

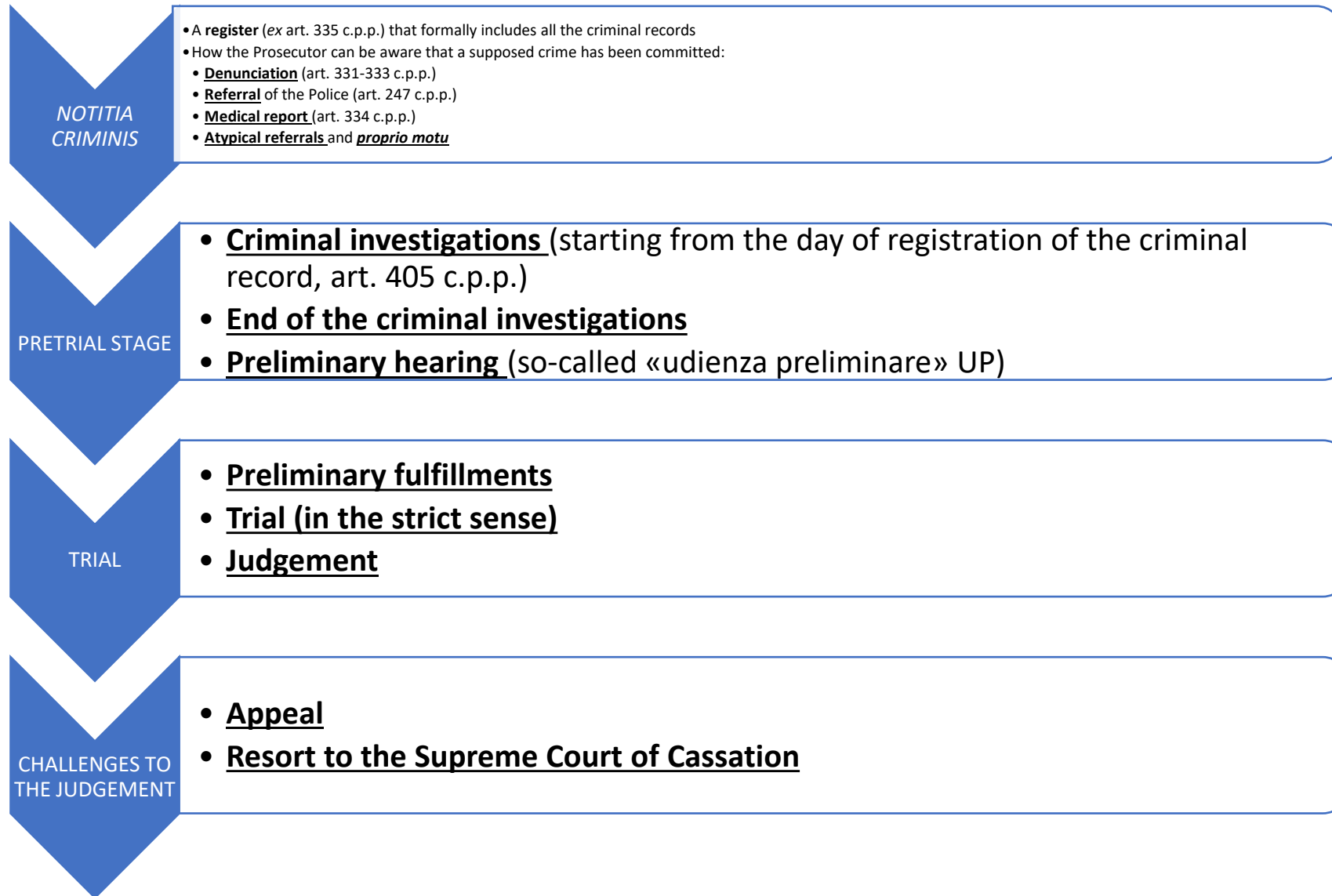
Guarantees of the defendant's rights during the pretrial stage in the Italian criminal procedure



UNIVERSITY
OF TRENTO

THE ITALIAN CRIMINAL PROCEEDINGS

Summary of the Italian criminal proceedings:



THE PRETRIAL STAGE

(A) The criminal investigations

GIP: a judge supervises the legality of investigation

Investigative activities of the the Police

Investigative activities of the Prosecutor

Investigative activities of the Defendant (of his/her Lawyer)

THE PRETRIAL STAGE

(B) The end of the criminal investigations

INACTION SCENARIO = The Prosecutor makes a request (to the GIP) for the dismissal of the case

ACTION SCENARIO = The Prosecutor makes a request (to the GUP) in order for the defendant to be sent to trial

SPECIAL PROCEEDINGS

THE PRETRIAL STAGE

(C) The preliminary hearing

GUP: a judge presides over the preliminary hearing

Focus → the confirmation or dismissal of charges

Judgements

- The defendant is sent to trial
- The case is dismissed

THE GUARANTEES OF THE DEFENDANT

THE DEFENDANT

SUSPECTED PERSON

**Who is under
investigation**

ACCUSED PERSON

Who is sent to trial

THE DEFENDANT

The general rule *ex* Article 61 c.p.p.

The rights and
safeguards of the
accused person

apply to

The
suspected
person

The rights and safeguards of the defendant during the pretrial stage: in general

Right of defence

- Article 24 Constitution

Presumption of innocence

- Article 27 Constitution
- Article 533 c.p.p. → BARD
- The «procedural side» of the (substantial) principles of:
 - Legality (*nullum crimen, nulla poena sine lege*)
 - Guilt (*nullum crimen, nulla poena sine culpa*)

«*Favor rei*»

«*Favor libertatis*»

The particular rights and safeguards: 1

Notice of investigation (Article 369 c.p.p.)

- The defendant does have the right to receive it in case the Prosecutor shall perform an investigative activity in which the defendant's lawyer does have the right to participate

Notice about the right of defence (Article 369-bis c.p.p.)

- The defendant does have the right to receive it in case the Prosecutor shall perform an investigative activity in which the defendant's lawyer does have the right to participate
- In any case, not later than the time in which the defendant receives the notice about the end of investigations (*ex Article 415-bis c.p.p.*)

Notice of investigation

The law that has been (hypothetically) broken

When (the date) and where (the place) the crime has been (hypothetically) committed

The call for the appointment of a private lawyer

Notice about the right of defence

The defendant cannot defend herself/himself
«in person»: a lawyer's assistance is compulsory

The name, the address and the contact number
of the public lawyer (if need be)

The call for the appointment of a private lawyer.
The notice that, otherwise, a public lawyer will be appointed

The duty to pay the public lawyer
(in case the requirements for the free legal aid are not met)

The notice of the requirements for the free legal aid

The right to be assisted by an interpreter and/or a translator

The particular rights and safeguards: 2

Right to appoint a private lawyer

- Article 69 c.p.p.

Right to directly address a court

- Article 121 c.p.p.
- The right to present *memoranda* and written requests to the judge

Right to evidence

- Article 190 c.p.p.: only legally forbidden and manifestly redundant/irrelevant can be excluded by the judge

Right to special evidentiary hearings in the pretrial stage

- Article 392 → cases
- In a nutshell, when there is the need to enclose the evidence urgently

Right to perform defensive investigations

- Article 391-*bis* c.p.p.
- Adversarial model

Right to participate in the trial (in person), and to not attend the hearings

- Article 485 c.p.p.
- Article 487 c.p.p.

Right to choose special proceedings

- Articles 438 to 464-*novies* c.p.p.

When she/he is into custody, the right to have a consultation with the lawyer

- Article 104 c.p.p.
- General rule: Immediately after the preventive custody has been enforced
- Exception (for specific serious crimes): a deferment (up to 5 days) can be authorized by the judge

The particular rights and safeguards: 3

During the questioning...

Right to participate in the questioning free

- *E.g.*, without handcuffs

Even with the defendant's consent, the right to moral freedom

- The application of methods or techniques that could affect the defendant's autodetermination and/or memory

Right to be warned, before the questioning starts,...

- About the right to remain silent
- That anything she/he does say can be used against her/him in a court of law
- That, with regards to any statement concerning the responsibility of other persons, she/he shall be treated as a witness