EL

Αρχική σελίδα>Τα δικαιώματά σας>**Εναγόμενοι (ποινική διαδικασία)**

Εναγόμενοι (ποινική διαδικασία)

Ιταλία

Τα παρόντα ενημερωτικά σημειώματα εξηγούν τι συμβαίνει όταν ένα πρόσωπο είναι ύποπτο ή κατηγορείται για ποινικό αδίκημα.

Περίληψη της ποινικής διαδικασίας

Στη συνέχεια παρατίθεται περίληψη των συνήθων σταδίων της ποινικής διαδικασίας που αφορά ενηλίκους.

Στα ενημερωτικά σημειώματα μπορείτε να βρείτε λεπτομερή περιγραφή κάθε σταδίου της διαδικασίας, καθώς και τα δικαιώματά σας. Οι παρούσες πληροφορίες δεν αντικαθιστούν τις νομικές συμβουλές και προορίζονται μόνο για καθοδήγηση.

Η ποινική διαδικασία κινείται όταν η αστυνομία ή ο εισαγγελέας λάβει γνώση μιας πράξης που θα μπορούσε να συνιστά ποινικό αδίκημα.

Μόλις ολοκληρωθεί η έρευνα, ο εισαγγελέας κινεί διαδικασία για την έναρξη της δίκης, εκτός εάν κρίνει σκόπιμο να θέσει την υπόθεση στο αρχείο.

Για αδικήματα που πρόκειται να δικαστούν από πολυμελές δικαστήριο, από το κακουργιοδικείο [όργανο παρόμοιο με το Crown Court του Ηνωμένου Βασιλείου (Αγγλία και Ουαλία) ή το Federal Judicial District στις Ηνωμένες Πολιτείες] ή, σε ορισμένες περιπτώσεις, από μονομελές δικαστήριο, ο εισαγγελέας αποστέλλει στον δικαστή αίτημα για παραπομπή σε δίκη κατά την προκαταρκτική ακροαματική διαδικασία.

Μετά την περάτωση της προκαταρκτικής ακροαματικής διαδικασίας, το δικαστήριο μπορεί να αποφασίσει την παραπομπή του κατηγορουμένου σε δίκη ή την παύση της διαδικασίας.

Στην περίπτωση αδικημάτων για τα οποία είναι αρμόδιο μονομελές δικαστήριο ή το ειρηνοδικείο, ο εισαγγελέας εκδίδει κλήτευση σε δίκη ή άμεση κλήτευση σε δίκη (mandato di comparizione, citazione diretta in giudizio).

Υπάρχουν επίσης διάφορες ειδικές διαδικασίες: συνοπτική δίκη, επιβολή ποινής κατόπιν αιτήματος των διαδίκων (συμφωνία δικαστικού διακανονισμού), άμεση ή απευθείας παραπομπή σε δίκη (giudizio immediato, giudizio direttissimo), έκδοση διάταξης.

Η ποινική διαδικασία πραγματοποιείται συνήθως σε τρία στάδια:

σε πρώτο βαθμό (κακουργιοδικείο, πολυμελές δικαστήριο, μονομελές δικαστήριο ή ειρηνοδικείο),

κατ' έφεση και

στο Ανώτατο Ακυρωτικό Δικαστήριο (ανώτατο δικαστήριο).

Σε πρώτο βαθμό, συλλέγονται όλες οι αποδείξεις, οι μαρτυρικές καταθέσεις και οι έγγραφες αποδείξεις· η διαδικασία περατώνεται με καταδίκη ή αθώωση.

Μπορείτε να ασκήσετε έφεση κατά της πρωτόδικης απόφασης.

Το εφετείο αποφασίζει αν θα επικυρώσει την πρωτόδικη απόφαση ή θα τη μεταρρυθμίσει εν όλω ή εν μέρει, ή θα την εξαφανίσει και θα αναπέμψει την υπόθεση στο πρωτοβάθμιο δικαστήριο.

Κατά της απόφασης του εφετείου μπορεί να ασκηθεί αναίρεση ενώπιον του Ανώτατου Ακυρωτικού Δικαστηρίου (ανώτατο δικαστήριο).

Το Ανώτατο Ακυρωτικό Δικαστήριο εκδίδει την απόφασή του, με την οποία μπορεί να κηρύξει απαράδεκτη την αίτηση ή να την απορρίψει, να αναιρέσει την αναιρεσιβαλλόμενη απόφαση χωρίς αναπομπή ή να αναιρέσει την απόφαση και να αναπέμψει την υπόθεση στο πρωτοβάθμιο δικαστήριο.

Μόλις ολοκληρωθούν όλα τα στάδια της διαδικασίας, η απόφαση καθίσταται αμετάκλητη. Σε περίπτωση καταδίκης με επιβολή ποινής, η τελευταία καθίσταται εκτελεστή.

Στα ενημερωτικά σημειώματα μπορείτε να βρείτε λεπτομερή περιγραφή κάθε σταδίου της διαδικασίας, καθώς και τα δικαιώματά σας. Οι παρούσες πληροφορίες δεν αντικαθιστούν τις νομικές συμβουλές και προορίζονται μόνο για καθοδήγηση.

Εάν είστε θύμα ποινικού αδικήματος, μπορείτε να βρείτε όλες τις πληροφορίες σχετικά με τα δικαιώματά σας εδώ.

Ο ρόλος της Ευρωπαϊκής Επιτροπής

Θα πρέπει να σημειωθεί ότι η Ευρωπαϊκή Επιτροπή δεν διαδραματίζει κανέναν ρόλο στις ποινικές διαδικασίες στα κράτη μέλη και, συνεπώς, δεν μπορεί να σας βοηθήσει στην υποβολή καταγγελίας. Οι πληροφορίες που παρέχονται στα παρόντα ενημερωτικά σημειώματα έχουν ως στόχο απλώς να σας ενημερώσουν σχετικά με τον τρόπο με τον οποίο μπορείτε να υποβάλετε καταγγελία και με ποιον μπορείτε να επικοινωνήσετε.

Κάντε κλικ στους ακόλουθους συνδέσμους για να μεταβείτε στις πληροφορίες που χρειάζεστε:

1 — Τα δικαιώματά μου κατά τη διάρκεια της έρευνας

2 — Τα δικαιώματά μου κατά τη διάρκεια της δίκης

3 — Τα δικαιώματά μου μετά τη δίκη

Σχετικοί σύνδεσμοι

Υπουργείο Δικαιοσύνης

Θέματα γενικού δικαίου

Θέματα ποινικού δικαίου

Ιταλικές Ενώσεις Ποινικολόγων

Ανθρώπινα δικαιώματα

Τελευταία επικαιροποίηση: 22/03/2023

Την έκδοση αυτής της σελίδας στην εθνική γλώσσα διαχειρίζεται το εκάστοτε κράτος μέλος. Οι μεταφράσεις έχουν γίνει από την αρμόδια υπηρεσία της Ευρωπαϊκής Επιτροπής. Οι τυχόν αλλαγές που επιφέρει η αρμόδια εθνική αρχή στο πρωτότυπο ενδέχεται να μην έχουν περιληφθεί ακόμα στις μεταφράσεις. Η Ευρωπαϊκή Επιτροπή δεν αναλαμβάνει καμία ευθύνη όσον αφορά τις πληροφορίες ή τα στοιχεία που περιλαμβάνονται ή για τα οποία γίνεται λόγος στο παρόν έγγραφο. Βλ. την ανακοίνωση νομικού περιεχομένου για τους κανόνες πνευματικής ιδιοκτησίας που ισχύουν στο κράτος μέλος που είναι αρμόδιο για την παρούσα σελίδα.

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.

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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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