

THE JUDICIAL WORKPLACE AND THE INTERSECTION WITH JUDICIAL INDEPENDENCE

Fourth Study Commission Questionnaire—2023

ITALY

For most, appointment to judicial office represents not only immense personal achievement but also public acknowledgment of professional eminence. In this Fourth Study Commission analysis, we will look at the judicial workplace and examine aspects of appointment to judicial office, promotion within the judiciary, equitable allocation and distribution of judicial workload and removal from judicial office. This review also endeavors to consider how the judicial workplace is or is not comparable to other workplaces.

Please answer the following in respect of your own country.

1. APPOINTMENT TO JUDICIAL OFFICE

Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal civil or appellate courts.

In Italy, access to the judiciary is achieved by passing a public competitive examination reserved for law graduates.

Prior the 2022 reform, it involved a second-level competition that could only be attempted after an additional two years of training or an internship in judicial offices, or after a lawyer's license or a doctoral degree. However, currently, access to the public competition is again allowed for those who have obtained a master's degree in law.

The competition is the same for judges and prosecutors.

There are no different methods of entering the judiciary depending on whether one intends to serve in civil or criminal functions. The allocation of functions and the legal sector is determined on available positions throughout the national territory, in order of ranking, following initial training.

The training for auditors of justice, now called *Magistrati ordinari in tirocinio* or *MOT* ("trainee ordinary magistrates"), includes both practical training in judicial offices and theoretical courses at the *Scuola Superiore della Magistratura* ("National School of the Judiciary"), in national locations such as Rome, Florence, and Naples, as well as decentralized venues at each Court of Appeal.

The first assignment of magistrates is aimed at filling first-instance judicial positions. The transition to the appellate jurisdiction can be decided, upon request, by the *Consiglio Superiore della Magistratura*, also called CSM ("High Council of the Judiciary") after successfully passing the second evaluation of professionalism. The selection is based on an internal call that considers seniority and coefficients calculated based on relevant personal conditions of the candidate, as well as the score obtained in the competition.

For the appointment to the Supreme Court, in addition to the requirement of minimum seniority, the scientific and normative analysis capacity is also evaluated by a special committee appointed by the CSM. The committee consists of five members, three chosen from magistrates who have obtained at least the fourth evaluation of professionalism and have exercised or are exercising functions of legitimacy for at least two years, a university professor appointed by the National University Council,

and a lawyer qualified to practice before higher courts designated by the National Bar Council. The members of the committee serve a two-year term and cannot be immediately reappointed. Furthermore, it is possible to be appointed as a Court of Cassation counselor for distinguished merits, participating in a specific competition reserved for lawyers with at least fifteen years of experience and university professors, announced by the CSM to cover up to a quarter of the available positions.

If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.

There is no political influence on the selection of magistrates.

Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, please describe why and in what respect each may be relevant.

Ethnicity and gender are not relevant factors for the appointment to judicial office, but Italian citizenship is required.

Describe whether and if so in what way the process of appointment to judicial office is independent of government.

The process of appointment to judicial office should be independent of the executive. The CSM, as a constitutional and independent body, is responsible for the selection, transfer, and career progression of magistrates, as well as disciplinary measures (Article 105 of the Constitution). While one-third of the members of the CSM are directly elected by the Parliament, the competition itself is regulated by public law, with predetermined selection criteria. The assessment of passing the competition is entrusted to a technical commission, while the CSM ensures the fairness of the procedure.

2. PROMOTION WITHIN THE JUDICIARY

Does scope exist for promotion within the judiciary and if so, please describe how and in what circumstances a magistrate or judge may be promoted.

To what extent is political affiliation of political partisanship relevant to promotion within the judiciary.

Describe the transparency involved in the process of promotion within the judiciary.

According to Article 105 of the Constitution, the CSM is also responsible for decisions regarding promotions of judges. The CSM is composed of three *ex officio* members, namely the President of the Republic, the Chief Justice of the Court of Cassation, and the Attorney General at the Court of Cassation, as well as twenty members from the judiciary (including two exercising appellate functions, thirteen exercising substantive judicial functions, and five exercising prosecutorial functions). Ten members are elected by Parliament and chosen from full professors of law or lawyers with at least fifteen years of professional experience.

It is a technical body of high administration for the judiciary, ensuring independence from politics (external independence) and from any other internal influence (internal independence).

The so-called "currents" are private associations of judges that participate in the public debate on justice and in the electoral competitions for the appointment of members of the Superior Council of the Judiciary. Many judges join these currents because they share common sensitivities and ideals.

The currents are all part of the National Association of Magistrates (ANM), which represents about 90% of Italian judges and is the only representative organization of all magistrates in Italy.

By statutory provision, the ANM is not a political association.

Founded in 1909, the Association, that is one of the founding members of the IAJ, aims to protect the independence and prestige of the judiciary, safeguard the moral and economic interests of magistrates, uphold the prestige and respect for the judicial function, and participate in societal debates for necessary judicial reforms and ensure their efficiency.

The currents, as represented within the CSM through the electoral mechanism, also elect their representatives within the ANM, which actively participates in the public debate on justice reforms and acts as an institutional interlocutor representing the category in parliamentary hearings, highlighting problems and dysfunctions, and formulating suggestions and proposals for the improvement of the service. Another task of the ANM is to protect the independence of the judiciary and individual magistrates from personal and/or political attacks.

It should also be noted that magistrates are prohibited from systematically participating in political activities or joining political parties.

Management and semi-management positions are assigned to magistrates by the Superior Council of the Judiciary through competitions based on qualifications. In the past, it has not always been easy to assess the merits and aptitudes of individual candidates through professional evaluations, which are generally positive for the vast majority of magistrates. As a result, it has sometimes happened (as evidenced by the scandal related to the chats of former magistrate Palamara) that membership in a particular current or personal connection, as well as associative or political affiliations, could also influence the assignment of these positions. The judicial leadership system has therefore undergone recent reform with a state law, still in the implementation phase, aiming to ensure, with stricter criteria, greater objectivity in decision-making on appointments, transparency, and meritocracy.

3. WORKLOAD WITHIN THE JUDICIARY

- 1. In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?**
- 2. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which –**
 - 1. (i) that judge's workload is allocated to other judges:**
 - 2. (ii) the overloaded judge can recover from workload arrears and from any other disabling factor that led to overload.**
 - 3. (iii) there are other mechanisms to address judicial delinquency.**
- 3. Are judges expected or required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner.**

1. Magistrates, being equated with executives, do not have a fixed working hours as they are required to produce a result, which consists of judgments or other judicial measures. Italian magistrates, therefore, are not obliged to be present in the office for a predetermined number of hours. However, diligent attendance at the judicial offices is required, in addition to the previously scheduled court activities. Moreover, magistrates are obligated to reside in the geographic area where their reference office is located. Failure to comply with this obligation without the required authorization and resulting in concrete prejudice to the fulfillment of diligence and hard work duties constitutes disciplinary misconduct.

2. Regarding the workload and expected productivity of a magistrate, there is a provision that requires office heads to identify the program to be implemented (known as a management plan) by January 31st of each year. The rules regarding workload planning have recently been modified (Law 71/2022). Office heads are required to determine the achievable objectives for reducing the duration of proceedings for the current year, as well as the office's performance goals. These objectives should include expected results for each section or, if not applicable, for each magistrate based on the

assessment of data from the previous four-year period and the program of activities for the current year.

In cases where the objectives are not met, there may be negative consequences for individual magistrates in terms of a “non-positive” or “negative” professional evaluation. The office head, in the event of serious and repeated delays by one or more magistrates, identifies the causes and takes appropriate measures to eliminate them. This may involve developing targeted plans for case disposal, including the total or partial suspension of assignments and the redistribution of roles and workloads if necessary. The concrete functionality of the plan is reviewed every three months. The targeted plan for case disposal, even when it does not involve tabular changes, as well as documentation on the outcome of periodic assessments, are submitted to the judicial council or, in the case of magistrates serving at the Court of Cassation, to the respective executive council. These bodies may suggest interventions different from those adopted.

3. There is no specific obligation to handle the pending files of a colleague to expedite the backlog clearance. However, magistrates have a general duty of hard work, cooperation within the office, and respect for the law and the parties involved. This implies timely intervention as a replacement for absent colleagues.

It is also the responsibility of the office head to determine the allocation of cases and subsequent reorganizations in the case of sick leave, maternity leave, or transfers. Similarly, mechanisms for equalization should be established in the event of the return to service of absent colleagues.

4. REMOVAL FROM JUDICIAL OFFICE

- 1. Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office. If so, please describe any such regime, giving all relevant details including-**
 - 1. (i) who decides that the judge is to be removed from office;**
 - 2. (ii) does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there an appeal process if removed;**
 - 3. (iii) what are the grounds for seeking the removal of a sitting judge;**
 - 4. (iv) what is the relationship between violation of the ethics code/principles and removal; and**
 - 5. (v) describe the transparency in the process.**

1 -1.1.- 1.3. Disciplinary responsibility is regulated by Legislative Decree 109/2006. Magistrates incur disciplinary responsibility for behaviors that constitute disciplinary misconduct. In the past, the identification of relevant violations was left to the disciplinary body. In implementation of the principle of legality, disciplinary offenses have been typified by Legislative Decree 109/2006. These offenses can occur during the exercise of their functions, including significant ones such as failure to communicate situations of incompatibility, grave and inexcusable ignorance of the law (excluding the interpretation of legal and factual norms), adopting decisions without motivation when motivation is required by law, and habitual and serious evasion of office duties. Disciplinary offenses can also be committed outside the exercise of their functions. In this regard, the use of the magistrate’s position to obtain unjust advantages for oneself or others, associating with individuals undergoing criminal or preventive proceedings handled by the magistrate, assuming extrajudicial positions without authorization, obtaining benefits or loans from the parties or their defenders, participating in secret associations or those objectively incompatible with the exercise of judicial functions, systematic and

continuous membership or participation in political parties, or involvement in economic or financial activities that could compromise the magistrate's image are particularly relevant. The sanctions imposed must respect the principles of legality and proportionality. The law establishes the minimum applicable sanction for different offenses.

The power to initiate disciplinary action lies with the Minister of Justice, who has discretionary power within one year from the knowledge of the fact, and the Attorney General at the Court of Cassation, who is obliged to initiate the action. The disciplinary judgment is conducted before the disciplinary section of the CSM (Superior Council of the Judiciary) after the formulation of a charge, specified by the Attorney General, consisting of one or more accusations. The disciplinary section of the CSM, composed of six actual members (the Vice President of the CSM, who presides over the section for the entire term of the council; a member elected by Parliament; a judge from the Court of Cassation with actual exercise of legitimacy functions; two judges with judicial functions of merit, and one judge with prosecutorial functions of merit) and five substitutes, decides on the removal of the magistrate and, more generally, on the existence of disciplinary offenses. The disciplinary section conducts an investigation and then issues a judgment in an adversarial procedure between the Attorney General, the accused, and their defense counsel, pronouncing a judgment of acquittal or conviction.

1.2. The accused, the Attorney General, and the Minister of Justice can file an appeal in cassation against the judgment. The appeal before the Joint Civil Sections of the Court of Cassation is governed by Article 606 of the Code of Criminal Procedure. The possible outcomes of this procedure are a declaration of inadmissibility, rejection on the merits, acceptance of the appeal with a referral to the disciplinary section (in a different composition) for a new judgment, or acceptance of the appeal without a referral. Revision of final judgments that have imposed a disciplinary sanction is also permitted when: the facts underlying the judgment are incompatible with those established in a final criminal judgment or in a judgment of non-prosecution no longer subject to appeal; new evidence has emerged or been discovered after the decision, which, alone or in conjunction with the evidence already examined in the disciplinary proceedings, demonstrates the non-existence of the offense; the finding of responsibility and the application of the related sanction have been determined by falsehood or another offense established by a final judgment. The elements on which the revision is requested must be such as to demonstrate that, if established, the charge should be excluded or a different sanction should be applied if removal is concerned, or if a transfer has resulted from the applied sanction. The magistrate who has been subjected to a disciplinary sanction or, in case of death or subsequent incapacity, their immediate relative with a moral interest, can request revision at any time. In the event of a revision request being accepted, the disciplinary section revokes the previous decision. A magistrate acquitted with an irrevocable decision following a revision trial has the right to a complete reconstruction of their career and to receive any unpaid salary and other entitlements.

1.4. It is established that the sanction of removal must be applied to a magistrate who has been convicted in a disciplinary proceeding for directly or indirectly obtaining loans or benefits from individuals whom the magistrate knows to be parties or subjects of pending criminal or civil proceedings at their belonging judicial office or at another office within the jurisdiction of the Court of Appeals where they exercise judicial functions, as well as from their defenders, victims, witnesses, or other parties involved in the proceedings. Removal is also imposed on a magistrate who has been criminally convicted with a penalty that includes the accessory penalty of permanent or temporary disqualification from public offices or who has been sentenced to imprisonment for a non-negligent offense for a term not less than one year, which has not been suspended or for which a revocation of the conditional suspension of the penalty has occurred. Removal leads to the termination of the employment relationship and is implemented by a decree of the President of the Republic.

1.5. The publicity and transparency of the proceedings are ensured by applying the rules of the Code of Criminal Procedure, where compatible, except for some expressly provided provisions. The procedure is extensively juridical, even during the investigation phase. The accused has the right to be notified of the conclusion of the investigations and to be heard during both the investigations and the trial. The disciplinary hearing is public, but the disciplinary section, upon request of any party, may order that the discussion be held behind closed doors. The European Court of Human Rights has stated that the principles of a fair trial must also be observed in disciplinary proceedings against magistrates (ECHR, Section I, 5 February 2009, *Olujic v. Croatia*).

2. If removed from office, describe the adverse consequences that may affect the removed judge including -

- (a) financial (especially pension) consequences.**
- (b) future employment consequences following removal.**
- (c) societal consequences including loss of title or civic decorations; and (d) disciplinary steps that may be taken against the removed judge.**

a) Removal results in the termination of the employment relationship and consequently the cessation of salary payments. The suspension of salary payments can also be decided as a precautionary measure during the disciplinary proceedings. Dismissal may entail the total or partial loss of retirement benefits, to be determined by the same disciplinary tribunal. A magistrate who has been removed or dismissed cannot be reinstated into service.

b) A removed magistrate cannot be rehabilitated.

c) In the case of removal from the judiciary, there are inevitable repercussions on society, resulting in an irreparable damage to the prestige of the exercised function and the trust of citizens in the judiciary. No disciplinary actions are taken against a magistrate who has been removed from the judiciary since, as mentioned, removal is one of the possible outcomes of the disciplinary process. Disciplinary sanctions have an administrative nature and are not criminal. The loss of ranks, academic titles, decorations, or other public honorary insignia does not result from a disciplinary sanction but from the permanent disqualification from public offices, which is an additional penalty applied in cases of conviction of over five years of imprisonment.