



## **The National Antimafia Direction, its organization and responsibility**

Good afternoon everybody

First of all, let me thank you for this valuable opportunity to discuss fighting crime and the role of the Public Prosecution Service and the Police with you today.

Meeting each other and exchanging experiences is the best way to try to fight and win the battle against organized crime.

No one can give lessons: all of us have to learn and to cooperate.

I' have been a Public Prosecutor, for 22 years and I have always dealt with organized crime.

I have worked in Sicily and in Genoa, Northern Italy.

I'm working now at the National Antimafia Direction in Rome , which is the central coordinating body for investigation regarding organized crime.

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Before going into detail and explaining how the National Direction is organized and its responsibilities, I think it would be useful, bearing in mind the aim of this important conference, to briefly explain and summarize how the Public Prosecutor Office is organized in Italy and how criminal proceedings in general are carried out.

I will then go into detail about the organization of the Public Prosecution Offices dealing with Organized crimes.

In order to understand the general set-up of the Public Prosecutor's organisation in Italy, two fundamental elements should be remembered , as a first step.

The first concerns the constitutional status of the Judiciary, and within this, that of the magistrates of the Public Prosecutor Office.

Under our Constitution, the Judiciary is an autonomous and independent body in relation to any other State authority.

Magistrates are appointed following an open examination and can choose whether to become judges or prosecutors.

The autonomy and independence of the Judiciary are guaranteed by the CSM (Superior Council of Judges), made up of 24 elected members, 16 elected by the magistrates from among themselves, 8 by Parliament and two permanent members (the Chief Justice of the Supreme Court and the Attorney-General of the same court) and are presided over by the President of the Republic.

Under the Constitution, it is not necessary that the Public Prosecutors have the same guarantees of independence as those of the judge.

In fact it has been so, ever since an interpretation of the constitutional regulations was given defining the autonomy and independence of the Public Prosecutors as essential conditions.

Other norms were introduced to implement two other constitutional principles:

- the binding principle of criminal action, the action that is the exclusive prerogative of the Public Prosecutor;
- the principle of equality of citizens under the law.

Therefore, the present constitutional status of the Public Prosecutor guarantees his complete autonomy from the Government.

The second element concerns the essential features of our legal proceedings.

The current Italian model which disciplines the relations between the Public Prosecution and the Criminal Police dates back to 1988, the year the new code of criminal procedure was adopted, totally inspired by the principles of the adversarial system.

From this perspective, the main feature of the Italian normative framework is that of having placed the Criminal Police in an autonomous position between the judge, the public prosecutor, the accused and the defence.

The law then explicitly considered the activities of the Criminal Police and the Public Prosecution in an unitary context within which the former actually participates directly in the public prosecution as defined by the Constitution in carrying out criminal prosecutions (Art. 326 of our criminal proceedings code states that the Criminal Police and the Public Prosecution carry out, the investigations required to determine the exercise of the penal action within the framework of their respective functions).

This tendentious operational positioning between the public prosecution and the criminal police, certainly implies a connotation of the impartiality of the system and of its functions.

The statute in our code that governs, the relations between the public prosecution and the criminal police consists of two fundamental procedural rules.

The first norm provides that **“the Public prosecution manages the investigations and gives instructions directly to the Criminal police”**.

The second, that both the criminal Police and the Public Prosecutor besides receiving information about the crime submitted or transmitted to them (according to the norms in subsequent articles) **“directly take note of the crimes”**.

The first of the two rules contains within itself the entire innovative dimension of the approach to public prosecutions as set by the legislator in 1988.

The Public Prosecutor Office is seen as a body that, governs the entire field of action of investigations in an almost total manner.

In the Italian system, the Public Prosecutor directs and controls investigations from their very beginning.

The judicial Police answer to the Public Prosecutor to the extent that they carry out the instructions given to them.

They have to immediately report the outcome of the investigations they have undertaken either on assignment or on their own initiative.

Therefore, the Public Prosecutor plays an absolutely crucial role starting from the point where they organize the preliminary investigation right through to the judgment stage.

The advantages of such procedures are often very evident if we recollect the need for effectiveness and promptness in managing the investigation.

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Before going into detail about the Italian experience in the fight against organized crime, we need to consider one aspect that is typical of our legislation in this field.

The Italian antimafia legislation developed from the start in a non - organic manner always driven by dramatic events that required an immediate and visible reaction by the State.

The core antimafia legislation was enacted in 1982 by a law which introduced important new elements: the crime of mafia - type conspiracy and the possibility to use special procedures to seize the illegal proceeds of crime deriving from mafia activities.

To understand the importance of this new category of crime I must explain that an organization is considered a mafia type when it uses the power of intimidation arising from combination of criminal relationship and their consequent binding requirement for silence accepted by those involved and imposed upon the surrounding social environment.

Furthermore this type of organization aims to commit an indeterminate number of crimes and to directly or indirectly control legal economic activity and public work contracts or to condition the political rights of citizens by trying to influence their votes in elections.

In our experience in Italy, the introduction of this new type of crime has produced new important consequences also for the organisational structure of the investigating magistrates and we can say that this has been the first step towards the subsequent reorganisation of the Public Prosecutor Office.

Recognition of such a new crime and of the existence of this serious type of organized criminality necessarily requires a new way of working.

That new crime requires us to prove the link between facts and persons, the need to exchange knowledge and opinions between magistrates and different offices and to store the information so collected.

In this way experience developed spontaneously in the antimafia pools, as had already happened against terrorism in the 70's and 80's.

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This experience, together with the application in 1988 of a new Code of criminal procedure, as I have said, gave the best possibility to the Prosecutor to direct investigations aimed at best fighting organized crime.

Since 1991, Italy has launched a wide ranging reorganisation of the Public Prosecutor's and police offices.

In fact these matters require:

- a strong specialisation by magistrates and police officers;
- a global vision of the criminal phenomena and, therefore, a special ability to analyse and assess criminal relations in relation to the logic of permanently structured organisations;
- modern and coherent regulations over the organisation of the work of the magistrate and of the judicial police;
- special research procedures to prove the offence.

The reality of this situation has imposed upon the most important Public Prosecutor's Offices the need to equip themselves with overall investigative strategies, linked to the availability of a vast wealth of information.

Other factors as well have contributed towards this process of assessing the investigative role of the Public Prosecution.

In particular there was an exclusive concentration in the office of the public prosecution of knowledge deriving from the investigation.

While, as for organised crime, the Public Prosecutor alone was able to gather evidence from the statements of criminals who had turned state's evidence, and from the statements of entrepreneurs and public officials involved in the investigations into corruption or fraud.

I repeat that our work in the matters linked to organized crime requires a global vision and a capacity to analyse and assess criminal relationships.

Organised crime-related offences are not impromptu, but as a rule they are committed as part of a previously established plan.

Hence, such criminal offences are often connected and linked to one another, so that only by pinpointing and verifying such connections and relations can their strategy possibly be understood; and the group which committed them and the offenders be traced.

Police authorities and Public Prosecutor's offices have to perform their investigating activity within this larger perspective.

In Italy the multiplicity of investigating authorities, the limited territory in which they operated, the difficulties in introducing effective forms of coordination among the various activities, was a major problem.

All this led to fragmented investigations unable to highlight the links and relationships existing between organised crime offences and thus were unable to understand their underlying strategy.

The fragmentation of investigations into organised crime offences should have been avoided.

In Italy 164 local Public Prosecutor's offices exist : this is a complicated judicial geography within which the coordination of the activities of the individual offices concerned in investigations involving more than one district, is rendered somewhat difficult.

The need to rationalise the organisation and the activities of the Public Prosecutor engaged in the investigation of proceedings involving organised crime and terrorism has been at the basis of the efforts at modernisation carried out so far.

To this end, in 1991 a law was passed, one of especial significance for our purposes, providing that Central and Inter-provincial departments should be created in the three main police forces in Italy (State Police, Carabinieri and Revenue police) with a view to ensuring collaboration of investigations into organised crime offences and to avoid the former fragmentation of investigations into them.

Before the legislation of May 1991 referred to earlier, the police bodies had jurisdiction at a provincial level and, thus, performed their investigating activity in a limited territory.

This is the reason why the multi-agency Central and Inter-provincial police Departments were created.

By doing so, the fragmentation of investigations into organised crime offences was avoided.

As already mentioned, the Central and Inter-provincial police departments were established with a view to fighting organised crime.

In October 1991 an additional investigative body was created – the Mafia Investigations Office DIA – with the specific task of conducting investigations into organized criminal groups and the criminal offences committed by them.

This is a multi-agency police body (that is made up of members of State Police, Carabinieri and Revenue police) whose functions also include analysis and the establishment of contacts with foreign counterparts.

This used to be the structure of Police forces with regard to organised crime, yet the organisation of the prosecuting bodies was quite different although they had had the task of directing the police investigation departments since 1989, under the code of criminal procedure.

In the same way, until 1991 all the existing 164 Prosecutor's offices were entitled to carry out investigations into Mafia-type organised crime.

This resulted in the previously mentioned drawbacks which had marked the activity of the police investigation departments before the 1991 reform and indicated fragmented and disjointed investigations and inadequate co-ordination.

So, in 1991 the organisation of the prosecuting body was substantially modified in relation to the fight against organized crime.

The 1991 reform made an important contribution to the reorganisation of the Public Prosecutor's Office by establishing 26 District Antimafia Offices with powers to investigate the said offences over a far larger area, namely that of the Court of Appeal, where each has an office, instead of the 164 Public Prosecutors at the courts (whose powers are restricted to a limited territory).

Each office (DDA) is made up of a varying number of Prosecutors according to the size of the district (between two and fifteen)

The same law instituted the Direzione Nazionale Antimafia, where I now work, and about which I will now talk.

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The National Antimafia Direction was conceived by Giovanni Falcone, a magistrate who was murdered by the Mafia on the 23 rd May 1992.

It is a great privilege for me to take this occasion to honour his memory, that of his wife, who was also a magistrate, and his body guards who died with him in the explosion.

This terrible event marks a turning point in the history of our country.

The National Antimafia Direction (DNA) was established within the office of the Prosecutor General attached to the Court of Cassation in Rome with a view to conducting a more successful fight against organized crime.

The National Antimafia Direction (DNA) is composed of Prosecutors who form a judicial body mandated to oversee both the investigations and the forces of law enforcement.

In particular the Office has a central role in the coordination and organisation of investigations into so called “Mafia crimes” carried out by the District Antimafia Offices.

The DNA therefore, does not conduct investigations directly, apart from occasionally taking over cases from the District Antimafia Offices (DDA).

Each of the 26 DDA throughout the country is in fact responsible for investigations concerning crimes set out under Section 51 (3).(a) of the code of Criminal Procedure, namely :

- Mafia-Type conspiracy (section 416a of the Criminal Code) identified by three patterns present in the “Mafia method” that constitute the requirements of mafia - type conspiracy: use of violence, imposing a regime of silence, committing crimes to obtain illegal benefits such as control of administration, commerce etc.
- conspiracy for the purposes of illicit trafficking of narcotic or psychotropic substances;
- conspiracy for the purposes of smuggling of tobaccos processed abroad;
- kidnapping for ransom;
- conspiracy for the purposes of committing the crime of trafficking in human beings, enslavement or holding in slavery or servitude; acquisition and transfer of slaves.

The law provides special measures to counter crimes of this nature:

- heavier sentencing powers for judges;
- longer investigations;
- less rigorous procedures to use telephone interception and other listening devices;
- possibility to use special investigative techniques such as the use of undercover agents ;
- particular ways of taking evidence during a trial such as videoconferencing.

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As I said, the most important new development was the creation of the DNA as a coordinating body for the 26 local DDA.

The DNA consists of the National Antimafia Prosecutor ( presently Piero GRASSO) supported by 20 deputy Antimafia Prosecutors. The office employs 180 administrative staff and also uses 32 members of the judiciary police and 20 ITC consultants.

The relations between the National Antimafia Prosecutor and the 26 District Antimafia Prosecutors offices are defined as follows:

the National Antimafia Prosecutor may issue specific instructions to, and convene meetings with, District Prosecutors to resolve any disagreement that may exist over the handling of a mafia case.

This role is the responsibility of the National Antimafia Prosecutor or, on his authority, by deputy Prosecutors belonging to his office .

The National Antimafia Prosecutor may also allocate Prosecutors from the National Office to the District Offices on a temporary basis to independently handle criminal proceedings regarding “Mafia crimes”.

In general the role of the DNA is to obtain and process information and data on organized crime; in special cases, with a view to avoiding unjustified inertia in the conduct of the investigations and with a view to coordinating them.

The National Antimafia Prosecutor expresses his opinion on the occasion of conflicts of jurisdiction that may arise between prosecutor’s offices in the course of investigations; he has access to all registers of reported offences and to databases expressly set up at the District Antimafia Offices.

In order to carry out its work, the DNA uses a national database.

This database contains information from both judicial and investigative sources (e.g. crime reports sent to the judicial authorities, arrest warrants, convictions,

statements made by witnesses etc.) as well as information from some external data sources.

The information is thoroughly analyzed and computerized and forms a reliable source of information.

This information contained in the database is necessary to ensure impulse and coordination of the public prosecutor activities.

It can reveal, and often does indeed reveal, itself useful to promote the system of spontaneous information exchange within the framework of international relations.

The National Antimafia Office receives all information regarding undercover operations as well as decisions taken by the Prosecutor regarding postponement of execution, of precautionary measures, the arrests of suspects, and orders for the enforcement of sentences or seizures.

The National Antimafia Office receives reports of suspicious financial transactions concerning organised crime as well as reports by the Financial Information Unit set up within the Bank of Italy.

Copies of incoming and outgoing rogatory Letters are also sent to the National Antimafia Office .

In the performance of his duties, the National Antimafia Prosecutor may make use of law enforcement bodies specialised in combating organised crime (Mafia Investigations Office; Central and Inter-Provincial departments of police, Carabinieri and Revenue Police) and issues instructions concerning the use of these bodies for investigative purposes.

With a view to effectively coordinating investigations, ensuring an operational involvement of law enforcement bodies and making sure that investigations are prompt and exhaustive , the National Antimafia Prosecutor provides impetus , if necessary, to the District Public Prosecutors, through the Prosecutors in his office.

With a view to carrying out his functions in respect of impetus and coordination in investigations, the National Antimafia Prosecutor also has the power to question prisoners without need of any authorisation by other authorities.

With respect to persons suspected of belonging to Mafia organisations, he may request the enforcement of preventive measures such as special police surveillance and house arrest.

Notice must be given to the National Antimafia Prosecutor about interrogations carried out by law enforcement bodies with respect to "Mafia crimes".

The National Prosecutor has further powers in specific matters to :

prevent and prosecute mafia infiltration into public works contracts:

The National Antimafia Office is active in the network monitoring public works (infrastructure and strategic national industries) and is part of the Monitoring Committee for major public works;

give an opinion on prison benefits and non-custodial measures.

Prison benefits and non-custodial measures may be refused to prisoners when the National Antimafia Prosecutor or the District Antimafia Prosecutor is aware of existing connections with organised crime;

give an opinion to a judge regarding the lifestyle, personal and family conditions, economic activities, if any of persons applying for defence at the state's expense;

give an opinion regarding special protection of cooperating witnesses.

The DNA receives requests for admission to special witness protection and may express an opinion.

An opinion shall necessarily be expressed, both when precautionary measures are withdrawn or replaced as a result of cooperation.

This also applies for the modification, termination or periodical checks on the measure granted and also in order to concede prison benefits to convicts.

Moreover the office receives notification from the Prisons Administration service in cases of prisoners expressing a desire to cooperate.

As I said :

the National Prosecutor must receive notification of all undercover operations,  
the National Prosecutor must receive notification of money laundering.

the opinion of the National Prosecutor is required on the Special Prison Regime article 41 bis , Law no 354 of 26/07/1975 containing provisions on prison rules; the opinion of the National Antimafia Office is in fact required for the application of this special regime providing for the non-application of prison treatment rules.

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Furthermore,

the DNA is part of a Committee established to fight activities linked to international terrorism.

The National Antimafia Office is part of the European Judicial Network represented by two of its prosecutors indicated as contact points.

The EJM was established by a EU Council Joint Action adopted on 29 June 1998 in order to allow the exchange of information between national judicial authorities by supplying quick, informal and non-bureaucratic assistance.

Finally with respect to its own duties, the National Antimafia Office was indicated as a National correspondent of Eurojust (art. 9, Law no. 41 of 14/03/2005), a body established to combat serious types of crime in application of the decision taken by the Council of the EU on 28/02/2002.

In light of the spread of transnational organised crime, and at the request of the Ministry of Justice, the National Antimafia Office has established contacts with judicial authorities in other countries and signed cooperation agreements with some of them, to strengthen cooperation in the fight against organised crime.

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The system that I have just summarised shows itself to have been efficient over the years, and that only a global analysis of information and an efficient coordination of investigations can bring concrete results in the struggle against organized crime.

I believe however that despite the time and effort already expended we all still have a long road ahead of us not only to fight against, but also to defeat, organized crime.

Thank you for your kind attention

Obrigado