THE ITALIAN JUDICIAL SYSTEM

CONSIGLIO SUPERIORE DELLA MAGISTRATURA
REPUBBLICA ITALIANA

Palazzo dei Marescialli

The Seat of the Consiglio Superiore della Magistratura

PROVISIONS ON THE JUDICIAL SYSTEM AND ORGANISATION AND OPERATION OF THE C.S.M.

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1. JURISDICTIONAL FUNCTIONS UNDER ITALY'S CONSTITUTION

1.1. *Jurisdictional Functions*

Jurisdictional functions are set forth in Italy's Constitution in accordance with the rules and provisions described below.

1.2. *Constitutional Court*

Jurisdiction on constitutional issues is conferred on the Constitutional Court, which is made up of fifteen judges; one-third of them are appointed by the President of the Republic, one-third by the two Houses of Parliament sitting in a joint session, and one-third by the highest-instance courts in the administrative and non-administrative sectors (Section 135 of Constitution).

Under section 134 of Italy's Constitution, the Constitutional Court is competent to decide on the following: a. disputes relating to constitutionality of laws and instruments equated to laws whether enacted by the State or Regions; b. conflicts of jurisdiction between State powers and/or between the State and Regions or between Regions; c. on indictments against the President of the Republic as per the Constitution (section 90).

Review of the constitutionality of laws may be initiated either by the entities that are specifically entitled to do so (State, Regions, autonomous Provinces - see sections 37 to 42 of Constitutional Act no. 87 dated 11 March 1953) or in the form of an incidental question raised by a judge in the course of a proceeding, if the judge wishes to establish whether the law applicable to the specific case is constitutional. In the latter instance, the constitutionality issue must be relevant to the decision on the given proceeding and must not be clearly unsubstantiated (see section 1 of Constitutional Act no. 1 dated 9 February 1948; see also sections 23 to 30 of Constitutional Act no. 87 dated 11 March 1953).

1.3. *Standard Jurisdictional Functions*

Standard jurisdictional functions are discharged by standard magistrates [NOTE: "magistrate" is used throughout the text to refer to both judges and public prosecutors when no distinction is required]; the latter are regarded as "standard" magistrates because they are provided for and regulated by the laws on the judicial system (section 102 of the

Constitution; sections 1 and 4 of Royal decree no. 12 dated 30 January 1941). They differ from other magistrates in that their independence is expressly provided for by the Constitution (sections 101 to 104) and they are subject to the control of the Superior Council of the Judiciary (Consiglio Superiore della Magistratura, C.S.M.). The latter is set up and operates in pursuance of Act no. 195 dated 24 March 1958 and Presidential decree no. 916 dated 16 September 1958; it is the body ensuring self-regulation of the judiciary.

The set-up of the Italian judiciary is grounded at Constitutional level in sections 101 to 113 of Title IV of Italy's Constitution. Prior to the relevant reformation, the judicial system was regulated by the provisions contained in Royal decree no. 12 dated 30 January 1941, Royal legislative decree no. 511 dated 31 May 1946, Act no. 195 dated 24 March 1958, and several provisions as contained in subsequent statutes that had been enacted to upgrade the judicial system provisions that had been issued prior to Italy's Constitution.

Secondary legislation applying to the judicial system includes the regulations and circular letters issued by the C.S.M..

The reformation of the judicial system was brought about by six legislative decrees[1], which were issued pursuant to delegated reformation powers set out in Act no. 150 dated 25 July 2005 and were subsequently amended by Act no. 111 dated 30 July 2007.

The key innovations concern recruitment mechanisms; assessment of magistrates' professional skills; initial and in-office training; organisation of prosecuting offices;

[1] Legislative decree no. 25 dated 27 January 2006 on "Setting up the Steering Committee of the Court of Cassation and New Regulations on Judicial Councils", pursuant to section 1(1)c. of Act no. 150 dated 25 July 2005; legislative decree no. 26 dated 30 January 2006 on "Setting up the Higher School of the Judiciary and Provisions on Judicial Trainees, Vocational Training, and Training of Judges and Prosecutors" pursuant to section 1(1) b. of Act no. 150 dated 25 July 2005; legislative decree no. 35 dated 2 February 2006 on "Publicising Non-Judicial Assignments Committed to Magistrates" pursuant to section 1(1)g. and section 2(8) of Act no. 150 dated 25 July 2005; legislative decree no. 109 dated 23 February 2006 on "Re-organization of Public Prosecutor's Offices" pursuant to section 1(1)d. of Act no. 150 dated 25 July 2005; legislative decree no. 109 dated 23 February 2006 on "Regulations Applying to Disciplinary Breaches of Magistrates, Relevant Penalties, and Implementing Procedures, and Amending the Legislation on Magistrates' Incompatibility, Exemption from Service, and Ex-Officio Transfers" pursuant to section 1(1)f. of Act no. 150 dated 25 July 2005; legislative decree no. 160 dated 5 April 2006 on "New Regulations Applying to Recruitment into the Judiciary, Wage Levels, and Functions of Magistrates" pursuant to section 1(1) a. of Act no. 150 dated 25 July 2005.".

transition from the position of public prosecutor to that of judge; and the disciplinary measures.

Standard jurisdictional functions include two main sectors - namely, the criminal and the civil one. In the former, the focus is on establishing whether the prosecution initiated by the public prosecutor against a given entity is substantiated; in the latter, the focus is on affording legal protection to the rights at issue in relationships either between individuals or between individuals and the public administration - where the latter breaches another individual's rights in discharging the relevant tasks.

Criminal proceedings are instituted by public prosecutors, who are standard magistrates as well (section 107, final paragraph, of the Constitution).

Civil proceedings may be instituted by any public or private entity - the plaintiff - against any other entity that is the addressee of the relevant claim - the respondent.

Civil and criminal proceedings are regulated by separate procedural rules, i.e. the civil and criminal procedural code, respectively.

Section 111 of Italy's Constitution sets forth the due process rule as applying to all proceedings whether concerning civil, criminal, administrative, or accounting matters - whereby all proceedings must be held by affording both parties the opportunity to be heard under equal terms before a third-party, impartial judge, and must have a reasonable duration.

The right to a reasonable duration of judicial proceedings was recently recognised by Act no. 89 dated 24 March 2001, which entitled both parties to claim fair pecuniary compensation from the State in case this right is violated.

Standard judicial functions are discharged by "career" judges as well as by lay (or honorary) judges, which jointly make up the judicial order (section 4 of Royal decree no. 12 dated 30 January 1941).

Currently, standard magistrates include: a. justices of the peace (under Act no. 374 dated 21 November 1991, Presidential decree no. 404 dated 28 August 1992), who are competent for both criminal and civil proceedings concerning lower value claims and/or less serious offences, which accordingly fall outside the jurisdiction of career judges; b. lay judges attached to the so-called separate divisions (under Act no. 276 dated 22 July 1997, decree no. 328 dated 21 September 1998 as converted into Act no. 221 dated 19

November 1998), which were set up to handle and cope with civil litigations pending as of 30 April 1995; c. court lay judges, supporting courts' activities, and lay deputy public prosecutors as attached to public prosecutor's offices; d. the experts attached to juvenile courts and the juvenile division at appellate courts; e. jury members in assize courts (under Act no. 287 dated 10 April 1951); f. the experts making up the courts competent for supervision over enforcement of sentences (see section 70 of Act no. 354 dated 26 July 1975); g. the experts making up specialised court divisions handling agrarian law matters (sections 2-4 of Act no. 320 dated 2 March 1963).

Pursuant to section 1 of Royal decree no. 12/1941, "*Civil and criminal matters shall be handled by justices of the peace, courts, appellate courts, the Supreme Court of Cassation, juvenile courts, the magistrate in charge of supervision over enforcement of sentences, and the courts in charge of supervision over enforcement of sentences."*

More specifically, the distribution of judicial offices in the national territory is as follows: there are 1,012 first-instance offices, of which 164 courts and 848 offices of justices of the peace; 26 appellate courts, which are second-instance judicial authorities; and the SUPREME COURT OF CASSATION, which is based only in Rome and is the last instance court for appellate proceedings as well as ruling on legitimacy of judgments.

1.4. *Special Jurisdictional Functions*

Italy's Constitution (section 102) prohibits the creation of *"extraordinary and/or special courts"*, whilst it allows - within the framework of standard jurisdictional functions - setting up specialised divisions dealing with certain matters; a feature of such divisions is the presence, within the same judicial body, of standard magistrates along with suitable citizens that are not members of the judicature (see, for instance, specialised agrarian law divisions).

Nevertheless, there are special courts in operation - such as administrative courts, the Court of Auditors, and military tribunals - which antedated the entry into force of Italy's Constitution (section 103).

The Court of Auditors is made up of accounting magistrates and includes a General Prosecuting Office that is in charge of prosecution. The Presidency Council of the Court operates as a self-regulation body.

As well as being competent for prior checking on the legitimacy of instruments and decisions taken by both Government and other public bodies along with ex-post checks on management of accounts and assets by public administrative bodies, the Court of Auditors is in charge of handling claims related to the State's accounting activities, pensions, and the liability vested in State and other public officials.

Military judges are competent for military offences committed by members of the armed forces; they make up a body separate from standard magistrates and are managed by a separate self-regulation body called Superior Council of Military Judiciary.

Administrative judicial functions are discharged by judicial bodies that are separate from those of the standard judicature - namely, the regional administrative courts, which are first-instance judicial authorities, and the Council of State, which is the second-instance court.

The self-regulation body for administrative law courts is the Presidency Council of administrative magistrates, which is made up by the judge presiding over the Council of State along with four magistrates from the Council of State, six magistrates from regional administrative courts, and lay members - i.e. four citizens that are elected by the Higher and Lower Houses of Parliament (two each) voting by absolute majority, out of a shortlist consisting of university professors in law and/or lawyers with at least twenty years' seniority. It also comprises alternate members, who are selected out of magistrates from the Council of State and regional administrative courts. The current make-up of this self-regulation body as for its including lay members results from the recent amendments to section 7 of Act no. 186 dated 27 April 1982 - which regulates administrative judicial functions - further to Act no. 205 dated 21 July 2000, in particular section 18 thereof.

Administrative courts review legitimacy (rather than the merits, i.e. the advisability) of administrative decisions; claims brought before administrative courts are aimed at having an administrative decision declared null and void since such decision is allegedly flawed on account of lack of competence of the decision-making body, breach of the law, or ultra vires.

Generally speaking, the jurisdiction of standard courts as opposed to administrative courts is related to the nature of the claim that is established - i.e. whether it is a right or a legitimate interest that is at issue. Administrative courts - except for certain matters that

fall within the exclusive jurisdiction of administrative courts under the law, whereby the range of such matters was expanded lastly by Act no. 205 dated 21 July 2000 - have jurisdiction on legitimate interests.

2. THE STATUS OF MAGISTRATES UNDER ITALY'S CONSTITUTION

2.1. *Independence and Autonomy*

Pursuant to Italy's Constitution, the judicature is an autonomous body independent of any other power (section 104).

Autonomy is related to organisational structure.

The judicature is autonomous from the executive power, since its independence would be jeopardised if the measures related to judicial career and, generally speaking, judicial status were entrusted to the executive power. Conversely, Constitution conferred on a self-regulation body the power to manage judicial staff: this includes transfers, promotion, tasks, and disciplinary measures (see section 105). Therefore, the C.S.M. is the guarantor of the independence of the judicature.

The judicature is also autonomous from the legislative power, insofar as judges are only subject to the law (section 105 of the Constitution).

Independence has to do with the functional features of the jurisdictional function. It has not to do with the judicature as a whole - which is safeguarded by the autonomy principle as described above - as it is rather a feature of each judge when exercising judicial functions.

Independence arises out and is implemented in connection with the other constitutional principle, whereby judges are only subject to the law - which mirrors the origin of jurisdictional powers from the people's sovereignty.

In our judicial system, considerable importance is attached to independence and autonomy of the judiciary. This is due both to the underlying concepts and to history. As to the former, it should be considered that Italy is a civil law country. This means, at least from a general standpoint, that laws - i.e., the laws taken into account in a proceeding as the rules to be applied in solving the relevant case - are made by other public bodies: Parliament, but sometimes by Government as well and, nowadays, by bodies having

jurisdiction on smaller geographic areas; conversely, courts are required to apply laws. Thus, judges participate in the law-making process only indirectly.

Given this conceptual framework, judges have come to be regarded as fulfilling a public function in compliance with certain constraints. Hence the idea that they can be appointed following a public competition, fill their positions as civil servants and be free from any control on the merits of their activity - such merits being set out in advance by law. Hence, again, the need for ensuring independence and autonomy of judges in order for them not only to be, but to be regarded as impartial third parties in discharging their tasks. In fact, third party status and impartiality are considered to be the features allowing the judiciary to be distinguished from other bodies that perform different public functions.

As to the latter reason, i.e. the historical one, it should be pointed out that our system was developed in its current version after World War II on the basis of the republican Constitution, whose democratic character was opposed to the previous - undoubtedly authoritarian - Fascist regime. Indeed, justice had been somewhat mismanaged during that period on account of three main reasons: a. limitations on the right to take legal action, b. external pressure on the judiciary, and c. setting up of special courts.

Obviously, in re-founding our State the drafters of our Constitutional charter - whose first sixty years of life were celebrated in 2008 - took special care in preventing the danger of mismanagement and deviations.

Independence and autonomy are set forth in our Constitution as also related to public prosecutors (section 107 and section 112), in particular by having regard to the provisions on compulsory prosecution.

Indeed, the principle of compulsory prosecution contributes to ensuring not only that public prosecutors are independent in discharging their tasks, but also that a level playing field is afforded to citizens vis-à-vis criminal law.

However, independence and autonomy of public prosecutors show some peculiarities as for the internal organisation of the prosecutor's office, which is regarded as a single unity whilst deputy public prosecutors attached to the office are hierarchically subject to the head of the office (see section 70 of Royal decree no. 12 dated 30 January 1941 and legislative decree no. 109 dated 23 February 2006).

2.2. *Non-Transferability*

Magistrates are also safeguarded by non-transferability provisions. Indeed, independence of judges might be seriously jeopardised if they were exempted from service or else transferred between different districts.

With a view to preventing this risk, Italy's Constitution provides that a magistrate may only be suspended, exempted from service, or transferred upon a resolution by the C.S.M. either with the magistrate's consent or on account of the reasons set forth in the laws regulating the judicial system in compliance with the defence mechanisms laid down therein.

Accordingly, a magistrate may as a rule be transferred to another district and/or entrusted with different functions exclusively with his/her consent upon a resolution by the C.S.M.. This measure is adopted following a competitive procedure among candidates; the procedure starts upon publication of the list of available positions along with a shortlist of the candidates based on seniority, health and/or family reasons, and qualifications. The relevant regulations are laid down in an ad-hoc circular letter issued by the C.S.M.: circular letter no. 15098 dated 30 November 1993 as subsequently amended.

The exceptions to this rule, i.e. the cases in which magistrates may be transferred ex officio, are set forth exclusively by law.

In this connection, reference should be made to the initial allocation of tasks to trainee magistrates as well as to the cases in which the ex-officio transfer is intended to meet administrative requirements to cover specific positions - pursuant to, in particular, section 3 et seq. of Act no. 321 dated 16 October 1991 as subsequently amended, which regulates ex-officio transfers to available positions not applied for, and section 1 of Act no. 133 dated 4 May 1998 on the need to cover positions in disadvantaged districts. Both statutes in question were recently amended by decree no. 148/2008.

Additionally, the C.S.M. is empowered to transfer magistrates ex-officio if the relevant office is eliminated (section 2(3) of Royal legislative decree no. 511/1946) as well as *"whenever they are unable to discharge their functions in the current position in an independent, impartial manner because of reasons for which they may not be held*

liable" (section 2(2) of royal legislative decree no. 511/1946). In the latter case, the derogation from the non-transferability rule is justified by the need (regarded as overriding) to ensure that the magistrate is enabled to discharge jurisdictional functions independently and impartially in the relevant office/district, whilst independence and impartiality would be jeopardised if the magistrate were to remain in the given office/district

It should be pointed out that the only material ground applying to this *ex-officio* transfer consists in an objective obstacle to discharging jurisdictional functions in a given office/district - i.e. no reference is made to circumstances entailing the magistrate's liability.

The decision on transfer is taken at the end of an administrative procedure that - although arising from the reports submitted by heads of judicial offices and/or citizens - is handled wholly inside the C.S.M. and results into an administrative measure that is implemented ultimately by allocating a different office to the given magistrate; the magistrate may appeal against the measure in question via administrative courts.

The provisions applying to this type of transfer - on grounds of no-fault incompatibility with the local conditions - differ both from those applying to the ex-officio transfer applied as a disciplinary measure (pursuant to section 13(1) of legislative decree no. 109/2006) and from the transfer applied as an interim precautionary measure (pursuant to section 13(2) of legislative decree no. 109/2006) in connection with a disciplinary proceeding against the given magistrate whenever there is reason to believe that the disciplinary claim is grounded and especially urgent circumstances obtain.

In the former case, the disciplinary measure is imposed upon establishing the magistrate's liability based on his/her fault in the course of a judicial proceeding instituted against that magistrate; this leads to a judgment passed by the disciplinary division of the C.S.M., which can be challenged before the Joint Divisions for civil matters at the Court of Cassation.

In the latter case, the ex-officio transfer is a veritable precautionary measure taken within the framework of a disciplinary proceeding against a magistrate, in anticipation of the subsequent conviction. The measure in question is requested by the Prosecutor General at the Court of Cassation and is decided upon via an interim proceeding followed

by an order issued by the disciplinary division of the C.S.M.; it can be challenged before the Court of Cassation.

2.3. *Impartiality and Pre-Determination by Law*

Additional safeguards are afforded to jurisdictional functions under Italy's Constitution. In particular, the principle whereby jurisdiction is pre-determined by law (section 25 of the Constitution) postulates, on the one hand, that judicial competence is determined exclusively by the law - whereby it is also prohibited that competence may be determined by secondary legislation and/or non-legislative instruments. On the other hand, this principle requires the competent court to be determined on the basis of rules set in advance of the specific facts to be decided upon, in order to prevent ex-post determination of the judge dealing with the case. The principle of pre-determination of the competent judge under the law ensures impartiality of jurisdictional functions as well.

Under Italy's Constitution, neutrality of judges is ensured by the provisions concerning a. prohibition to institute ex officio proceedings (Article 24, para. 1); b. establishment of judges by law (Article 25, para. 1); c. prohibition to set up extraordinary (or special) courts (Article 102); and d. the requirement that judges be subject to law (Article 101, para. 2). The principles enshrined in these provisions were re-affirmed and enhanced by Article 6 of the European Human Rights Convention, which was transposed into Italy's legal system by Act no. 848 of 04.08.1955; these principles provided the foundations for the amendment made to Article 111 of the Constitution by Constitutional Act no. 2 of 23.11.1999. It is appropriate that they are briefly considered here.

The prohibition to institute ex officio proceedings can be derived from Article 24, which actually is worded in order to lay down the basic principle whereby citizens may not be limited or hindered in defending their substantive rights in a proceeding if those rights have been granted legal recognition. Indeed, if in a positive perspective the respect for the rights recognised to individuals makes it impossible to impose any limitations on the defence of a claim in a proceeding, this same respect makes it necessary, in a negative perspective, to only allow the claimant to decide whether to take legal action or not.

Additionally, the drafters of our Constitution were fully aware that no judge could be regarded by a community as an impartial judge where he had been appointed after a litigation or a proceeding had arisen or else on the basis of criteria developed after the said events had taken place. Pursuant to these requirements, an impartial judge is a judge established by law - that is to say, a judge selected on account of objective criteria that have been set forth in advance of the individual proceeding. Still, this is not enough in order to prevent all possible dangers, since the law-making body might override this principle by setting up ad hoc judges who would be competent for specific litigations on the basis of the aforementioned "objective criteria". Indeed, section 25(1) must be read jointly with section 102(2), prohibiting the establishment of extraordinary judges/courts - who are usually appointed exactly with a view to specific proceedings.

As to the requirement that judges be only subject to law, it should be stressed that paragraph 2 in Article 101 can also be construed in twofold manner. In positive terms, it is aimed at ensuring autonomy and independence of the judiciary, which is protected against the influence of other constitutional bodies and is only subject to law. In negative terms, this can be construed as a limitation: indeed, if judges are only subject to law, they are not allowed to override it and are expected to search for and detect the pre-determined benchmark applying to the individual, specific cases exactly in the existing laws. In order to re-inforce this limitation, section 111(6) provides that judges must expressly account for their decisions so as to enable control not only by the parties directly concerned, but by the people at large - justice being administered in the people's name.

As a corollary to the aforementioned constitutional principles, there are the provisions on drawing up of the tables of judicial offices; such provisions are aimed at regulating the allocation of individual magistrates and cases (see section 7 et seq. of Royal decree no. 12 dated 30 January 1941; see also the sector-specific regulations introduced by the C.S.M., lastly via a circular letter on the drawing up of the tables applying to membership of courts).

The principles whereby judges should be impartial and pre-determined by law are not in conflict with measures such as secondment (see, in particular, section 110 of Royal decree no. 12 dated 30 January 1941 and the detailed regulations set forth in the

aforementioned circular letter by the C.S.M.) and deputyship (see, in particular, sections 97, 104, 108, and 109 of Royal decree no. 12/1941 as well as the detailed regulations set forth in the aforementioned circular letter by the C.S.M.); such measures are intended to cope with loopholes in judicial offices with the help of magistrates who usually work in other offices, or who happen to work in the same office but are in charge of different functions. From this standpoint, reference should be made actually to Act no. 133 dated 4 May 1988, which introduced measures to improve judicial services including the so-called "intra-district tables" for judicial offices. These tables do not replace those that are used as a rule in the individual offices (see section 7-bis of Royal decree no. 12/1941); rather, they complement the latter tables in order to enable more flexible, extended use of magistrates at several judicial offices (i.e. those "pooled" within a given district) - partly with the help of equally innovative measures such as the "joint allocation" of a given magistrate to several judicial offices and the "multi-district deputyship" (see section 6 of the aforementioned Act). These measures are quite similar to the secondment and deputyship provisions mentioned above; their rationale consists in enhancing effectiveness of the judicial system to cope with the - not infrequent - lack of staff and/or any impediments affecting the tenured magistrates, as they have extended the opportunities for making use of the magistrates allocated to the given district in terms of both their number and their qualifications.

Another measure aimed at remedying the organisational inconveniences brought about in judicial offices by the temporary absences of magistrates consists in the establishment of the roll of district magistrates at each appellate court (under Act no. 48 dated 13 February 2001); the magistrates in question can replace district magistrates in case they are absent from their offices. District magistrates may be employed if the absence is due to the following: a. sick leave and/or leave of absence on whatever grounds; b. mandatory and/or optional leave on account of pregnancy/maternity or else on any other grounds as set forth in Act no. 53 dated 8 March 2000 (containing provisions to support motherhood and fatherhood); c. transfer to another office, if another magistrate has not been simultaneously transferred to the position left vacant; d. precautionary suspension from service pending a criminal/disciplinary proceeding; e.

exemption from judicial functions on the occasion of the magistrate's inclusion in the examination board at the competition for admission to the judiciary.

The number of district magistrates making up the roll is determined by a decree issued by the Minister of Justice after consulting with the C.S.M.; account is taken of the statistics concerning mean absences in the given district over the three years prior to entry into force of the relevant Act. The determination is reviewed every two years by having regard to the statistics on mean absences in the district over the previous two years.

2.4. *Compulsory Prosecution*

Independence of public prosecutors is also ensured by the provisions concerning compulsory prosecution (section 112 of Italy's Constitution). This principle should be construed as the obligation for the public prosecutor, having become apprised of information on a crime, to carry out investigations and submit the outcome of such investigations to the judge along with the relevant requests. This obligation applies irrespective of whether dismissal of the case is requested, because the information has been found to be unsubstantiated, or a criminal proceeding is to be instituted against a given entity because of the commission of a specific criminal offence.

As said, compulsory prosecution contributes to ensuring not only that public prosecutors are independent in discharging their functions, but also that a level playing field is afforded to citizens vis-à-vis criminal law.

3. SELF-REGULATION

3.1. *Powers of the Superior Council of the Judiciary*

To effectively implement the safeguards applying to autonomy and independence of the judiciary, the drafters of Italy's Constitution decided that the judiciary would not be managed by entities belonging to the executive and/or legislative powers; accordingly, they set up the Superior Council of the Judiciary (C.S.M.).

The C.S.M. is the self-regulation body of the judiciary; pursuant to the legislation on the judicial system, it is competent for recruitment, allocation, transfer, promotion, and disciplinary measures in respect of magistrates (see section 105 of the Constitution).

3.2. *Membership of the C.S.M.*

Under section 104 of Italy's Constitution, the C.S.M. includes three members of their own right - namely, the President of the Republic, who also chairs the C.S.M., the President of the Court of Cassation, and the Prosecutor General at the Court of Cassation.

As far as the elected members are concerned, the Constitution does not specify their number, but stipulates that two-thirds of them should be elected by all the magistrates from among those belonging to the various categories (the so-called “toga-clad” members), while the remaining one-third should be elected at a joint session of Parliament, which selects them from among university professors in legal subjects and advocates who have exercised their profession for fifteen years or more (the so-called lay members).

Under Italy's Constitution, elected members hold office for four years and may not be re-elected for the next term. The Council must elect, from out the lay members, a deputy-Chair, who will chair the plenary of the C.S.M. whenever the President of the Republic is absent, or else upon the President's delegation, as well as chairing the Presidency Board; the latter is in charge of fostering the Council's activities, implementing the resolutions adopted by the C.S.M., and managing budgetary funds - given that the C.S.M. is autonomous as for accounting and financial matters.

Accordingly, both the number of elected members and the mechanisms for their election are set forth in statutes - Act no. 195 dated 24 March 1955, as subsequently amended by Act no. 695/1975 and Act no. 44/2002, along with Presidential decree no. 916 dated 16 September 1958 and the internal regulations adopted by the C.S.M. regulate setting up and operation of the C.S.M..

As of date, Act no. 44/2002 - which amended section 1 of Act no. 195/1958 - provides that the C.S.M. is made up of 24 elected members, of which 16 shall be career members and 8 shall be lay members. The latter are elected by the two Houses of Parliament in joint sitting by secret ballot; a majority of three-fifths of the members of

the two Houses is required at the first two ballots, whilst a majority of three-fifths of the voting members is enough as from the third ballot onwards.

The composition of the members to be elected among career magistrates is as follows: two magistrates from the Court of Cassation (judges and public prosecutors), deciding on legitimacy issues; four magistrates discharging prosecution functions in view of decisions on the merits; and ten magistrates discharging judicial functions by deciding on the merits.

Career magistrates are elected by majority voting in a single nationwide constituency for each of the categories to be elected; individual candidates may run for election and must be presented by no less than twenty-five and no more than fifty magistrates. Each voter is given three cards for the three nationwide constituencies and votes for one magistrate per each of the said categories as described above.

The central election board at the Court of Cassation is in charge of counting the votes and calculating the total valid votes along with the votes obtained by each candidate. As many candidates obtaining the highest number of votes are elected as the posts available in each constituency (i.e. for each category).

3.3. *Status of the C.S.M. under the Constitution*

As for the status of the C.S.M., the Constitutional Court has ruled that it is not part of the public administration, although the functions it discharges are de facto administrative in nature, because it is ultimately alien to the organisational framework that is directly related to governance of the State and/or Regions.

Taking account of the functions entrusted by the Constitution to the C.S.M., the latter was found to be *"a body unquestionably discharging Constitutional functions"*. The functions at issue can be considered to consist in *"management of jurisdictional activities"*; they concern, first and foremost, management of judicial staff as related to recruitment, allocation and transfer, promotion, and disciplinary measures in respect of magistrates. Additionally, such functions are related to the organisation of judicial offices in view of ensuring that the individual magistrate is only *"subject to the law"* in discharging the respective tasks. From this standpoint, it should be recalled that the C.S.M., upon the proposal of the judges presiding over Appellate Courts, after consulting

with Judicial Councils, approves the tables listing the judges making up the courts in each district - at three-year intervals - along with objective, pre-determined criteria to regulate allocation of cases to the individual judges.

Therefore, the C.S.M. is the head of the bureaucratic organisation in charge of managing jurisdictional functions, which is also supported - on different grounds - by Judicial Councils and the heads of the individual courts and public prosecutor's offices.

3.4. *Quasi-Legislative Activity of the C.S.M.*

The C.S.M. is empowered to issue quasi-legislative instruments that can be grouped as follows: a. internal regulations and administrative/accounting regulations (both are provided for by the Act setting up the C.S.M.). These are statutory instruments, which any political and administrative body discharging Constitutional functions is empowered to issue; they are aimed at regulating organisation and operation of the C.S.M.; b. regulations on the training of trainee magistrates (these are provided for expressly by the Act setting up the C.S.M. as well). The regulations are aimed at setting out duration and mechanisms of the training period applying to trainee magistrates; c. circular letters, resolutions, and instructions. The circular letters are related to the fundamental task of ensuring self-regulation of the discretion that is left to the C.S.M. in administrative matters pursuant to the Constitution and the relevant statutes; conversely, resolutions and instructions address the implementation of legislation related to the judicial system in accordance with a systematic analysis of legal sources.

3.5. *International activity of the Higher Judicial Council*

The Higher Judicial Council, for many years now, has been setting aside a significant part of its own resources as well as its commitment to the cultivation of international relationships strictly connected with its own institutional tasks and with the subjects of specific interest to it.

Most of these relationships focus around the skills of the Sixth Referring (Representative) Commission.

The Council, in particular, keeps ties with the autonomous governance organisms of the judiciary operating in the other countries, including through its participation in the activities of the European Network of Judicial Councils; moreover, it organizes meetings at international level, and carries out comparative law studies, with a special focus on the subjects relating to the Judicial System, making use in the process of collaboration from the internal Study Office as well.

Some activities are conducted through the European Network of judicial training, partly in pursuance of a bilateral partnership with Institutions from other countries, including extra European ones, and partly in collaboration with the European Commission which, every year, finances activities of cultural and professional training on behalf of the judiciaries of European countries.

An additional sector of great significance within the scope of the *Higher Council*'s international activity is represented by the *Twinnings projects*, which aim at supporting the Countries of recent or impending membership to the European Union, in an effort to adapt the national judicial systems and institutions to the parameters which are common to the European States. To that end, the European Institutions finance specific projects based on the transmission of know-how and expertise from one Country to the other.

During the last years, the Council has operated within that sphere as well, by offering its own experience to the newly established Albanian Judicial School, and, since 2006, by working on the project of reorganization and consolidation of the Albanian judiciary's Justice Council.

In order to publicize this multifarious and differentiated activity carried out by the Higher Council, and especially in order to collect and catalogue the documents and studies which have been realized within the international sectors and enable their ready consultation, it was deemed fit to realize, on the Council's Internet and Intranet site, a specific section dedicated precisely to the Higher Judicial Council's international activity.

Besides the already existing links, dedicated to the EJTN (European Judicial Training Network), the ENCJ (European Network of Judicial Councils), the CCJE (Consultative Council of European Judges) and the CCPE (Consultative Council of European Attorneys - Consultative Organ of the European Council's Committee of Ministers), new theme-based areas have been realized relating to visits by council

delegations abroad and reception at the Council of foreign delegations and teams of representatives of European training schools, to *Twinning projects*, to council projects financed by the European Commission, to international conferences and study meetings, to Italian judges vested with international mandates, to opinions and documentation formulated and gathered by the Study Office in the international field, and to judgments by the European Court of Justice.

3.6. *Judicial Councils*

Judicial Councils can be regarded as local self-regulation bodies; their key role in the self-regulation framework was affirmed unambiguously in the *"Resolution on De-Centralisation of Judicial Councils"* approved by the C.S.M. during the sitting of 20 October 1999.

Judicial Councils provide advisory services to the C.S.M. in that they draft opinions on the advancement of magistrates, the taking up of different functions, and any other circumstances in a magistrate's professional life. Additionally, Judicial Councils carry out the preparatory activities related to proceedings concerning lay magistrates.

It can be argued that Judicial Councils are ancillary and functionally subordinate to the C.S.M..

Currently, Judicial Councils are regulated by legislative decree no. 25 dated 27 January 2006, which was enacted pursuant to delegated powers as per section 1(1), letter c., of Act no. 150 dated 25 July 2005. The decree in question set out innovative rules applying to membership, competence, and term of office of Judicial Councils and also set up the Steering Council at the Court of Cassation. This piece of legislation superseded previous provisions.

The reformation was meant to implement decentralisation measures to make administrative activities both more effective and expeditious in view of ensuring better functional co-ordination between C.S.M. and Judicial Councils. Indeed, self-regulation bodies at district level are closer to the multifarious local situations and are in a better position to adequately gauge the cases on which the central self-regulation body is required to decide.

The judge presiding over the Appellate Court and the Prosecutor General at the Appellate Court are members of the Judicial Council of their own right.

Regarding membership of Judicial Councils, it should be pointed out that the number of their members can vary with the number of magistrates in the given district.

In districts with less than 350 magistrates, Judicial Councils are made up of six magistrates elected among those from the district judicial offices - four judges and two public prosecutors - in addition to one university professor in law - who is appointed by the National Council of Universities - and two lawyers, who are appointed by the National Council of the Bar.

In districts with over 350 magistrates, the membership includes ten magistrates - seven judges plus three public prosecutors - and four lay members - one university professor plus three lawyers - appointed in accordance with the aforementioned mechanisms.

An unprecedented innovation brought about by decree no. 25/2006 consists in setting up a body within the Court of Cassation that can be equated to the Judicial Councils set up at Appellate Courts.

4. ACCESS TO THE JUDICIARY

4.1. *Competitive public examination*

To become career magistrates, candidates have to pass a competitive public examination pursuant to Article 106, paragraph 1, of the Constitution; the provisions regulating access to the Judiciary have been amended several times over recent years by the lawmaker, with the aim, on the one hand, to expedite the examination procedure and, on the other, to ensure that candidates have a better qualification, since before the reform they only needed a degree in law to take part.

Legislative Decree 398/97 has set up post-graduate Schools for Legal Professions within the Universities to complete the training of law-graduate students who want to exercise the professions of judge, prosecutor, lawyer and notary public. The said Schools, which started operating as from the 2001-2002 university year, at the end of two-year courses, confer a diploma which is required to participate in the public examination, and

also have the clear aim of training the people who want to perform the above professions in the future.

Access to the Judiciary is today regulated by Legislative Decree no. 160/2006, Chapter I, which sets forth the conditions for participating in the exam, the modalities for presenting the application, the composition and functions of the examining committee, the conduction of the written and oral exams and the modalities to be followed by the examiners. The said examination is thus organised like second level public exams.

The law provides for given pre-requisites for being admitted to take the examination so as to ensure that the candidates are technically qualified and their number is reduced. In fact, only candidates who have a law degree and the diploma issued by the post-graduate Schools for Legal Professions are admitted to take the written examinations. Furthermore, administrative and accounting magistrates, State employees who have given qualifications and at least a five-year seniority, university professors, civil servants of the public administration having a law degree and at least a five-year seniority, lawyers who have not been subjected to disciplinary sanctions, honorary magistrates who have practiced the profession for at least six years and have had no demerits, and law graduates who have a PhD in legal matters, or a specialisation diploma in a *post lauream* School, are also admitted to take the exam.

One of the qualifications enabling access to the competitive examination for magistrates is the qualification obtained as a result of attendance, with final positive outcome, of a theoretical-practical training course at the judicial offices, admission to which is open, in accordance with article 73 of Legislative Decree of 21 June 2013 (later converted into Law No. 98 of 9 August 2013), to whoever is in possession of a four-year degree in jurisprudence, showing a particularly positive performance in university studies, and has not yet turned 30.

In view of the growing importance of European training of magistrates, both community and international law with specific reference both to the public and private sectors have been included in the curriculum of the oral exam.

Those who pass the examination are appointed magistrates; under the reform the name of "trainee magistrate" used before to indicate magistrates when they first entered the Judiciary has been deleted.

The aforesaid magistrates have to undergo a training period of 18 months. The said training involves following in-depth theory-practical courses and sessions at the judicial offices. The theory courses are organised at the Superior School of the Judiciary, a body set up by the recent reform of the judicial system.

A magistrate undergoing training does not exercise judicial functions. At the end of the training, The Superior Council of the Judiciary (C.S.M.) assesses whether magistrates can be conferred judicial functions.

In case of a favourable appraisal, a magistrate is conferred judicial functions by the C.S.M. The recent reform stipulates that magistrates at the end of the training cannot carry out the functions of a prosecutor, a criminal single judge, a pre-trial investigation judge and a preliminary hearing judge before they undergo their first professional appraisal, four years after their appointment.

With an adverse appraisal, a magistrate is admitted to a new training period of one year. A second adverse appraisal implies being dismissed from employment.

4.2. *Direct appointment*

As an exception to recruitment by competitive examination, the Constitution prescribes that regular university law professors and lawyers of at least fifteen years standing and registered in the special Rolls entitling them to practise in the higher jurisdiction courts may be appointed Counsellors of the Supreme Court of Cassation on exceptional merit (Article 106 Const.).

This measure has recently been enforced by Law n. 303 of 5 August 1998, and in this regard the C.S.M. issued circular letter no. P. 99-03499 of 18.2.1999.

5. CAREER ADVANCEMENT OF MAGISTRATES

5.1 *Professional appraisal*

Career advancement is the same for judges and prosecutors.

The reform of the judicial system by Legislative Decree no. 160/2006, as amended by Law no. 111/2007, provides for all magistrates to be appraised every four years, until they pass their seventh professional appraisal, after 28 years of employment.

These recurring appraisals stress that the professionalism of magistrates, under its various profiles, is repeatedly and thoroughly monitored during their whole professional career.

Assuming that a magistrate's independence, impartiality and balance are indispensable conditions for a proper exercise of the judicial functions, these professional appraisals mostly concern: professional capacity, hardworkingness, diligence and commitment.

The indicators used for assessing magistrates are: legal expertise, mastery of the techniques used in the different judicial sectors; the outcome of the judicial decisions issued in subsequent instances of the proceedings; the quantity and quality of judgements issued; compliance with deadlines for drafting and filing provisions; degree of participation and actual contribution to the proper operation of the office (if available for replacing colleagues, frequency of attendance of refresher courses, contribution to solving organisational issues, etc.).

In particular, the reform provides for the identification of average standards for settling proceedings to which to compare the activity carried out by every individual magistrate.

In order to safeguard the autonomy and independence of magistrates, in no case can a professional appraisal reconsider the law applied to individual cases.

When collecting information needed to make a professional appraisal, particular importance is given to the reports drafted by the heads of the judicial offices.

The Superior Council of the Judiciary makes professional assessments on the basis of the opinion expressed by the Judicial Council and the documents acquired.

The C.S.M. expresses a favourable professional appraisal when the assessed magistrate is given a pass mark on each of the above mentioned parameters. In that case, the magistrate gets the professional appraisal corresponding to his seniority.

A "non favourable" appraisal is expressed when there are shortcomings in respect of one or more of the above parameters.

An "adverse appraisal" is expressed when there are serious shortcomings in respect of one or more of the above parameters.

The law provides for specific consequences, both professional and economic, as a result of a "non favourable" or "adverse" appraisal; in particular, the law provides for a magistrate to be released from service in case of a double adverse appraisal.

The C.S.M., by its own circular letter no. 20691 issued on 4 October 2007, has implemented the primary legislation, and has regulated criteria, sources and parameters of assessment that will serve as guidelines for the four-year professional appraisals.

5.2 *Changing from the function of prosecutor to the function of judge, and viceversa*

The provisions as per Chapter IV of Legislative Decree no. 160/06, issued to implement enabling law no. 150/05, later amended by law n 111/07, have introduced some important restraints on magistrates wanting to change from the functions of judge to the functions of prosecutors, and viceversa.

Before the provisions set forth in Chapter V of Legislative Decree no. 160/06 entered into force, there were no restraints on magistrates wanting to change from the functions of judge to the functions of prosecutors, and in order to do that it was enough, under Article 190 of Royal Decree no. 12/1941, to have an aptitude appraisal by the Judicial Council of the district of employment. In 2003, a circular letter issued by the Superior Council of the Judiciary (Circular no. P-5157/2003 of 14 March 2003 - Deliberation 13 March 2003) regulated the modalities for making an appraisal and envisaged limitations on changing from the functions of prosecutors to the functions of a criminal judge within the same district (circondario).

The reform has limited the possibility for magistrates to change from one function to the other from an objective point of view, and has forbidden it in the following cases: a) within the same district[2]; b) within other districts of the same region; c) within the district of the court of appeal established by law as holding jurisdiction in the matter of criminal liability of magistrates of the district where the magistrate holds office when changing functions.

[2] A district indicates the territorial jurisdiction of the Court of Appeal and comprises several territorial jurisdictions of the courts (circondari).

From a subjective point of view, by law a magistrate can change from one function to the other four times at the most during his whole career, and has to exercise a given function for at least five years before changing again.

In order to be able to change the following is required: a) having attended a vocational training course; b) a favourable appraisal by C.S.M., issued on the basis of the opinion by the Judicial Council that the magistrate is suitable to exercise the different functions.

A change in functions is also possible in the same district, as long as it occurs in a different circondario and a different province from the one of origin, if a) the magistrate asking to change to the functions of prosecutor has exclusively exercised functions of judge in civil and labour courts for five years; or b) a magistrate asking to be changed from functions of prosecutor to functions of judge in civil or labour courts divided into divisions and with vacant positions, and be assigned to a division exclusively dealing with civil and labour affairs. In the first case, the magistrate cannot be assigned, not even as a deputy, to civil or mixed functions before his subsequent transfer or change in functions. In the second case, the magistrate cannot be assigned, not even as a deputy, to mixed or criminal functions before his subsequent transfer or change in functions. In all the above cases, a change in functions can only take place in a different circondario and in a different province from that of origin.

The assignment to the rank of second instance judge or prosecutor can only occur in a different district from that of origin.

The assignment to civil or labour judicial functions of a prosecutor has to be expressly indicated in the list of vacant positions published by the Superior Council of the Judiciary (C.S.M.) and in the relevant transfer provision.

6. HEADS OF THE COURTS

The President of the Court of Cassation, the Prosecutor General attached to the same Court and the magistrates holding executive posts within the courts of first and second instance, whether exercising the function of judge or prosecutor, are in charge of running the offices, carrying out tasks of jurisdiction management in compliance with the

guidelines of the judicial councils, and administrative functions with regard to the exercise of the judicial functions.

The executive positions are decided by the C.S.M., with the agreement of the Minister of Justice (see. Article 11, Law 195 of 24 March 1958; Article 22 of C.S.M. internal rules). The criteria used to choose the heads of the offices are aptitude and merit, as well as seniority, taken together. The recent reform of the judicial system has basically changed the criterium of appraisal to a criterium of legitimation for applying for given executive positions.

The comparative appraisal of applicants aims at choosing the most suitable candidate for the position to be filled, with regard to the functionality and, possibly, specific environmental requirements of the office.

For the sake of awarding the posts of head of the Court of Cassation and head of the Higher Court of Public Waters, the assessment procedure is restricted to those magistrates who have discharged functions of legitimacy for at least four years, while a preferential ground for assessment consists in having been, during the last fifteen years, at the head of higher executive offices for at least two years.

6.1 *Temporary nature of executive posts*

The law reforming the judicial system has provided for executive and semi-executive positions to be temporary.

Executive and semi-executive functions are now temporary in nature and are conferred for four years. At the end of the term the said office can be confirmed only for another four years following a favourable appraisal by the Superior Council of the Judiciary (C.S.M.) on the past activities. Should an adverse appraisal be issued, the magistrate concerned cannot apply for other executive jobs for at least five years.

At the end of the term, a magistrate who has exercised an executive function is assigned to a non-executive function in the same office, even if staff is in excess, which excess is to be reabsorbed at the first coming holiday.

Executive and semi-executive functions may be exclusively conferred on magistrates who, on the date that the position is made open, have at least four years of service before retirement. In Italy, retirement is at the age of 70.

7. ORGANISATION OF THE PROSECUTING OFFICES

The new rules in the matter of organisation of the Offices of the Public Prosecutor, set forth by Legislative Decree 106/2008, provide for criminal proceedings to be instituted exclusively by the Prosecutor of the Republic. The said organisational choice while establishing the role of the Prosecutor of the Republic, highlights its hierarchical role. By so doing, the law maker has pursued the aim of giving full uniformity and effectiveness to criminal prosecutions, as set forth by the Constitution.

At an organizational level, the Prosecutor is entitled to appoint a deputy, among the assistant prosecutors attached to the office, in those instances where he is absent or prevented from attending to his duties, or where the post is vacant; failing which the deputy functions are exercised by the Assistant Prosecutor or by the Stand-in Prosecutor with the longer service.

The Prosecutor of the Republic, since exclusively in charge of prosecutions, exercises the said power either personally or by assigning a case to one or more prosecutors of his office. The Prosecutor of the Republic has the power-duty to establish the general criteria for his Office's organisation, set up working groups, possibly coordinated by a deputy prosecutor of his office, and identify types of offences for which the assignment of cases can occur automatically.

The role of individual deputy prosecutors has in any case been enhanced. The law, in fact, ensures some margin of autonomy to individual deputies *vis-à-vis* handling the cases assigned by the head of the office.

In given circumstances, the Prosecutor can revoke the assignment of a case; and the deputy can then submit written observations to the Prosecutor of the Republic. A magistrate cannot be subjected to disciplinary proceedings because an assigned case has been revoked.

The law confers on the Prosecutor specific competences in the matter of judicial orders limiting the personal liberty of citizens or those affecting property rights.

Relations with the media are personally kept by the Prosecutor of the Republic, or by a prosecutor of his office he has delegated. Prosecutors of the Office of the

Prosecutor of the Republic are forbidden to issue statements or provide information to the media on the judicial activity of the office.

As guarantee of compliance with such a prohibition, the law enjoins upon the State Prosecutor the obligation of reporting to the Higher Judicial Council, for it to exercise its power of supervision and solicitation of disciplinary action, any conduct by magistrates attached to his office that are in breach of the prohibition itself.

The law does not provide for the organisational plan of the office worked out by the Prosecutor of the Republic to be approved by the C.S.M.; however, the Prosecutor is expected to send the adopted organisational provisions to C.S.M. Both primary and secondary legislation in any case provides for the executive functions of the Prosecutor of the Republic to be appraised at the end of his first four years of office, so that he may, if any, be confirmed. By this appraisal, the C.S.M. can check the organisational plan's compliance with the principles that should underlie the activity of prosecutors.

8. TRAINING OF MAGISTRATES

8.1. *The training activity carried out by C.S.M.*

Before the Superior School of the Judiciary (dealt with in the following paragraph) was set up, and still today, until the School actually enters into operation, the training is organised by the Superior Council of the Judiciary, with the contribution of the Scientific Committee - body provided for by Article 29 of the Internal Rules - a collegiate body made up of 16 members (12 magistrates and 4 university professors in legal matters) appointed by the C.S.M..

In fact, the C.S.M., as the body safeguarding the autonomy and independence of all the members of the Judiciary, provides a training aimed at enhancing the expertise and sensitivity for professional ethics both of judges and public prosecutors, representing the same conditions needed to ensure that the judicial functions are exercised in an autonomous and independent way.

Over the last years, both the initial and subsequent training has been aimed at providing an in-depth study of the procedural institutions, but also at enhancing and promoting greater commitment on behalf of judges vis à vis the trial - by studying the

case file before the trial, attempting a conciliation and enhancing the principle of hearing both parties - and at encouraging magistrates to acquire virtuous organisational and interpretation practices within their respective offices.

The C.S.M. has introduced European law in the yearly training programmes and has promoted EJTN (European Judicial Training Network), convinced that the Judiciaries have to contribute to creating a European judicial area through mutual collaboration and dialogue.

The main objective of the network, in fact, is to act as a link between the European Institutions, their politics and the various national judiciaries, so as to facilitate attention to the principles of autonomy and independence of the judicial power in elaborating the normative cooperation instruments.

In other words, the network aims at facilitating, among the judiciaries, dialogue and mutual knowledge of the operation on the part of the respective judicial systems, through an accurate study of the system-related differences, for the sake of a growing acquisition of reciprocal trust.

In 2000, the C.S.M. set up a network of decentralised trainers. In every Court of Appeal district an office has been set up for decentralised training, consisting of magistrates chosen by the Council. They work together with the Scientific Committee and the Council itself. Decentralised training is entirely part of the overall training provided by the C.S.M..

Lastly, with regard to methodology, the C.S.M. has adopted new training modules like e-learning - as part of a specific remote training programme - which is based essentially on topic discussion forums coordinated by experts.

8.2. *The Higher Judicial School*

Legislative Decree No. 26 of 30 January 2006 has established the Higher Judicial School, which is the exclusive authority in the field of training and refreshment courses for judges, and is structurally and functionally distinct from the Higher Judicial Council.

The School is an autonomous educational structure, endowed with public law juristic personality, full private law capacity and organizational, functional, managerial,

negotiating and accounting autonomy, in conformity with the provisions of its own Statute and internal Regulations, in due compliance with the law.

By explicit regulatory provision, the School can have a maximum of three offices, to be determined by decree of the Ministry of Justice, jointly with the Ministry of Economy and Finance.

Since 2012, thanks to an agreement stipulated with the Ministry of Justice, the Tuscany Region, the Province of Florence and the Municipality of Scandicci, the executive office of the school is situated in Villa di Castel Pulci, situated in the Municipality of Scandicci (Florence).

The allocation of the School to the activity of judicial training simultaneously fulfils two long pursued objectives: the identification of a stable "home" for undertaking such a delicate activity, which is instrumental to a better professionalization of the magistrate, including through an in-depth study of extra-judicial disciplines and aspects of professional ethics; the start of operations of an independent body – the School – with exclusive jurisdiction over the activity itself.

The School organization is regulated by the Statute and by the Regulations issued by the School itself.

The School organs are: The Steering Committee, the Chairman and the Secretary General.

The Steering Committee consists of twelve members; of those members, seven are chosen from among magistrates, including retired ones, who have reached at least the third professional appraisal, three from among university professors, including retired ones, and two from among advocated who have exercised the profession for at least ten years. The Higher Judicial Council appoints six magistrates and a university professor; the Minister of Justice appoints a magistrate, two university professors and two advocates. The members of the Steering Committee remain in office for four years, their term of office cannot be renewed immediately, and they cannot be part of Commissions in competitive examinations for magistrates.

The steering Committee adopts the School's Statute and Regulations, elects the Chairman and two Vice-Chairman, appoints the Secretary General, approves the budget and the final balance, appoints the people in charge of sectors; adopts, by no later than the 31st December of every year, the educational activity program for the following year; approves, by no later than the 31st January of every year, the report on the activity undertaken in the previous year and transmits it to the Higher Judicial Council and to the Ministry of Justice; attends to the task of keeping a roll of teachers; approves the apprenticeship plans for magistrates, as regards both generic and targeted apprenticeships; appoints the teachers for the single training sessions and sees to the admissions themselves; monitors the due operation of the School; and adopts every resolution which is necessary to ensure the good operation of the School and the thorough achievement of its institutional objectives.

The Chairman, elected for two years by the Steering Committee from among its own members, is vested with the School's legal representation, chairs the Steering Committee, summons it to meetings by setting the relevant agenda, adopts urgent measures, subject to ratification if they fall within the prerogative of another organ, and discharges the tasks allocated to him by Statute.

The General Secretary, appointed among the magistrates who have reached at least the fourth professional appraisal, or among first band executives, remains in office for five years, in the course of which, if he is a magistrate, he is placed outside the organic role of the judiciary.

He is responsible for the administrative management and coordinates all the School activities, except for those pertaining to education, takes care of executing the resolutions of the Steering Committee, draws up the annual report on the School Activities, exercises the powers which might have been delegated to him by the Steering Committee and exercises any other function conferred upon him by Statute and by the internal Regulations.

The School is vested with the task of providing professional training and refreshment courses for magistrates and honorary magistrates, as well as with the task of training in Italy foreign magistrates or magistrates participating in the training activity

that is carried out within the scope of the European network of judicial training. It collaborates, at the behest of the competent Governmental authorities, with the activities aimed at the organization and operation of the justice service in other Countries.

When elaborating the annual educational activities, the Higher School must take account of the guidelines on training formulated by the Higher Judicial Council and by the Ministry of Justice, as well as of the proposals received from the National Advocates' Council and the National University Council.

The courses organized by the School are aimed at professional training and refreshment; at the move from a judicial to a prosecuting function and vice versa; and at the implementation of the steering functions.

The professional training and refreshment courses are held at the School's offices and consist in the attendance of study sessions run by highly competent and professional teachers, as identified in the existing roll kept at the School.

The roll is annually updated by the Steering Committee on the basis of the new availability lists forwarded to the School and the appraisal given to any teacher, regard having been paid to the judgment set out in the cards drawn up by the course participants. The courses are both theoretical and practical.

All the serving magistrates are under the obligation of participating at least once every four years in one of the juridical preparation and refreshment courses organized by the School, in accordance with the modalities set out by the School Regulation.

The initial training is addressed to apprentice magistrates, concerning whom the School is called upon to organize theoretical-practical refreshment courses on subjects identified by the Higher Judicial Council. The courses are run by highly competent and professional teachers, appointed by the Steering Committee so as to ensure a broad cultural and scientific pluralism.

Among the appointed teachers are also tutors, who further ensure educational assistance for the trainee magistrates.

With regard to the initial training of apprentice magistrates, the Steering Committee has jurisdiction to approve the apprenticeship program to be run at the judicial offices of the district capital where each of them resides.

At the end of the apprenticeship, the Steering Committee draws up a summary report relating to each magistrate. The Higher Judicial Council formulates the judgment on eligibility upon conferring judicial functions, bearing in mind the reports drawn up at the end of the sessions as transmitted to the Steering Committee, the summary report prepared by the same, the opinion expressed by the Judicial Council and any other relevant and objectively verifiable element as might have been acquired. The judgment on eligibility, if positive, includes a specific reference to the magistrate's aptitude for carrying out the judging or prosecuting functions.

The trainee magistrate who is evaluated negatively is admitted to a new apprenticeship period lasting one year, which consists in a two-month session at the School offices, to be carried out according to the modalities set out in article 20, and in another session at the judicial offices. The session at the judicial offices is structured around three periods: the first period, lasting three months, is carried out at court and consists in his participation in the judicial activity pertaining to disputes or offences falling within the jurisdiction of a court sitting as a single bench or as a full bench, including participation in a closed session, in such a manner as to ensure to the apprentice magistrate the creation of a balanced experience in the different sectors; the second period, lasting two months, is carried out in court at the State Prosecution; while the third period, lasting five months, is carried out at an office corresponding to the first destination office of the apprentice magistrate.

A possible second negative evaluation would give rise to the termination of the trainee magistrate's employment relationship.

In the first four years after taking up judicial functions, the magistrates shall have to participate at least once a year in professional training sessions.

9. DISCIPLINARY LIABILITY OF MAGISTRATES

9.1. *Breach of Discipline*

Legislative Decree no. 109/2006 - "*rules regulating breaches of discipline by magistrates, relevant sanctions, and application procedure*" - notably changes the previous system, as part of the global reform of the judicial system approved by enabling law no. 150 of 2005. The first chapter of the legislative decree is divided into two sections, one dedicated to breaches of discipline and the other to disciplinary sanctions.

Breaches of discipline can be divided into two categories: on the one hand, cases of breaches committed in the exercise of the judicial functions, and on the other, cases of breaches committed out of court. The substantive rules tend to typify breaches of discipline of magistrates, both with regard to conducts in court and those out of court, without prescribing any additional closing provisions.

Article one of the above mentioned legislative decree is dedicated to *"duties of a magistrate"* and provides for a detail list of fundamental duties to be complied with by magistrates while exercising the judicial functions. They are basic principles and ethical values for practitioners of the judicial functions and sets forth duties widely recognised by legal scholars and case law.

Reference is thus made to the duty of impartiality, propriety, diligence, commitment, confidentiality, balance and respect for the dignity of individuals as the fundamental principles to be complied with when exercising the judicial functions.

Article 2 of the legislative decree sets forth a detailed list of mandatory cases of breaches of discipline in the exercise of the judicial functions, while Article 3 provides for a number of conducts held out of court that amount to breaches of discipline and give rise to disciplinary proceedings.

Given that any interpretation of the law, and the assessment of facts and evidence, can never amount to breaches of discipline, 25 cases are identified amounting to typical breaches committed while exercising the judicial functions; as an example, any conduct that, contravening the duties of a magistrate, causes unfair damage or unfair advantage to one of the parties; the omitted communication to the Superior Council of the Judiciary that one of the circumstances of parental incompatibilities as per Articles 18 and 19 of

the judicial system applies; the knowing non-compliance with the obligation to abstain; conducts that are normally or seriously unfair to the parties, their lawyers, the witnesses or anyone relating to a magistrate of the judicial office, or to other magistrates or collaborators; an unjustified interference in the judicial activity of another magistrate and the omitted communication of the said interference to the head of the office by the magistrate who suffered it; and also serious violations of the law caused by inexcusable ignorance or negligence and the misinterpretation of facts caused by inexcusable negligence; and many others that are just as important.

Article 3 of the above legislative decree lists 8 cases of breaches of discipline perpetrated out of court. Examples are: using the title of magistrate to obtain an unfair advantage for oneself or others; seeing people who are subject to criminal, or other, proceedings assigned to the magistrate concerned; seeing people who are known to be habitual or professional criminals: seeing people who have criminal tendencies, or have prior convictions for intentional offences and have been sentenced to a term of imprisonment of over three years, or have been imposed a precautionary measure, except when the person has been rehabilitated; knowingly doing business with one of the above persons; discharging out-of-court jobs without the required authorisation of the Superior Council of the Judiciary; participating in secret associations or associations whose membership is objectively incompatible with the exercise of judicial functions; registration or systematic and continuing participation in political parties, or involvement in the activities of individuals working in the economic or financial sector who can condition the exercise of their functions or in any case jeopardise the image of a magistrate.

Article 4 of the decree identifies breaches of discipline that result from the commission of an offence, establishing a kind of automatism between the facts at the basis of a conviction for an intentional offence and disciplinary proceedings. This automatism does not apply to unintentional offences punished by imprisonment unless they particularly serious in view of the modalities used to commit the act and its consequences.

9.2. ***Disciplinary sanctions***

The second section of the legislative decree sets the sanctions for breaches of discipline. The law provides for different types of sanctions, which are adapted to the individual breaches of discipline described above. The law, in fact, introduces the criterium of tale crimen talis poena, as a consequence of the typification of the breaches.

The various sanctions are: a) a warning, which formally invites the magistrate to comply with his duties; b) a censure, which is a formal statement of disapproval; c) loss of seniority, which cannot be of less than two months and more than two years; d) temporary incapacity to exercise an executive or semi-executive position, which cannot be for less than six months and more than two years; e) suspension from functions, with is the suspension from the functions, the salary, and the magistrate is placed out of the rolls of the Judiciary; and f) removal from office, with the termination of employment.

There is also the accessory sanction of enforced transfer that a disciplinary judge can apply when imposing a sanction stricter than a warning. Such additional sanction is always adopted in given specific cases identified by law.

An enforced transfer can also be ordered as a precautionary and temporary measure when there is circumstantial evidence of the breach of discipline and there are reasons of particular urgency.

9.3. ***Disciplinary proceedings***

Disciplinary proceedings are judicial in nature and are regulated by the rules of the code of criminal procedure, in view of their compatibility. The competent authority is the Disciplinary Division of the C.S.M., made up of six members: the Vice President of the C.S.M., who acts as the president, and five members elected by the C.S.M. itself among its members, of which one is elected by Parliament, a magistrate with the rank of court of cassation magistrate actually exercising court of cassation functions and three magistrates of the merits.

Disciplinary proceedings are instituted at the initiative of the Minister of Justice and the Prosecutor General attached to the Court of Cassation. Prosecution has been changed from discretionary to obligatory for the Prosecutor General, while it remains discretionary for the Minister.

The obligatory nature of prosecution is linked with the choice of typifying breaches of discipline, and is very similar to that within the criminal system, and imposes strict compliance with the principle of legal certainty, so as to avoid uncertainties in law application as much as possible.

The law also provides for a general clause for the disciplinary irrelevance of a conduct should the act be of "scarce importance". This clause will work on a different level - although convergent with regard to objectives - from the Prosecutor General's authority to set aside a case.

In fact, the Prosecutor General has the autonomous power to set aside a case when the act in question does not amount to a breach of conduct, is the subject of an incomplete report, does not fall within any of the typical cases identified by law, or when investigations show that the act was inexistent or not committed.

The measure setting aside the case is transmitted to the Minister of Justice. The latter can request a copy of the case file within ten days of receipt of the measure, and in the subsequent sixty days can ask the President of the Disciplinary Division to set a hearing for discussion, and issue the relevant charges.

At the hearing, the functions of public prosecutor are in any case exercised by the Prosecutor General or one of his deputies.

Once the first stage is over, the law provides for the proceedings to be instituted within a year of the notice of the breach, of which the Prosecutor General attached to the Court of Cassation had knowledge following preliminary investigations or a detailed report or communication of the Minister of Justice. Pursuant to the legislative decree, then, within two years of the commencement of the proceedings, the Prosecutor General has to make the conclusive requests, and within two years of the request, the Disciplinary Division of the C.S.M has to make a decision. The law also stipulates that disciplinary proceedings cannot be instituted ten years after the act was committed.

As from the beginning, notice of the disciplinary proceedings must be given to the accused within thirty days and the accused can be assisted by another magistrate or a lawyer. Then, investigations are conducted by the Prosecutor General, who makes his requests sending the case file to the Disciplinary Division of the C.S.M. and giving notice thereof to the accused. If he does not think that he has to request an order setting

aside the case, the Prosecutor General issues the charges and asks for a hearing for the oral discussion of the case to be set.

The Minister of Justice can intervene in the disciplinary proceedings by requesting investigations, requesting to extend the action instituted by the Prosecutor General to other acts, exercising its authority to issue an integration of the disciplinary charges in the cases instituted by the Prosecutor General, and by asking to change the disciplinary charges in case of actions he has instituted himself, by exercising its authority to make the charges and autonomously ask to set the date of the disciplinary proceedings in all the cases in which he disagrees with the request for acquittal issued by the Prosecutor General.

The discussion of a case within disciplinary proceedings, which occurs by public hearing, consists of hearing the report of one of the members of the Disciplinary Division, gathering ex officio evidence, hearing the reports, inspections, procedures and evidence gathered, as well as the discovery of documents. The Disciplinary Division makes a decision after having heard the parties and the said judgement can be opposed before the Joint Divisions of the Court of Cassation. Once it becomes final it can in any case be reviewed.

10. THE CIVIL LIABILITY OF THE MEMBERS OF THE JUDICIARY

Disciplinary liability is the result of a breach of the functional duties a magistrate undertakes vis-à -vis the State at the time of appointment. Civil liability, instead, is the liability that a magistrate undertakes vis-à -vis the parties to the proceedings or other entities, and which results from any mistake or non-compliance affected in the exercise of his functions.

The civil liability of magistrates, which is similar to that of any other public servant, is based on article 28 of the Constitution.

Following the outcome of a referendum which led to the repeal of earlier rules severely limiting cases of civil liability, the issue is now regulated by Law no. 117 of 13th April 1988.

From a substantive viewpoint, this law affirms the principle of the right to compensation for any unfair damage resulting from the conduct, decision or judicial order issued by a magistrate either with "intention" or "serious negligence" while exercising his functions, or resulting from a "denial of justice" (art. 2).

After explaining in detail the notions of "serious negligence" (art. 2, paragraph 3) and "denial of justice" (art. 3), the law nevertheless clarifies that the activities of interpreting the law and assessing the facts and evidence (art. 2, paragraph 2) cannot give rise to such liability. In this respect, in any such cases, it is the procedure itself which safeguards the parties, i.e. by resorting to the system of appeals against the order assumed to be defective.

Without prejudice to the fact that in relation to the merits the judicial activity is unquestionable, something can nevertheless be done in respect of a magistrate's disciplinary liability in cases where - according to the C.S.M. Disciplinary Division's case law - an exceptional or evident breach of law has been committed, or the judicial function has been exercised in a distorted way.

From a procedural view point, it should be pointed out that the liability for compensating damage rests with the State, against which an injured party may take legal action (art. 4). If the State's liability is established, then the State may, subject to certain conditions, in turn claim compensation from the judge/prosecutor (art. 7).

A liability action and relevant proceedings must comply with specific rules. The most important of these rules provides for liability proceedings to be subject to: the lodging of all ordinary means of appeal, including any other remedy for amending or revoking the measure that is assumed to have been the cause of unfair damage; the existence of a deadline for exercising such action (art. 4); a decision on the action's admissibility, for the purposes of checking the relevant prerequisites; observance of the terms; an assessment of the evidence to see whether the charges are grounded (art. 5); and the judge's power to intervene in the proceedings against the State (art. 6).

In order to guarantee the transparency and impartiality of the proceedings, the system prescribes for the jurisdiction over such proceedings to be transferred to a different judicial office (arts. 4 and 8), to ensure that the proceedings are not assigned to a judge of the same office as the office of the magistrate whose activity is assumed to

have given rise to an unfair damage. The criteria for establishing the competent judge have recently been amended by Law no. 420 of 2nd December 1998, with the specific objective to avoid any risk of prejudice while such cases are decided.

Law No. 18 of 2015 has amended the regulations on magistrates'civil liability, in order to adapt the Italian system to the recommendations issued by the Court of Justice of the European Union.

The novelty of Law No. 117 of 1988 (the so-called Vassalli Law) on magistrates' civil liability is characterized by:

- the preservation of the current principle of indirect liability of the magistrate (any compensatory action can still be instituted against the State only);
- the limitation of the exemption clause excluding the magistrate's liability;
- the redefinition of the specific category of gross negligence, whereupon a *"misrepresentation of fact or evidence"* is added to the negation of an existing act and to the affirmation of a non-existent fact and the issuing of a personal or real restriction order outside the instances contemplated by law or groundlessly. Moreover, a magistrate's gross negligence might consist in a "manifest breach of the law as well as of European Union law";
- the elimination of the filter of prior activation of court-connected ADR services for entertaining a compensatory claim on the part of the District Court of Appeal;
- extension of compensatory redress for non-patrimonial damage even outside the scenarios of possible deprivation of personal freedom due to an act carried out by the magistrate;
- a stricter regulation of the State's reimbursement action against the magistrate.

Law No. 18 of 2015 further specifies the grounds to be considered in determining instances of manifest breach of the law and of European Union law which, in terms of the new paragraph 3, represent instances of gross negligence by the magistrate. It does

not set out an exhaustive list of cases. It is in fact specified that it is necessary to pay regard, "in particular", to the following elements:

- the degree of clarity and precision of the infringed laws;
- the inexcusability and seriousness of the non-compliance.

The reference to inexcusability, abrogated by the current paragraph 3, is accordingly reintroduced among the elements that are symptomatic of a manifest breach of the law and of European Union law.

Moreover, with regard to the mere manifest breach of European Union law, regard should additionally be paid to:

- non-compliance with the obligation of seeking a preliminary ruling from the Court of Justice of the European Union (CJEU) [3];
- the interpretative conflict, i.e. the conflict between the decision or order issued by the judge with the interpretation adopted by the CJEU (Court of Justice of the European Union) itself. Article 7 of Law 117/1988, relating to the State's reimbursement action against the magistrate, which is the right of the President of the Council of Ministers, has likewise been amended. The following new aspects are introduced:
  - the action must be instituted within 2 years (the previous deadline was 1 year) from the compensation awarded at judicial or quasi-judicial proceedings against the State;
  - the reimbursement action against the magistrate is made obligatory;
  - in coordination with the abrogation of art. 5, the reference to the issue of admissibility of the action is eliminated;
  - the grounds founding the reimbursement action have been linked to a denial of justice, a manifest breach of the law and of European Union law, or a misrepresentation of fact or evidence, as defined in article 2 (2), (3) and (3bis), while at the same time stipulating that the subjective element of the magistrate's wrongful conduct should exclusively consist in wilful default or inexcusable negligence.

[3] Also referred to as European Court of Justice.

In addition, the quantitative ceilings of the reimbursement are laid down. It cannot in fact exceed a sum amounting to half the annual salary (the previous legislation envisaged one-third thereof), net of tax deductions, which the magistrate was receiving as at the date on which the compensatory action has been instituted. The said ceiling does not apply to a fact committed in wilful default, in which case the compensatory claim is unqualified. If, instead, the execution of the reimbursement has been done through a salary deduction, it cannot entail an overall payment in monthly instalments which exceeds one-third of the net salary (before it could not exceed one-fifth thereof).

Lastly, Law No. 18 of 27 February 2015 also amends article 9 of the Vassalli Law, by coordinating the regulation of the disciplinary action against the magistrate (consequential on the compensation action instituted) through the suppression of the filter (of prior activation of court-connected ADR services) to the admissibility of the claim. The content of article 13 of Law 117/1988 (Civil liability for a fact amounting to an offence) is supplemented by envisaging the patrimonial liability for failure to institute the State's reimbursement action against the magistrate.

11. THE CRIMINAL LIABILITY OF THE MEMBERS OF THE JUDICIARY

From a criminal point of view, in their capacity as public officials, magistrates can be made to account for offences committed in the exercise of their functions (e.g. abuse of office, corruption, corruption connected with judicial duties, extortion, failure to perform official duties, etc.).

Parallel to this, they may act, in conjunction with the State, in their capacity as victims of a crime committed by private individuals against the public administration (a typical example is that of contempt of court and, in particular, contempt of court directed against the judge).

In this respect, it should be noted that under the aforesaid Law no. 420 of 2nd December 1998, the rules governing jurisdiction over such proceedings have radically been reformed. In addition to transparency, the aim of this reform was to ensure a judge's maximum autonomy of decision when called on to decide cases in which other

colleagues are involved for whatever reason. Significant changes were made to the rules of criminal procedure (arts. 11 of the code of criminal procedure and 1 of the implementing rules of the code of criminal procedure), by creating a mechanism that establishes the competent judge to avert the risk of "reciprocal" (or "crossed") jurisdictions. The same mechanism is in force in the civil actions when a magistrate is a party thereof, and is limited to actions regarding restitutions and compensation of damage caused by the offence.

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