



**Case study:**  
**an Italian trial concerning date mussels**  
***(Lithophaga lithophaga)***

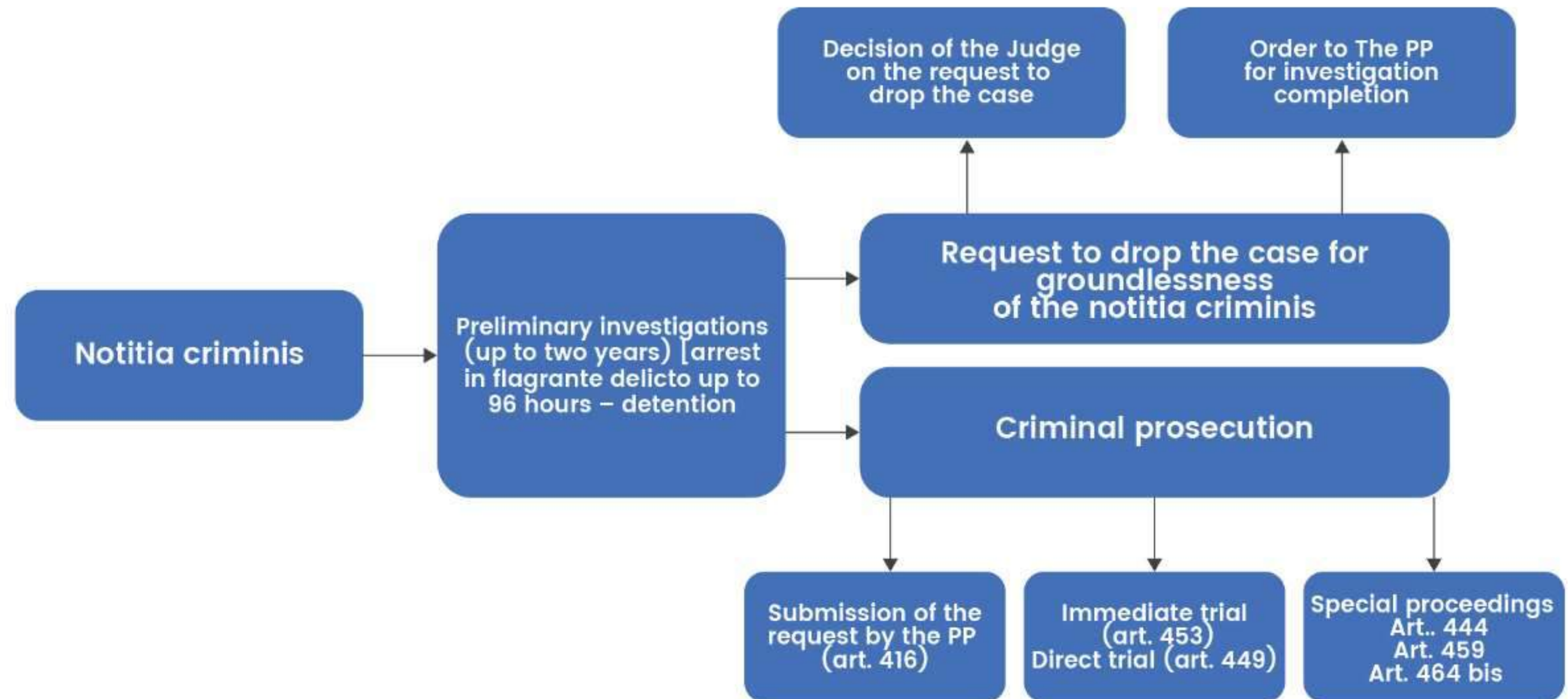
**Prof.ssa Daniela Mainenti**  
**Avv. Andrea Franco**



- ❖ SUMMARY OF THE CRIMINAL  
PROCESS IN ITALY
- ❖ INVESTIGATIONS
- ❖ THE PRELIMINARY HEARING
- ❖ SPECIAL PROCEEDINGS
- ❖ THE NEW DEAL FOR THE REFORM

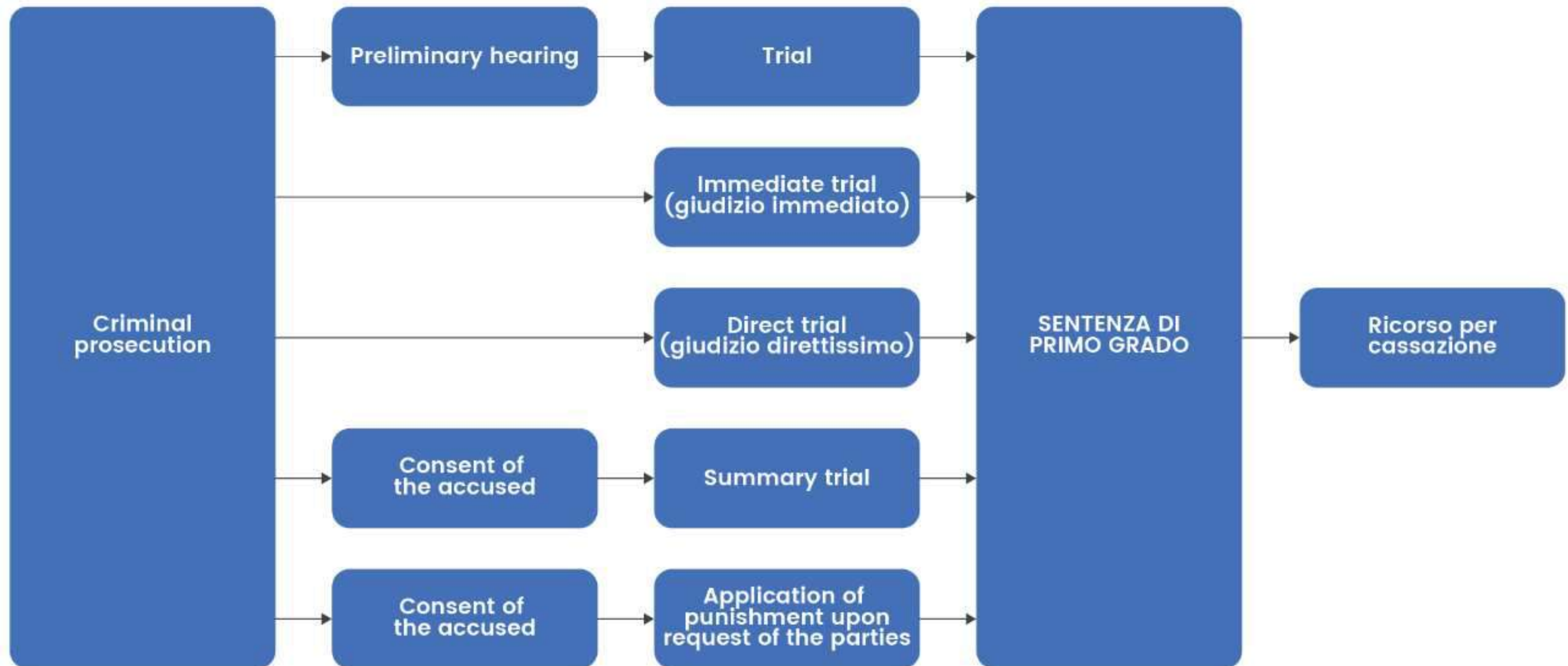


# 1. The preliminary investigation





## 2. Trial and special proceedings



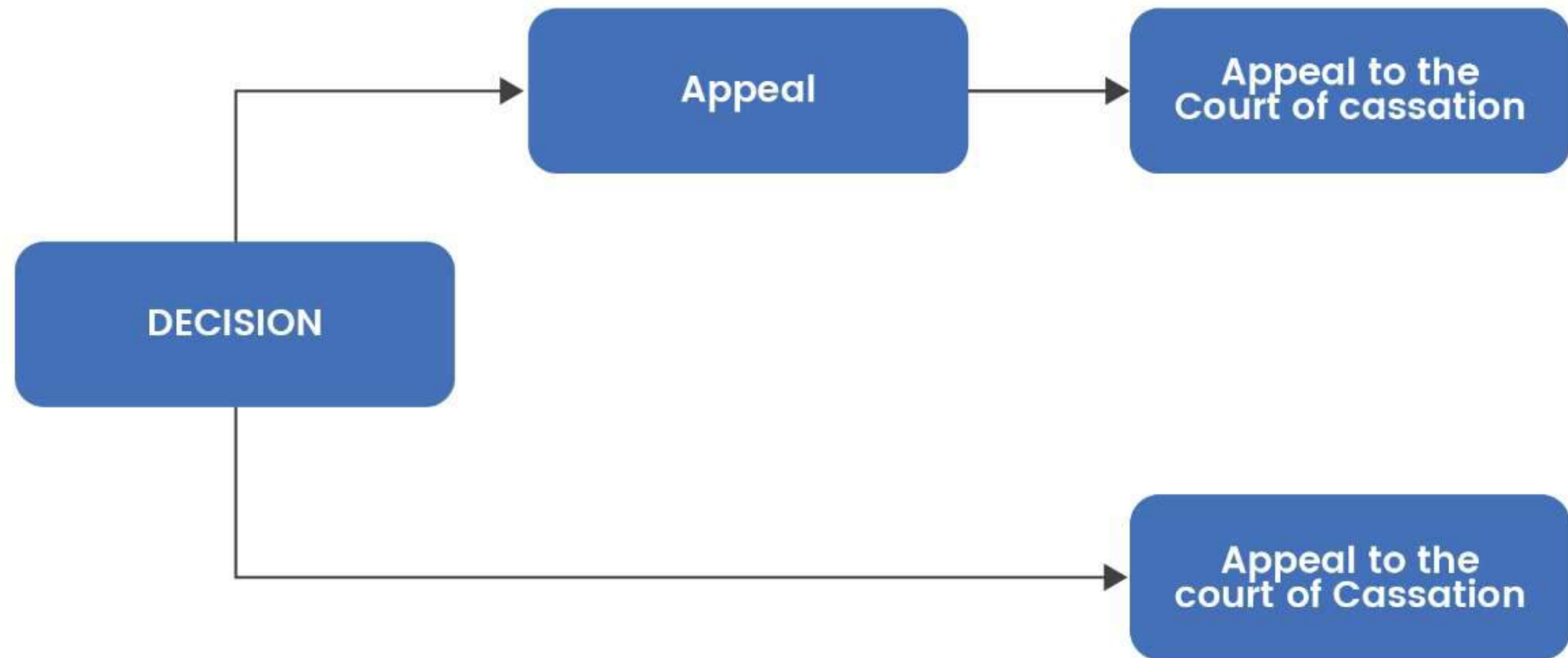




### 3. Appellate Remedies

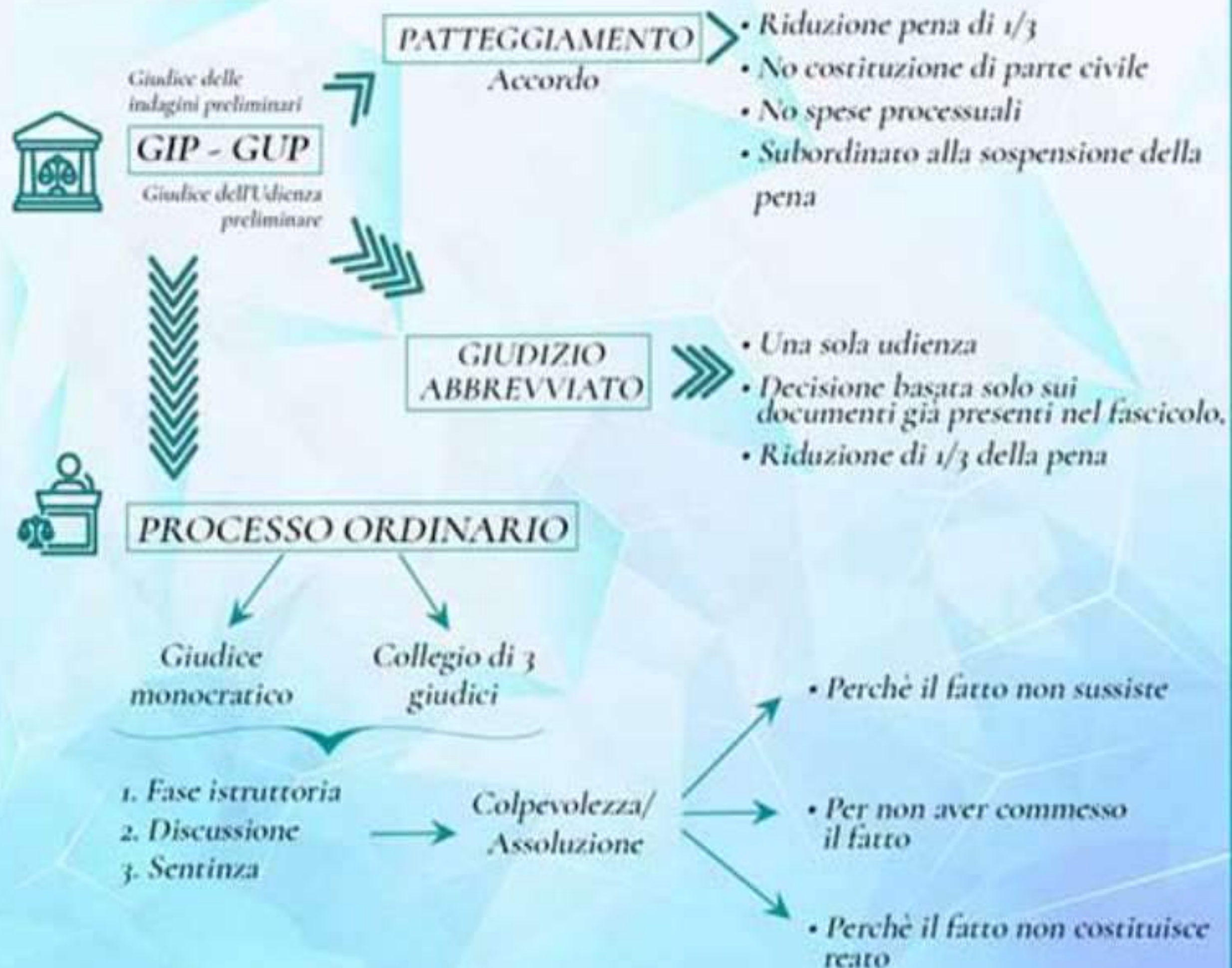
Case study: Italian criminal process  
concerning date mussels  
(*Lithophaga lithophaga*)

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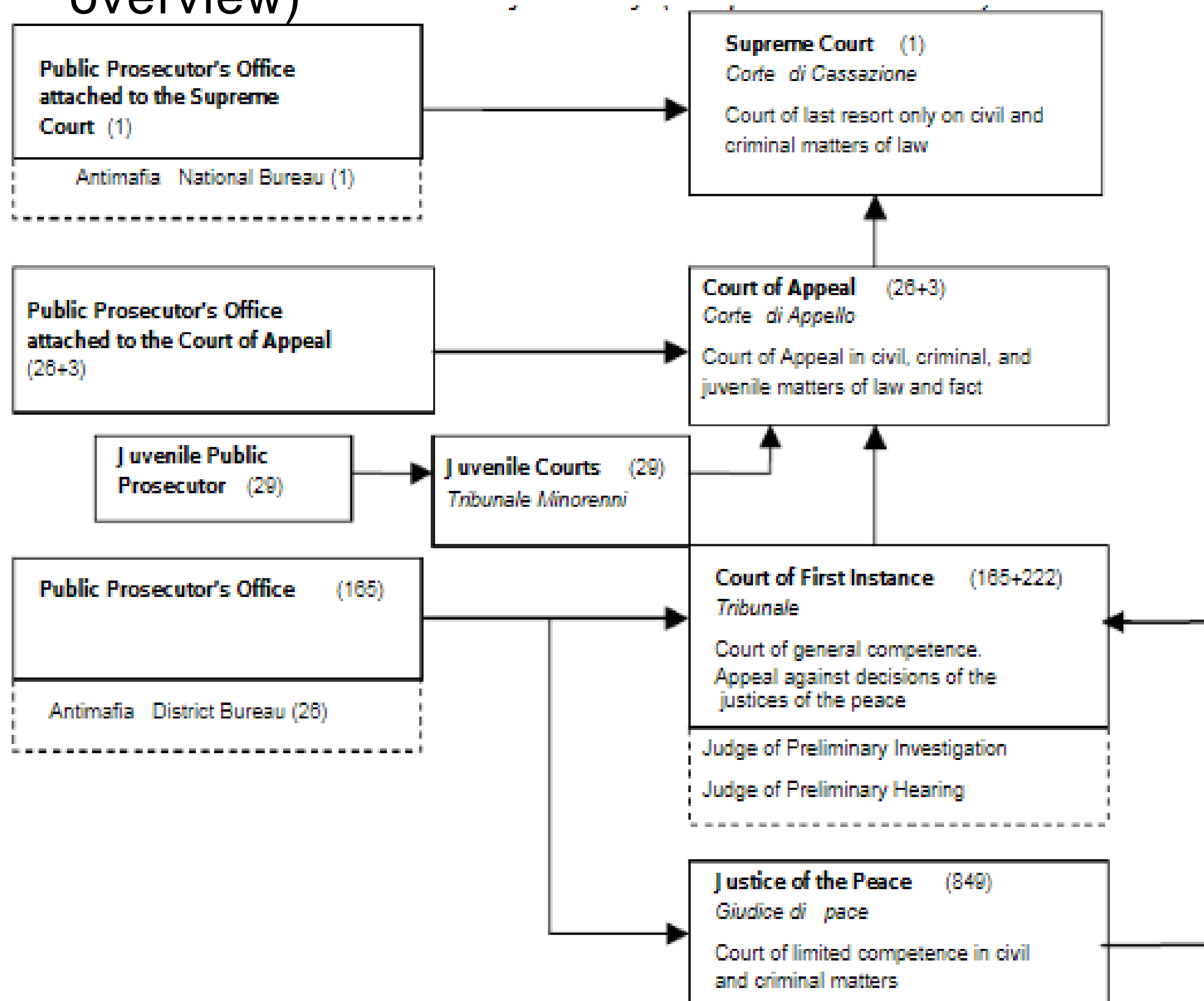


## 4. A GENERAL SCHEME





### The Italian criminal judiciary (simplified overview)





## 6. Italian special proceedings: main features

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<i>Proceeding</i>	<i>Usage</i>	<i>Trial</i>	<i>Sentence</i>	<i>Appeal</i>
<i>Decreto Penale – Penal Decree</i>	Cases where a fine is due	No trial	Fine (50% reduction in what should be paid)	No appeal allowed
<i>Applicazione della pena su richiesta delle parti – Plea Bargaining</i>	Cases where the sentence, after 1/3 reduction, does not exceed five years in prison	No trial, but plea bargain is possible just before the opening statements	No sentence, but the judge can review the plea bargain	No appeal allowed under parties' agreement
<i>Giudizio Abbreviato – Abbreviated Trial</i>	All cases except those punishable by a life sentence	No trial; the judge uses only the dossier	Verdict and written judgment, sentence reduced by 1/3	Appeal is allowed with some restrictions
<i>Giudizio Direttissimo – Direct Trial</i>	Defendants either are caught in act or confess	Adversary trial	Verdict and written judgment	Appeal is always allowed
<i>Giudizio Immediato – Immediate Trial</i>	Cases with overwhelming evidence	Adversary trial	Verdict and written judgment	Appeal is always allowed





### IN PARTICULAR THE SPECIAL PROCEEDINGS: ALTERNATIVE PROCEDURES (ART. 1, PARA. 10)

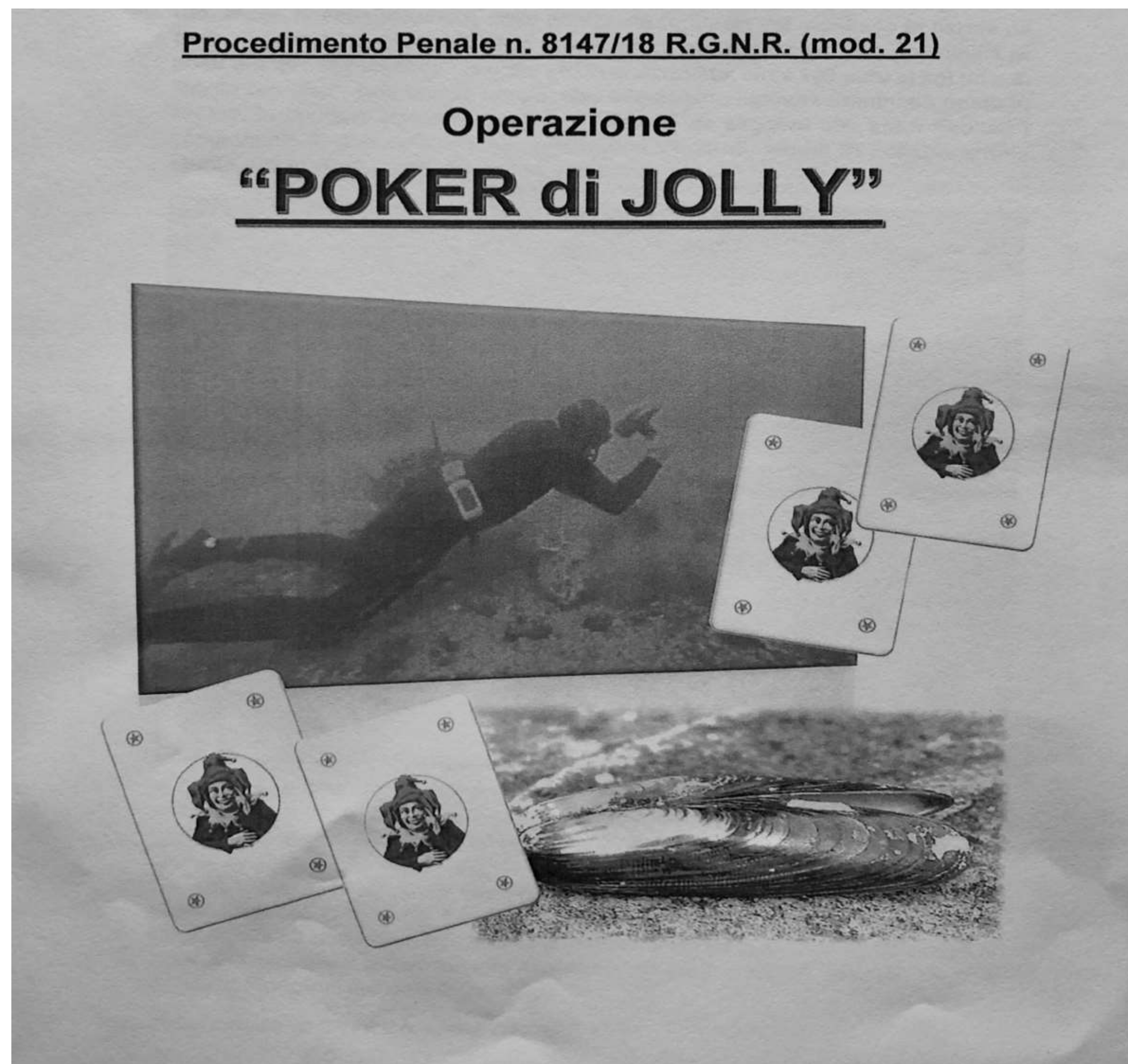
The reform of alternative procedures is aimed at extending their applicability and making them moremore usable, with a deflective effect on the trial procedure. In particular, as regards the list of guiding principles and criteria for what concerning plea bargaining, the Government must allow, when the prison sentence to be applied exceeds two years (so-called 'extended plea bargaining'), the agreement between the defendant and the public prosecutor must to be extended to accessory penalties and optional confiscation and it shall reduce the extra-criminal effects of the sentencing on request of the parties. It has also providing that it shall not have the effect of res judicata in disciplinary proceedings and in other cases. In abridged trials, the Government will have to intervene on the conditions for accepting of the request subject to an supplement of evidence, providing for its admissibility only if the integration is necessary for the decision and if the special procedure produces procedural economy in relation to the time of the trial. The Government must also provide that the penalty is further reduced by one-sixth in the event that no appeal is lodged by the defendant. On the subject of immediate trial, the Government will have to increase the possibilities of access to the bonus procedures in the face of the decree of the Judge for Preliminary Investigations ordering the immediate trial by providing that, in the event that the request for conditional abbreviated trial, the defendant may apply for an abbreviated trial without the addition of evidence (section 438(1) of the Code of Criminal Procedure) or requesting plea bargaining (section 444 of the Code of Criminal Procedure). When the defendant intends to request the application of the sentence pursuant to Article 444, but does not agree with the public prosecutor, or when the plea bargaining request is rejected by the judge for preliminary investigation, a request for an abbreviated trial may be made. By intervening on the decree proceedings, the Government will have to extend from 6 months to one year, the time limit available to the public prosecutor to request to the GIP to issue the decree, establishing that the prerequisite for the extinction of the offence is, in addition to the expiry of the time limit also the payment of the fine, and providing that if the convicted person renounce opposition may be allowed to pay a reduced fine. More generally, the measure aims to increase the possibilities of access to the GIP decree ordering the immediate trial and to allow the defendant, in the event of new objections at trial, to access at alternative procedures.



The corresponding Italian rules leave considerable uncertainty in identifying the threshold for criminally relevant offences.

- By the way, a satisfactory assessment can only be made if we are aware with certainty of the previous environmental site situations, which must be accompanied by the collection of adequate proof that highlights the violations following the general principles of presenting evidence in criminal trials.
- Thus, it is important for the administrative bodies of management and control be prepared to carefully monitor and document the state of preservation of the species or the protected habitat, so that sure elements of proof relating to the impact of alleged unlawful conduct can be presented in criminal trials









# The peculiarities and the importance of date mussels.

A ***date mussel*** is a particular species of **bivalve mollusk**.

It can **secrete** an **acid** capable of **dissolving** rocks of **calcareous** nature, digging **holes** in which to **settle**. Though **not «endangered»**, it is preserved as it plays a fundamental role as an **«ombrella species»**, since the holes it creates represent the perfect habitat for a conspicuous number of other species.





## **The date shell is protected by a variety of national and supranational legislation:**

- 1) Convention on international trade in endangered species of wild fauna and flora (*Washington D.C. – 1973*);
- 2) Convention on the conservation of European wildlife and natural habits (*Bern – 1979*);
- 3) Convention for the protection of the Mediterranean Sea against pollution (with annex and Protocols for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircraft and Protocol concerning co-operation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency) (*Barcelona – 1979*);
- 4) Council directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (*1992*);
- 5) Council regulation (EC) n. 1626/94 laying down certain technical measures for the conservation of fishery resources in the Mediterranean (*1994*);
- 6) Council regulation (EC) n. 1967/2006 concerning management measures for sustainable exploitation of fishery resources in the Mediterranean Sea (*2006*);
- 7) Several Ministerial Decrees (*1988; 1990; 1992; 1994; 1996; 1998*);
- 8) D. Lgs. n. 4/2012.



The **flourishing clandestine market** of illegally collected date mussels can lead to **massive earnings**.

Four steps:

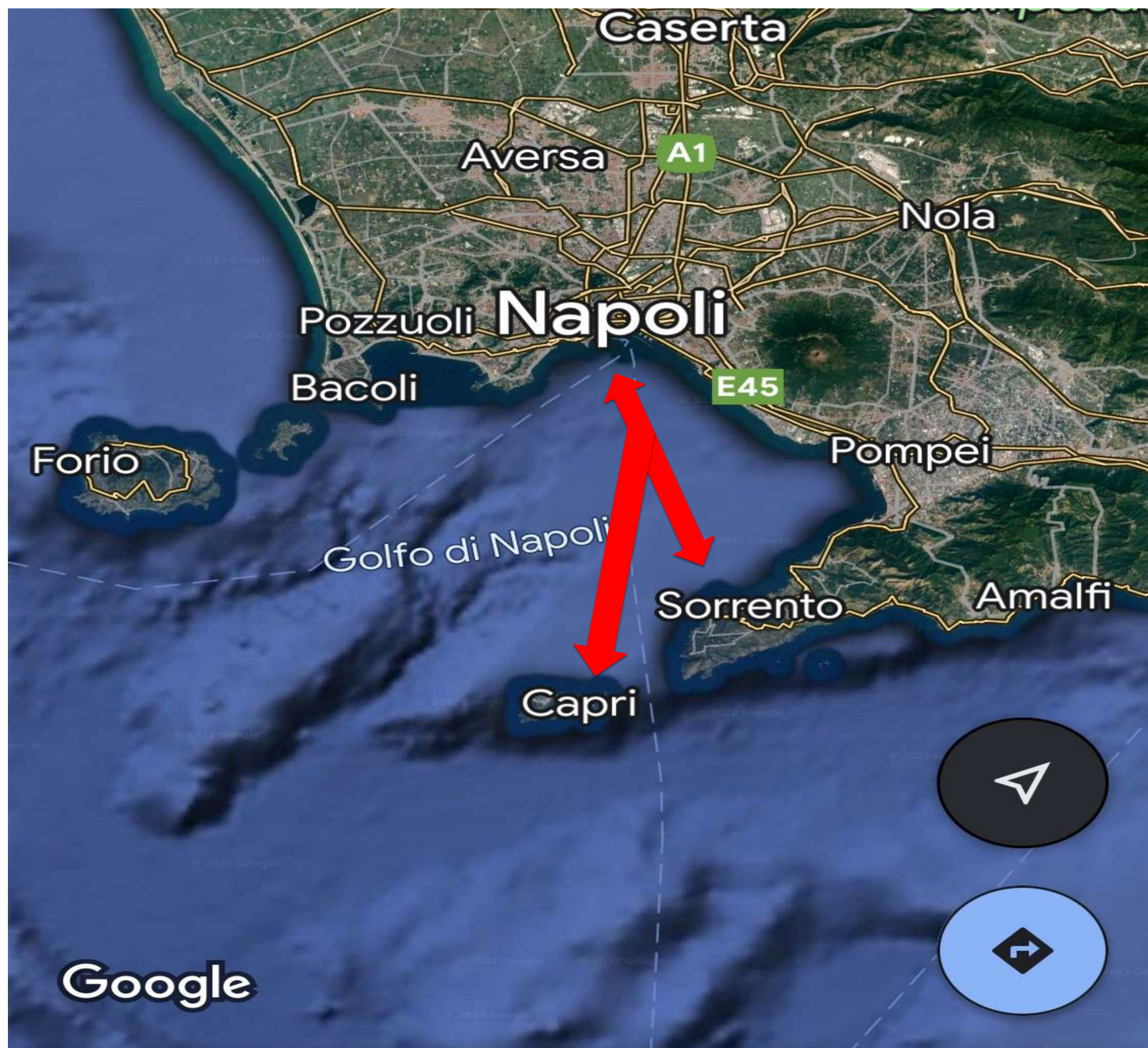
**1) Diving and collecting**

**2) Hiding the product**

**3) Selling**

**4) Remunerating and reinvesting**



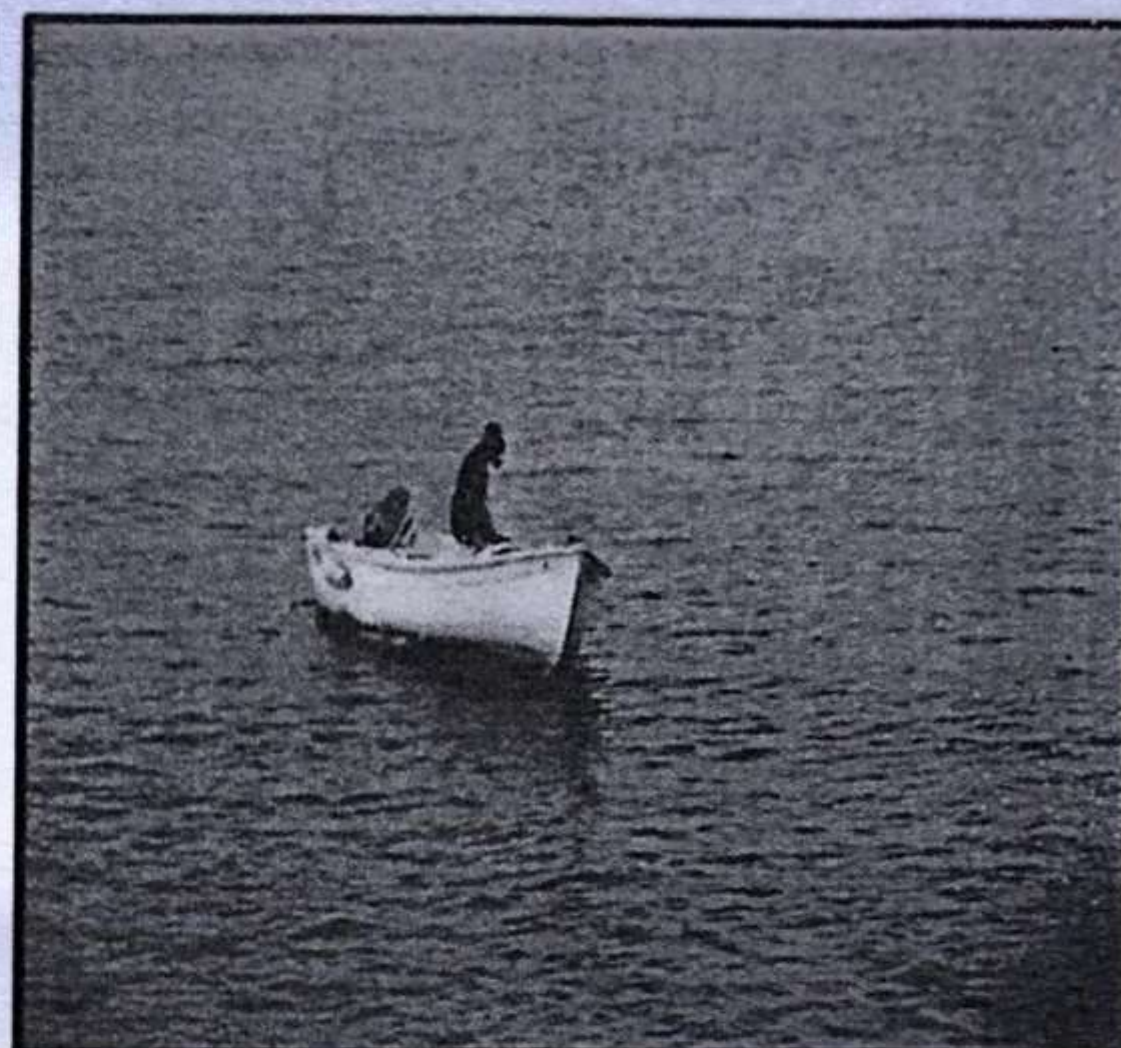
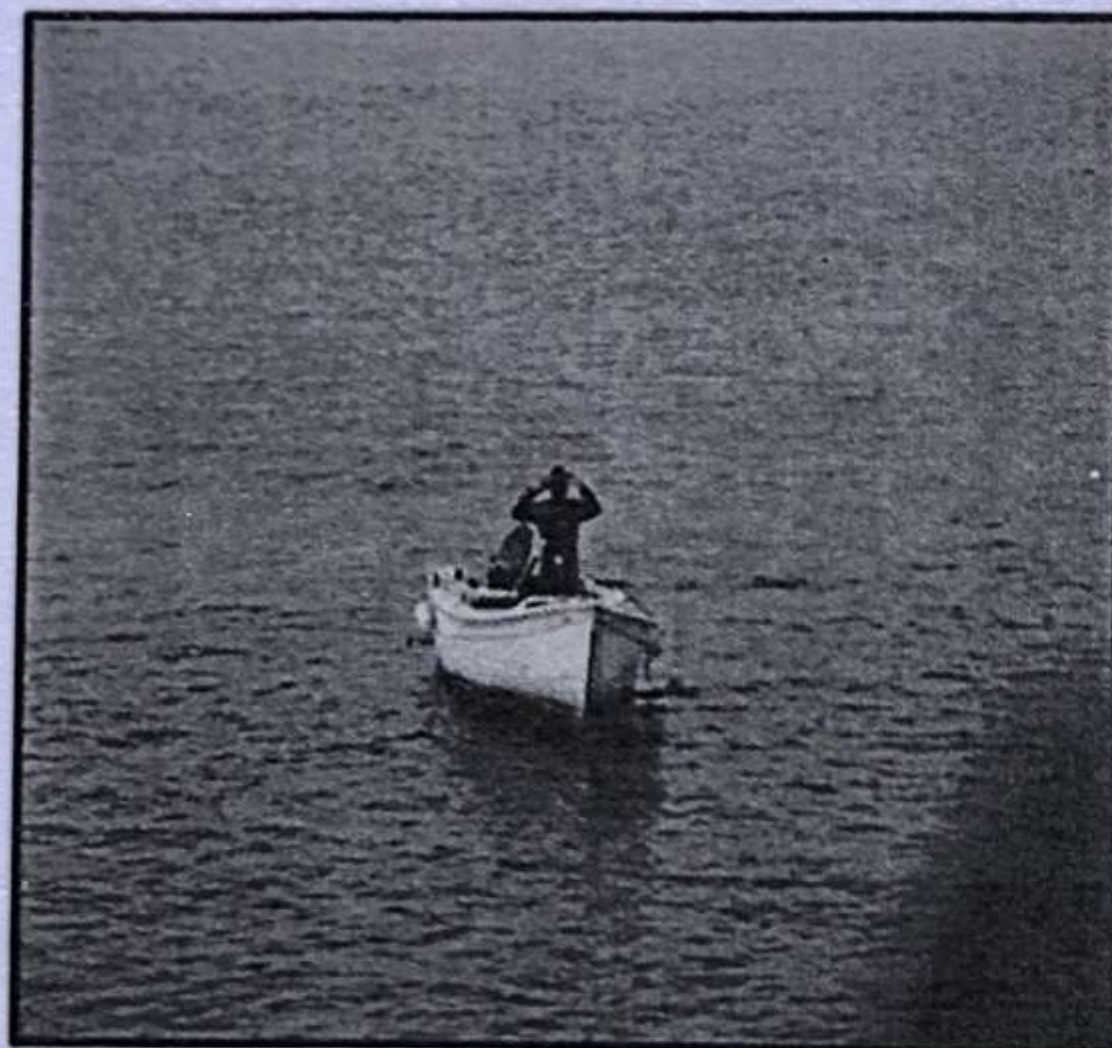


Two criminal syndicates operating in two areas:

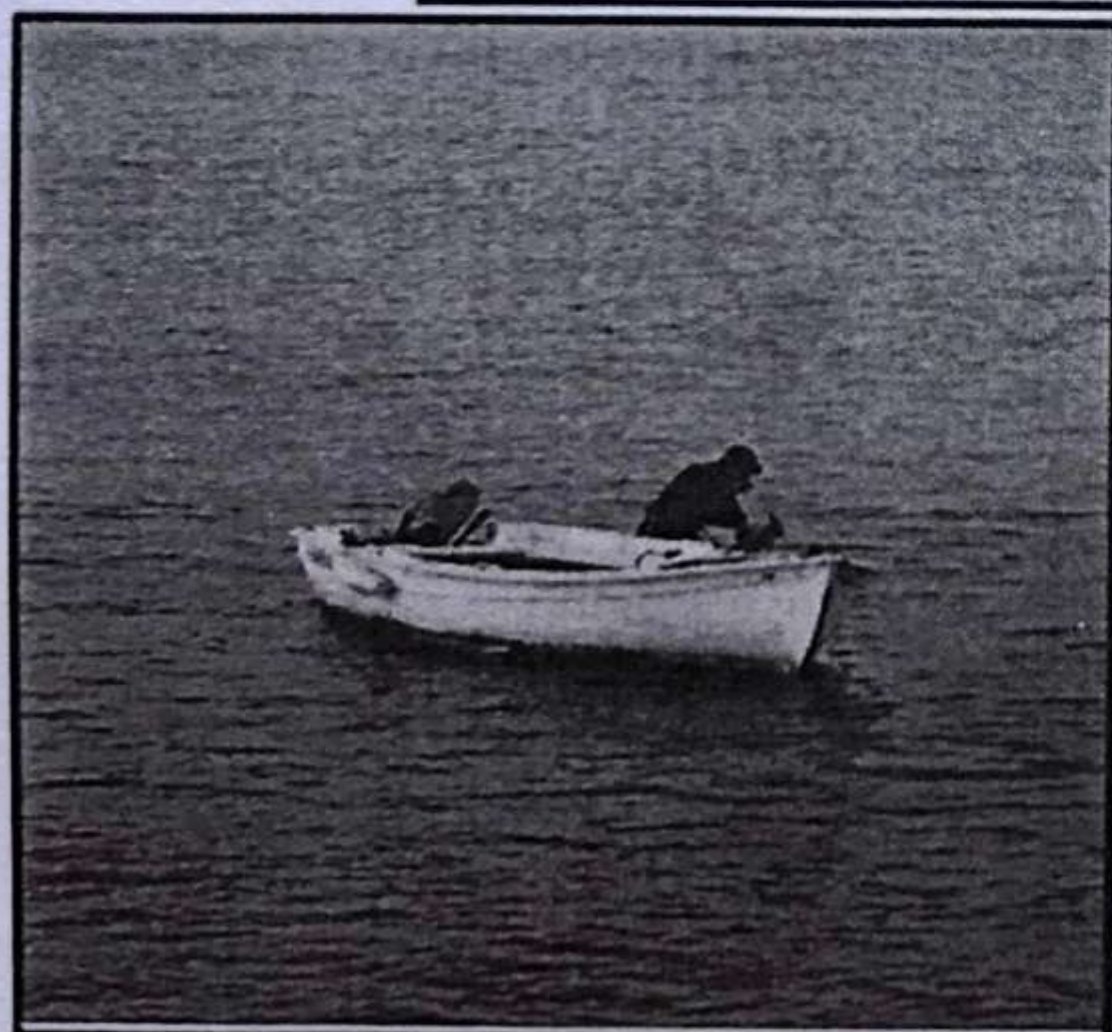
**1) Naples**

**2) Sorrento peninsula and island of Capri**





Preparazione ed Immersione di [REDACTED]



Immersione [REDACTED]

The only way to extract and collect the date mussels is to **hammering and destroying** the rocks in which they have dug their holes.

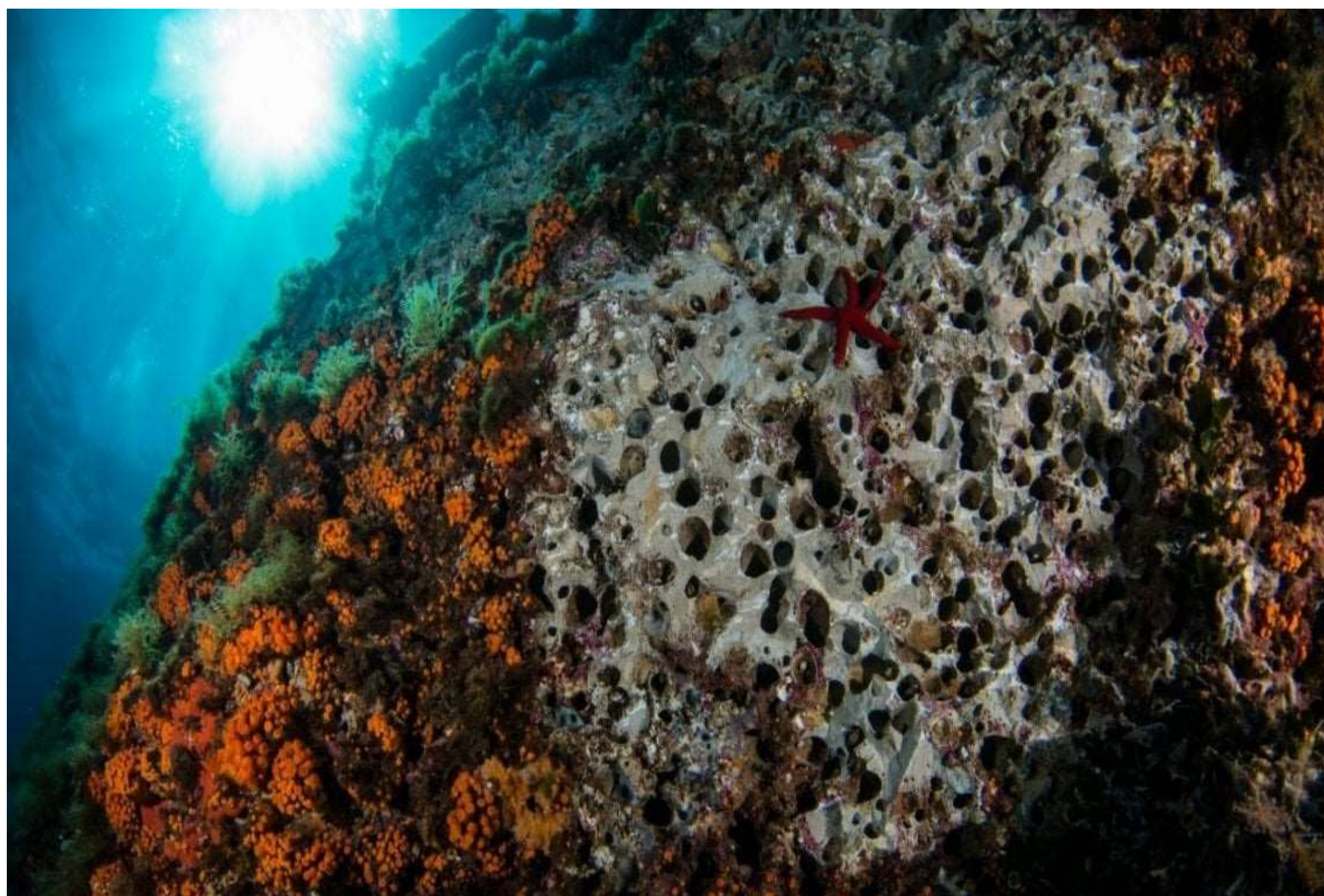
*(On the left, one of the defendants is depicted preparing to dive while holding a hammer)*





Once the date mussels are collected, the **rocks** are completely **devastated**.  
The **leaving organisms** that inhabited them have **disappeared**.

Picture on the right:  
the difference between the **left side** of a rock (still **intact**) and the **right side** (**ravaged**).



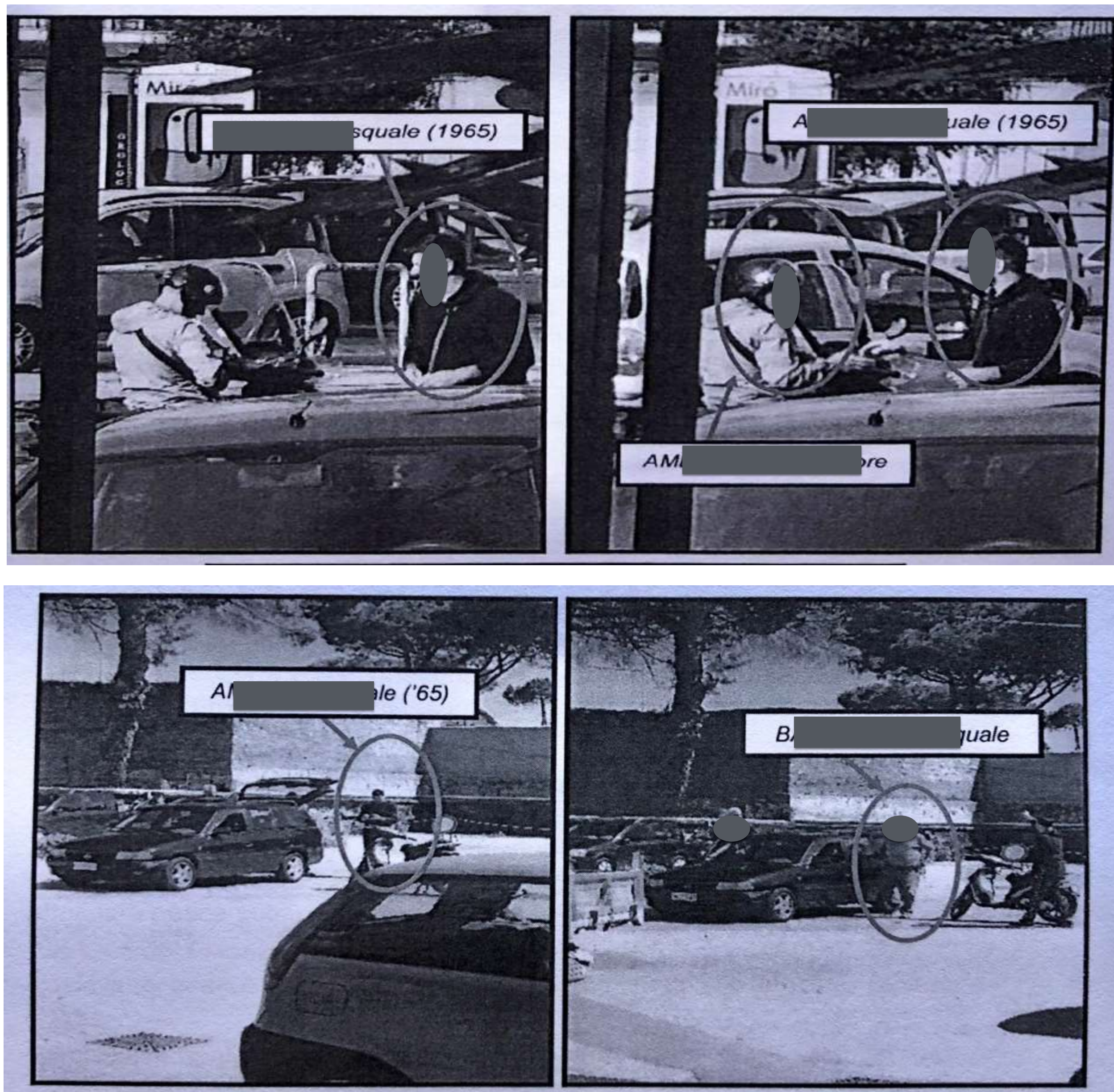




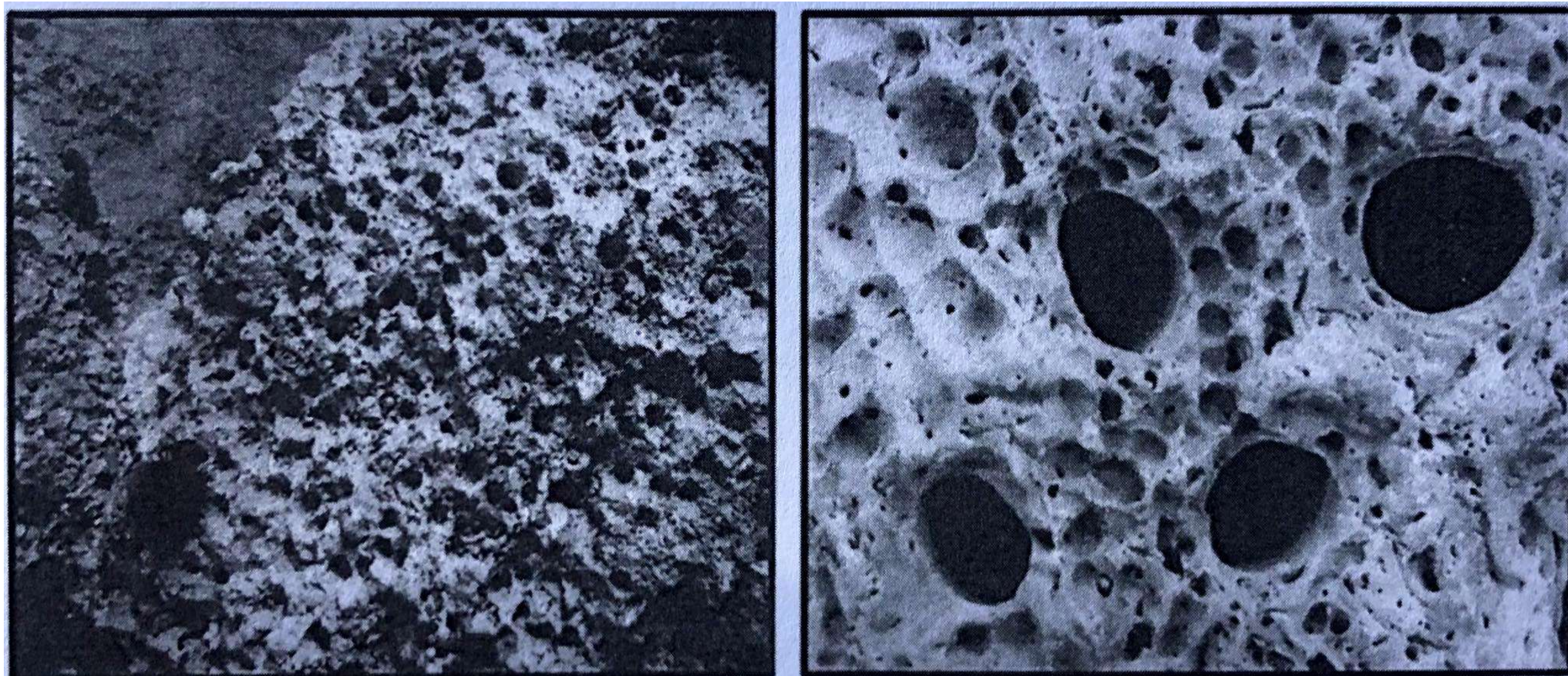
## **An incisive way of investigating:**

Wiretapping  
**Surveillance**  
Tailing

**Searches and seizures**  
Diving to stop ongoing  
activities  
or collecting evidence  
**Scientific investigations**







A visive example of the state of the premises in one of the areas devastated by the defendants.

**This is how the whole area of the Faraglioni of Capri currently appears (!)**





## **Alleged offences:**

**1) *Environmental pollution (art. 452-bis c.p.)***

**2) *Environmental disaster (art. 452-quater c.p.)***

**3) *Damage (art. 635 c.p.)***

**4) *Receiving of stolen goods (art. 648 c.p.)***





Once one trial, now three trials:

<b>Defendants who asked for <i>rito abbreviato</i> without evidentiary integration:</b>	<b>Defendants who asked for <i>rito abbreviato</i> with evidentiary integration:</b>	<b>Defendants being tried under the ordinary procedure:</b>
Sentenced to several years' imprisonment and ordered to compensate the damages. The ruling can still be appealed.	Trial in progress.	Trial in progress.



## **Concluding remarks**

What kind of evidence must be collected in order to get to a conviction for the «environmental crimes» introduced with the 2015 reform?



The importance of an adequate training of the investigating authorities



# MANY THANKS!

