

## 1. Evaluation of the judicial systems (2016-2018 cycle)



Italy

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**Reference data 2016 (01/01/2016 - 31/12/2016)**

**Start/end date of the data collection campaign : 01/06/2017 - 31/12/2017**

### **Objective :**

The CEPEJ decided, at its 28th plenary meeting, to launch the seventh evaluation cycle 2016 – 2018, focused on 2016 data. The CEPEJ wishes to use the methodology developed in the previous cycles to get, with the support of its national correspondents' network, a general evaluation of the judicial systems in the 47 member states of the Council of Europe as well as two observer states (Israel and Morocco). This will enable policy makers and judicial practitioners to take account of such unique information when carrying out their activities.

The present questionnaire was adapted by the Working group on evaluation of judicial systems (CEPEJ-GT-EVAL) in view of the previous evaluation cycles and considering the comments submitted by CEPEJ members, observers, experts and national correspondents. The aim of this exercise is to increase awareness of judicial systems in the participating states, to compare the functioning of judicial systems in their various aspects, as well as to have a better knowledge of the trends of the judicial organisation in order to help improve the efficiency of justice. The evaluation questionnaire and the analysis of the results becomes a genuine tool in favour of public policies on justice, for the sake of the European citizens.

### **Instruction :**

The ways to use the application and to answer the questions are guided by two main documents:

- User manual
- Explanatory note

While the explanatory note gives definitions and explanations on the CEPEJ evaluation questionnaire and the methodology needed for replying, the User manual is a tool to help you navigate through this application. You can download the Explanatory note as a whole on the CEPEJ website. The specific explanations are also accessible for each question within this application under the tab "Explanatory note". This will serve as immediate consultation tool when answering questions. The user manual is accessible in the "Documentation" tab of the application.

In case you have any questions related to these documents or on the use of the application, please do not hesitate to contact the Secretariat.

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## **1.General information**

### **1.1.Demographic and economic data**

#### **1.1.1.Inhabitants and economic general information**



##### **001. Number of inhabitants (if possible on 1 January of the reference year +1)**

Comments :

General comments :

## **002. Total of annual public expenditure at state level and where appropriate, public expenditure at regional or federal entity level (in €)**

Comments :

General comments :

## **003. Per capita GDP (in €) in current prices for the reference year**

Comments :

General comments :

## **004. Average gross annual salary (in €) for the reference year**

Comments :

General comments :

## **005. Exchange rate of national currency (non-Euro zone) in € on 1 January of the reference year +1**

Comments :

General comments :

## **A1. Please indicate the sources for answering questions 1 to 5**

Comments :

General comments :

### **1.1.2. Budgetary data concerning judicial system**



**006. Annual (approved and implemented) public budget allocated to the functioning of all courts, in € (without the budget of the public prosecution services and without the budget of legal aid). If you cannot separate the budget allocated to the courts from the budgets of public prosecution services and/or legal aid, please go to question 7. If you are able to answer this question 6, please answer NAP to the question 7.**

Comments : As far as the annual public budget allocated to training (point 6) both approved budget and implemented budget are considerably higher compared to 2014 and 2015. In 2016 extra funds were destined to the training of around one thousand employees who joined the justice system from other administrations. It is noteworthy that there was an extra budget destined to “computerization” in 2016. When it comes to “court buildings (maintenance, operating costs)” it is unlikely have a linear trend as maintenance costs are subject to high fluctuation. In respect of the sub-category "other", there is no particular explanation for the observed increase in both approved and implemented budgets.

General comments : Due to the structure of the Italian judicial system, the Ministry of Justice has one single budget which does not distinguish between the budget allocated to courts, the budget allocated to public prosecution services and the one allocated to the administration. The figures provided in this chapter are the result of a re-classification of the budget statements which takes into consideration several criteria.

The administrative courts are not taken into consideration at question 6.

As far as point 6 in Italy there are two different public schools that deal with the training of both judges/prosecutors on one hand and civil servants on the other.

Both the School for the Judiciary (<http://www.scuolamagistratura.it/>) and the National School of Administration (<http://sna.gov.it/nc/en/>) have their own budget. The above figure (point 6) is just the budget of the Ministry of Justice in terms of training and it doesn't include

the budget of these schools.

**007. (Modified question) If you cannot answer question 6 because you cannot isolate the budget allocated to courts from the budget allocated to public prosecution services and/or legal aid, please fill only the appropriate line in the table according to your system:**

Comments :

General comments :

**008. Are litigants in general required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:**

Comments :

General comments : Generally, litigants are required to pay court fees in respect of other than criminal law cases, except for cases concerning employment, agriculture, family matters and other specific cases explicitly enumerated by law (DPR 115/2002).

**008-1. Please briefly present the methodology of calculation of court taxes or fees:**

Comments :

General comments : Court fees depend on the value of the dispute.

**008-2. The amount of court fees to commence an action for 3000€ debt recovery:**

Comments :

General comments : To commence a case whose value is 3.000€ the court fee is 98€. The appeal fee for the same case is 147,00€ whilst the cassation fee is 196,00€.

**009. Annual income of court taxes or fees received by the State (in €)**

Comments :

General comments :

**012. Annual approved public budget allocated to legal aid, in €.**

Comments : In Italy, legal aid claims which are legitimate (i.e. the claimant lives under a certain income threshold) are always honoured. In other words, legal aid covers all judicial expenses regardless available funds. In order to reflect this reality, the approved budget appears equal to the implemented one.

General comments : In Italy there is not a specific budget allocated to legal aid. Legal aid is part of the general budget allocated to justice expenses.

More generally, due to the structure of the Italian judicial system, the Ministry of Justice has one single budget which does not distinguish between the budget allocated to courts, the budget allocated to public prosecution services and the one allocated to the administration. The figures provided in this chapter are the result of a re-classification of the budget statements which takes into consideration several criteria.

In Italy, legal aid can be granted for all categories of civil cases: litigious, non-litigious and also ADR. Nevertheless, in respect of the latter, so far the Ministry of Justice has not experienced any payment yet.

**012-1. Annual implemented public budget allocated to legal aid, in €.**

Comments : The increase experienced during the period 2014-2016 is very likely due to the higher number of cases for which legal aid was granted.

General comments :

**013. Total annual (approved and implemented) public budget allocated to the public prosecution services, in €.**

Comments :

General comments : Due to the structure of the Italian judicial system, the Ministry of Justice has one single budget which does not distinguish between the budget allocated to courts, the budget allocated to public prosecution services and the one allocated to the administration. However an effort is made in order to provide the most reasonable figure for the budget of the prosecution services. The calculation is carried out taking into account several criteria (e.g. the number of staff allocated to the public prosecution services).

**014. Authorities formally responsible for the budgets allocated to the courts (multiple options possible):**

Comments : The category "Other Ministry" refers to the Ministry of Economy and Finance. The category "Other" refers to Court of Audit (Corte dei conti).

General comments : For the last three evaluations, the category "other" refers to the Ministry of Economy and Finance.

**A2. Please indicate the sources for answering questions 6 to 14:**

Comments :

General comments : Sources: Ministry of Justice – Budget and Accounts Department (Direzione Generale del Bilancio)

**1.1.3. Budgetary data concerning the whole justice system**

**015-1. Annual (approved and implemented) public budget allocated to the whole justice system, in € (this global budget includes the court system as defined under question 6 and also the prison system, the judicial protection of juveniles, the operation of the Ministry of Justice, etc.).**

Comments :

General comments : Due to the structure of the Italian judicial system, the Ministry of Justice has one single budget which does not distinguish between the budget allocated to courts, the budget allocated to public prosecution services and the one allocated to the administration. The figures provided in this chapter are the result of a re-classification of the budget statements which takes into consideration several criteria.

**015-2. (Modified question) Please indicate the budgetary elements that are included in the whole justice system by specifying on the one hand the elements of the judicial system budget (please check the consistency with questions 6, 12 and 13). (Note: NAP means that the element does not exist in your system):**

Comments :

General comments :

**015-3. (Modified question) On the other hand, please specify the other budgetary elements included in the whole justice system budget. (Note: NAP means that the element does not exist in your system):**

Comments :

General comments :

**A3. Please indicate the sources for answering questions 15-1, 15-2 and 15-3:**

Comments :

General comments :

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## **2. Access to justice and all courts**

### **2.1. Legal Aid**

#### **2.1.1. Scope of legal aid**

##### **016. Does legal aid apply to:**

Comments :

General comments :

##### **017. Does legal aid include the coverage of or the exemption from court fees?**

Comments :

General comments : According to the general rule, people granted with legal aid are not required to pay court fees.

##### **018. Can legal aid be granted for the fees that are related to the enforcement of judicial decisions (e.g. fees of an enforcement agent)?**

Comments :

General comments : Legal aid also covers expenses related to the enforcement of judicial decisions.

##### **019. Can legal aid be granted for other costs (different from those mentioned in questions 16 to 18, e.g. fees of technical advisors or experts, costs of other legal professionals (notaries), travel costs etc.)?**

Comments :

General comments : Legal aid can also be granted for costs related to private detectives, interpreters and expert witnesses.

#### **2.1.2. Quantitative information on legal aid**

##### **020. (Modified question) Please indicate the number of cases for which legal aid has been granted:**

Comments :

General comments : On the occasion of the 2012 evaluation cycle, it has been explained that the higher number of cases for which legal aid had been granted compared to 2010 was due to the fact that the threshold concerning the income and assets evaluation had been slightly increased. Owing to that, since 2012, Italy is experiencing a positive trend in this respect. Additionally, more and more people are living under the threshold under which legal aid can be granted.

##### **021. In criminal cases, can individuals who do not have sufficient financial means be assisted by a free of charge (or financed by a public budget) lawyer?**

Comments :

General comments :

##### **022. If yes, are individuals free to choose their lawyer within the framework of the legal aid system?**

Comments :

General comments :

**023. (Modified question) Does your country have an income and assets evaluation for granting (full or partial) legal aid to the applicant? The answer NAP means that there is no income and/or assets evaluation system for granting legal aid.**

Comments :

General comments : In Italy applicants are either granted full legal aid or not. There is no such option as “partial legal aid”.

In Italy there is no annual asset as such. However, the annual income is taken from the “Annual Income Tax Return form” which takes into account the overall income (e.g. dividends, salary, rent from properties, etc.) as well as the cadastral value in case the applicant is a real estate owner.

If the applicant lives with his/her spouse or other family members, the income is the sum of the income earned by all members of the family, including the applicant.

**024. In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action or no chance of success)?**

Comments :

General comments : It is possible to refuse legal aid when the request has none or poor grounds to be initiated.

**025. In other than criminal cases, is the decision to grant or refuse legal aid taken by (one option only):**

Comments :

General comments :

**026. Is there a private system of legal expense insurance enabling individuals (this does not concern companies or other legal persons) to finance court proceedings?**

Comments :

General comments : In Italy, this kind of private systems of legal expense insurance was introduced years ago.

**027. Can judicial decisions direct how legal costs, paid by the parties during the procedure, will be shared:**

Comments :

General comments : The Criminal Procedure Code provides for that in case of condemnation, the convicted party has to pay all the costs.

**B1. Please indicate the sources for answering questions 20 and 23 :**

Comments :

General comments :

## **2.2.Users of the courts and victims**

### **2.2.1.Rights of the users and victims**

**028. Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for which the general public may have free of charge access to the following:**

Comments :

General comments :

### **029. Is there an obligation to provide information to the parties concerning the foreseeable timeframes of proceedings?**

Comments :

General comments : According to a law issued in 2009 (69/2009, article 81-bis, Calendar of the process), in civil proceedings, the judge has to provide the parties with the timetable of the process with an indication of subsequent hearings and obligations to be fulfilled. The terms established in the schedule may be extended when serious reasons occur. The extension must be requested by the parties before the deadline.

### **030. Is there a public and free-of-charge specific information system to inform and to help victims of crime?**

Comments :

General comments : There are some public and free-of-charge specific information systems, at both national and local level, which inform and help victims of crime. Often such information systems are specific to a crime or phenomenon (e.g. stalking, in-house violence, etc.).

### **031. Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:**

Comments :

General comments : Children victims of crimes are assisted and supported by social workers. In Italy there is a special public fund for victims of human trafficking.

### **031-1. Is it possible for minors to be a party to a judicial proceeding:**

Comments :

General comments : In general, minors cannot be a party to a judicial proceeding by their own, not even through a lawyer. There must be a parent or another adult who legally represents them. This legal representative can be either a parent or a guardian. This person acts on behalf of the minor and can appoint a lawyer for them. However there are special circumstances where minors can act independently in court (for example 'emancipated minors' who are authorized by the court to contract marriage). Please also consider that in Italy there is a Juvenile justice system in place since 1934.

### **032. Does your country allocate compensation for victims of crime?**

Comments :

General comments : In Italy, victims of crime (all kinds of offences) receive a compensation from the accused person who is found guilty. In other words, within the criminal procedure the victims can lodge a claim for compensation. In those cases where the person found guilty owns nothing, victims can still receive a compensation through a Public Fund. This is possible only for certain types of offences such as domestic violence, terrorism and human trafficking.

### **034. Are there studies that evaluate the recovery rate of the damages awarded by courts to victims?**

Comments :

General comments :

### **035. Do public prosecutors have a specific role with respect to the victims (protection and assistance)?**

Comments :

General comments : In Italy, public prosecutors have specific duties concerning the protection and assistance of victims of crime.

**036. Do victims of crime have the right to dispute a public prosecutor's decision to discontinue a case? Please verify the consistency of your answer with that of question 105 regarding the possibility for a public prosecutor "to discontinue a case without needing a decision by a judge". (The answer NAP means that the public prosecutor cannot decide to discontinue a case on his/her own. A decision by a judge is needed.)**

Comments :

General comments : The public prosecutor cannot decide to discontinue a case on his/her own. A decision by a judge is needed.

## **2.2.2. Confidence of citizens in their justice system**

**037. (Modified question) Is there a system for compensating users in the following circumstances:**

Comments :

General comments :

**038. (Modified question) Did your country implement surveys aimed at legal professionals and court users to measure their trust in justice and their satisfaction with the services delivered by the judicial system? If yes, how frequently and up to what level?**

Comments : No surveys were carried out in 2016.

General comments :

**040. Is there a national or local procedure for making complaints about the functioning of the judicial system? (for example the handling of a case by a judge or the duration of a proceeding)**

Comments :

General comments :

**041. (Modified question) If yes, please specify certain aspects of this procedure:**

Comments :

General comments :

**041-1. (Modified question) Please specify further certain aspects of this procedure:**

Comments :

General comments : No compensation is provided for this kind of procedures.

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## **3. Organisation of the court system**

### **3.1. Courts**

#### **3.1.1. Number of courts**

**042. Number of courts considered as legal entities (administrative structures) and geographic**



## locations

Comments :

General comments :

### **043. Number (legal entities) of first instance specialised courts (or specific judicial order)**

Comments : OTHER: 29 Minor (or Juvenile) Courts + 103 Local Tax Commissions

General comments : Since 2014 in Italy there are 22 Brand Commercial courts (Tribunali delle imprese) that are legal entities of their own and not just internal court divisions for organizational purpose (such as labour, family etc.).

It is noteworthy that in Italy, some of the specialized first instance courts are not administered and financed by the Ministry of Justice. This is the case for the regional administrative courts, the regional audit commissions, the local tax commissions and military courts. These courts are not taken into consideration for the replies to questions 6, 46 and 52 for none of the exercises.

In respect of the 29 regional administrative courts and their supreme court, it should be stressed that they have been encompassed within the total under question 43 for the last four exercises, but only since 2014 this approach is reflected in questions 91 and 99 (number of administrative law cases). On the contrary, the administrative courts are not taken into consideration for the replies to questions 6, 46 and 52 for none of the exercises. Moreover, in Italy specific matters (such as labour, family etc.) are dealt by specific divisions within the same Court. There are also 26 divisions called DDA (Direzioni Distrettuali Antimafia) which deal specifically with mafia and organized crime.

### **044. Is there a foreseen change in the structure of courts [for example a reduction of the number of courts (geographic locations) or a change in the powers of courts]?**

Comments : Enhancing the specialization of judges / courts. In particular, the judiciary authorities are evaluating the introduction of specific courts for family and personal matters ("Berruti" reform). Increased competence of Business Courts. Establishment of specialized sections on matters such as immigration, international protection and free movement of citizens of the European Union. Revision of the appeal system in order to reduce the appeal rate.

General comments :

### **045. Number of first instance courts (geographic locations) competent for a case concerning:**

Comments :

General comments : The Justice of the Peace office deals with a wide range of civil disputes. In particular, under article 7 of the Code of Civil Procedure, the justice of the peace office has jurisdiction over cases involving movable assets with a value not exceeding € 5,000 (there are exceptions) as well as the causes for damages caused by the circulation of vehicles and boats, provided that the amount in dispute does not exceed € 20,000.

#### **045-1. Is your definition for small claims the same as the one in the Explanatory note?**

Comments :

General comments :

#### **045-2. Please indicate the value in € of a small claim:**

Comments :

General comments : The Justice of the Peace office deals with a wide range of civil disputes. In particular, under article 7 of the Code of Civil Procedure, the justice of the peace office has jurisdiction over cases involving movable assets with a value not exceeding € 5,000 (there are exceptions) as well as the causes for damages caused by the circulation of vehicles and boats, provided that the amount in dispute does not exceed € 20,000.

## **C. Please indicate the sources for answering questions 42, 43 and 45:**

Comments :

General comments :

## 3.2. Court staff

### 3.2.1. Judges and non-judge staff



**046. Number of professional judges sitting in courts (if possible on 31 December of the reference year). (Please give the information in full-time equivalent and for permanent posts actually filled for all types of courts - general jurisdiction and specialised courts )**

Comments :

General comments : The specialized first instance courts that are not administered and financed by the Ministry of Justice (regional administrative courts, regional audit commissions, local tax commissions and military courts) are not taken into consideration at question 46.

**047. Number of court presidents (professional judges).**

Comments :

General comments :

**048. Number of professional judges sitting in courts on an occasional basis and who are paid as such (if possible on 31 December of the reference year):**

Comments :

General comments : There are no professional judges sitting in courts on an occasional basis in the Italian judicial system.

**048-1. (New question) Do these professional judges sitting in courts on an occasional basis deal with a significant part of cases?**

Comments :

General comments :

**049. (Modified question) Number of non-professional judges who are not remunerated but who can possibly receive a simple defrayal of costs (if possible on 31 December of the reference year) (e.g. lay judges and “juges consulaires”, but not arbitrators and persons sitting in a jury):**

Comments :

General comments :

**049-1. If such non-professional judges exist in first instance in your country, please specify for which types of cases:**

Comments :

General comments :

**050. Does your judicial system include trial by jury with the participation of citizens?**

Comments :

General comments : Only for serious criminal offences such as murdering the trial is carried out with the presence of a jury.

**051. Number of citizens who were involved in such juries for the year of reference:**

Comments :

General comments :

**052. Number of non-judge staff who are working in courts (on 31 December of the reference year) (this data should not include the staff working for public prosecutors; see question 60) (please give the information in full-time equivalent and for permanent posts actually filled)**

Comments : According to the data provided for 2014, 2015 and 2016, we can notice a downward trend as concerns the number of technical staff (a decrease of 28% between 2014 and 2015 and a decrease of 26% between 2015 and 2016), especially the number of female staff (a decrease of 33% between 2014 and 2015 and of 32% between 2015 and 2016). An explanation of these variations is not available at this stage.

General comments : The category “other non-judge staff” encompasses assistants, receptionists, porters and other judicial staff. As a general remark, it should be stressed that the high percentage of “other non-judge staff” in Italy is due to a very strict interpretation of the definition of the main categories. · Besides, it should be emphasized that between 2010 and 2012 the way of distributing the professional figures among the categories proposed by the CEPEJ has been changed. Owing to that, figures before and after 2010 are not comparable. · The specialized first instance courts that are not administered and financed by the Ministry of Justice (regional administrative courts, regional audit commissions, local tax commissions and military courts) are not taken into consideration at question 52.

**053. (Modified question) If there are Rechtspfleger (or similar bodies) in your judicial system, please specify in which fields do they have a role:**

Comments :

General comments :

**054. Have the courts outsourced certain services, which fall within their powers, to private providers?**

Comments :

General comments : A number of non-core services are outsourced to external providers, especially in IT, foreign language training (and not judicial training), cleaning and wire-tapping machinery rental.

**C1. Please indicate the sources for answering questions 46, 47, 48, 49 and 52**

Comments :

General comments : Q.46 High Council of the Judiciary  
Q.52 Ministry of Justice – HR Department

**3.3. Public prosecution**

**3.3.1. Public prosecutors and staff**

**055. Number of public prosecutors (on 31 December of the reference year). Please give the information in full-time equivalent and for permanent posts actually filled for all types of courts - general jurisdiction and specialised courts.**

Comments : There is no specific explanation concerning the increase in the total number of prosecutors at Supreme Court level. However, numbers are small and therefore percentage changes vary more harshly.



General comments :

**056. Number of heads of prosecution offices (on 31 December of the reference year).**

Comments :

General comments :

**057. Do other persons have similar duties to public prosecutors?**

Comments :

General comments :

**059. If yes, is their number included in the number of public prosecutors that you have indicated under question 55?**

Comments :

General comments :

**059-1. Do prosecution offices have specially trained prosecutors in domestic violence and sexual violence etc.?**

Comments :

General comments :

**060. Number of staff (non-public prosecutors) attached to the public prosecution service (on 31 December of the reference year) (without the number of non-judge staff, see question 52) (in full-time equivalent and for permanent posts actually filled).**

Comments :

General comments :

**C2. Please indicate the sources for answering questions 55, 56 and 60**

Comments :

General comments :

**3.4. Management of the court budget**

**3.4.1. Court budget**

**061. Who is entrusted with responsibilities related to the budget within the court?**

Comments :

General comments :

**3.6. Performance and evaluation**

**3.6.1. National policies applied in courts and public prosecution services**

**066. Are quality standards determined for the judicial system (are there quality systems for the judiciary and/or judicial quality policies)?**

Comments :

General comments : In Italy there is not a strict quality system as such. However, there is a regular monitoring system in place which tracks the performance of court activities.

### **067. Do you have specialised court staff that is entrusted with these quality standards?**

Comments :

General comments :

### **068. Is there a national system to evaluate the overall (smooth) functioning of courts on the basis of an evaluation plan agreed beforehand?**

Comments :

General comments : The overall functioning of courts is evaluated on both national and court level through a quarterly monitoring, an annual report system and inspection visits every 3 years for all judicial offices.

### **069. Is there a system for monitoring and evaluating the performance of the public prosecution service?**

Comments :

General comments : The overall functioning of public prosecution services is evaluated on both national and court level through a quarterly monitoring, an annual report system and inspection visits every 3 years for all judicial offices.

## **3.6.2. Performance and evaluation of courts**

### **070. Do you have, within the courts, a regular monitoring system of court activities concerning:**

Comments :

General comments :

### **071. Do you monitor backlogs and cases that are not processed within a reasonable timeframe for:**

Comments :

General comments :

### **072. Do you have an evaluation process to monitor waiting time during court procedures?**

Comments :

General comments :

### **073. Do you have a system to evaluate regularly the activity (in terms of performance and output) of each court?**

Comments :

General comments : The activity of each court (tribunals and appeal courts) in terms of performance and output is monitored every three months. The output and the indicators (clearance rate, variation of backlogs, age of the proceeding, etc.) are published on the website of the Ministry of Justice. [https://www.giustizia.it/giustizia/it/mg\\_1\\_14.page?all=true&facetNode\\_1=4\\_26&selectedNode=2\\_8](https://www.giustizia.it/giustizia/it/mg_1_14.page?all=true&facetNode_1=4_26&selectedNode=2_8)

### **073-1. Is this evaluation of the court activity used for the later allocation of means to this court?**

Comments :

General comments :

#### **074. Are there performance targets defined at the level of the court?**

Comments : The main two targets are: reduction of the pending cases and reduction of costs.

General comments :

#### **075. (Modified question) Please specify the main targets applied to the courts:**

Comments :

General comments :

#### **076. Who is responsible for setting the targets for the courts?**

Comments :

General comments : Every year, at the beginning of the year, the Ministry of Justice provides new performance targets. For the first time in the Italian judiciary system, the law decree n. 98/2011 has provided for economic bonuses to courts and single magistrates when the number of pending cases is reduced by a certain percentage in a year (civil sector only). The provision has not yet been implemented.

#### **077. Concerning court activities, have you defined performance and quality indicators (if no, please skip to question 79)**

Comments :

General comments : The performance of each court is given by different indicators such as the clearance rate, the variation of backlogs and the age of the proceeding.

#### **078. If yes, please select the main performance and quality indicators that have been defined:**

Comments :

General comments :

#### **079. Who is responsible for evaluating the performance of the courts (multiple options possible) :**

Comments :

General comments :

### **3.6.3. Court activity and administration**

#### **080. Is there a centralised institution that is responsible for collecting statistical data regarding the functioning of the courts and judiciary?**

Comments :

General comments : Department of Statistics and Organizational Analysis within the Ministry of Justice.

#### **080-1. Does this institution publish statistics on the functioning of each court:**

Comments :

General comments : The reports are available on the website of the Department of Statistics and Organizational Analysis

[https://webstat.giustizia.it/\\_layouts/15/start.aspx#/SitePages/Monitoraggio%20trimestrale.aspx](https://webstat.giustizia.it/_layouts/15/start.aspx#/SitePages/Monitoraggio%20trimestrale.aspx)

as well as the website of MoJ:

[https://www.giustizia.it/giustizia/it/mg\\_1\\_14.page?all=true&facetNode\\_1=4\\_26&selectedNode=2\\_8](https://www.giustizia.it/giustizia/it/mg_1_14.page?all=true&facetNode_1=4_26&selectedNode=2_8)

#### **081. Are individual courts required to prepare an activity report (that includes, for example, data on the number of cases processed or pending cases, the number of judges and administrative staff,**

**targets and assessment of the activity)?**

Comments :

General comments :

**082. (Modified question) Is there a process or structure of dialogue between the public prosecutor service and courts as regards the way cases are presented before courts (for example the organisation, number and planning of hearings, on-call service for urgent cases, selection of simplified procedures of prosecution...)?**

Comments :

General comments : In Italy public prosecutor offices (Procure) and courts (Tribunali) act jointly to set the calendar of the hearings and plan other organisation issues in order to facilitate the smooth functioning of the system.

**082-1. (Modified question) Is there a process or structure of dialogue between lawyers and courts as regards the way cases are presented before courts in other than criminal matter (e.g. organisation, number and planning of hearings, on-call service for urgent cases)?**

Comments :

General comments : In Italy there is a specific collegial body of the State called “Consiglio giudiziario” in each court of appeal. The “Consiglio giudiziario” is a sort of open table between judges, prosecutors and lawyers.

### **3.6.4. Performance and evaluation of judges**

**083. Are there quantitative performance targets (for instance a number of cases to be addressed in a month) defined for each judge?**

Comments : Quantitative performance targets are set in terms of length and timeframe of proceedings. Judges who fail to meet certain requirements may face disciplinary proceedings.

General comments :

**083-1. Who is responsible for setting the targets for each judge?**

Comments :

General comments :

### **New node**

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## **4. Fair trial**

### **4.1. Principles**

#### **4.1.1. Principles of fair trial**

**084. Percentage of first instance criminal in absentia judgments (cases in which the suspect is not attending the hearing in person nor represented by a lawyer)?**

Comments :

General comments :

**085. Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?**

Comments :

General comments :

**086. Is there in your country a monitoring system for the violations related to Article 6 of the European Convention on Human Rights?**

Comments :

General comments : In Italy there is a specific office under the umbrella of the Council of Ministers which is in charge of the relations with the European Court of Human Rights. In particular, this office has competence for drafting an annual report (aimed at the Italian Parliament) regarding the execution of judgments of the ECtHR. Besides, there is a parliamentary committee (namely “Commissione straordinaria diritti umani del Senato”), which performs a cognitive investigation on the protection mechanisms of human rights in Italy.

**D1. Please indicate the sources for answering questions in this chapter.**

Comments :

General comments :

**4.2. Timeframe of proceedings**

**4.2.1. General information**

**087. Are there specific procedures for urgent matters as regards:**

Comments :

General comments : There are specific procedures for urgent matters in both civil and criminal cases. For example there are specific measures when dealing with child protection. As far as administrative justice is concerned there are specific procedures for tender, anti-trust, competition, and gender discrimination cases.

**088. Are there simplified procedures for:**

Comments :

General comments : The “Processo per direttissima” is a simplified criminal proceeding and it is applied in cases of red-handed arrest or confession of the accused. An example of simplified procedures for civil cases is the “Rito sommario”. There are also simplified procedures within administrative justice for specific cases (e.g. fail to act, access to documentation, etc.).

**088-1. (Modified question) For these simplified procedures, may judges deliver an oral judgement with a written order and dispense with a full reasoned judgement?**

Comments :

General comments :

**089. Do courts and lawyers have the possibility to conclude agreements on arrangements for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?**

Comments :

General comments : Such agreements between courts and lawyers are possible only in a few cases (e.g. company law).



## 4.2.2. Case flow management – first instance



### **091. (Modified question) First instance courts: number of other than criminal law cases.**

Comments :

General comments : A different methodology of classification of civil cases is used since 2012. The result is an improved classification and a better split between litigious and non-litigious cases. For 2010, 2012 and 2013, the category of civil and commercial non-litigious cases has an identical content, namely: separation and divorce by mutual consent, interdiction and incapacitation, protective measures for underage, guardianship and trusteeship etc. Since 2014, it subsumes uncontested payment orders, uncontested divorces, technical appraisals, judicial interdiction and incapacitation, hereditament, etc.

### **092. If courts deal with “civil (and commercial) non-litigious cases”, please indicate the case categories included:**

Comments :

General comments :

### **093. Please indicate the case categories included in the category "other cases":**

Comments :

General comments :

### **094. (Modified question) First instance courts: number of criminal law cases.**

Comments :

General comments : In Italy there is no formal definition of minor criminal cases. For the purposes of this exercise, are considered as minor criminal cases those proceedings dealt with by the Justice of Peace Offices.

## 4.2.3. Case flow management – second instance



### **097. (Modified question) Second instance courts (appeal): Number of “other than criminal law” cases.**

Comments : As regards the variations concerning the category "general civil (and commercial) non litigious cases", it should be noted that the Ministry of Justice has recently implemented a data warehouse system that can collect a huge number of data and events pertaining to millions of civil cases. The new DWGC (Data Warehouse for Civil Justice) is now fully operational and it represents a major improvement in terms of statistics and quality. Since 2015, data pertaining to Q.97 is extracted from the above Datawarehouse and it is to be considered more accurate than the figures provided in the past.

It should be noted that in 2014 for many cases it was not possible to distinguish between litigious and non-litigious cases because they were coming together in a bundle. With the data warehouse it is possible to tell whether any given procedure has either litigious or non-litigious nature. Besides, when comparing pending cases on 31 Dec 2014 with pending cases on 1 Jan 2016, the variations are less important.

General comments : · Non-litigious enforcement cases are not in the competence of the Courts of Appeal.

· With regard to the administrative cases (which number is provided only since 2014), the appeals are dealt with by the Council of State (Consiglio di Stato) which is a legal-administrative consultative body ensuring the legality of public administration in Italy. The Council has jurisdiction on acts of all administrative authorities, except when these authorities lack discretionary power, in which case the dispute is considered to be one of civil law. Figures referring to the activity of the Council of State are inserted in the frame of question 99 and not question 97.

### **098. (Modified question) Second instance courts (appeal): number of criminal law cases.**

Comments : With regard to second instance criminal cases, in 2014-2015 a new case management system was introduced. This has negatively affected the statistics for those two years. Statistics for 2016 are definitely more robust and consistent. Besides, when comparing pending cases on 31 Dec 2014 with pending cases on 1 Jan 2016, the variations are less important.

General comments : In Italy there is no formal definition of “minor criminal cases”. For the purposes of this exercise are considered as minor criminal cases those proceedings dealt with by the Justice of Peace Offices which have been appealed (to Tribunal).

#### **4.2.4. Case flow management – Supreme Court**

##### **099. (Modified question) Highest instance courts (Supreme Court): number of “other than criminal law” cases.**

Comments : “Other cases” represent residual cases such as cases regarding the competence/jurisdiction of the court, corrections of material errors, etc. In respect of this category, the numbers are small and the observed variations should be put into perspective.

General comments : · With regard to the administrative cases (which number is provided only since 2014), the appeals are dealt with by the Council of State (Consiglio di Stato) which is a legal-administrative consultative body ensuring the legality of public administration in Italy. The Council has jurisdiction on acts of all administrative authorities, except when these authorities lack discretionary power, in which case the dispute is considered to be one of civil law. Figures referring to the activity of the Council of State are inserted in the frame of question 99 and not question 97. · In Italy, non-litigious enforcement cases are not heard by the highest instance court. The latter only hears litigious enforcement cases.

##### **099-1. At the level of the Highest court (Supreme Court), is there a procedure of manifest inadmissibility?**

Comments :

General comments :

##### **100. (Modified question) Highest instance courts (Supreme Court): number of criminal law cases.**

Comments : In respect of minor criminal cases, the numbers are small and the observed variations should be put into perspective.

General comments : Under “misdemeanour and/or minor criminal cases” are included all those cases coming from the Justice of Peace Courts.

#### **4.2.5. Case flow management – specific cases**

##### **101. (Modified question) Number of litigious divorce cases, employment dismissal cases, insolvency, robbery cases, intentional homicide cases, cases relating to asylum seekers and cases relating to the right of entry and stay for aliens received and processed by first instance courts.**

Comments : With the introduction of the data warehouse system we can now identify specific types of proceedings (e.g. employment dismissal cases) more precisely.

The figures provided for both litigious divorce and insolvency cases (year 2016) are correct but there is no particular reason explaining the observed variations. With regard to the insolvency cases, the peculiarity of the Italian system consists in distinguishing between “insolvency applications” and “insolvency cases”. The former category concerns the litigious part of the proceeding where creditors and debtors have different goals (dispute). The latter category concerns the part of the proceeding where the judge has already established the insolvency / bankruptcy of the debtor and the case is all about the management of the assets and proceeds of the debtor. The figures at questions 101 and 102 refer to “insolvency applications” (the litigious part of this kind of proceedings) rather than “insolvency cases”.

General comments : With regard to the insolvency cases, the peculiarity of the Italian system consists in distinguishing between “insolvency applications” and “insolvency cases”. The former category concerns the litigious part of the proceeding where creditors and debtors have different goals (dispute). The latter category concerns the part of the proceeding where the judge has already established the insolvency / bankruptcy of the debtor and the case is all about the management of the assets and proceeds of the debtor. Figures at

questions 101 and 102 refer to “insolvency cases” rather than “insolvency applications”.

**101-1. (New question) Could you briefly describe the system in your country dealing with judicial remedies relating to asylum seekers (refugee status under the 1951 Geneva Convention) and the right of entry and stay for aliens:**

Comments :

General comments :

**102. Average length of proceedings, in days (from the date the application for judicial review is lodged). The average length of proceedings has to be calculated from the date the application for judicial review is lodged to the date the judgment is made, without taking into account the enforcement procedure.**

Comments : Concerning insolvency and divorce cases, in 2014 their lengths were calculated (i.e estimated) through a formula (similar to the disposition time formula), while 2016 figures come from the data warehouse (DWH) and are the exact values. In this regard, 2014 data on length of proceedings concerning insolvency cases at first instance will be up-dated in compliance with the DWH data. With regard to the insolvency cases, the peculiarity of the Italian system consists in distinguishing between “insolvency applications” and “insolvency cases”. The former category concerns the litigious part of the proceeding where creditors and debtors have different goals (dispute). The latter category concerns the part of the proceeding where the judge has already established the insolvency / bankruptcy of the debtor and the case is all about the management of the assets and proceeds of the debtor. The figures at questions 101 and 102 refer to “insolvency applications” (the litigious part of this kind of proceedings) rather than “insolvency cases”.

General comments :

**103. Where appropriate, please indicate the specific procedure as regards divorce cases (litigious and non-litigious):**

Comments :

General comments :

**104. How is the length of proceedings calculated for the five case categories of question 102? Please give a description of the calculation method.**

Comments :

General comments : In first and second instances, the average length has been calculated using the following formula:  $L = (\text{Initial Pending cases} + \text{Final Pending cases}) / (\text{Incoming cases} + \text{Resolved cases})$ . The average length in 3rd instance (in days) is the actual average length of the proceedings.

#### **4.2.6. Case flow management – public prosecution**



**105. Role and powers of the public prosecutor in the criminal procedure (multiple options possible):**

Comments :

General comments :

**106. (Modified question) Does the public prosecutor also have a role in:**

Comments :

General comments : The public prosecutor is a party in civil affairs in which a public interest is involved – such as cases related to status

and capacity of persons, rights of minors, divorces, bankrupt etc.

## **107. Cases processed by the public prosecutor - Total number of first instance criminal cases:**

Comments :

General comments :

### **107-1. (Modified question) If the guilty plea procedures exist, how many cases were brought to court by the prosecutor through this procedure?**

Comments :

General comments : As a matter of fact in Italy there is no "guilty plea procedure" as such. However, if someone pleads guilty there are special procedures to speed up the proceedings.

## **108. Total cases which were discontinued by the public prosecutor:**

Comments : There is no specific explanation in respect of the increase between 2014 and 2016 in the number of cases discontinued by the public prosecutor for reasons of opportunity.

General comments :

## **109. Do the figures include traffic offence cases?**

Comments :

General comments :

## **D2. Please indicate the sources for answering questions 91, 94, 97, 98, 99, 100, 101, 102, 107, 107-1 and 108.**

Comments :

General comments :

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## **5. Career of judges and public prosecutors**

### **5.1. Recruitment and promotion**

#### **5.1.1. Recruitment and promotion of judges**

### **110. (Modified question) How are judges recruited?**

Comments :

General comments :

### **110-1. Are there specific provisions for facilitating gender equality within the framework of the procedure for recruiting judges?**

Comments :

General comments :

### **111. Authority(ies) responsible for recruitment. Are judges initially/at the beginning of their career recruited and nominated by:**

Comments :

General comments : The recruitment process (including examination) is managed by the Ministry of Justice. More precisely, in Italy judges and public prosecutors are recruited by the Ministry of Justice. The Ministry of Justice is the authority entrusted with the decision to recruit and also the decision on the number of magistrates (judges and prosecutors) to recruit. On the other hand, the High Judicial Council is the authority formally responsible for the nomination, assignment, transfer and promotion of magistrates (judges and prosecutors).

## **112. Is the same authority (Q111) competent for the promotion of judges?**

Comments :

General comments :

### **112-1. Are there specific provisions for facilitating gender equality within the framework of the procedure for promoting judges?**

Comments :

General comments :

## **113. What is the procedure for judges to be promoted? (multiple answers possible)**

Comments :

General comments : Every four years, the High Judicial Council (CSM) conducts a professional appraisal based on the professional skills of judges. The professional status of both judges and prosecutors is organized into 7 different levels. The criteria applied are: independence, impartiality, balance, professional capacity, hardworkingness, diligence and commitment.

### **113-1. Please indicate the criteria used for the promotion of a judge? (multiple answers possible)**

Comments :

General comments : The category "other" refers to the following criteria: independence, impartiality, balance, professional capability, hardworkingness, diligence, commitment, punctuality of sentence, goodness of decisions, importance and relevance of cases dealt with.

## **114. (Modified question) Is there a system of qualitative individual assessment of the judges' work?**

Comments :

General comments : The assessment procedure applies to both judges and public prosecutors. Every four years, the High Judicial Council (CSM) conducts a professional appraisal based on the professional skills of judges/prosecutors. The professional status of both judges and prosecutors is organized into 7 different levels. Several criteria are taken into consideration: independence, impartiality, balance, professional capacity, hardworkingness, diligence and commitment. The assessment is based on a number of acts and documents that describe all the professional aspects of the magistrate to be evaluated. The most significant are: • a "self report" where the magistrate illustrates all the elements that he/she believes are necessary or useful to be considered for the purpose of his/her appraisal; • a random sample of acts and documents produced by the magistrate during the evaluation period; • an "informative report" prepared by a superior of the magistrate; • the statistics concerning activity of the magistrate: the number of provisions drafted, the processing times of the proceedings, the time for filing the documents (even in comparison with the other magistrates of the office); • scientific publications, if any; • reports from the lawyers' council, if any.

## **5.1.2. Status, recruitment and promotion of prosecutors**

### **115. What is the status of prosecution services?**

Comments :

General comments : Judges and public prosecutors are part of the same judiciary body and are submitted to the same regulation. They are

both subject to the High Judicial Council (Consiglio Superiore della Magistratura).

### **115-1. Does the law or another regulation prevent specific instructions to prosecute or not, addressed to a prosecutor in a court.**

Comments :

General comments : Judges and public prosecutors are part of the same judiciary body and there is no separation of career. Public prosecutors are autonomous and independent according to the Italian Constitution (articles 104 and 107). By no means, the Ministry of Justice can give instructions to a public prosecutor on whether or not to prosecute or how to prosecute. Article 104 reads: “The Judiciary is a branch that is autonomous and independent of all other powers” Article 107 reads “Magistrates (i.e. judges and public prosecutors) may not be removed from office; they may not be dismissed or suspended from office or assigned to other courts or functions unless by a decision of the High Council of the Judiciary.

### **116. How are public prosecutors recruited?**

Comments :

General comments :

### **117. Authority(ies) responsible for recruitment. Are public prosecutors initially/at the beginning of their career recruited by:**

Comments :

General comments : The recruitment process (including examination) is managed by the Ministry of Justice. More precisely, in Italy judges and public prosecutors are recruited by the Ministry of Justice. The Ministry of Justice is the authority entrusted with the decision to recruit and also the decision on the number of magistrates (judges and prosecutors) to recruit. On the other hand, the High Judicial Council is the authority formally responsible for the nomination, assignment, transfer and promotion of magistrates (judges and prosecutors).

### **117-1. Are there specific provisions for facilitating gender equality within the framework of the procedure for recruiting prosecutors?**

Comments :

General comments :

### **118. Is the same authority (Q.117) formally responsible for the promotion of public prosecutors?**

Comments :

General comments : The career advancement of both judges and prosecutors falls within the competence of the High Judicial Council (CSM) and it is based on periodic evaluations.

### **119. What is the procedure for prosecutors to be promoted? (multiple answers possible)**

Comments :

General comments : Every four years, the High Judicial Council (CSM) conducts a professional appraisal based on the professional skills of prosecutors. The professional status of both judges and prosecutors is organized into 7 different levels. The criteria applied are: impartiality, balance, professional capacity, hardworkingness, diligence and commitment.

### **119-1. Are there specific provisions for facilitating gender equality within the framework of the procedure for promoting prosecutors?**

Comments :

General comments :

## **119-2. Please indicate the criteria used for the promotion of a prosecutor:**

Comments :

General comments : The category “other” refers to the following criteria: professional capability, hardworkingness, diligence, commitment, effectiveness of investigations, importance and relevance of cases dealt, punctuality of activity under their responsibility.

## **120. Is there a system of qualitative individual assessment of the public prosecutors’ work?**

Comments :

General comments : The assessment procedure applies to both judges and public prosecutors. Every four years, the High Judicial Council (CSM) conducts a professional appraisal based on the professional skills of judges/prosecutors. The professional status of both judges and prosecutors is organized into 7 different levels. Several criteria are taken into consideration: independence, impartiality, balance, professional capacity, hardworkingness, diligence and commitment. The assessment is based on a number of acts and documents that describe all the professional aspects of the magistrate to be evaluated. The most significant are: • a “self report” where the magistrate illustrates all the elements that he/she believes are necessary or useful to be considered for the purpose of his/her appraisal; • a random sample of acts and documents produced by the magistrate during the evaluation period; • an "informative report" prepared by a superior of the magistrate; • the statistics concerning activity of the magistrate: the number of provisions drafted, the processing times of the proceedings, the time for filing the documents (even in comparison with the other magistrates of the office); • scientific publications, if any; • reports from the lawyers' council, if any.

### **5.1.3.Mandate and retirement of judges and prosecutors**

## **121. Are judges appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?**

Comments :

General comments : According to the Italian Constitution, judges are appointed to office for life. The current legislation sets the compulsory retirement age for magistrates (i.e. both judges and public prosecutors) to 70. However, for judges with top managerial duties who serve at the Supreme Court of Cassation, Council of State, Court of Auditors or Avvocatura di Stato, the retirement age is set to 72.

A judge may be removed from office as a result of a disciplinary proceeding, initiated by the Prosecutor-general of the Court of Cassation or requested by the Minister of Justice according to article 107 of the Constitution. If charges are brought, the Disciplinary Section of the High Judicial Council hears and decides the case. The proceeding has a judicial nature, the right of defence is guaranteed at all stages, and the Code of criminal procedure (as in force before 1989) applies. The disciplinary decision can be appealed before the Joint Civil Chambers of the Court of Cassation. Besides, the dismissal can be decided following the professional evaluation. If the outcome of the periodical appraisal is negative, judges must undergo another evaluation after two years, if the appraisal is still negative they are dismissed. Finally, demotion of judges or public prosecutors can be justified by sanitary reasons if they are not physically or mentally fit to fulfil the jurisdictional functions.

## **121-1. Can a judge be transferred (to another court) without his/her consent:**

Comments :

General comments : Apart for disciplinary reasons, a judge cannot be transferred to another court without his/her consent.

## **122. Is there a probation period for judges (e.g. before being appointed "for life")? If yes, how long is this period?**

Comments :

General comments : In order to become judges or public prosecutors, candidates have to pass a competitive public examination. After the



examination successful candidates still have to spend 18 months as “Magistrati ordinari in tirocinio”. This is a mandatory training rather than a probation period. Moreover this is a period of not less than eighteen months – during which ‘appointed magistrates’ do not fulfil any judicial function. On completion of the traineeship, the High Judicial Council (CSM) appraises whether the newly appointed magistrates are suitable to take up judicial functions. If the outcome of the appraisal is negative, they are admitted to a new traineeship of one year. If this new traineeship is followed by a second negative appraisal, they are dismissed. If the outcome is positive the newly appointed magistrates take up judicial functions.

### **123. Are public prosecutors appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?**

Comments :

General comments : In Italy a public prosecutor may be removed from office as a result of a disciplinary proceeding, initiated by the Prosecutor-general of the Court of Cassation or requested by the Minister of Justice according to article 107 of the Constitution. If charges are brought, the Disciplinary Section of the High Judicial Council hears and decides the case. The proceeding has a judicial nature, the right of defence is guaranteed at all stages, and the Code of criminal procedure (as in force before 1989) applies. The disciplinary decision can be appealed before the Joint Civil Chambers of the Court of Cassation. Besides, the dismissal can be decided following the professional evaluation. If the outcome of the periodical appraisal is negative, public prosecutors must undergo another evaluation after two years, if the appraisal is still negative they are dismissed. Finally, demotion of judges or public prosecutors can be justified by sanitary reasons if they are not physically or mentally fit to fulfil the jurisdictional functions.

### **124. Is there a probation period for public prosecutors? If yes, how long is this period?**

Comments :

General comments :

### **125. If the mandate for judges is not for an undetermined period (see question 121), what is the length of the mandate (in years)? Is it renewable?**

Comments :

General comments :

### **126. If the mandate for public prosecutors is not for an undetermined period (see question 123), what is the length of the mandate (in years)? Is it renewable?**

Comments :

General comments :

## **5.2. Training**

### **5.2.1. Training of judges**

#### **127. Types of different trainings offered to judges**

Comments :

General comments :

#### **128. Frequency of the in-service training of judges:**

Comments :

General comments :

### **5.2.2. Training of prosecutors**



## 129. Types of different trainings offered to public prosecutors

Comments :

General comments :

## 130. Frequency of the in-service training of public prosecutors :

Comments :

General comments :

## 131. Do you have public training institutions for judges and / or prosecutors?

Comments :

General comments : In accordance with the constitutional principles of judicial independence, freedom of research and teaching, and good administration of justice, the School for the Judiciary, established by the Legislative Decree n. 26, of 30 January 2006, ensures the implementation of the right to, and duty of, professional training of members of the judiciary; the School also performs other tasks in the areas of training and research, as provided for by the law and the School's own charter. The School is an independent entity with legal personality under public and private law, as well as full capacity vis-à-vis organizational, functioning, management, contractual and accounting aspects of its activity. Its charter was adopted on February 6, 2012. The School is the sole agency competent with regard to professional training of the judiciary. In adopting or amending its annual training programme the School takes account of the guidelines it receives from the High Council for the Judiciary and the Minister of Justice, as well as the proposals it receives from the National Bar Council and the National University Council. The School may conclude agreements or memoranda of understanding with other public or private entities. The organs of the School are: the Board of Directors, the President and the Secretary General. The Board of Directors is composed of 12 members: 7 are chosen from among judges and prosecutors, both in service and retired; 3 from among university professors, both in service and retired, and 2 among lawyers who have practiced for at least ten years. The High Council for the Judiciary appoints 6 judges and prosecutors and 1 university professor, the Minister of Justice appoints 1 judge or prosecutor, 2 lawyers and 2 university professors. The members of the Board shall hold office for four years and may not be immediately renewed. The Secretary General is either a judge or prosecutor or a chief executive within State Ministries.

Before the establishment of the "School for the Judiciary", the training of magistrates was run by the High Judicial Council with the assistance of the Scientific Committee.

### 131-0. (Modified question) If yes, what is the budget of such institution(s)?

Comments :

General comments :

### 131-1. If judges and/or prosecutors have no compulsory initial training in such institutions, please indicate briefly how these judges and/or prosecutors are trained?

Comments :

General comments :

## 5.3.Practice of the profession

### 5.3.1.Salaries and benefits of judges and prosecutors

### 132. Salaries of judges and public prosecutors on 31 December of the reference year:

Comments :

General comments : It is noteworthy that the salaries of judges and public prosecutors do not depend on the position held but rather on the experience (i.e. years of service). That means that the salary of a judge working in the lowest courts can be the same as the salary of a judge working in the Highest Appellate Court.

### **133. Do judges and public prosecutors have additional benefits?**

Comments :

General comments :

### **134. If “other financial benefit”, please specify:**

Comments :

General comments : It might not be a proper benefit but in Italy, judges receive a bonus salary if they accept to work in judicial offices with significant lack of personnel (“sedi disagiate”).

### **135. Can judges combine their work with any of the following other functions/activities?**

Comments :

General comments : Any function – different from their work – performed by a judge or a public prosecutors is subject to authorisation by the High Judicial Council (CSM). The aim of authorisation is to ensure that the activity doesn’t bring the risk of undermining the autonomy and impartiality of the magistrate’s image.

### **137. Can public prosecutors combine their work with any of the following other functions/activities?**

Comments :

General comments : Any function – different from their work – performed by a judge or a public prosecutors is subject to authorisation by the High Judicial Council (CSM). The aim of authorisation is to ensure that the activity doesn’t bring the risk of undermining the autonomy and impartiality of the magistrate’s image.

### **139. Productivity bonuses: do judges receive bonuses based on the fulfilment of quantitative objectives in relation to the delivery of judgments (e.g. number of judgments delivered over a given period of time) or cases examination?**

Comments :

General comments : For the first time the law decree n. 98/2011 has provided for economic bonuses to Court offices and single magistrates when the number of pending cases is reduced by 10% in a year. The provision has not yet been implemented.

## **5.4. Disciplinary procedures**

### **5.4.1. Authorities responsible for disciplinary procedures and sanctions**

#### **140. Who is authorised to initiate disciplinary proceedings against judges (multiple options possible)?**

Comments :

General comments : Disciplinary proceedings against judges and public prosecutors can only be initiated by the Prosecutor General of the Corte Suprema di Cassazione (i.e. Supreme court) or by the Minister of Justice.

#### **141. Who is authorised to initiate disciplinary proceedings against public prosecutors: (multiple options possible):**

Comments :

General comments : Disciplinary proceedings against judges and public prosecutors can only be initiated by the Prosecutor General of the Corte Suprema di Cassazione (i.e. Supreme court) or by the Minister of Justice.

## 142. Which authority has disciplinary power over judges? (multiple options possible)

Comments :

General comments : The High Judicial Council (Consiglio Superiore della Magistratura), in particular, its Disciplinary Section sitting as a judicial body, has disciplinary power over judges. If charges are brought, the Disciplinary Section hears and decides the case. The proceedings have a judicial nature, the right of defence is guaranteed at all stages, and the Code of criminal procedure (as in force before 1989) applies. The disciplinary decision can be appealed before the Joint Civil Chambers of the Court of Cassation.

The High Judicial Council (Consiglio Superiore della Magistratura), in particular, its Disciplinary Section sitting as a judicial body, has disciplinary power over public prosecutors. If charges are brought, the Disciplinary Section hears and decides the case. The proceedings have a judicial nature, the right of defence is guaranteed at all stages, and the Code of criminal procedure (as in force before 1989) applies. The disciplinary decision can be appealed before the Joint Civil Chambers of the Court of Cassation.

## 143. Which authority has disciplinary power over public prosecutors? (multiple options possible):

Comments :

General comments : The High Judicial Council (Consiglio Superiore della Magistratura), in particular, its Disciplinary Section sitting as a judicial body, has disciplinary power over judges. If charges are brought, the Disciplinary Section hears and decides the case. The proceedings have a judicial nature, the right of defence is guaranteed at all stages, and the Code of criminal procedure (as in force before 1989) applies. The disciplinary decision can be appealed before the Joint Civil Chambers of the Court of Cassation.

The High Judicial Council (Consiglio Superiore della Magistratura), in particular, its Disciplinary Section sitting as a judicial body, has disciplinary power over public prosecutors. If charges are brought, the Disciplinary Section hears and decides the case. The proceedings have a judicial nature, the right of defence is guaranteed at all stages, and the Code of criminal procedure (as in force before 1989) applies. The disciplinary decision can be appealed before the Joint Civil Chambers of the Court of Cassation.

### 5.4.2. Number of disciplinary procedures and sanctions

#### 144. Number of disciplinary proceedings initiated during the reference year against judges and public prosecutors. (If a disciplinary proceeding is undertaken because of several reasons, please count the proceedings only once and for the main reason.)

Comments : "Other" refers to disciplinary proceedings which involve more than one category (e.g. "Breach of professional ethics" and "Professional inadequacy").

General comments :

#### 145. Number of sanctions pronounced during the reference year against judges and public prosecutors:

Comments :

General comments :

#### E3. Please indicate the sources for answering questions 144 and 145:

Comments :

General comments :

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## 6. Lawyers

### 6.1. Profession of lawyer

#### 6.1.1. Status of the profession of lawyers

**146. Total number of lawyers practising in your country:**

Comments :

General comments :

**147. Does this figure include “legal advisors” who cannot represent their clients in court (for example, some solicitors or in-house counsellors)?**

Comments :

General comments :

**148. Number of legal advisors who cannot represent their clients in court:**

Comments :

General comments :

**149. (Modified question) Do lawyers have a monopoly on legal representation in (multiple options are possible):**

Comments :

General comments :

**149-0. (New question) If there is no monopoly, please specify the organisations or persons that may represent a client before a court:**

Comments :

General comments :

**149-1. In addition to the functions of legal representation and legal advice, can a lawyer exercise other activities?**

Comments :

General comments :

**149-2. What are the statuses for exercising the legal profession in court?**

Comments :

General comments : In Italy, all these categories can exercise the legal profession in court.

**150. Is the lawyer profession organised through:**

Comments :

General comments :

**151. Is there a specific initial training and/or exam to enter the profession of lawyer?**

Comments :

General comments :

**152. Is there a mandatory general system for lawyers requiring in-service professional training?**

Comments :

General comments :

### **153. Is the specialisation in some legal fields linked to specific training, levels of qualification, specific diploma or specific authorisations?**

Comments :

General comments : In the frame of the 2014 evaluation, the attention was drawn on the fact that the Ministry of Justice, in consultation with the Lawyer National Bar, has approved the minimum standard requirements in terms of professional practice. There are different types of qualification/authorisations. The legal representation to the highest national Courts (Corte di cassazione; Consiglio di Stato; Corte costituzionale) is reserved to specialist lawyers (authorisations); besides, the reform of the legal profession (L. 247/2012) provides new rules about specialization and the Ministry of Justice has approved a regulation on the title and the expertise of specialist lawyers.

### **F1. Please indicate the sources for answering questions 146 and 148:**

Comments :

General comments :

## **6.1.2. Practicing the profession**

### **154. Can court users establish easily what the lawyers' fees will be (i.e. a prior information on the foreseeable amount of fees)?**

Comments :

General comments :

### **155. Are lawyers' fees freely negotiated?**

Comments :

General comments : On one hand the lawyers' fees are freely negotiated, on the other side a decree of the Ministry of Justice with general provisions addressed to judges, regulates the «parameters» which apply in 3 circumstances: when: 1) the judge clears costs and expenses relating to the proceedings 2) lawyer and client have not determined the fee by a written agreement; 3) When a lawyer and client have not determined the fees by mutual agreement.

### **156. Do laws or bar association standards provide any rules on lawyers' fees (including those freely negotiated)?**

Comments :

General comments :

## **6.1.3. Quality standards and disciplinary procedures**

### **157. Have quality standards been determined for lawyers?**

Comments :

General comments : Quality standards (e.g. independence of the lawyer, integrity and good repute of the lawyer, professional competence etc.) are set out by the rules of the Code of Professional Conduct for lawyers (Codice deontologico forense) approved by the Lawyer National Bar Association (Consiglio Nazionale Forense).

### **158. If yes, who is responsible for formulating these quality standards:**

Comments :

General comments :

## 159. Is it possible to file a complaint about:

Comments :

General comments : Clients can file a complaint with local bars which investigate if there has been a breach of the Code of Conduct or if the lawyer's fee appears to be too high. Clients may also submit a claim before a civil court against lawyers' fees.

## 160. Which authority is responsible for disciplinary procedures?

Comments :

General comments : Until the reform of the legal profession (L. 247/2012), the local bar was responsible for disciplinary proceedings and its decisions could be appealed before the Lawyer National Bar Council (Consiglio Nazionale Forense). As a result of the reform, a larger (professional) body, elected by members of local bars operates at the level of District Courts, being responsible for disciplinary proceedings; its decisions may be appealed before the Lawyer National Bar Council (Consiglio Nazionale Forense). The "implementation decree" was enacted in 2014 and the reform entered into force in 2014.

## 161. Disciplinary proceedings initiated against lawyers. (If a disciplinary proceeding is undertaken because of several reasons, please count the proceedings only once and for the main reason.)

Comments :

General comments :

## 162. Sanctions pronounced against lawyers.

Comments :

General comments :

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## 7. Alternative dispute resolutions

### 7.1. Mediation

#### 7.1.1. Details on mediation procedures and other ADR



## 163. Does the judicial system provide for judicial mediation procedures? If this is not the case you will go directly to question 168.

Comments :

General comments :

## 168. Does the legal system provide for the following alternative dispute resolutions (ADR):

Comments :

General comments : According to the relevant legal provisions, conciliation bodies have competence in the fields of company law, financial brokerage, banking and credit. The Chambers of Commerce have competence with regard to conciliation procedures and can even play a role as mediation and arbitration organizations. Conciliation bodies are also intervening in respect of disputes in the telecommunication sector. Besides, there are private procedures of mediation ("negoziazione paritetica") established by consumers' associations and companies. The latter are acting on behalf of consumers who may decide at the end of the procedure to accept or not the proposal of settlement. There is also another ADR procedure called "conciliazione bancaria" intended to address issues between a customer and a bank or a financial intermediary. It is noteworthy that in 2010 a large reform on ADR took place in Italy. Accordingly, since 2011, a number of matters in the civil sector require that a mandatory mediation procedure is executed before the case can be treated in court. In 2012, mediation procedure became mandatory for additional subjects of the civil sector.

## **G1. Please indicate the source for answering question 166:**

Comments :

General comments :

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## **8.Enforcement of court decisions**

### **8.1.Execution of decisions in civil matters**

#### **8.1.1.Functioning**

##### **169. Do you have enforcement agents in your judicial system?**

Comments :

General comments :

##### **174. Are enforcement fees easily established and transparent for the court users?**

Comments :

General comments :

##### **175. Are enforcement fees freely negotiated?**

Comments :

General comments :

##### **176. Do laws provide any rules on enforcement fees (including those freely negotiated)?**

Comments :

General comments :

## **H0. Please indicate the sources for answering question 170**

Comments :

General comments :

#### **8.1.2.Efficiency of enforcement services**

##### **177. Is there a body entrusted with supervising and monitoring the enforcement agents' activity?**

Comments :

General comments :

##### **178. Which authority is responsible for supervising and monitoring enforcement agents?**

Comments :

General comments :

##### **179. Have quality standards been determined for enforcement agents?**

Comments :

General comments :

**180. If yes, who is responsible for establishing these quality standards?**

Comments :

General comments :

**181. Is there a specific mechanism for executing court decisions rendered against public authorities, including supervising such execution?**

Comments :

General comments : The execution of court decisions rendered against public authorities follows the same mechanism as rendered against individuals.

**182. Is there a system for monitoring how the enforcement procedure is conducted by the enforcement agent?**

Comments :

General comments : In Italy there is not a specific system for monitoring how the enforcement procedure is conducted. However the activity of enforcement agents is closely supervised by the judge.

**183. What are the main complaints made by users concerning the enforcement procedure? Please indicate a maximum of 3.**

Comments :

General comments : The execution itself is due within 90 days. However, people complain about the overall length of the judicial procedure which is a totally different matter.

**184. Has your country prepared or established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?**

Comments :

General comments :

**185. Is there a system measuring the length of enforcement procedures:**

Comments :

General comments :

**186. As regards a decision on debt collection, please estimate the average timeframe to notify the decision to the parties who live in the city where the court sits (one option only):**

Comments : Not available

General comments : The timeframe to notify the decision cannot exceed 45 days. In case of urgent matters the timeframe is 48 hours.

**187. Number of disciplinary proceedings initiated against enforcement agents. (If a disciplinary proceeding is undertaken because of several reasons, please count the proceedings only once and for the main reason.)**

Comments :

General comments :



## 188. Number of sanctions pronounced against enforcement agents:

Comments :

General comments : A reform of the judicial system was presented in December 2013 and implemented in 2014 by the introduction of a new piece of legislation. This reform regards both the civil procedure and the execution process and aims to reduce the time needed to obtain the judgment and to have the judgment executed. With regard to the execution process, a number of measures make the winning parties more likely to get their credit. In particular, the enforcement agents have now access to specific databases where they can find information about the goods of the debtor that usually were protected against distraint (bank accounts, relationship with trust companies, government and standard bonds, etc.).

## H1. Please indicate the sources for answering questions 186, 187 and 188:

Comments :

General comments :

## 8.2. Execution of decisions in criminal matters

### 8.2.1. Functioning of execution in criminal matters

#### 189. Which authority is in charge of the enforcement of judgments in criminal matters? (multiple options possible)

Comments :

General comments : The judge of surveillance monitors and supervises the execution of the sentence in compliance with the rights of detainees and inmates. In particular, the judge of surveillance is responsible for: supervising the organization of prisons; approving the individual treatment plan for each prisoner; granting remission in case of mental illness, granting permits and safety measures; managing complaints of prisoners. The judge of surveillance is also responsible for granting and revoking alternative measures to detention (e.g. home detention, conditional release, deferment of execution of sentences). The prosecutor is responsible, pursuant to article 655 of the Code of Criminal Procedure, for criminal enforcement of judgments, by proposing their demands to the judge. The Prison administration (i.e. Prison and Probation Services) is responsible for the imprisonment and the monitoring of the conduct of the convicted person (inmate). This body is also responsible for the control and monitoring of the convicted person subject to alternative measures to detention.

#### 190. Are the effective recovery rates of fines decided by a criminal court evaluated by studies?

Comments : No study of such nature was carried out in 2016.

General comments :

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## 9. Notaries

### 9.1. Profession of notary

#### 9.1.1. Number and status of notaries

#### 192. Number and type of notaries in your country. If you do not have notaries skip to question 197.

Comments :

General comments : The Notary as existing in Italy belongs to the "Latin (roman) notarial system". The Latin notary is a public officer and a specialized counselor; his/her expertise must cover estate contracts, loans and mortgages, company law, family law, wills law, the relevant sections of fiscal law. The Latin notary also performs other judicial duties as a judicial auxiliary/assistant. Notaries as public

officers are professionals who perform public functions. They are vested by the State with public authority and faith, which allows them to draw authentic deeds (or public deeds). Put differently, a notary can be defined as a public officer to whom the State delegates a specific public power, the power to assert (to affirm) the authenticity of a document. The profession of notary is characterized by the qualities of independence and impartiality. A full description of the responsibilities of the notary can be found at the following link: <http://www.notariato.it/en/italian-notaries/who-we-are/responsibilities-of-the-notary.html>

### **192-1. What are the access conditions to the profession of notary:**

Comments :

General comments : To be allowed to practice the notarial profession, notaries must get through a very rigorous and competitive examination and, unlike the solicitors, their number is fixed by the law.

### **192-2. (Modified question) What is the duration of appointment of a notary?**

Comments :

General comments :

### **194. Do notaries have duties (multiple options possible):**

Comments :

General comments : Notaries have to explain to the parties the legal consequences and effects of their contracts and statements, also from a fiscal point of view, pointing out the possible risks. They have also a duty to properly preserve the original deeds in their offices for future consultation or issue of certified copies.

In Italy notaries are very often delegated by the courts in the proceedings of real estate auctions, inventories and distribution of assets of a deceased person. Moreover notaries give very frequently (even written) legal opinions and advice regarding family law, succession law, real estate matters as well as in the field of company law.

### **194-1. Do notaries have the monopoly when exercising their profession:**

Comments :

General comments :

### **194-2. As well as these activities, what are the other ones that can be carried out by notaries?**

Comments :

General comments :

### **195. Is there an authority entrusted with supervising and monitoring the notaries' work?**

Comments :

General comments :

### **196-1. Is there a system of general continuous training mandatory for all notaries?**

Comments :

General comments :

## **I1. Please indicate the sources for answering question 192:**

Comments :

General comments :

## 10. Court interpreters

### 10.1. Details on profession of court interpreter

#### 10.1.1. Status of court interpreters

##### 197. Is the title of court interpreters protected?

Comments :

General comments :

##### 198. Is the function of court interpreters regulated by legal norms?

Comments :

General comments :

##### 199. Number of accredited or registered court interpreters:

Comments :

General comments :

##### 200. Are there binding provisions regarding the quality of court interpretation within judicial proceedings?

Comments :

General comments :

##### 201. Are the courts responsible for selecting court interpreters?

Comments :

General comments :

##### J1. Please indicate the sources for answering question 199

Comments :

General comments :

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## 11. Judicial experts

### 11.1. Profession of judicial expert

#### 11.1.1. Status of judicial experts

##### 202. In your system, what type of experts can be requested to participate in judicial procedures (multiple choice possible):

Comments :

General comments :

##### 202-1. Are there lists or databases of technical experts registered?

Comments :

General comments : In each court there is a list of technical experts that judges can choose from.

### **203. Is the title of judicial experts protected?**

Comments :

General comments : Technical experts have to possess the necessary qualifications. For some professions (e.g. architects, engineers, psychologists, etc.) their name has to be on national registers.

#### **203-1. Does the expert have an obligation of training?**

Comments :

General comments :

#### **203-2. If yes, does this training concern:**

Comments :

General comments :

### **204. Is the function of judicial experts regulated by legal norms?**

Comments :

General comments :

#### **204-1. On the occasion of a mission entrusted to him/her, does the expert have to report any potential conflicts of interest?**

Comments :

General comments :

### **205. Number of accredited or registered judicial / technical experts:**

Comments :

General comments :

#### **205-1. Who sets the expert remuneration?**

Comments :

General comments : The experts' remuneration is set by law.

### **206. Are there binding provisions regarding the exercise of the function of judicial expert within judicial proceedings?**

Comments :

General comments : Experts must address their technical report to the judge within 60 days.

### **207. Are the courts responsible for selecting judicial experts?**

Comments :

General comments :

#### **207-1. Does the judge control the progress of investigations?**

Comments :

General comments :

## **K1. Please indicate the sources for answering question 205**

Comments :

General comments :

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## **12.Reforms in judiciary**

### **12.1.Foreseen reforms**

#### **12.1.1.Reforms**

**208. Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? Please inform whether these reforms are under preparation or have only been envisaged at this stage. Have innovative projects been implemented? If possible, please observe the following categories:**

Comments :

General comments :