NOTES ON THE ITALIAN CRIMINAL PROCEDURE CODE
(AG, September 2005)

1. THE HISTORY OF CODIFICATION OF CRIMINAL LAW IN ITALY

The current **CRIMINAL CODE**, which is known as the *Codice Rocco*, dates back to 1930. It replaced, with effect from July 1, 1931, an earlier code called the *Codice Zanardelli*, which dated from 1889, and which was based on liberal guarantees characteristic of the Enlightenment. In fact the Italian tradition of codification – from before the unification of Italy in 1861 and the birth of the Liberal State – was deeply influenced by the two French *Codes pénaux* of 1791 and 1810. In 1848 a Constitution was enacted in Sardinia and Piedmont – known as the *Statuto Albertino* – which made it necessary, in the area of criminal law, to enact legislation that was more liberal, and a code less influenced by the French one: hence the *Codice Zanardelli* (1889).

Less than 30 years later, the emerging totalitarian ideology in Europe changed the concept of the state and of the relationship between the state and its citizens. In 1919, a Law Committee had been nominated, chaired by the jurist Enrico Ferri, which published - after 3 years' work - a draft of a new criminal code; but this was not approved because of the rise of the Fascist party, which came to power in 1922.

In 1925, the Italian Parliament authorised the Government to reform the 1889 Criminal Code. To this end, a Ministerial Committee was nominated – chaired by Giovanni Appiani – which entrusted the project to another specialised committee, chaired by the prominent jurist Arturo Rocco. In 1929, a Bill providing for the new code was introduced and came into force two year's later. It was and is still known as the *Codice Rocco*.

Despite the unhappy historical and political period in which this Code was passed, the *Codice Rocco* was generally well thought of by the academic world, even after the fall of Fascism. In fact it set out some very important liberal principles and its technical language and structure were both very good. This explains why, surprisingly, the *Codice Rocco* is still in force: although after the fall of Fascism some modifications and abrogation of offences connected to the Fascist Power were necessary ([1]).

The current **CODE OF CRIMINAL PROCEDURE**, *Codice di procedura penale* (CPP), dates from 1988. It replaced the relevant parts of the earlier *Codice Rocco* (1930), which in its original form included both a criminal code and a code of criminal procedure. But in fact the Italian tradition of codification of criminal procedure is older and dates from the period before the unification of Italy. The first code was promulgated in 1807 (before the French *Code d'instruction criminelle*) and in 1847 a second was issued for Sardinia and Piedmont by Duke Carlo Alberto. The 1847 Code was extended, after the unification of Italy, to the territories of the new Italian Kingdom and became the first "Code of criminal procedure of the United Italian Kingdom" in 1865. Following the unification of Italy, it was necessary to reform the 1865 Code for two reasons: (i) the existing Code was not a

([1]) For a wide view on the problems of codifying criminal law, see E.DOLCINI, G.MARINUCCI, *Note sul metodo della codificazione penale*, in *Riv. It. Dir. e Proc. Pen.*, 1992, 385. See also A.PAGLIARO, Verso un nuovo codice penale? Itinerari, problemi, prospettive, in *Id. Pen.*, 1992, 385.

real national code because it was born under a single state and then imposed upon the new united State, and (ii) it was still influenced by the Napoleonic *Code d'instruction criminelle*. The occasion for a reform of the criminal procedure code came not long after the Criminal Code of 1889 (*Codice Zanardelli*). In 1900, a new criminal procedure code was produced in draft, which was subjected to the opinion of academics, lawyers and judges. In 1905 and 1911 two further drafts were produced by a ministerial committee chaired by Aprile Finocchiaro. This new Code was eventually approved in 1913 and came into force on January 1, 1914.

The 1913 Code was much less influenced by the French *Code d'instruction criminelle* than its predecessor and its ideology was more liberal ([2]). However, its life was short because when the Fascist Party came to power it was considered "too liberal". And so a *third* Italian Code of criminal procedure saw the light of day in 1930. This, like the new Criminal Code with which it was connected, became known as the *Codice Rocco*, after the man responsible for the reform ([3]).

In order to write the new Code, a procedure known as "*Delega in bianco*" was used ([4]). This involved a piece of primary legislation enacted by Parliament, which gave the Government a blank cheque to reform the entire criminal procedure system, without laying down any limits or guiding principles for it to follow. In this way, the Government was left with a free hand to write a new criminal procedure system for a totalitarian state, so enabling it to create a "Fascist Code". This Code contained 675 articles distributed over five Books. Its language was highly technical, and the broad scheme was based on the "inquisitorial model". One of its prominent characteristics was that it put the defendant in a particularly weak position. During the investigative phase, which was conducted on the French model by an examining judge (*guidice istruttore*), the defendant was not allowed counsel, or any means of actively preparing his defence.

2. THE DECISION FOR A NEW CODE OF CRIMINAL PROCEDURE

The decision to give Italy a new code – after the fall of Fascism and the end of the war – was taken for the following reasons:
(i) the need – bearing in mind the strong connection that exists between the political and the legal system - for the country to leave behind a criminal procedure system built by a totalitarian regime in the past;
(ii) the will to go back to the liberal traditions that had flourished at time of the unification of Italy and swept away by Fascist policy;
(iii) the need to make the criminal procedure system fit with the new Italian Constitution (1948), and in particular the important procedural guarantee contained in Article 24, which guarantees the inviolability of defence: "All persons may act in justice for the protection of their rights and legitimate interests. Defence is an inviolable right at every stage and at all levels of the process..."
(iii) a conscious will to introduce into Italian criminal procedure a number of the key features of the Anglo-American adversarial tradition: in particular, abbreviated procedures to deal with those

([2]) Most academics claimed that the influence came from the German "*Strafprozessordnung*" of 1877.
([3]) The criminal procedure code and the criminal code came into light together in the same year and brought the same "name" because they were drawn up under the guidance of Alfredo Rocco.
([4]) The "*Delega in bianco*" was typical of a totalitarian regime because it gave the Government the power to legislate without any limits except the subject. Nowadays the 1948 Italian Constitution entitles the Government to legislate only under the conditions *ex* article 76 Cost (see § 8).

defendants who do not wish to contest their guilt – and for the trial of those who plead not guilty, less reliance on written statements prepared ahead of trial and a greater emphasis on oral testimony.

3. FORMS OF RELEVANT LEGISLATION IN CRIMINAL MATTERS

Italy, unlike the United Kingdom, has a written Constitution. This specifies the different types of law, which persons or bodies are authorised to make them, and the processes by which they can be made. Respect for the rules contained in the Italian Constitution is ensured by means of a Constitutional Court.

"Primary legislation" Of this there are three types of within the Italian Legal system. These are:

(i) "*legge ordinaria*", or ordinary Acts of Parliament in the strict sense ([5]);

(ii) "*decreto legge*"; originally decrees issued by the Government, which has the legal power to make laws in situations of *necessity* and *emergency*; to remain effective, these must then be approved by Parliament within 60 days from the date of promulgation ([6]), a process which converts them into formal Acts of Parliament ([7]);

(iii) "*decreto legislativo*" (or *legge delegata*); these are similar in some ways to what in the U.K. is called "delegated legislation", but their scope is more limited, and the resulting law has a higher legal status, because it counts as primary legislation. The Italian Constitution makes it possible for Parliament, when wishing to legislate in difficult areas, to allow the Government to formulate the legislation on those matters following a time-table, subject-limits ([8]) and rules and principles set down by Parliament itself through the "*Legge Delega*", which is itself a *Legge ordinaria* (see (i) above) passed by Parliament in the usual way. Within these limits the Government issues the law, which must then be promulgated by the President of the Republic through a "*Decreto del Presidente della Repubblica*" – DPR (known as a Presidential Decree) - upon which it acquires the status and the binding force of primary legislation.

The Government's power to legislate by means of primary legislation – as in (ii) and (iii) above – is prescribed by the Italian Constitution with the limits described above. If the Government exceeds these limits the Act will be condemned as unconstitutional by the Constitutional Court and thereby rendered null and void ([9]).

([5]) This kind of Act has both the *form* and the *binding force* of primary legislation. In the Italian legal system, a new bill could be proposed by the Government (as well as by a Member of Parliament, a group of citizens or a County: see art. 71 of the Italian Constitution), but the law-making procedure is led only by Parliament itself or by Parliamentary Committees.

([6]) If Parliament decides not to approve the *Decreto Legge*, the law passed by the Government loses its effect for the future and, if the law involves a criminal matter, its voidness will be retroactive. On the contrary, if Parliament decides to approve it, the law will reach the same level and force of an Act of Parliament.

([7]) This kind of Act has the *form* of secondary legislation because it is issued by the Government). If it has been approved by Parliament (within 60 days) it will acquire the *binding force* and the *form* of primary legislation: see art. 77 of the Italian Constitution.

([8]) Which means that the Government has the power to legislate only on that specific subject.

([9]) Article 70 of the Italian Constitution – under the Section II "*Law making*" – provides that the power to legislate belongs to Parliament. The Government's power to legislate (within the primary legislation) is an exceptional power and should be exercised within specific limits and always under Parliament's control and the subsequent control of the Constitutional Court.

"Secondary (or subordinate) Legislation" In the Italian system, secondary legislation is known as "Regolamenti del Governo" (Governmental Rules) ([10]). By virtue of this type of legislation, the Government has the power to give effect to primary legislation. To this end, the Government has what Italian lawyers call "the executive power" to create - generally speaking – supplementary rules: provided these are limited to the modalities or procedures necessary to make the primary legislation effective, and do not rewrite the basic rules contained in the primary legislation, or add new ones.

In criminal matters the Italian system includes the "*Riserva di legge*" (saving clause). This is a guarantee, contained in the Constitution, ensuring that only Parliament (by using primary legislation) is entitled to legislate on criminal matters. In principle, the saving clause in criminal matters is *absolute*. This means that norms in relation to criminal law and criminal procedure can be created or modified only by means of primary legislation. Secondary legislation can deal only with formal aspects of the topic which do not interfere with the norms laid down by the primary legislation. Subordinate legislation of this sort can be issued by the Prime Minister himself or by the competent Minister.

The relationship between the CPP and the secondary legislation. Secondary legislation, in the sense described in the preceding paragraph, barely exists in the area covered by the CPP. The CPP is intended to be a comprehensive document, and it contains within it many of the rules which, in England, would be found in the Criminal Procedure Rules or in a Practice Direction.

The Code can be modified only by means of primary legislation (*Legge ordinaria, Decreto legge, Legge delegata*). The obvious reasons are that (i) Parliament is the authority best qualified to legislate in criminal matters because it is able to safeguard and protect the common interest, (ii) this rule prevents the Government –which represents only a political party – from having the power to issue criminal laws, and (iii) the rule is necessary in order to comply with the *nullum-crime- sine-lege* principle.

The CPP exists together with two additional sets of rules, the *Norme di attuazione, di coordinamento e transitorie* (with 260 articles) and the *Regolamento per l'esecuzione del Codice di Procedure Penale* (36 articles); but although these are in a sense subsidiary, they have the status of primary legislation.

4. THE LONG DEBATE THAT LED UP TO THE NEW CPP

The requirement for a new code was felt immediately after the fall of Fascism and then more and more after 1948, when the Italian Constitution was issued. In 1955, Parliament enacted a wide reform in order to modify more than 200 articles of the existing Code. The main purpose of this reform was to enforce and include within the CPP the "right of defence" provided for by Art. 24 of the Constitution, but it did not change the basic inquisitorial structure of the Code. An important role was played in these developments by the Constitutional Court ([11]): many articles of the 1930

([10]) See L. n. 400/1988.
([11]) The Constitutional Court starts its office in 1956.

CPP were declared unconstitutional because they were not consistent with the Constitutional principle of the inviolability of the right of defence. For this reason, the criminal procedure system in force between end of the 1930 Code and arrival of the Code of 1988 was usually described as a "guaranteed inquisitorial system".

The first CPP Bill was presented in 1963 by a Ministerial Committee composed of the most famous jurists of the day and chaired by Francesco Carnelutti, but it made little progress because it was considered too "modern".

In 1965 Parliament passed the first "*Legge delega*" for a new code, laying down 37 rules and principles that the Government was required to follow when formulating the articles of the code. But the draft proposed by the Government was not approved because the Government's mandate under the *Legge delega* expired before the job was finished.

In 1974 Parliament passed a new "*Legge delega*" (L. 3/4/1974 n. 108), which gave the Government the power to write a new CPP following the principles set out in the Constitution, international treaties, human rights and accusatorial principles. In order to carry out the programme set out by the "*Legge delega*", a Ministerial Committee was nominated - chaired by the very famous Italian jurist Gian Domenico Pisapia. The Pisapia Committee drafted a preliminary project, which was published in 1978. Jurists and academics were asked to express their official opinion on this 1978 draft. Then the project was passed over to a Parliamentary Committee which was also composed of jurists from outside Parliament ([12]). The Parliamentary Committee first examined and expressed its opinion on groups of articles concerning different topics (i.e. investigation, evidence, sentencing etc...) and then on the entire code as a whole. The process of examination by the Committee and the problems that Italy had to face with waves of terrorism at the end of 1970s protracted the progress of the draft law, to the point where Parliament finally passed a new "*Legge delega*" in 1987 (L 16/02/1987 n. 81).

5. THE BIRTH OF THE 1988 CPP

The Legge Delega n. 81/1978

The contents of the *Legge Delega* n. 81/1987 were as follows:

1) Art. 1 entitled the Government to compile the new CPP following the principles and rules provided by the *Legge Delega* itself.
2) Art. 2 set out a list of the principles and rules the Government was required to follow ([13]).
3) Art. 7 entitled the Government, for a period of three years, to issue – by means of a *Decreto Legge* (see above §3) - rules to correct and complete the text in conformity with the principles set out in art. 2.
4) Art. 8 and 9 provided for the nomination of a Parliamentary Committee with the task of giving its opinion on the drafting of the code, and prescribed time-limits to approve the text.
5) Art. 10 provided the rules for the Committee's work.
6) Art. 11 and 12 dealt with the costs of producing the new code.

([12]) The composition of the Committee was provided by article 1 of the *Legge delega* n. 108/1974.
([13]) Constitutional principles, International Treaties, Accusatorial principles and the 105 rules set out by the *Legge Delega.*

The Ministerial Commission

The task of drafting the new CPP was given to an official commission appointed by the Government - "*Ministero di Grazia e Giustizia*" (Department of Justice) – by virtue of a Ministerial Decree (Decreto Ministerial. 3/03/1987). This Commission was once again chaired by G.D. Pisapia and was composed of other 17 jurists, who had earlier supervised the passage through Parliament of the draft of *Legge Delega* n. 81/1987 ([14]) over the course of 75 sessions. This Ministerial Commission was supported by the Legal Office of the Department of Justice and assisted by a body of 14 academic lawyers and an office in charge of the practical organisation. The Office started working on the new CPP on March 13, 1987.

Eight more Committees were appointed to support the official Commission through research, studies, documents and reports on the more difficult and specific subjects, such as legislation on *pentiti* (members of criminal organisations who 'turn Queen's evidence'), international co-operation and the law relating to prisons and to prisoners ([15]).

The Ministerial Commission concluded and approved a preliminary draft of the entire Code after 98 sessions. The preliminary project - accompanied by explanatory report - was presented to the Cabinet, which formally authorized the transfer of the draft to Parliament on January 30, 1988.

The Parliamentary Committee

A most important aspect of the *Legge Delega* n. 81/1987 was the role given to Parliament in the process of drafting the Code. Article 8 (*Legge delega* n. 81/1987) provided for a Parliamentary Committee composed by 40 Members of Parliament: 20 of them belonged to the Chamber of Deputies and were chosen by its President; the rest of them belonged to the Senate and were chosen by the President of the Senate. The selection of members reflected the political composition of Parliament at the time.

The mandate of the Parliamentary Committee was, in general, to give its official opinion and, if need be, its detailed observations on the preliminary draft, and then on the definitive project ([16]), with particular reference to the compliance of the draft with the principles set out in article 2 of the *Legge Delega*.

The Parliamentary Committee opened its first working session on February 16, 1987 ([17]) and, after 63 sittings, gave its first official opinion on May 16, 1988. This was based on a double scrutiny of the draft: the opinion dealt first with the different topics of the criminal process and then with each article of the Code individually. The first official opinion (together with the observations expressed

([14]) This was very helpful to speed up the drafting of the Code, because the Ministerial Committee's members knew exactly what sort of CPP Parliament wanted.

([15]) These Committees were composed by the best experts on those subjects, who carried on researches on the main problems concerning with those specific matters following – at the same time – the working on the code.

([16]) In particular, article 8 provided that the first opinion was given within 90 days from the reception of the preliminary draft. Afterwards, the Government had to revisit the draft, in the light of Parliament's observations, within the following 60 days and then passed it again to the Parliament Committee in order to obtain its second opinion, which had to be given within the following 30 days (see art. 8 c. 2 and 3, *Legge Delega* n. 81/1987).

([17]) In the same period, the draft was sent to all the Faculties of Law, the Bar, the lawyers' associations, the President and the Prosecutor of the Supreme Court (*Corte di Cassazione*), to obtain their comments and opinions on those aspects and articles of the draft not concerning the principles set out in the *Legge Delega*.

by academics, lawyers and judges) was examined by the Government, which modified the draft to take account of them ([18]). The revised draft was then transmitted to Parliament again and obtained the Committee's approval, to become at this point the "Definitive Project of the Criminal Procedure Code".
The new CPP – containing 746 articles – was approved by the Cabinet on 22/09/1988, issued by presidential decree *D.P.R.* 24/10/1988 n. 447, and published in the Official Gazette (*Gazzetta Ufficiale*) on the same day ([19]).

6. THE CONTENTS OF THE CRIMINAL PROCEDURE CODE

The structure of the new CPP is new: two parts, consisting of 11 "Books" and 770 articles ([20]). There is no longer a Book dedicated to "general dispositions". Instead, there is a first part that could be described as "*static*", and a second part which could be described "*dynamic*". The first "static" part deals with each of the different parties and institutions involved in criminal procedure topic by topic, and the second "dynamic" part sets out the course of a prosecution chronologically.

The "static part" consists of Books 1, 2, 3 and 4:

Book 1: *"Soggetti"* (Persons)
Persons and bodies who participate to the criminal process: the judge (types of tribunals; jurisdiction; capacity and incompatibility with judicial functions); the prosecutor (organisation of the Prosecution Office; prosecutor's powers and independence); the police (functions; organisation); the defendant (general guarantees; rules on identification; rules on questioning the defendant); the parties bringing civil action in the criminal process (*Parte civile*, the injured party) and the conditions to participate to the criminal process; formalities and terms of the civil action in the criminal process; the relation between the civil process and the criminal process); *Responsabile civile*, the person who is responsible to pay damages; *Civilmente obbligato per la pena pecuniaria*, the person responsible to pay the fine; the victim (general guarantees; conditions to participate to the criminal process); defence counsel (formalities for counsel's appointment; legal aid; general guarantees; incompatibilities).

Book 2: *"Atti"* (The "acts" in the criminal process)
General rules (the official language to be used for acts; formalities; confidentiality and prohibition on publication); judicial acts (categories and formalities); formalities to record witnesses' statements and other types of reports; the translation of the acts, interpreters; rules concerning the notifications; time limits for acts in the criminal process; causes of invalidity of acts.

Book 3: *"Prove"* (Evidence)

([18]) The comments from the Parliamentary Committee - as well as those coming from lawyers, academics and judges - were actually quite positive and consisted of limited remarks on specific aspects and particular articles. The general structure and principles of the code were found consistent with the *Legge Delega*'s criteria.
([19]) See *Gazzetta Ufficiale* 24/10/1988 n. 250, suppl. ord. N. 1.
([20]) The Books are divided in Titles (Titoli), Items (Capi), Sections (Sezioni).

General rules; trial evidence (testimony; examination of the parties; confrontation; ascertainment; 'judicial experiment' (e.g. reconstruction of events); expert opinions; documents); means to gather evidence (inspection; search; seizure; interceptions).

Book 4: *"Misure cautelari"* (Precautionary measures)
Precautionary measures *in personam*: general rules of applicability; categories; proceedings to apply them; release; appeal; proceedings to obtain redress caused by unfair detention. Precautionary measures *in rem*: seizure of goods to preserve the defendant's capacity to pay the injury caused by the offence; seizure of goods and things related to the crime to avoid its being continued or repeated; appeal.

The "dynamic part" comprises Books 5, 6, 7, 8, 9, 10, 11 dealing with the stages of the process:

Book 5: *"Indagini preliminari e Udienza preliminare"* (Prosecution investigations and committal proceedings)
General dispositions; conditions to proceed; police powers and activities; prosecutors' powers and activities; cases in which the police can arrest summarily without the prosecutor's warrant; investigations by defence counsel; *incidente probatorio* (i.e, the taking of oral evidence ahead of trial) ; the closure of the prosecutor's investigation stage (procedure to dismiss a case, defendant's guarantees; committal proceeding, in which the judge decides if the prosecutor has assembled a sufficiently serious case against the defendant to justify sending the case to trial.

Book 6: *"Procedimenti speciali"* (Special Proceedings)
Giudizio abbreviato: a summary trial that, with the consent of the accused, omits the formal trial stage, and reduces the penalty by one third; *Applicazione della pena su richiesta delle parti*: a kind of sentence bargain where the accused reaches an agreement with the prosecutor about the sentence to apply, without formally admitting guilt (c.f. *nolo contendere* in the USA); *Giudizio direttissimo*: a special proceeding in which the prosecutor can conduct the accused – directly after having arrested him – to the trial before a judge, omitting the committal proceeding phase; *Giudizio immediato*: a trial without the committal proceeding phase, when the prosecutor believes the defendant's guilt cannot be seriously contested; *Procedimento per decreto*: when the prosecutor – only in case of offences punished by fine – recommends the judge to impose a sentence reduced by up to half, leaving the defendant free either to accept the penalty, or to reject it with a request to be judged with a public trial.

Book 7: *"Giudizio"* (The trial stage)
Rules for the conduct of the trial: the examination of the parties, the evidential value at the trial of statements taken during the investigation, the cases in which they can be read at trial and formalities to conduct the trial. Sentencing stage: evidence that can be used for the decision, different kinds of decisions and decisions on civil action ([21]).

([21]) Matters relating to the criteria that the judge should follow to sentence the defendant (type and measure of the penalty) are dealt with in the *Codice Penale* (Criminal Code), at Book I, Title II.

Book 8: *"Procedimento davanti al tribunale in composizione monocratica"* (Special proceedings)
Adopted for categories of offences with a penalty within 5 years of imprisonment, which can be tried before a sole judge (as against the normal type of bench, which in Italy is collegiate).

Book 9: *"Impugnazioni"* (Means to appeal a decision)
General dispositions; appeal to a superior court; appeal to the *Corte di Cassazione*, i.e. the supreme court which decides only on the points of law (not on the facts); *Revisione* – a sort of extraordinary appeal, when new evidence or facts come out after the time-limits for entering an ordinary appeal have expired.

Book 10: *"Esecuzione"* (The execution of sentence)
Ne bis in idem principle; the rules on the effects of the criminal decision in civil and administrative proceeedings; the competent judge for the execution of sentence; costs in criminal cases.

Book 11: *"Rapporti giurisdizionali con autorità straniere"* (Relations between Italian and foreign judicial authorities)
General dispositions; extradition; request for documents and witness' statements to other countries; effects of Italian criminal decisions abroad; the execution of Italian criminal decisions abroad.

7. HOW THE CPP IS AMENDED

As has been already explained, the CPP has in law the status of primary legislation – although its detailed drafting was delegated to a committee by using the "*decreto legislativo*" procedure. In consequence, the articles of the CPP cannot be modified by secondary legislation. This means that, in order either to amend its articles or to add to them, one of the three means of enacting primary legislation must be used (see § 3). In principle, such an amendment could take the form of (i) amending a single article, (ii) inserting one or more articles connected with one already existing in the Code, by the numeration "*bis* or *ter* or *quarter*" etc…, and (iii) introducing a new body of rules (Title) through the numeration "Title-*bis* or *ter* or *quater* etc... in order to deal with a new aspect of the subject (i.e. Legge 397/2000 on the Defence Counsel's Investigations).

Obviously, when either a single article or a consistent part of the Code has to be modified, it is necessary to consider all the other articles connected to the article or articles amended.

The initiative to amend the CPP usually comes from the Government - which is in the best position to understand the requirements of the criminal justice system – and also sometimes from a single or a group of Parliamentarians. When the proposal comes from the Government, it will be the Department of Justice and its Minister who will present a draft for a reform. When it is a group of Parliamentarians, the reform, in order to succeed, usually requires political pressure.

8. HOW THE CPP IS MADE ACCESSIBLE TO THE PUBLIC

Italian lawyers, judges, prosecutors, academics and the public in general have easy access to the CPP because the main law publishers ([22]) print an updated version of the CPP annually.

Many and varied editions are available: *annotated* versions including the main case-law with reference to any specific article; *commentated* versions including both the main reported cases and a commentary by the editor; *explanatory* versions (usually used by students) and *practical* versions (usually used by lawyers). All the editions contain the Italian Constitution, the *Legge Delega* which commissioned the Government to "write" the CPP, and the additional primary legislation to carry the CPP into effect. Most of them also contain the relevant international treaties ([23]) and the complementary legislation ([24]).

In the recent years the text of the CPP has also become available online in Italian, but not so far in other languages.

9. THE STYLE OF THE NEW CPP

The Code has a structure which is easy to use, especially for lawyers. Its subdivision into *Books*, *Titles*, *Items* and *Sections* makes it possible to find the subjects that one needs to know and to refer to quickly and without trouble.

As it has been already mentioned above (see § 6), the CPP is divided into two parts: the "*static*" one and the "*dynamic*" one. The first part (Books I, II, III, IV) deals with those aspects of the criminal process that could be considered "independent" from the actual procedure and sets out "functional" notions and elements to the procedure itself. The second part deals, instead, with the different stages of the procedure.

The relationship among Books, Titles, Items and Sections starts from a more general subject to finish to a more specific topic. The same criterion is adopted for the structure of the individual articles. In general, the first "*comma*" (paragraph) gives the general rule (or rules), while the following "*commi*" (paragraphs) set out the details or exceptions to the first "*comma*".

Jurists say the language used is crisp and clear but, at the same time, practitioners find it both technical and precise. This is a positive aspect of the new Code because most of the time (although not always!) the language is unambiguous and does not allow different interpretations. The text is also drafted so as to maintain a high level of consistency and coherence between the different articles themselves and the entire Code as a whole.

10. WHAT THE ITALIANS THINK ABOUT THE NEW CPP

([22]) In fact, there are many editions of the CPP and the most important are: the Giuffrè (Milan) ed., the Ipsoa (Milan) ed., the Utet (Turin) ed., the Giappichelli (Turin) ed., the Zanichelli (Bologna) ed., Cedam (Padua) ed., the E.S.I. (Naples) ed., Edizioni Giuridiche Simone (Naples) ed..
([23]) Universal Declaration of Human Rights (1948); European Convention of Human Rights (1950); Additional Protocols n. 4, n. 6, n. 7; International Covenant on Civil and Political Rights, New York (1966).
([24]) The recent editions usually contain also a CD-Rom version.

The Italians in general have easy access to the CPP because of the many published versions existing on the market (see § 8). Despite this, the only people who actually use it are lawyers and judges when working on a criminal case. Ordinary people do not have the occasion to refer directly to it, because every single step in the criminal process needs the assistance of the defense attorney ([25]). Although there are some choices that the defendant must make by himself or herself (or by giving an explicit power to his or her attorney), the defendant usually takes even these steps under the advice of counsel.

As to the justice and wisdom of the rules set out in the new CPP and the system that results from them, opinions among Italian lawyers vary. But the general opinion of practitioners, judges and academics on the CPP is that – from a "formal" point of view – the new Code is a good one, because its structure makes access easy, and the style of its language is readily comprehensible, at least to those who have studied law.

11 . THE (POSSIBLE) LESSONS TO LEARN FROM THE ITALIAN EXPERIENCE

The Italian experience in codification of the criminal procedure shows several positive aspects.

First, and most obviously, the ability to refer to a Code gives lawyers and judges an easier access to the criminal legislation mainly because every single rule (*rectius*: article) has been written keeping in mind all the possible connections that it could have with the other rules contained the Code (= a system that is both "closed" and unitary). Every article, if connected to others in the Code, gives references to the other article or articles that judges or lawyers should consider too.

But from the continental lawyer's point of view, providing a homogeneous structure to criminal legislation is not enough: it is also necessary to ensure a constant control on the reforms or changes made to it. On this point, the Italian experience could be considered as a model because the CPP was written in the frame of Constitutional principles - and the Constitutional Court (known as "The Guardian of the Constitution") has the power to condemn an article of the Code as unconstitutional. Lawyers and judges can claim, before the Court, a "declaration of incompatibility" between an article of the Code and a higher legal norm prescribed by the Constitution – which, unlike a declaration of incompatibility in the UK, makes the offending law ineffective, even where it is primary legislation. When such a declaration is sought this Court is obliged to consider the case and its decisions are always very important for the entire system and for the future choices of Parliament.

In conclusion, a criminal procedure code could be seen as an important part of a well built system because (i) as primary legislation, the Code reflects the public debate on the political choices of the country, as represented by Parliament (and not merely by the Government!), (ii) the activity of Parliament on criminal matters is subjected to the Constitutional Court's control, in order to assure the consistency of the articles of the Code with the fundamental principles, and (iii) the technical

([25]) The defence counsel is someone with a law degree and the title of "lawyer" obtained through a specific exam. Before having attained the title, it is possible to act in a criminal process as a lawyer after a minimum of one year of training, but only for less serious offences.

language and the structure of the code makes it possible for judges to take their decisions according to criteria that are clear and certain. The Italian criminal justice system has been constructed as a hierarchic one where every single "actor" has a specific role: the judge is subject to the law (the Code), the power to legislate in criminal matters belongs exclusively to Parliament by virtue of the Saving Clause (see § 3), criminal legislation is made with due respect to Constitutional principles, and the Constitutional Court has the specific task controlling and verifying that the articles of the Code are consistent with the Constitution and those parts of public international law that the Constitution incorporates into Italian law.

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