

Criminal proceedings

First instance: proceedings on the merits of the case

(Trial Court- Court of Appeal)



Appeal

(Court of Assizes - Court of Assizes of appeal)

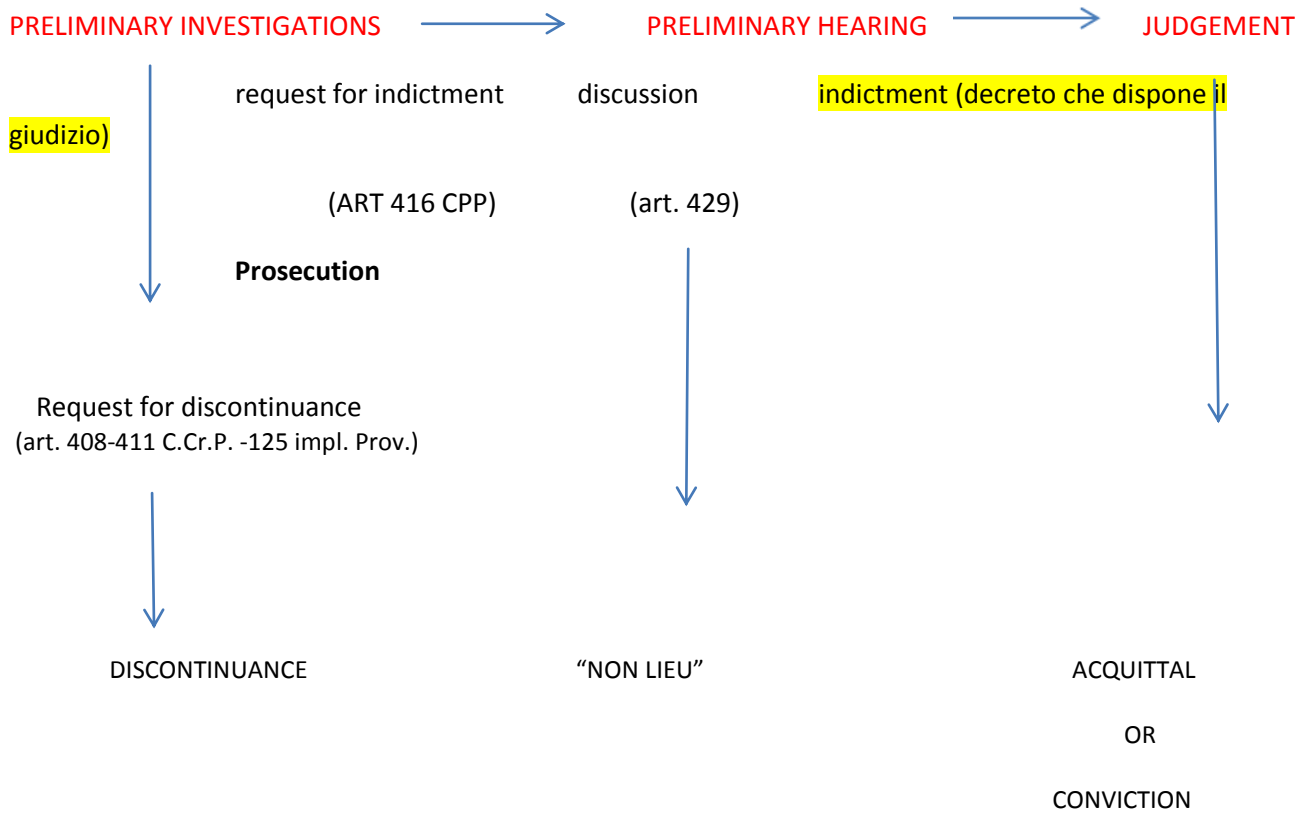


Assessment of lawfulness:

Court of Cassation

Normal criminal proceedings: steps

First instance



Alternative procedures

✓ Summary judgment

When a person is caught in the act, if no further investigations are needed, the Preliminary Investigation Judge can request for a summary judgment within 48 hours from the capture, in addition to the arrest validation. If arrest has already been validated, or if the offender confesses a crime, the PIJ can go for a summary judgment within 15 days from the capture or from the entry in the Criminal Records Registry in case of confession. In this period, it is possible to request for shortened and simplified procedures or for at any time.

✓ Immediate judgment

If there is clear evidence of the crime, the Public Prosecutor's Office can request for an immediate judgment by the Preliminary Investigation Judge within 90 days from the entry in the Criminal Records Registry. The decision by the PIJ for the immediate judgment must be communicated at least 30 days before the trial date. Within 15 days from the notification of the decision for immediate judgment, the accused can request for either simplified and shortened procedures or for the means called "settlement". After said deadline, it is not possible to request for simplified and shortened procedures or settlement anymore.

✓ Shortened and simplified procedure

Request for this procedure shall be submitted to the Preliminary Hearing Judge. If the PHJ holds that enough elements were collected to decide immediately, they will allow shortened and simplified procedures to be chosen. In that case, the sentence shall be decreased by one third. This procedure can be applied even to the crimes providing for a life sentence without continual confinement.

✓ The "settlement"

(sentence applied upon request by both parties) It is an agreement between the accused and the Public Prosecutor's Office upon the sentence to be applied. It is possible to settle the case this way if, having considered the extenuating circumstances and the **sentence decrease because of the settlement**, the final sentence will be no longer than two years. Request for this procedure must be submitted to the judge during the preliminary hearing. It is then impossible to ask for it during the hearing.

✓ Summons by Single Judge

When crimes provide for no preliminary hearing, request for shortened and simplified procedure or settlement can be made at the very beginning of the hearing.

PUBLIC PROSECUTOR'S OFFICE

(art. 104-109, 112 Const.; art. 73 ss jud. sys.;
compulsory part: art. 50-54 C.Cr.P.; **functions**: art. 358 ss.)

AUTHORITIES:

Basic Public Prosecutor's Office at:

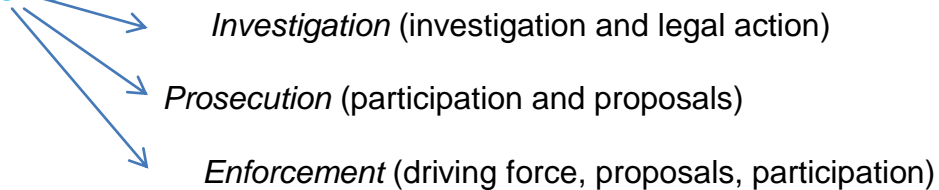
- The Trial Court
- the Juvenile Court
- Main Town Court in the District Court of Appeal
(District Anti-mafia Prosecutor)

High Public Prosecutor's Office at:

- the Court of Appeal
- The Court of Cassation

The General Prosecutor's Office at the Court of Cassation includes the National Anti-mafia Bureau (DNA – Direzione Nazionale Antimafia), its head is called Anti-mafia Public Prosecutor.

FUNCTIONS



CRIMINAL INVESTIGATION DEPARTMENT

(subject: art. 55 ss. C.Cr.P; functions: art. 347 ss. C.Cr.P)

Variable functional reporting relationship to the Public Prosecutor's Office:

sections (art. 56 lett. b)

- **strongest functional reporting relationship**
 - ✓ To the High Public Prosecutor's Office
 - ✓ Criminal investigation function **only**
 - ✓ To the head of the Basic Public Prosecutor's Office
 - ✓ Fully available to the Basic Public Prosecutor's Office

services (art. 56 lett. a)

• cogestione con ente di appartenenza

- ✓ At the Police, Carabinieri, and Financial Police Headquarters
- ✓ Priority to the criminal investigation functions
- ✓ The official plays the role of intermediary between Basic Public Prosecutor's Office and the service staff; the official is held accountable for the staff to the High Public Prosecutor's Office
- ✓ The judicial authorities make use of the services

Other officials and police officers (art. 56 lett. c)

- **weakest functional reporting relationship**
 - ✓ To other offices, e.g. Labour Inspection
 - ✓ Laws and regulations provides for criminal investigation functions
 - ✓ Duty to carry out the tasks deriving from criminal investigation functions
 - ✓ The judicial authorities make use of all criminal investigation agencies

DIA Distric Antimafia Bureau

- steered by the Antimafia Public Prosecutor, active in antimafia investigations

CRIMINAL INVESTIGATION DEPARTMENT ACTIVITY

- **Obligation to report criminal records** (art. 347):

1. "timely"

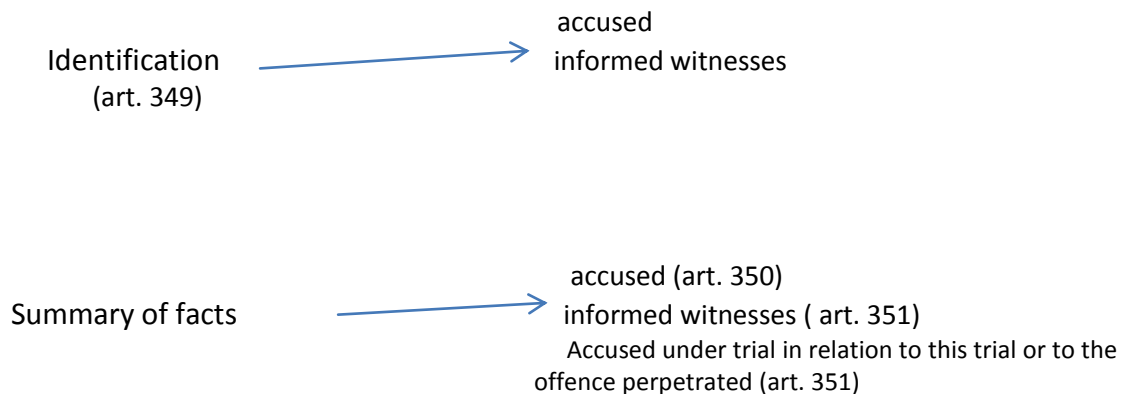
2. whenever the offence provides for an intervention of a defense attorney "within 48 hours max."

3. whenever the offence falls within art. 407.2, lett. a), n. 1-6 and whenever the situation requires "immediate" communication (even orally, before giving written notification)

- **Activity (goals): information, investigation, guarantee** (artt. 55, 348)
- **Activity (in relation with the Public Prosecutor's Office):**
- **independent (even in parallel with)** (artt. 327, 348.1 and 3)
- **steered** (by the Public Prosecutor's Office)
- **authorised** (by the Public Prosecutor's Office *ex art.* 370)

Activity (discipline)

Atypical/ typical activity (artt.349-357)



Searches (art. 352)

Collecting documents/mail (art. 353)

Investigations on places, goods and people (art. 354)

Seizure (art. 354-355)

How do you get to the preliminary investigation phase?

BASIC PUBLIC PROSECUTOR'S OFFICE

CRIMINAL INVESTIGATION DEPARTMENT

collect information on their own initiative
(obligation for the Criminal Inv. Dept to inform the Basic PP's Office *ex art. 347*)

Or
They are informed of

A crime
(art. 330)

How do they know?

Report (art. 331-334-*bis* C.Cr.P; art. 364Cr.C.)
by: **public officers/civil servants/ private citizens**

NB: anonymous reporting
cannot be used in any way (art.
333.3; art. 108 impl. Prov. ; art. 5
reg.es.) form n. 46: anonymous reporting book

- **Medical report** (art. 334 C.Cr.P, 365 c.p.)
 - **Legal action** (artt. 120-126, 152-156 c.p.; artt. 336-340 C.Cr.P)
 - **Proceedings petition** (art. 341 C.Cr.P)
 - **Jury Demand** (art. 342 C.Cr.P)
 - **Authorisation to proceed** (art. 343 C.Cr.P)
- PROSECUTION CONDITIONS

The Basic Public Prosecutor's Office enters the crime in the

Criminal Records Registry
(art. 335)

(registry of non-criminal records = form n. 45, when they are not qualified as records)

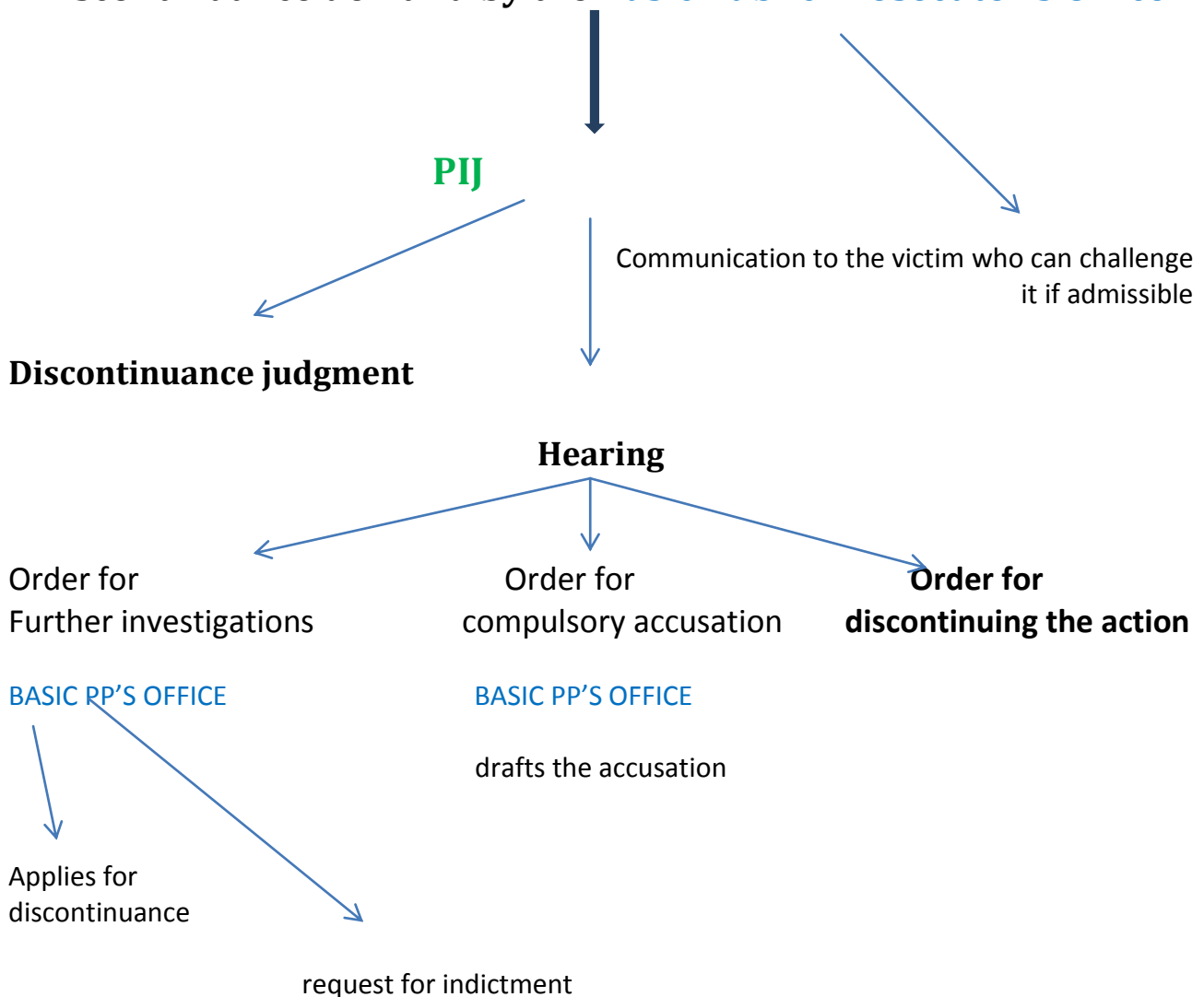
DISCONTINUANCE

PRECONDITIONS

- art. 408 C.Cr.P e 125 impl. prov.
- art. 411
- cf., in addition to art. 415 (offence perpetrated by unknown offenders)

PROCEDURE

Discontinuance demand by the **Basic Public Prosecutor's Office**



Appeal and Cassation

Judgments issued at the end of both ordinary and simplified and shortened procedures can be challenged at the Court of Appeal in charge (the written appeals must include the judgment challenged and its date, the name of the Judge, and the reasons for challenging, under penalty of rejection as inadmissible) or at the Court of Cassation. In case of "settlement", only appeals to the Court of Cassation are possible. The deadlines for challenging judgments may vary from 15 to 45 days.

EXECUTION PHASE

Scientific observation of the convict

The prison staff is composed of:

- ✓ educators
- ✓ a psychologist
- ✓ the Director
- ✓ Prison administration police officers

Scientific observation of the convicts' personality is summarized in a

FINAL REPORT



Used by the

Supervisory Judge

Who decides for



Prison treatment

Which shall be devised so as to promote the prisoners' adjustment in society and can include internal or external activities.

Surveillance court convened in chambers

Decides for



Any **advantage**

or

alternative measures to detention for the convict



FOR CRIMES

Life sentence
imprisonment
fine

FOR BREACHES

arrest
penalty

ALTERNATIVE MEASURES TO SHORT DETENTION

Art. 53, Law n. 689/81 introduced the following alternative measures: **day release**, **supervised probation** and **fine**.

Day release

It is an alternative measure to up to 1 year detention. It allows prisoners to stay out of prison for max. 14 hours per day, it provides for a strict ban on any kind of firearms for prisoners, no driving license, and other similar provisions.

Supervised probation

It is an alternative measure to up to 6 month detention. It provides for a ban to leave the place of residence (except for school and/or work reasons), obligation to show up at Police Offices at least once a day, and so on.

Fine

It is an alternative measure to up to 3 month detention. In order for this measure to be applied, the convict must be in a special personal condition (art. 59 L. 689/81) and the authorities must have valid reasons to be sure that no crime will be committed again by said person.

The *preconditions* for this measure include:

- ✓ The kind of sanction inflicted by the Judge
- ✓ Detention cannot be replaced by a fine for some specific crimes.
- ✓ No fine is admissible for offenders who are condemned to 2 year detention and committed the crime within five years from the previous sentence
- ✓ For re-offenders convicted twice for the crimes of the same kind.

ALTERNATIVE MEASURES TO DETENTION

Day release

What is it?

Technically speaking, day release is not considered as a real alternative measure to detention but just a s kind of detention among the others.

It provides for the possibility for the convict to exit the prison only during daytime in order to work, study or carry out volunteer activities.

Probation

What is it?

It provides for the possibility for the convict to serve their sentence at home or in special centres under the responsibility of the local Social Services (CSSA).

Probation for special cases (community confinement)

(for drug-addicts and alcoholics)

What is it?

It provides for the possibility for the convict to serve their sentence by following therapeutic programme agreed upon with the Health Service in charge (Ser.T for drug-addicts, NOA for alcoholics) or with suitable centres (rehabilitation community).

Alternative measures for convicts affected by declared AIDS or serious immunodeficiency

(Art. 47 quater PAA, introduced by Law n. 231/99)

What is it?

Ex art. 47 quater of the Prison Administration Act, all convicts affected by declared AIDS or serious immunodeficiency who are willing to follow a programme for heathcares and assistance are entitled to probation or home detention, whatever sentence they have to serve.

The demand for such measure must include a medical declaration.

Home detention

What is it?

It provides for the possibility for the convict to serve their sentence at home or in any other place, such as a community or a healthcare centre.

