

person was arrested or placed under temporary detention.

2. The judge shall set the confirmation hearing as soon as possible and, in any case, within the following forty-eight hours, and shall inform without delay the Public Prosecutor and the lawyer.

3. The arrest or temporary detention shall become ineffective if the Public Prosecutor does not comply with the provisions of paragraph 1.

3-bis. If the Public Prosecutor decides not to appear, he shall forward the requests regarding personal freedom along with the elements on which they are based to the judge for the confirmation hearing.

#### Article 391

##### *Confirmation hearing*

1. The confirmation hearing is held in closed session with the necessary participation of the lawyer of the arrested or temporarily detained person.

2. If the retained or court-appointed lawyer cannot be found or has not appeared, the judge shall decide on the designation of a substitute according to Article 97, paragraph 4.

3. If the Public Prosecutor appears, he shall provide the grounds for the arrest or temporary detention and illustrate the requests regarding personal freedom. The judge shall then question the arrested or temporarily detained person, unless the latter has been unable or has refused to appear; he shall in any case hear the lawyer of the arrested or temporarily detained person.

4. If the person has been arrested or placed under temporary detention legitimately and the time limits provided for in Articles 386, paragraph 3, and 390, paragraph 1, have been fulfilled, the judge shall confirm the arrest or temporary detention by order. The Public Prosecutor and the arrested or temporarily detained person may lodge an appeal with the Court of Cassation against the confirmation order.

5. If the conditions of applicability provided for in Article 273 and any of the precautionary needs provided for in Article 274 apply, the judge shall order the application of one of the coercive

measures under Article 291. When a person has been arrested for any of the crimes referred to in Article 381, paragraph 2, or for any of the crimes for which arrest is allowed also in cases other than those of *flagrante delicto*, the application of the measure shall be ordered also outside the sentence limits provided for in Articles 274, paragraph 1, letter c), and 280.

6. If the judge does not apply a precautionary measure according to paragraph 5, he shall direct, by order, the immediate release of the arrested or temporarily detained person.

7. If the orders provided for in the previous paragraphs are not delivered during a hearing, they shall be notified to or served on anyone entitled to apply for an appellate remedy. The orders delivered during a hearing shall be notified to the Public Prosecutor and served on the arrested or temporarily detained person, if they have not appeared. The time limits for submitting an application for appellate remedy shall start as of the reading of the decision during the hearing or as of its notification or service. The arrest or temporary detention shall cease to be effective if the confirmation order is not delivered or filed within forty-eight hours of the moment the arrested or temporarily detained person was put at the judge's disposal.

#### TITLE VI-BIS

##### DEFENCE INVESTIGATIONS

#### Article 391-bis

##### *Interview, taking of statements and information by the lawyer*

1. Without prejudice to the incompatibilities referred to in Article 197, paragraph 1, letters c) and d), in order to gather information the lawyer, his substitute, the authorised private investigators or the technical consultants may have a consultation with whoever is able to provide information relevant for the reconstruction of the facts. In such case, the gathering of information takes place by means of an undocumented interview.

2. The lawyer or his substitute may also request that the persons referred to in paragraph 1 make a written statement or

provide information to be documented following the procedure provided for in Article 391-ter.

3. In any case, the lawyer, his substitute, the authorised private investigators or the technical consultants shall inform the persons referred to in paragraph 1 about:

- a) their role and purpose of the interview;
- b) their intention of simply having a consultation, receiving statements or gathering information specifying, in the latter case, the documentation procedure;
- c) their obligation to declare whether they are under investigation or accused in the same proceedings, in joint proceedings or for a joined offence;
- d) their right to silence or not to render any statements;
- e) the prohibition to reveal the questions that the criminal police or the Public Prosecutor might ask and the answers given;
- f) the criminal liabilities resulting from false statements.

4. Information about the questions asked or the answers given shall not be requested to the persons who have already been heard by the criminal police or by the Public Prosecutor.

5. To interview, obtain statements or gather information from a suspected or accused person in the same proceedings, in joint proceedings or for a joined offence, the lawyer of such person shall be informed at least twenty-four hours in advance and must participate in the interview. If the person does not have a lawyer, the judge, upon request of the lawyer conducting investigations, shall order the designation of a court-appointed lawyer under Article 97.

5-bis. In the proceedings for the crimes referred to in Article 351, paragraph 1-ter, the lawyer shall avail himself of the help of a child psychology or psychiatry expert appointed by the Public Prosecutor.

6. The statements obtained and the information gathered in breach of one of the provisions referred to in the previous paragraphs shall not be used. The violation of these provisions constitutes a disciplinary misconduct which shall be notified to the body with disciplinary powers by the proceeding judge.

7. To interview, obtain statements or gather information from a detained person, the lawyer shall have a specific authorisation

issued by the proceeding judge who is prosecuting the detained, after hearing his lawyer and the Public Prosecutor. Prior to the criminal prosecution, such authorisation shall be issued by the preliminary investigation judge. During the enforcement of the penalty, the Supervisory Penitentiary Magistrate shall decide on the authorisation.

8. The suspect, the victim and the other private parties must not participate in the gathering of information.

9. The lawyer or his substitute shall interrupt the gathering of information from the person who is neither accused nor suspected, if such person makes statements revealing indications of guilt against himself. The previous statements shall not be used against the person who made them.

10. When the person who is able to provide information relevant for the reconstruction of the facts has exercised the right referred to in letter d) of paragraph 3, the Public Prosecutor, upon request of the lawyer, shall set the examination of such person within seven days of the request. This provision shall not be applied against suspected or accused persons in the same proceedings and suspected or accused persons in different proceedings in the cases provided for in Article 210. The examination shall take place before the lawyer who is the first person to ask questions. The provisions of Article 362 shall also apply with reference to the information requested by the lawyer.

11. As an alternative to the examination referred to in paragraph 10, the lawyer shall be entitled to request to proceed to the gathering of testimony or to the examination of the person who exercised the right referred to in letter d) of paragraph 3, also in cases other than those provided for in Article 392, paragraph 1 by means of special evidentiary hearing.

#### Article 391-ter

##### *Records of statements and information*

1. The statement referred to in paragraph 2 of Article 391-bis, undersigned by the declarant, shall be authenticated by the lawyer or his substitute who shall draft a report containing:

- a) the date of receipt of the statement;

- b) his own personal data and those of the person who has made the statement;
- c) the certification that the warnings provided for in paragraph 3 of Article 391-*bis* have been issued;
- d) the facts object of the statement.

2. The statement shall be enclosed to the aforementioned report.

3. The information referred to in paragraph 2 of Article 391-*bis* shall be documented by the lawyer or his substitute who may avail themselves of the collaboration of trusted persons for the drafting of the minutes. If applicable, the provisions contained in Title III of Book II shall be observed.

#### Article 391-*quater*

##### *Request for documentation to the public administration*

1. The lawyer may request documents belonging to the public administration and copy them at his own expense if these are necessary to the defence investigations.
2. The request shall be addressed to the administration which has produced the document or permanently holds it.
3. If the public administration rejects the request, the provisions of Articles 367 and 368 shall apply.

#### Article 391-*quinquies*

##### *Power of secrecy of the Public Prosecutor*

1. If there are specific needs regarding the investigations, the Public Prosecutor may, by means of a reasoned decree, prohibit that the persons who have been interviewed disclose the facts and circumstances of the investigation to their knowledge. The prohibition shall not exceed two months.
2. The Public Prosecutor, while informing the persons who have made the statements of the prohibition referred to in paragraph 1, shall warn them about the criminal liabilities resulting from the unlawful disclosure of information.

#### Article 391-*sexies*

##### *Access to places and records*

1. When accessing a site to examine the state of the places and objects by means of audiovisual, photographic, planimetric, graphic or technical tools, the lawyer, his substitute and the assistants referred to in Article 391-*bis* may draft minutes containing:

- a) the date and place of the access;
- b) their own personal data and those of the participants;
- c) the description of the state of places and objects;
- d) the indication of the ascertainments that might be carried out by means of audiovisual, photographic, planimetric, graphic or technical tools which are an integral part of the document attached thereto. The minutes shall be undersigned by the participants.

#### Article 391-*septies*

##### *Access to private places or places not open to the public*

1. If it is necessary to access private places or places which are not open to the public and there is no consent by the persons in charge of them, upon request of the lawyer, the judge shall authorise the access, by means of a reasoned decree specifying the exact procedure to be followed.
2. In the case referred to in paragraph 1, the person who is present shall be informed about his right of being assisted by a trusted person, provided that such person is immediately available and suitable under Article 120.
3. Access to a dwelling and its appurtenances shall not be allowed unless it is necessary to verify traces or other material items concerning the offence.

#### Article 391-*octies*

##### *Dossier of the lawyer*

1. During preliminary investigations and the preliminary hearing, the lawyer may directly submit the elements of evidence in favour of his own client to the judge who has to take a decision with the intervention of the private party.

2. During preliminary investigations the lawyer who is informed of criminal proceedings may submit the defence elements referred to in paragraph 1 directly to the judge, so that he can take them into consideration should he have to take a decision that does not require the intervention of the client.

3. The documentation referred to in paragraphs 1 and 2, in its original version or a copy if the lawyer requests that the original documentation be returned, shall be inserted in the lawyer's dossier which is drafted and kept at the office of the preliminary investigation judge. The Public Prosecutor may examine and copy the documents prior to the issuing of the decision upon request of the other parties or with their intervention. After the conclusion of preliminary investigations, the dossier of the lawyer shall be included in the dossier referred to in Article 433.

4. The lawyer may, in any case, submit to the Public Prosecutor the elements of evidence in favour of his own client.

#### Article 391-nomies

##### *Preventive investigation*

1. The investigations provided for in Article 327-bis, with the exclusion of the actions requiring an authorisation or the intervention of a judicial authority, shall also be carried out by the lawyer who has received a specific mandate in case of criminal proceedings.

2. The mandate shall be issued bearing an authenticated signature and contain the appointment of the lawyer, as well as the indication of the alleged offences to which it refers.

#### Article 391-decies

##### *Use of results of defence investigations*

1. The parties may use the statements included in the lawyer's dossier under the provisions of Articles 500, 512 and 513.

2. Except for the cases in which Article 234 may be applied, the records submitted during the preliminary investigations or preliminary hearing and regarding the unrepeatable actions performed upon accessing the places under examination shall be included in the dossier provided for in Article 431.

3. In case of unrepeatable technical ascertainties, the lawyer shall inform, without delay, the Public Prosecutor so as to exercise the rights provided for in Article 360. In the other cases of unrepeatable actions referred to in paragraph 2, the Public Prosecutor has the right to participate in them, personally or by means of a proxy to the criminal police.

4. The minutes of the ascertainties carried out under paragraph 3 and, if the Public Prosecutor has exercised the right to participate in them, the records of the actions carried out under paragraph 2 shall be included in the lawyer's dossier and the investigative dossier. The provision referred to in Article 431, paragraph 1, letter c), shall apply.

#### TITLE VII

### SPECIAL EVIDENTIARY HEARING

#### Article 392

##### *Cases*

1. During preliminary investigations (<sup>1</sup>), the Public Prosecutor and the suspect may request that the judge proceed by means of special evidentiary hearing to:

a) the taking of a person's testimony, if there are reasonable grounds to believe that the same person will not be able to be examined during the trial due to illness or any other serious impediment;

b) the taking of testimony when, due to real and specific elements, there are reasonable grounds to believe that the person will be exposed to violence, threat, offer or promise of money or any other benefit so as to avoid that he testifies or gives a false testimony;

c) the examination of the suspect on facts regarding someone else's liability;

d) the examination of the persons referred to in Article 210;

e) the confrontation of persons who, in a different special evidentiary hearing or before the Public Prosecutor, have made contrasting statements, if one of the circumstances provided for in letters a) and b) occurs;

# THE ITALIAN CODE OF CRIMINAL PROCEDURE

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