

ITALIAN CRIMINAL LITIGATION

Preliminary Investigations

Police/Prosecution

Searches/Seizures/Statements from informants

Wiretaps (granted by judge of Prel. Invest., upon motion of prosecution)

Interrogation of suspect by prosecution

Warnings: (right to silence) -
Mandatory assistance by counsel

Pre-Trial Detention

Probable cause/
Risk of flight/Corruption of evidence /
Reiteration of offences

Decision to prosecute – followed by total discovery pursuant to §416bis Italian Code Crim Pro.

§112 It. Const: Principle of mandatory prosecution

PRELIMINARY HEARING

Held before a single judge - defendant is not required to appear

Negotiation on Sentence (not so serious crimes, up to one third discount based upon bargain between counsel and prosecution, additional benefits for defendant)

Resolutions without Trial / Alternate modes of proceeding

Abbreviated/Summary Trial (all crimes, one third discount, investigation findings are admitted into evidence)

RIGHT TO PUBLIC TRIAL *Held before a single judge, panel of judges, mixed panel*

§111 It. Const: Right to Fair Trial (trial within reasonable time, impartiality etc....)

§111 It. Const: Right to Adversarial Proceedings (investigation findings are no evidence)

Opening statements by prosecution and counsel

EVIDENCE COLLECTION

(Examination of witnesses/experts)

Direct, Cross, Re-

"No Leading in Direct"

Case for the prosecution – Case for defence

Exclusionary rules of evidence:

OPINION: opinion is no evidence unless the witness is an expert

HEARSAY: out-of-court statements are no evidence

ILLEGALLY OBTAINED EVIDENCE

(e.g. confessions in absence of warnings, illegal wiretaps)

Standard of proof "beyond reasonable doubt"

Reasoned Judgment

Acquittal (*Defendant found not guilty*) – **Conviction** (*Defendant found guilty – Determination of sentence by the court*)

Appeals by prosecution and defendant

Grounds for appeal before Court of Appeal: *questions of fact (e.g. re-evaluation of evidence) and law (e.g. evidence wrongly allowed)*

Grounds for appeal before Supreme Court: *questions of law only*