THE CRIMINAL JUSTICE SYSTEM IN ITALY

BACKGROUND

The criminal justice system in Italy underwent a major reform in 1988 known as the ‘fair trial’ and the old inquisitorial model, in which it was the task of investigating judges to collect all the evidence and issue a verdict, was replaced by a clearly Anglo-Saxon based adversarial system. The new Code of Criminal Procedure (CCP), which came into force in 1989, was introduced in order to make the criminal trial more consistent with the democratic principles of orality, immediacy and publicity, and was intended to place the defence on the same footing as the prosecution. Indeed, whereas in the inquisitorial system court hearings, in many cases, merely served to verify that all the procedures had been carried out correctly during the previous phase, evidence now has to be presented orally in court and can be challenged during cross-examination.

The investigating judge has been replaced by public prosecutors, who are responsible for the collecting of evidence, and adjudicating magistrates, whose task, in addition to issuing a verdict after the evidence has been presented during a trial, is also, during the investigative phase, to ensure that the work being carried out by the public prosecutors is in compliance with the law and respects the rights of the person under investigation. As a result of certain decisions of the Constitutional Court, the adjudicating magistrates have been given a more active role as regards the collecting of evidence and much of the adversarial nature of the system has been lost, giving way to a mixed system.

Criminal investigation and criminal procedure

The criminal process begins when an offence is reported, and concludes when a decision has been made by a court. It is divided into two phases: the investigative phase (indagini preliminari), during which the public prosecutor collects the evidence, and the trial phase, during which the contending parties put evidence before the court.

Preliminary investigations start when a crime is reported to the public prosecutor or when the public prosecutor or a member of one of the law enforcement agencies discovers sufficient elements to suspect that a crime has been committed (the notitia criminis), in accordance with Article 330 of the CCP. This preliminary investigative phase has a maximum time limit, which does not start on the day a crime is reported, but on the day that the name of the person suspected of having committed the crime is officially recorded. The maximum time for which a person can be under investigation is normally six months, but it can be extended to a maximum of two years in the case of more serious crimes.

This pre-trial phase is conducted under the supervision of the judge for preliminary investigations (Giudice delle indagini preliminari - G.I.P.), whose task is to monitor the work of the public prosecutor and guarantee the rights of the person under investigation. The judge for preliminary investigations is also responsible for applying measures restricting the personal freedom of the person under investigation, such as pre-trial detention or house arrest, should this be deemed necessary. In addition, at the request of the parties, the judge for preliminary investigations has to decide on whether a special enquiry procedure should be admitted for the recording of evidence during the pre-trial phase (incidente probatorio) and presides over the adversarial procedure for the taking of this evidence. The judge for preliminary investigations also rules on any requests for the case to be dismissed.

The preliminary investigation phase ends when the public prosecutor decides whether or not to officially charge the person under investigation. If the public prosecutor believes that there is no evidence to show that the person under investigation has committed the crime (or that the evidence
is insufficient to sustain the accusation in court) or that the act does not constitute an offence, s/he asks the judge for preliminary investigations to close the case. The judge can either agree to this request or order the public prosecutor to carry out further investigations. If, after these further investigations, the public prosecutor still believes that there are no grounds for the case to go to court, s/he can nevertheless be ordered by the judge for preliminary investigations to issue an indictment. It should also be noted that if a case is closed, the victim of the crime can appeal against this decision before the judge for preliminary investigations.

Organisation of investigative agencies

Italy has various law enforcement agencies, each with a different status and structure. The most important law enforcement agencies are the State Police (Polizia di Stato), the Arma dei Carabinieri and the Customs and Excise Police (Guardia di finanza). The State Police is part of the Ministry of the Interior, while the Arma dei Carabinieri, which is a branch of the Armed Forces and, therefore, has a military structure and military regulations, answers to the Ministry of Defence. The general task of these two law enforcement agencies is to maintain public order. The Customs and Excise Police, which, in addition to maintaining public order, is essentially responsible for financial crimes and smuggling, comes under the authority of the Ministry of Economy and Finance even though it is part of the Armed Forces.

There are many other law enforcement agencies with specific tasks relating to given fields. These include the Municipal Police, which has limited powers and is under the control of individual municipalities; the State Forest Corps, which protects woodlands and forests and is part of the Ministry of Agriculture; and the Penitentiary Police, which comes under the Ministry of Justice.

The three main law enforcement agencies (but essentially all of the national law enforcement agencies) have a pyramidal structure, with the lower level ranks organised at a provincial level (each provincial capital has a police headquarters, a provincial Carabinieri command office and a provincial Customs and Excise Police command office) under the command of the Head of the Police, the Commander of the Carabinieri and the Commander of the Customs and Excise Police.

Any member of any law enforcement agency can be given the task of carrying out investigations into a criminal offence by the public prosecutor and in this case they come under the umbrella term of the polizia giudiziaria (judicial police), a term used to indicate a function rather than a specific law enforcement agency. The judicial police depend from an operational point of view on the judicial authorities in compliance with Article 109 of the Constitution, which establishes that the judicial authorities can make direct use of the judicial police. To make this Article effective, the CPP establishes that when carrying out their functions the judicial police must answer to and come under the authority of the judicial authorities. There are particularly close ties between the judicial police and the public prosecutor, with special judicial police sections in all of the Public Prosecutor’s Offices.

Italian Criminal Court System

In Italy the judiciary are guaranteed independence from the executive or any other power by the Constitution. Decisions regarding their careers and, in general, any administrative decisions regarding them are taken by the self-governing judicial body, the Consiglio Superiore della Magistratura (Supreme Judicial Council), which comprises both investigating and adjudicating magistrates (and therefore also Public Prosecutors).
The Italian criminal court system is divided up into various adjudicating bodies. The courts of first instance include the Justice of the Peace, the ordinary Tribunal and the Court of Assizes, each of them dealing with different types of crimes. While proceedings in the ordinary Tribunal may be held before a single judge, the Court of Assizes is a collective body comprising two professional judges and six lay judges. All these different courts of first instance follow more or less the same procedures, albeit with a few minor differences. The Court of Appeals reviews the decisions of the Justice of the Peace and of the Tribunal while the Court of Assizes of Appeal listens to the appeals made against the Court of Assizes.

The highest appellate Court in Italy is the Court of Cassation. The role of the judges of this Court is limited to reviewing the decisions of an inferior court on points of law. The Court cannot, therefore, judge on the substance of the sentence.

The Italian criminal court system makes use of lay judges, i.e. citizens who are not part of the judiciary, but who are called upon to carry out judicial activities by deciding on the guilt or innocence of defendants charged with more serious crimes. They are only present in the Court of Assizes and in the Court of Assizes of Appeal. The Justice of the Peace is an honorary magistrate who temporarily (4 years) acts as a judge in minor civil and criminal cases. In Italy, Justices of the Peace must have had legal training and professional experience in the legal field.

The legal provisions guaranteeing the right to an interpreter in Italy

The new Code of Criminal Procedure, which came into force in 1989, contains five articles that refer specifically to interpreters in criminal proceedings (Art. 143-147), under the heading Traduzione degli Atti (Translation of Proceedings). Article 143 states that the interpreter’s task is to enable defendants (and, in accordance with Art. 61 of the CCP, also anyone under investigation) “who do not know the Italian language (...) to understand the charges made against them and follow the proceedings in which they are involved”. This important concept has been reiterated by Italy’s highest courts on various occasions. This means that an interpreter must be present whenever non-Italian speaking defendants are questioned otherwise their statements can be challenged in court. Moreover, paragraph 3 of Art. 143 implicitly states that not just judges, but also public prosecutors and offices of the judicial police may appoint an interpreter. This means that the services of an interpreter must also be provided during the investigative phase, including when the person under investigation makes an unsolicited statement. Further legal grounds for the right to an interpreter are to be found in Art. 111 of the Italian constitution.

Although the right to an interpreter is fully recognised in Italian law, the law says nothing about the qualifications of the interpreter, or even what the interpreter is supposed to do in various situations, or what the legal status of the interpreter is. The 1989 code does not mention any criteria on which the selection of the interpreters should be based (such as minimum qualifications or necessary skills). Nor does it provide any kind of guidelines with regard to when an interpreter is required. Moreover, no guidelines have ever been provided by the Ministry of Justice to assist the courts in how to select and work with interpreters, nor has a specific body been set up to manage interpreting services.

The concept of the knowledge of Italian expressed in Art. 143 has been challenged on numerous occasions as it is too vague and is in part more restrictive than the European Convention on Human Rights and the International Covenant on Civil and Political Rights, which guarantee the right to the free assistance of an interpreter for anyone who cannot understand or speak the language used in
court. A ruling of the Court of Cassation in 2007 spoke of "communicating" and "participating fully at the hearing", without specifying exactly what is meant by the ability to "communicate" of non-Italian speakers and below which they have a right to an interpreter. In another ruling in 2007, the Constitutional Court stated that the mere provision of an interpreter does not guarantee a person’s right to a fair trial if the interpreter is not able to perform the task s/he was summoned to carry out, adding that Parliament must introduce the necessary legislation to guarantee the competence of interpreters in legal proceedings.

The absence of any system for the training, certification and accreditation of interpreters in legal proceedings and the total lack of any guidelines has meant that legal professionals and the law enforcement agencies have been left totally to themselves to decide on linguistic matters – when interpreters are needed and how to select and work with interpreters – about which they have no knowledge or training.

One exception to this situation are the in-house translators/interpreters of the Ministry of the Interior, who are selected for the major languages by means of an examination including the testing of their translation, but not interpreting skills. These translators/interpreters are mainly based in the provincial police headquarters and work in close contact with the police officers for whom they interpret.