

A BRIEF SUMMARY OF THE ITALIAN PENAL PROCEDURE

PENAL PROCEDURE: The criminal procedure begins with "notification of crime" that may arrive at the Public Prosecutor either through "Polizia giudiziaria" (prosecution service) or private complaint from a citizen (civil complaint).

From the moment in which an investigation begins on a person who has been accused of a crime, the Prosecution service has a maximum of six months to carry out the investigation and up to a year for more serious offences. If the investigation develops into a much more complex case, for example, if investigations have to be carried out abroad or if the case cannot be concluded in the time allowed, the term for investigation can again be extended to between 18 months and 2 years.

Investigations can be carried out through all the methods of obtaining evidence. As an example: telephone tapping, searches, testimonies, seizures, "perizie" (expert reports) etc. During the investigation, evidence that cannot be presented at the time of trial, for example, the testimonies of a dying witness or statements on evidence that could deteriorate over the course of the investigation, must be recorded as evidence in the case. In this instance, the Prosecutor or the defence can ask for the evidence to be recorded as such by "Incidente probatorio" (probative proceeding). This is in anticipation of the preliminary hearings, as the evidence (being unable to be disclosed and subsequently to be discussed at the proper trial) is compiled respecting the "garanzie del contraddittorio" (rights to cross-examination). This is to say that a real and proper hearing is carried out with the participation of all the parties (GIP, Public Attorney, the defence and prosecution lawyers).

The "incidente probatorio" hearing is carried out in front of the GIP who is the judge for preliminary investigations, or the one who takes care of all the actions of the PM that must be scrutinized by a third Judge (searches, seizures, arrest warrants and others).

Once the investigation is finished the procedure can have two different outcomes:

- 1) The Public Attorney does not think there is enough evidence to support the charge (or presumes innocence of the person investigated) and therefore asks the GIP to terminate the procedure. They can agree and thus arrange closure (with which the procedure is definitively closed) or send the procedure back to the Public Attorney for new investigations (especially if the prosecution exercises the right to appeal against the closure of the procedure);
- 2) Or the Public Attorney thinks on the contrary that enough elements exist to support the charge and asks the GIP for indictment. If the procedure is for less serious crimes and falls under the competence of a solo judge, the Judge passes the decree that provides judgment and the trial begins. On the other hand, if it is for more serious crimes, that fall under the competence of the collegial judge, the GIP fixes the preliminary hearing to be carried out in front of a judge (GUP), different from the first, as the acts of procedure must not be previously known. In the preliminary hearing the first Public Attorney introduces the recorded evidence that he thinks is useful and enough to support the charge, the defence can oppose this. The GUP DOES NOT assess the innocence or the guilt of the investigated person BUT ONLY the suitability of the evidence collected by the prosecution to support the trial with reasonable probability of reaching the sentence. If the GUP does not consider the evidence to be enough for the trial he pronounces sentence nonsuit. If however, as almost always happens, he thinks that the Public Attorney has enough elements to support the charge, he fixes the hearing for the beginning of the debate in front of the competent college.
- 3) During the preliminary hearing the defence could ask to be admitted to alternative rituals to the debate, such as the bargaining agreement or the abbreviated ritual.

At this stage the real trial begins and the two parties (prosecution and defence) must submit their lists of witnesses at least 7 days before the trial otherwise they will be invalid. Other counter-part witnesses could be called for during the course of the trial to provide counter evidence under specific circumstances or at the end of the trial if the Judge deems them necessary to arrive at a sentence.

The trial opens with the verification of the constitutional regularity as judged by the parties (Public Attorney, defense and offended party) and any other preliminary issues (competence of the judges etc). Then the trial begins and the debate is created. The college of judges must be virgin, i.e. must not know any of the acts of the trials investigations. By law the debate file (that is the college) will only record unrepeatable actions (searches, seizures, probative incident hearings) and those coming from the parties on which there is the consent of the counterpart.

Therefore it begins hearing the witnesses of the prosecution, then those of the defence, and finally, if they want, the defendant.

The examination of the statements is carried out in this way: the questions are asked first by the party that presented the witness and subsequently by the counterpart, or by the other parties involved in the trial (possible plaintiffs).

Other evidence that enters the trial coming from the two parties can be written, video or photographic evidence or expert reports or technical advice to the parties. At the end of the debate the Judge (collective or solo) returns a verdict of the defendants innocence or guilt. This first-level sentence can be appealed against in the court of appeal and, that sentence can be appealed against in the Cassation court.

Source: from the web at <http://italy.indymedia.org/news/2004/07/581049.php>, last consulted on 6 September, 2004