

Excerpts from the Italian Code of Criminal Procedure

Article 371 bis. Coordination activity by the national anti-Mafia public prosecutor

1. The functions entrusted to the national anti-Mafia public prosecutor shall relate to proceedings in connection with the offences as per paragraph 3 bis of article 51 and to proceedings for the application of anti-Mafia precautionary measures. To that end, he may employ the Head Office Investigations on Mafia the Central and Interprovincial Services of the Police, issuing orders to regulate their use for investigational purposes.
2. The National anti-Mafia and anti-Terrorism public prosecutor shall promote the activity of district public prosecutors so as to actually coordinate investigations, ensure a purposeful use of judicial police in its various branches and makes certain that investigations are carried out thoroughly and promptly.
3. For the performance of the tasks entrusted to him by the law, the national anti-Mafia public prosecutor shall, in particular:
 - a) ensure, in agreement with the district public prosecutors concerned, investigational connections also by the means of the judges/prosecutors attached to the national anti-Mafia department;
 - b) ensure, by temporarily transferring judges/prosecutors of the national and district anti-Mafia departments, flexibility and mobility as required to meet specific, case-related investigational or procedural needs;
 - c) collect and process news, information and data relating to organized crime in order to coordinate investigations and control criminal activities;
 - d) (repealed)
 - e) (repealed)
 - f) issue specific regulations concerning district public prosecutors in order to prevent or solve conflicts as to the modalities for the coordination of investigational activities;
 - g) call a meeting of the district public prosecutors concerned in order to solve any conflicts that have arisen in spite of the specific regulations issued and that have prevented promoting or implementing coordination activities;
 - h) provide, by an order to be accompanied by a statement of reasons, challengeable before the general public prosecutor attached to the "*Corte di Cassazione*" for taking upon himself any preliminary investigations relating to the offences as per para. 3 bis of article 51, whenever the meetings called to promote or implement coordination proved unuseful and such coordination could not be achieved because of:
 - 1) persistent, unaccountable investigational inactivity;
 - 2) repeated, unaccountable infringement of the obligations laid down in article 371 with respect of the coordination of investigations;
 - 3) (repealed)
4. The national anti-Mafia public prosecutor shall provide for taking upon himself the preliminary investigations referred to in the preceding paragraph after having collected the necessary information on the spot, either directly or through a judge/prosecutor attached to the national anti-Mafia department and entrusted with this task. Apart from specific cases, the national anti-Mafia public prosecutor or the judge/prosecutor entrusted by the latter with the above task may not commit the investigational activity to other departments in the office of the public prosecutor.

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Article 51. Functions of the public prosecutor – Functions of the heads of the district office of the public prosecutor.

3 bis. In the event of proceedings relating to crimes, whether attempted or completed, as per articles 416, sixth and seventh paragraphs, 416, put in place in order to commit offences referred to in articles 473 and 474, 600, 601, 602, 416-bis and 630 of the Criminal Code, to crimes committed by taking advantage of the conditions designated in the aforesaid article 416-bis or in order to facilitate the activities of the associations designated in the selfsame article, as well as to crimes as per article 74 of the consolidated text approved by Presidential Decree no. 309 of 9 October 1990, article 291-quarter of the consolidated text approved by Presidential Decree no. 43 of 23 January 1973 and article 260 of the Legislative Decree of 3 April 2006, no. 152, the functions designated in paragraph 1, sub-paragraph a9, shall be exercised by the office of the public prosecutor attached to the Court of the capital city in the district where there is the seat of the judge having jurisdiction.

Excerpts from the Italian Criminal Code

Article 416 (Unlawful Association to commit a crime)

When three or more persons associate in order to commit several criminal offences, those promoting or setting up or organizing such association shall be liable, for this sole offence, to imprisonment for 3 to 7 years.

For the sole fact of participating in the association, the punishment shall be imprisonment for 1 to 5 years

Those directing the association shall be liable to the same punishments as those promoting it.

If the participants in the association carry out armed raids of the country or the public roads, the punishment shall be imprisonment for 5 to 15 years.

The punishment shall be increased if the association includes ten or more persons.

Whenever the organization is aimed to commit any of the crimes referred to in Articles 600, 601 and 602, and Article 12, paragraph 3-bis of the provisions on the regulation of immigration and the status of foreigners, set forth in the legislative decree 25 July 1998 n. 286, imprisonment from 5 to 15 years in the cases provided for in the first paragraph, and from 4 to 9 years in the cases provided for in the second paragraph shall be applied.

Whenever the organization is aimed to commit any of the crimes referred to in Articles 600-bis, 600-ter, 600-quarter, 600-quarter.1, 600-quinquies, 609-bis, when the crime is committed against a minor under eighteen years, 609-quarter, 609-quinquies, 609-octies, when the crime is committed against a minor of eighteen years, and 609-undecies, the imprisonment from 4 to 8

years, in cases foreseen in the first paragraph, and imprisonment from 2 to 6 years, in cases provided for the second paragraph, shall be applied.

Article 416 bis (Mafia type unlawful Association)

Any person participating in a Mafia-type unlawful association including three or more persons shall be liable to imprisonment for 7 to 12 years.

Those persons promoting, directing or organizing the said association shall be liable, for this sole offence, to imprisonment for 9 to 14 years.

Mafia-type unlawful association is said to exist when the participants take advantage of the intimidating power of the association and of the resulting conditions of submission and silence to commit criminal offences, to manage or at all events control, either directly or indirectly, economic activities, concessions, authorizations, public contracts and services, or to obtain unlawful profits or advantages for themselves or for others, or with a view to prevent or limit the freedom to vote, or to get votes for themselves or for others on the occasion of an election.

Should the association be of the armed type, the punishment shall be imprisonment for 9 to 15 years pursuant to paragraph 1 and imprisonment for 12 to 24 years pursuant to paragraph 2

An association is said to be of the armed type when the participants have firearms or explosives at their disposal, even if hidden or deposited elsewhere, to achieve the objectives of the said association.

If the economic activities of which the participants in the said association aim at the achieving or maintaining the control are funded, totally or partially, by the price, the products or the proceeds of criminal offences, the punishments referred to in the above paragraphs shall be increased by one third to one half.

The offender shall always be liable to confiscation of the things that were used or meant to be used to commit the offence and of the things that represent the price, the product or the proceeds of such offence or the use thereof.

The provisions of this article shall also apply to the Camorra, 'Ndrangheta and to any other associations, whatever their local titles, even foreigners, seeking to achieve objectives that correspond to those of Mafia-type unlawful association by taking advantage of the intimidating power of the association.

Article 416 ter (Bargaining of votes between politicians and members of Mafia)

Whoever accepts the promise to obtain votes, through the ways referred to in the third paragraph of article 416-bis, in exchange of payment or promise of payment of money or other benefits, shall be punished with imprisonment from 4 to 10 years.

The same punishment applies to those who promise to obtain votes in the manner specified in the first paragraph.

Article 73 D.P.R. 09.10.1990 no. 309 (Association finalized to unlawful trade of drugs or psychotropic substances)

Anyone who, without authorization provided for by the art. 17, grows, produces, extracts refines, sells, offers, cedes or receives in any way, provides, trades, buys, carries, exports, imports, manages to others, sends, exchanges or sends, deliveries for any purpose or anyway illegally holds, drugs or psychotropic substances provided for in the art. 14 tables I and III, shall be punishable with detention from 8 to 20 years and with a fine of 26.000 euro to 260.000 euro.

Article 74 D.P.R. 09.10.1990 no. 309 (Association finalized to unlawful trade of drugs or psychotropic substances)

When three or more people create an association in order to commit more crime of those provided for by the art. 73, who promotes, constitutes, manages, organizes or finances the association shall be punishable with the detention not less than 20 years.

Who participates to the association shall be punishable with the detention not less than 10 years. The punishment is increased if the number of members is 10 or more or if between the members there are someone who uses drugs or psychotropic substances.

If the association is armed, the punishment in the cases indicated by paragraph 1 and 3, it may not be less than 24 years of detention and, in the case provided for the paragraph 2, to 12 years of detention. The association is considered armed when the members have the availability of arms or explosives, even in hidden or in a storage.

The punishment is increased if we have the case of letter e) paragraph 1 of the art. 80.

If the association is created to commit the facts described by paragraph 5 of the art.73 we apply first and second paragraph of the art. 416 of the criminal code.

The punishments expected by paragraphs from 1 to 6 are decreased by half to two thirds for who showed the proofs of the crime or to steal to the association important proofs to commit the crimes.

When in laws and decrees is named the crime provided by the art. 75 of the law 22 December 1975 n. 685, abrogated from the art. 38, paragraph 1, if the law 26 June 1990, n. 163, the reference concerns to this Article.

Artt. 270 bis and ter of the penal code

Article 270-bis (Associations for terrorist ends including international or for subversion of the democratic order)

Whoever promotes, sets up, organizes, manages or finances associations which propose to carry out acts of violence for terrorist end or subversion of the democratic order is liability to punishment of imprisonment from 7 to 15 years.

Whoever takes part in any such association is liable to imprisonment of 5 to 10 years.

For the purpose of the penal law, terrorist ends occur also when the acts of violence are directed against a foreign country, institution or international organization

For the person condemned it is always obligatory to confiscate those items that serve or were destined for the commission of the crime and items that are the price, product, profit thereof or that comprise their use¹

Article 270-ter (Assisting members)

Whoever, apart from cases of participating in the crime or aiding and abetting, gives shelter or provides food, hospitality, means of transport, instruments for communication to any person who is a member of the associations indicated in article 270-bis is liable to imprisonment for up to 4 years

The punishment is increased if the assistance given is continuous.

Those who commit the fact in favour of a close relative are not subject to punishment²

¹ This article, added by Article 3 of Decree Law 625 of 15 December 1979, converted with amendments in Law no. 15 of 6 February 1980 was amended in this way by Article 1 Decree Law no. 374 of 18 October 2001, as amended by conversion law 438 of 15 December 2001. The text of this Article in force after the amendments introduced by Article 1 of the above Decree Law 374 of 2001 (but before its conversion into law) was as follows:

“Associations for terrorist ends or for subversion of the democratic order.

Whoever promotes, sets up, organizes, manages or finances associations which propose to carry out acts of violence for terrorist ends or subversion of the democratic order is liability to punishment of imprisonment from 7 to 15 years.

Whoever takes part in any such association is liable to imprisonment of 5 to 10 years”

“Associations for terrorist ends or for subversion of the democratic order.

Whoever promotes, sets up, organizes, manages or finances associations which propose to carry out acts of violence for terrorist ends or subversion of the democratic order is liability to punishment of imprisonment from 7 to 15 years.

Whoever takes part in any such association is liable to imprisonment of 4 to 8 years”

² Article added by Article 1 of Legislative Decree 374 of 18 October 2001, as amended by conversion Law 438 of 15 December 2001. In the procedures for the crimes envisaged by this Article the provisions of Article 13, Legislative Decree 152 of 13 May 1991, as per what is set down by Article 3 of Legislative Decree 374/2001

The text of this article introduced by Legislative Decree 374 of 2001 before its conversion into Law was as follows:

“Associations for international terrorist ends.

1. Whoever promotes, sets up, manages or finances even indirectly associations that purpose to carry out abroad or in any event to the damage of a foreign state, institution or international organization, acts of violence against persons or things, for terrorist ends, is punishable by imprisonment from 7 to 15 years;
2. Whoever takes part in associations indicated in paragraph 1 is punished by imprisonment from 5 to 10 years”

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Article 648 (Handling stolen goods)

Apart from participation in the (predicate) offence, any person who acquires, receives or conceals money or goods which are the proceeds of a criminal offence, or who assists in acquiring, receiving or concealing such money or goods, with a view to gain for himself or another, shall be punished by imprisonment for between 2 and 8 years and by a fine from € 516 to € 10.329. The punishment shall be imprisonment up to 6 years and a fine up to € 516 if the offence is not serious.

The provisions of this article shall also apply if the person committing the offence of which the said money or goods are the proceeds is not chargeable or punishable as well as in the absence of the legal conditions for criminal prosecution in respect of the said offence.

Article 648bis (Money laundering)

Apart from participation in the (predicate) offence, any person who substitutes or transfers money, goods or assets obtained by means of intentional criminal offences, or who seeks by any other means to conceal the fact the said money, goods or assets are the proceeds of such offences, shall be punished by imprisonment from 4 to 12 years and by a fine from 1.032 to 15.493 euros.

The punishment shall be increased if the offence is committed in the course of a professional activity.

The punishment shall be decreased if the money, goods, or assets are the proceeds of a criminal offence for which the punishment is imprisonment up to 5 years

The final paragraph of article 648 shall apply.

Article 648 ter (Utilization of money, goods or assets of unlawful origin)

Apart from participation in the (predicate) offence and from the cases as per 648 and 648bis, any person using for economic or financial activities money, goods or assets obtained by means of a criminal offence, shall be punished by imprisonment from 4 to 12 years and by a fine from 1.032 euros to 15.493 euros.

The punishment shall be increased if the offence is committed in the course of a professional activity.

The punishment shall be decreased pursuant to paragraph 2 of article 648.

The final paragraph of article 648 shall apply.

Article 648 quarter (Confiscation)

In case of conviction or of application of punishment upon request of the parties pursuant to 444 of the Code of Criminal Procedure, for one of the offences under Article 648 bis and 648 ter , it is always ordered the confiscation of the goods which constitute the product or the profit, unless they belong to persons unrelated to the crime.

Whenever confiscation in the first paragraph is not possible, the Court orders the confiscation of amount of money, goods or other utilities which the offender has at his disposal, even through a third party, for a value corresponding to the product, profit or price of the crime.

In relation to the offences referred to Articles 648 bis and 648 ter, the prosecutor can perform , within and for the purposes of article 430 of the Criminal Procedure Code, any investigations that may be necessary concerning the properties, money or other benefits to be confiscated in accordance with the previous paragraphs.