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ITALY

AN OVERVIEW OF CRIMINAL PROCEDURE

*This report discusses the criminal appeals process and standards for a fair trial
and an impartial tribunal under Italian statutory law.*

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AN OVERVIEW OF CRIMINAL PROCEDURE¹

Executive Summary

The new Italian criminal procedure instituted in 1989 contemplates an accusatorial approach akin to the American criminal procedure system. There are, however, important differences stemming from the fact that Italy is a civil law country. According to Italy's domestic law, and the norms of European Union and international law to which Italy is bound, the accused enjoys a set of due process guarantees during the criminal process. Appellate review is broader than its American counterpart in that the appellate court has the power to receive new evidence, including the hearing of new testimony. The appellate review process for a conviction allows for a broad range of alternatives, including remand and reversal of the case to the trial level. The appellate court may not, however, impose a harsher penalty on the convicted. In the new system the public prosecutor emerged as a crucial and powerful actor, as a guarantor of the prompt and correct administration of justice, and as the defender of the State. The Constitution also sets forth due process guarantees for criminal defendants, which in broad terms resemble those extant in American criminal procedure.

I. The Criminal Appeals Process

A. The 1989 Code of Criminal Procedure

Italy's current Code of Criminal Procedure (*Codice di procedura penale*, C.P.P.) was promulgated in 1988 and came into force in October 1989.² The new Code substituted the

¹ This report seeks to provide an objective discussion of the law without reference to any particular set of facts. It is limited to a discussion of applicable constitutional and statutory law. Note that the Law Library of Congress does not currently have an Italian attorney on staff but does have researchers who are fluent in Italian as well as attorneys from other civil law jurisdictions. All original materials in Italian have been translated into English by the authors unless otherwise indicated. Because civil law concepts do not translate exactly into Anglo-American legal terminology, a cautionary approach was taken by the authors when providing translations. Issues related to applicable European Union law standards are addressed in a separate report.

² See THOMAS GLYN WATKIN, *THE ITALIAN LEGAL TRADITION* 137 (1997) (stating that “[D]issatisfaction with what was seen by many as being a system of criminal justice which favoured the State at the expense of its subjects led to many calls for reform [of the 1931 Code]...”).

accusatorial system for the old inquisitorial model and placed “the prosecution and the defence on an equal footing before impartial judges.”³

The new Code contemplates an open, oral, and impartial process, thus replacing the previous structure of the instruction phase, which was “predominantly written, secret and dominated by the State officials.”⁴

The reception of the new Code has had mixed results:

Its critics in particular have been swift to point out that its accusatorial elements sit uneasily in a system in which the State has an acknowledged responsibility to discover and prosecute crimes. They argue that the new system is an uncomfortable mix of inquisitorial and accusatorial styles. Moreover, there has undoubtedly been a mixed reaction to the new system from established advocates. Many of these had for years practised in a system which required them to address the court but not to cross-examine witnesses. In so far as the techniques of cross-examination have to be acquired, it has been difficult for the older generation of advocates to adapt to the requirements of the new style.⁵

B. The Italian Criminal Court System

1. Trial Level

For criminal jurisdiction purposes, Italy is divided in territorial divisions called *circoli*. Each *circolo* has two types of criminal courts: the *corte d’assise* (trial level) and the *corte d’assise d’appello* (appellate level). The trial takes place in the court with jurisdiction over the territory where the crime was committed. More serious crimes are reviewed by the *corte d’assise* of each *circolo*.⁶

2. Appellate Level

Decisions of the *corte d’assise* go to the *corte d’assise d’appello*,⁷ which is a special criminal appellate court, and “[T]o hear appeals from the *corte d’assise*, [the sitting judges of the appellate court] are joined on the bench by six lay judges.”⁸

³ *Id.* at 137. Other principles included were “respect for the constitutional rights of subjects during the criminal process, respect for international treaties and declarations on human rights, ... [and] ensuring swiftness and simplicity in the criminal process and placing the prosecution and the defence on an equal footing before impartial judges.” *Id.*

⁴ *Id.* at 138.

⁵ *Id.* at 140.

⁶ *Id.* at 129.

⁷ C.P.P. art. 596.

⁸ WATKIN, *supra* note 2, at 130.

C. Rights of the Accused at Trial⁹

In keeping with modern constitutional, criminal, and international law, the Italian legal system provides for a series of rights of the accused before and during trial. Among these rights are the right to:¹⁰

- (a) Life, liberty, safety and property;
- (b) An independent and impartial tribunal;
- (c) A public trial, with some exceptions, within an adequate period of time;
- (d) Be informed of the nature and content of the accusation;
- (e) Cross-examine witnesses for the prosecution and subpoena witnesses for the defense;
- (f) Counsel; and
- (g) A presumption of innocence.

The Italian Constitution also guarantees these rights as follows:¹¹

- (a) Right to liberty;
- (b) Right to select and employ a defense attorney in order to obtain legal assistance;
- (c) Equality of all citizens before the law;
- (d) Right to be fully informed of the charge and of the existing evidence against him, and to be informed of the source of the evidence, such as the identity of the claimant(s), unless this would be detrimental to the investigation;

⁹ See Marco W. Fabri, *Theory Versus Practice of the Italian Criminal Justice Reform*, in 77 JUDICATURE 211, 215 (1994) (criticizing the absence of certain victims' rights in Italian criminal procedure, such as "the victim's right to be informed and present at the critical stages of the criminal justice process.").

¹⁰ See PIETRO MARONGIU, WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS: ITALY, available at <http://bjs.ojp.usdoj.gov/content/pub/ascii/WFBCJITA.TXT> (last visited Feb. 16, 2010) (citing the Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, available at <http://conventions.coe.int/Treaty/EN/Treaties/html/005.htm>, and its Protocol No. 11, Nov. 1, 1998, E.T.S. No. 155, available at the same website). Both the Convention and its Protocol are part of the Italian legal system, "in that no national law can conflict with its provisions. The Convention and Protocol have been signed by all government members of the Council of Europe and are in force in Italy as a State law." *Id.* at 18.

¹¹ *Id.*; COSTITUZIONE [COST.] [Constitution] arts. 3, 13, 24, published in Gazzetta Ufficiale della Repubblica Italiana [Gazz. Uff.] [Official Gazette of the Republic of Italy] No. 298, Dec. 27, 1947; Protocol No. 11, arts. 5, 6.

- (e) Right to remain silent and to be considered not guilty until a final sentence has been pronounced;¹²
- (f) Right to be present at trial, to confront opposing witnesses, and to have all witnesses cross-examined by the defense attorney;¹³
- (g) Right to be tried by a judicial panel or by a single judge, before the court with jurisdiction over the territory where the crime was committed;
- (h) Right not to be removed from the “natural judge,” that is, from the judge who is competent to try the case under the law;
- (i) Right not to be tried twice for the same crime;
- (j) Right to be tried in a fair trial, that is, by an independent and impartial tribunal; and
- (k) Right to produce evidence in his defense at any stage of judicial proceedings, including the arrest and investigation stage.

D. Appellate Procedure Under the Code of Criminal Procedure¹⁴

Criminal appellate procedure is regulated in Title II, Articles 593 to 605 of the C.P.P. Trial rules apply to the appellate level, as applicable, except when otherwise specified in Articles 599 to 605, which refer to decisions made in chambers, the enforcement procedure for decisions imposing civil liability, preliminary actions during appellate procedures, the appellate hearing, the renewal of the appellate procedure, questions of nullity, and sentencing.¹⁵

1. Grounds for Appeal

The grounds for appeal are not listed in the C.P.P.¹⁶ The appealed decision may be completely overturned at the appellate level.¹⁷

¹² C.P.P. arts. 65, 649; COST. arts. 25, 27.

¹³ C.P.P. arts. 65, 474, 486, 498, 499, 530; COST. art. 27.

¹⁴ See Carlos de la Barra, *Chile: Adversarial vs. Inquisitorial Systems: The Rule of Law and Prospects for Criminal Procedure Reform in Chile*, 5 SW. J.L. & TRADE AM. 323, 328-29 (1998) (commenting on the challenges of the new Italian criminal procedure system: “However, further investigations proved that, in some cases, poor performance of public prosecutors in their oral skills led some judges to reassume the investigative role by questioning the witness or requiring evidence.”).

¹⁵ C.P.P. art. 598.

¹⁶ Adelmo Manna & Enrico Infante, *Criminal Justice Systems in Europe and North America: Italy 25* (The European Institute for Crime Prevention and Control (HEUNI), 2000).

¹⁷ *Id.*

2. Parties Entitled to an Appeal

With limited exceptions, both the public prosecutor and the accused may appeal a conviction or acquittal.¹⁸

3. Scope of Appellate Review

The court of appeals' review of the case is limited exclusively to the points of the lower court's decision referred to in the appeal,¹⁹ which usually concerns the merits of the case.²⁰ The appellate court has the power to "accept the appeal based on its own argumentations or reasons different from those of the appellant."²¹ The guilt of the accused cannot be established on appeal on the basis of testimony made by those who voluntarily avoid cross-examination by the accused or his counsel.²²

When the public prosecutor appeals a conviction, the court has broad jurisdiction to decide the appeal. In fact, the court may, within the limits of the jurisdiction of the court of first instance, give the facts a more serious legal definition (e.g., construe the identical facts established at the trial level as a felony versus a misdemeanor); change the nature of or increase the amount of, the penalty; withdraw benefits; apply security measures when necessary, and adopt any other action required or permitted by law.²³ In appeals of acquittals, the court may convict and issue an order in the aforementioned terms, or acquit based on a ground other than that indicated in the appealed decision.²⁴ If the court confirms the decision of first instance, the court may apply, amend, or exclude the accessory penalties and the security measures, in those cases specified by the law.²⁵

Article 597 of the C.P.P. establishes restrictions in the case of an appeal filed by the accused. In such cases, the court may not:

- (a) Impose a more serious penalty in terms of the nature of the offense or the severity of punishment;²⁶

¹⁸ C.P.P. art. 593.

¹⁹ *Id.* art. 597, § 1.

²⁰ WATKIN, *supra* note 2, at 140.

²¹ ANIELLO NAPPI, GUIDA AL CODICE DI PROCEDURA PENALE 702 (7th ed. 2000) (in Italian).

²² C.P.P. art. 526, introduced by Law of March 1, 2001, No. 63, art. 19, Gazz. Uff. No. 68 of March 22, 2001, available at <http://www.parlamento.it/parlam/leggi/010631.htm> (last visited Feb. 16, 2010).

²³ *Id.* art. 597(a).

²⁴ *Id.* art. 597(b).

²⁵ *Id.* art. 597(c).

²⁶ This institution is called the *reformatio in pejus*, which bans the appellate court from imposing a penalty harsher than that of the trial court, which is the subject of the appeal. NAPPI, *supra* note 21, at 703. This restriction "concerns not only the totality of the penalty, but also its components." *Id.* at 704. If the court accepts "the denial of the defendant related to the concurrent circumstances and crimes," it must reduce the totality of the penalty proportionately. *Id.* The court always has the power to give the facts a different appreciation or qualification,

- (b) Apply a new or more serious security measure;
- (c) Acquit the accused for a reason less favorable than that mentioned in the appealed decision;
- (d) Revoke benefits.²⁷

In exceptional cases, the court may assign the facts a more serious legal definition, provided that it does not exceed the jurisdiction of the trial court.²⁸

If the appeal of the accused is granted based on concurrent circumstances or crimes, even if unified by their continuation, the total penalty imposed is correspondingly decreased.²⁹

The court, on its own initiative, may order the conditional suspension of the penalty and the omission of the conviction from the criminal record when issuing the sentence. The court may also apply one or more mitigating circumstances and, when necessary, conduct a comparison of mitigating and aggravating circumstances pursuant to Article 69 of the Criminal Code.³⁰

Generally, the appellate court meets in chambers.³¹

4. Suspension of the Appellate Hearing

The hearing is suspended in the case of a legitimate impediment of the accused who has expressed his willingness to appear before the court.³²

5. Renewal of the Proceedings

In case of renewal of the proceedings, the court receives the evidence in chambers, pursuant to Article 603, with the necessary participation of the public prosecutor and the defendant's counsel. If these persons are not present when the renewal is ordered, the court sets a new hearing date and orders that notice be provided to them.³³

within the limits of the *reformatio in pejus*, and to conduct a comparison between the aggravating and extenuating circumstances (called "trial of comparison"). *Id.* at 705. In that context, the appellate court may recognize a previously denied extenuating circumstance or exclude an aggravating circumstance that was previously applied by the court of first instance. *Id.* at 704.

²⁷ C.P.P. art. 597.

²⁸ *Id.* § 2.

²⁹ *Id.* § 3.

³⁰ *Id.* § 4.

³¹ *Id.* art. 599, § 1. Article 601, section 2, of the Code provides that when the court proceeds in chambers pursuant to Article 599, a mention of the summons must be included in the decree.

³² C.P.P. art. 599, § 2.

³³ *Id.* § 3.

When the court rejects the request for a renewal of the proceedings, it issues a summons to participate in the hearing. In this case, the request and the waiver remain without effect, but they may be proposed again during the hearing.³⁴

6. Preliminary Acts Prior to the Appellate Trial

a. Summons of the Accused

Subject to certain exceptions, the president of the appellate court orders the summons of the appellant accused, and of the non-appellant accused if there is an appeal by the public prosecutor.³⁵

b. Decree of Summons

The decree of summons for the appellate trial must specify the competent court and contain the information regarding the crime, the accused, the evidence, etc., required by Article 429.³⁶ The date to appear may be no less than twenty days from the date of the summons.³⁷

c. Notice of the Summons

Counsel for the defendant must be given notice at least twenty days prior to the date fixed for the appellate trial.³⁸

d. Nullity of the Decree of Summons

The decree of summons is void if the accused is not identified with reasonable certainty, or if any of the requirements of Article 429, paragraph 1(f) (referring to the place, date, and time for the appearance) are missing or insufficient.³⁹

7. Report by the President

At the hearing, the president or his delegate makes the report of the case.⁴⁰

³⁴ *Id.* § 4. Section 4 was amended by Law of January 19, 1999, No. 14.

³⁵ C.P.P. art. 601, § 1.

³⁶ *Id.* § 3.

³⁷ *Id.*

³⁸ *Id.* § 5.

³⁹ *Id.* § 6.

⁴⁰ *Id.* art. 602, § 1.

8. Plea Agreement at the Appellate Level

If the parties unanimously agree to accept, in whole or in part, the grounds for the appeal pursuant to Article 599, paragraph 4, the court may accept that agreement immediately. The court may decide not to accept the agreement if the request and the waiver of the grounds for the appeal deviate from the agreement. In such cases, the court orders the continuation of the hearing.⁴¹

9. Reading of the Proceedings of the Trial Court

During the proceedings the president (or his delegate) may, on his own initiative, read the facts of the case as established at the trial level and, within the limits contemplated in Articles 511 et seq.,⁴² the acts performed in the previous stages.⁴³

10. Renewal of the Proceedings

a. On the Appellate Court's Own Initiative

The court may order the renewal of the proceedings (i.e., retrial at the appellate level) on its own initiative if it considers renewal to be absolutely necessary.⁴⁴

The court may also order the renewal of the proceedings on its own initiative when the accused has been uncooperative during trial. In this case, the accused must prove that his lack of appearance was due either to: (a) An Act of God or *force majeure*; (b) his lack of knowledge of the decree of summons for no fault of his own; or (c) the fact that the notice of summons was served on his counsel because service on the accused was impossible and he did not purposely avoid being served.⁴⁵

b. At the Parties' Request

The court may order the renewal of the proceedings when, during the appeal proceedings, a party has requested the resumption of the evidence already produced at trial or the inclusion of new evidence, and the court determines that it is unable to decide given the current status of the circumstances.⁴⁶ Within the limits established pursuant to Article 495, paragraph 1, the court

⁴¹ *Id.* § 2.

⁴² Article 511 of the Code deals with the reading of procedural activities allowed during the trial, including the reading of the testimony, expert reports, and prosecutorial charges. It also gives the court power to restrict or broaden the reading of other portions of the criminal docket. C.P.P. art. 511.

⁴³ *Id.* art. 602, § 3.

⁴⁴ *Id.* art. 603, § 3.

⁴⁵ *Id.* § 4.

⁴⁶ *Id.* § 1.

also orders the renewal of the proceedings when new evidence has arisen or has been discovered after the decision of the first instance.⁴⁷

c. In Case of Disagreement Between the Parties

The Court may issue an order renewing the proceedings in case of a disagreement between the parties.⁴⁸

11. Suspension of the Proceedings

The renewal of the proceedings occurs immediately. In the case of impossibility, the proceedings are suspended for a period not to exceed ten days.⁴⁹

12. New Evidence

New evidence may be introduced at the appellate level in limited circumstances, and this evidence is heard in open court. The parties again have the right to address the court and cross-examine any new witnesses.⁵⁰

13. Questions of Nullity

In the case provided in Article 522 (referring to the nullity caused by noncompliance with deadlines), the court of appeals declares the total or partial nullity of the appealed decision and orders the case to be remanded to the court of first instance based on any of the following grounds: (a) conviction for a different act; (b) the application of an aggravating circumstance for which the law establishes a penalty of a nature different from the regular penalty applicable to the crime; or (c) the application of an aggravating circumstance with a special effect, provided that these circumstances are not considered prevailing or equivalent mitigating circumstances.⁵¹

If a decision of the *corte d'assise* is quashed, the court of appeals orders the remand of the proceedings to another section of the same court or of the same tribunal, or in default, to the closest court or tribunal.⁵² If a trial decision is quashed, the court of appeals remands the case to another section of the same court or, if this is not possible, to the closest court.⁵³

⁴⁷ *Id.* § 2.

⁴⁸ *Id.* § 5.

⁴⁹ *Id.* § 6.

⁵⁰ WATKIN, *supra* note 2, at 139.

⁵¹ C.P.P. art. 604, § 1.

⁵² *Id.* § 8. This provision also applies to decisions of the *tribunale collegiale*, or collegiate courts, which consist of three judges, WATKIN, *supra* note 2, at 105, and has jurisdiction “over all matters that do not fall within the competence of either the *giudice di pace* or the *pretura*. It is the main court of first instance. It alone has competence to deal with causes concerning taxes and duties, personal status and capacity, honorary rights, and *querela di falso* – that is a claim that a duly authenticated deed is a forgery.” *Id.* at 99.

⁵³ C.P.P. art. 604, § 8.

a. Application of Modifying Circumstances

When prevailing or equivalent mitigating circumstances have been considered or aggravating circumstances other than those noted above are applied, the court of appeals excludes the aggravating circumstances and, if necessary, conducts a new comparison, redefining the penalty.⁵⁴

b. Notice to the Public Prosecutor

When the accused has been convicted of a concurrent crime or for a new fact, the court of appeals quashes the holding of the decision and eliminates the corresponding penalty, providing that notice of the measure be given to the public prosecutor for his determination.⁵⁵ At the appeal stage, the prosecution is conducted by the Attorney General at the Court of Appeal (*Procuratore Generale presso la corte d'appello*).⁵⁶

c. Remand of the Case after a Declaration of Nullity

If the court of appeals declares the nullity indicated in Article 179 (concerning the lack of summons of the accused or the absence of his defense counsel in cases when the latter's appearance is required), which derives from the nullity of the decision ordering the ruling or the decision of first instance, the case is remanded to the court that had jurisdiction when the action creating the nullity took place. The court proceeds in the same manner when one of the nullities declared in accordance with Article 178 (concerning the capacity and number of judges, actions of the prosecutor, and a failure to properly serve the summons) and Article 179 is found not to have been cured and from which derives the nullity of the measure ordering the trial or the decision of the first instance.⁵⁷

d. Uncured Nullities

With respect to other nullities that have not been cured, the court of appeals may order the renewal of the void acts or, once the nullity is declared, decide on the merits, when it recognizes that the act does not provide the elements necessary for the trial.⁵⁸

14. Renewal of the Proceedings When the Crime/Criminal Action is Extinct

When the trial court has declared that the crime is extinct or that the criminal action could not be started or continued, the court of appeals, if it finds this holding incorrect, may order the renewal of the proceedings and decide the case on the merits.⁵⁹

⁵⁴ *Id.* § 2.

⁵⁵ *Id.* § 3.

⁵⁶ MARONGIU, *supra* note 10, at 19.

⁵⁷ C.P.P. art. 604, § 4.

⁵⁸ *Id.* § 5.

15. Decision of the Appellate Court

Outside of those cases provided in Article 604, the court of appeals issues a decision in which it confirms or amends the appealed decision.⁶⁰ The ruling of the court of appeals must be reasoned⁶¹ and, when referring to a civil action, is immediately enforceable.⁶²

A copy of the appellate decision, with the docket of the case, is transferred by the clerk to the court of first instance without delay when this court is responsible for the execution of the decision, provided that a writ of cassation has not been filed against the appellate decision.⁶³ The writ of cassation is available in cases where a question of law arises. The Court of Cassation (*Corte di cassazione*)⁶⁴ has exclusive jurisdiction to review writs of cassation.⁶⁵ This Court may either confirm the appellate decision or quash it in whole or in part, in which case it remands the case to the appellate court.⁶⁶

II. Role of the Public Prosecutor

As stated above, the appellate procedure involves the participation of other legal actors at the appellate level.

The new Code of Criminal Procedure of 1989 amended the organization of the prosecutorial office⁶⁷ and the prosecutors' powers. One Italian scholar, who has described the prosecutor as "a representative of the community of the citizens and the guarantor of legality,"⁶⁸ has outlined the prosecutor's core functions as follows:

The duties of the public prosecutor are carried out by magistrates, who are members of their own right of the judicial system, like the judges of the judging bodies. Such

⁵⁹ *Id.* § 6.

⁶⁰ *Id.* art. 605, § 1.

⁶¹ WATKIN, *supra* note 2, at 139.

⁶² C.P.P. art. 605, § 2.

⁶³ *Id.* § 3.

⁶⁴ The *Corte di cassazione* "is the highest judging body in the Italian Judicature. It has its [only] seat in Rome, and jurisdiction over the whole territory of the State. The task of the Court of Cassation is to assure the exact observance and the even interpretation of the law (art. 65 Judicial System). The Court of Cassation is judge on the right [i.e., it reviews only the law, not the facts], since it controls that the sentences passed by the judges on the merits (that is, those who directly evaluate the facts) are in compliance with the law." V. CIRESE & V. BERTUCCI, *THE NEW ITALIAN CRIMINAL PROCEDURE FOR FOREIGN JURISTS* 25 (2d ed. 1993).

⁶⁵ WATKIN, *supra* note 2, at 131.

⁶⁶ *Id.* at 140.

⁶⁷ See CIRESE & BERTUCCI, *supra* note 64, at 29 (stating that the internal management of the public prosecutor's office, the organization of its activity and the fulfillment of the duties of public prosecutor "are personal prerogatives of the head of the office.").

⁶⁸ *Id.* at 28.

magistrates, however, possess less guarantees of independence, since they carry out their activity “under the supervision of the Minister of Justice.” (Art. 69 Jud. Syst.).

...

[A]lthough opposed to the defendant, and since he is a public party carrying out a public function, he is actually impartial, acting as he does in the defence of the general interest to comply with the law and not to assert particular interests.^[69]

Among other duties of the public prosecutor he “watches over the observance of the law, the prompt and correct administration of justice, the defence of the rights of the State, of the legal persons and of the persons under disability.”⁷⁰ The performance of prosecutors under the new system has also been subject to criticism.⁷¹

III. Location of Appellate Proceedings

Under penalty of being void, the decree of summons issued to the parties at the appellate level must contain, among other requirements, the elements listed in Article 429, paragraph 1(f), which refer to the place, date, and time for the appearance of the parties.⁷² As stated in Part I(B), above, appeals against a *corte d’assise’s* decision are heard by the *corte d’assise d’appello* with jurisdiction over the territory where the *corte d’assise* is located.

IV. Standard for a Fair Trial by an Impartial Tribunal

The standards for a “fair” trial by an “impartial tribunal” under Italian law are established in Article 111 of the Constitution concerning legal proceedings, which provides:⁷³

Art. 111

The law shall be administered by means of a fair trial governed by Act of Parliament.

The parties to all trials may speak in their own defence in the presence of the other parties, with an equal status, before an independent and impartial court. An Act of Parliament shall lay down provisions to ensure that trials are of a reasonable length.

In the criminal process, all individuals charged with a criminal offence have the statutory right to be notified promptly and confidentially of the nature and cause of the charges made against them; they shall be given adequate time and conditions to prepare their defence; they have the statutory right to examine, or have examined, the witnesses testifying against them in court and to obtain the attendance and examination of witnesses

⁶⁹ *Id.* at 27.

⁷⁰ *Id.*

⁷¹ Fabri, *supra* note 9, at 215 (“By participant observations, watching videotaped trial records, and interviewing people, it seems clear that the performances of attorneys and, in particular, of public prosecutors are far from reaching an acceptable level.”).

⁷² C.P.P. art. 601, § 6.

⁷³ COST. art. 111, *translated in* LEGISLATIONLINE.ORG (published and maintained by the OSCE Office for Democratic Institutions and Human Rights), <http://www.legislationline.org/documents/section/constitutions> (last visited Feb. 16, 2010).

on their behalf under the same conditions as witnesses against them, and to obtain all other evidence on their behalf; they shall be assisted by an interpreter if they cannot understand or speak the language used during the trial.

The criminal process is governed by the principle that all the parties may speak in their own defence in the presence of the other parties during the taking of evidence. Guilt shall not be established on the basis of statements made by anyone who has freely chosen not to submit to questioning by the defendant or the defendant's Counsel ad litem.

An Act of Parliament shall govern the cases in which evidence is not to be taken in the presence of both parties with the consent of the defendant or when it is objectively proven to be impossible, or as a result of proven unlawful conduct.

All judicial decisions must be motivated.

Appeals to the Court of Cassation in cases of violations of the law are always allowed against sentences and against measures on personal freedom pronounced by ordinary and special courts. This rule can only be waived in cases of sentences by military tribunals in time of war.

Appeals to the Court of Cassation against decisions of the Council of State and the Court of Accounts are permitted only for motives arising from judicial flaws.

VI. Concluding Remarks

The new adversarial or accusatorial system created in Italy in 1989 follows the Anglo-American framework, but due to the fact of Italy's civil law background it differs in important aspects from that framework. The role of the public prosecutor is not without criticism. There is no doubt that prosecutors are a key component of the new system. Their actions have been considered too far-reaching by some, while others have criticized their lack of experience and initiative. In sum, the new system is a project in the making. Only time will define its specific contours and the ways in which Italy will address the challenges presented by the new system.

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