

CRIMINAL JUSTICE SYSTEM IN ITALY

1. The first thing that must be pointed out is the difference between Common law systems and Civil law or continental systems.

We will talk about a written law system, which is somehow different than the other one, because it is based on written law and not on Court rulings. In real world practice, however, differences are not that huge. If we say that in Common law systems "all the law is judge made law", at the same time we can say that in Civil law systems Court rulings are, especially written by Supreme Courts, a fundamental guidance for interpretation, and Judges must be consistent with them.

Another thing that we have to bear in mind is that this is just an example based on Italian law. Each system has got its own rules and principles.

1.1 Italian Constitution, drafted in 1948, is our Magna Charta. There are rules concerning the administration of justice. There are several fundamentals and one of them says that the Prosecutor (each individual has the power provided by law to anybody who has the same rank in the judicial system) must pursue each and every crime. What does this mean?

1.2 If there is a suspicion of a crime, Prosecutor has to investigate. First of all, allegations are collected by Police and Prosecutors. They can be provided by private accusations. Police investigate and try to discover if initial allegations or accusations are to be further examined. Once Police has gathered initial elements, officials must provide them to the Prosecutor, who is the master of the investigation and gives instructions on how to proceed (what kind of investigating instruments should be used for that case).

1.3 If a case is serious enough and there are elements and allegations against somebody, there is a formal procedure to comply with. The name of the alleged person is registered on a record. This means that this individual has some procedural rights. For example, from the moment of the registration is computed the 6 month time for investigations to end up (but Judge for preliminary investigations can assign another 6 month period). Another example. If some investigations must be done, the alleged person has the right to be informed before that act, and participate in it.

1.4 Another principle is that Prosecutors cannot decide to limit fundamental rights (property or personal freedom) and have to ask a Judge for a particular order. It's the role of G.I.P., who controls the activity of Prosecutors and determines which of their acts are legitimate and allowed by law and which are not. It is important to understand that there is a very sharp difference in roles between Judges and Prosecutor. The first ones have not any power to investigate (there are some exceptions) and must provide control on other's actions.

1.5 What happens in this six months time? What are the typical investigations that take place? Let's make an example that could be easily understood.

Let's assume that there is a regular coach service that links two cities. One day, halfway, the coach goes off road and hits a tree, this causing severe damages and minor injuries to some passengers.

How the news can reach the Prosecutor. Police, citizen allegations, official reports from the coach service (let's assume it's a public service)

What are the first things that should be done? Search and seizures of the area. Further investigations to gather all relevant data relating to the accident. A search and seizure of the area and of the wreckage is done by the Police. In this case the Police has to

immediately inform the Prosecutor. Witness informations. We have to point out the difference between informations given by someone who is suspected or by a mere witness. In the first case one is granted with sort of "Miranda warnings", otherwise his statements cannot be used as evidence. It can occur that someone who is initially not charged of any allegation, becomes a suspect in a second phase. What he said before can't be used against him. At first there may be no suspects and later on a witness could become alleged of the crime. Expert witness. At the very first stage, the Prosecutor appoints an expert to find out what happened, technically. There is a register? No, in criminal matters there is not a record or a list of experts. We always choose professors or engineers. They must provide curricula. Often it's a question of trustiness and confidence. But, since there are not specialized magistrates nor sections of the Courts, PM needs advice on how to choose his expert. This is where other Public authorities could give suggestions, and, for instance, present the Judge a list of experts formed within Just Culture programs.

1.6 Here issues are: what language must speak the expert? How can he/she let the Judge or Prosecutor understand what happened, technically? Is it necessary for him to know what are the legal principles and special legislations in Air Traffic and Transportation? Especially for what concerns "negligence" principles. In other topics, the expert knows about law principles and can "suggest" the solution. But it must be remembered that in our system, Judge is the final expert, he is the expert over the experts and could decide the other way round in respect of what the expert suggested.

1.7 So said, what happens next? At the end of the preliminary investigation phase, Prosecutor can decide to ask for a formal indictment against the alleged person. Then GIP holds one or more "preliminary hearings" dedicated to evaluate the "probable cause" and if that indictment deserves a trial. If the evaluation is positive (and if the alleged don't prefer another kind of trial – plea bargaining, summary procedure, all these taken before the GIP) an *adversary trial* will begin.

1.8 What are the main issues with the expertise, in this phase? The expert witness becomes a witness before the Court and is cross-examined by Prosecutor and Defence attorneys. The expert must justify and clarify what he wrote. In some cases, the Court can decide to assign another expertise to deepen the crucial, technical questions.

1.9 In the end, **this is the substantial question we have to answer** in aviation cases: there must be a written rule that says that who operates as a controller or a pilot or the head of aerodrome has some duties and responsibilities. If something happens (incident or accident), there could be a case for negligence if the person in charge did not do everything he could to avoid that event.

BUT.... "HOW IT REALLY GOES"

2. In the course of a single case, a judge may make countless decisions interpreting the intent of the Constitution or a piece of legislation, or applying legal principles and precedents established by Courts rulings. If there is a Supreme Court ruling that interprets the law or deals with a similar dispute, the judge should make a ruling that is consistent with this precedent. The details of every case are different, however, and the judge may be able to "distinguish" the rulings of other courts and make a different decision And, of course, if a novel issue arises and there is no precedent to follow, the judge must craft a decision that breaks new ground but is consistent with the principles of the law.

2.1 A similar approach is taken when deciding the sentence to impose on someone convicted of a crime. The Criminal Code sets out the maximum prison term for each offence and sometimes a minimum. The maximum penalty is reserved for the worst crimes and the worst offenders, and there is a wide array of sentencing options - discharges, fines, probation or conditional sentences served in the community. The judge must take into account the seriousness of the offence, the offender's background and prospects for rehabilitation, and the need to deter others from committing crimes. Judges also review the sentences other judges have imposed for similar crimes, to ensure the punishment is fair and fits the crime. In Italy, sentencing is not based on revenge but rather on the fundamental concepts of protection of the public, fairness, deterring others from committing crime and reforming the individual offender.

2.2 The role of the judge

Judges play many roles. They interpret the law, assess the evidence presented, and control how hearings and trials develop in their courtrooms. Most important of all, judges are impartial decision-makers in the pursuit of justice. We have what is known as an adversarial system of justice - legal cases are contests between opposing sides, which ensures that evidence and legal arguments will be fully and forcefully presented. The judge, however, remains above the fray, providing an independent and impartial assessment of the facts and how the law applies to those facts.

2.2 Many criminal cases are heard by a judge sitting without a jury (we will see exceptions later). The judge is the "trier of fact," deciding whether the evidence is credible and which witnesses are telling the truth. Then the judge applies the law to these facts to determine whether there is proof beyond a reasonable doubt, in criminal cases, that the suspect is guilty.

If the defendant is convicted of a crime, the judge passes sentence, imposing a penalty that can range from a fine to a prison term depending on the severity of the offence.

Massimo Scarabello
Judge in Turin