



# *Ministero della Giustizia*

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## **The independence of the Italian Public Prosecutors**

The Italian Constitution excludes Public Prosecutors from the sphere of influence of the executive power and places them in their own right in the sphere of independence of the Judicial authority, that is safeguarded by a Superior Council of the Judiciary, whose members are elected to the extent of two thirds by judges, and that has competence in the field of appointments, promotions, transfers and disciplinary proceedings.

Under Article 104 of the Constitution “the judiciary is an autonomous and independent order vis a vis any other power”.

As a result Public Prosecutors have not only been placed out of the dependence of the Minister of Justice, but they have also obtained the same guarantees as the judges responsible for giving rulings (with whom they share the same career) that protect their professional position from any intrusion of the executive power.

In Italy, in particular, public prosecutors are judges included in the judicial order and participate in the unified culture of jurisdiction, in the sense that they belong to the same order, the judiciary, of judges and as such they are and must be fully independent.

The judges attached to a Public Prosecutor's Office enjoy maximum independence with regard to their status, therefore the recruitments, disciplinary proceedings, transfers and promotions concerning them are decided by the Supreme Council of the Judiciary (Article 105 of the Constitution); they are irremovable from their office (Article 107 of the Constitution); they are appointed after a public competition (Article 106, paragraph 1 of the Constitution). The functions performed by public prosecutors are encapsulated in the judicial order; they ensure compliance with the laws, prompt and regular administration of justice; protection of the rights of the State, legal persons and incapacitated persons; they promote repression of offences by carrying out the necessary investigations to establish whether requesting committal for trial or that the case be dismissed; they prosecute offences when investigations evidence elements capable to support charges in the trial; they enforce final judgments and any other decision made by judges as provided for by the law.

In particular, in criminal proceedings Public Prosecutors perform the function of the public party by representing the State's general interest and, under Article 112 of the Constitution, have an obligation to initiate public prosecution. From this principle it follows that public prosecution cannot be subject to criteria of political opportunity, or submitted to vetoes or directives adopted by the Government or the Parliament and that the body in charge of public prosecution, public prosecutors, is itself as independent vis a vis political conditioning as the judges responsible for giving rulings.

By virtue of their position, Public Prosecutors have also a duty of procedural loyalty; actually they must not limit themselves to seek evidence supporting the prosecution's reconstruction, but, based on 358 of the Code of Criminal Procedure, they must carry out checks on facts and circumstances in favour of the persons under investigation; therefore they cannot refuse to carry out investigations if the latter lead to establishing facts in favour of the person under investigation, they must file all the results of investigations in accordance with the deadlines provided for by the law and in any case at the same time as the service of the notice that investigations are concluded under Article 415 bis of the Code of Criminal Procedure.

At the hearing public prosecutors are fully autonomous in the performing of their functions.

Therefore the constitutional scheme has fully implemented the principle of separation of powers.

The Judicial Authority has been instituted as a power of guarantee, and has been provided with strong guarantees that allow its proper function to be performed: ensuring effective supervision of legality over the exercise of powers (both public and private ones) and therefore the rule of law within the framework of the State of law.



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