

DUAL PROCEDURE

- The first phase was framed according to an inquisitorial model
- The second phase had a more accusatorial orientation, based on the *principio del contraddittorio* (the evidence is taken in the presence of the defence, who is entitled to offer counterproof and counter-arguments)

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graph LR; A([First phase]) --> B[Conducted by a public prosecutor, in an istruzione sommaria (summary investigation)]; A --> C[Conducted by an examining judge, called the instruction judge, in an "istruzione formale" (formal investigation)];
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First phase

Conducted by a public prosecutor,
in an *istruzione sommaria*
(summary investigation)

Conducted by an examining judge,
called the instruction judge,
in an "*istruzione formale*"
(formal investigation)

The public official

In either case the public official was committed to a non-partisan investigation during which he or she assembled the evidence both for and against the accused.

The procedure was written and largely secret

The trial judge

The second phase was conducted in front of the trial judge.

At the time of the trial the trial judge was already aware of the results of the preliminary enquiry.

That means that the judge had been able to evaluate the evidence in advance.

He or she was therefore in a position to be prejudiced by it

The trial tended to amount to a little more than a mere repetition and confirmation of what had taken place in the earlier phase, and conviction of the accused could be based upon evidence collected secretly – though in a non partisan manner – in the pre-trial inquiry

The new Italian system of criminal procedure

Code of criminal procedure -article 190-

*Secundum alligata et probata a
partibus iudex iudicare debet*

Which are the characteristics of the new system?

- The adjudicator would have no prior knowledge of the case
- The defendant would enjoy the right to be confronted with all the opposing evidence
- The witnesses' prior inconsistent statements collected and reduced to a written form during the pre-trial investigation could be used at trial for impeachment purposes only.

The New Italian Criminal Procedure System

The new Code divides ordinary criminal proceedings into three phases:

1. The preliminary investigation
2. The preliminary hearing
3. The trial

Every time the police or the public prosecutor receives notice of a crime, or collects information about a crime on its own initiative, a formal investigation is instituted by the prosecutor

Notitia criminis

Upon learning of the notitia criminis, the public prosecutor must record the event in the crime register. From the moment of the registration, the prosecutor is required to complete the investigation within six months, unless an extension of time from the judge in charge of the preliminary investigation is applied for and received. Such an extension may be granted for up to 18 months or, in exceptional cases, two years.

The new Code provides a clear-cut separation between the investigative and judicial functions during the preliminary phase

The GIP

The GIP (judge for the preliminary investigation) supervises the activities of the investigative authorities, making sure that the rights of those under investigation are respected (i.e. any restraints on personal freedom requested by the prosecutor and any activities such as wire-taps or other interceptions that impinge upon an individual's right of privacy require the authorization of the GIP)

The prosecutor

The prosecutor's task is that of gathering the evidence in order to decide whether or not to prosecute the offence. The prosecutor can ask the GIP for a judgement of dismissal only if he or she deems that the case is too weak to lead to a conviction in trial. The GIP reviews the prosecutor's decision to dismiss the case, and if he disagrees with the prosecutor he can order the prosecutor to conduct further investigation or on mandate the bringing of a formal charge against the suspect

The defendant

If the prosecutor believes he has collected enough evidence to sustain a conviction at trial, he will make a formal request that the person under investigation be committed for a trial. At this moment, under Italian law, the person under investigation formally becomes a “defendant”.

Giudice dell'udienza preliminare

(Judge of the preliminary hearing)

The decision will be made by a judge – giudice dell'udienza preliminare – in a hearing held in camera , called an udienza preliminare (preliminary hearing). It is essentially based on the documents contained in the prosecutor's investigative file, which the GUP will receive together with the request for committal to trial and which the defendant and his counsel have the right to inspect before the preliminary hearing

The trial

Whenever the judge at the preliminary hearing grants the prosecutor's request to refer the case for trial, a file for the trial judge is created in addition to the prosecutor's file. The prosecutor's file, containing the evidence accumulated during the pre-trial investigation, is in fact no longer available to the trial judge

The new trial's principles

- The principle of orality, according to which no prior out-of-court statements should be read out in court for evidentiary purposes
- The second principle is that of temporal concentration of the proceedings

The preliminary hearing has three aims:

The first is to select the cases to be sent to trial, in order to increase the efficiency of the machinery of justice

- The second function assigned to the preliminary hearing is to allow defendants to adduce any exculpatory evidence they have collected in order to stop the case from moving forward to trial

- Finally, the preliminary hearing is aimed at allowing alternatives to trial procedure: namely the “sentencing by parties’ request” and the summary proceedings

The Trial

According to the new Code, the judge approaches the case without familiarity with sources of information gathered by the prosecutor during the pre-trial stages of the criminal process.

The principle of “immediacy” is implemented and all evidence is required to be produced to the trial judge in its original form; only through their introduction in court are sources of information transformed into proper evidence

Implicitly



Orality, according to which no prior out of court statements should be read out in court for evidentiary purposes

Temporal concentration of the proceedings, also known as the concentrated day-in court trial principle

Seven days before the trial begins the parties must draft and submit to the court a list with the names of the witnesses, experts and technical counsel they wish to examine in court, as well as indicate the subject matter of the examination

The trial begins with the discussion of any preliminary matters, such as claims of procedural error.

Then the prosecutor delivers an opening statement. The prosecutor's statement is followed by the opening statements of the "private parties" (i.e. plaintiffs asking for damages).

Thereafter the accused makes an opening statement. Each side then indicates the facts to be proved and the evidence they intend to introduce.

There are four departures from a purely adversarial approach:

1.If parties consent to the admission of hearsay, the trial judge may require original proof

2.The presiding judge is allowed not only to question witnesses at the conclusion of the examination, but also to indicate new issues to the parties that need to be addressed during the examination

3.Expert witnesses may be examined ex officio in court

4.After all the evidence has been produced in court, whenever absolutely necessary, the trial judge is authorized to examine proof *sua sponte*

The anglo-american model, in which the judge handles questions of law – including the admissibility of evidence – and the lay jury handles questions of fact, does not exist in Italy. Rather, the same people decide the question of admissibility and the ultimate issue of guilt.

The Italian trial judge, unlike the American jury, must give written reasons for a finding of guilt or innocence