Обвиняеми (наказателни производства)

Италия

В тези информационни бележки се обяснява какво се случва, когато дадено лице бъде заподозряно или обвинено в извършване на престъпление.

Кратко представяне на наказателния процес

По-долу следва кратко представяне на обичайните стадии на наказателното производство срещу пълнолетни лица.

Подробно описание на всеки етап от производството и на Вашите права можете да намерите в информационните бележки. Тази информация не замества правните консултации и предназначението ѝ е само да Ви насочи.

Наказателното производство започва, когато полицията или прокурор узнаят за деяние, което може да представлява престъпление.

След като разследването приключи, прокурорът предприема процесуални действия за започване на съдебния процес, освен ако не счете за уместно да прекрати делото.

За престъпления, които се разглеждат от съд, заседаващ в колегиален състав, съд със съдебни заседатели (*Corte d'assise*, орган, подобен на Кралския съд (*Crown Court*) в Обединеното кралство (Англия и Уелс) или съда на федералния съдебен район (*Federal Judicial District*) в Съединените щати) или в някои случаи от едноличен съдебен състав, при разпоредителното заседание прокурорът изпраща на съдията искане за образуване на съдебно производство.

В края на разпоредителното заседание съдът може да образува съдебен процес срещу обвиняемия или да прекрати производството.

При престъпления от компетентността на едноличен съдебен състав или мирови съдия прокурорът издава призовка или директна призовка за явяване (*mandato di comparizione, citazione diretta in giudizio*).

Съществуват и няколко специални процедури: съкратено производство, налагане на наказание по волята на страните (споразумение за решаване на делото), незабавно или бързо производство (*giudizio immediato, giudizio direttissimo*), присъда, постановена в опростено наказателно производство.

Наказателното производство обикновено протича на три етапа:

първа инстанция (съд със съдебни заседатели (*Corte d'assise*), съд, заседаващ в колегиален състав, едноличен съдебен състав или мирови съд);

въззивна инстанция; и

касационен съд (най-висшата инстанция).

На първа инстанция се събират всички доказателства, свидетелски показания и документи; производството приключва с осъдителна или оправдателна присъда.

Можете да обжалвате присъдата, постановена на първа инстанция.

Въззивният съд решава дали да потвърди първоинстанционната присъда, или да я измени изцяло или частично, или да отмени присъдата и върне делото за ново разглеждане на първоинстанционния съд.

Решението на въззивния съд може да се обжалва пред касационния съд (най-висшата инстанция).

Касационният съд постановява решението си, с което може да обяви жалбата за недопустима или да я отхвърли, да отмени обжалваното съдебно решение, без да го върне за ново разглеждане, или да отмени решението и да върне делото на първоинстанционния съд.

След като всички етапи на производството приключат, съдебното решение става окончателно. Ако е постановена осъдителна присъда с налагане на наказание, последното подлежи на изпълнение.

Подробно описание на всеки етап от производството и на Вашите права можете да намерите в информационните бележки. Тази информация не замества правните консултации и предназначението ѝ е само да Ви насочи.

Ако сте жертва на престъпление, можете да намерите пълна информация за правата си тук.

Ролята на Европейската комисия

Следва да се отбележи, че Европейската комисия няма никаква роля в наказателното производство в държавите членки и поради това не може да Ви съдейства при подаването на жалба. Информацията, предоставена в тези информационни бележки, има за цел просто да Ви насочи за това как можете да подадете жалба и с кого да се свържете.

Щракнете върху връзките по-долу, за да намерите необходимата информация:

1 — Моите права по време на разследването

2 — Моите права по време на съдебния процес

3 — Моите права след съдебния процес

Връзки по темата

Министерство на правосъдието

Общи правни въпроси

Въпроси в областта на наказателното право

Италианска камара на адвокатите по наказателни дела

Права на човека

Последна актуализация: 22/03/2023

Версията на националния език на тази страница се поддържа от съответната държава-членка. Преводите са направени от Европейската комисия. Възможно е евентуални промени, въведени в оригинала от компетентните национални органи, все още да не са отразени в преводите. Европейската комисия не поема каквато и да е отговорност по отношение на информация или данни, които се съдържат или споменават в този документ. Моля, посетете рубриката „Правна информация“, за да видите правилата за авторските права за държавата-членка, отговорна за тази страница.

1 - My rights during the investigation

A. If I am a foreign national, does that affect the investigation?

Yes, essentially because some additional rights and guarantees are relevant (see also *below).*

B. What are the stages of an investigation?

i. Evidence-gathering stage/powers of investigators

The activities of the police in criminal investigations are provided for in Articles 347 to 357 of the Code of Criminal Procedure; the activities of the public prosecutor are governed by Articles 358 to 378 of the Code of Criminal Procedure.

ii. Police custody

Under Article 384 of the Code of Criminal Procedure, other than in flagrant cases - in which the criminal police carry out compulsory arrest or optional arrest of a suspect while in the act of committing an offence - where there are specific factors which, even in relation to the impossibility of identifying the suspect, suggest that the risk of absconding is well founded, the public prosecutor orders the provisional arrest or, before the public prosecutor has taken over the investigation, the criminal police carry out the provisional arrest on their own initiative of a person on serious suspicion of an offence for which the law imposes a sentence of life imprisonment or imprisonment of a minimum of two years and a maximum of six years, or of an offence involving weapons of war and explosives, or of an offence committed for the purposes of terrorism, including international terrorism, or the subversion of the democratic order.

iii. Questioning

The person under investigation, even if taken into custody or detained for another reason, participates voluntarily in the questioning, subject to the necessary safeguards to prevent the risk of absconding or violence; methods or techniques capable of influencing the freedom of self-determination or altering the ability to remember and assess the facts may not be used, even with the consent of the person questioned.

iv. Provisional custody

Pre-trial detention and other personal supervision measures are provided for in Articles 272 to 315 of the Code of Criminal Procedure. The system of personal supervision measures is governed by the principles of appropriateness and proportionality, on the basis of which, as a general rule, when ordering the measures the judge must take into account, on the one hand, the specific suitability of each measure in relation to the nature and degree of the precautionary requirements to be met in the specific case and, on the other, each measure must be proportionate to the magnitude of the facts and to the penalty which has been or may be imposed.

C. What are my rights during the investigation?

i. Am I entitled to an interpreter and translations?

Yes, in accordance with Article 143 of the Code of Criminal Procedure.

ii. What are my rights to information and access to the case-file?

In this regard, it should be noted, in general, that the notice of completion of the preliminary investigations notified to the suspect and their chosen defence counsel contains a brief statement of the facts in respect of which the proceedings are brought, the legal provisions which are alleged to have been infringed, and the date and place of the act, pointing out that the documents relating to the investigations carried out have been lodged with the public prosecutor's office and that the suspect and their counsel are entitled to inspect and take a copy of them; in addition, specific rules on the right to be informed and the right of access to documents in the case-file are laid down, in particular in relation to the conduct of the questioning or the imposition of a personal protective measure.

iii. Am I entitled to a lawyer and to inform a third party of my situation?

The suspect/accused person is entitled to appoint no more than two defence counsel; a suspect/accused person who has not appointed or has no defence counsel is assisted by an officially appointed counsel. Specific provisions including, for the person concerned, the right to be assisted by a representative, as long as readily available and suitable, apply to inspections and searches.

iv. Am I entitled to legal aid?

Yes, where the conditions laid down in the relevant provisions in force are met.

v. What is important to know regarding:

a. Presumption of innocence

Article 27 of the Italian Constitution provides that accused persons are not to be considered guilty until final judgment is delivered.

b. Right to remain silent and not to incriminate oneself

In this regard, it should be noted inter alia that, before questioning begins, persons must be informed that their statements may always be used against them and that - subject to the obligation to provide their particulars - they are entitled not to answer any questions, but the procedure will continue; failure to comply with these provisions renders any statements made by the person questioned unusable.

c. Burden of proof

In general, the burden of proof in respect of the facts relating to the indictment, criminality liability and determination of the penalty or preventive measure lies with the public prosecutor.

vi. What are the specific safeguards for minors?

The rules relating to criminal proceedings against children and young people are set out in Presidential Decree No 448 of 22 September 1988 which, in general, sets out a system more beneficial to the suspect/accused person, in both the preliminary investigations and the court proceedings.

vii. What are the specific safeguards for vulnerable people?

As a general rule, the ordinary rules on the protection of the relevant individual rights apply.

D. What are the legal time limits of the investigations?

In general, if the public prosecutor does not request dismissal of the case, it must bring criminal proceedings within six months of the date on which the name of the person to whom the offence is attributed is entered in the register of reported offences; this deadline is extended to one year for any of the offences set out in Article 407(2)(a) of the Code of Criminal Procedure (organised crime, terrorism, offences relating to firearms or drugs and other serious offences). In any event, the public prosecutor may, before the deadline expires, ask the judge responsible for the preliminary investigations to extend the period referred to above on justified grounds; further extensions may, as a rule, be requested by the public prosecutor in cases of particularly complex investigations or where it is objectively impossible to conclude them within the extended period; any extension may be authorised by the judge responsible for the preliminary investigations for a period not exceeding six months. As a rule, the duration of preliminary investigations, also taking into account any extensions, may not however exceed 18 months. Nevertheless, the maximum duration is two years if the preliminary investigations concern the offences referred to in Article 407 (2)(a), or in other limited specific cases laid down by law.

E. What measures are taken at the investigation stage, including alternatives to provisional custody and possibilities for transfer to the home state (European Supervision Order)?

In addition to pre-trial detention, the following coercive personal supervision measures may be imposed: prohibition on leaving the country, obligation to report to the criminal investigation police, removal from the family home, prohibition on going to places regularly attended by the victim, prohibition and obligation to reside at a specified address, house arrest, provisional detention in institutions with relaxed detention arrangements for mothers, provisional detention in a medical treatment facility.

Last update: 18/01/2022

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2 - My rights during the trial

A. Where will the trial take place?

As a general rule, the trial is held in the place where the court has jurisdiction - in terms of territory and subject-matter - in relation to the offence in question.

B. Can the charges be amended? If so, what is my right to information in this regard?

In general, if in the trial proceedings the facts prove to be different from those described in the order referring the matter for trial and do not fall within the jurisdiction of a higher court, the public prosecutor amends the charge and proceeds with the new notification; the same applies in relation to a concurrent offence and any aggravating circumstances resulting from the trial. As a rule, the public prosecutor proceeds in the ordinary manner if, during the trial, a new fact emerges in respect of the accused person which is not set out in the original order and which must be dealt with ex officio. However, if the public prosecutor so requests, the judge may authorise the notification of the amended charge at the same hearing, subject to the consent of the defendant and if this does not prejudice the time limits of the proceedings. If the public prosecutor proceeds directly with the new charge, as a rule the accused person may apply for the trial to be suspended and for new evidence to be admitted.

C. What are my rights when appearing in court?

i. Must I be present at the trial? Under what conditions can I be absent during the court case?

The defendant has the right - not the obligation - to be present at the trial. The court may, however, order that a defendant who is absent be duly forced to attend, where their appearance is necessary for the taking of evidence other than the examination.

Am I entitled to an interpreter and to a translation of the documents?

Yes, under Article 143 of the Code of Criminal Procedure.

iii. Am I entitled to a lawyer?

The defendant has the right to appoint no more than two defence counsel; a suspect/accused person who has not appointed or has no defence counsel is assisted by an officially appointed counsel.

iv. Which other procedural rights should I be aware of? (e.g. appearance of suspects before the court)

In this regard, it may be noted that, under Article 523 of the Code of Criminal Procedure, the defendant and their defence counsel must, in any event, speak last at the hearing if they ask to, failing which the procedure will be invalid. In addition, it should be pointed out that, at any stage and instance of the proceedings, the parties and their defence counsel may submit written pleadings or requests to the court.

D. Possible sentences

The judge delivers a conviction if the defendant is found guilty of the offence of which they are accused beyond any reasonable doubt, and by a judgment the judge applies a penalty and any preventive measures. When delivering a conviction, the judge also rules on any claim for restitution and compensation for damages. If the judge decides that the defendant must pay compensatory damages, they will also set their amount, unless this is a matter for another court.

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3 - My rights after the trial

A. Do I have the right to appeal against the judgment?

Yes, as a rule - subject to the exceptions provided for by law (see Article 593 of the Code of Criminal Procedure) - an appeal may be lodged against judgments of conviction; alternatively, an appeal may be lodged directly with the Court of Cassation against judgments at first instance that are subject to appeal.

B. What other remedies do I have?

An appeal in cassation on the grounds laid down by law (see Article 606 of the Code of Criminal Procedure) - in addition to the cases provided for under specific provisions - may be brought against judgments handed down on appeal or judgments that are not subject to appeal..

C. What are the consequences of a conviction?

i. Criminal record

In general, final criminal convictions are recorded, inter alia, in extract in the criminal record of the individual in question.

v. Enforcement of the judgment, transfer of detainees, suspended sentences and alternative sanctions

Conditional suspension of the sentence: as a rule, when delivering a sentence of imprisonment or a custodial sentence for a period of two years or less, or a monetary penalty that, alone or in conjunction with the corresponding custodial sentence under the law, is equivalent to a sentence involving deprivation of liberty of a total period of two years or less, the Court may order that the enforcement of the sentence be suspended for a period of five years if the conviction is for a serious criminal offence and for two years if the conviction is for a less serious offence; higher penalty limits are provided for minors and for adults under the age of 21 (three years and two and a half years respectively).

Alternative sanctions: under Article 53 of Law No 689 of 24 November 1981 the Court may, when delivering a judgment of conviction, where it considers that the term of detention must not exceed two years, replace that sentence with a sentence of semi-detention; where it considers that the term must not exceed one year, it may replace that sentence with court supervision ('*libertà controllata*'); where it considers that the tem must not exceed six months, it may also replace that sentence with a commensurate monetary penalty.

Enforcement of the sentence: in general - except in the case of a person who, in view of the act which resulted in the judgment of conviction be enforced, is already detained in custody in prison at the time the final judgment is delivered, the enforcement of the custodial sentence - including any remaining part of a longer sentence - not exceeding four years and that has not been imposed for certain serious criminal offences (referred to in Article 656(9)(a) of the Code of Criminal Procedure and Article *4 bis* of Law No 354/1975) is suspended by the Public Prosecutor's Office, by a decree for that purpose notified to the convicted person and their lawyer, stating inter alia that an application for an alternative to ordinary detention in prison may be submitted within the time limits laid down by law; the judges supervising the enforcement of sentences (*Magistratura di Sorveglianza*) are responsible for deciding such applications..

Transfer of persons in custody: the provisions laid down in Legislative Decree No 16 of 7 September 2010, adopted in accordance with Delegated Law No 88 of 7 July 2009 (Community Law 2008) to bring Italian national law into line with Council Framework Decision 2008/909/JHA of 27 November 2008 (on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union) or the provisions of bilateral international treaties concluded by Italy *in this area shall apply.*

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