The principle of mandatory criminal prosecution and the independence of public prosecutors in the Italian criminal justice system

Caterina Scaccianoce*

Abstract The purpose of this article is to explain the reasons for adopting, in Italy, the principle of mandatory criminal prosecution. This rule is closely connected to the role and functions of Italian public prosecutors. The supreme guarantee deriving from the rule governing the mandatory status of criminal prosecution is to safeguard the equal treatment of all citizens before criminal law. This is possible only if criminal prosecution is the responsibility of a public body carrying out public functions without any external interference. This is the reason for the independence of public prosecutors from the other powers of the state. But, there has been a tendency to separate the *status* of public procurators, currently equal to that of judges. That could open the way for the dependence of public prosecutors on executive power, with the risk of substituting the provision of mandatory criminal prosecution with the opposite opportunity principle, thus helping to explain the large gap between the principle of mandatory criminal prosecution and the reality. Therefore, if the provision of mandatory criminal prosecution is to be fully respected it is absolutely necessary that public prosecutors remain independent from external influences. If this were not the case, criminal prosecution would become discriminatory and the principle of equality would be damaged.

Keywords Public prosecutors – independence – principle of mandatory criminal prosecution – investigations – impartiality-objectivity

List of abbreviations

Aa. Vv.	Various Authors
Corte cost.	Constitutional Court
Cost.	Italian Constitution
c.p.p.	Code of Criminal Procedure
disp. att. c.p.p.	Actualization's norms of Code of Criminal Procedure

Introduction

In Italy, during the last reformation of the code of criminal procedure, it became evident that a structural reorganization of the public prosecutor's office would also be required in order to bring this institution – that carries out criminal investigations – as much as possible in line with the substantial procedural changes, which have been moving towards a more accusatorial system of justice (cf. Illuminati 1994, p. 219).

Especially with the adoption of a trial by parties, it became necessary to remove any ambiguities arising from his controversial position that to induce to tell about him of an "impartial part" (cf. Carnelutti 1953, p. 257, for whom becoming an impartial party is like squaring the circle).

Constitutional regulations directly regarding public prosecutors (though open to interpretation) supported the need to redefine the institutional position of public prosecutors whose investigative responsibilities

* Caterina Scaccianoce is a Doctor of Criminal Procedure at the University of Palermo, Department of Criminal Procedure, Criminal Law and Criminology. She holds a PhD from the University of Italy at Palermo. Her research interests include the role of public prosecutors and their functions, with special attention to the principle of mandatory criminal prosecution. She is author of the book entitled "*The inaction of the public prosecutor*", Giuffrè, Milano, 2009, pp. 364.

arise from the obligation to prosecute. This factor, still today, requires their independence from external influences and state powers.

The controversy that arose from the work of the Constituent Assembly – and the subsequent approval of art. 112 Cost. – has two main, contrasting facets. The first regards the principle of the mandatory criminal prosecution and the necessary independence of public prosecutors; while the second dwells on the opportunity principle and the unavoidable dependence of public prosecutors on executive powers[1] (cf. Neppi Modona 1987, pp. 39-85).

It is without doubt that the definitive option for the first correlation was affected by the climate of the time. It was an expression of the fear that there could be a reappearance of the conditions of unacceptable illegality experienced under Fascism, when the indiscriminate use of criminal prosecution substantially legitimized impunity from serious crimes (cf. Di Federico and Guarnieri 1988, p. 171).

The greatest guarantee deriving from the rule governing the principle of mandatory criminal prosecution is, indeed, that of safeguarding the equal treatment of all citizens before the criminal law (cf. Damaska 1981, pp. 119-138). This is only obtainable if the power to prosecute is the responsibility of a public body carrying out public functions, in the interest of the public and without any external interference ("politicians are careful about giving orders in judicial matters, but on occasion they discreetly suggest or insinuate that criminal prosecutions should be delayed or even suspended", Calamandrei 1966 p. 203; cf. also Pisapia 1994, p. 18). The assertions of the Constitutional Court are unequivocal on this point (as seen in the sentence note of 15 February 1991, n. 88: "to be implemented properly, the principle of legality (art. 2 para. 2), which demands the repression of any violation of criminal law, requires legality in criminal procedure. Thus, a system such as ours, founded on the principle of equal treatment of all citizens before the criminal law […], can only be safeguarded through an obligation to prosecute. Realizing the legality of equality is not, however, fully possible if the body whose action is needed is dependent on other powers: to guarantee these principles, therefore, the independence of public prosecutors is indispensable").

The type of analysis that one would carry out anyway appears important for other criminal justice systems, even if this does not bear comparison with them. In fact one can fully understand the reason why in Italy one would still wish to defend the principle of mandatory criminal prosecution and at the same time the independence of public prosecutors, although more countries support the independence of public prosecutors but adopt the opportunity principle (cf. Harringer 1992; Deiters 2006; Garcia-Maltras De Blas 2009). In these countries – where the decision to prosecute or not is discretionary – public prosecutors need to carry out their functions impartially and avoid discrimination. This is possible by defining the guidelines on the role of prosecutor. In Italy the most scholars don't believe in the constitutional legitimacy of the "priorities" in the exercise of penal action of a public prosecutor because they are not compatible with the principle of mandatory criminal prosecution. The discussion is about who should define the guidelines: parliament, the government or the same office of prosecutor. Obviously the choice affects the independence of the public prosecutor. The analysis of the role and functions of Italian public prosecutors is important in understandingwhy in Italy, it is fundamental that the principle of mandatory criminal prosecution be defended. In fact, prosecutors have a monopoly over initiating criminal proceedings and at the same time they exercise their functions in full independence, but without any of the direct or indirect forms of political responsability. The public prosecutor is a "impartial part" that with the judges belong to the same body. The principle of mandatory criminal prosecution is a guarantee of their independence, but in spite of some difficulty, it now commands respect.. For this reason the European Commission's preference over the European Public Prosecutor

[1] As noted, some members of the Constituent Assembly were inclined towards a public prosecution that was dependent on the executive power (Bettiol and Leone), while others supported its independence, citing the strong connection between the public prosecution and the obligation to prosecute (Calamandrei).

is for a mandatory prosecution system, modified by exceptions (cf. Green Paper – Fijnaut and Groenhuijsen 2002, p. 330).

The independence of public prosecutors: a value to be defended

The independence of the public prosecutor – dating back to the "Togliatti" Decree[2], which substituted the original function of "direction" attributed to the Minister of Justice with that of mere "vigilance" – has never truly found explicit confirmation in the Italian Constitution. Therefore it became the object of insidious attacks from those who, in the name of career separation, failed to understand that a loss of autonomy of the judiciary would result in a corresponding expansion of political power into criminal investigations and trials (cf. Di Federico 1995, p. 411; Ead. 1998, Ead. 2008; see also Dominioni 2006, pp. 87-112; Illuminati 1994, pp. 215-224).

The will of the Constituent legislator to assimilate public prosecutors and judges, in terms of institutional roles and belonging to one single judicial order, can be identified in a sequence of constitutional rules, contained in Title IV. Here, in generic reference to magistrates – or to the magistracy –, the choice of giving public prosecutors the same judicial role and the same institutional collocation as judges seems to be confirmed. However, the other roles, contained in the same Title IV, offer support for an antithetical argument, by which the two juridical roles are clearly differentiated, with firmly defined references being made to both judges and public prosecutors. Indeed, even though art. 104, paragraph 1° establishes the existence of one single order which is autonomous and independent of all political power,paragraph 3° of the same article foresees the participation of the First President and the Attorney General of the Court of Cassation in the Higher Council of the Magistracy, a government body or self-governing organization. In accordance with art. 105, the Higher Council of the Magistracy is responsible for the employment, assignment, transfer, promotion and disciplinary action of magistrates in general (also, therefore, of public prosecutors). Art. 106, paragraph 1° stipulates that recruitment takes place through examinations, art. 7 ratifies the equal position of the two orders regarding irrevocability, with a further clarification that the two roles are different only in terms of function, thus excluding the possibility of belonging to different systems. Finally, art. 109 establishes a functional dependence between the police and the judicial authorities. The regulatory network thus seen – an expression of the constitutional choice to unify the judiciary – does not seem to be in harmony with two specific regulations contained in the same chapter, the artt. 101, paragraph 2° and 108 paragraph 2°, thus evidencing a loophole in the overall constitutional definition of the institutional position of public prosecutors. It is this ambiguity that has brought about calls for reformation and radical change in their institutional role.

With the principal aim of guaranteeing the effectiveness and efficiency of the accusatorial system, authoritative doctrine (Dominioni 2006, pp. 87-112) believe that it is necessary to establish a clear-cut difference between public prosecutors and judges, giving each of them, whose functions are clearly delineated by procedural law, a different institutional position. This has already been accomplished at a constitutional level, through the passing of art. 111 paragraph 2°, which explicitly acknowledges the third-party *status* of judges, who are deemed separate due to their impartiality.

In fact, only judges explicitly have the status of independence in constitutional regulations. This is in apparent disharmony with all other regulations governing the magistracy. It is this fact that represents the main argument of those who call for a distinction between judges and public prosecutors, with this latter group being dependent on other organizations, including the government. The subjection of judges to the law alone, as foreseen by art. 101, paragraph 2°, as well as the explicit reference made in art. 108, paragraph 2°, guaranteeing the independence of public prosecutors in circumstances of

[2] Art. 39 of R.d.l. 31 May 1946, n. 511, had, by giving the Ministry of Justice the function of vigilance, modified art. 69 of the judiciary, approved with R.d. 30 January 1941, n. 12, according to which "public prosecutors exercise the functions attributed to them by the law, under the direction of the Ministry of Justice".

special jurisdiction only[3], represent 'constitutional loopholes' that legitimize the implementation of reforms completely to separate the roles of judges and public prosecutors; this should be in terms both of their procedural position, with specific reference to their respective functions, and of their institutional position.

In accordance with art. 107, paragraph 4°, the choice of the Constituent legislator to return the responsibility of establishing guarantees for public prosecutors to judicial law seems to confirm a trend for separatism while also offering the necessary input for career diversification through common law, thus ignoring, in our opinion, an inevitable need for a revision of the Constitution.

Indeed, it is precisely this that appears to have taken place during the last reforms of the judiciary (*ordinamento giudiziario*), when the legislator made the apparently moderate decision to clearly separate public prosecutors from judges, in accordance with their different functions. This action, however, conceals a desire to carry out a substantial modification of the institutional system of the public magistracy as outlined by the Constituent legislator[4].

However, the argument in favor of the separation of the two roles in question seems to be the result of an erroneous belief that there is an automatic interdependence between the investigating magistrate's assumption of a 'party' role – something that certainly occurred with the adoption of an accusatorial system – and the necessary otherness, in terms of *status*, between those who carry out the functions of the public prosecutor and those who carry out jurisdictional functions. If a similar correlation seems indispensible in the light of the inquisitorial involutions with which the new code of criminal procedure was tainted[5] (Ferrua 1997, pp. 87-110), causing understandable fear that examining judges had been eliminated and substituted by examining public prosecutors (Illuminati 1994, pp. 220-221), then overcoming these 'lacunae' in the development of the accusatorial system, through the valorization of the principles of 'due process' – including the equality of arms – at the heart of art. 111 Cost., may slow down the parabola of role diversification between judges and public prosecutors. Any transcendence in the profile of their respective procedural functions could culminate in the repudiation of the principle governing public prosecutors' independence from external influences, as explained in articles 104, paragraph 1°, 107, 108, 109 and 112 Cost. This aspect doesn't take into account the effect which the institutional separation of judges and public prosecutors would have on the effective application of the principle of mandatory criminal prosecution: this, together with the existing gap between the principle in question and reality, would seem to open the way for the substitution of the mandate to prosecute with the much feared and opposed opportunity principle.

Thus it is important to ask why the principle of mandatory criminal prosecution is considered to be a guarantee of the independence of public prosecutors and why, for it to be considered effective, the Italian criminal justice system provides for rigid control by the judge on the public prosecutor's decision to prosecute or not.

It is necessary therefore, taking constitutional rules into consideration, to identify the role and functions that the current principles of criminal procedure, consolidated by the constitutional reform of art. 111, assign to public prosecutors. From an analysis carried out in these terms, it is possible to make some valid observations, the better to understand three important aspects. First, why public prosecutors are responsible for driving forward jurisdictional activities; secondly, how public prosecutors are obliged to

[3] It is evident, however, how this argument lends itself to an antithetic interpretation, confirming, a fortiori, the independence of public prosecutors with respect to ordinary jurisdiction.

[4] The reference is to d.d.l. 25 July 2005, n. 150, and its partial putting into effect through d.lgs. 20 February 2006, n. 106, regarding the internal reorganization of the offices of the public prosecution and l. 30 July 2007, n. 111, regarding the separation of functions.

[5] Interventions of the Constitutional Court on this subject are well-known. Along with some legislative reforms, they came to characterize the 1990s, attributing, in the name of the principle of non-dispersion of means of evidence, approbatory value to evidence assumed by public ministers or the police outside the cross-examination.

exercise the propulsive *vis* of the criminal process, an expression of multiple powers, also of a discretionary nature. In this context, the conditions and limits foreseen by the system are useful in understanding how vast the scope of independent initiative actually is, especially in the form of inaction: public prosecutors have the essential function of deciding whether or not to set the wheels of justice in motion. Finally, the third observation regards the mechanisms set in place by the system to guarantee, both internally and externally, the full accomplishment of jurisdictional investigations.

The role and functions of Italian public prosecutors

One certainty is that public prosecutors are not judges, and it is this difference, stemming from a real dialectic between the two parties, that, today, is seen as being a precept of juridical civility, and an expression of an effective equality of arms[6], even if only fully realized during trials and not before.

It should be remembered, even though opinion is divided on the subject, how both judges and public prosecutors, despite having profoundly different functions, work within the criminal justice system and are both governed by a specific tenet of the Italian criminal justice system: the impartial search for and verification of judicial truth.

Also at the level of constitutional jurisprudence, the role of public prosecutors is expressed in these same terms, not as "mere prosecutor, but also as an *organ of justice* that is obliged to search for all elements of evidence that are relevant for the correct verdict, including any elements in favor of the accused" (Corte cost., 15 February 1991, n. 88).

This is the reason why it is possible to speak of equality of arms, principally in the sense of the safeguarding of "equal 'rights' during the trial, once *penal action* has been taken: and in particular with connection to the fundamental right represented by the right to prove there own innocence" (Maddalena 1994, p. 49; about the versatility of the term impartiality cf. also Foschini 1971, p. 123: he shows how this term may have two different meanings depending on whether it is applied to a judge or to a public prosecutor. In the first instance the focus is on the rectitude and balanced fairness of a judge, while the second denotes a certain transcendence in respect of the opposite interests implicit in a trial). The concept of party, in fact, cannot be disconnected from the necessarily triadic structure of the trial, which foresees a dialectical confrontation between two parties in front of a judge seated equidistantly from the two contenders. Everything takes place through a hearing debate, a principal phase delegated to form the evidence. During the phase of preliminary investigations, the Judge for Preliminary Investigations (*Giudice per le indagini preliminari*) is not present, unless expressly requested – art. 328 c.p.p. confirms this assumption – and therefore there are no parties outside the jurisdictional parenthesis. Rather, on one side, there is a public subject, who, acting in the public interest, searches for evidence that will explain what has happened and who evaluates the likelihood of the prosecution being successful if it goes to trial. On the other side is a subject who, in most cases, is not aware of being investigated or, if he is, and has the necessary financial support, may carry out a parallel investigation.

Italian public prosecutors have the special responsibility of being biased towards the truth and the law and therefore, of being impartial. This concept may not be renounced unless regulations governing the phase of preliminary investigations are misinterpreted. As it has been observed, "the art. 358 of the code of criminal procedure must mean something…" when it confirms that public prosecutors, when confronted by their "natural" opponent, the defense, must not set out to "be accusatorial at any cost" (Chiavario 2006, p. 14). In other words, public prosecutors should not behave like "two-faced Janus" (Cristiani 1995, p. 17), an impartial searcher of all evidence, but, in accordance with previously cited art. 358 c.p.p., must carry out their activities while maintaining a willingness to support the requests of their

[6] Known as the principle of the parity of arms, in art. 111 Cost., it was stigmatized by the Constitutional Court (6 February 2007, n. 26) on the subject of impugnation of public prosecutors on occasion of the declaratory judgment of unconstitutionality of art. 1 of law 20 February 2006, n. 46, which had excluded the possibility for the prosecution to appeal against acquittals, except in circumstances foreseen by art. 603, para. 2, c.p.p. (decisiveness of new evidence).

'counterparts'. Art. 358 c.p.p., while being useful for ensuring the correct pursuance of criminal action, may appear, in one sense, to cancel out the requirement for investigations to be carried out with absolute rationality, as stipulated by the principle of investigative completeness. Indeed, it is this instrument that is most commonly invoked, usually by indigent defendants unable to carry out parallel investigations, to call for a widening in the scope of investigations and the opening of new investigative horizons, even if in the sometimes humiliating forms of so-called canalization that were in force before the passing of law n. 397 in 2000 on defensive investigations system (about canalization system cf. Nobili 1995, p. 128, for whom "the rights of the defense [were] rather set and dissolved – *ex* art. 358 e 367 c.p.p. – in the definitions and powers of the public prosecution").

While recognizing the innovative value of the new defensive investigations system, in the context of change that could subsequently see the same functional collocation of public prosecutors in the investigative system, as foreseen by legislators and represented in art. 358 c.p.p., we must not ignore the fact that the investigative function carried out by public prosecutors *pro reo* appears absorbed in the obligation to prosecute by reason of the "systemic, judicial and public nature of the institution [of public prosecutors] and function" (Relation to the Preliminary Project of Code of Criminal Procedure). This demonstrates, in terms of the principle of mandatory prosecution, "the alternative between a request for dismissal and the accomplishment of criminal prosecution" and not the indiscriminate recourse to criminal action "each time public prosecutors are informed of a notice of crime" (Constitutional Court., ord. 11 April 1997, n. 96, by which art. 358 c.p.p. aims neither to realize the principle of equality between prosecution and defense nor to give fulfillment to the right of defense, but rather to establish a correct and rational exercising of criminal prosecution […] with the aim of avoiding the creation of an unnecessary process).

3. Concluding Remarks

We can, therefore, identify a thread linking the whole pre-trial phase: one single protagonist – who may be helped, in a more or less mediated form, by any investigative work carried out by the defense – whose main aim is to verify the legitimacy of the accusatorial hypothesis in view of a trial that doesn't appear superfluous. To do this, public prosecutors (the direction) have a duty, and also an interest in carrying out thorough investigations while being free from the typical formalities of the jurisdictional phase. They are able to direct their investigations autonomously though in respect of regulations governing criminal prosecution, by which they are obliged not to overlook any evidence of circumstances, especially if requested by the party under investigation, in accordance with art. 358 c.p.p. This norm contains a regulation of juridical civility by which "during the phase of preliminary investigations, public prosecutors must have 'the judge's eye', evaluate impartially the information at his disposal and should not become seduced by an accusatorial thesis". "If all the potential guarantees of this rule were finally re-evaluated, one could formulate a precise disciplinary responsibility for public prosecutors who, while being able to carry out active favorable assessments of the accused, have overlooked areas of investigation that could have brought about dismissal of the case or – in a more serious scenario – could avoid unfair imprisonment" (Silvestri 2006, p. 229).

In contrast to those who believe that the *status* of 'party' attributed to public prosecutors implies a dependence on political power (cf. Zanon 1996, pp. 212-213), thus compromising their impartiality, one should stress how important it is that 'prosecutors' retain their characteristics of impartiality and objectivity. This is particularly true if we are to dispel any doubts about the inherent requirements for launching a criminal prosecution, whereby the collecting of evidence must be unremitting in its range so that trials are not based on partial evidence only. "It is in the interests of a public prosecutor to acquire any "facts" or "circumstances" that may discredit the accusatorial case, thus creating a fuller picture from which all necessary assessments can be made for successful criminal prosecution" (Tranchina 2006, p. 139). On the other hand, the defense is not governed by the same need for impartiality. Any evidence that may refute the prosecution's case is enough and the defense has "no responsibility to

propose a different reconstruction to that made by the prosecution". Above all, the defense has no obligation to produce any evidence that may "incriminate its client" (Ferrua 1997, p. 104).

Moreover, the figure of an investigating magistrate, seen as part of an institutional structure dedicated to criminal prosecution, is in direct contrast with the Constitution, which imposes a series of rules of obligation that ensure the maximum independence of public prosecutors, safeguards the equal rights and treatment of all citizens and guarantees the efficiency of judicial services. If the mandatory status of criminal prosecution is to be fully respected therefore, it is absolutely necessary that public prosecutors remain independent from external influences. Otherwise, criminal prosecution would become discriminatory and the principle of equality would be damaged. At the moment, in Italy it would be unwise to reform the role of public prosecutors, making them dependent on the power of the executive (Cordero 2006, p. 214; cf. also Molari 2006, p. 250; Chiavario 2006, p. 19).

In the Italian criminal justice system the decision to promote criminal action presumes that public prosecutors are confident that the charge will be maintained in the trail (artt. 408 c.p.p. and 125 disp. att. c.p.p.).

It's clear that thepublic prosecutor, "although his position of real and concrete objectivity and of respect of the equal treatment of all citizens before the criminal law, is partial when he takes the weight of the petitions in conflict with that of the other party" (Riccio 1977, p. 78). His partiality does not remove him from the *status* of a member of one single judicial order (*la magistratura*) that the Constituent legislator has reserved establishing his necessary independence from the other powers of the state.

In this contest the art. 112 Cost, establishing the principle of mandatory criminal prosecution, takes a central role as principal source from which derives the equal subjection of public prosecutors to the law, to guarantee independence from the other powers of the state (cf. Chiavario 2006, p. 17; Siracusa 1967, p. 544; Ubertis 1988, p. 4).

The principle of mandatory criminal prosecution, in other terms, provides "an efficient shield to guarantee legality in our country, especially against those pressures coming from political and economic power, that involve turning a blind eye to serious delinquency and attempts to avoid "embarassing" trials" (cf. Chiavario 2006, p. 17).

The judge's role as guarantor is closely related to the principle of mandatory prosecution: for an effective implementation of this principle the public prosecutor asks for the intervention of the judge. By placing himself above the parties, he thus ensures that the principle of mandatory prosecution is respected and the indispensable nature of his control sustains the implicit jurisdictional guarantee.

The mandatoy prosecution means, that, necessary scrutiny from the judge (Conso p. 66), with the controls of the legal conditions to not promote the criminal action (cf. Chiavario 1995, p. 77: his opinion is that the judge's control on the decision of public prosecutors to not prosecute is implicit corollary of the principle of the mandatory criminal prosecution). The adoption of condictions that implies objective valutations of superfluous judgement is useful to evade that behind this principle of the superfluous judgement can be hidden reasons of opportunity, i.e. political reasons.

That's why the discipline governing the public prosecutor's request to dismiss a case (*archiviazione*) becames the antidote for a concrete implementation of the principle of mandatory criminal prosecution, developing as jurisdictional obligatory itinerary when the presence of the judge, the active role of the victim, the intervention of General Prosecutor, the rules of cross-examination, the "forced investigations", the "forced charged", rappresent guaranteed stages established for a protection to the equal rights of citizens, to the good functioning of the justice system, and to the independence of public prosecutors, which the art. 112 Cost., as dictated by the Constitutional Court, is the point of the junction (sent. 15 february 1991, n. 88).

The control mechanism takes a guaranteed role involving, on one side, the function of unmasking the 'suspected inaction', and on the other, the function of reducing to a minimum those trials that could be revealed as superfluous.

However, the discretion of the public prosecutors could slip in the moments of evaluation if the information received was a crime notice that was placed before the request about the existence of the conditions for when not to prosecute. These moments concern the acquisition of the *notitia criminis*, the evaluation if the information received is a real crime notice, and the provision of screening mechanisms to remedy the mass of real crime notices.

The final result of these moments could degenerate in mechanisms of direct decision to dismiss a case by the public prosecutors without the guarantee of the judicial control: his free decisions could be the fruit of choices justified by reasons of opportunity, *i.e.* the arbitrary and discriminatory decisions not to prosecute.

This is dysfunction with serious consequence, connected to the 'personalization of prosecutorial functions', but one that can be remedied provided, on the one hand, there is co-ordination among various prosecutors and on the other, general guidelines on selection between various crime notices.

References

Calamandrei P. (1966), *Governo e Magistratura*, in *Opere giuridiche*, vol. II, Morano, Napoli, pp. 195-221.

Carnelutti F. (1953), *Mettere il pubblico ministero al suo posto*, in *Rivista di diritto processuale*, pp. 257-264.

Chiavario M. (1995), *L'azione penale tra diritto e politica*, Cedam, Padova.

Chiavario M. (2006), *La fisionomia del titolare dell'azione penale, tema essenziale di dibattito per la cultura del processo*, in Aa. Vv., *Pubblico ministero e riforma dell'ordinamento giudiziario*, Giuffrè, Milano, pp. 11-31.

Conso G. (1991), in AA. VV., *Accusa penale e ruolo del pubblico ministero*, Jovene, Napoli, pp. 5-8, 65-66.

Cordero F. (2006), *Procedura Penale*, Giuffrè, Milano, pp. 189-223.

Cristiani A. (1995), *La bilancia delle illusioni*, Giuffrè, Milano, pp. 10-18.

Damaska M. (1981), "*The Reality of Prosecutorial Discretion*", in *The American Journal of Comparative Law*, vol. 29, pp. 119-138.

Deiters M. (2006), *Legalitätsprinzip und Normgeltung*, Mohr Siebeck, German - [*Principle of Mandatory Prosecution of an Offence and the Applicability of Laws*].

Di Federico G. and Guarnieri C. (1988), *The Courts in Italy*, in J.L. Waltman and M. Holland (eds.), *The Political Role of Law Courts in Modern Democracies*, London, Macmillan Press.

Di Federico G. (1995), *Il pubblico ministero: indipendenza, responsabilità, carriera "separata"*, in *L'Indice penale*, pp. 399-437.

Di Federico G. (Summer 1998), *Prosecutorial indipendence and the democratic requirement of accountability in Italy. Analysis of Deviant Case in a Comparative Perspective*, in Brit. J. Criminol, Vol. 38, No. 3, pp. 371-387.

Di Federico G. (2008), *Obbligatorietà dell'azione penale e indipendenza del pubblico ministero, Conference entitled The obligation to prosecute in the Italy of 2008: a tabu to overpass?*, Roma 29-30 September.

Dominioni O. (2006), *Pubblico ministero e giudice, funzioni e carriere in discussione*, in Aa. Vv., *Pubblico ministero e riforma dell'ordinamento giudiziario*, Giuffrè, Milano, pp. 87-112.

Fabri M. (2007), *Criminal procedure and public prosecution reform in Italy: a flash back*, European Consortium for Political Research, Pisa, 7 September.

Ferrua P. (1997), *Processo penale, contraddittorio e indagini difensive*, in *Studi sul processo penale III*, Giappichelli, Torino, pp. 87-110.

Fijnaut C. and Groenhuijsen M.S. (2002), *A European Public Prosecution Service: Comments on the Green Paper*, in *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 10/4, pp. 321-336.

Foschini G. (1971), *Il pubblico ministero in un processo penale a struttura giurisdizionale*, in *Tornare alla giurisdizione. Saggi critici*, Giuffrè, Milano, pp. 109- 141.

Garcia-Maltras De Blas E. (2009), *Guarantees of independence and non-interference of the prosecution service*, Report – Campus Trieste Seminar on "The independence of the judicial system from the executive and legislative power", Trieste, Italy, 28 September-1 October.

Harringer K.R. (1992), *Independent Justice, the Federal Special Prosecutor* in *American Politics*. Lawrence: The University Press of Kansas.

Illuminati G. (1994), *La separazione delle carriere come presupposto per un riequilibrio dei poteri delle parti,* in Aa. Vv*., Il pubblico ministero oggi*, Giuffrè, Milano, pp. 215-224.

Luparia L. (2002), *Obbligatorietà e discrezionalità dell'azione penale nel quadro comparativo europeo*, in *Giurisprudenza Italiana*, pp. 1751-1758.

Maddalena M. (1994), *Il ruolo del pubblico ministero nel processo penale*, Aa. Vv., *Il pubblico ministero oggi*, Giuffrè, Milano, pp. 47-53.

Molari A. (2006), *Organizzazione del pubblico ministero*, in Aa. Vv., *Pubblico ministero e riforma dell'ordinamento giudiziario*, Giuffrè, Milano, pp. 249-262.

Neppi Modona G. (1987), in G. Branca, ed., *Commento all'art. 112 (e 107, 4 comma)*, in *Commentario della Costituzione*, Tomo IV, La Magistratura, Zanichelli, Bologna, pp. 39-85.

Nobili M. (1995), *Prove "a difesa" e investigazioni di parte nell'attuale assetto delle indagini preliminari,* in Aa. Vv*., Libertà personale e ricerca della prova nell'attuale assetto delle indagini preliminari*, Giuffrè, Milano, pp. 111-141.

Pisapia G. (1994), *Relazione introduttiva*, in Aa. Vv., *Il pubblico ministero oggi*, Giuffrè, Milano, pp. 15-23.

Pizzi W. and Marafioti L. (1992), "*The new Italian Code of Crminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation*", in *The Yale Journal of International Law*, vol. 17, n. 1, pp. 1-40.

Riccio G. (1977), *Processo penale e modelli di partecipazione*, Jovene, Napoli, p. 78.

Silvestri G. (2006), *L'organizzazione del pubblico ministero: rapporti nell'ufficio e tra gli uffici*, in Aa. Vv., *Pubblico ministero e riforma dell'ordinamento giudiziario*, Giuffrè, Milano, pp. 215-248.

Siracusa F. (1967), voice *Pubblico ministero (dir. pen. proc.)*, in *Novissimo Dig. Italiano*, vol. XIV, Utet, Torino.

Tranchina G. (2006)*, Il pubblico ministero*, in D. Siracusano-A. Galati-G. Tranchina-E. Zappalà, *Diritto processuale penale*, Giuffrè, Milano, pp. 135-151.

Ubertis G. (1988), voice *II) Azione penale*, in *Enc. giur. Treccani*, vol. IV, Roma.

Zanon N. (1996), *Pubblico ministero e Costituzione*, Cedam, Padova, pp. 1-291.