In response to the request to provide a contribution on the current subject matter (letter protocol n. DAG n. 22045.U of 29.06.2022), we are providing the following information:

We would like to say first that UNODC, by implementing the content of Resolution E/CN.15/2022/L.4/Rev.1, titled “reducing reoffending through rehabilitation and reintegration”, intends developing model strategies to reduce reoffending, which may serve as useful tools for member States. The same resolution encourages member States to share with UNODC “through written contributions, information on promising practices for possible inclusion in model strategies projects to reduce re offending, to be submitted to the intergovernmental group of experts”. Consequently, UNODC has invited the government to share a short summary of the practices, together with relevant basic information, which may include national strategies, action plans, legislation or approaches and programs based on concrete data aimed at reducing reoffending.

Reoffending - by now considered as an aggravating circumstance of offences - is regulated by Article 99 of the Italian Criminal Code. This article covers reoffending’s different forms:

Paragraph one which reads: “Any person who commits another non-negligent crime after having been convicted of a non-negligent crime, may be subjected to a one-third increase in the sentence to be imposed for the new non-negligent crime”, refers to simple reoffending, which occurs when an individual who already has a final conviction for a non-negligent offence, commits another offence of a different kind;
Paragraph 2 provides for cases of **aggravated reoffending**, which applies:

1) when another offence is committed, and it is of the same kind as the previous offence (**simple reoffending**);

2) when another offence is committed within five years of being convicted for the previous offence (**reoffending within five-years**);

3) when another non-negligent offence is committed during or after the enforcement of sentence, or during the time when the convicted person voluntarily evades enforcement of sentence. It is important to underscore that under paragraph four of the same rule, it is specified that “Whenever more than one of the circumstances specified in paragraph 2 concur the punishment is increased by one-half”.

Paragraph 5 regulates **repeated reoffending**, which applies when a reoffender commits another non-negligent offence. A distinction is then made between simple repeated reoffending (when the new non-negligent offence is of a different kind) and aggravated reoffending (when the individual is already a reoffender because of an earlier aggravated reoffence).

The decision to recognise reoffence - following the judgment of the Constitutional Court n. 185/2015, which definitively clarified the cases where it is obligatory to apply reoffending - is solely entrusted to the discretionary power of a judge; hence, in all of the above-mentioned cases, it is optional to apply reoffence. However, when a judge recognises the occurrence of reoffending, it is obligatory to increase the sentence.

The reform introduced by Law n. 251/2005 has affected the institution of reoffending making punishments harsher against individuals who commit another offence after perpetrating a non-negligent offence.

The said aggravation of the sentence has affected other aspects of law connected to reoffending: the granting of the general mitigating circumstances as per Article 62 bis of the Criminal Code; the calculation of the maximum term of the time limit of an offence, as prescribed by of Article 161, paragraph 2, of the Criminal Code; the determination of the sentence in case of continuing offences (part of the same criminal plan) or concurrence of offences, as envisaged by of Article 81, paragraph 4, of the Criminal Code, and lastly, the granting of alternative measures to detention.

However, an attempt has been made through case-law to mitigate the sanctions connected to the application of reoffending.
In its decision no. 185 of 23 July 2015, the Constitutional Court held that a compulsory increase in the sentence in the case of repeated reoffending is inconsistent with the Constitution. The Court excluded any automatism between reoffending and the application of a harsher sentence.

The circumstance of prior convictions alone cannot lead a judge to automatically apply the rules on reoffending; rather, a “qualified relationship” between a prior conviction and another non-negligent offence committed at a later date is required.

In fact, a court should assess the concrete circumstances and specificities of the case at issue, keeping account of the whole series of descriptive elements of reoffending like, for instance, the nature of the committed offences, the time that elapsed between them, the harm or danger caused by the different conducts, etc. An assessment of the said elements may also lead to ascertain the occasional nature of the offender’s relapse into crime, which element does not in any way amount to an enhanced propensity to perpetrate crime, the only circumstance that may legitimately lead to applying an increase in penalty for reoffending.

The circumstances underlying a reoffence allow a judge to go beyond the head sentence prescribed by law when determining the punishment, and they act as a tool for adjusting the sentence to the crime.

More specifically, reoffence is a case of special-effect aggravating-circumstance (Article 63), since it can lead to an increase of more than a third in the sentence.

Article 69 of the Criminal Code regulates cases where opposite-type of circumstances apply to the same fact, that is the so-called concurrence of heterogeneous circumstances, which is the simultaneous occurrence of aggravating and mitigating circumstances.

The Italian legislator, in this case, opted in favour of the judge’s discretionary power, who is called to make a balancing assessment. That approach is the opposite to what the Zanardelli code previously established, which code had opted for a “mechanical” solution to the question, providing for the head sentence to undergo individual increases or decreases in depending on the number of applied aggravating or mitigating circumstances, without balancing them in any way. The ratio can be found in the consideration that this balancing act allows to have an overall and far-reaching appraisal of the personality of the offender and the seriousness of the offence.
Furthermore, the last paragraph of Article 69 of the Criminal Code was amended by Article 3 of Law no. 251 of 5 December 2005 but then later held unconstitutional by the Constitutional Court by judgment no. 251 of 5 November 2012. The Court held unconstitutional the part of this article disallowing the mitigating circumstances envisaged by Article 73, paragraph 5, of Presidential Decree no. 309 of 9 October 1990 to prevail in cases of reoffending as per Article 99, paragraph 4, of the Criminal Code. The Constitutional Court, by judgment no. 105 of 14-18 April 2014 (Official Gazette Uff. no. 18 of 23 April 2014 - First Special Series), again addressed the last paragraph of the mentioned rule and held unconstitutional the part of this article disallowing the mitigating circumstance envisaged in Article 648, paragraph 2, to prevail in cases of reoffending as per Article 99, paragraph 4, of the Criminal Code.

There are also other significant rulings of the Constitutional Court on the same last paragraph of Article 69 of the Criminal Code:

- judgment no. 106 of 14-18 April 2014 (Official Gazette Uff. no. 18 of 23 April 2014 - First Special Series): the Court held the part of the above-mentioned rule unconstitutional because it disallowed the mitigating circumstances prescribed by Article 609 bis, paragraph 3, to prevail in cases of reoffending envisaged by Article 99, paragraph 4;
- judgment no. 74 of 7 April 2016 (Official Gazette Uff. no. 15 of 13 April 2016 - First Special Series): the Court held the part of the above-mentioned rule unconstitutional because it disallowed the mitigating circumstances prescribed by Article 73, paragraph 7, of Presidential Decree no. 309 of 9 October 1990 to prevail in cases of repeated reoffending as per Article 99, paragraph 4;
- judgment no. 205 of 17 July 2017: the Court held the unconstitutionality of the rule in question, as replaced by Article 3 of Law no. 251 of 5 December 2005, in the part barring the prevalence of the mitigating circumstance envisaged by Article 219, Paragraph 3, of Royal Decree no. 267 of 16 March 1942 in cases of reoffending as per Article 99, paragraph 4, of the Criminal Code;
- judgment no. 73 of 7-24 April 2020, where the Court held “the unconstitutionality of a part of Article 69, paragraph 4, of the Criminal Code, because it disallowed the mitigating circumstance as per Article 89 of the Criminal Code to prevail over the aggravating circumstance in cases of reoffending as per Article 99, paragraph 4, of the Criminal Code”;
- judgment no. 55 of 25 February-31 March 2021, where the Court held “the unconstitutionality of a part of Article 69, paragraph 4, of the Criminal Code, as replaced by Article 3 of Law No.251 of 05 December 2005 (amendments to the criminal code and to Law No.354 of 26 July 1975, in the matter of general mitigating circumstances, reoffending, comparative assessment of the circumstances of an offence for reoffenders, usury and time limitation), where it bars the prevalence of the mitigating circumstances as per Article 116, paragraph 2, in cases of reoffending as per Article 99, paragraph 4, of the Criminal Code”.
With specific reference to the sentence execution phase, under Article 30 quater of the Penitentiary System “Temporary Release may be granted to inmates who have been applied reoffending under Article 99, paragraph 4, of the Criminal Code, in the following cases envisaged by Article 30 ter, paragraph 4:

a) after having served a third of the sentence,

b) after having served half of the sentence,

c) and d) after having served two thirds of the sentence and, in any case, not more than fifteen years”.

Lastly, we should underscore the important principle of law set forth by the Joint Chambers of the Supreme Court of cassation (cass. pen, Sez Un., u.p.27 ottobre 2011 (dep. Un., u.p. 27 ottobre 2011 (dep. 15 febbraio 2012) no. 5859/12, Pres. Lupo) whereby: “the extinction of every criminal effect envisaged by Article 47, paragraph 12, of the Penitentiary System, when a probation period is passed successfully, requires the relevant conviction not to be taken account of for the purposes of reoffending”.

Rome, 19 July 2022

Giovanni Mimmo

DIRECTOR GENERAL

(signature)
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Contribution of the Italian Penitentiary Administration

With reference to the United Nations Office on Drugs and Crime resolution E/CN.15/2022/L.4/Rev.1, entitled “Reducing reoffending through rehabilitation and reintegration” adopted by the Commission on Crime Prevention and Criminal Justice at its thirty-first session, please find below the excerpts from the Italian Penitentiary Act, as legislative framework which represent the baseline aimed at underpinning rehabilitation and reintegration programmes aimed at reducing reoffending.

Provisions excerpted from the Italian Penitentiary Act (Law n. 354 of 1975 and following amendments)

Article 1. Treatment and rehabilitation

[...]
2. Treatment tends to the social reintegration, also through contacts with the outside community. It shall be tailored to each individual with regard to the offenders’ specific needs and conditions.

Article 13. Tailoring treatment to meet the needs of individuals

1. Prison treatment shall meet the particular needs of every offender, while encouraging the behaviours and promoting the competences that may support their social reintegration.

2. The scientific observation of the offenders’ [personality] shall be carried out both in relation to convicted persons and internees, in order to record their physical and psychological deficiencies and the other causes that brought them to offend and in order to suggest an adequate plan of reintegration.

3. During such observation, the subject concerned has the possibility to reflect on the offence perpetrated, its motivations and the consequences provoked, particularly on the victim, as well as the possible remedial actions.

4. The observation shall be carried out at the beginning of the execution of the sentence and shall be continued throughout the sentence. On the basis of the results of the observation, for every convicted person or internee, indications
shall be given relevant to the rehabilitating programme and the relative plan shall be drafted; such a plan shall be integrated or modified according to the exigencies arising during the execution of the sentence. The first version is drawn up within six months from the beginning of the execution.

5. The general and particular indications relevant to treatment shall be included, together with the judicial, biographical and health data, in the personal file that follows the subject in question during his transfers; in such file the developments of the provided treatment and its results are subsequently recorded.

Provisions excerpted from the Regulations of Enforcement of the Italian Penitentiary Act (Decree of the President of the Republic n. 230 of 2000 and following amendments)

**Art. 27 Observation of offenders’ personality**

1. The scientific observation of the offender’s personality is designed to evaluate the needs of each individual regarding possible physical, mental, personal, education or social problems which have prevented the subject from establishing normal social relationships. The observation shall be supported by the acquisition of judicial, penitentiary, clinical, psychological and sociological data to be evaluated with reference to the past attitudes of the subject regarding his experiences and to his present willingness to take advantage of his treatment. On the basis of the judicial data acquired, an interview shall take place with the convict or internee in which he shall have an opportunity to reflect on his criminal acts, the reasons for them and their negative consequences for himself, and the ways in which he can make amends for them, including compensation to the victim.

2. At the outset, the observation is specifically designed to establish, with the cooperation of the convict or internee, the elements relevant to the planning of the tailored treatment programme, which shall be completed within nine months.

3. During the treatment, the observation is designed to ascertain, by means of an examination of the behaviour of the subject and the changes in his relationships with others, any new needs requiring a change in the treatment programme.

4. The continuous nature of the observation and treatment of internees and prisoners must be guaranteed in the case of their transfer to other institutions.
Art. 28 Carrying out of the observation of offenders’ personality
1. The scientific observation of the offender’s personality shall be carried out, as a rule, at the institution where the subject is serving his sentence or where the security measures are enforced.
2. When the need arises for particular investigations to be made, at the governor's motivated proposal the subject to be observed shall be assigned to an observation centre.
3. The observation shall be conducted by personnel employed by the administration or, when necessary, also by the professionals referred to by paragraphs 2 and 4 of Article 80 of the Penitentiary Act.
4. Observations shall be carried out under the responsibility of the governor of the institution and shall be co-ordinated by the same.

Art. 29 Tailored treatment programme
1. The treatment programme contains the specific indications under Article 13, paragraph 3 of the Penitentiary Act, in compliance with the principles laid down in Article 1, paragraph 6 of the same.
2. The programme shall be draft by an observation and treatment team presided over by the governor of the institution and composed of the personnel and experts who carried out the observation procedure indicated in Article 28.
3. The team shall hold periodic meetings, in the course of which they shall examine the progress of the treatment carried out and its results.
4. The technical secretary of the team is entrusted, as a rule, to the treatment officer.

The staff involved in the development of the individual treatment plan for each finally sentenced offender is: the prison governor, the rehabilitation officer (literally: juridical-pedagogical officer), the probation officer (literally: social worker), the penitentiary police staff, the psychologist (possibly a criminologist). Those staff compose the “Observation Team” (équipe). The Observation and Treatment Group is the enlarged version of that team, and is composed also by teachers, the chaplain, volunteers who interact with the offender.
The rehabilitation officer carries out the function of secretary to the Team and drafts the synthesis report preparatory to the approval of the treatment plan.

In the Italian penitentiary system, there is currently a ratio of 1 rehabilitation officer per 84 inmates.

The ongoing program of recruitment shall bring that ratio to 1 rehabilitation officer per 65 inmates.

The treatment plan implemented by each offender is assessed by the treatment and observation Team, that draft a synthetic report bringing to a prognosis evaluation concerning the offender's chances to be released from the prison into the community (benefiting from leaves, alternatives measures, conditional release). That synthesis report is sent to the Supervisory Judge who is responsible for deciding one of the above-mentioned measures or benefits.

In order to prevent re-offending, pre-release activities are also important. The activities that inmates can carry out during imprisonment fall within the following topics, which are set by article 15 of the Italian Penitentiary Act: education, vocational training, work, participation in works for the community, religion, cultural, recreational and sporting activities, proper contacts with the outside world and family links. Within each one of the above-mentioned areas, the following initiatives are undertaken, inter alia: primary school, secondary school, university courses; vocational training courses in handicraft, industrial, agricultural skills od service provision; theatre, music and visual arts courses; visits with family members (six per months) and many other activities proposed in cooperation with volunteers' associations.