terrorism, including international terrorism, or the subversion of democracy, well grounded”.

What is the difference between arrest and custody?

Arrest is conducted by police officers or agents and is **connected to cases in flagrante delicto, which is the sign of an offence that has just been committed or is in the process of being committed.**

Custody does not imply the act of committing a crime and is based on the flight risk of someone suspected of having committed a serious offence.

Will I be informed of my rights? How?

Art. 386-387 c.p.p. establish procedures for the police immediately following arrest or custody. Those police officers and/or agents who performed the arrest or custody, or were given the arrested person, must immediately inform the Public Prosecutor of the place where the arrest or custody took place, and put the arrested person at the Prosecutor’s disposal within 24 hours of implementing such measures. They must inform the arrested person of his or her right to appoint a trusted lawyer; a public defender will be appointed to those who do not want to do so. The police must also immediately inform the lawyer of the arrest or custody. Obligations concerning the rights of the person arrested or taken into custody have been further extended after the enactment of Decree 101/2014, which implements European regulation 2012/13/UE.



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The Judicial Police must:

- a** inform the person arrested or taken into custody that he or she is entitled to appoint a trusted lawyer and inform him or her about the conditions for receiving public legal representation;
- b** inform him or her of the reasons for the arrest or custody, providing information on the charge(s) against him or her;
- c** inform him or her of the right, as a foreign person who does not understand and/or speak Italian, to have linguistic assistance by an interpreter and the translation of essential documents;
- d** inform him or her of his or her right to remain silent;
- e** inform him or her of the right to receive assistance, under consent, from the consular authorities and to give notice to relatives;
- f** inform him or her of the right to have access to urgent medical assistance;
- g** inform him or her of the right to be brought before the judicial authority for validation within 96 hours of the arrest or custody;
- h** inform him or her of the right to appear before the court for questioning and to propose recourse to the Court of Cassation against the deciding order concerning arrest or custody.

This is a list of the essential information rights provided for in Art. 386 c.p.p

In addition, the person under arrest or in custody also has the right:

- a** to receive legal assistance from a lawyer appointed by a close relative or by a public legal representative if he or she is unable to appoint a trusted one;
- b** to speak with his or her lawyer immediately after the arrest or custody, except when the Prosecutor delays the conversation up to 5 days for exceptional cases.

Those persons arrested, taken into custody, or in any way restricted (following a pre-trial detention order or a detention order), must receive such information in writing (what is known as the *Letter of rights*).



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The delivery in writing of the communication concerning the rights of the person arrested or in custody, or the information possibly transmitted orally to different language speakers due to the impossibility of translating the Letter of Rights into a known language, must be mentioned in the arrest or custody report.

The written information to be provided to the subject addressed with the supervision measure, even if a European Arrest Warrant is in force, are, *mutatis mutandis*, the same given to the person arrested or taken into custody.

Will I be informed of the charges against me?

Yes, as stated in the written communication delivered by the police, the person arrested or taken into custody has the right to receive information concerning the charges and sources of evidence, so long as the latter does not impair investigations.

The reasons for your arrest or custody must be written in the summons for appearance before the court for the validation of the arrest or custody, and must be given to you.

Am I entitled to a lawyer?

Yes, the right to self defence is among the most essential of the accused's rights and is concretely realised by the right and duty of having a lawyer. The law states that the person **has the right to talk with a trusted lawyer, in some cases appointed, or with a public legal representative chosen by the Prosecutor or the police who performed the supervision measure immediately following the arrest or custody.**

When there are specific and exceptional reasons for caution, the Judge can, upon request from the Public Prosecutor, issue a motivated decree and delay the implementation of the right to speak with a lawyer for up to 5 days.



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How can I find a lawyer?

Public legal representation is guaranteed for whomever is involved in a trial but does not appoint his or her own trusted defense lawyer, no matter what their annual income. Regardless of whether they are a suspect or the accused in a penal trial, whoever does not appoint a trusted lawyer for his or her defence will be assigned a legal representative **by the Judge, the Public Prosecutor, or the police who performed the supervision measure** and this lawyer will be selected from a dedicated list of lawyers provided by the Council of the Bar.

The legal representative appointed cannot refuse the assignment unless there are justified reasons for it (such as a conflict of interests).

The accused, however, can appoint his or her own trusted lawyer to replace the public defender at any time. The main difference to free legal aid is that the public defender is assigned regardless of the annual income of the accused and must be paid by him or her.

To have information on the access to free legal aid or public defence you may refer to the Council of the Bar from your hometown.

I cannot afford a lawyer, am I entitled to free legal aid?

Free legal aid guarantees the right to defence and therefore the right to be assisted by a lawyer who is registered on dedicated lists and whose fees are paid for by the State in the case of persons who do not have suitable means (namely, who have an annual income lower than 11 thousand euros) and cannot provide for legal expenses on their own.

Therefore, if someone who cannot afford a lawyer or additional expenses needs assistance in a trial, they can appoint a lawyer of their own choosing without having to pay: the defender will be paid directly by the State.





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What is the role of my lawyer?

The lawyer's role in relation to the person under arrest or in custody, in order to safeguard the person's best interests, is twofold:

- to provide assistance of a technical nature;
- to provide representation, namely as a substitute for the person concerned in the application of his or her rights and faculties.

As soon as the lawyer is informed of the arrest or custody, and so long as the trial times allow it, he or she should go to the prison or to the security rooms at the police station before the Public Prosecutor interrogatory or confirmation hearing. If this is not possible, it is standard practice for lawyers to ask the Prosecutor or the court for a few minutes to speak with the defendant, primarily to evaluate whether he or she should take part in the questioning or opt for the right to remain silent.

What happens if I am unhappy with my lawyer?

Both the client and the lawyer can choose to end the relationship at any time. In particular, a revocation of the assignment on the part of the client is a free-form act: it requires no specific formalities, forms, or special *formulae* whatsoever. It can also be performed verbally so long as it is addressed directly at the lawyer. The client, however, must still pay fees for any work done until withdrawal of the public defender.

Do I have the right to speak with my relatives?

The police must ask the person under arrest or in custody whether he or she consents to informing his or her relatives of the arrest or custody; if so, the police must notify the relatives in a timely fashion or, in the case the person under arrest or in custody is a foreigner and only upon request, the competent consular authority. Consent cannot be inferred from the person's behaviour, it must be unequivocally expressed.



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In the case of the arrest of a minor, however, consent is absolutely irrelevant, as the police must notify the arrest or custody of the minor to the holder of parental responsibility.

I do not understand Italian.

Do I have the right to an interpreter?

The Judge will have interpreters question those persons arrested or in custody who do not speak and/or understand Italian. Furthermore, Italian law prescribes that those persons arrested or in custody who do not know Italian be entitled to free assistance from an interpreter so that they may speak with their defenders.

In such cases, it is a good idea to express your desire to have the assistance of an interpreter to the Judge, Public Prosecutor, or police in charge of supervision as the Judge or the Prosecutor are obliged to appoint one.

Will I be interrogated?

By whom and how?

The Public Prosecutor can proceed to interviewing the person arrested or in custody by giving timely notification to the trusted lawyer or, in their absence, to the public defender.

The investigative authority and the Public Prosecutor must gather information indicating involvement in the crime as well as information related to the discharge of the person under arrest or in custody.

At the beginning of questioning, the person arrested or in custody must be informed of his or her right to refuse to give testimony and that the deposition will be available for use during the trial.



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The person under arrest or in custody will be given the chance to say what he or she knows concerning the crime under investigation, also through specific questions.

The deposition will be transcribed and will have to be signed by the person arrested or in custody, who also has the right to read it and have his or her remarks noted.

Am I obliged to answer the questions?

What consequences will there be if I decide to remain silent?

The person arrested or in custody has the right to remain silent without risking detrimental consequences for choosing to do so. This right must be clearly explained by the judicial authority before beginning the interrogation.

How long can I be held by the police?

Up to a maximum of 96 hours. More precisely: within 24 hours of the arrest or custody the police must put you at the Public Prosecutor's disposal, and forward all relevant documents to the prosecuting authority (the arrest report, notes, etc.).

The Public Prosecutor must request validation of the measure within 48 hours of the arrest or custody. The Judge will have to set the confirmation hearing and decide on the matter within 48 hours of the Prosecutor's request.

In which cases will the Prosecutor order my release?

The Public Prosecutor will have to immediately order your release:

a) if it turns out the arrest or custody was made due to mistaken identity or outside of circumstances provided for by the law; b) if the report of the act has not been made available to the Prosecutor within 48 hours of the arrest or custody or if the Prosecutor did not ask for validation from the court within 48 hours of the arrest or custody; c) if he or she does not intend to ask the court for the application of a coercive measure on the person arrested or in custody.





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If they do not intend to order your release, they must ask the relevant judge connected to the place of arrest or custody for validation within 48 hours of the arrest or custody.

What happens during the confirmation hearing?

The Judge for Preliminary Investigations or the ordinary Judge (if the summary trial is in force) must set the confirmation hearing within 48 hours of the Prosecutor's validation request, informing the Prosecutor, the defender, and you in the case that you have already been released.

The Judge questions you, if you are present and consent to it and listens to the Prosecutor's requests (who is not obliged to be at the hearing and can send written requests) as well as to those of your lawyer. At this point, the Judge can validate the arrest or custody with an order or not.

Arrest and/or custody cease to be effective if the validation order is not expressed or filed within 48 hours of the person being arrested or taken into custody being put at the Judge's disposal.

If the Judge does not order a custodial supervision measure (imprisonment or house arrest) he or she must order your immediate release.

Therefore, both in the case of a lack of validation and in the case of validation not followed by a custodial supervision measure either in prison or through house arrest, the Judge will have to order your release.

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