

# 2024 Rule of Law Report

## Italian Supreme Court

### Questions

The topics are structured according to four pillars:

- I. Justice system.
- II. Anti-corruption framework.
- III. Media pluralism.
- IV. Other institutional issues related to checks and balances.

The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments, and best practices:

- A) **Legislative developments**
- B) **Policy developments**
- C) **Developments related to the judiciary / independent authorities.**
- D) **Any other relevant developments**

Please also indicate whether the developments reported are linked to the implementation of reforms and investments under the RRP, where applicable.

If there are no changes, it is sufficient to indicate this, and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

### I. Justice System

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Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system (if applicable).

**First recommendation: "To continue the efforts to further improve the level of digitalisation of the justice system, particularly for criminal courts and prosecutors' offices".**

1. **Digitisation of civil proceedings before the Court of Cassation and the telematic proceedings at the Court of Cassation.** From 1 January 2023, all defence documents must be filed electronically (Article 4, Legislative Decree 10/10/2022, n. 149; Article 196-quater of the law provisions implementing the Code of Civil Procedure). After the entry into force of Article 35, Legislative Decree 24/2/2023, no. 13, converted by Law 21/4/2023, no. 41, court decisions and acts of the public prosecutor must also be filed electronically. For this purpose, the Ministry of Justice (General Directorate for Digital Transition and Information Systems - DGSIA), in collaboration with the Electronic Documentation Centre (CED) of the Court of Cassation, has prepared a special application called "Civil Desk". From 1 January to 31 December 2023, the Court of Cassation received 181,849 acts by defence lawyers filed electronically (twice as many as in 2022); 68,538

orders of the Court (a 520% increase compared to 2022); 3,820 acts of the Public Prosecutor. The telematic filing of all documents has led to a reorganisation of court services and the almost complete dematerialisation of the civil Cassation procedure. The dematerialisation of files has also favoured the immediate assignment of appeals to the competent chamber. This has led to the abolition of the Sixth Civil Chamber, which was previously responsible for the preliminary examination of appeals with a view to their assignment to the ordinary chambers. This has also led to a reduction in the time required for the preliminary examination of cassation cases.

2. More in detail, the civil sector of the Supreme Court of Cassation has been affected, in recent years, by profound innovations, both regulatory and organisational. Mainly: a) the implementation of effective telematic proceedings; b) the digitalisation of appeals already pending; c) the implementation of a new, more effective organisational module of the Chambers, with the objectives of carrying out a careful examination of the appeals that are filed and of those that are already pending; of enhancing the specialisation by subject areas and of the justices in charge of dealing with them (in parallel with the aforementioned closure of the Sixth Civil Chamber, whose task was to rule on inadmissible and manifestly unfounded appeals); e) the establishment of the Office for Judicial Proceedings as a structure to support jurisdiction. This renewed organisational commitment has favourable repercussions on the duration of the Supreme Court proceedings. The overall perspective is in line with the indications of the RRP and the determination of the disposition time.

Very positive results have already been achieved, thanks to: the digitalisation of the acts of Cassation proceedings; the overall digitisation of the activities; and the introduction of the compulsory telematic filing of acts and measures with the Court of Cassation.

The technical structures of the Court (the CED first and foremost), led by the First Presidency, have collaborated in the success of this development in order to make improvements to the two ministerial applications made available for the management of telematic proceedings (*CSC Client* and *Justice's Desk*).

For 2023 and among the most relevant developments (also of 'new' functions, in order to adapt the Court of Cassation's IT system to the reform set out in Legislative Decrees nos. 149 and 151 of 2022) there are:

a) *the establishment of functions to support the preliminary examination of appeals and the formation of cause lists according to <specialisation areas>.*

Specialisation areas are a fundamental innovation of the First Presidency adopted in 2023 for the civil sector. The renewed impetus given to the perusal offices (i.e. the offices in each chamber dedicated to the preliminary examination of appeals) and the areas of specialisation have completely reshaped the organisation of work; they have made it more effective, conscious, fast and efficient. The success of the innovation was also contributed by the human resources allocated at Court thanks to the RRP interventions, namely the staff of the Office for Judicial Proceedings;

b) *the creation of functions for the automation of proceedings for accelerated decisions, referred to in Article 380-bis of the Code of Civil Procedure and the Proposal for Accelerated Decisions (PDA).* A fully computerised management cycle of the accelerated decision procedure of the simplest appeals (drafting of the proposal; monitoring of the expiry of deadlines; issuance of the closure decree) was implemented. The *Desk* application was specially adapted, with the full integration of the functions for the management of the PDA with those already implemented for the preliminary examination of the appeals. The selection of appeals to be sent to the fast-track PDA procedure is one of the possible outcomes of the perusal procedure;

(c) *the establishment of functions for the operation of Article 137 of the law*

provisions implementing the Code of Civil Procedure: a special function has been developed to support the clerk's office services, so as to automate the request for acquisition (in view) of the office file, at the time of acceptance of the telematic filing of the appeal. In this way, it is possible to easily and directly consult the documents of the lower judicial instances, through the applications in use by clerk's offices and Court justices; with this functionality, a system of 'dialogue' between the computer applications for the management of the files in use by the lower courts and those of the Court of Cassation has been created for the first time;

e) the development of functionalities for the automation of preliminary reference, as mentioned in Article 363-bis of the Code of Civil Procedure, and of the Office for Preliminary Matters, set up by decree of the First Presidency on 8 February 2023, which carries out a dialogue between the Court of Cassation and the lower courts on the case-law trends.

f) the development and testing of the application for the computerised drawing up of the minutes of the hearing (setting up of the hearing rooms with the necessary computer equipment, personal computers and monitors; possibility for the President of the Panel to follow the minutes directly on the monitor at the hearing and to sign the minutes with a digital signature; telematic signing and filing of the minutes by the Registrar);

g) *the creation of a new function for the rapid consultation of the so-called regulatory documents*'. This is a function intended to make it easier to identify and consult through *Desk* the fundamental acts for the study of the proceedings (appeal, defence, contested measure); the Court justices, through *Desk*, can directly examine a selection of acts filed by the parties (called 'regulatory papers'), useful for the rapid consultation of the fundamental acts;

h) *the development of new functionalities to support the fulfilment of the requirements for the obscuration of decisions*, as per the First President's order of 17 April 2023, aimed at guaranteeing the privacy rights of the parties involved, in case of legal requirements on obscuration;

i) *the development of some specific monitoring tools within the desk* (agenda of the Court justices and the president of the adjudicating panel, who can easily follow the progress of the filing of the decisions made and to be made);

l) *in the analysis phase, the development and management of the material error correction procedure*, also following the new provision of Article 196-quinquies, paragraph 5, of the Code of Civil Procedure.

The Court's technical structures have also promoted the necessary training of users: Court justices in charge of the perusal offices, presiding justices, Office for Judicial Proceedings personnel.

With regard to the new organisational models of the civil trial linked to the digitisation process, Article 2 of Legislative Decree No. 151 of 2022 (*innovation of organisational models, more efficient use of information and communication technologies*) calls for a comprehensive review of the organisational structure of the Court of Cassation.

The First Presidency has promoted the synergy between the different functions of running the proceedings and the possibility of a preliminary examination of appeals (*perusal*), in the computerised environment set up for the implementation of the telematic civil trial (PCT) at the Court of Cassation; the experimentation with new forms of preliminary examination of civil appeals by the 'perusal' offices set up in each of the subject areas identified in each Chamber has been promoted. These areas are fundamental from an organisational point of view, because they are functional to the strengthening of specialisation; to the critical re-reading of the case-law formed in relation to each matter; to the conscious and orderly evolution of the case law of the Supreme Court (also to overcome possible conflicts).

The decrees adopted by the First Presidency - No. 58 of 9 May 2023 and No. 76 of 31 May 2023 – envisaged in an innovative manner: a) the systematic handling of the files by the perusal offices which are composed of justices assigned to given areas within the Chambers, aimed at a complete census of the essential data of the proceedings and the issues submitted to the Court; b) the rapid identification of the forms of hearings (public hearing; in-chamber hearing; selection of appeals susceptible to a proposal for accelerated settlement, taking into account the established case-law orientation on the issues raised by the appeals).

The preliminary examination has been systematised in PCT. In this way, *a form of efficient application of technology* was realised, useful for an orderly quantitative and qualitative increase in the number and quality of individual or area- or chamber-related proceedings.

Thanks to these system innovations, there has been a strong cultural and organisational change at the Court of cassation, both among the Court justices and the administrative staff; an evolved hearing of the registered cases, which prepares for their definition from the outset. It is an organised intervention on the proceedings since its application to the Court of Cassation, enriched with information and studied in its interference with other files and groups of files and in its interpretative environment.

Ultimately, the PCT perusal makes it possible to: a) intercept the flows by thematic areas and issues; b) provide the elements for the scheduling of thematic hearings; c) identify problematic mergers of issues. All aimed at a better rendering of the complex and essential functions of the Court of Cassation with respect to the protection of rights.

A crucial step in the innovation of the Supreme Court of Cassation and the work of the civil sector (but also of the criminal sector) is represented by the employment of the personnel of the Office for Judicial Proceedings (UPP: new Article 58-bis of the Code of Civil Procedure).

In fact, Decree-Law no. 80 of 9 June 2021 ('Urgent measures to strengthen the administrative capacity of public administrations functional to the implementation of the National Recovery and Resilience Plan (RRP) and for the efficiency of justice'), converted by Law no. 113 of 6 August 2021, provided for the establishment of the Office for Judicial Proceedings also at the Court of Cassation. The purpose of the new structure is to ensure the reasonable duration of judicial proceedings, through the innovation of organisational models and a more efficient use of information and communication technologies.

The UPP was conceived, from its inception, as a support structure for the judicial activity in all its articulations (from the preliminary examination of appeals to the filing and publication of the decisions); the UPP is located within the overall structure of the Court and constitutes a specialised articulation of it.

In the civil sector, the UPP is gradually becoming one of the 'judicial bodies', joining the administrative and clerk's office staff and supporting the judicial activity. The aims of the UPP, expressly described by Article 2 of Legislative Decree no. 151 of 2022, are inspired by the achievement of the reasonable duration of judicial proceedings (with the decrease of the *stock* of pending cases), through organisational, technological and communicative innovations, according to a link between digitalisation and the efficiency of justice as indicated in the European e-Justice Strategy and Action Plan 2019-2023, (at [www.consilium.europa.eu](http://www.consilium.europa.eu)).

The UPP, in the civil sector, has become an indispensable instrument for innovation and reorganisation (with particular regard to the functions of perusal and preparation of appeals in the subject areas; it is hoped that the relevant staff

permanently hired even after the expiration of their fixed term of employment.

Decree No. 76/2023 of the First Presidency indicates that the UPP personnel in the civil sector, in close cooperation with the justices allocated to the perusal office take part in the perusal and classification of appeals; they enter the missing data in the perusal sheet on the justices' *desk* application; they check the regularity of the service of acts and documents, any connections with other appeals, the regulatory references and any precedents with the preparation of classification sheets.

The Office for Judicial Proceedings has immediately turned out to be the best way to classify the appeals: the transition from the mode of conducting the perusal in the Court's information system (SIC) or on internal archives to the PCT perusal has brought excellent results in terms of efficiency and quality of the activity of organising the examination of appeals.

The strategies implemented for the settlement of the oldest disputes also benefited from organizational innovations and the implementation of digitalisation processes, as well as the contribution of the UPP staff. The progressive erosion of the duration index was pursued by establishing cause lists for the handling of proceedings according to a so-called pincer technique: older appeals are inserted together with recently (or very recently) registered appeals. In this way, a triple objective is pursued: to significantly eliminate the oldest disputes; prevent the creation of a new backlog in relation to newly registered appeals; make the intervention of the Court of Cassation case-law more timely in relation to the most recent appeals.

With the same aim, there is a positive dematerialisation of the filing the judgments, which has led to a significant acceleration of the timing during the proceedings of the process that goes from the hearing (or sitting) to the publication of the decision.

Always with a view to fostering the technological evolution of judicial work, the Court of Cassation completed, in 2023, a project aimed at developing a monitoring system of statistical data and judicial activities on the management of the Court's civil and criminal proceedings (so-called Directional Dashboard). The Politecnico di Milano and the Conference of Italian University Rectors (CRUI) participated in the project, with the cooperation of the Court of Cassation's CED. The Dashboard for the civil sector has been operational since September 2023; the one for the criminal sector is also being developed and will be active from early 2024.

The CEPEJ, the European Commission for the Evaluation of Justice Systems of the Council of Europe, defines a dashboard of indicators as a "visual representation of data in the form of tables, charts, graphs, diagrams, maps, colour coded scales, etc. This visual representation is a management tool that aims to track, analyse and display data on the performance level of an organisation or a business process [...] for understanding, managing and improving the performance of a given organisation, system or process by focusing on the relevant performance indicators".

In line with these indications, the management dashboard of the Court of Cassation fulfils four main and connected functions; in particular: 1) an operational function, aimed at describing the state of affairs moment by moment and the performance of the organisation over time; 2) a data analysis function, aimed at presenting the data in a clear and readable manner for target users; 3) a tactical function: it allows the data to be filtered and combined to allow a more detailed and precise interpretation of the state of the art and the historical dynamics of the data; 4) a strategic function, aimed at highlighting potential evolutions with respect to medium- and long-term objectives and which, therefore, allows users to consider, in the future, which interventions to favour in order to achieve them.

The tool provides an updated representation on a daily basis of the progress of the

Supreme Court's proceedings, drawing directly from the internal information system (SIC).

It must be emphasised, however, that the Dashboard is a tool in addition to, and not a substitute for, the surveys and processing carried out by the Court's Statistical Office.

Thanks to all the measures described, at the end of 2023 the Court's total disposition time, in the civil sector, was 1.003 days, a reduction of 23% compared to 2019. The value reached is very close to the value set for 30 June 2026 by the RRP (976 days), which appears to be concretely attainable if the flow of new files remains stable. The statistical data show a positive development of the Court's situation on several fronts.

- 3. Digitisation of criminal proceedings before the Court of Cassation and the Telematic Criminal Proceedings.** The reform of the criminal procedure, which entered into force on 1 January 2023 (Legislative Decree no. 150 of 10/10/2022), initiated the digitalisation of all stages and levels of the procedure. The implementation of the hardware and software infrastructures necessary for the effective start of the paperless criminal procedure began with the trial of first instance. However, as far as the Cassation procedure is concerned, the implementation of an application allowing for the telematic filing of judgments and inadmissibility orders issued by the Seventh Criminal Section was anticipated. The application, called "Criminal Desk", is at an advanced stage of testing. It is web-based and can also be used remotely by the Court justices and registrars of the Court. It will significantly speed up the drafting and filing of judgments and orders. The application should be in use by all Court's justices by this January.

More specifically, Ministerial Decree no. 44 of 21 February 2011, recently amended by Ministerial Decree No. 217 of 29 December 2023 - which lays down the technical rules for the adoption in civil and criminal proceedings of information and communication technologies (by implementing Decree-Law no. 193 of 29 December 2009, converted into Law no. 24 of 22 February 2010 and Legislative Decree No. 82 of 7 March 2005 on the 'Digital Administration Code') - has enabled the Court of Cassation to give impetus to a project of the digital administration of the Italian Supreme Court no. 193 of 29 December 2009, converted into Law no. 24 of 22 February 2010, and of Legislative Decree No. 82 of 7 March 2005, containing the 'Digital Administration Code') - has enabled the Court of Cassation to give impetus to a project that anticipates an important segment of the Telematic Criminal Proceedings (PPT).

The Electronic Documentation Centre (CED) asked the DGSIA Dept. of the Ministry of Justice to develop an application, called '*criminal desk*', partly based on the same application already in operation for civil proceedings. It has been calibrated, in its material preparation, on the daily needs of the justices presiding the adjudicating panels, justices and court clerks, both from an operational point of view and from an organisational, functional and regulatory point of view. The *criminal desk* is divided into a profile for judges and prosecutors (Rapporteur and President), and a profile for clerks serving at the Criminal Court of Cassation. Both tools are web-based and allow access from any device with a secure internet connection; this allows Court justices to draft and file decisions from any geographical location and the chancellery staff, also in smart-working mode, to manage the filing and publication of orders, thus reducing the so-called 'passing times'. The web-based architecture also guarantees immediate software changes and updates for all users, ensuring that everyone always has access to the latest version of the application. The application will be able to implement the objective of eliminating all the activity

currently carried out in a 'physical' form from the decision by the adjudicating panel to the final filing of the judgment.

The application is designed to provide Court justices with the information they need to draft the decisions (determinations adopted at the hearing or the conclusions of the defenders and the Prosecution General's Office) and also to monitor the time and compliance with the filing deadlines.

The most important new feature is, however, the possibility of filing decisions electronically. Court justices will be able to draft documents using one of the various drafting methods available to them and the data recorded in SIC.

The criminal *desk* is designed to allow the drafting justices to highlight sensitive or identifying data in the decisions, in compliance with First Presidency Decree No. 78 of 2023, which sets out the methodological and application guidelines for the obscuration of decisions containing sensitive data worthy of protection. The presidential decree, which was preceded by a study delegated by the First President to the Office for Judicial Abstracts of the Supreme Court, gave operational guidelines in line with Regulation (EU) 2016/679 (and Legislative Decree No. 101 of 2018), which enhanced the levels of protection of natural persons with respect to the processing of personal data and made data controllers accountable according to the principle of accountability. A user interface has been created that allows the drafting justices to select and mark the data of the parties and any other entities concerned by the obscurement.

Once detected, these data are automatically omitted or anonymised when the decision is filed. This process is therefore semi-automated and is part of the ordinary organisational flow of review of data subject to privacy that the Court of Cassation has adopted to ensure that no sensitive data are disclosed.

Lastly, the telematic filing of the minutes of the decisions takes place by means of internal interoperability between the criminal desk and the CSP-Client at the clerk's office, following the digital signature by the clerk of the Court. The criminal desk profiled for the access of the presidents of the adjudicating panel allows the president to work on the minutes filed telematically by the rapporteur justices: check their content, request revisions from the drafting justices through an integrated procedure and digitally sign the decisions. The sending to the clerk's office of the computerised document digitally signed by the presidents of the adjudicating panel and the drafting justices has been developed to ensure the speed of signature and filing operations, even in bulk.

These filing functions are also structured with a view to functionally monitoring the progress of the filing (paper or digital) of minutes per hearing as well as the publication of the decisions.

Thanks to this initiative, the jurisdictional decisions of the Criminal Chambers of the Court, as is already the case for those of the Civil Chambers, will also be involved in the digitisation process, with the aim of a further cultural evolution in the working methods of the Court presidents and justices of the Criminal Court of Cassation. The digital transformation of the Court of Cassation through the adoption of the criminal desk will bring numerous benefits: improved efficiency, reduced filing times, greater transparency and traceability of transactions.

For the future, in order to implement a real PPT, the need remains for appropriate regulatory changes and the indispensable implementation of an IT infrastructure that allows the telematic filing of parties' documents at the Court.

**Second recommendation: "To continuing efforts to establish a National Human rights Institutions, taking into account the UN Paris Principles".**

At the opening of the 19th legislative period, new bills were submitted to Parliament. In the light of the proposals submitted, three different solutions can be identified and are now before Parliament.

The first is the creation of a new authority, and this is the path taken by the re-proposal of the bill signed by Valente and others (A.S. 424), entitled "Creation of the National Commission for the Promotion and Protection of Fundamental Human Rights", which was presented to the Senate on 26 January 2023. In the same vein, the bill signed by Quartapelle and Procopio in the Chamber of Deputies on 21 October 2022 (A.C. 426).

The second is that of the constitutionalisation of the Human Rights Authority, re-proposed by Laus (A.C. 580), presented on 15 November 2022 in the Chamber of Deputies.

Finally, proposals to extend the functions of the Data Protection Guarantor are under discussion in the Senate (A.S. 303, signed by Pucciarelli, and A.S. 505, signed by Bevilacqua and others, aimed at giving the Data Protection Authority the missions of an independent national institution for the protection and promotion of human rights, presented on 9 November 2022 and 26 January 2023 respectively).

**Third recommendation: "To adopt comprehensive conflicts of interest rules and lobbying regulation to establish an operational lobbying register, including a legislative footprint."**

The I Commission of the Chamber of Deputies has examined several parliamentary bills aimed at amending the regulation on conflicts of interest - currently contained in Law 215/2004 - by providing for the adoption of a basic text. The legislative process is still ongoing.

On 12 January, the Chamber of Deputies approved a parliamentary bill on the regulation of lobbying activities. The proposal provides for the establishment of a register for the transparency of interest representation activities at the Antitrust Authority. It also provides for the establishment at the Antitrust Authority of a Monitoring Committee on the Transparency of Public Decision-Making Processes, which will be entrusted with the functions of monitoring and imposing the administrative sanctions set out in the text. The measure was sent to the Senate, which examined it without approving it.

On 8 March 2023, the 1st Constitutional Commission of the Chamber of Deputies decided to carry out a fact-finding study on interest representation activities. This analysis provides elements on four aspects:

- the identification of both the "public decision-maker" and the "interest bearer";
- the different ways in which the phenomenon is regulated;
- the identification of a supervisory authority;
- the system of sanctions to be applied in the event of non-compliance.

Bill C.983 assigned on 3 May 2023 to the Constitutional Affairs Commission of the Chamber of Deputies has as its object the 'Rules of the activity of representation of special interests and the establishment of the public register of interest representatives'.

The examination in the Commission has not yet started.

**Fourth recommendation: "To continue the legislative process to reform and introduce safeguards for the regime of defamation, standards of protection of professional secrecy and journalistic sources".**

Several draft laws deal with these issues. They provide, *inter alia*, for amendments to the Criminal Code and the Code of Criminal Procedure about investigative secrecy, the prohibition of disclosure and publication of intercepted conversations and images, the



protection of confidentiality and freedom and secrecy of communications, defamation by the press or other means of dissemination, the conviction of the plaintiff and professional secrecy.

They are intended to ensure more effective protection of the principle of the presumption of innocence by striking the delicate balance between criminal proceedings and information, between the requirements of efficient investigations and the right to judicial reporting.

On the substantive side, changes to the constituent elements of offences committed by means of the press (Article 57 of the Criminal Code) and <<defamation>> (Article 595 of the Criminal Code) are envisaged; on the other hand, the introduction of new offences is promoted, such as <<revelation and publication of intercepted conversations and images>>, <<unlawful access to acts of criminal proceedings>>, <<detention of documents unlawfully established or acquired>> and, finally, <<revelation of the content of documents drawn up through the unlawful collection of information>>.

From a procedural point of view, a further amendment to Article 114 of the Code of Criminal Procedure is foreseen to better define the scope of the <<prohibition to publish acts>>, in particular with regard to telephone tapping and precautionary measures.

Corrections are also proposed to the professional secrecy of journalists, the regime on compensation for unjust imprisonment, the preservation of the results of wiretaps and the regime of their use in other judicial proceedings.

The prohibition of publishing the results of wiretaps is of specific relevance.

On 19 December 2023 the Chamber of Deputies approved the Costa Bill C.653, presented on 5 April 2023, to amend Article 114 of the Code of Criminal Procedure in the aforementioned sense and which is now passing to the Senate for examination.

The sole article of this bill expunges from Article 114 of the Code of Criminal Procedure the phrase 'with the exception of the order referred to in Article 292'. This extends the prohibition of full, verbatim publication also to orders concerning precautionary measures until the end of the preliminary investigation or until the end of the preliminary hearing. The same provision addresses the last paragraph of Article 114, specifying that of the order in question, when no longer covered by secrecy, only the name and surname of the addressee of the order and the offences for which proceedings are being conducted may be published. Against this proposal, protests were raised by the professional associations of journalists (see below: Part III, C.)

#### The protection of the freedom of press.

The Court of Cassation continues to interpret the right of journalistic reporting and criticism in such a way as to ensure full protection of the freedom of the press and the corresponding right of every citizen to be correctly and fully informed.

The domestic legal system as a whole, in fact, extensively protects the information activity carried out by the media and the freedom of the press.

Over the years the Constitutional Court has outlined the broad boundaries to be recognised, in the criminal sphere, to the freedom of expression of thought that underpins the right of journalistic reporting and criticism: this freedom is enshrined in the right of the press to inform and in the right of citizens, in a democratic society, to be informed.

With Order no. 132 of 2020, the Constitutional Court reaffirmed the nature of a fundamental right ascribed to the right to inform through a free press; the right is recognised as "coessential to the regime of freedoms guaranteed by the Constitution", a relevant part of the freedom of expression of thought, "cornerstone of the democratic order" and "hinge of democracy in the general order" (see Constitutional Court, decisions nos. 11 of 1968; 81 and 84 of 1969; 126 of 1985 and 206 of 2019). Freedom of the press is therefore of fundamental importance, due to its essential role in the functioning of the democratic system, according to constitutional case-law: in a state structure and in a society that is nourished by the rules of democracy, the journalists' right to inform

corresponds to a correlative right of citizens to information. And it is precisely this dual face of the fundamental freedom protected by Article 21 of the Constitution that qualifies the form of State outlined by the Constitution itself: a form based on principles and values that require our democracy to constantly cultivate free public opinion and develop through the equal competition of all in the formation of the general will.

In other words, the Constitution requires that the democratic system that inspires it be characterised by pluralism of sources from which knowledge and news are drawn; citizens must be put in a position to make their political and social assessments and choices, on the basis of different points of view and opposing cultural orientations (see Judgments no. 112 of 1993 and no. 155 of 2002 of the Constitutional Court; as well as ruling no. 206 of 2019). From this perspective, the Constitutional Court has long valued journalistic activity, which, for the aforementioned reasons, deserves to be "safeguarded against any threat or coercion, direct or indirect", which could "weaken its vital function in the democratic system..., also through the harsh and polemical criticism of the conduct of those who hold positions of power" (thus, aforementioned Order no. 132 of 2020 of the Constitutional Court). The perspective within which the Court of Cassation moves evokes the guarantees that the international rules and treaties to which Italy adheres (mainly Article 10 ECHR, which mirrors Article 21 of the Constitution) dedicate to the fundamental right at stake.

In the same vein of great protection for the freedom of the press is Constitutional Court ruling no. 150 of 2021, which declared unconstitutional Article 13 of the Press Law (no. 47 of 1948) that mandatorily provided for, in the event of conviction for defamation in the press committed by attributing a specific fact, imprisonment from one to six years together with the payment of a fine. On the other hand, Article 595, third paragraph, of the Criminal Code, which provides for imprisonment from six months to three years or, alternatively, the payment of a fine for ordinary defamation committed by means of the press or another form of publicity, was deemed compatible with the Constitution; the latter rule in fact allows the Court to punish only exceptionally serious cases with imprisonment. However, according to the Constitutional Court, the need for an overall intervention by the Legislature remains topical, in view of a more adequate balance between freedom of thought and the protection of individual reputation, also in the light of the ever-increasing dangers connected to the evolution of the media, already highlighted in Order no. 132 of 2020.

Therefore, the Constitutional Court did not in principle rule out the imprisonment penalty, 'provided that its application is supported by suitable precautions to avoid the risk of undue intimidation exercised on those who carry out the journalistic profession'. These precautions are identified in the identification of cases in which the offences brought against the victim can be qualified as being of "exceptional gravity", with the need to protect the passive subject of the defamation. There are two categories that the Constitutional Court has isolated as possibly being subjected to a prison sentence:

(a) hate speeches and speeches inciting violence, when conveyed or conveyed by defamatory messages (drawing inspiration from the European Court of Human Rights, Grand Chamber, judgment of 17 December 2004, *Cumpàna and Mazàre v. Romania*; 5 November 2020, *Balaskas v. Greece*; 11 February 2020, *Atamanchuk v. Russia*; 7 March 2019, *Sallusti v. Italy*; 24 September 2013, *Belpietro v. Italy*;

(b) 'disinformation campaigns conducted through the press, internet or social media, characterised by the dissemination of allegations seriously damaging the reputation of the victim, and carried out in the knowledge by their authors of the - objective and demonstrable - falsity of the allegations themselves'. When the information activity leads to the transmission of such information - the Court maintains - it does not constitute the fundamental 'watchdog' of democracy, but even represents a danger for the latter, being able even to affect electoral competitions by means of campaigns to discredit the offended person in relation to public opinion.

The reasoning of the Constitutional Court is one of balancing but also and above all of great protection for freedom of the press in general; and such wide spaces for the protection of the right to report and journalistic criticism have always been the constant *leitmotif* of the case-law of the Supreme Court. Immediately after judgement no. 150 of 2021, for example, the Supreme Court stated that, following this ruling, the application of the prison sentence for the crime of defamation in the press or with any other means of advertising is subject to verification of the "exceptional gravity" of the relevant conduct; this exceptionality, according to a constitutionally and conventionally oriented interpretation, is identified in the dissemination of defamatory messages characterized by hate speech and incitement to violence or in disinformation campaigns seriously damaging to the victim's reputation, carried out in the awareness of the objective and demonstrable falsehood of the facts attributed to said victim (Chamber 5, decision no. 28340 of 25/6/2021).

The Supreme Court tends to reconstruct the system in a way favourable to the maximum expansion of freedom of the press and the rights of journalists (for example, Chamber 5, no. 19889 of 17/2/2021; Chamber 5, no. 29128 of 17/9/2020). According to the Court, the provision of Article 10 ECHR echoes the incessant case-law elaboration coming from the European Court of Human Rights. The ECtHR has long ruled on the centrality of the role assumed in the development of a democratic society by the free press, recognizing the latter's duty and right to inform the public on all matters of general interest (see, among the many decisions, ECtHR, De Haes and Gifsels v. Belgium, of 02/24/1997). In the proper function of the press, which consists in disseminating information and ideas on matters of public interest, the Supreme Court includes the right of the public to receive them (see ECtHR Court, Observer and Guardian v. United Kingdom, 26 November 1991, and Dupuis and others v. France of 7 June 2007; as well as, most recently, ECtHR, Magosso and Brindani v. Italy, 16/01/2020; ECtHR, Magosso and Brindani v. Italy, 16/01/2020 ).

For this reason, the exemption from criminal responsibility in the case of the right to report can be granted to journalists who reliably report statements, objectively damaging to the reputation of others, made by a public figure during an interview, regardless of the truthfulness and restraint of the expressions reported, for the prevailing public interest in knowing the thoughts of the interviewee in relation to his/her fame and the fame of the offended person and the events being disclosed (Chamber 5, no. 29128 of 17/9/2020; Chamber 5, no. 19889 of 17/2/2021).

As for the right to criticize, this right however postulates, as a necessary prerequisite, the truth of the historical fact attributed to the defamed person, where this fact is placed as the basis of the critical elaboration (*ex multis* Chamber 5, no. 40930 of 27/9/2013 ; Chamber 5, no. 8721 of 17/11/2017, filed in 2018; Chamber 5, no. 34129 of 10/5/2019). Furthermore, the principle has been established according to which the exemption from criminal responsibility in case of the right to criticism postulates a correct form of presentation, strictly functional to the purpose of disapproval, which does not lead to gratuitous and unjustified aggression against another's reputation; it does not prohibit the use of terms which, although objectively offensive, also have the meaning of mere negative critical judgment which must be taken into account in light of the overall context in which the term is used (among the many rulings, Chamber 5 , no. 17243 of 19/2/2020). Again, in the presence of the assumption of the restraint and relevance of the topics covered, criticism, as an expression of purely subjective evaluations of the acting person, can also be characterized by strong harshness, especially when it involves judges and prosecutors, public officials and politicians, due to the function of public interest carried out.

According to the Supreme Court, the use of expressions that result in the denigration of the person being criticized as such is not permitted. It is necessary to keep firm the line of demarcation between the dissent expressed towards the actions of others, always widely permitted in a democratic society, and the gratuitous, unjustified damage to the reputation and honour of the person attacked.

Furthermore, the constant case-law of the Court of Cassation protects the right to secrecy of sources and highlights how the seizure for the evidence against a journalist, entitled to a legally established right to assert professional secrecy to protect his/her sources in criminal proceedings, must be limited under precise and rigorous conditions. If it concerns acts and documents relating to the exercise of his/her professional activity, the seizure must rigorously comply with the criterion of proportionality between the content of the restriction measure and the needs of ascertaining the facts under investigation (pursuant to Article 200, paragraph 3, of the Code of Criminal Procedure and Article 10 of the ECHR as interpreted by the ECtHR); invasive interventions in the professional sphere must be avoided as much as possible (among many, see Chamber 6, no. 9989 of 16/1/2018, in a case in which the indiscriminate seizure of telephone and IT devices of a journalist, his partner and his ex-wife was deemed unlawful).

The utmost attention is paid to the right to protect sources, with respect to investigative documents (Chamber 6, no. 24617 of 24/2/2015).

## **Independence**

The independence of the judiciary is a fundamental principle of the Italian constitutional system.

In 2023, no changes were made to the Italian legal framework in this respect.

However, several bills (draft laws) were presented on the separation of the careers of judges and prosecutors, the creation of two different Superior Councils of the Judiciary for judges and for prosecutors.

On 2 February, the Constitutional Committee of the Parliament discussed some of these bills.

In particular, it deals with the constitutional bill "Morrone and others" C.824 presented on 26 January 2023 (titled "Amendments to Article 87 and Title IV of Part II of the Constitution regarding the separation of adjudicating and prosecuting careers of the judiciary"), to which bills C.23 (Costa), C.434 (Giachetti), C.806 (Calderone) are connected; the bills fully reproduce the text of the constitutional-law bill submitted upon popular initiative and presented in the previous Legislature (AC. 14), the examination of which, started by the Constitutional Affairs Commission in February 2019, has never been concluded by the Chamber of Deputies.

In the session of 2 February 2023 (as shown on the website of the Chamber of Deputies), the President-rapporteur noted, in extreme summary, that all the bills under consideration provide for: two distinct self-governing bodies of the judiciary (one for the prosecuting judiciary and one for the adjudicating judiciary); the modification of the composition of the elective members of the two CSM institutions to be established compared to the existing unitary one, harmonising the current numerical prevalence of professional members - corresponding to two thirds- with the lay members being politically appointed; the formal separation of the judicial order into the two categories of the adjudicating judiciary and the prosecuting judiciary with the provision of separate competitions for the access to judiciary.

All the proposals, except one, keep the President of the Republic in charge of the Presidency of the two distinct self-government bodies to be established; instead, bill C. 806, in its Article 1, removes the presidency from the President of the Republic and assigns the presidency of the Superior Council of the Adjudicating Judiciary to the First President of the Court of Cassation (Article 2 of the proposal) and the presidency of the Superior Council of the Prosecuting Judiciary to the Attorney General of the Court of Cassation (Article 4 of the proposal).

According to what the bill's rapporteur explained about the independence and autonomy of the entire judiciary, public prosecutors would continue to belong to the judiciary and enjoy the safeguards of autonomy and independence characterising the judiciary, but they will belong to a judicial order distinct from that of the adjudicating judiciary.

The rapporteur also points out that Article 10 of bills C. 23, C. 434 and 824 amends Article

112 of the Constitution, which establishes the principle of mandatory criminal prosecution. The amendment introduced consists in attributing to the law the determination of the cases and methods for the compulsory exercise of criminal prosecution. The legislative process continued, during 2023, until 19 December 2023, with numerous hearings in the Commission of expert professors, representatives of the legal profession and the judiciary (among these, the President of the National Judicial Association).

On 11 June 2023, the Minister of Justice announced the government's intention to reform the judicial system along these lines.

Stakeholders expressed concern that a strict separation of careers would make the prosecution more susceptible to potential political influence and lead to the abandonment of a common judicial culture for judges and prosecutors.

It should be noted that the 2022 reform, precisely Law no. 71 of 17 June 2022, which came into force on 21 June 2022, provided for the possibility of changing functions, from judges to prosecutors, or vice versa, no more than once during the career of a member of the judiciary, amending Article 13 of Legislative Decree no. 160 of 2006, a provision that sets some space and time limits to the change of functions. The intertemporal regime envisaged for this new provision by Article 12, paragraph 2, of Law no. 71/2022 has already been interpreted by the Superior Council of the Judiciary (with a resolution responding to a question dated 5 April 2023).

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review) *(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)* 5000 character(s) maximum

In 2023, no changes have been made to the Italian legal framework in this respect.

#### The ordinary judiciary

Ordinary judges and prosecutors are considered as such because they are set out and governed by the rules on the judicial system (Article 102 of the Constitution; Articles 1 and 4 of Royal Decree no. 12 of 30 January 1941). The exercise of ordinary judicial functions is assisted by particular safeguards, provided for in the Constitution: autonomy from any other governmental power, submission only to the law, internal independence (i.e., from any hierarchical constraint) and external (from any external conditioning), provision of the proper court as pre-established by the law, irremovability.

The Superior Council of the Judiciary (a body of constitutional relevance independent from any other governmental power) is entrusted with the power to decide on careers, transfers, appointments, disciplinary proceedings of judges and prosecutors, and, more generally, any other provision concerning the status of members of the judiciary.

According to Article 106 of the Constitution, which has not been amended to date, the appointments of ordinary judges and prosecutors take place by competition; the law on the judicial system can allow the appointment, even elective, of honorary judicial members for all the functions attributed to individual judges and prosecutors. Upon designation by the Superior Council of the Judiciary, university full professors in legal subjects and lawyers who have practiced for fifteen years and are registered in the special registers for the higher jurisdictions can be called to become Cassation justices or prosecutors for outstanding merit. Pursuant to Article 105 of the Constitution, also never amended, it is up to the Superior Council of the Judiciary (CSM) – the self-governing body of the judiciary –, according to the rules on the judicial system, the hiring, assignments and transfers, promotions and disciplinary measures regarding the members of the judiciary.

The most recent competition for 400 ordinary judicial posts was announced by Decree of the Ministry of Justice of 9.10.2023 (supplemented by a decree of 19 October 2023) and the written tests will take place on 24,25,26 January 2024.

The presidents of courts, courts of appeal and the First President and the Adjunct President of the Court of Cassation, as well as the presidents of the Chambers of the Court of Cassation and of the lower judicial offices are appointed by the CSM, following a competition based on qualifications. The same happens for the directors and semi-directors of the Prosecution's office at the trial courts and of the General Prosecution's offices at the Court of Cassation (Prosecutor General, Adjunct Prosecutor General, Attorneys General).

Currently, the ordinary legislation sets out some general provisions containing the appointment criteria: the last organic intervention was the one implemented with Law no. 111 of 2007, which intervened on Legislative Decree no. 160 of 2006 (for prosecution's offices, reference is also made to Legislative Decree no. 106 of 2006). More recently, action has been taken, in some respects, with Law no. 71 of 17 June 2022 (*Delegations to the Government for the reform of the judicial system and for the adaptation of the military judicial system, as well as provisions on regulatory, organisational and disciplinary matters, on the eligibility and repositioning of the members of the judiciary and on the establishment and functioning of the Superior Council of judiciary*).

The secondary legislation concerning the CSM, in particular the Consolidated Law on Judicial Managing Functions (Circular no. P 14858 of 28 July 2015, updated as of 16 June 2021), represents a set of applicative and operational provisions for the appointment of directors and semi-directors for ordinary judicial officers (and their four-year re-appointment), in the framework of the 2006/2007 reform. The consolidated text contains the criteria for the assignment of these tasks and the general indication that they must be evaluated in an integrated manner. The criteria refer to the categories of *aptitude* and *merit*, with the related indicators (especially for aptitude, multiple general and specific indicators are listed, relating to each type of office). Seniority in the role has residual value. The consolidated law also regulates its comparative evaluation and the criteria for choosing appointments, for each type of office, with the importance to be assigned to the positive exercise of judicial functions. It also provides for the complete description of the sources indicating merit and aptitude (regulating the impact of any disciplinary proceedings), as well as the procedure for submitting the application for positions and appointment. A part of the Consolidated Law is then dedicated to the four-year re-appointment procedure.

A complex regulatory reform project is being examined by Parliament.

The draft legislative decree in question (A.G. 110), assigned to the competent Commissions on 29 December 2023, contains provisions regarding the regulatory reform of the judiciary, pursuant to Article 1, paragraph 1, letters a), b) and c) of Law no. 71 of 2022 (so-called reform of the judicial system). Article 1, paragraph 2, of the aforementioned enabling law provides that the draft legislative decrees are adopted upon proposal of the Minister of Justice, in agreement with the Ministers of Economy and Finance and University and Research and are transmitted to Parliament for the purposes of acquiring the opinion of the Commissions competent for the relevant subject and for the financial aspects. The scheme was assigned to Commissions II (Justice) of the Chamber of Deputies and 2nd (Justice) of the Senate, as well as, due to the financial consequences, to Commissions V (Budget) of the Chamber of Deputies and 5th (Budget) of the Senate.

The competent parliamentary commissions are called to express their opinion by 28 January 2024.

The delegation provisions aim: to review, according to principles of transparency and enhancement of merit, the criteria for assigning managerial and semi-managerial positions; to reform the procedure for approving the organisational tables of judicial offices; to review of the criteria for access to Court of Cassation functions; to reform the procedures for evaluating the professionalism of the members of the judiciary; to establish the evaluation file for the members of the judiciary, to be taken into consideration not only when verifying professionalism but also when assigning managerial and semi-managerial tasks; to intervene on the regulation of access to the judiciary.

The structure of the draft legislative decree is extremely detailed and complex and, if approved, will lead to some significant regulatory changes.

To mention only the main ones, and according to the drafter's illustration, the following can be recalled:

- Article 1, which modifies Article 7-bis of the judicial system rules (R.D. 12/1941) regarding the tables for judicial offices, implementing Article 2, paragraph 2, of the aforementioned enabling law;
  - Article 2, which contains amendments to the regulations on judicial boards and on the Executive Board of the Court of Cassation (Legislative Decree no. 25 of 2006) regarding the participation of non-professional members (university professors and lawyers) in resolutions concerning the opinions for the assessment of professionalism for implementing Article 3, paragraph 1, letter a) of the enabling law. In summary, they are given the right to participate in discussions and assist in deliberations as well as to cast a vote in the case of reports of specific facts by the professional councils, following the indications of the councils themselves;
  - Article 3 of the draft legislative decree, which addresses the rules relating to the Superior School of the Judiciary (Legislative Decree no. 26 of 2006), mainly providing -in letter a) among the tasks of the School- the organisation of preparation courses for the competition for the ordinary judiciary;
  - Article 4, which addresses the regulations relating to the organisation of the public prosecutor's offices (Article 1, paragraph 7, of Legislative Decree no. 106 of 2006): by virtue of the amendments, the organisational project of the public prosecutor's office is adopted on the basis of standard models established by resolution of the CSM similarly to what is provided for the organisation of the adjudicating offices by the scheme in question and therefore the provisions on the organisation of the adjudicating offices are applied, if compatible as introduced by the scheme itself;
  - Article 5, which brings about changes to the regulations regarding access to the judiciary (however confirming the structure of the current competition) and economic progression and functions of judicial members (Legislative Decree no. 160 of 2006); in particular, the personal file of judges and prosecutors is created at the CSM and the elements that must be part of this file are indicated; the current regulations regarding the evaluation of the professionalism of judicial members, referred to in Article 11 of aforementioned Legislative Decree no. 160 of 2006, are also significantly modified (for the purposes of calculating the four-year period, periods of leave of absence of the judicial members for carrying out political tasks, both elective and performed within the Government and, for any reason, in the Regions, in local authorities and at supranational elective bodies, identified by Article 17 of law no. 71 of 2022, will not be taken into account, but the period spent on leave is in any case considered for pension purposes and length of service; in relation to the capacity indicator, reference is made to the evaluation regarding the existence of serious anomalies concerning the outcome of the activities in the subsequent phases and instances of the proceedings and of the judgments; for example, *the dismissal of the requests made by the judicial members or the review and annulment of decisions due to abnormality, lack of reasoning, ignorance or negligence in applying the law, manifest misrepresentation of the fact, failure to evaluate decisive evidence*); positive evaluation outcomes are provided for according to the kind of assessment (fair, good, excellent). The procedure envisaged by the secondary regulations of the Superior Council of the Judiciary for access to Court of Cassation functions is to be regulated by the law.
- Paragraph 5 of Article 5 introduces Articles 46-bis to 46-terdecies into Legislative Decree n. 160/2006, regarding the assignment of managerial and semi-managerial positions, rewriting with detailed provisions the current procedure entrusted, for the most part, to the Consolidated Law of the CSM.

It should be noted, in relation to the draft legislative decree on the regulatory reform, that the CSM is preparing to decide on the expected opinion within its competence.

Furthermore, during the hearing in the Chamber of Deputies on 16 January 2024, the National Judicial Association (ANM) expressed its opposition to the provisions on the personal file of judges and prosecutors, especially in relation to the concept of "serious

anomaly". The ANM considers it dangerous that this concept has been structured not only with reference to the "activity as a whole", as an anomalous statistical data, but in such a way as to also include the individual judicial provision and any gaps or errors in the reasoning (due to misrepresentation of the facts, negligence in the interpretative activity), with negative repercussions on the evaluation of the judicial professionalism. The new regime, according to the ANM, betrays a top-down and outdated vision of the judiciary, which gives the appellate courts the power with their rulings to influence the professional advancement of their lower-ranking colleagues.

In implementation of the same enabling law, two other draft legislative decrees have currently been adopted on a preliminary basis and are currently being examined by Parliament:

- a) the draft legislative decree containing provisions on the functioning of the Council of the Military Judiciary and on the military judicial system, implementing the delegation provided for in Article 40, paragraphs 1, 2, letters d) and e), and 3, of Law no. 71 of 2022 (A.G. 91);
- b) the draft legislative decree containing provisions on the reorganisation of the regulation of the redundancy of ordinary, administrative and accounting judges and prosecutors, implementing the delegation set forth in Article 1, paragraph 1, letter d) of Law no. 71 of 2022 (A.G. 107)

For the latter, informal hearings in the Commission began on 10 January 2024. And precisely on 10 January 2024, a hearing was held in the commission of the Chamber of Deputies of the representation of the National Judicial Association, which expressed serious doubts about the planned reduction to 180 of the maximum number of judges and prosecutors who can be assigned to functions other than the judicial ones (around 25% in less than the number currently allowed, equal to 241), with specific reference to: 1) the significant extent of this reduction; 2) the fact that this reduction concerns only ordinary judicial members, while for administrative and accounting judges and prosecutors an increase is allowed compared to the past; 3) the fact that the authorization for non-judicial functions for positions intended by law exclusively for ordinary judicial members and those characterized by the exercise of judicial or jurisdictional functions abroad, and in particular those within the European Union, such as those at the Courts, however named, provided for by international agreements to which Italy adheres, of European Chief Prosecutor, of European Prosecutor, of Liaison Magistrate, may also be granted in the event that the maximum number of judicial members not performing judicial functions is reached, but in that case with subsequent reabsorption into the same maximum number, upon the return to judicial functions of other judges or prosecutors.

The Report on the draft legislative decree in question underlines in this regard, illustrating the provisions of Article 13, "that, compared to the ordinary judiciary, the restrictive effect on the number of judges and prosecutors who can perform non-judicial functions is extremely wider than it might appear. In fact, currently the maximum number of 200 judicial members who can be perform non-judicial functions are not included in the maximum number, due to the effect of Article 1-bis, paragraph 4, of Legislative Decree no. 143 of 16 September 2008, converted with amendments by Law no. 181 of 13 November 2008, (which is expressly repealed), judicial members assigned to non-judicial functions at the Presidency of the Republic, the Constitutional Court, the Superior Council of the Judiciary and to elective positions. As a consequence, for ordinary judges and prosecutors, the reduction of the positions that can be authorized as per non-judicial functions does not go from 200 to 180, but from the 200 established posts, to which all the positions at the Presidency of the Republic must be added (currently numbering 4, but may be increased), the Constitutional Court (currently 15 in number, but may be increased) and the Superior Council of the Judiciary (currently 15 in number, but may be increased to 22 as a result of Articles 7 and 7-bis of Law 195 of 1958). With the effect that the actual reduction is from the currently possible number of, at least, 241 to the number of 180. In addition, however, there is also the intervention carried out with



paragraph 3, as a consequence of which, the positions assigned by law exclusively to judges and prosecutors and those characterized by the exercise of judicial or jurisdictional functions abroad, including those in courts -however named- provided for by international agreements to which Italy adheres, of European chief prosecutor, of European prosecutor, of liaison magistrate, may also be authorized if the maximum number of judicial members non performing judicial functions is reached, but in that case with subsequent reabsorption into the same maximum number, when other judges and prosecutors return to their judicial functions. In this way, therefore, the cases to which the numerical limit does not apply are exhaustively identified, as the delegation law allowed, but without that exception having a real expansive effect on the number of non-judicial positions, given the reabsorption mechanism."

#### The Constitutional Court.

According to Article 135 of the Constitution, the Constitutional Court (constitutional body of the State, whose primary task is to review the actions of the legislator, in order to verify their compliance with constitutional principles) is made up of fifteen judges.

The appointment system is the result of a delicate balance, because it seeks to harmonise different needs: ensuring that judges are as impartial and independent as possible; guarantee the necessary level of technical-legal competence; bring to Court various skills and experiences, different cultures and sensitivities, but not foreign and disconnected from those present in political institutions.

The judges must all be chosen from restricted categories of highly trained jurists: members of the judiciary, in service or retired, coming from the "supreme jurisdictions", i.e. from the Court of Cassation (the body at the apex of the ordinary judiciary), from the Council of State (the top of the administrative judiciary) and by the Court of Auditors (body of the accounting judiciary); university full professors of legal subjects; lawyers with at least twenty years of experience in their profession. Precisely, one third of the judges (i.e. five) are elected by judges and prosecutors of each of the three higher judiciaries (three from the Court of Cassation, one from the Council of State, one from the Court of Auditors), by absolute majority (half plus one of the members of the constituency) and with possible run-off between the most voted. Another five are elected by Parliament in a "joint session", i.e. by the two parliamentary Chambers together, with a majority vote of two thirds of the members in the first three ballots, and of three fifths of the members (i.e. around 570, out of around 950 deputies and senators) from the fourth ballot onwards. The last five are chosen by the President of the Republic on his/her own initiative. There is no minimum or maximum age limit: in fact, since membership of the higher judiciary or a high academic qualification or long professional practice is required, judges and prosecutors mostly join the Court at a mature age.

Each judge or prosecutor is appointed for a nine-year term (once again without age limits), and cannot be re-elected or extended: upon expiration, he or she retires or returns, if he or she still meets the requirements, to his or her previous professional position. The length of the tenure tends to ensure the independence of judges and prosecutors, also from the political bodies that designate them. If a judge/prosecutor terminates his/her tenure prematurely, due to death or resignation or forfeiture (the latter can only be ordered by the Court itself in the case of very serious shortcomings, but it has never happened), he/she is replaced by the same body that had designated his/her predecessor, and in turn lasts nine years in office. In this way, since the dates of the appointments of individual judges or prosecutors have differed over time, the change in the composition of the Court is always partial and gradual, and there is never an abrupt break between one composition and another; so that the "case-law" of the Court (i.e. the guidelines that underlie its decisions) can indeed change, but within the context of a fundamental continuity.

#### The administrative judiciary.

The regulatory law has provided for a threefold system of recruitment of administrative

judges and prosecutors. The competition for judicial posts in the regional administrative courts; the competition for Council of State justices; the free governmental appointment as Council of State justices.

The single self-governing body is the Presidency Council of Administrative Justice.

The Council of State, governed by Article 100 of the Constitution, is a body of constitutional relevance and a body of legal-administrative advice and protection of justice in the administration; the jurisdictional functions are chiefly performed at the second instance, in relation to the Regional Administrative Courts' decisions, first-instance courts of the administrative jurisdiction.

#### The accounting judiciary

The Court of Auditors exercises preventive control over the compliance of governmental acts with the legislation, and also subsequent control over the management of the state budget., In the cases and in the forms established by law, it participates in the control of the financial management of the entities to which the State contributes on an ordinary basis. It reports directly to the parliamentary Chambers on the result of the verification carried out.

The judges and prosecutors of the Court of Auditors are appointed by competition for the functions of Court of Auditors judges and prosecutors.

According to Article 100 of the Constitution, the law safeguards the independence of the Council of State and the Court of Auditors and their members towards the Government.

Promotion of judges and prosecutors (incl. judicial review)

*5000 character(s) maximum*

In 2023, no changes have been made to the Italian legal framework in this respect.

As already mentioned above, the CSM is the sole competent body in charge of transferring and promoting the members of the ordinary judiciary, both adjudicating and prosecuting.

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

*5000 character(s) maximum*

In 2023, no changes have been made to the Italian legal framework in this respect.

Article 107 of the Constitution states that the members of the judiciary are immovable. They cannot be dismissed or suspended from service or assigned to other offices or functions except by decision of the Superior Council of the Judiciary, adopted either on the grounds and with the safeguards of defence established by the judicial system rules or with their consent.

Ordinary law and secondary legislation of the CSM, in compliance with the constitutional provision, govern transfers and resignations or retirement of ordinary judicial members. The organic regulations that have affected the judicial system (Royal Decree no. 12 of 1941), supplementing or replacing some of its provisions, have already been referred to above, as has the reform in the process of being approved by Parliament.

In particular, the matter of termination of service, which is particularly delicate, is assisted, in addition to the general constitutional and legislative safeguards, by precise provisions of circulars issued by the Superior Council of the Judiciary; in this way the safeguards of autonomy and independence are effectively protected at a crucial time such as the termination of a judge's or prosecutor's duties (retirement due to seniority, resignation, illness).

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

In 2023, no changes have been made to the Italian legal framework in this respect. See precedent paragraph on independence.

The Superior Council of the Judiciary is a body of constitutional relevance, which has the task of safeguarding the autonomy and independence of the ordinary judiciary.

The Constitution attributes all the most significant decisions on the career and professional status of judicial members to the CSM, whose fundamental characteristic is autonomy from the governing political bodies. An autonomous and independent judicial order constitutes, in fact, a fundamental characteristic, on an organisational level, of the rule of law, as it implements the principle of separation of powers.

Article 21 of Law no. 71 of 2022 amended Article 1 of Law no. 195 of 1958 which contains the rules on the CSM, by increasing the number of its members. In particular, an increase from 16 to 20 professional members and from 8 to 10 lay members is established.

Overall, therefore, the CSM members have increased from 24 to 30, in addition to the three members by right (the President of the Republic, the First President of the Court of Cassation, the Prosecutor General of the Court of Cassation)

Of the 20 members elected by the ordinary judiciary, 2 exercise Court of Cassation functions, 13 exercise first and second-instance adjudicating functions and 5 exercise first and second-instance prosecuting functions; the 10 members elected by Parliament are chosen from among full professors in legal subjects or lawyers with at least 15 years of professional practice.

The functions of the CSM are provided for by the Constitution (Article 104 and following), which establishes that the judiciary is autonomous and independent from any other power of the State (i.e. the legislative and executive one) and governs the CSM, that is, the body called upon to safeguard its autonomy and independence. This occurs by entrusting exclusively to the CSM the adoption of all decisions that concern the professional life of the members of the judiciary and, more generally, the administration of justice. Preventing other state powers from affecting appointments, promotions and transfers avoids the risk that the decisions taken by judges and prosecutors in the exercise of their functions could be "influenced" by fears about the political repercussions of the choices on their careers. The Council then decides on all aspects of the judges' and prosecutors' professional life: access and training; career progression (the so-called professionalism assessments); training; carrying out extrajudicial assignments; transfers to another office or other functions; placement outside the standard functions; appointment to managerial (or semi-managerial) positions; absences and leaves; retirement; the imposition of disciplinary sanctions. The appointments of office managers are the only case in which the Minister of Justice intervenes in the procedure: according to Article 110 of the Constitution, the Minister of Justice is responsible for the organisation and functioning of justice-related services; and the managers of judicial offices have considerable powers in organisational matters. This is why the Minister of Justice can express his/her own assessment (in practice practically always an assent to the CSM's choices).

Independence/autonomy of the prosecution service

In 2023, no changes have been made to the Italian legal framework in this respect. See precedent paragraph on independence.

Allocation of cases in courts

In 2023, no changes have been made to the Italian legal framework in this respect. See previous paragraph on independence. The allocation of cases and proceedings is basically automatic, to safeguard the independence of decisions and the principle of the "proper court pre-established by law" ("Giudice naturale precostituito per legge" – Article 25 of the Italian Constitution).

The system based organisational schemes allows transparent allocation of files to the proper judge as previously determined by the internal organisation of judicial offices (i.e., the schemes).

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information.

In 2023, no changes have been made to the Italian legal framework in this respect.

The economic progression of judges and prosecutors continues to be automatic and is based on seniority, once the positive professionalism assessment has been given by the CSM. There are no distinctions by function, except for justice and prosecutors serving at the Court of Cassation.

Salaries are established by law.

Independence of the Bar (chamber/association of lawyers) and of lawyers.

In 2023, no changes have been made to the Italian legal framework in this respect.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

In 2023, no changes have been made to the Italian legal framework and its implementation in this respect.

Any reforms envisaging the rigid separation of careers between judges and prosecutors could also have an effect on the perception of the independence of the latter, which has always been linked to the unitary judicial order.

## B. Quality of justice

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section)*

Legislative Decrees no. 149 and no. 150 of October 10, 2022, also known as the 'Cartabia Reform', were adopted by the Italian Government with the aim of streamlining civil and criminal proceedings. The main goals of the Reform 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 must 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) must be reduced 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.

The reforms adopted in both civil and criminal matters have promoted new forms of organisation of the Court of Cassation, which have proved effective in pursuing the objectives set out in the NRRP.

**In the civil sector, in paragraph I, in response to the First Recommendation formulated by the European Commission in the 2023 Report,** some of the most relevant organisational initiatives and regulatory innovations have been already described that are contributing to shaping a more modern form of jurisdiction in this area. They must be understood as referred to here.

Among the most relevant changes for the Court of Cassation the following can be mentioned:

1) the closure of the Sixth Civil Chamber (the so-called "filter chamber") in order to reduce the time needed for the transfer of cases to the ordinary civil chambers and to facilitate coordinated case management; and 2) the improvement of the organisation of the first screening (preliminary examination) of appeals in order to identify related appeals and/or common issues. This has already improved the organisation of hearings and the quality of decisions.

**In addition to recalling what has already been stated in paragraph I**, it can also be specified that Article 196-quater of the rules implementing the Code of Civil Procedure, introduced by Article 4 of Legislative Decree no. 149 of 10 October 2022, provided for the mandatory electronic filing of every parties' document (starting from 1 January 2023), including at the Court of Cassation. The effectiveness of the new provision is thus linked to the post-Covid emergency rules which definitively ceased on 31 December 2022. The notable impact deriving from the general obligation of electronic filing, also in terms of the overall maintenance of the Court's IT system, clearly emerges from the statistics processed for the period from 1 January to 11 December 2023. The now achieved uniformity of the procedural flow on the digital channel and the rationalisation of the procedure have offered the opportunity to launch an innovative organisational process in the Court: thus exploiting the potential of the telematic process, making systematic use of the contribution of a strategic aid tool such as the Office for Judicial Proceedings.

The delivery of the introductory documents (and all the defence counsels' documents) via the only electronic method led to the reorganisation of the registry services. The acceptance of the electronic filing of the documents for the purposes of registration in the registers allows the registration of the appeals and the counter-appeals on a semi-automatic basis, with the acceptance of the documents by the registrar, who makes use of the data entered by the defence counsels, according to a predefined IT scheme.

As regards the general reforms of the civil proceedings on the merits, the objective of the regulatory changes was to achieve an improvement in the overall times for settling civil cases. The reform law no. 206 of 2021 intervened extensively on the civil procedure code. The law introduced changes to the ordinary process of cognition (Article 163 and following, Code of Civil Procedure) - to ensure the simplicity, concentration and effectiveness of the protection, as well as the reasonable duration - and to the phase of forced execution; it provided for the new simplified process of cognition (Article 281-decies, Civil Procedure Code); has established a single procedure for persons, minors and families (Articles 473-bis et seq.), has introduced the preliminary ruling procedure (Article 363-bis, Civil Procedure Code), has made changes to the procedure for work and the appeal process. Furthermore, important measures have been adopted with a view to implementing the digitalisation of judgements, which have already been mentioned; it is enough to remember that, for the offices of first and second instance, the methods for conducting remote hearings have been codified and stabilized and the tools for a fully computerized civil trial have been strengthened. With reference to the appeal system, the legislative decree intervened by strengthening the regulation of "filters", speeding up the definition of inadmissible, inadmissible or manifestly unfounded appeals.

The reform interventions with a specific perspective on procedural deflation must be underlined: innovations have been introduced in the field of alternative dispute resolution methods, through interventions on the institutions of mediation and assisted negotiation and the strengthening of the arbitration rules. In the context of the first-instance proceedings, the regulation of the introductory phase of the proceedings was dealt with, to obtain greater concentration and arrive at the first hearing with a clearer definition of the proceedings. In this way, the actual start of the proceedings should be achieved at the first hearing and, generally speaking, a single-hearing procedure, which aims to facilitate the

rapid settlement of the cases. With a view to deflation of civil litigation, it has been envisaged that the court can formulate the settlement or conciliation proposal even in the decision-making phase of the proceedings, until the moment in which the hearing for ruling on the case is set.

**In the area of criminal law**, the "Cartabia reform" introduced some innovations. Among other things, it provided that the statute of limitations for an offence (prescription period) ceases to run when the first-instance judgement is rendered. Irrespective of whether the defendant is convicted or acquitted, the statute of limitations ceases to run for almost all offences (except for mafia offences and the most serious offences). To prevent proceedings from running out of time, the "Cartabia reform" amended the Code of Criminal Procedure by introducing Article 344-bis: it provides for new time limits (to be understood as "conditions of admissibility") for proceedings before the Courts of Appeal and the Court of Cassation. According to the new provision, legal proceedings must be concluded within the time limits provided for by law, after which the court will be obliged to render a judgement of 'non luogo a procedere' and dismiss the case ('improcedibilità'). Under Article 344-bis, the time limits are two years for proceedings before the Courts of Appeal and one year for proceedings before the Court of Cassation. However, Article 344-bis provides for some exceptions: (1) the defendant may waive the statutory time limit and (2) the statutory time limit does not apply to offences punishable by life imprisonment. It is expected that the new legal framework will be implemented gradually, and indeed a transitional regime will apply until 31 December 2024, under which the above time limits will be extended to three years for proceedings before the Courts of appeal and 18 months for proceedings before the Supreme Court.

Finally, with 71,837 appeals filed with the Court of Cassation in 2023 (24,680 appeals in civil matters, compared to 29,915 civil appeals in 2022, and 47,157 appeals in criminal matters, against 45,363 criminal appeals in 2022), the question arises as to how this enormous volume of work can be handled in the best and quickest way possible, while at the same time ensuring a high quality of decisions. The Court of cassation is generally positive about the reform.

It should be noted that a new bill (Pittalis) is being examined by Parliament which essentially restores the statute of limitations for crimes even after the first-instance ruling, as a mechanism for extinguishing crimes for the lapse of a certain time indicated by law. The result is obtained by repealing Article 161-bis of the Criminal Code, introduced with Law no. 134 of 2021, which currently provides for the definitive cessation of the limitation period following the first-instance conviction. The bill simultaneously provides for the repeal of the institution of procedural inadmissibility (repealing Article 344-bis of the Code of criminal Procedure introduced with Law no. 134 of 2021) and the introduction of Article 159-bis into the Criminal Code which regulates some cases of suspended sentence after the first-instance conviction (the limitation period remains suspended in the case of first-instance conviction, for a period not exceeding two years and, following the Court of Appeal decision which confirms the first-instance conviction, for a period not exceeding one year).

Pittalis bill C.893, presented on 17.2.2023 (and amended and combined with similar bills C.745, C.1036, C.1380), after examination in the Commission, which ended on 31.10.2023, was approved by the Chamber of Deputies, with the favourable opinion of the Government, on 17 January 2024, with 173 votes in favour and 79 against. The measure approved by the Chamber was transmitted to the Senate of the Republic on 17 January 2024.

In this regard, it should be noted that, in relation to aforementioned Bill no. C 893-A Pittalis, the Superior Council of the Judiciary, in a resolution dated 17 January 2024, approved the envisaged opinion. In addition to a comprehensive analysis of the text, this opinion calls for the adoption of transitional rules. The SCM points out that the many resources to be devoted to the identification of the applicable regime as more favourable, in the absence of a transitional regulation that identifies it, will determine "inevitable negative effects on the duration of judicial proceedings and the elimination of the backlog" and points out "the further risk of reversing the positive trend recorded in the last two years in terms of the reduction of disposition time and, consequently, of jeopardising the achievement, by 2026,

of the objectives negotiated with the European Commission."

On 20 January 2024, the General Secretary of the National Judicial Association expressed strong concerns about the lack of transitional regulations relating to pending appellate proceedings for which the most favourable applicable legislation will have to be identified. According to the ANM, the identification will be very complicated and should involve choices reserved to the legislator. The same topic was also the subject of the concerns expressed by the Presidents of all the Italian Courts of Appeal. The latter have addressed a letter to the Minister of Justice, to the Presidents of the justice commissions of the Chamber of Deputies and Senate, as well as, for information, to the Head of the Legislative Office of the Ministry of Justice, with which they request transitional regulations for pending appellate proceedings, in the event of any changes to the regulations on the statute of limitations for crimes and inadmissibility. The Presidents of the Courts of Appeal highlight the strong impact on the organisation of work in their offices of the further regulatory change in a few years on these issues. They point out the worrying prospect of having to completely reschedule the work through "material access to tens of thousands of pending paper files" by judges and prosecutors and the administrative staff, in offices that already have very significant vacancies. We read further in the letter that "this umpteenth close intervention on the issue of the influence of the passage of time on the development of criminal proceedings, and therefore on the very possibility of deciding on the merits of the charges is, this time, characterized by absolutely new and peculiar problems of transitional law." Without a transitional regulation, therefore, which indicates the path chosen by the legislator, there would be serious uncertainty, which cannot be resolved through interpretation, especially with the problem - which is defined as enormous in the letter - about what legislation to apply to crimes committed since 01/01/2020 on the date of entry into force of the new regulations, to which inadmissibility may be applied pursuant to Article 344-bis, as introduced by Law no. 134 of 2021).

Some further structural reforms in the criminal sector introduced by Legislative Decree no. 150 of 2022 will contribute to raise the qualitative level of the jurisdictional response. Reference is made to the modified procedural instruments, useful to promote channels of definition prior to the trial venue, in order to deflate the latter also with a view to favouring the concrete implementation of the principles of immediacy and concentration. The following goes in this direction:

a) the new procedural rule introduced for the request for dismissal, the judgement not to proceed and the new decision of the so-called pre-trial filter hearing for direct summons offences, *when the elements acquired (in the proceedings) do not allow a reasonable prediction of conviction*.

b) the insertion of Article 129-bis of the Code of Criminal Procedure, which, in the first paragraph, provides for the power of the judicial authority to order, at any stage and level of the proceedings, to transfer the defendant and the victim of the offence to the relevant Centre for Restorative Justice, to start of a restorative justice programme;

(c) the new rule of Article 24-bis, introduced into the Code of Criminal Procedure and devoted to the unprecedented institution of the 'preliminary reference to the Court of Cassation for a decision on jurisdiction by territory'; it relates to the task of regulating jurisdiction at an early stage (the parties, or, also *ex officio*, the courts, may refer the question concerning jurisdiction by territory to the Court of Cassation). Significant, in particular, is the nature of an instrument indirectly aimed at anticipating, in a tendentially definitive manner, questions of jurisdiction by territory that are reasonably serious and complex (paragraph 6 of the rule establishes, in fact, for the party that pleads, in the course of the proceedings, the lack of jurisdiction without however activating the new instrument, the impossibility of subsequently re-submitting the question). The "anticipated dialogue" with the Court of Cassation is therefore intended to avoid (as clarified already in the first interpretations that the Court has given of this new institution) that the objection of lack of

territorial jurisdiction timely raised but rejected remains as a "hidden defect" in the trial; this instrument helps avoiding to overwhelm the entire procedural activity at its final outcome, ensuring the constitutional principle of the reasonable duration of the trial and the efficiency of the same; for the restorative justice of reference;

d) the new regime of the trial in absence. Article 420-bis of the Code of Criminal Procedure was fully reformulated by Legislative Decree no. 150, through the identification of the hypotheses in which it is possible to proceed even though the defendant has not appeared in court and the adoption of some fundamental ideological assumptions: the elimination of any form of presumption of legal knowledge, even surreptitious; the enhancement of the principle of effective knowledge of the trial; the centrality of judicial assessment in the concrete verification of such knowledge by the defendant; the rules on the case of voluntary ignorance about the pending trial (which is also accompanied by a rewriting of the provisions on absconding). At the same time, in Article 420 of the Code of Criminal Procedure, paragraph 2-bis was added, pursuant to which, in the presence of regular notifications, if the defendant is not present at the preliminary hearing and is not prevented from attending, the court is required to verify whether there are grounds for proceeding in his/her absence, pursuant to amended Article 420-bis;

(e) the reform of the rules on appeals, which has operated on several fronts: a first one of a general nature, i.e. the modification of certain aspects relating to the form and presentation of the appeal, as well as the time limits for proposing it; a second one providing for the extension, with a view to deflating the situation, of the number of judgments that cannot be appealed and the modification of the modalities for dealing with the judicial proceedings and the particular instrument of the agreement at the appellate stage, as well as the areas of the renewal of the preliminary investigation; a third one, dedicated to the Court of Cassation proceedings, with regard to the modalities for dealing with appeals; and a fourth one relating to restitutory remedies. For both the appellate and Cassation proceedings, the appeals brought for civil interests only have been shaped according to the substantial principle of transferring them, once their inadmissibility has been ascertained, to the civil court of "corresponding instance" (Article 573, paragraph 1-bis of the Code of Criminal Procedure).

Revising the appellate system is extremely functional to the containment of the judicial response time in line with the objectives set by the RRP on the disposition time, objectives that can only be achieved by streamlining the workflows in the various instances of jurisdiction and giving new impetus to the organisational dimension of judicial offices;

f) the strengthening of simplified proceedings with a view to trial deflation.

With specific reference to the summary trial, the 2022 reform provides that, if neither the defendant nor his/her defence counsel lodges an appeal against a first-instance conviction, the execution court, once the enforceability of the order has been declared, shall apply a reduction of one-sixth of the punishment. As mentioned above, the extra-criminal effects of the plea bargaining proceedings have been affected, where it has been provided that the judgment rendered pursuant to Article 444 of the Code of Criminal Procedure cannot be used as evidence in civil, administrative, disciplinary and tax proceedings and in proceedings to ascertain accounting liability. In the same deflative perspective is the extension of the "agreement at the appellate stage" with the elimination of preclusions by type of offence or by author;

g) the amendments to Article 611 of the Code of Criminal Procedure, entitled "Proceedings in chambers" and dedicated to the manner in which Court of Cassation appeals are to be dealt with; as a general rule, Court of Cassation appeals are to be dealt with in chambers, with "paper-based" cross-examination, which is considered sufficient to ensure the exchange between the parties also because of the technical nature of the Court of Cassation proceedings. The oral hearing is ordered by the Court at the simple request of the defence proposed within the time limits laid down by the Code, or *ex officio*, taking into account the



relevance of the issues submitted to its examination.

This overall system, which, by effect of a transitional rule (Article 94, paragraph 2, of Legislative Decree no. 150 of 2022 as amended by Article 17 of Legislative Decree no. 75 of 2023), should have become operative for appeals brought as of 16 January 2024, was further postponed in its entry into force by Article 11, paragraph 7, of Legislative Decree no. 215 of 2023, until 30 June 2024; from that date, therefore, the regime of "differentiation" between oral hearings and formal hearings at the request of a party should be "stabilised" for appeals that were not characterised by a non-participatory hearing in the traditional situation, which was introduced, on a provisional and emergency basis, in order to avoid interpersonal contacts entailing risks of Sars Covid contagion, by Article 23 of Law Decree No. 137 of 2020.

The novelty, in short, has brought about a compression of the time limits for requesting the oral hearing before the Court of Cassation and has also entrusted the Court with the power to establish *ex officio* the hearing in the oral participatory form. This Court is of the opinion that it would be more consistent to entrust the Court with the power to decide on the appropriateness of the oral hearing requested by the defence, according to criteria laid down by the legislature or established by guidelines agreed upon by the Court and the National Bar Council.

The innovations relating to the extension of offence hypotheses prosecutable on complaint having deflative effects in the long term, and the reform of alternative sanctions and restorative justice are also fundamental; they have all been introduced by Legislative Decree no. 150 of 10 October 2022.

The amendments respond to a unified judicial policy matrix: the legislator's conviction of being able to intervene on an alternative sanctioning plan to that of typical punishments, disincentivising the execution of short prison sentences and encouraging what has been defined as 'paths of humanisation and personalisation of penalty'; a change of perspective may be interpreted, which is intended to be projected towards a valorisation of the person - whether victim or offender - in a horizon that is altogether restorative and educational.

As part of a broader series of reforms aimed at the efficiency of criminal proceedings, the reform now attributes to the courts of first and second instance, always within the limit of four years of imprisonment imposed, the possibility of applying an alternative penalty, including those of day-release and home detention, which can substantially be added to the corresponding alternative measures to detention. In this way, the intention was to return to the courts of first and second instance their role as courts of the punishments: punishments to be identified and quantified and to be individualised, also through treatment programmes prepared with the External Criminal Execution Office.

The law provision that gives the sign of change is contained in new Article 545-bis of the Code of Criminal Procedure, which introduced the unprecedented possibility of the *sentencing hearing*: from now on the trial should become, in the legislator's perspective, the privileged place for decisions on alternatives to prison.

The organic regime of restorative justice aims to make it efficient and effective and to induce an overall cultural change in the approach to the criminal sanctioning universe; it encourages mediation between the victim and the offender, the overcoming of the conflict generated by violated legality, the sharing of a single purpose of reconstruction of the fracture opened by the crime. The background to this judicial policy purpose is the idea of the centrality of the victim in the penal system, but also the line of complementarity between restorative justice and criminal justice.

It should be noted that a legislative decree containing supplementary and corrective provisions to Legislative Decree no. 150/2022 (A.G. 102) is in the process of being approved, of which the outline of the articles, the illustrative report and the dossier by the Study Service of the Chamber of Deputies and Senate are known. The outline of the legislative decree was approved in preliminary examination by the Council of Ministers and

by the beginning of February the Justice Committees of the Chamber and Senate will have to express their opinions on it.

It consists of eleven articles. The first ten articles introduce some amendments to the provisions of Legislative Decree no. 150 of 2022 in the Criminal Code, the Code of Criminal Procedure and special laws, in order to make the institutions concerned more consistent with the principles and criteria of delegation. The aim is to simplify some specific procedural and trial mechanisms, as well as to solve coordination problems that emerged when the reform was first applied. The last article concerns the financial provisions.

Interventions are envisaged, among other things, regarding: a) prosecution of a complaint, to expand the cases of prosecution of a complaint to the crime of damaging things exposed to public trust (Article 635 of the Criminal Code) and harmonise, from the point of view of the regulatory references of the circumstances that require *ex officio* prosecution, Article 582 of the Criminal Code with the amendments to Article 583-quater of the Criminal Code, modified by Legislative Decree no. 34 of 2023, relating to healthcare professionals; b) electronic criminal proceedings (this is only the possibility, extended to the persons offended by the crime, to file the documents they carry out personally even with non-electronic methods); c) restorative justice, improving the clarity of the procedure pursuant to Article 129-bis of the Criminal Code; d) service of procedural documents and their methods of implementation; e) trial in the absence, also modifying Article 601 of the Code of Criminal Procedure, in the matter of preliminary acts to the appellate proceedings, to insert, in the summons decree for the appellate proceedings, the warning to the accused that if he/she does not appear he/she will be judged in his/she absence. The lack of this warning constitutes cause for the nullity of the decree itself; f) alternative sentences, with some clarifications of the sentencing hearing provided for by Article 545-bis cod. proc. criminal procedure and with coordination with the formal appeal procedure (art. 598-bis of the penal procedure code) and with the appeal agreement (art. 599-bis of the Code of Criminal Procedure); g) of execution proceedings, expressly providing for the possibility for the executing court to automatically apply a reduction of one sixth of the sentence in the event of failure by the accused or his/her defence lawyer to challenge the sentence, pursuant to Article 442, paragraph 2-bis, thus avoiding the activation of a procedure upon request of a party to obtain a reduction established by law.

Among the interventions on special laws, it is relevant to note that:

- Article 5 of the draft legislative decree amends Article 58 of Law no. 689 of 1981, providing that the substitute penalties of day-release, home detention and public utility work can be applied only with the consent of the defendant, expressed personally or through a special proxy;
- Article 7 addresses Legislative Decree no. 231 of 2001, on the subject of the administrative liability of legal persons, amending Article 61 thereof; similarly to Article 425 of the Code of Criminal Procedure, a new decisional parameter is introduced for proceedings relating to corporations, which must lead the Preliminary Hearing Judge to issue a decision not to proceed, in the event that, having assessed the elements acquired, a reasonable expectation of conviction must be formulated.

### **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, to 24,680 in 2023. Comparing the 2023 Jan-Dec period with the 2022 one, incoming cases fell by 17.5%;
- 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 and to 34,793 in 2023. Compared to the 2020 Jan-Dec period when 29,108 cases were completed, the amount of completed cases in 2023 has increased by 19.7%;
- the **clearance rate** went up from 89% in 2020 to 129% in 2021 and then slightly

decreased to 121% in 2022. In 2023 it was up to 141%.

This virtuous circle has started to have positive effects on the number of **pending cases**: at the end of 2023 there were 94,759 civil cases before the Court of Cassation, compared to 104,872 cases pending in 2022, to 111,241 pending cases in 2021. The 2023 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., 1,206 days in 2023, compared to 1,223 days in 2022, and to 1,289 days in 2021.

The reorganisation process of the Court 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, a positive outcome can already be seen in terms of reduction of the **disposition time (DT)** for solving civil cases\* 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 994 days in 2023 with a -23% 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) a 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 dismissal. 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 assigned to one of the civil chambers for a second selection / filter and the subsequent hearing of the case.

**The high number of internal organisational innovations at the Court of Cassation can be mentioned as they decrease the pending cases and the duration of the proceedings, as already described in Paragraph I of the Questionnaire which are referred to herein.**

- 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 first and second instance courts in 2014-2015, and, finally, at the Court of Cassation as of January 1<sup>st</sup>, 2023. It is now mandatory to file applications with the Court (and the relevant documents) on a digital platform, thus enabling the Registrar 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 examine each single appeal, thus facilitating the improved and efficient organisation of files, managerial solutions, and qualified/specialised hearings (see Paragraph I).

\* 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).

## **Criminal law sector**

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

- on the one hand, the drop of incoming cases ended in 2022. They went down from 51,956 in 2018 to 46,297 in 2021, to 45,363 in 2022. In 2023, they went up to 47,157. Comparing the 2023 Jan-Dec period with the 2022 one, incoming cases raised by 4%;
- on the other hand, the yearly number of completed cases is equivalent. They went up from 37,611 in 2020 to 47,040 in 2021, then increased to 50,775 in 2022. In 2023 they were 50,350.
- the clearance rate was also very positive (106%).

The number of pending cases before the criminal chambers of the Court of Cassation substantially decreased in 2023, they went from 18,323 at the end of 2022 to 15,125 at the end of 2023; this shows that the relevant number dropped by 17,4% in 2023.

The **average length of proceedings** is lower in 2023 than in the past – it went from 180 days in 2022 to 134 days in 2023 (-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, to 110 days at the end of 2023.

This is an exceptional result if one considers that the criminal chambers have gone above and beyond the '2026 target' (this amount at 166 days).

Accessibility of courts (e.g. court/legal fees, legal aid, language)

In 2023, no changes have been made to the Italian legal framework and its implementation in this respect.

The Italian legal system guarantees adequate access to the exercise of rights before the courts.

Fair trial is a constitutional safeguard (Article 111 of the Constitution)

Resources of the judiciary (human/financial/material)

*(Material resources refer e.g. to court buildings and other facilities. Financial resources include salaries of staff in courts and prosecution offices.)*

On 31 December 2023, the total number of judges and prosecutors is 10,853, but only 9,304 are in service. There are 1,757 vacant judicial posts. The vacancy rate is 16.52%, almost equally divided between judges (1,306 vacancies or 16.36%) and prosecutors (451 vacancies or 17.03%).

Some competitions for the recruitment of new members of the judiciary are still ongoing.

A new competition for 400 posts was announced by ministerial decree on 9 October 2023.

The number of judges assigned to the Court of Cassation has not changed since last year and remains at 417, including the First President and Vice-Presidents, 59 Presidents of Chambers and 356 "justices" (judges), in addition to 67 judges of the Office for Judicial Abstracts of the Court of Cassation.

There are currently 10 vacancies for chamber presidents, and three more will become vacant in the first few months of the year, bringing the vacancy rate to 22%. For the judges ('justices'), 83 posts were vacant on 31 December 2023, representing a vacancy rate of 23%.

Finally, there has been a significant increase in the number of women judges at the Court of Cassation: the First President is also a woman.

Last year, 27% of the presidents of the chambers (13 out of 49) and 34% of the members of the Council (85 out of 250) were women.

By 31 December 2023, however, 32% of the presidents of chambers (16 out of 49) and 34.8% of the judges (95 out of 273) will be women.

The human resources situation for administrative and judicial support is also critical. The Supreme Court of Cassation has 756 administrative staff (one administrative director, 156 former Area III units, 523 former Area II units and 76 former Area I units), but a significant number of posts (129) are vacant.

The actual vacancies of the RRP resources (court clerks, the so-called AUPPs) are also significant in terms of numbers. Of the 200 AUPPs initially recruited, only 103 were in service on 31 December 2023. In this context, the modification of the parameters of the RRP authorised by the European Commission on 24 November 2023, which allows the extension of the fixed-term contracts of the clerks and administrative technicians until 30 June 2026 and the recruitment of new staff, is certainly a positive element. The Ministry of Justice, to which the critical nature of the situation has been repeatedly reported, has confirmed that, because of the authorisation received from the European Commission, a call for tenders will be published shortly to fill the current vacancies at the UPP (*Ufficio per il Processo*).

## MATERIAL RESOURCES

The provision of computers, technology and other material supports is ensured by the Ministry of Justice, as usual.

The Commission for the Maintenance and Conservation of the Palace of Justice in Rome has begun a major restoration of the Palace where it is based the Court of Cassation. A major redistribution of space among the Civil Chambers is underway.

The Criminal Chambers and the entire Court will also benefit from the modernisation and technological upgrade of the building, allowed by the NRRP.

Preliminary planning has also begun for the installation of photovoltaic panels on the roofs of the buildings, with the aim of making the Palace energy self-sufficient.

The Court has also started the implementation of waste separation in the building in order to reduce the overall environmental impact of the offices.

Training of justice professionals (including judges, prosecutors, lawyers, court staff, clerks/trainees)  
*5000 character(s) maximum*

The Training Structure of the Court of cassation, in association with the *Scuola Superiore della Magistratura*, continues its training activities in civil and criminal matters.

The need to share training with the judiciary was the basis of some important training initiatives that brought together judges of the Court of Cassation, other judges and prosecutors, and lawyers.

A great attention was paid to the interpretation of judgments of supranational courts. The interaction created between the Court of Cassation and the *Scuola Superiore della Magistratura* has produced an important study (recently published) on the relationship between national courts and European law.

An agreement has been signed between the Ministry of Justice and the *Scuola Superiore della Magistratura* - in collaboration with Giuffrè Francis Lefebvre - for the training of administrative staff in the justice sector.

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

In the Court of Cassation, in the civil sector, organisational modules have generally been adopted, in various forms, to rationalise and make the management of serial litigation more efficient, by holding thematic hearings for the joint treatment of disputes with similar issues; in addition, the management dashboard constantly monitors the flow of work and

the backlog. The time taken to file orders is carefully monitored. In the same vein, the management dashboard is being implemented in the criminal justice sector.

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases.

In the Court of Cassation, the Sixth Criminal Chamber deals with corruption cases.

In first and second instance offices, especially in the larger ones, there are specialised divisions dealing with offences against public administration.

Even medium-sized and large public prosecution offices of first and second instance have, in their organisation, groups of judges with specialised competence for offences against public administration.

### C. Efficiency of the justice system

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)*

#### Length of proceedings

With regard to civil courts, the statistical data provided by the Ministry of Justice for the period from 1 July to 30 June 2023, 2022 and 2021 show a progressive and constant reduction of the disposition time. The Ministry of Justice's latest NRRP monitoring report (dated 11 October 2023), for the first half of 2023, shows a reduction in the disposition time for both, the *Tribunali* and the *Corti di appello*.

Overall, the first half of 2023 shows a DT of 453 days, a reduction of -18.5%, compared with a baseline of 556 days in 2019. The first half of 2023 is also better than the first half of 2022 (497 days), a change of -8.9%.

For the Courts of Appeal, compared to the 2019 baseline of 654 days, the disposition time in the first semester 2023 amounts to 533 days, or -18.4%. Compared to the first semester of 2022 (578 days), there was a decrease of -7.8%.

In the criminal sector, the results of the disposition time for the judicial year 2022/23 are very positive.

For the ordinary courts, an index of 310 days is recorded for the judicial year 2022/23, compared to 386 days in the previous period, which is much closer to the planned NRRP target of 282 days.

For the Courts of Appeal, an index of 689 days was recorded in the period under review, compared to 815 days in the previous period. This is very close to the target of 601 days to be achieved by 30 June 2026 to meet Italy's obligations to the EU.

Regarding the Court of cassation, on both, civil and criminal sectors, see paragraph B (Quality of justice).

Other - please specify

*5000 character(s) maximum*

## II. Anti-Corruption Framework

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Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the anti-corruption framework (if applicable)

N/A. Reducing the length of civil and criminal proceedings will also have a positive impact on the fight against corruption in public administration (See paragraphs I.B and I.C).

Italy has committed to proactively monitor the impact of criminal justice reform as part of its Recovery and Resilience Plan.

### A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic and with foreign authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

N/A

In Italy, there is an integrated anti-corruption system, which has found in ANAC (the National Anti-Corruption Authority) a body of more modern intervention on the prevention front.

The ANAC moves along three lines of intervention:

- Transparency: the protection of citizens' rights starts from the accessibility of public administration data and documents.
- Anticorruption: prevention of corruption by outlining organisational measures to make its occurrence more difficult. Supervisory activities in the area of public administration appointments. Advisory functions in favour of administrations and regulation on anti-corruption and transparency.
- Public contracts, with complex supervisory activities.

The Italian Anticorruption Authority (from now on: ANAC) was created with the aim of implementing Article 6 of the United Nations Convention against Corruption (UNCAC). ANAC is an independent authority. ANAC's board is comprised of five members appointed with a non-renewable mandate of six years. The proposed nominations are approved by the Council of Ministers and the candidates are appointed by the President of the Republic. ANAC has a staff of 350 employees. Law no. 190 of 2012 gave ANAC the responsibility : • To draw up a preventive strategy against corruption; • To supervise the anticorruption strategy of each public entity (through the adoption of Three Year Plans for integrity and transparency), • To guarantee transparency in public administrations • To guarantee the integrity of civil servants, and to disseminate a culture of integrity and legality. The Authority pursues its goals through regulatory and supervisory activities, has an advisory function and some inspection and sanctioning powers. These tasks are accompanied by an important monitoring activity through the collection of data on public tenders. For this purpose ANAC has set up a National Database on Public Contracts. The BDNCP is a database that collects, integrates and reconciles data concerning public contracts transmitted by contracting authorities. The system is open to interoperability, under application cooperation, both with internal systems of the Authority, and with similar systems of other administrations.

The BDNCP, which incorporates all the information contained in existing databases, including at the territorial level, in order to ensure unified accessibility, transparency, publicity and traceability of the whole procurement process. ANAC establishes the modalities for the holders of such databases, subject

to signatures of interoperability protocols, to ensure the confluence of the data. This database is available to the public through our institutional website, in order to increase the transparency of the market. In addition, ANAC has the duty to report to the Italian Parliament on its activities and exercises an advocacy function by submitting proposals for new legislation or modifications of existing laws to both Parliament and the Government.

The system of repression of offences against public administration represents the most relevant point of intervention of the State in the fight against corruption.

The Criminal Code provides for an entire title, the second one in Book Two, to 'Crimes against public administration', which counts the crimes of public officials against public administration (i.e. corruption) in Articles 314 to 335 bis.

The Public Prosecution's Offices in the area have developed, together with the forces delegated to investigate, consolidated operational protocols, with highly specialised judges and prosecutors and police personnel dedicated to combating corruption. The new judicial members assigned to EPPOs in the area also contribute to the integrated anti-corruption system, pursuing related fraudulent mechanisms.

The judiciary offices also have specialised divisions that deal specifically with crimes against public administration.

The Court of Cassation has a chamber specifically dealing with offences against the public administration - the Sixth Criminal Chamber - and intervenes with the Grand Chambers to resolve any conflict in interpretation, in order to improve the predictability of guidelines on the criminal phenomenon.

#### [Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption](#)

Judges and prosecutors tasked with the detection of corruption enjoy the guarantees of independence provided by the Constitution.

ANAC is an independent authority (see above).

In 2023, no changes have been made to the Italian legal framework and its implementation in this respect.

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators.

N/A

## **B. Prevention**

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training)

N/A. See previous Paragraph I, third recommendation.

General transparency of public decision-making (including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing)

N/A. See previous paragraph I, third recommendation.

Rules and measures to prevent and address conflicts of interest in the public sector. Please specify the features and scope of their application (e.g. categories of officials concerned, types of checks and corrective measures depending on the category of officials concerned)

N/A. See previous paragraph I, third recommendation.



If available to you, for the three preceding questions, you are also invited to provide figures on their application, such as number of detected breaches/irregularities of the various rules in place and the follow-up given (investigations, sanctions, etc.).

Measures in place to ensure whistleblower protection and encourage reporting of corruption, including the number of reports received and the follow-up given

N/A. See previous paragraph I, third recommendation.

Sectors with high-risks of corruption in your Member State:

- Measures taken/envisaged for monitoring and preventing corruption and conflict of interest in public procurement
- List other sectors with high risks of corruption and the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. healthcare, citizen /residence investor schemes, urban planning, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

N/A. See previous Paragraph I, third recommendation.

Any other relevant measures to prevent corruption in public and private sector.

N/A. See previous Paragraph I, third recommendation.

It can be added that the complex anti-corruption rules are located in a border space between administrative law and criminal law and require multi- and interdisciplinary approaches. The combination of prevention and repression derives from the main supranational reference (the United Nations Convention against Corruption - UNCAC, also known as the Mérida Convention, of 2003) and poses a series of problems: from a criminal perspective the question is that of the definition of "corruption-type" crime figures; from an administrative perspective, the issue is that of containing that set of "bad administration" phenomena which make public administrations and institutions more exposed to the risk of corruption.

For this reason, the Italian system has put in place a multiplicity of principles, mechanisms and institutions: the rules on conflicts of interest, those of transparency, the action of the ANAC, the renewed duties of public personnel, the protection of whistleblowers, the regulation of public contracts, the rules on conflicts of interest, the corruption prevention plans.

On the more purely criminal front, it is enough to remember the impact of Law no. 3 of 9 January 2019, relating to Measures to combat crimes against the public administration, as well as on the statute of limitations of the crime and on the transparency of political parties and movements.

Over the years, a renewed attention has been perceived concerning impartiality, integrity and transparency of public administrations.

With regards to criminal intervention, reference is made to all the answers already provided previously on the topic and the subsequent ones (in the following point C repressive measures).

### C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery.

The integrated system of criminalization has already been indicated, especially in Articles 314 to 335.bis of the Criminal Code.

The penalties provided for the most serious crimes against the public administration have a

high degree of severity (for example: embezzlement, from 4 to 10 years of imprisonment; extortion, from 6 to 12 years of imprisonment; corruption for the exercise of the function from 3 to 8 years; corruption for an act contrary to official duties, from 6 to 10 years of imprisonment; corruption in judicial acts, from 6 to 12 years of imprisonment; abuse of office - object of a bill for repealing it – the penalty ranges from 1 to 4 years in prison). A peculiar crime is that referred to in Article 346-bis of the Criminal Code: illicit influence trafficking, also at the centre of a legislative reform project, which will be discussed shortly; the crime is included in Crimes by private individuals against the public administration.

Data on the number of investigations, prosecutions, final judgments and application of sanctions for corruption offences (differentiated by corruption offence if possible, including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.

Of the 50,350 appeals decided by the criminal chambers of the Court of Cassation in 2023, 4.8% regarded cases of corruption and related offences.

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning).

Members of Parliament enjoy safeguards that sometimes prevent investigations against them from fully taking place, but the choice is the result of a constitutional balance between the various interests at stake.

Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders.

### Other - please specify

On 15 June 2023, the Council of Ministers approved Bill no. S. 808 on "Amendments to the Criminal Code, the Code of Criminal Procedure, the Judicial Order and the Code of the Military Order".

The text, which consists of eight articles, began its parliamentary process at the beginning of August 2023 and was referred for its first reading to the Senate Committee on Justice.

More specifically, the reform provides for the abolition of the offence of abuse of office (Abuso d'ufficio – Article 323 of the Criminal Code), a substantial rewriting of the offence of trafficking in unlawful influence (Traffico di influenze illecite – Article 346-bis of the Criminal Code), a modification of the rules on wiretapping, significant innovations in the area of pre-trial detention and bail information, as well as some changes to the rules on criminal procedure (such as the exclusion of the prosecutor's appeal in certain cases provided for by law) and military order.

According to the Government's intentions, the draft law is intended to give a first turn to Italian criminal policy, particularly in the field of crimes against the public administration.

The offence of trading in unlawful influence was first introduced into our legal system by Law no. 190 of 6 November 2012 (the international conventions on corruption to which Italy is a party, in particular the 1999 Council of Europe Criminal Law Convention on Corruption and the 2003 United Nations Convention against Corruption, were the driving force behind this move). The aim of the offence was to combat the illegal activities of "intermediaries" who, almost always in return for payment, act with the aim of influencing public decision-makers in order to obtain favours or unlawful advantages for their protégés.

The incriminating provision of article 346-bis of the Criminal Code has the specific aim of protecting the impartiality of the public administration from possible unlawful external interference or from the occurrence of more serious forms of crime, such as bribery.

According to some initial comments, the new bill will narrow the scope of the offence very significantly.

### III. Media pluralism and media freedom

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Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding media pluralism and media freedom (if applicable)

*5000-character(s) maximum*

*See previous paragraph I, fourth recommendations*

**N/A**

#### A. Media authorities and bodies

*(Cf. Article 30 of Directive 2018/1808)*

Measures adopted to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies.

*5000 character(s) maximum*

**N/A**

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

*5000 character(s) maximum*

**N/A**

Existence and functions of media councils or other self-regulatory bodies

*5000 character(s) maximum*

**N/A**

**B. Safeguards against government or political interference and transparency and concentration of media ownership**

Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

*5000 character(s) maximum*

**N/A**

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

*5000 character(s) maximum*

**N/A**

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

*5000 character(s) maximum*

**N/A**

### C. Framework for journalists' protection, transparency and access to documents

Rules and practices guaranteeing journalists' independence and safety, including as regards protection of journalistic sources and communications, referring also, if applicable, to follow-up given to alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists.

Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

*5000 character(s) maximum*

*See previous paragraph I, fourth recommendations*

Access to information and public documents by public at large and journalists (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

*5000 character(s) maximum*

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits.

See previous Paragraph I, fourth recommendations

It is also hereby highlighted that the Costa bill, C.653, presented on 5 April 2023, to amend Article 114 of the Code of Criminal Procedure, which has already been mentioned, was recently approved by the Chamber of Deputies on 12.19.2023. It is now proceeding to the Senate for consideration.

Protests from journalists' trade associations were raised against this proposal.

The Italian National Press Federation has issued a statement in which, in summary, it stresses how the autonomy of journalists would be compressed; journalists would be forced to be less precise, analytical and verifiable in their reporting of an act that is as public as the deprivation of personal liberty, with the risk of knowing very little until the preliminary hearing, several months or years after the alleged crime. Citizens and their right to information would be damaged.

The National Federation of the Italian Press, the Regional Press Associations and the Editorial Committees have spoken of yet another information gag, which represents a further imbalance in the Italian legal and constitutional system. The approved text - it is stated - goes beyond European provisions and violates Article 21 of the Constitution. Hence the request to the President of the Republic Mattarella not to sign a law with a rule of this type.

Other - please specify

*5000 character(s) maximum*

## IV. Other institutional issues related to checks and balances

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Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the system of checks and balances (if applicable)

*5000 character(s) maximum*

### A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (including consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase [1] *This includes also the consultation of social partners*

The High Council of the Judiciary has the power to give opinions to the Minister of Justice (at the latter's request) on legislative acts before Parliament and to make legislative proposals to the latter. These must, of course, be matters directly or indirectly related to the judicial system and the functioning of justice.

In the course of the examination of legislative proposals, representatives of the professional and trade associations involved, such as judges and prosecutors, lawyers and university professors, are heard in the parliamentary committees.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

*5000 character(s) maximum*

Rules and application of states of emergency (or analogous regimes), including judicial review and parliamentary oversight

*5000 character(s) maximum*

#### Regime for constitutional review of laws

According to Article 138 of the Constitution, the rule that governs amendments to the Constitution or laws of constitutional rank, laws to amend the Constitution and other constitutional laws are adopted by each parliamentary Chamber with two successive deliberations at intervals of not less than three months, and are approved by an absolute majority of the members of each Chamber in the second vote [see Article 72, [paragraph 4](#)]. The laws themselves are subject to popular referendum [cf. Article 87, [paragraph 6](#)] when, within three months of their publication, one-fifth of the members of a Chamber or five hundred thousand electors or five regional councils so request. The law submitted to referendum is not enacted [see Articles 73, [paragraph 1](#), 87, [paragraph 5](#)] if it is not approved by a majority of the valid votes. A referendum does not take place if the law has been approved in the second ballot by each of the chambers by a two-thirds majority of its members.

## B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

*5000 character(s) maximum*

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years

*5000 character(s) maximum*

## C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

*5000 character(s) maximum*

Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

*5000 character(s) maximum*

Rules and practices related to the application by all courts, including constitutional jurisdictions, of the preliminary ruling procedure (Art. 267 TFEU)

The Court of Cassation has constantly implemented the dialogue with the European Court of Justice through the instrument of the preliminary reference, both in civil and criminal matters. As regards the vitality of the instrument of the preliminary reference to the European Court of Justice in the criminal field, it is sufficient to recall Order Chamber 6, no. 12079 of 7/12/2022, filed in 2023, M., which, on the subject of the European arrest warrant and refusal of surrender, referred (again, after order Chamber 6, no. 15143 of 14/1/2022) to the Court of Justice of the European Union (pursuant to and for the purposes of Article 267 TFEU) for a preliminary ruling on questions affecting fundamental rights on the subject of refusal or deferment of surrender of a pregnant woman or a mother with minor children living together.

The Court of Justice, precisely by ruling on this question raised in the preliminary ruling proposed by the Court of Cassation, with the recent ruling C-261/2022, GN, of 21 December 2023, established that Article 1, paragraphs 2 and 3, of Council Framework Decision 2002/584/JHA of 13 June 2002 - relating to the European arrest warrant and surrender procedures between Member States - as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in the light of Article 7 and Article 24, paragraphs 2 and 3, of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it precludes the executing judicial authority from refusing to hand over the person subject to a European arrest warrant on the grounds that that person is the mother of young minors living with her, unless: a) that authority has elements capable of demonstrating the existence of a concrete risk of violation of the fundamental right to respect for the private and family life of that person (guaranteed by Article 7 of the Charter of Fundamental Rights), and for the best interests of such minors (best interest of the child, as protected by Article 24, paragraphs 2 and 3, of this Charter), due to systemic or generalized deficiencies regarding the conditions of detention of mothers of young minors and of care of such minors in the issuing Member State; (b) there are serious and substantiated reasons to believe that, taking into account their personal situation, the persons in question are at such risk as a result of those conditions. These principles were implemented by the Supreme Court with a very recent ruling (Chamber 6, no. 51798 of 12/28/2023), indicative of the fruitfulness of the dialogue between national courts and supranational courts.

In the civil sphere, the preliminary ruling pursuant to Article 267 has been regularly exercised for years in various matters most clearly of Union interest (see Chamber 1, Order no. 2483/2017).

The case-law has clarified in this regard, given the frequency of requests for reference, that there is no obligation on the national court of last instance to refer the question of interpretation of Union law, every time - relating to the hypothesis of "acte clair" - the correct interpretation of European Union law is so obvious as to leave no room for any reasonable doubt, as well as in the case - amounting to an "acte éclairé" - in which the Court itself has already interpreted the question in a similar case, or in a similar matter, in another proceeding in one of the Member States (Chamber 4 no. 36776 of 2022).

Follow-up by the public administration and State institutions to final (national/supranational, including the European Court of Human Rights) court decisions, as well as available remedies in case of non implementation.

#### *5000 character(s) maximum*

*The Italian legislator in Legislative Decree no. 150 of 2022 introduced, in criminal proceedings, the remedy of Article 628-bis of the Code of Criminal Procedure, i.e. the request for the elimination of the prejudicial effects of decisions adopted in violation of the ECHR (an expression preferred by the legislator to that of "European revision"). In this way, the obligation to execute the judgments of the European Court by which the violation of an ECHR right is recognised against the petitioning party is given normative implementation.*

The Court of Cassation, on its part, had already provided (Chamber 5, no. 16226 of 4/2/2022) the lines of intervention, then used by the Legislature, to ensure the binding nature of the declaration of the cessation of the matter being disputed pursuant to Article 37 ECHR and Article 62A of the ECHR Rules, in the proceedings brought by the private individual before the ECHR Court for the recognition of the violation of Article 6 ECHR by the domestic legislation. Similarly, it was decided in 2023 in the matter of reparation for unfair detention (see Chamber 4, no. 18288 of 2/2/2023, Ben Slimen). In the second half of 2023, the Court showed, moreover, that it already has a clear understanding of the main interpretative fronts that are developing precisely around the provision of Article 628-bis, by rendering two important judgments with which it has outlined the perimeter of operation of the new legal instrument (Chamber 5, no. 39081 of 13/7/2023) and has marked out



some fundamental pivots of application (Chamber 5, no. 47183 of 12/10/2023).

In civil proceedings, the full recognition of the principles enunciated by the supranational Courts has found, at the regulatory level, concrete expression in the introduction, in the civil sphere, of the institution of revocation (Article 391-quater of the Code of Civil Procedure) made in implementation of Article 1, paragraph 10, letter A, delegated Law no. 206/2021. In this way, the gap that the Constitutional Court - decision no. 127/2013 - had highlighted was filled, considering that it was the legislator's task to introduce a mechanism, not necessarily to be added on the one that the Constitutional Court had outlined for the criminal trial with decision no. 113/2011, but in any case suitable for implementing the obligation to conform the domestic legal system to the decisions of the European Court of Human Rights provided for by Articles 41 and 46 ECHR.

#### D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

*5000 character(s) maximum*

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services

*5000 character(s) maximum*

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

*5000 character(s) maximum*

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

*5000 character(s) maximum*

## E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society, education initiatives etc.)

The initiatives that the Court of Cassation promotes every year to raise the level of awareness in society of a culture of rule of law are of various tenors. They mainly consist of study meetings, implemented thanks to the proactive capacity of the First Presidency, in cooperation with the Decentralised Training of the School of the Judiciary, and of exchanges of information and experiences, implemented with the contribution of the Secretariat General of the Court of Cassation, where the implementation activities of cooperation with European and foreign jurisdictions and institutions are concentrated.

A Study Group, set up to implement the protocols with the Court of Justice and the ECHR Court, works directly for the dissemination of European case law and the rule of law in the Supreme Court of Cassation and, in parallel, to communicate the internal case-law of the Supreme Court of Cassation to the European Courts. The group, composed of chamber presidents and justices, works in close liaison with the First Presidency.

Among the various initiatives are the exchange of questionnaires with European institutions and, directly open to civil society, the so-called *Notte Bianca della legalità* (White Night of Legality), which takes place annually at the Court of Cassation and opens the Palace to students and citizens, organising guided orientation tours under the banner of the ideals of rule of law.

Other - please specify

*5000 character(s) maximum*