

WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

ITALY

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This country report is one of many prepared for the World Factbook of Criminal Justice Systems under Bureau of Justice Statistics grant No. 90-BJ-CX-0002 to the State University of New York at Albany. The project director was Graeme R. Newman, but responsibility for the accuracy of the information contained in each report is that of the individual author. The contents of these reports do not necessarily reflect the views or policies of the Bureau of Justice Statistics or the U. S. Department of Justice.

GENERAL OVERVIEW

1. Political system.

There is no federal government nor federal system of justice. All criminal laws are contained in the Penal Code and many other statutes. The Constitution of the Italian Republic (Art.73) states that all laws have to be published in the Gazzetta Ufficiale dello Stato, which is the Official Gazette of the State. These written mandatory statutes are effective throughout the nation. The statutes do not conflict with the Italian Constitution.

The different parts of the criminal justice system are part of a state system which operates all over the national territory through Districts and other minor territorial jurisdictions. These districts do not correspond to the 20 administrative districts (Regioni) into which the country is divided. Although each district has the power to make laws, providing they do not conflict with the Constitution, only the State has jurisdiction over substantive and procedural penal law. The administrative functions of the criminal justice system fall under the authority of the Minister of Justice (Ministro di Grazia e Giustizia).

The State government has three branches: Legislative, Executive, and Judiciary. A system of checks and balances allows each power to be separate and independent from the others.

Each branch of the State has specific powers and responsibilities in the criminal justice system. For instance, the Legislative branch has the power to develop laws, including penal law, directly or through laws enacted under delegate power. This branch also has influence on the two branches of Parliament: the Chamber of Deputies and the Senate of the Italian Republic. Any member of Parliament, of the Government or of particular institutions can present a bill to introduce a new law or modify an existing one to the Parliament for consideration. Citizens can take the same initiative by presenting petitions that are signed by at least 50,000 citizens. (Constitution, Art.71).

Parliament has the power to debate, pass, or reject all bills, with or without modifications. Once passed, the law is promulgated by the President of the Republic and published in the Official Gazette. Parliament may delegate legislative power to the Government for a specific project, such as the development of a substantive or procedural Penal Code, while providing the general principles and direction for the project. In urgent cases, the government can enact a law by decree (Decreto Legge), which takes effect immediately. This type of decree must be made into a law by the Parliament within 60 days, or it loses its validity. (Constitution, Art.71,76,77).

The Executive branch has the power to govern the nation. The Minister of Justice is in charge of the organization and functioning of the criminal justice system. Although the Minister cannot interfere with jurisdictional functions that pertain to the Judiciary Power, he does have the power to allocate the budget for the criminal justice system. He can also initiate disciplinary action against individual judges, although the final decision of disciplinary sanctions pertains to the Superior Council of the Judiciary. The Minister has the power to issue criminal justice directives and regulations and has the power to inspect criminal justice activities, except for cases which fall under the competence of the Superior Council of the Judiciary. (Constitution, Art.107,110).

The Judiciary branch is separate and autonomous from the other State branches. The Bench has the power to administer justice and enforce the law. (Constitution, Art.104).

2. Legal system.

Criminal procedure can be described as adversarial in nature. No informal justice system exists. The Italian legal system is based on written laws. Penal Law defines what specific behavior is criminal and what specific minimum and maximum penalties are provided. The basic principles of no penalty without a law (*nulla poena sine lege*) and no crime without a law (*nullum crimen sine lege*) are stated in the Penal Code (Art.1) and in the Constitution (Art.25).

Other basic constitutional principles follow as well: a) legal responsibility rests solely on the acting individual; b) rules of penal law are not retroactive; c) no one can be sentenced without a fair trial (*nulla poena sine iudicio*); d) no one can be considered guilty until a final sentence has been pronounced; e) penalties cannot consist in treatment contrary to the sense of humanity and must tend to the rehabilitation of the offender; and f) personal freedom is inviolable and no one shall be deprived of it except under specific provisions of the law. (Constitution, Art.27).

The Bench (judiciary and prosecutors) is autonomous and independent from the political Legislative and Executive powers. A self-governed elective Board (Consiglio Superiore della Magistratura) of which two-thirds are a large majority of judges and prosecutors, is permanently in charge of all decisions concerning the Bench, such as recruitment, assignments, transfers, promotions, and disciplinary actions (judges and prosecutors cannot be removed). (Constitution, Art.104,107). The Constitution also states that judges are subjected only to the authority of the law (Art.101). The Legislative Power has the monopoly on the production of the Penal Law (directly or through laws enacted under delegate power).

The Constitution prescribes the general norms of the penal system. No law can conflict with the Constitution. The Constitutional Court (Corte Costituzionale) is in charge of evaluating the conformity of specific rules of the Penal Law to the Constitution.

3. History of the criminal justice system.

Although the origins of Italian penal legislation can be traced back to Roman and middle age canonic law, its general principles derive from the French Enlightenment. These principles include clarity of the law, no punishment without trial, proportionality between crime and punishment, definitions of crime and punishment based on a system of written laws and fixed penalties, and the elimination of secret

accusations. The dissemination of these principles is commonly ascribed to the influence of Cesare Beccaria's Treatise On Crimes and Punishments. Actually, these principles were part of the general reformist approach and judicial enlightenment expounded by various thinkers even before Beccaria had published his Treatise. For example, in his "Spirit of Laws" (1764), Montesquieu had already written in favor of clarity of the law, not to mention Voltaire's ardent opposition to secret accusations. (Newman and Marongiu, 1990: 333). (Dei Delitti e delle Pene, Livorno, 1764).

The new principles of the French Revolution are affirmed in the 1791 and 1795 French Penal Codes and eventually in the Napoleon Code of 1810. All subsequent Italian Penal Codes bear the mark of French influence. (For instance, the Penal Code of the Kingdom of the Two Sicilies of 1819 (Codice Penale Regno delle due Sicilie), the code of the Duchy of Parma of 1820 (Codice del Ducato di Parma), the regulations concerning crimes and punishment in the Papal States of 1832, (Regolamento dei delitti e delle pane per gli Stati della Chiesa), the Codice Penale Sardo (Albertino), Sardinian or Albertine because it was promulgated by the King Carlo Alberto di Savoia (Penal Code, 1839), the Codice Penale Toscano (Penal Code of Tuscany 1853 and the 1859 Codice Penale Sardo, which replaced the 1839 Sardinian Penal Code. After the unification of Italy (1861), the 1859 Sardinian Penal Code (with minor modifications) came gradually into force in the entire Italian territory, with the exclusion of the former Grand Duchy of Tuscany.) In 1889, a general Penal Code for the new Kingdom of Italy was promulgated by the Ministry of Justice, Zanardelli. (Antolisei, 1985).

In 1919, a commission chaired by Enrico Ferri was appointed in order to forward a proposal of revision of the Zanardelli Penal Code. This revision project, named the Project of Penal Code or the Ferri Project (Progetto di Codice Penale or Progetto Ferri) was completed in 1921, but it was rejected because it was considered too radical due to its acceptance of Positive and Social Defense School principles. (Antolisei, 1985).

In 1925, another commission, chaired by the jurist Arturo Rocco, Professor of Penal Law and Procedure, put forward a new project which resulted in the Italian Penal Code, known as the Rocco Code. (Penal Code, The Official Gazette (supplement) n. 253, October 28, 1930. Effective on July 1, 1931. (Gazzetta Ufficiale (supplemento) n. 253 del 28 ottobre 1930, entrato in vigore il primo luglio 1931.) This Code, linked with the Code of Penal Procedure (Code of Penal Procedure,

The Official Gazette (supplement) n. 254, October 29, 1930. Effective on July 1st, 1931. (Codice di Procedura Penale, Gazzetta Ufficiale (supplement) n. 254 del 29 ottobre 1930, entrato in vigore il primo luglio 1931.) which became effective at the same time, has subsequently been modified in order to conform to the principles of the Republican Constitution (Constitution of the Italian Republic, The Official Gazette, n. 289 Dec. 27, 1947. Effective on January 1st, 1948 (Costituzione della Repubblica Italiana, Gazzetta Ufficiale n. 289, del 27 Dicembre 1947. Entrata in vigore il primo Gennaio 1948.), but is essentially unchanged in its basic structure and is still in force in Italy. The linked Code of Penal Procedure was in force until 1988. (Antolisei, 1985).

Significant criminal justice legislation.

The most significant legislation that has affected the criminal justice system was the 1988 promulgation of a new Code of Penal Procedure. (President's of the Republic Decree, September 22, 1988 n.447, in ordinary supplement no.1 to the Official Gazette of the State, general series no. 250, october 24, 1988. (D.P.R. (Decreto del Presidente della Repubblica) 22 settembre 1988 n.447 in supplemento ordinario n.1 alla Gazzetta Ufficiale dello Stato, serie generale, n. 250, 24 ottobre 1988). The new Code represented a substantial shifting from the old inquisitorial system to a modern adversarial system.

The most important innovation of this new legislation concerns the admission of evidence that, as a rule, can be obtained only during the course of an oral and public trial, in front of the judge (acting as a third party) on the basis of witnesses' cross-examination and other kinds of proof legally presented in the Court. The trial is conducted by the prosecution and defense on a parity basis.

The former inquisitorial procedure had allowed the admission of evidence obtained both in the course of the trial and in the preliminary investigation (istruttoria) stage. The preliminary investigation was typically characterized by secrecy concerning documentation of the pre-trial investigation. An investigating judge (giudice istruttore) was in charge of collecting criminal evidence as well as conducting direct examinations of the witnesses. During the trial, the examination of witnesses was conducted by the Chief Judge.

Although the new Italian Code of Penal Procedure is similar to the adversarial English and American systems, its system of written laws still retains important differences when compared

with the Anglo-American system, such as the obligatoriness of penal action. (obbligatoriet... dell'azione penale).

The obligatoriness of penal action is sanctioned by the Constitution (Art.112). According to this provision, the Public Prosecutor (Pubblico Ministero), when becoming acquainted with the commission of a crime (notizia criminis), is legally bound to start the investigation and, if there is enough circumstantial evidence, to take penal action against the alleged culprit of that particular crime. The Italian Prosecutor is therefore without discretionary power to withhold prosecution. Prosecution is not simply a right, but a duty of the Italian Public Prosecutor. (Code of Penal Procedure, Art.358,405).

However, certain crimes can only be prosecuted under specific conditions; penal action cannot be taken unless a specific requirement is met. Crimes prosecutable by initiative of the offended person (reati perseguibili a querela dell'offeso), can range from forcible rape to personal minor injury and can be prosecuted only if the offended person requests the Public Prosecutor to proceed against someone for the alleged commission of a crime. Excluding rape and similar sex offenses, this request can be withdrawn, which essentially eliminates the crime. (Penal Code, Art.120,152; Code of Penal Procedure, Art.340)

For crimes allegedly committed by members of the two branches of Parliament (Camera dei Deputati and Senato della Repubblica), a special authorization of the Parliament is required in order both to carry out certain types of investigation procedures (search and seizure, wire tapping) and to arrest or otherwise limit their personal freedom. That is, another condition of prosecutability (procedibilita) can be the authorization to proceed (autorizzazione a procedere). (Constitution, Art.68; Code of Penal Procedure, Art. 343,344).

Up until October 1993, a similar authorization was required to bring members of the Parliament to trial. This provision was revoked and under a modification of Article 68 of the Constitution, the judiciary is now free to prosecute the members, although they cannot be arrested or imprisoned until a final sentence of guilt has been pronounced.

CRIME

1. Classification of crimes.

*Legal classification. All criminal offenses (reati) are divided by the Penal Code (Codice Penale) into two broad categories: delitti, which are serious offenses and contravvenzioni, which are less serious offenses. The two categories (The crime categories are described in the second and third books of the Italian Penal Code entitled, Libro Secondo: Dei Delitti in Particolare and Libro Terzo: Delle Contravvenzioni in Particolare, respectively) are also used to help to classify special law statutes (drugs, prostitution, weapons, bankruptcy, pollution, hunting, traffic, customs, tax evasion, Military Code in wartime and in peacetime). The distinction between delitti and contravvenzioni crimes is based on the seriousness of the crime and on the severity of punishment. Although they are both punishable by imprisonment and/or fine, the sentences for delitti are more severe than those for the contravvenzioni. (For delitti crimes, the penalty is 15 days to 24 years imprisonment, and as much as 30 years or life imprisonment in special cases. For contravvenzioni crimes, the penalty is 5 days to 3 years imprisonment. As a rule, sentences for contravvenzioni are served in different types of prison facilities than those used for delitti. Fines vary considerably and can amount to 500,000 U. S. Dollars for serious drug offenses. (Penal Code, Art.22,23.25).)

The Penal Code generally classifies each crime under a specific heading: a) Crimes against the Nation (delitti contro la personalita` dello Stato), (for example, espionage, assassination of the President, armed bands, terrorism). b) Crimes against public authority (delitti contro la pubblica amministrazione), (for instance, corruption, bribery, embezzlement of public property by an officer). c) Crimes against judicial authority (delitti contro l'amministrazione della giustizia), (for example, Perjury, to suborn a witness). d) Crimes against religious feelings and against the feelings of pity towards the dead (delitti contro il sentimento religioso e contro la pieta` dei defunti), (profanation of a tomb, offenses against religion). e) Crimes against the public order/breach of the peace (delitti contro l'ordine pubblico), (for instance, criminal association, particularly of the mafioso type). f) Crimes against public safety (delitti contro l'incolumita` pubblica), (poisoning food, water and drugs, arson, provoking a railway or air disaster).

g) Crimes against public faithfulness (delitti contro la fede pubblica), (forgery and counterfeiting).

h) Crimes against public economy, industry and commerce (delitti contro l'economia pubblica, l'industria e il commercio), (commercial fraud).

i) Crimes against public morality (delitti contro la moralita` pubblica e il buon costume), (rape, indecent exposure).

j) Crimes against the family (delitti contro la famiglia), (bigamy, incest).

k) Crimes against the person/violent crimes (delitti contro la persona), (murder, assault, non-ransom kidnapping, defamation).

l) Crimes against property (Delitti contro il patrimonio), (theft, money laundering, robbery, extortion, ransom kidnapping). (The Penal Code considers the violent crimes of robbery, extortion, and ransom kidnapping as property crimes because their main intent is to gain property.)

*Age of criminal responsibility. The age of criminal responsibility is 18 under the Penal Code (Art.85), which also states that a person is chargeable with a crime only if mentally competent at the time of its commission. Over the age of 18, a person is considered fully chargeable with a crime unless a mental evaluation ordered by the judge finds the person mentally incompetent due to a mental disease, deaf-mutism, or chronic intoxication from alcohol or drug abuse.

(Mentally incompetent individuals who commit serious crimes are considered socially dangerous and must undergo compulsory hospitalization in a special mental institution for offenders (ospedale psichiatrico giudiziario). (Penal Code, Art. 222).) In these cases, usually no criminal sanction is imposed. Instead, compulsory hospitalization in a special mental institution for insane offenders is provided as a safety measure, except in minor offense cases. (Penal Code, Art.88,95,96,222; Code of Penal Procedure, Art.220).

A person can also be considered criminally liable, if as the result of a psychiatric examination, he or she is found partly mentally incompetent because of mental disease, chronic intoxication deriving from alcohol, drug abuse, or deaf-mutism. (Penal Code, Art.88,89,95,96). In that case, in addition to the penal sanction, compulsory hospitalization is provided as a safety measure. For minor offenses, release under surveillance may be imposed as an alternative measure. (Penal Code, Art.219).

A person under 14 years old is not considered mentally competent and therefore cannot be charged

with any crime. If mentally competent, a person between 14 and 18 years old is considered legally responsible, although a more lenient criminal sanction is imposed. (Penal Code, Art.97,98).

*Drug offenses. The personal use of drugs has recently been decriminalized. Following a national referendum, a new law does not permit imprisonment for drug-related activities involving personal use only. In these cases, only administrative sanctions, such as revoking a driving license or passport, can be imposed. However, producing, selling or trafficking drugs are considered very serious crimes. Criminal association with drug offenses is alone punishable by a maximum prison sentence of 30 years. Illegal drugs include opium and its derivatives (morphine, heroin), cocaine and its derivatives, amphetamine, synthetic drugs, cannabis, and hashish. (According to international agreements, all narcotics (and nonnarcotic dangerous drugs) whose manufacturing and distribution is prohibited or restricted, are listed in the Official Gazette, October 9, 1990.) (Official Gazette, Oct.31, 1990, June 5, 1993).

2. Crime statistics.

The definitions of the following crimes (reati) are provided in the Penal Code. The number of crimes reported by police to the judiciary were collected by the Institute of Statistics (ISTAT). (National Institute of Statistics, Yearbook of Statistics: Crimes reported by the Police to the judicial authority according to the type of offense, years 1987-1991. The 1992 figures are taken from ISTAT, press release, March 17, 1993. (Istituto Nazionale di Statistica ((ISTAT, Annuario Statistico o: Delitti denunciati all'Autorita giudiziaria dalle forze dell'ordine (Polizia di Stato, Carabinieri e Guardia di Finanza) per specie del delitto, anni 1986-1992).) Excluding homicides, ISTAT sources do not specify whether attempts are included.

*Murder. In 1992, there were a total of 1,461 incidents of murder (Omicidio) and 1,851 incidents of attempted murder (Tentato omicidio). (Figures for the number of murders in prior years: 1,096 (1987); 1,255 (1988); 1,563 (1989); 1773 (1990); and 1,916 (1991). Figures for the number of attempted murders in prior years: 15,900 (1987); 1,586 (1988); 1,759 (1989); 1,959 (1990); and 2,197 (1991). In 1991, the rate for murders and attempted murders recorded was 3.31 and 3.8 per 100,000 population, respectively.) The figures for murder/intentional homicide do not include infanticides. (Penal Code, Art.56, 575-577).

*Rape. In 1992, there were 806 incidents of forcible rape (Violenza carnale) reported by police. (The number of rapes recorded for prior years: 871 (1987); 865 (1988); 687 (1989); 687 (1990); 733 (1991). The rate of rapes recorded in 1991 was 1.26 per 100,000 population.) (Penal Code, Art.519).

*Burglary. In 1992, the police reported 193,170 incidents of burglary, (Furto aggravato), in the home. (The number of burglarly incidents which took place in the home, recorded for prior years: 158,305 (1987); 160,860 (1988); 175,408 (1989); 210,835 (1990); and 206,216 (1991). In 1991, the rate for recorded burglaries was 357.09 per 100,000.) (Penal Code, Art.624- 625). Burglary in private houses is reported here as a serious property crime because it is routinely punished more severely than other forms of aggravated theft (pocket picking), which is typically punishable by 1 to 6 years in prison under the Penal law.

*Serious drug offense. In 1992, there were 42,164 incidents of drug offenses (Produzione, commercio di stupefacenti) reported by police. (The number of drug offenses recorded for prior years: 21,590 (1987); 31,079 (1988); 30,180 (1989); 30,691 (1990) and 40,421 (1991). The rate of drug offenses in 1991 was 69.99 per 100,000.) These incidents include the offenses of growing, manufacturing, selling or distributing drugs. (Official Gazette, Oct. 31, 1990).

*Crime regions. Organized crime conducts illegal activities over portions of the territory in at least three regions: Sicilia (Mafia), Calabria (N'drangheta) and Campania (Camorra). Although each organization has a different history, structure and modus operandi, their main illegal activities (which often involve violent crime) are similar, ranging from extortion and drug trafficking to corruption. (Art. 416 of the Penal Code defines these activities in detail. For example, criminal association of the mafioso type (associazione per delinquere di tipo mafioso) providing severe penalties of up to 15 years in prison for involvement in the association alone. The law also has special prosecuting and sentencing provisions for this type of crime, which includes kidnapping and drug offenses.

In prosecuting these cases, some evidence obtained from outside sources may be admitted, including evidence gathered during the trial or in the pre-trial investigation stage. The pre-trial investigation stage and pre-trial incarceration can extend past the limits normally provided by

the law.

Convicted defendants of this crime also are allowed less privileges than other convicted criminals. However, the accused is entitled to a penalty reduction and other privileges if he or she decides to cooperate with the justice system by producing evidence that can be used to effectively fight organized crime. (Official Gazette, August 7, 1992.) The Penal Code (Art.416) defines these activities in detail and provides for a 15 year maximum prison sentence for such crimes.

A specific form of rural criminality can be found in the central-eastern mountainous area of inner Sardinia, which has a high rate of violent crime that includes homicide, assault, bombing, rustling and ransom kidnapping.

VICTIMS

1. Groups most victimized by crime. Information not available.

2. Victims' assistance agencies.

Compensation for up to 100,000 USD is provided through a state fund for victims of organized crime or terrorism. A special compensation fund for victims of extortion has been established by the State. Victims who have suffered property damage from not complying with extortion requests (for example, if a store was bombed because of not paying racketeers) may be entitled to compensation through a state fund. The fund is administered by a state controlled insurance company (INA, Istituto Nazionale delle Assicurazioni) and is under the supervision of the Minister of Industry and Trade. (Official Gazette, October 25, 1990, January 2, 1992).

Compensation for needy victims of crime is also provided by the Department of Prisons with money coming from private donations and from a 30% deduction of the pay received by convicted working prisoners. Victims can be compensated for any kind of damage they have suffered, whether it be moral, medical, mental, or property. Offenders are obliged to give restitution and pay for damages they may have caused to the victim(s). (Official Gazette, August 9, 1975, October 25, 1990; Penal Code, Art.185).

A law also provides for the granting of free legal aid to needy victims. (Official Gazette, July 30, 1990).

3. Role of victim in prosecution and sentencing.

Victims have the right to be informed about judicial proceeding developments, to produce evidence at any stage of criminal prosecution, to oppose the request by the Judge for the Preliminary Investigation, (Giudice per le Indagini Preliminari or G.I.P) for dismissal of the case, and to designate defending counsel to protect their rights.

Victims' assistance associations (environmentalist associations) can join the victim at trial with the victim's consent. (Code of Penal Procedure, Art.91).

Prosecutors and defending counsel play two distinct roles to protect the victims' rights. Prosecutors do not directly protect victims' rights since their main intent is to protect the public interest by seeking prosecution against alleged offenders. However, they indirectly protect victims' rights in that, if defendants are convicted, victims are entitled to compensation. Victims' defending counsel, on the other hand, are directly in charge of protecting the rights of victims. Alleged offenders' defense attorneys do not protect victims' interests, but rather, seek acquittal for their clients.

4. Victims' Rights Legislation.

Crime victims can claim compensation for damages incurred during the trial stage under the Penal Code (Art.185) and the new Code of Penal Procedure (Art.74, 90, 101, 394, 396).

POLICE

1. Administration.

There are three main state police corps in Italy: the State Police (Polizia di Stato), the Carabinieri, and the Finance Guard (Guardia di Finanza). The Carabinieri and Finance Guard (employed mainly in the investigation of financial crimes) is a military corps, under authority of the Ministry of Defence and of the Ministry of Finance, respectively. The State Police is a civil corps under authority of the Ministry of the Interior and is responsible for all functions listed in the United Nation's definition of police (prevention, detection, investigation, and apprehension of alleged offenders). There also exist local police corps with limited jurisdiction (rangers, city police, traffic police, railway police, coast guard).

The Code of Penal Procedure state the functions of the investigating police. (Articles 55-59). Appointed police officers (ufficiali di polizia giudiziaria) from all police corps carry out criminal investigation functions (funzioni di polizia giudiziaria). under direction of the judicial authority in the criminal investigation departments (sezioni di polizia giudiziaria). In addition to the criminal investigation departments located at the Public Prosecutor's offices, there are also criminal investigation services (servizi di polizia giudiziaria) which are established all over the country at the local Carabinieri, State Police and Finance Guard stations. Criminal investigative services are directly and exclusively used for the Public Prosecutor for particular criminal investigations. The Central Operating Service (Servizio Centrale Operativo) coordinates all police criminal investigation activities under the authority of the Chief of Police and the Ministry of the Interior.

The Ministry of the Interior has recently established a special agency of criminal investigation, called the DIA (Direzione Investigativa Antimafia) to be in charge of organized crime investigations. The DIA is directed by a high ranking Carabinieri, State Police or Chief Finance Guard Officer. This interforce structure is used by the National Antimafia Prosecuting Attorney (Procuratore Nazionale Antimafia), who is also the head of the National Antimafia Prosecutor Office (Direzione Nazionale Antimafia). (Official Gazette, November 6, 1991; December 31, 1991)

2. Resources.

*Expenditures. For fiscal year 1994, the Italian State budget entered the following expenses, which include the investigating police expenses for all three police corps:

- a) 8,030 billion lire for the State Police (Ministry of the Interior)
- b) 5,915 billion lire for the Carabinieri (Ministry of Defense)
- c) 3,608 billion and 744 million lire for the Finance Guard (Ministry of Finance). (Official Gazette, December 28, 1993).

It should be noted that investigating police functions comprise only a fraction of all police activities (military police, rangers, traffic, secret services, witness protection programs, public order). Police officers of all corps may serve different functions while in service. This makes it difficult to distinguish the expenses for investigating police from general police expenses.

*Number of police. As of Dec. 31, 1990, the total number of police, including the State Police, Carabinieri and Finance Police, and the criminal investigation police, was 241,429, of which 234,729 were male and 6,700 were female. (On Dec. 31, 1986, the total number of police personnel, including the Polizia di Stato, Carabinieri, and Guardia di Finanza, and the polizia giudiziaria, was 215,186.) (Fourth United Nation Survey of Crime Trends and Operations of Criminal Justice Systems, 1992).

As of Dec. 31, 1990, the total number of police personnel was 200,660, of which 189,240 were male and 11,420 were female. Sworn/uniformed police comprised 192,817 of this total and civilians comprised 7,843. (On Dec. 31, 1986, the total number of police personnel was 183,393, of which 179,242 were male and 4,151 were female. Sworn/uniformed police comprised 177,371 of this total and civilians numbered 6,022.)

3. Technology.

*Availability of police automobiles. Information not available.

*Electronic equipment. Information not available.

*Weapons. Handguns, automatic weapons and batons are commonly carried on sworn uniformed police officers. Individually, police officers are issued one Beretta 92 SB double action semiautomatic pistol, cal 9 mm. Parabellum (8 or 15-shot) as a personal weapon for the duration of their service.

There are also ordinary and special party armaments which are not personal and must be returned when not on duty. Ordinary armament is generally available to all police officers for ordinary team activities such as patrolling. Special armament requires special training and is generally only available to special squads, such as anti-kidnapping and anti-terrorist squads.

Types of ordinary party armament (armamento ordinario di reparto) include: a) Rubber or plastic cylindrical internally hollow nightstick with an overall length between 40 to 60 centimeters or 19 to 24 inches; b) Beretta PM 12S fully automatic submachine pistol, cal. 9 mm. Parabellum; c) Semiautomatic plus slide-action 12 Gauge shotgun; and d) a fully automatic, semiautomatic, or bolt action rifle, cal. 5.56 mm or 7.62 NATO mm.

Types of special party armament (armamento speciale di reparto) include: a) Beretta 92 SB double action semiautomatic pistol, cal 9 mm. Parabellum (8 or 15-shot); b) Revolver (cal. 38

Special, 357 Magnum, 9 mm. Parabellum); c) Beretta PM 12S fully automatic submachine pistol, cal. 9 mm. Parabellum; d) Fully automatic (or semiautomatic, or bolt action) rifle, cal. 5.56 mm or 7.62 NATO mm.; e) Machine gun; f) Hand grenades, which can also to be launched with the rifle; g) Explosives of various types; and h) Self-propelled weapons (bazooka).

Both ordinary and special party armament includes other weapons and accessories, such as bullet-proof vests, training pistols and rifles, cal 4.5 mm. air guns, light and smoke devices, helmets, silencers, night vision binoculars and scopes, various types of knives, and narcotizing weapons. (Official Gazette, May 2, 1986)

4. Training and qualifications.

To become a senior officer or executive in the state police, a masters of law degree is required. In the military structure (Carabinieri and Finance Guard) it is required to attend the military academy and the scuola ufficiali. The Scuola di Perfezionamento per le Forze di Polizia provides the highest level of specialization for police officers of all police corps. All state police corps have schools and training programs for police personnel. A clean record and good moral qualities are required to join the police.

5. Discretion.

*Use of force. Police may use force and/or deadly force in self defense to drive back acts of violence, to overcome resistance to authority, or to prevent the occurrence of very serious crimes (slaughter, homicide, kidnapping, robbery), providing that there is an immediate danger of the occurrence of these crimes and that the police reaction is proportionate to such danger. (Penal Code, Art.52,53).

*Stop/apprehend a suspect. The law requires police to arrest and incarcerate a person if caught in flagrancy (arresto obbligatorio in flagranza) (in the act of committing a crime) or immediately after the crime's commission, if the crime is punishable by a 5 to 20 year prison sentence or life imprisonment. An arrest is also required for other serious crimes including: 1) crimes against the state; 2) devastation and ransacking; 3) crimes against public safety; 4) reduction to slavery; 5) serious forms of aggravated theft; 6) robbery, extortion; 7) illegal manufacturing, smuggling, selling, letting have, possessing, or carrying in a public place of illegal weapons, especially military weapons; 8)

serious drug crimes; 9) crimes of terrorism and subversion, secrecy, mafioso, military and political illegal associations; and 10) criminal association with the intent to commit some of the aforementioned crimes (for example, number 1,2,3,4,6,7 and 9). These crimes are listed in the Code of Penal Procedure and have attached penalties such as 3 to 10 years of imprisonment. (Code of Penal Procedure, Art.380).

The police have facultative power to arrest and incarcerate a suspect, if caught "in flagrancy" (arresto facoltativo in flagranza), for crimes punishable by more than 3 years in prison, with a 5 year maximum if the crime is unintentional. Facultative arrest powers are also in force for other crimes such as: 1) embezzlement of public property by an officer; 2) corruption of a public officer; 3) threat or violence to a public officer; 4) commerce and supply of bad food or drugs; 5) corruption of a minor; 6) assault provoking a personal injury; 7) theft; 8) aggravated damaging; 9) fraud; and 10) misappropriation of private funds or property. Generally these crimes are punishable by more than 6 months to 5 years in prison and are listed in the Code of Penal Procedure (Art.381).

Police may also arrest and incarcerate a person suspected of having committed a crime for which the law provides a minimum penalty of no less than 2 years in prison and a maximum of more than 6 years in prison, even if the suspect is not caught in flagrancy such as crimes involving weapons or explosives. Arrest and incarceration may be imposed if there is relevant circumstantial evidence of guilt before the Public Prosecutor starts the investigation, or if there is danger that the suspect will escape and there is no time to get a warrant signed by the Public Prosecutor. (Code of Penal Procedure, Art.384).

In all cases (mandatory and facultative "arresto" or "fermo"), the police must immediately notify the Public Prosecutor, the defense attorney and the suspect's family of the arrest (Code of Penal Procedure, Art.386,387). Within 48 hours, the Public Prosecutor must request the Judge for the Preliminary Investigation (G.I.P.) to fix a hearing in order to confirm the arrest within the next 48 hours. If the 48 hour terms are not met, the arrest loses its validity and the arrested person is set free (Code of Penal Procedure, Art.391).

The G.I.P summons the defendant, the defense attorney and the prosecutor for the special validation hearing. At this hearing, the G.I.P. examines the prosecutor's conclusions concerning the motives of the arrest and the defendant is questioned in the presence of his attorney. The

G.I.P. then decides on the legitimacy of the arrest and issues an order of release. (Code of Penal Procedure, Art. 274). After arrest, procedures to process the suspect further in the criminal justice system are specifically and formally provided by the Code of Penal Procedure.

After the arrest has been made and reported to the judge, all subsequent procedural decisions are made by the judge or prosecutor.

*Decision to arrest. The majority of arrests are made while the suspect is committing a crime in "flagrancy" in which a warrant is obtained.

*Search and seizure. For the purpose of collecting criminal evidence, as a rule, a search requires a warrant signed by the judge. In particular cases of emergency connected with serious crimes (for example, kidnapping, drug offenses) the police may search or seize property without a warrant (motu proprio). In this case, police must give notice of the searching/seizing within 48 hours to the prosecutor who is bound to verify its legitimacy. Illegal searching and seizing of property by police officers is punished by law as an abuse of power. (For example, an illegal body search (peruizione e ispezione personali arbitrarie) can result in sanctions taken against the police officer. (Penal Code Art.609).) Illegally obtained evidence is not admissible in a case. (Code of Penal Procedure, Art.191,244-265).

*Confessions. The law provides that all statements, including confessions, made in the presence of police officers or at any stage of judicial proceedings are invalid, when obtained by coercion. Also, the mere confession of a crime does not amount to full evidence of guilt. (Code of Penal Procedure, Art.63-65,192).

6. Accountability.

Complaints against alleged illegal police behavior are filed according to the same procedures provided for an alleged violation of the Penal Law. Complaints can be filed directly at the Public Prosecutor's Office or at any investigating police office. There is no state-independent board to process complaints, nor are there "watchdog" committees.

1. Rights of accused.

*Rights of the accused at trial. The Convention for the Safeguard of Human Rights and the annexed Protocol is, for all purposes, 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.) It states that persons have the right to an independent and impartial trial in an impartial tribunal and the right to life, liberty, safety and property. (Convention for the Safeguard of Human Rights and of Fundamental Liberties, November 4, 1950; Protocollo, Art.1,2,5,6).

The Convention also states that the accused has the right to a public trial, with some exceptions, within an adequate period of time, to be informed of the nature and content of the accusation, to cross examine witnesses for the prosecution, to subpoena witnesses for the defense, the right to counsel, and the right to be presumed innocent. The Italian Constitution also provides for general principles such as the inviolable rights to liberty and counsel and the equality of all citizens before the law. (Constitution, Art.3,13,24; Protocollo, Art.5,6).

Principles similar to those found in the Italian Constitution and the Convention for the Safeguard of Human Rights can also be found in many sections of the Penal Code and Code of Penal Procedure. For instance, the accused has the right to be fully informed of the charge and of the existing evidence against him or her, 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. The accused also has the right to remain silent and is considered not guilty until a final sentence has been pronounced. Uncertainty about the guilt of the accused due to insufficient or contradictory evidence can result in a judgement of full acquittal. The accused also has the right to be present at trial, to confront opposing witnesses, and to have all witnesses cross-examined by the defense attorney. (Code of Penal Procedure, Art. 65,474,486,498,499,530; Constitution, Art.27).

In addition, the accused has the right to be tried by a judicial panel or by a single judge, depending on the type of court, according to territorial jurisdiction where the crime has been committed. The accused cannot be removed from the "natural judge", meaning, from the judge who is competent to try the case, under law. The accused may not be tried twice for the same crime and has the right to be tried in a fair trial, that is, by an independent and impartial tribunal. (Code of

Penal Procedure, Art. 65,649; Constitution, Art. 25,27).

*Assistance to the accused. The accused has the right to select and employ a defense attorney in order to get legal assistance and to produce evidence in his/her defense at any stage of judicial proceedings, including the arrest and investigation stage. If the accused does not designate a defense attorney, a counsel is appointed by the Court. This applies to all crimes of all types of severity. The law states that indigents must be provided with counsel. The Bar Association Nation provides a roster of available attorneys who are legally bound to provide defense counseling. A Bar Association Nation exists in each district; therefore, many rosters of attorneys are available. If eligible, the accused can select and employ a defense attorney at state expense, under law. Eligibility is determined on the basis of personal or family income. (Code of Penal Procedure, Art.97,190; Constitution, Art.24; Official Gazette, July 30, 1990).

2. Procedures.

*Preparatory procedures for bringing a suspect to trial. The Public Prosecutor conducts the pre-trial investigation either directly or indirectly by employing the investigating police. An investigation takes place to establish whether there is enough circumstantial criminal evidence to prompt penal action. Depending on the type of crime, the investigation must be completed within a legally fixed period of time. (Code of Penal Procedure, Art.326,358)

If the prosecutor does not find probable cause after the investigation, he or she requests the Judge for the Preliminary Investigation (G.I.P) to dismiss the case. If cause is found, the prosecutor formally charges the defendant with the commission of the crime and requests the G.I.P to commit the defendant for trial. (Code of Penal Procedure, Art.405,408,416).

After the G.I.P. holds a hearing, he or she issues an order for trial or, in case of unsupported charges, pronounces a no case judgement (nolle prosequi). In the lowest court level, the Public Prosecutor is in charge of signing or not signing the indictment. (Code of Penal Procedure, Art.424,554).

Two other forms of trial are the direct trial (guidizio direttissimo) and the immediate trial (giudizio immediato). In direct trials, the Public Prosecutor can order the accused to be brought up to trial within 48 hours, if he or she

was caught in the midst of committing a crime. In immediate trials, the accused may be brought directly to trial without the preliminary hearing, if during the preliminary investigation there is clear evidence of guilt.

*Official who conducts prosecution. The prosecution of the accused is conducted by the Public Prosecutor. In the trial stage, prosecution and defense are in a position of parity. Similar to a judge, the Public Prosecutor is a career official (public servant) considered to be a part of the Bench although the prosecutor is not a judge.

The distinction between prosecutors and judges is based on the different functions of the prosecutor and the judge, who are both considered magistrates. The Italian magistracy is divided into the inquiring magistracy (*magistratura inquirente* or magistracy), who are the public prosecutors, and the judging magistracy (*magistratura giudicante*), who are the judges. The prosecutor is in charge of conducting the investigation and prosecution while the judge passes judgement on the case and imposes a sentence. (The terms magistrate and magistracy refer to all judges and prosecutors, independent of their level, competency and jurisdiction.)

*Alternatives to trial. The accused does not have the right to plead guilty to a lesser offense (plea bargain). (The inadmissibility of a plea bargain in the system is based on the principle of the *obbligatorietà dell'azione penale*, which allows no discretion in prosecution. Once acquainted with the commission of a crime, the judicial authority is legally bound to take action against that particular crime and cannot choose to seek prosecution to a lesser charge in exchange for a plea of guilt. In other words, discretionary or selective enforcement does not exist in the system. The prosecutor has no discretionary power to engage in plea bargaining. The crimes prosecutable by the initiative of the offended person (*reati perseguibili a querela*) also adheres to this rule.) In the case of a miscarriage of justice, compensation for damages is provided. In addition, there are 3 pre-trial alternatives: 1) Short trial (*guidizio abbreviato*). Upon a defendant's formal request, the case is decided in the course of the preliminary hearing on the basis of findings of the preliminary investigation, providing that the Public Prosecutor agrees with it. If found guilty, the defendant is entitled to a reduction of one-third of the penalty provided for the crime (for instance, 6 years in prison instead of 9). The reduction applies to all

crimes except those incurring a life sentence. This alternative addresses the problem of lengthy trials. It was originally introduced to save both money and time.

2) Imposition of specific penalty. (applicazione della pena su richiesta delle parti). The prosecution and defense can jointly ask the judge for the imposition of a specific penalty on which they both agree, as long as the suggested penalty does not exceed 2 years in prison, even when reduced to one-third of the time. If the defendant does not commit the same kind of delitto for 5 years after the sentence or contravvenzione crime for 2 Years, the offense is legally extinguished. (Although this is informally called bargain (patteggiamento), it is entirely different from the plea bargain known in the United States court system.)

3) Penal decree of condemnation (decreto penale di condanna). For minor crimes punishable with fines and/or prison up to 3 months, the Public Prosecutor, by decree, can request the G.I.P to condemn the defendant to pay a fine, the amount of which is reduced up to 50% of the minimum amount provided by law. The decree is issued without hearing the defendant (inaudita altera parte), who can always oppose the G.I.P decision, in which case the decree loses its validity and the defendant goes to trial.

A cash settlement for contravvenzioni crimes can also be reached (Oblazione nelle contravvenzioni punite con pene alternative). In these cases the defendant may be permitted to pay 50% of the maximum amount of the fine provided by law for that particular contravvenzione, plus legal expenses. (Code of Penal Procedure, Art.314,444-448,459; Penal Code, Art.162).

*Proportion of prosecuted cases going to trial. The majority of prosecuted cases for serious crimes go to trial, notwithstanding the use of pre-trial alternatives in the new Code of Penal Procedure. Approximately 20% of all cases are resolved by pre-trial alternatives, while 80% go to trial. It had been expected that the use of new non-trial alternatives would result in 80% of all cases being resolved without a trial.

*Pre-trial incarceration conditions. The Judge for the Preliminary Investigation (G.I.P.) can opt for pre-trial incarceration, or precautionary custody (custodia cautelare), at the request of the Public Prosecutor. Except in cases of mandatory or facultative arrest, pre-trial incarceration is permitted only when a person is

accused of a crime carrying a maximum penalty exceeding 3 years in prison and when at least one of the following conditions is present: 1) Danger of counterfeiting, destruction of evidence; 2) Danger of escape; and 3) Danger of committing more crimes of the same kind. (Code of Penal Procedure, Art.274).

Precautionary custody is permitted when other sanctions such as a prohibition against leaving the country or town, daily check-ins at the police station, and house arrest are deemed insufficient.

*Bail procedure. Bail is not allowed in the penal system.

*Proportion of pre-trial offenders incarcerated. As of December 31, 1992, there were 47,588 prisoners. The total number of convicted offenders in prison serving a sentence were 19,855 (41.7%). The total number of incarcerated pre-trial offenders who were awaiting trial was 26,444 (55.6%). (The total number of prisoners awaiting trial includes all prisoners awaiting a final sentence, such as those who are awaiting a first instance judgement and all convicted prisoners who appealed against decisions at any stage of a criminal proceeding.) This figure does not include the 1,289 (2.7%) offenders subjected to safety measures in prison who were not awaiting trial. (National Institute of Statistics, April 5, 1993).

JUDICIAL SYSTEM

1. Administration.

Except for the lowest court level (the Pretura) with a single judge (Pretore), courts consist of a judicial panel made up of a number of stipendiary judges (giudici togati). In the Court of Assizes and Court of Assizes of Appeal (Corte d'Assise e nella Corte d'Assise d'Appello) the judicial panel consists of stipendiary and popular judges (giudici popolari). There is no jury.

The Pretura. The Pretura is a trial court and operates in the first stage of legal proceedings. It has the jurisdiction to try criminal cases carrying a maximum penalty of 4 years in prison and cases involving: a) violence or threat to a public officer; b) insulting a judge at trial; c) aggravated violation of an official seal; d) aiding an abetting; e) abuse/maltreatment; f) aggravated brawl; g) manslaughter (non intentional

homicide); h) aggravated housebreaking; i) aggravated theft; l) aggravated fraud; m) receiving stolen goods. The prosecution is conducted by the Public Prosecutor at the Pretura (Pubblico Ministero presso la Pretura). (Code of Penal Procedure, Art.7,51).

The Court of Assizes. The Court of Assizes (Corte d'Assise) has jurisdiction to try crimes carrying a maximum penalty of 24 years in prison or life imprisonment, and other serious crimes. The Prosecution is conducted by the Public Prosecutor at the Court of Assizes (Pubblico Ministero presso la Corte d'Assise). (Code of Penal Procedure, Art.5,51).

The Tribunal. The Tribunal (Tribunale) has jurisdiction over all other crimes. The prosecution is conducted by the Public Prosecutor of the Tribunal (Pubblico Ministero presso il Tribunale). The prosecution for organized crime (Mafia), ransom kidnapping, drug trafficking and related crimes is conducted by the Anti-mafia Public Prosecutor. (Procuratore Distrettuale Antimafia). (Code of Penal Procedure, Art.6,51).

Court of Appeal. Appeals against Tribunal and Pretura decisions are decided by the Court of Appeal (Corte d'Appello). Appeals against Court of Assizes decisions are decided by the Court of Assizes of Appeal (Corte d'Assise d'Appello). In the appeal stage, prosecution is conducted by the Attorney General at the Court of Appeal (Procuratore Generale presso la Corte di Appello). (Code of Penal Procedure, Art.51,593-605).

Court of Cassation. The Court of Cassation (Corte di Cassazione), which is the third stage of proceedings, decides appeals concerning questions of formal legitimacy. The Prosecution is conducted by the Attorney General at the Court of Cassation (Procuratore Generale presso la Corte di Cassazione). (Code of Penal Procedure, Art.606).

2. Special Courts.

Juvenile Court. Juvenile criminal courts have jurisdiction on crimes committed by minors between 14 and 18 years old. The court consists of 2 stipendiary judges and 2 honorary judges (psychologists or experts in juvenile crime). There is a Court of Appeal for juveniles, with the same judicial panel composition for appeals.

3. Judges.

*Number of judges. As of July 21, 1993, there

were 8,174 judges in active service, of which 5,982 were male and 2,192 were female. (Ministry of Justice).

*Appointment and qualifications. All judges and prosecutors are non-elective, stipendiary public officers. A Masters of law degree is a necessary qualification. They are selected through public national competitions and begin serving after a period of training as *uditori giudiziari* under the supervision of experienced judges. (Constitution, Art.106).

PENALTIES AND SENTENCING

1. Sentencing process.

*Who determines the sentence? The judge decides the guilt and sentence in all cases.

*Is there a special sentencing hearing? There is no special sentencing hearing. Passing sentence and the determination of guilt occur simultaneously. At the end of the trial, the judge immediately pronounces the verdict. The judge must issue the sentence in writing, explaining judicial and factual motivation, and have it made public within a maximum term of 90 days after the verdict, but usually within 15 days.

*Which persons have input into the sentencing process? Psychiatrists, as expert witnesses for both prosecution and defense, have input into the sentencing process when an issue of mental incompetency, disease, or defect is considered in order to exclude or diminish criminal responsibility. However, the judge is not bound to accept the opinion expressed by expert witnesses.

2. Types of penalties.

*Range of penalties. The principal penalties (*pene principali*) used are prison, including life imprisonment, and fines. Secondary penalties (*pene accessorie*), which are always inflicted in connection with the principal penalties, are basically forms of legal interdiction or disqualification (prohibition against holding public and private office, forfeiture of parental authority). As a rule, all property crimes are punished by imprisonment and fine. (Penal Code, Art.18-20).

If the penalty does not exceed 2 years in prison and the convicted person has no previous criminal record, the judge may suspend the sentence for a period of 5 years for a delitto or 2 years for a contravvenzione. If the convicted person does not commit a delitto or a contravvenzione within these periods of time, the criminal offense is extinguished. (Official Gazette, November 30, 1981; Penal Code, Art.167).

When pronouncing a sentence for minor crimes, the judge may substitute imprisonment with substitute sanctions for short-term imprisonment (sanzioni sostitutive delle pene detentive brevi). These sanctions are: a) Semi-custody (semi-detenzione): only the night is spent in prison; b) Release under control (liberta` controllata): a number of restrictions are imposed, such as not leaving town or daily check-ins at the local police station; and c) Pecuniary sanction/fine (pena pecuniaria).

After a final sentence of conviction has been pronounced, another judicial panel, the Tribunal of Surveillance (Tribunale di Sorveglianza), which consists of 2 stipendiary judges and 2 experts who are not judges (psychiatrists, psychologists, pedagogists, and criminologists) may apply alternative measures to detention (misure alternative all detenzione). The principal measures of this kind are: a) probation (affidamento in prova al servizio sociale); b) House arrest (detenzione domiciliare); and c) Semi-liberty (regime di semiliberta`): only the night is spent in prison). (Official Gazette, August 9, 1975).

In addition to these penalties, which are inflicted as penal sanctions if a person is found guilty of a crime, the penal law provides for the imposition of safety measures (misure di sicurezza), on socially dangerous individuals. According to the Penal Code, a person is socially dangerous if he or she has committed a crime and there is a strong likelihood that he or she will commit another crime in the future, given the characteristics of the offense and the offender. The concept of social dangerousness is based on the prediction of recidivism. (Constitution, Art.25; Penal Code, Art.203).

Safety measures are also imposed on individuals who are not criminally liable, or if liable, are susceptible to lesser penalties because they were found totally or partially mentally incompetent at the time of the crime due to mental disease, chronic intoxication deriving from alcohol, or drug abuse or deaf-mutism. The Penal Law determines the minimum length of enforcement for each safety measure but not the maximum. Safety measures cannot be revoked unless

the judge decides that the subjected person is no longer socially dangerous. (Penal Code, Art.207,208).

There are generally three types of safety measures: custodial, non-custodial, and patrimonial. Custodial safety measures include confinement on a prison farm or labour facility, which is used mostly for persistent, habitual, or professional offenders and for offenders "prone to crime". It also includes compulsory hospitalization, and confinement in a reformatory for juvenile offenders. (Penal Code, Art.215,216,219,222,223).

A non-custodial safety measure could mean being released under surveillance, where the judge prescribes a number of measures that the offender is required to follow. In addition, the offender may be prohibited to reside in certain municipal or provincial districts or to frequent pubs and other facilities in which alcoholic beverages are served. If the offender is an alien, he or she may be expelled from the country. (Penal Code, Art.215).

Patrimonial or property safety measures include a process whereby the offender deposits a sum of money as a guarantee of good behavior throughout the application of a non-custodial safety measure. The security is returned if the offender does not commit a crime which requires arrest. If the offender does not deposit any security, the judge will substitute this measure with release under surveillance. Another patrimonial safety measure involves the seizure of property. After conviction, the judge may order that objects used for the commission of the crime or that constitute its product or profit must be confiscated. (Penal Code, Art.219,236,238).

While technically, these safety measures are not penalties, but rather a protective device, they are subject to the general judicial principles which regulate penalties.

*Death penalty. The death penalty is not allowed, except in case of war, under the military law. (Constitution of the Republic, Art.27).

PRISON

1. Description.

*Number of prisons and type. As of July 16, 1992, there were 154 district facilities for male prisoners awaiting trial (Case circondariali maschili) and 6 female facilities (Case

circondariali femminili). There were 27 penitentiaries for convicted male prisoners serving a sentence (Case di reclusione maschili) and 2 female penitentiaries (Case di reclusione femminili). There were also 2 facilities for working prisoners serving for safety measures (Case di lavoro), 2 mental hospitals for offenders (Ospedali psichiatrici giudiziari), 1 semi-custody facility in which only the night is spent in custody (Istituti per semiliberi), 1 national facility where prisoners under psychological observation participate in re-education and rehabilitation programmes (Istituti nazionali di osservazione), and 4 prison facilities for drug addicts (Case di reclusione per tossicodipendenti). (Ministry of Justice, 1993: 224).

*Number of prison beds. In 1987, the total number of prison beds was 36,776. The total number of prison beds in juvenile facilities was 827. (In 1986, the total number of prison beds was 36,053. The total number of prison beds in juvenile facilities was 705.) (Fourth United Nations Survey, 1992).

*Average daily population/Number of prisoners. As of July 16, 1992, the annual average population of prisoners was 44,133, while the Italian prison capacity was 33,883 inmates. (The annual average population of prisoners for prior years: 31,170 (November 30, 1991); 31,676 (1990); 35,187 (1989); 35,222 (1988); and 33,865 (1987), while the Italian prison capacity was at 30,986 (November 30, 1991); 29,836 (1990); 29,779 (1989); 29,560 (1988); and 39,139 (1987). The decrease in prison capacity between 1987 and 1988 is partly due to the suppression of a number of prison facilities, but mostly due to the redefinition of the standards of capacity provided by the Ministry of Health. (Decree of the Minister, November 23, 1988; Ministry of Justice, 1993).) (Ministry of Justice, 1993: 221).

On December 31, 1992, there were 47,316 prisoners, of which 44,748 were male and 2,568 were female. (The total number of prisoners for prior years: 35,469 (male=33,577; female=1,892) (1991); 25,931 (male=24,568; female=1,363) (1990), 30,680 (male=29,270; female=1,410) (1989), 31,382 (male=29,800; female=1,582) (1988), and 31,773 (male=30,183; female=1,590) (1987).) (Ministry of Justice of Italy, 1993: 40.)

*Number of annual admissions. In 1992, there were a total of 93,774 admissions into Italian prisons. In 1991, there were 80,234 admissions, of which 74,355 were male and 5,879 were female. (The

number of admissions for prior years: 57,738 (male=53,307; female=4,431) (1990); 83,600 (male=76,715; female=6,885) (1989), (male=81,757; female=7,984) (1988), and 85,875 (male=78,544; female=7,331) (1987).) (National Institute of Statistics, April 5, 1993).

*Actual or estimated proportions of inmates incarcerated. Information not available.

2. Administration.

*Administration. All prisons are administrated by the State. The General Direction for Prevention and Penalty Institutes (Direzione Generale degli Istituti di Prevenzione e Pena) is a state agency, under the authority of the Ministry of Justice whose head is usually a judge (Direttore Generale).

*Number of prison guards. There are a total of 28,721 penitentiary police (prison guards), of which 751 are marshals (marescialli), 2,034 are sergeants and vice-sergeants (brigadieri and vicebrigadieri), and 25,936 are guards (Appuntati e guardie). (Ministry of Justice, 1993: 189).

*Training and qualifications. Information not available.

*Expenditure on prison system. Total prison system expenditures include personnel salaries, functioning expenses such as goods and services for the sustenance of the inmates, and ordinary maintenance of the buildings. It does not include the costs of the penitentiary building. The total expenditure for 1991 was 2,277,791 million lire, while the average daily cost per prisoner was 200,212 lire. (In 1990, expenditures totalled 1,994,197 million lire, while the average daily cost per prisoner was 172,477 lire.)

3. Prison conditions.

*Remissions. There are instances in which a prisoner may get time off for good behavior or parole. A convicted prisoner who participates in a re-education program is entitled to early release from prison (Liberazione anticipata) amounting to a reduction of the length of imprisonment equivalent to 45 days for each 6-month period spent in prison. For example, a 5-year prison sentence would allow for a maximum reduction of about 15 months, resulting in 3 years and 9 months of actual time served. (Official Gazette, August 9, 1975).

A convicted prisoner who has served part of

the prison sentence and whose behavior is such that one can regard him as reformed, can be released under a number of specific conditions which, for serious crimes, are very strict. (Penal Code Art.176,177).

*Work/education. Inmates are required to work. However, prison work is not considered forced labor and it is remunerated. Under certain conditions, working outside the prison is permitted.

Prisoners may also attend classes. Specific provisions have been established in order to facilitate university studies.

*Amenities/privileges. Visits are allowed on a weekly basis. Inmates are allowed to communicate by telegraph, in writing (and by phone with some restrictions). They can also participate in group therapy and educational/vocational programs. Medical and psychological assistance is provided by law and takes place according to the specific conditions of prison facilities. (Official Gazette, August 9, 1975).

EXTRADITION AND TREATIES

*Extradition.

The law permits extradition of both suspected and convicted criminals to and from other countries. Extradition treaties exist between Italy and the following countries: Argentina, Australia, Austria, Bahamas, Belgium, Bolivia, Brazil (imminent), Canada, Czechoslovakia, Cipro, Costa Rica, Cuba, Denmark, Finland, France, Germany, Greece, Hungary, India, Ireland, Israel, Kenya, Lebanon, Lesotho, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Morocco, Netherlands, New Zealand, Norway, Paraguay, Poland, Portugal, Romania, San Marino, San Salvador, Singapore, Spain, Sri Lanka, South Africa, Sweden, Switzerland, Tunisia, Turkey, Uruguay, United Kingdom, United States, the Vatican City, Venezuela, and Yugoslavia (Croatia and Slovenia). (Pisani and Mosconi, 1993).

In 1991, there were 172 extraditions made to Italy from other countries and 89 extraditions made from Italy to other countries. (Extraditions made to Italy from other countries and from Italy to other countries for earlier years were, respectively, 106 and 39 (1990); 90 and 45 (1989); 113 and 38 (1988); and 124 and 48 (1987).) (National Institute of Statistics, 1991).

*Exchange and transfer of prisoners. Prisoners cannot be exchanged but they can be transferred in order to serve their sentence in other countries or transferred from other countries to serve their sentence in Italy. Transfer of prisoners is permitted according to the provision stated in the treaties. The transfer of prisoners is permitted among the following countries: Austria, Bahamas, Belgium, Bulgaria, Canada, Cipro, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, San Marino, Slovakia Republic, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom, and the United States. (Pisani and Mosconi, 1993).

*Specified conditions. There are some legal limitations to extradition. For example, extradition can be permitted only if expressly provided by international conventions. It is not permitted for political crimes or if there is reason to believe that the suspect or convict will be subjected to persecution or discrimination because of his or her race, religion, sex, nationality, language, political opinions, personal or social conditions, or that he or she will be subject to cruel, inhuman or degrading penalties (including death penalty), and/or treatment, or that his or her basic human rights will be violated unless otherwise arranged in the international conventions. Extradition procedures are provided by the Code of Penal Procedure. (Constitution, Art.10,26; Code of Penal Procedure, Art.696-722).

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