Paradigms of Judicial Supervision and Co-Ordination between Police and Prosecutors: The Italian Case in a Comparative Perspective

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This article intends to describe and analyse the significance and the limits of judicial supervision in Italy. Observations and conclusions will be mainly based on semi-structured interviews with prosecutors, police officers and lawyers conducted in Italy in 2006. It will be argued that prosecutors can effectively supervise cases that they prioritised even though they may leave the police wide discretion in the investigation of routine cases. In so doing, fresh perspectives in the debate around judicial supervision of police investigations will be explored. The question is of intrinsic interest for the analysis of the operation of continental criminal justice systems. Italian criminal procedure is a mixture of adversarial and inquisitorial legal principles and judicial supervision is firmly based on co-ordination between police and prosecutors (who direct the investigation). Moreover, the nature of judicial supervision has also been a subject of debate within the Anglo-American literature which has examined prosecutorial practice in inquisitorial criminal justice systems. Goldstein and Marcus in 1977 and the Royal Commission on Criminal Justice in England and Wales (Runciman) in 1993 reached similar conclusions: judicial supervision is, in practice, ineffective. Other authors such as Langbein and Weinreb have suggested a different interpretation and remarked on the prosecutor’s fundamental contribution, in inquisitorial criminal procedures, to the shaping of the case file. The analysis of prosecutorial practice in Italy can substantially

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contribute to this debate. And, more generally, it can help to conceptualise the role of prosecutors in contemporary criminal justice systems.

1. Introduction

This article examines a central feature of Italian criminal procedure – the prosecutor’s power to direct criminal investigations. It draws on the author’s empirical study conducted in Italy between April and October 2006. Following some guidance from five consultants (2 prosecutors, 1 police officer and 2 lawyers), 49 semi-structured interviews were conducted with prosecutors (27), police officers (11) and lawyers (11). Whilst some interviews were conducted in the centre and the south of Italy, the study focused on practice in the north and was conducted in 10 prosecution offices (lawyers and police officers working in the same area). Italian prosecutors are part of the judiciary and legally supervise and direct the police during investigations, though the police retain significant powers to shape investigation strategies. The central question is: how effective is judicial supervision in Italy? The study reveals that judicial supervision is effective despite the fact that prosecutorial practices do not fully reflect the legal principles that inform the inquisitorial tradition (or, at least, Italian criminal procedure). Thus, in this context, effectiveness does not necessarily mean fulfilling the specific legal objectives set out in the Italian code of criminal procedure. Judicial supervision is effective to the extent that its mechanisms, in practice, allow prosecutors to regulate and influence the investigation. There are various means to achieve this objective and close supervision of police activities is one. There are, however, other solutions: the prosecutors’ powers to take crucial decisions during investigations, their capacity to suggest investigation strategies and their interactions with the police can increase the prosecutors’ chances of exercising control and influence. The topic is relevant because it is central to the analysis of the role of prosecutors in contemporary criminal justice systems. Failure to supervise the investigation effectively (where this power exists) may open the door to extensive and uncontrolled police powers that, accordingly, can undermine both the rights of the defendant and of the victim. Italy is of interest for the analysis of continental inquisitorial systems because of the peculiar and problematic structure of Italian criminal procedure. These are a mixture of inquisitorial and adversarial principles in which the prosecutors’

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1) The size of the prosecution offices was variable, from very small to very large. Size was determined according to the number of prosecutors working in the office and taking into account the area for which the prosecution office has jurisdiction. From now on abbreviations will be used to indicate the interviewees. These are: CP (chief prosecutor), DCP (deputy chief prosecutor), AP (assistant prosecutor), APApl. (assistant prosecutor at the court of appeal), L (lawyer) and Pol. (police).