Answers addressed to the EU Commission
2023 Rule of Law Report

1. *Since the publication of the report in July 2022, have there been any developments regarding the independence of the judiciary?*

There have been no changes regarding the independence of the judiciary in the Italian Court of Cassation. The 2022 'Cartabia Reform'[1] – which concerns the judicial system as a whole – has not directly impacted on the status of the Court's judges and the basic rules of their activity.
The core issue of the Reform involves restructuring the judiciary through the adoption of new rules on organisational and disciplinary matters as well as on the functioning and the electoral system of the High Council of the Judiciary (*Consiglio Superiore della Magistratura*, CSM). In 2022 the Central Electoral Office (i.e., the national election commission) based at the Court of Cassation administered the newly regulated electoral process for the election of the new members of the CSM. The operations – more complex than the previous ones – went correctly and the Reform's amendments to the CSM did not affect said activities.

2. *Could you inform us about the state of play of the implementing legislation for the law on the High Council for the Judiciary, which was adopted on 16 June 2022? Have you been consulted during its preparation?*

The reply to this question would entail a political assessment that does not fall within the competence of the Italian Court of Cassation. It will probably take at least one year to start seeing the initial effects of the implementing legislation.
The Court of Cassation has been involved in round table discussions during the entire process leading to the 'Cartabia Reform', including the approval of the Bill on the High Council of the Judiciary (CSM). Additionally, the First President of the Court of Cassation is an *ex-officio* member of the CSM and indeed took part directly in the consultations.

[1] Legislative Decree No. 149 of October 17, 2022, also known as the 'Cartabia Reform', was adopted by the Italian Government with the aim of streamlining civil proceedings, reviewing ADR methods, and implementing urgent measures to rationalise proceedings in the areas of personal rights, family law and enforcement. The main goals of the Reform will include a reduction in the length of both civil and criminal proceedings to meet the targets provided for by the Italian National Recovery Resilience Plan (NRRP), thus bringing the Italian court proceedings towards a model of efficiency and competitiveness. This will require that the length of civil proceedings be reduced by 40% and that of criminal proceedings by 25% by June 2026, while the civil backlog pending before the ordinary courts of first and second instance (i.e., tribunals and courts of appeal) will need to be reduced drastically by 90% within the same deadline (June 2026). These figures will be measured against the length of court proceedings in 2019, which has been chosen as the 'baseline' for comparison purposes.

3. *The Government informed us about the implementing legislation for the civil justice reform (Legislative Decree no. 149/2022). Could you share your views on how does this implementing legislation addresses the efforts to cope with the efficiency challenges in the area of civil justice? Have there been any preliminary results that you could share with us already?*
4. *The Government also informed us about the implementing legislation for the criminal justice reform (Legislative Decree no. 149/2022). Could you share your views on how does this implementing legislation addresses the efforts to cope with the efficiency challenges in the area of criminal justice? Have there been any preliminary results that you could share with us already?*

The efforts in the civil and criminal law sectors aiming at improving the endeavours of the National Recovery and Resilience Plan are actually effective. Their assessment is conferred upon the political bodies.

As to the Court of Cassation, the efforts in the civil law sector include: 1) the Sixth Civil Chamber (so-called 'Filtering Section') has been closed down in order to reduce the time needed for the transfer of cases to the ordinary civil chambers[2] and to facilitate the coordinated management of the cases, and 2) the organisation of the first screening (preliminary examination) of the appeals has been improved in order to identify co-related appeals and/or consistent interpretative questions. This is improving the organisation of the hearings and the quality of decisions.

In the criminal law sector, basic proceeding rules before the Court of Cassation have not changed. However, the 'Cartabia Reform' has introduced some innovations. In particular it has provided that the delivery of the first-instance judgement will make the statute of limitations on a crime (prescriptive period) cease to run. Regardless of whether the defendant is eventually convicted or acquitted, the prescriptive period will stop permanently for almost all crimes (this does not work for mafia and most serious crimes), provided for by the law. In order to prevent proceedings to run with no time limit, the 'Cartabia Reform' has amended the code of criminal procedure to introduce art. 344-*bis:* this innovative article provides for new time limits (to be considered as '*condizioni di procedibilità'*) for the proceedings before the appellate courts and the Court of Cassation. According to the new provision, court proceedings shall be concluded within statutory time limits, after which the panel will be obliged to enter a nonsuit judgment and dismiss the case ('*improcedibilità'*). Pursuant to art. 344-*bis*, time limits shall be respectively two years for proceedings before the appellate courts and one year for those before the Court of Cassation. However, art. 344-*bis* has provided for a couple of exceptions in that 1) the defendant may forgo the statutory time limit and 2) the statutory time limit does not apply to crimes punished by life imprisonment. The new legal framework is expected to be put into place progressively, and indeed a transitional regime will apply until 31 December 2024, according to which the above-mentioned time limits will be increased up to

[2] First to Fifth Civil Chamber that manages the highest number of civil case.

three years for the proceedings before the appellate courts and 18 months for those before the Court of Cassation. The results will be therefore examined in the next future.
Finally, since 75,000-80,000 appeals (29,915 civil appeals and 45,363 criminal appeals in 2022) are filed yearly with the Court of Cassation in the average, the point is how to afford this huge worklog in the best possible and fast way, with a view to guaranteeing high-quality decisions at the same time.
At first glance, the Court of Cassation has an overall positive opinion on the Reform.

Civil law sector

The overall evolution of civil proceedings over the last years indicates that:

- on the one hand, **incoming cases** tend to decrease constantly every year. They went down from 36,881 in 2018 to 31,544 in 2021, to 29,915 in 2022. Comparing the 2022 Jan-Dec period with the 2021 one, incoming cases fell by 5.2%;
- on the other hand, the yearly number of **completed cases** went up from 32,449 in 2018 to 40,778 in 2021, then decreased to 36,284 in 2022. Compared to the 2020 Jan-Dec period where 29,108 cases were completed, the amount of completed cases in 2022 has increased by 24.7%;
- figures at the end of 2022 show that the **justices' average productivity** slightly decreased to 247 decisions per justice compared to the previous year, yet this remains a huge number compared to years 2019-2021 and to the EU average;
- the **clearance rate** went up from 89% in 2020 to 129% in 2021 and then slightly decreased to 121% in 2022.

This virtuous circle has started to have positive effects on the number of **pending cases**: in 2022 there were 104,872 civil cases pending before the Court of Cassation, compared to 111,241 pending cases in 2021 (this shows the relevant number dropped by 5.7% in 2022). The 2022 results are even more positive if measured against the 120,473 cases that were pending before the Court in 2020.
Furthermore, the majority of the Court's chambers are working hard to eliminate the backlog of older cases, and consequently the **average length of proceedings** is at present lower than in the past, i.e., 1,223 days in 2022 compared to 1,289 days in 2021 (-5.1%).
As regards the Court of Cassation, the civil chambers continue to perform very well compared to previous years, hence the individual performance of the court justices can be slightly furtherly increased considering that the quality of judicial decisions must be preserved and current and future efforts should sustain the Court towards an overall and general organisational improvement of its work.
The reorganisation process of the Court has started a long time ago and it is now accelerating thanks to EU funding through the National Recovery and Resilience Plan. The Court of Cassation is indeed working towards reducing the length of proceedings against the backdrop of a high backlog of pending cases. During the first months of the NRRP being put in place, the Court encountered some difficulties due to adapting to a new working methodology; however, we can already see a positive

outcome in terms of reduction of the **disposition time (DT)** for solving civil cases[3] before the Court, which corresponds to a reduction of 200 days: the DT has indeed dropped from 1,302 days in 2019 ('baseline year') to 1,063 days in 2022 with a -18.4% variation. This reorganisation process could be further supported by the external intervention of the lawmaker on the relevant legislation.
Although the backlog of older civil cases has slowed down the disposition time over the years, the Court of Cassation is planning to reduce it significantly in 2024. To this end, the Court is relying on two measures:

1) legislative measure consisting in the closure of the Sixth Civil Chamber ('Filtering Chamber') of the Court of Cassation on 31 December 2022 and the allocation of its cases directly to the other ordinary civil chambers. The Sixth Civil Chamber filtered about 30% of civil cases per year, concluding them with orders of inadmissibility or rejection. The 'Cartabia Reform' envisaged the elimination of such a filter due to the possibility of the ordinary chambers – starting from 2016 – to settle cases by means of an order too and with a more streamlined procedure than that envisaged for the Sixth Civil Chamber.
   This has eliminated the whole process of making a case going through a first filtering step before it could be conveyed to one of the civil chambers for a second selection / filter and the subsequent hearing of the case.

2) organisational changes consisting in the use of digital instruments especially the 'digital civil trial' (*Processo Civile Telematico*, PCT), which has become fully operational for the tribunals, the courts of appeal in 2014-2015 and, finally, at the Court of Cassation as of January 1st, 2023. It is now mandatory to file applications to the Court (and the relevant documents) on a digital platform, thus enabling the Registry to process applications digitally and the Court justices to have easy digital access to the case files. The PCT and the use of the electronic tools are encouraging new organisational measures, including an electronic-based form to classify and value each single appeal, thus facilitating the improved and efficient organisation of files, managerial solutions, and qualified/specialised hearings.

Criminal law sector

The overall evolution of criminal proceedings over the last years indicates that:

- on the one hand, incoming cases tend to decrease constantly and significantly every year. They went down from 51,956 in 2018 to 46,297 in 2021, to 45,363 in 2022. Comparing the 2022 Jan-Dec period with the 2021 one, incoming cases fell by 2%. Unfortunately in December 2022 and in January-March 2023 the number of incoming cases is increasing and we must be prepared to

[3] To calculate the disposition time, only litigious proceedings ('procedimenti contenziosi') are taken into consideration according to the classification proposed by the CEPEJ and implemented by the European Commission in the EU Justice Scoreboard (civil and commercial litigious cases).

manage more than 50.000 cases again;

- on the other hand, the yearly number of completed cases has increased. They went up from 37,611 in 2020 to 47,040 in 2021, then increased to 50,775 in 2022. Comparing the 2022 Jan-Dec period with the 2021 one, the number of competed cases increased by 7.9%;
- at the end of 2022, the justices' average productivity numbered 409 judicial decisions per justice, i.e., +7% compared to 2021 where the average number was 382 judicial decisions;
- the clearance rate went up from 101.6% in 2021 to 111.9% in 2022.

Positive effects are to be underlined with regard to the number of pending cases before the criminal chambers of the Court of Cassation, which went from 23,735 at the end of 2021 to 18,323 at the end of 2022; this shows that the relevant number dropped by 22.8% in 2022.

The **average length of proceedings** is higher than in the past – it went from 211 days in 2021 to 180 days in 2022 (-14.7%).

Extremely positive effects must be emphasized as regards the **disposition time** in the criminal sector of the Court of Cassation where the DT went from 184 days in 2021 to 131 days in 2022. This is an exceptional result if one considers that the criminal chambers have gone above and beyond the '2026 target' (this amount at166 days).

5. *Could you inform us about the newly established tax courts? In particular, could you elaborate on their independence?*

The Court of Cassation is not in a position to make an assessment of the independence of the newly established tax courts of first and second instance. These courts are now composed also by judges coming from the 'ordinary jurisdiction' (i.e., civil and criminal jurisdiction) who will bring their judicial skills, expertise and culture with them, thus addressing the concerns about the quality of tax court's decisions and motivations.

As regards the Court of Cassation specifically, the tax cases backlog remains historically high; however, according to the 2022 Bill on tax justice,[4] the Tax Chamber of the Court of Cassation has been turned into a specialised chamber, and this will ensure a higher level of specialisation and competence of the justices working on tax cases which might help speed up court proceedings.

This change will need initial and in-service training for the justices serving in the Tax Chamber. Furthermore, the Court has supported the work of the Tax Chamber assigning to it most of the staff of the Office of the Trial, i.e., 38 staff at the beginning of 2022 (the number decreased to 33 at the end of December 2022 following the resignation of 5 staff).

The Tax Chamber has relied on the support from the staff of the Office of the Trial to filter applications and to carry out the most urgent part of its work, i.e., to classify all its backlog and to identify repetitive cases with a view to concluding them cumulatively and quicker. This, together with streamlined judicial decisions, could produce a significant increase in the number of defined cases.

[4] Law No. 130 of August 31, 2022.

Furthermore, a topical issue concerns the possibility for the Court of Cassation to access (digitally) the judicial files of the first and second instance tax courts – this will require that a protocol be signed between the Court of Cassation and the tax courts.
Some 43,000 tax cases are currently pending at the Court of Cassation, which amount to roughly 50% of all appeals filed before the Court. This figure is however dropping – thanks to organisational improvements around 15,000 tax cases could be finalised right after summer 2023 by means of a simple decree of the First President to dismiss the case.
Moreover, the Italian Budget Law 2023 provides that, as of January 1st, 2023 taxpayers have the chance to settle tax litigations by paying a specific amount in proportion to the value of the dispute. Taxpayers could take advantage of this legislative innovation until June 30, 2023, and although it might not be easy to predict the outcome of such measure, it is safe to say that it will lead to the extinction of thousands of appeals. As for tax cases pending before the Court of Cassation, if a settlement is reached between the taxpayer and the Tax Administration and the requested amount is paid, the Court will dismiss the relevant case.

6. *Could you inform us about the digitalisation of justice in Italy? Has there been any efforts to further improve the level of digitalisation of the justice system, particularly for criminal courts and prosecutors' offices?*

Judicial digitalisation, which was initially achieved by the courts of first instance and at the appellate level, has also been effectively launched in the civil law sector at the Court of Cassation with the provision of the digital filing of the appeals together with the relevant supporting documents. However, in 2022 the optional and transitional phase of the digital filing has been in place at the Court of Cassation, which provided for the chance to lodge an appeal either in writing or digitally at the applicant's choosing. At present, the digital filing and managing of the appeals is mandatory and fully in force starting from January 1st, 2023.
The launching of the 'digital civil trial' (*Processo Civile Telematico*, PCT) has been paired with the signature of a protocol between the Court of Cassation and the National Bar Council (*Consiglio Nazionale Forense*, CNF) to better handle the appeals and positive results are likely to take place soon. Cooperation between lawyers and the Court of Cassation will also involve the drafting of the appeals and the corresponding judgment which are expected to be short, clear, organised, and to express clearly the factual and legal grounds for a decision.
In the criminal-law sector there is some delay on the part of the Ministry of Justice. Plans towards the judicial digitalisation within the Public Prosecutor Offices and trial courts are under implementation whereas at the Court of Cassation no innovation has been implemented so far in this regard. The Court would benefit in fact from the creation of a national electronic platform where documents relating to cases from the lower courts would be uploaded in electronic format and the Court could easily download and directly work on them. Finally, specific digitalisation processes concerning arrest

warrants should be finalised shortly, and this will speed the Court of Cassation's decisions in such cases.