Prison policy, prison regime and prisoners’ rights in Argentina

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Introduction

Argentina is the second largest country in South America, constituted as a federation of 23 provinces and the autonomous city of Buenos Aires, the capital of the country. Its total population is around 39 million. Argentina is signatory of many international treaties such as the International Covenant on Civil and Political Rights and other international human rights instruments. These are incorporated in the Constitution and are of superior hierarchy to national laws.

At the national level a penal code and a code of criminal procedure exist. Due to the federal constitutional system there is a federal, a national (for Buenos Aires) and a provincial justice system.

The supervision on the compliance with the rules of conduct attached to the conditional sentence or the suspended sentence is carried out by the National Justice (of the City of Buenos Aires) and the Federal and Provincial Justice for the offences committed in their jurisdiction.

At the national level and in several provinces penitentiary judges exist. This special judge was created in the Province of Salta in the 1980’s. In 1991 the tasks and powers of the penitentiary judge were regulated in the National Code of Criminal Procedure.

For the enforcement of sentences a distinction is to be made between custodial sentences and sentences to be served in society.

For the enforcement of custodial sentences Act Nº 24,660 on the Enforcement of custodial sentences is applicable. This Act supplements the Nation’s Penal Code and dates back to 1996. The first penitentiary Act was the Act on Prison Organization and the Penal Regime of 1933.
With regard to the enforcement of penalties to be served in the society, the Penal Code introduced the conditional sentence with probation and the suspended sentence.

With regard to prison administration, the Federal System, in charge of the Federal Penitentiary Service, and the Provincial Systems, in charge of the Penitentiary Service of the Provinces, are integrated. In case a province does not have its own prison institution, prisoners are accommodated in federal prison institutions and vice versa. This system is based on agreements signed between the provinces and the nation.

The City of Buenos Aires does not have a prison institution of its own, and pre-trial detainees and convicts for crimes committed in that city are accommodated in federal institutions.

**Prison reality**

Taking into consideration that the objective of this study is to deal with the prison situation in Argentina in an accurate, updated and sincere manner, we have preferred to begin the technical report with what we refer to as an approach to the Argentine prison reality, before adding up endless pages with general ideas and principles, how worthy they may be, which may, however, actually distort reality. In this paragraph we will attempt to reproduce reality as it is as far as it is reflected in reliable and official statistics and not the ideological interpretation of such facts which constitutes ‘a reality’ in the way the observer wants to see it.

**Glossary**

Convictions mentioned in this study are the so called final sentences (*sentencias firmes*), i.e. the sentences for which all legal remedies have been exhausted. As far as the total prison population of the country is concerned, the national statistics include people not only detained in prison institutions but also those detained in police detention facilities.

Inmates (*internos*) comprise both convicts and pre-trial detainees (*procesados*), when they are detained.

Juveniles are people between sixteen and eighteen for whom special rules laid down in the Young Adults Penal Act System (*Régimen Penal Tutelar de Menores*) apply. From eighteen years onwards people are for the penal system considered to be adults.

The minimum age for criminal responsibility is sixteen. When someone under sixteen commits a serious crime non-penal measures may be applied.
Progressive periods (períodos de la progresividad)

The Enforcement of custodial sentences Act sets forth that the progressive prison regime shall be applicable to all convicted persons, whatever their punishment. This regime consists in attempting to limit their stay in confinement, promoting their transfer to open or semi open institutions, depending on their development, or even get parole days, work release and conditional release/parole. Progression encompasses four periods:
- the observation period;
- the treatment period;
- the probation period (in this stage the prisoner may benefit of parole days or work release); and
- conditional release/parole.

Parole days allow the convict to periodically leave prison in order to visit his home (for 12, 24 or 72 hours). Work release allows him to leave prison for external work activity.
Parole days, work release as well as conditional release/parole ought to be authorized by the penitentiary judge or other competent judge.

Prior-to-release program (programa de pre-libertad)

This program is designed to be performed between 60 and 90 days prior to the release day and has as objective the intensive preparation of the inmate on his return in free society. The program must be carried out by the prison administration and the post-penitentiary entities jointly.

Intermittent imprisonment (prisión discontinua)

In intermittent imprisonment the convict will serve his detention in an institution in periods of 36 hours, endeavoring to make this period coincide with the convict’s leisure time. This variety is known as “weekend prison”.

Semi-imprisonment (semi-detención)

Semi-imprisonment consists in the uninterrupted stay of the convict in an institution based on the principle of self-discipline during part of the day. Its varieties may be the day prison or the night prison.

Both the intermittent imprisonment as the semi-imprisonment are regulated in the Enforcement of custodial sentences Act.
Prison population

The prison population rose from 29,690 (pre-trial detainees and convicts) in 1997 to 54,000 in 2006. If one add those who are detained in police facilities or in facilities of security forces, the total number is 60,621. The total present prison capacity is 46,494 places. There is a shortage of prison capacity of almost 25%. Many prisons, however, are not adequate nor safe, nor do they have facilities for the personal and social development of the inmate.

70% of the prison population is first offender and 22% recidivist. 57% are pre-trial detainees and 41% convicts. The statistics do not reveal the fact that detention of pre-trial detainees can last for months and generally years, and entails a sort of anticipatory sentence. This is largely due to problems of justice administration.

94% of the prison population is of Argentine nationality, 73% is single and 12% is married, 70% of the prisoners is aged between 18 and 34, 94% is male and 91% came from urban area. 49% was employed prior to the detention, 77% has a low educational level, 49% finished primary school, 4% secondary school and 6% finished other studies.

In 2006 6% of the prison population was sentenced up to 3 years; 36% from 3 to 6 years; 27% from 6 to 9 years; 14% from 9 to 12 years; 7% from 12 to 15 years; 4% from 15 to 18 years and 6% was sentenced for more than 18 years.

Prison policy

Introductory remarks

Dealing with prison policy some introductory explanations might be useful. Firstly, not all countries tend to have a prison policy which is explicit or even written. Secondly, we could say, that not to have a prison policy is a prison policy itself. Thirdly, that prison policy rarely has a scientific basis. It is rarely verified or verifiable in its results. It is rarely updated. It is rarely communicated to the population and it is rarely interesting to the latter.

As part of the general State policies, prison policy is usually improvised, not based on empirical studies and insulated in terms of its development. Nobody knows what happens in jails simply because nobody cares about it.

This sum of deficiencies pertaining to the prison system is due to the historical and irreducible concept that societies have about crime and particularly about the criminal offender. Even though the public speech may be different,
in the human soul, even in this third millennium, there is a predominance of punishment and retribution over any other objective of the sanction. 

On the other hand, in politics there is little understanding for the problems of jails and prisons, nor is there room for the prevention of crime. All this produces a widespread erroneous belief that the solution to the problem lies in more rigorous punishments and more segregation of those who have committed a crime. 

Summing up, the generalized situation is that for societies and governments the prison policy is one of their greatest debts. That fact leads to more euphemistic than real laws, decrees, regulations, reports and speeches. 

*Prison policy concept*

Since 1995 in Argentina a prison policy plan is in force. Prison policy is part of the social policies. Its primary planning, in the sense of promoting its implementation, is in the hands of the State. However, in all its segments society should necessarily take part by means of representative institutions and organizations. 

In theory prison policy aims to establish the basis and fundamental principles for the enforcement of custodial sentences. In operation, it ought to establish the smooth functioning of the laws, institutions and mechanisms that enable a more adequate enforcement of such sanctions. Ethically and juridically, it ought to lay the foundations for the legality of the enforcement and an adequate balance between the rights of society and of those who are convicted. Politically it ought to see to the variations and changes which take place in society. Scientifically, it is to analyze the advances and experience, designed in the field of the treatment of offenders and methods and techniques of re-adaptation and social re-insertion. Socially, it ought to be a reliable path for society in the demand of its rights on security, in the prevention of crime and in the correction of conducts which are stray and inadequate. Functionally, it is to generate the development of creativity and practical, effective and efficient solutions. Economically, it ought to put forward feasible proposals indicating a convenient relationship between costs and benefits. 

The prison policy must be at the same time local, regional, federal and national and have a connection with the international context. It needs to have an accurate diagnosis, with a present and future planning, with executive entities for implementation and with an adequate assessment design. 

Finally, it must embody a master plan, integrating all the measures and actions to be implemented, which establishes a schedule and calls for commitment in terms of human, material and economic resources.
Fundamental principles

The planning and implementation of the prison policy and of the master plan is based on fundamental principles which structure its ethical-juridical, penological and social framework. These fundamental principles are:

– respect for human dignity;
– belief in the perfectible character of human nature;
– recognition of the right of society to a safe life;
– full respect of judicial decisions;
– judicial guarantee of the legality of the enforcement of custodial sentences;
– opportunities for change of attitudes and for adequate understanding of the rules governing social life;
– fostering the process of rediscovery of personal values and the capacity of self-discipline;
– organization of activities that lead to a convenient social re-insertion;
– multidisciplinary, cross-institutional, cross-sector integration in the enforcement of custodial sentences;
– abolition of any type of worsening of sanctions beyond the inevitable suffering that confinement causes;
– reduction of the stay, whenever possible, in enclosed institutions of maximum security;
– rediscovery of ethical, moral and spiritual principles, personal effort, work and study as a means of personal growth and social integration;
– the highest possible contacts with the family and the society;
– integrated development of pedagogical and therapeutical action;
– abolition of all forms of discrimination;
– recognition of the obligation of the State, as primarily responsible for the process of change, reform and social re-adaptation and, according to the principles of subsidiarity and solidarity, of society as a whole by means of its institutions and organizations;
– structuring of the institutions in terms of their relevant obligations toward society and toward convicts who are entrusted to them for their change, reform and re-adaptation;
– legislative, structural and economic adequacy and adequacy in terms of facilities and human resources of the institutions involved to reach the best results in terms of the objectives set;
– application of scientific criteria in the enforcement of custodial sentences;
– systematization of the assessment of results and implementation of changes and reforms which straighten deviations, errors or failures; and
– social and community clarification on the enforcement of custodial sentences.
The previous transcript of the concept of prison policy and of its fundamental principles explains what has been established as the law governing matters related to the enforcement of custodial sentences.

At federal level five major action guidelines have been established:
- regulatory and legislative reform;
- reform of prison facilities in order to make these more adequate;
- redesign of the methods and criteria of treatment;
- training and permanent updating of prison personnel; and
- integration (of the national prison system, the prison system with the post prison system, with social, community organizations, the media, et cetera).

At federal level legislation was modified by the Enforcement of custodial sentences Act N° 24,660, issued supplementary to the National Penal Code. Moreover, general regulations exist for pre-trial detainees, regulations on discipline for inmates, regulations on the basic types of enforcement, regulations on the communication of inmates, regulations on home detention and regulations for rewards.

Provinces, in turn, adopted regulations that in essence follow the criteria of the mentioned Act, with adaptation to their local needs.

In terms of infrastructure an important advance was achieved nationwide with the construction of up-to-date institutions to replace the old ones by approximately 200,000 square meters of state-of-the-art facilities, all having individual cells. This activity still continues and there is still a need to replace inadequate facilities because prison population is still rising.

The Province of Buenos Aires traditionally has had the highest numbers of inmates. It largely outnumbers not only other provinces but also the Nation as a whole. Such historical fact together with the modification of some procedural regulations in the sense of restricting the release of pre-trial detainees resulted in a serious overpopulation, with pre-trial detainees and persons detained at police stations. A construction and renovation program is carried out at present but the crisis is not over yet.

Three major provinces, Córdoba, Santa Fe and Mendoza, have faced serious problems as well, partly due to prison overpopulation and partly due to the inadequate condition of their prisons and jails. Others, like Salta and Jujuy, are suffering by the increase in drug trafficking at the northern border with neighboring Bolivia, which results in much activity of federal security forces, federal courts, and have plans to construct federal penal institutions. However, in the meantime, there is overpopulation in provincial prisons.
One of the problems still unsolved is the question of formation and constant training of the prison personnel. There are jurisdictions where some important advances have been made and others where no changes have been achieved at all.

In general, the tendency to reject innovations is a common reaction; the repetition of procedures ‘as it was always done’, and the importance given to the criteria of security over those of treatment, are primary reaction when reforms are proposed.

There have been some advances in terms of innovation with regard to prison treatment. The most deeply developed is the one called Socializing Pedagogical Methodology which has been in use for over a decade with young adults and has been extended to various prison institutions for adults in the Federal Prison System.

Prison regime

Despite its permanent use, the term prison regime has different meanings and may deal with different issues.

The Standard Minimum Rules for the Treatment of Prisoners deal with the issue of the prison regime from the start but do not define what is meant by it. However, in sections 56ff guiding principles have been formulated concerning the purpose and justification of the prison sentence.

In Argentina, the Enforcement of custodial sentences Act formulates in Chapter I sections 1-11 the Basic Principles of the enforcement as follows:

Section 1 Objective of the enforcement: “…succeed in making the convict acquire the capacity to understand and respect the law, fostering his adequate social reinsertion…”

Section 2 The convict shall exercise all his rights not affected by the conviction.

Section 3 The enforcement in all its forms shall be submitted to permanent judicial control. The judge shall ensure compliance with all constitutional regulations, International Treaties ratified and the rights of the convicts not affected by the conviction.

Section 4 Establishes judicial capacity when – in a broad sense – a convict’s right may be considered violated and when any prison release ought to be authorized.

Section 5 The treatment of the convict is to be scheduled and personalized and compulsory with regard to the regulations which rule life, discipline and work, and voluntary for all other activities.
Section 6  Establishes that the prison regime will be based on the progressive regime with the aim to limit the stay in enclosed institutions and to favor, on the basis of personal development, the transfer to semi-open or open institutions.

Section 7  Authorizes the transfer of the convict to any period of treatment which best matches his personal conditions on a well reasoned decision by the competent authority.

Section 8  Prohibits all forms of discrimination in the application of the regulations of enforcement.

Section 9  Declares the enforcement free from cruel, inhuman or degrading treatment and establishes that whoever shall order, carry out or tolerate such shall be subjected to the sanctions provided in the Penal Code.

Section 10  Limits the administrative and judicial capacity.

Section 11  Provides that all the content of this Act, with the exception of parole days, be applicable to pre-trial detainees but shall not affect the principle of innocence or defense in trial. In this way, the progressive regime may be applied from the beginning of the deprivation of liberty and not only from the moment that the sentence is pronounced.

Chapter II, Basic Types of Enforcement (sects 12 to 56), in its First Section provides the Progressive Penitentiary Regime, establishing four periods:
- the observation period;
- the treatment period;
- the probation period; and
- the conditional release/parole period.

The observation period is focused on the medical, psychological and social study of the convict with a view to give a diagnosis and a criminological forecast, which is recorded in the individual criminological history, which will be permanently updated. In this case a projection of the treatment will be made, listening to the queries put forth by the convict himself. The other periods we dealt with priorly.

The period of progressive regime and the stage where it is to be included will also be indicated.

The study corresponding to this period will be made by an interdisciplinary professional team.

In the Argentine federal legislation the rule is that, except in very exceptional cases, duly reasoned by the penitentiary judge, all convicts shall be released
prior to their total service of the sentence. The great majority may require a conditional release/parole period after having served 2/3 of the sentence, which is the most common situation. For those who may not be granted conditional release/parole, there is Assisted Freedom which allows a release six months before the total service of the sentence. In all cases the prison reports are taken into account but the final decision is that of the penitentiary judge. The objective of this regulation has been that, at the moment of the release, the convict may have assistance and supervision by a post penitentiary institution, which may aid him in the process of social reinsertion. In practice, and despite its long history, the operation of post-penitentiary activity is not well organized nor efficient.

Furthermore the Act contains specific regulations referring to other aspects of the prison regime such as hygiene, accommodation, clothing and bedding, food, information to and complaints by inmates, forms of carrying out transfers, instruments of restraint, rewards, work (including payment and social security), education (at all levels), medical assistance, spiritual care (freedom of religion and contact with the ministers of all religions), contact with relatives and the outside world as well as social assistance (social work).

It is also significant what has been established about discipline. The criteria to avoid indiscipline have been established and, when a case has appeared, what procedure to follow. Violations to rules of conduct are classified into mild, medium and serious. The violations, the disciplinary sanctions, the procedure to sanction and to enforce the sanction are regulated. All disciplinary sanctions are appealable before the penitentiary judge.

**Types of penitentiary institutions**

The Enforcement of custodial sentences Act provides regulations for the classification and differentiation of prisons.

There are three main differentiations; the differentiation on gender, the legal basis for the deprivation of liberty and age:

- men and women are to be detained separately;
- pre-trial detainees and convicts have to be detained separately (which is only partially complied with); and
- juveniles and adults are not to be detained in the same institution (which is largely complied with but not always).

According to the Act there shall be:

- jails for pre-trial detainees;
- observation centers for the criminological study in the observation period;
institutions for the various ways sentences may be enforced (closed, semi-open and open institutions);
- special institutions with medical and psychiatric assistance;
- centers for assistance and supervision of inmates who may be under treatment in society and similar (not yet created).

In fact there exist:
- independent sections in jails for pre-trial detainees for the observation period (at federal level);
- closed institution with maximum security level;
- semi-open institutions with medium security;
- penal colonies (semi-open institutions);
- open institutions;
- half-way houses;
- medical institutions, such as psychiatric institutions, institutions for highly complex diseases (particularly HIV/AIDS), sections or general hospitals within common institutions, sections for the treatment of drug dependent inmates and sections for aged inmates (> 50 years of age).

The complexity of the network of institutions, be it jails, prisons, institutions for young adults, assistance institutions, et cetera depends on the characteristics of each jurisdiction. In a province with 10 million inhabitants the variety of institutions is much wider than in a province with only 500,000 inhabitants.

Furthermore the rise in criminality in the region may differ (in urban areas: property crimes; in border areas: drug trafficking), which may ask for different types of penitentiary institutions.

There is a need to establish new ways of effective treatment in prison when enforcing the custodial sentence.

In the primitive concept of deprivation of liberty as punishment, less than 200 years ago, the paradigm was to succeed in the re-adaptation through the rigor of confinement together with certain other criteria of discipline related to time-tables, hygiene, obedience to orders and prison labor which as a rule was not inspiring. This concept, however, was inefficient and we know that it promoted contradictory responses to the objectives desired. However, we have not yet overcome that primitive concept completely.

Today education is emphasized. For instance, there are two institutions with college centers with graduates as lawyers, psychologists and sociologists. Furthermore prison labor activities have been improved. It is no longer a pure repetitive activity.
The question of health is also of major concern. There have been improvements in social relations, ease of communication, information, contacts with families, married life et cetera. These are recent achievements which all may support the process of real treatment, meaning treatment that will go more deeply from the point of view of science into the main reasons that resulted in the offense and which, from that point, develops a program of intensive intervention accepted and agreed on by inmates, to promote changes that allow that on their release they may become useful persons to themselves, to their families and to society.

**Constitutional regulations**

From the beginnings of emancipation there has always been a concern for the conditions in which the custodial sentences should be served. Hence, the First Triumvirate, on 23 November 1811 entered the Decree on Individual Security whereby it established that: “each citizen has a sacred right to the protection of his life, honor, freedom, and property; the possession of such right, center of civil liberty and foundation of all social institutions, is what is called individual security”.

At the same time it provided that no one could be sentenced without previous trial and conviction, or arrested without credible proof or clear indication of his participation in a criminal offence and that prisons exist for security and not for the punishment of offenders confined there and that all measures that with the pretext of precaution only serve the purpose of mortification, shall be punished accordingly; such precepts were also included in the Constitutions of 1819 and 1826.

Section 18 of the enacted Constitution on 25 May 1853 rules that: “the death penalty for political causes, all kinds of torment and scourging are forever abolished. The prisons of this Nation shall be healthy and clean, for security and not for the punishment of the offenders confined there, and that all measures that with the pretext of precaution lead to tormenting prisoners, beyond what is demanded by such measures, shall hold responsible the judge that authorizes it” (see the present sect. 9 Enforcement of custodial sentences Act).

The Constitution vested the President of the Confederation with the power to grant pardon or commute the punishments for offences under federal jurisdiction, after a report of the corresponding court, except for the cases of accusation by the Chamber of Deputies. When we deal with the rights which are currently recognized to convicts deprived of their liberty, we will explain the scope of these norms currently provided in section 99, article 5 of the Consti-
tion. A respectful system of human dignity in prison was also expressed in the Buenos Aires Provisional Prison Regulation of 1877. In 1933 the Prison Organization and Penal Regime Act (Ley de Organización Carcelaria y Régimen Penal) was issued with important innovations as far as it concerns the deprivation of liberty sentences. The Act was replaced by the 1958 National Penitentiary Act (Ley Penitenciaria Nacional) which meant a significant advance in the penal system. Section 121 contains a general rule on control by the judicial authority over actions of the administrative authority regarding the individualized enforcement of the sanction. Such control is maintained in the Enforcement of custodial sentences Act (sects 3 and 208). Argentina played an important role in the formulation of the Standard Minimum Rules for the Treatment of Prisoners in the context of the First U.N. Congress for the Prevention of Crime and Treatment of Offenders held in Geneva in 1955. The last reform of the Constitution in 1994 brought constitutional hierarchy to various international treaties (art. 22, sect. 75). This is of importance for the several treaties.

*The American Convention on Human Rights (Act 23,054)*

This Convention states that no one shall be subjected to torture or to cruel or inhuman or degrading punishment or treatment (sect. 5.2). Pre-trial detainees must be separated from convicts, except in exceptional circumstances and they shall be subject to separate treatment appropriate to their status as unconvicted (sect. 5.4). When minors are subject to criminal proceeding, they shall be separated from adults and brought before special courts as promptly as possible for their treatment. In Argentina a special justice for minors, as well as national and provincial special laws in this field and institutions for minors which are totally independent of those for adults exist (sect. 5.5). Deprivation of liberty shall aim at the reform and social re-adaptation of convicts (sect. 5.6). Every person charged with a crime has a right to be presumed innocent and not to be compelled to be a witness against himself or to plead guilty (sect. 8.2 sub 7) and the confession of the accused is valid only if it is made without coercion of any kind (sect. 8.3).

*The Convention against torture or other cruel, inhuman or degrading treatment or punishment (Act 23,338)*

This Convention establishes, among others, that every signatory party shall take legislative, administrative, judicial measures to prevent acts of torture in any territory under its jurisdiction. Acts of torture may never be justified
even by exceptional circumstances (sect. 2, paragraph 1 and 2). In our country control mechanisms have been arranged for the federal and provincial prison systems, by the executive, legislative and judicial power as well as by means of NGO’s.

In the same line the American Declaration of the Rights and Duties of Man, establishes in section XXV that: “every individual who has have been deprived of his liberty has the right to a humane treatment during the time he is in custody” and section 10 of the International Covenant on Civil and Political Rights that: “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

_The Convention on the Rights of the Child (Act 23,849)_

This Convention is applicable on every human under the age of eighteen years, unless under the law applicable to the child, majority is attained earlier. It provides that in all actions concerning children, whether undertaken by public or private or social welfare institutions, courts, administrative authorities or legislative parties bodies, the best interests of the child shall be a primary consideration (sect. 3.1). The parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall comply with the standards established by competent authorities, particularly in the areas of safety, health, the number and suitability of the staff, as well as competent supervision (sect. 3.3).

In this respect and in the same way as with adults, in our country, with regard to this issue, control mechanisms have been arranged by the executive, legislature and judicial authorities and by means of NGO’s on the juvenile penitentiary institutions, either in the case of derivations by civil justice, when minors are being assisted or by the special juvenile penal justice.

Besides Act 22,278 states in section 6 that custodial measures which judges might impose on juveniles shall be enforced in special institutions.

Furthermore, both the National Enforcement of custodial sentences Act (sect. 197) and the Act of the Province of Buenos Aires (sect. 15), establish that young adults (from 18 to 21) must be accommodated in special and independent institutions.

_Rights acknowledged to convicts in the Penal Code_

Section 10 of the Penal Code states that home detention shall be allowed when a prison sentence imposed on honest women, people over sixty or ill do not exceed the term of six months.
Since 1922 the Penal Code includes the regulation of conditional release or parole. It is a type of enforcement of the deprivation of liberty which allows the convict to recover his liberty by judicial resolution before the total service of a sentence, providing the statutory prerequisites are complied with. Conditional release or parole may be granted when:

- those sentenced to reclusion (solitary confinement) or life imprisonment have served thirty-five years of the sentence;
- those sentenced to prison sentences for more than three years have served two thirds of the sentence;
- those sentenced to deprivation of liberty for three years or less served one year in the case of reclusion and eight months in the case of imprisonment;

Another legal prerequisite is that there should be reports by both the administration of the institution and experts which forecast in an individualized and favorable way the social reinsertion of the inmate. When all prerequisites are complied with the convict will be eligible for conditional release or parole under certain conditions, such as not to commit new offences or to submit himself to the supervision of a guardian.

The benefit of conditional release or parole shall not be granted in case the person has been sentenced for homicide, for sexual abuse, for illegal deprivation of a person’s freedom with coercive purposes, for kidnapping, for robbery with death as a result and in case the offence resulted in the death of the victim or the death of the victim was intentionally caused (sect. 14 Penal Code). However, it should be mentioned that the unconstitutionality of section 14 Penal Code has been discussed.

Sections 26 and 27 Penal Code regulate the cessation of the enforcement of the first prison sentence not exceeding three years. The power to grant this benefit belongs to the judge and the convict has a right to petition. It may be granted even for a second time when the second sentence has been pronounced after a period of eight years has elapsed as of the date of the first final sentence. If both offences – first and second – constitute a criminal intent, the time period is set at ten years.

The Penal Code also allows offenders of a crime of public action repressed by reclusion or imprisonment not exceeding three years, to petition the cessation of pre-trial probation (sect. 76 second), regardless whether they are convicted or in pre-trial detention.

*Rights acknowledged in the Enforcement of custodial sentences Act*

This Act adopted by the majority of the provinces, includes important norms to which convicts who show a favorable development, shall have access.
In this line, and as Basic Principles of the Execution, it establishes – among others – that the convict shall exercise all the rights unaffected by the sentence or by the law and the regulations which are consequently pronounced (sect. 2). The treatment of the convict shall be scheduled and individualized and compulsory, with regard to the rules which regulate life, discipline and work and all other activities involved shall have a voluntary nature (sect. 5). The prison regime shall be based on progression, endeavoring to limit the stay of the convict in enclosed institutions and striving to – depending on his development – transfer him to open or semi-open institutions or separate facilities ruled by the principle of self-discipline (sect. 6). The rules on enforcement are to be applied without making a distinction or discriminating against race, sex, language, religion, ideology, social condition or any other circumstance. At the same time it is established that the only differences shall follow the differential treatment (sect. 8).

Among the four periods which are part of the prison regime (observation-treatment-probation-conditional release or parole) (sect. 12), the probation period must be emphasized. It includes the transfer of the convict to an open institution or independent facility based on the principle of self-discipline and the possibility of achieving parole days and conditional release.

There are different types of parole days according to the duration, the objectives and the level of trust (sects 15 and 16). Work release, which may include one parole day a week, allows the convict to work outside the institution without continuous supervision, under the same conditions as those released, including salary and social security. It is based on the principle of self-discipline and expects the inmate to return at the end of the working day to the institution assigned. This probation period cannot include those convicts who have committed the crimes which bar the access to conditional release/parole (sect. 56).

Beside the basic types of enforcement regulated in this act others exist which enable those convicts with a favorable development, to have gradual access to conditional release, the last stage of the progression of the prison regime or to prepare him for release. These types are:

- Prior-to-release program: convicts may participate in this program as of sixty to ninety days prior to the minimum time required for granting conditional release or assisted freedom. It consists in an intensive program of preparation for the return of the convict in free society. In cases of release due to conditional release/parole or assisted freedom, this program shall be performed in cooperation with the Free People Foundations and when release occurs as a result of the expiry of the sentence, such coordination
shall be carried out together with the post-penitentiary assistance organizations or other community based organizations (sects 30 and 31).

- **Alternatives to special situations**: these may be granted by the penitentiary judge or the competent judge upon request by the convict or with his consent in those cases when benefits may be revoked.

The alternatives to special situations are:

- **Home detention**: for convicts older than 70 or for those suffering of an incurable disease at a terminal stage. Home detention must be authorized by the competent judge, upon request by the family, the convict or the responsible institution, after having received medical, psychological and social reports.

- **Intermittent confinement**: allows the convict to stay in a weekend prison and is based on the principle of self-discipline. Each night the convict stays in the institution equals one day of deprivation of liberty.

- **Semi-imprisonment**: allows the convict to stay in a day prison or night prison and is also based on the principle of self-discipline; such stay has no detrimental effect on the family life, work and educational obligations of the convict.

- **Community work**: intermittent confinement or semi-imprisonment may, upon request by the convict, be in part or fully substituted by the performance of unpaid community work. Six hours of community work shall be calculated as one day in prison. The maximum time for community service is eighteen months.

- **Assisted freedom**: allows a non recidivist-convict to be released six months prior to the total service of his sentence.

**Pardon, commutation of sentences and amnesty**

The Constitution attributes to the executive power the right to grant pardon or commute the sentences for offences under federal jurisdiction, after a report of the corresponding court, except in the cases of accusation by the Chamber of Deputies (impeachment proceeding and offences against the democratic system). In accordance with the National Constitution and the Provincial Constitutions, pardons and/or commutations of sentences can only take place by the President for sentences imposed by the National or Federal Justice. The constitution supports convicts in their right to petition for pardon or commutation of sentences. Pardon extinguishes the sentence to be served, but it does not erase the sentence or its traces.
Commutation of a sentence is a remission of a part of the punishment or a substitution of a less penalty for the one originally imposed. Both institutions which are granted for humanitarian reasons, to redress errors or judicial excesses or sometimes for political reasons, constitute a control mechanism of the Executive Branch in respect to the judiciary. This power may only be exercised when a report of the corresponding judicial authority is present and sentence is final. This last point has been reaffirmed by numerous rulings of the Argentine Supreme Court. Through such a report the judicial authority informs the Executive Branch on the characteristics of the case, the personality of the convict. The report shall include a non-binding opinion on the convenience or inconvenience of granting pardon or commutation of the sentence.

At national and federal level there is also a Parole Board or a Correctional Board (for convicts accommodated in federal prisons located in a province) which also operate as advisor both on pardons and commutations of punishment and on parole days, work release and conditional release/parole. The Supreme Court has recently ruled that the crimes against humanity cannot be the object of pardon. These are not subject to prescription.

It is deemed necessary to distinguish between pardon and commutation of sentences and amnesty, which is in the power of the Congress (sect. 75, art. 20, National Constitution). Amnesty brings about the extinction of the proceeding and the punishment, eliminating the criminal record as if the crime had never been committed. Amnesty must be general and encompasses all the people accused, pre-trial-detainees or sentenced for a particular crime.

**Prisoners’ rights**

In this paragraph the rights recognized to inmates by the Rules of Treatment (sects 57 to 78 Enforcement of custodial sentences Act) will be dealt with.

**Accommodation**

The accommodation shall be individual as far as possible in closed or semi-open institutions. In institutions or facilities based on the principle of self-discipline, dormitories may be used for carefully chosen inmates.

**Hygiene, clothing and food**

The prison regime shall ensure and promote the psycho-physical wellbeing of inmates. The given capacity of each institution shall not be extended in or-
der to ensure adequate accommodation. Facilities used to this end must be well-preserved. Climatic factors must be taken into account as far as it concerns ventilation, lighting, heating and space. Every inmate shall be provided with clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating. They should also be provided with separate and sufficient bedding. Every inmate shall be provided by the prison administration with food of nutritional value adequate for health, of wholesome quality and well prepared.

Possession and deposit of articles and money

Upon admission at the institution the inmate shall be given adequate information about the system he will be subjected to, the way to make claims and to raise complaints and all information that may be useful to learn his rights and obligations. The inmate shall be able to make requests and complaints to the director of the institution and address any other administrative authority, penitentiary judge or competent judge. Articles and money he may possess or articles he may receive later shall, after an inventory thereof, be placed in safe custody until they are returned. Steps shall be taken by authorities to keep them in good condition.

Removal of inmates

Individual or group removals are to be carried out with the utmost discretion and without any publicity. Means of transportation shall be clean and safe.

Contacts with the outside world (sects 158-167)

The inmate has a right to communicate orally (in person or by telephone) or in writing with his family, friends, acquaintances, curator or lawyers as well as with representatives of public or private institutions interested in his social reinsertion. Non-native inmates have a right to communicate with their accredited diplomatic and consular representatives. Non-native inmates from states not represented in the country, refugees and stateless persons have the right to address the diplomatic representative of the State in charge of the interests of their nation in the country, or any authority either national or international with the mission to protect him. The inmate also has the right to be informed by different media of what happens in national or international life and shall be authorized, in case of illness or serious injury or decease of relatives or acquaintances, with a right to visit
or correspondence, to leave the institution to fulfill his moral duties, unless serious and well-grounded reasons contraindicate so. Inmates, male and female, have the right regularly to receive intimate visits from their spouse or person they hold a permanent marital life with, which visits shall be performed respecting decency, discretion and the order of the prison institution. The relationships of the inmate with his family shall be stimulated and made possible as long as this were convenient for both parties and compatible with the treatment and the formation of bonds with persons, state and private entities, favoring an adequate reinsertion of the inmate to social life. He also has the right to keep his documentation updated with the help of the social assistance of the institution that accommodates him.

*Prison labor (sects 106-113)*

Work constitutes a right-duty of the prisoner. It is one of the basis for treatment and is ruled by the following principles: it shall not be imposed as a punishment; it shall not be damaging, degrading, insulting or forced; it shall develop the formation and improvement of work habits and shall foster training for future free life; it shall be scheduled and rewarded, complying with labor laws and, in case of refusal to work, the prisoner shall not be obliged to do so and his unjustified denial shall be considered a medium violation and shall affect his enhancement negatively.

*Education (sects 133-142)*

The inmate may exercise his right to learn. Education – which corresponds to the public system – must be above all formative. The illiterate prisoner who has not attained the minimum level of education required by law is under the obligation to receive instruction. The certificates of studies and diplomas given shall not contain any indication that the studies have been done in a penal institution. Inmates have access to the library which must be available in any institution. Today inmates besides primary education, which is compulsory, have the right to attend secondary education, training colleges and university. Some institutions have special centers to that effect.

*Medical care (sects 143-152)*

All inmates have a right to health care and to this end shall be provided with adequate and integral medical assistance at the expenses of the State, be it National or Provincial. Prescribed medicines shall be provided free of charge.
Nevertheless, the inmate may require private medical assistance at his own expense. It is forbidden to submit the inmate to medical or scientific research or treatment which is experimental. The Federal and Provincial Prison Systems have facilities to accommodate prisoners with serious psychiatric and psychological problems.

Religious care

Inmates have their right on freedom of conscience and religion respected and guaranteed. They have a right to maintain personal or other authorized contacts with a representative of their religion provided that these religions are registered and recognized in the National Registry of Religions. Each institution must have a place for worship, reunions and other religious acts of the different recognized religions and all prison institutions shall have celebration of the Catholic service and attendance to this shall be voluntary.

Aftercare (sects 172-175)

Released prisoners are provided with aftercare by the post-penitentiary organization, by a post-prison assistance institution with specific missions, or by a legal entity, which may provide the person with protection and social, moral and material assistance (e.g. social re-insertion, accommodation, work, provision of adequate clothing and sufficient resources – if needed – in the benefit of a smooth return into free society).

These regulations are also applicable to pre-trial detainees as far as these are not in conflict with the principle of innocence, and are useful to preserve their personality.

In this line, regulations for pre-trial detainees have been issued, which in general terms are similar to the rights recognized to inmates in the National Execution Act. The National and Provincial Procedural Codes, taking into consideration that the accused or pre-trial detainees shall as far as possible face the criminal proceedings in freedom, have established rules which limit the application of pre-trial detention (such as release on different grounds, like conditional release and extraordinary release) or moderate or attenuate pre-trial detention (e.g. home detention with electronic monitoring or family control).

In turn, the National Code of Criminal Procedure and the Procedural Code of the Province of Buenos Aires, establish that the enforcement of a deprivation of liberty may be delayed by the court only in the following cases:
– when it is to be served by a pregnant woman or a woman who has a child that is younger than six months, at the moment of the sentence; and
– in case the pre-trial detainee was found to be seriously ill and the immediate enforcement put his life at risk, according to the report of specialists designated by the court. In that case the penitentiary court shall order his hospitalization in an adequate institution. The time the person is hospitalized will be calculated as time of serving his sentence as long as the pre-trial detainee is detained, unless the detained had feigned or pretended his illness.

Disciplinary sanctions

Disciplinary sanctions shall not mean the total cessation of the right to visits and correspondence of a direct relative or acquaintance, if the former were unavailable. The inmate in solitary confinement has the right to be provided with reading material, to be visited on a daily basis by a member of the senior staff of the institution, by a priest or by the minister of a State recognized religion upon request, by an educator and by the physician, who should inform in writing the director of the institution whether the sanction must be suspended or eased for health reasons.

The inmate has the right to be informed about the sanction imposed, to offer proof and to be heard by the director of the institution prior to his decision, which shall in all cases be well-grounded. The resolution shall be pronounced within the time prescribed by the regulations and the prisoner shall not be punished twice for the same violation. In case of doubt, authorities shall incline their decision to what is more favorable to the prisoner under the principle in dubio pro reo. Under no circumstances collective measures shall be taken; communication of the penalty imposed shall be made by a member of the senior personnel of the institution. The inmate shall be informed of its grounds and scope and urged to ponder on his behavior.
Penalties shall be appealable before the penitentiary judge or the competent judge within five working days, which is a right the convict should be informed of once the resolution is notified. The legal recourse shall not suspend the resolution, unless it is decided by the judge in charge, and should the penitentiary judge or competent judge fail to make a decision within sixty days, the penalty shall be final, setting forth that the sanctions and legal recourses presented by the convict sanctioned, shall be notified to the penitentiary judge or competent judge through the fastest means available within six hours following their pronouncement or presentation.
In case of primary violations, if the previous behavior of the convict justifies so, the director may suspend the enforcement of the disciplinary sanction and if the prisoner commits another violation within the probation period set by the director, he shall serve not only the suspended sanction but also the sanction for the new violation.

The prisoner has a right to be assessed in terms of his behavior and enhancement (sects 100 to 104); meaning by behavior: the observance of the regulations which rule the order, discipline and life inside the institution; and by enhancement: the appraisal of his personal development in relation to the chance of an adequate social reinsertion. Prisoners are motivated by a regime of rewards for their favorable development (sect. 105).

**Supervision and control**

*Instruments of restraint*

The Enforcement of custodial sentences Act states the cases where such measures are to be used (e.g. prevention of a possible escape during transfer) for a period no longer than necessary.

Prison personnel is forbidden to use force in dealing with inmates, except in the case of escape, evasion or attempts or resistance by active or passive force to an order based on a legal rule or regulation.

*Control over the deprivation of liberty*

The National General Audit, which is an entity of technical assistance to Congress, controls legality and audits all activities of the public administration (both centralized and decentralized), including the federal prison system and the federal police when it accommodates inmates. Such control includes management, expenditure and assignment related to the provision of food, medicine, furniture, educational materials, work, sports, leisure and investment in infrastructure targeted at the inmates.

The public defender is an independent organ instituted at the level of the National Congress, with full functional autonomy, not receiving orders from any authority. Its mission is to defend and protect human rights and other rights, guarantees and interests provided in the Constitution and the laws, and to control the exercise of public administrative functions by public authorities such as the prison authority or the federal police when the latter accommodates, on a transitional basis, arrested or convicted inmates.
Section 43 (Chapter II) of the Constitution incorporates the *Habeas Corpus Rule*: “When the right damaged, limited, modified, or threatened affects physical liberty, or in case of an illegitimate worsening of procedures or conditions of detention, or of forced missing of persons, the action of *habeas corpus* shall be filed by the party concerned or by any other person on his behalf, and the judge shall immediately make a decision even under state of siege”.

By means of this guarantee the judicial authority who has been notified, must proceed to analyze the situation and, in case of finding the deprivation of freedom illegal or arbitrary or the conditions of the detention illegally aggravated, must order the immediate cessation of such deprivation or situation of aggravation.

It should be mentioned that the guarantee of *habeas corpus* originally had a reparative nature and was applicable to the case where a person had been deprived of his liberty without the order of a competent authority, but now the protection is much wider and also includes the illegal worsening of the detention conditions.

*Controlling agents*

In order to safeguard the rights of inmates in general, the legislation has established agencies to control the implementation of sentences and security measures: the penitentiary judge and the National Penitentiary Procurator.

The penitentiary judge or the court having pronounced the sentence shall:
- ensure that all due constitutional guaranties and treaties ratified by Argentina are respected in the treatment given to pre-trial detainees, convicts and persons submitted to security measures;
- control the compliance with the instructions and conditions attached to the pre-trial probation;
- control the effective service of sentences imposed by the judiciary;
- solve all the incidents arising during such period; and
- cooperate in the social reinsertion of the persons on conditional release or parole.

The task of the National Penitentiary Procurator, created in 1993, was to protect quickly, effectively and through non-traditional methods, the human rights of people deprived of their freedom in the federal prisons. Technically, the institution had been designed as “Sector Ombudsman” in the Executive Branch, which objective was to control the administration as far as it concerns the deprivation of liberty of persons.
After ten years the National Penitentiary Procurator was inserted in the sphere of the legislature in order to ensure his independent position, not any longer being part of the Executive Branch which is also in charge of the prison administration.

The fundamental objective of the National Penitentiary Procurator is to protect the human rights of inmates embodied by the federal prison system, of all persons deprived of their liberty by any reason in federal jurisdiction, including police facilities, jails and any type of places where people deprived of their freedom may be found, and of pre-trial detainees and convicts by the national justice which are found in provincial institutions.

In that respect the National Penitentiary Procurator has to investigate acts, deeds or omissions affecting the rights of persons subject to the federal prison system, to make recommendations or proposals to the Justice, Security and Human Rights Ministry in order to avoid the repetition of acts affecting the dignity of persons deprived of their freedom, to carry out inspections and/or audits in the places of detention, raise complaints or accusations when being informed of an act, deed or omission which may be considered constituting an offence of public action, to inform judges of actions taken and express his opinion as a friend of the court (amicus curiae), propose legislative or regulatory reforms in order to make more effective the rights of inmates and make detained persons aware of their rights.

Finally, as a corollary of this point, it should be mentioned that as far as this issue is concerned, the reality of facts in our country impedes the full exercise of the rights which are acknowledged in their favor through current regulations. In fact, even though judicial resolutions on repair *habeas corpus*, through which petitions are made for improving the conditions of the accommodation facilities, the controls made by either the penitentiary judges or the National Penitentiary Procurator are effective, thus obtaining improvements for inmates. These usually have access to education at its different levels, as well as tending to favor family and social relationships in all their forms (system of visits, correspondence, telephone communication, intimate visits, accommodation by family approach, et cetera), social assistance in terms of its documentation and family issues, religious assistance, leisure activities and sports.

There are, however, important factors to be improved or overcome, such as jail overpopulation, defective building infrastructure in numerous institutions, the mistreatment by the prison personnel, which is not well-prepared for the task at hand, the lack of economic resources coming from scarce work due to the impossibility of installing workshops in the prison institutions.
All this is in conflict with certain rights acknowledged by legislation, such as the right to have access to a dignifying accommodation, adequate food, clothing and work. We should also add to this list, the excessive duration of criminal prosecution and the long terms of pre-trial detention. This reality obliges the National State and the Provinces to consider the prison policy as a real State Policy and to allocate enough resources to enable its full implementation throughout the territory, having to highlight that this policy is already established in the legal framework in effect and that – far from being a mere structural solution – it has taken place as a product of a conscious and studied development with the objective of completely fulfilling the proper end of the enforcement of custodial sentences, security measures and the care of the persons charged with offences.