

The pardon power

Art. 87 of the Constitution, Paragraph 11, lays down that the President of the Republic may, through a presidential decree, grant pardons and commute punishments. It is a clemency provision dating back to ancient times and that wholly or partially extinguishes the punishment inflicted by an irrevocable sentence or transforms it into another type of penalty provided for by law (for example a temporary detention instead of a life sentence or a fine instead of detention). The pardon also extinguishes ancillary punishments, if specifically provided for in the decree; instead, it does not extinguish the other penal effects of the sentence (Art. 174 of the Penal Code). The pardon may be subjected to the conditions laid down in Art. 681 of the Code of Criminal Procedure¹.

The pardon granting procedure is regulated by Art. 681 of the Code of Criminal Procedure. The pardon application must be addressed to the President of the Republic and submitted to the Ministry of Justice. It is signed by the convicted person, by the person's next of kin, his/her domestic partner, guardian or custodian, or by an attorney. If the convict is detained or interned, the application may also be directly filed with the Surveillance Magistrate (*Magistrato di sorveglianza*). The chairman of the Board of Corrections of the penitentiary may propose, as compensation for particularly note-worthy behaviour, to pardon the inmate who has distinguished himself for good conduct.

The Prosecutor General of the Court of Appeal and, if the convict is detained – at a person's home – remanded to community service, the Surveillance Magistrate, expresses his opinion on the pardon application or proposal. To this end, they collect any useful information relative to, inter alia, the legal status of the convict, the intervening pardon of the persons harmed by the offence, the personal information provided by the Police, and the evaluation of the people in charge of the penitentiary institutions...After receiving the opinions, the Minister transmits the pardon application or proposal, complete with an investigation report, to the President of the Republic, accompanied by his/her own "opinion" in favour or against granting the reprieve. As established in Decision N. 200 of 2006 of the Constitutional Court, the President of the Republic takes the final decision. Art. 681 of the Code of Criminal Procedure also sets forth that pardon may be granted ex-officio, meaning thereby without the filing of an application or the submission of a proposal, but always after the conclusion of an investigation.

In case the President of the Republic grants the pardon, the competent public prosecutor will execute it by ordering the release of the convict, if the case so requires.

¹The resolute condition of a clemency revocation is generally included in a pardon or a reprieve, in case of commission from a beneficiary of an offence committed with criminal intent within 5 years from a presidential decree (10 years in case of pardon concerning life imprisonment).