

IAJ/UIM
Study Commission IV — 2022

Judicial Workplace and Judicial Independence

Answers from Italy

What is the impact on judicial independence of the judicial workplace (including nominations and appointments, independence in decision making, governance, assignments, fund and other resources)?

In Italy what is the judicial independence based on

The independence of the judiciary is established in the Constitution of Italy (1st January 1948) according to which Justice is administered in the name of the people and members of the judiciary (judges and prosecutors) are subject only to the law.

The courts are ordered by Parliament Act: The Supreme Court, the Courts of Appeal and District Courts are the general courts of law. The Supreme Administrative Court and the regional Administrative Courts are general courts of administrative law. Provisions on special courts administering justice in special fields (the Market Court, the Labour Court, Family Court) are laid down by Parliament Act.

The Constitution guarantees the independence of judges and prosecutors. A judge shall not be suspended from office unless by a judgement of a court of law. A judge shall not be transferred to another office without his or her own consent. Exceptions are only the age of retirement and if a judge loses capability to work as laid down by an Act. Judges are subject to professional assessment every four years.

The independence of the judge has been secured by the right to remain in office. A judge may not lose his or her office in another way than by a court decision.

Nominations and appointments

According to the Constitution (art.105) judges are appointed by the High Council of the Judiciary (CSM – *Consiglio Superiore della Magistratura*) after public

competitive examinations; the President of the Republic presides over the CSM in accordance with the procedure laid down by Parliament Act.

One of the main goals to the Act has been to ensure judicial independence, to ensure independence from other organs of the State. The nomination system of judges is meant to be transparent. The High Council of the Judiciary (art. 105 Constitution) has jurisdiction for employment, assignment, promotion, disciplinary measure related to Judges and prosecutors.

Independence in decision making

Independence in a judge's decision making means the power to obey only the law and generally accepted legal principles.

A court cannot be given advice or orders on how an individual case should be decided. Independence also means impartiality and objectivity. To protect independence there are procedural rules of disqualification of the judge.

Independence also means that public opinion, the press or other media may not impact on a judge's work.

Governance and assignments, fund and other resources

To support the activity of the courts and of prosecutor office, the Ministry of Justice is responsible for the central administrative functions of all courts, also the administrative support functions.

The Ministry of Justice decides on the allocation of the appropriations to the courts in accordance with the High Council of the Judiciary and by the approved budget. The Administration monitors the performance of the courts and conducts studies and assessments concerning it.

The Administration oversees the premises management of the courts. It is responsible for the maintenance and development of the information systems of the courts.

The Administration supports the courts, coordinates projects and takes part in international cooperation. Also, it submits initiatives to the Government on legislation in its field of activity.

All courts have their own administration system. The presidents of the courts lead the administration of their courts together with administrative manager appointed by the Ministry of Justice.

Fund and other resources

The Government of Italy grants the courts the necessary funds.

Court fees and application fees are also charged as compensation for the handling of the case and the measures taken in the courts.

Examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede or negatively impact judicial independence.

The Italian Association of Judges and Prosecutors established and accepted its own Ethical principles for judges and prosecutors. The document contains general principles for the identification and interpretation of ethical issues as well as guidelines for the deliberation and resolution of these issues.

Judges and prosecutor must declare, whenever he/she takes office in a new court, whether he/she has any relatives working as judges, prosecutors or lawyers in the same court in order to evaluate any possible incompatibility of offices.