Country: ITALY by Mr. Fausto Zuccarelli

1. "New Public Management" in the Judiciary

1.1 Introduction

New public management (NPM), management techniques and practices drawn mainly from the private sector, are increasingly seen as a global phenomenon. NPM reforms shift the emphasis from traditional public administration to public management.

NPM reforms have been driven by a combination of economic, social, political and technological factors. A common feature of countries going down the NPM route has allegedly been the experience of economic and fiscal crises, which triggered the quest for efficiency and for ways to cut the cost of delivering public services. However, it may well be argued that "fiscal and economic crises" are just used as excuses to push forward political intentions!

NPM refers to two concepts. The most relevant may be the new institutional economics. "The new institutional economics refers to introducing incentive structures (such as market competition) into public service provision. It stresses aggregating bureaucracies; greater competition through contracting-out and quasi-markets; and consumer choice." (Rhodes, 1996.1)

The NPM style of government involves distinguishing between policy decisions and service delivery. Service delivery, proponents of NPM argue, is best left to "entrepreneurial" governments based on principles like competition between service providers, outcome based performance standards, decentralized authority, market mechanisms and other qualities not traditionally found in government bureaucracy. Rhodes notes that "NPM and entrepreneurial government share a concern with competition, markets, customers and outcomes." (1996)

Key elements of NMP may include

- various forms of decentralizing management within public services (e.g., the creation of autonomous agencies and devolution of budgets and financial control),
- increasing use of markets and (internal) competition in the provision of public services (e.g., contracting out and other market-type mechanisms such as benchmarking),
- increasing emphasis on the quantity of outputs, performance and customer orientation.

1.2 Questions

1.2.1 There are Ideas of NPM which are or are planned to be applied in several countries in the judiciary. They may infringe on the independence of the judiciary and the judge. Please give a short survey of certain tendencies or features which may derive from NPM in your jurisdiction.

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• Regulatory reform in Italy has required radical rethinking of the role of the state and the quality of its performance. Since the early 1990s, Italy has been carrying out a programme for public sector revitalisation that is a wide-ranging approach. Competition principles, transparency, simplification, accountability for results and regulatory quality, decentralisation, and client-orientation are being built into the national regulatory apparatus through multiyear policies, procedures, skills, and institutions. As a result, Italy is rapidly improving its use of best practice tools for regulatory quality. Enactment in 1990 of the Administrative Procedure Law and subsequent new laws and amendments strengthened consistency and transparency in the application of laws and regulations. The principles of the law are applicable to all levels of governments. To improve regulatory communication, the government has relied on the Internet for government actions. In 1999, a programme was launched called "Regulations on the net" (Norme in rete) to permit easier access and search mechanisms for European, national and regional laws. The Prime Minister’s Office Internet site has started to regularly publish and update a list of regulatory measures approved within the Government. The Parliament publishes in the Internet all bills under discussion.

As for as the judiciary, no NPM integrated initiatives are in place or foreseen up to now. Taking in account that Constitutional Chart of Italy established the judicial power to be committed to law and right, jurisdiction is not a matter of NPM. At most NPM may be considered for the administration of the courts.

However, the High Council of the Judiciary, the Court of Cassation and several First Instance and Appellative Courts have already set up official Internet sites for easily giving people interested free access to legal texts (eg. codes, laws, regulations, jurisprudence, etc…) and legal forms. Furthermore, the High Council of the Judiciary has also arranged Intranet system for allowing all the judges and public prosecutors to get internal information, deliver application for training coursees and competion based on qualification as well as have access to their own files.

1.2.2. Please report on the following typical features of NPM.

Are they applied in your judiciary? If yes, in what way are they applied?

Do you think that they infringe on the independence of the judiciary?

• Global budget, devolution of budgets
• Financial control,
• Internal competition, benchmarking
• Best practice
• Quantity of outputs flexible distribution of workload
• Customer orientation,
• Emphasis on performance, incentives
• Quality control
• Others

• See 1.2.1. above. Furthermore, a threat to the judicial independence would only lie in relating the budget and the benchmarking to individual judges or panel of judges.

As far as the Ministry of Justice, which has got responsibility for the administrative functioning of court systems, a number of studies and projects have been launched, which aim to develop a completely automated system for the management of trials, in the
various sectors of justice. In most cases they have been financed by European Union grants, in particular in the context of the fifth framework programme. In that structure, for instance the e-Court project aims to create an integrated multimedia system for the courts of the various European countries within the area of judicial cooperation in the criminal fields. Its implementation will, on the one hand, provide a common framework for exchanging information among European judicial systems and improve the search, retrieval and archiving of multimedia documents from trials. On the other hand, it will also provide a service for European citizens to search and access the information available to the public about these trials. In summary, the e-Court system aims to:

- improve the search, consultation and the archiving procedures for trial documentation;
- introduce a greater degree of knowledge through the aggregation of different heterogeneous sources;
- provide a common access point for those sources;
- define a common framework for the exchange of information between European legal systems;
- support a synchronised audio/video/text consultation of testimony and statements.

2. Costs of the judiciary

2.1 How many professional judges are there in the judiciary of your country? (absolute figure and per 100'000 inhabitants)

- Italy’s judiciary is comprised of judges and public prosecutors, both of whom are considered magistrates. The Constitution guarantees the independence of magistrates from the executive branch of government by assigning to the Consiglio Superiore della Magistratura (CSM) - which is an independent, self-governing judicial body - the exclusive competence to appoint, assign, move, promote and discipline judges and public prosecutors. Prosecutors may apply to be judges (and vice versa) when openings arise. So, permanent magistrates are no. 9463, of whom no. 7059 judges and no. 2404 public prosecutors.

As Italian people are 53,321,000 there is a ratio of 16 magistrates per 100,000 inhabitants.

2.2 How much is the share of the judiciary of the overall annual budget of the state? Indicate the percentage out of the total state budget)?

- Italy has no consolidated budget sheet for the judiciary. According to the Italian Constitution it is up to the Ministry of Justice providing all the expenses for the justice administration. However, all the heads of Courts and Prosecutor's Offices have to manage budget for minor acquisitions.

2.3 Is there any fixed percentage in the overall budget of the state?

- No, there is not.

2.4 What is the recent development (1995-2005) of finances allocated to the judiciary? Give a short survey.

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2 Source: High Council of the Judiciary.
3 Article 110 Cost. [Minister of Justice]: Notwithstanding the powers of the superior council of the judiciary, organization and operation of the administration of justice are vested in the minister of justice.
• Taking in account the Ministry of Justice as a whole (including all the services, prisons system, judiciary, salaries, etc…), the part of national budget was:

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<tr>
<th>Year</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>1995</td>
<td>1.09%</td>
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<tr>
<td>1996</td>
<td>1.33%</td>
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<td>1997</td>
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<tr>
<td>2005</td>
<td>1.58%</td>
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2.5. Can you report on any cost-cutting measures in the last 10 years (1995.2005)? If yes, give a short description of them (please consider especially changes of court procedures, remedies etc.)

• Other than increasing measures to reduce public deficit, procedural reforms both in civil and criminal matters have been enacted by the Parliament for speeding up trials time.

2.6. Is there any influence of these cost-cutting measures on judicial independence and jurisdiction? If yes give a short description.

• No, there is not.

3. Privatisation of the judiciary

3.1. Are the tendencies to shift competences from the state courts to private arbitration, mediation and "private courts" ("rent a judge")? What are your experiences?

• Only in civil matters the involved parties can use arbitration courts under specific procedural rules. However, since arbitration courts are very expensive, these courts are not very frequent.

4. Diversa

4.1 Is remuneration for judges dependant at all on their performance (quantity or quality of output)?

• No, it is not at all.

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Please send the answers to this questionnaire by E-Mail to the presidency of the First Study Commission and to the Secretariat of the IAJ not later than by 31-07-2005

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4 Source: Ministry of Justice, Department of Balance.