

Italy

The main problems in the Italian judiciary are the excessively lengthy trials and the influence of corruption and organised crime on political and economic life which have important repercussions for judicial activity.

Italy is a republic composed of regions, provinces and municipalities. The 1948 Republican Constitution subjects the state to the Rule of Law, establishes the division of power and basic human rights guarantees for citizens. The political structure is composed of an executive, a legislature and a judiciary. The government is in the hands of the President of the Council of Ministers (Prime minister) who is nominated by the President of the Republic and must have the confidence of parliament, to which he or she is accountable. The President of the Republic, who enjoys mostly supervisory and guarantee functions, is also elected by a two thirds vote of parliament, sitting in plenary session jointly with representatives of the regions, for a renewable seven-year term. On 13 May 1999, the parliament, which comprises a Chamber of Deputies (lower chamber) and the Senate of the Republic (Upper chamber), elected Mr. Carlo Azeglio Ciampi as President of the Republic.

Italian politics have long been characterised by high instability, illustrated by the series of successive and short-lived government political coalitions that have been in power since the end of the Second World War. This instability has prompted some legal initiatives to change the electoral system in order to provide the Italian political system with greater stability. With this aim a referendum for the abolition of 155 seats in the Chamber of Deputies, elected on the basis of proportional representation, was held on 18 April. The initiative was approved by 90% of voters, and it also seeks to eliminate the system of proportional representation and introduce the majority system in the election of the lower chamber. However, the results are not legally binding as only less than 50% of the electorate actually cast their votes.

Mr. Massimo D'Alema and his party of the Democratic Left (PDS), leading a centre-left coalition, had been in office since November 1998 when he was invited to form the government after Mr. Romano Prodi stepped down. Mr. Prodi resigned after a series of successive political crisis within his coalition. Mr. D'Alema also faced similar problems. In December 1999, he resigned after an internal crisis split the centre-left coalition, but the President of the Republic asked him to stay and form a new government, which he did with the support of the political party of former Prime Minister Prodi. Local and regional elections were held in June and resulted in the advance of the right-wing Freedom Party led by former Prime Minister Mr. Silvio Berlusconi.

Human Rights Background

Human rights are generally respected by government officials and security forces. However, there were frequent allegations of torture, especially against immigrants, and mistreatment in prisons. On 5 May 1999, the United Nations Committee against Torture examined Italy's third periodic report and adopted its Concluding Observations. Apart from welcoming the introduction of a bill criminalising torture for discussion in parliament, the Committee expressed concern that:

- "despite the efforts of the authorities, the prison system remains overcrowded and lacking in facilities which makes the overall conditions of detention not conducive to the efforts of preventing inhuman or degrading treatment or punishment... the Committee notes with concern that reports of cases of ill-treatment in prison continued and that many of them

involved foreigners"

- "the lack of training in the field of human rights, in particular, the prohibition against torture, to the troops participating in peacekeeping operations and the inadequate number of military police accompanying them, which was responsible in part for the unfortunate incidents that occurred in Somalia".

The Committee against Torture's observations came only some months after the UN Human Rights Committee had issued its own observations and recommendations in August 1998. Among those concerns and recommendations more directly related to the judiciary are the following:

- the system of holding offenders, before and after trial, in "preventive detention" until all possible stages and appeals are finalised, which can take up to 6 years, "could constitute an infringement of the presumption of innocence and the right to the principle of a fair trial within a reasonable time or to release". The Committee recommended in this regard the elimination of the system by which the length of time a person could be held in preventive detention is calculated proportionately to the possible prison punishment for the offence, and to restrict the grounds for preventive detention only to those cases in which detention is essential to protect legitimate interests such as the appearance of the accused at the trial (paragraph 15);
- further steps need to be taken to speed up criminal and civil trials, in order to increase the efficiency and promptness of the entire system of justice (paragraph 17);
- that "the maximum period during which a person may be held in custody following arrest on a criminal charge be reduced, even in exceptional circumstances, to less than the present five days and that the arrested person be entitled to access to legal advice as soon as he or she is arrested" (paragraph 14);
- the concern at the increase in incidents of racial intolerance (paragraph 18).

It should be noted that non-governmental reports also included instances of discrimination and violence against immigrants. In June more than a 1000 gypsies had to flee their homes after a local mob in Naples burnt their camps as a revenge for an accident involving a young Serbian gypsy.

Anti-Mafia Operations and Organised Crime

Numerous Mafia leaders and members were captured and tried during the year. Authorities ordered police crackdowns in main cities such as Milan in order to keep under control the ever increasing and diversifying activities of Mafia groups. In August 1999 the police discovered a Mafia network for teaching children how to shoot from moving motorcycles. The information was revealed by the Public Prosecutor of Caltanissetta (south Sicily), Mr. Gianni Tinebra, who said that the children had already carried out a series of killings. On 10 December 1999, seventeen Mafia members were sentenced to life imprisonment for the 1992 planting of a car bomb that killed Mr. Paolo Borsellino, Chief Public Prosecutor in Palermo, Sicily, and five policemen in an attempt to halt investigations. Italian legislation permits joint trials (maxiprocessi) for offenders charged with criminal association.

Despite these encouraging steps forward judicial officials reported that organised crime is far from being defeated, but rather is growing by adopting new forms of organisation and establishing international links. Among the new fields into which organised crime has extended are: trafficking of immigrants, mainly from the Balkans, drugs dealing and arms trafficking.

During the first months of the year, Prime Minister D'Alema ordered army troops to return to Sicily to help combat organised crime. The troops returned to the island less than a year after they had pulled out.

In late August 1999, Rome investigating judge, Ms. Rosario Priore, made public the report of her investigations into the 1980 crash of an Itavia aircraft DC9 near the island of Ustica (north Sicily) which resulted in the death of 81 people. She concluded that the flight was caught up in an air battle between a NATO fighter aircraft and Libyan MIGs and that evidence relating to this had been concealed. This led to the indictment of four Italian generals with charges of crimes against the Constitution and high treason. Another five military officials were charged with giving false testimony.

The fight against Mafia and other organised crime has also resulted in threats and attacks on judges and magistrates. The Prosecutor-General, in his 1999 report, stated that a magistrate in Milan had received a bomb-package, without mentioning the magistrate's name. The Prosecutor qualified the attack as politically motivated. Another bomb-package was sent to the adjunct to the Public Prosecutor of Turin, allegedly by an anarchist group. The attack was also reported by the Prosecutor General.

The Judiciary

Article 104 of the Constitution guarantees the autonomy and independence of the judiciary. However, political influence, pervasive corruption and organised criminality pose great threats to that independence.

The Italian judiciary has been under close scrutiny in recent years, mainly because of the excessive delays of trials and the lengthy proceedings. Since the new European Court of Human Rights initiated its work in November 1998, there have been 40 cases against Italy. In 37 of these cases Italy was found in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms's (ECHR) provisions on reasonable duration of trials. The Committee of Ministers of the Council of Europe, in accordance with its powers under the European Convention, also found Italy in violation of the Convention in at least 361 cases, most of them for reasons related to the unreasonable duration of proceedings. Most of the violations occurred in civil cases.

On 15 July 1999 the Committee of Ministers of the Council of Europe passed a resolution on "The excessive duration of proceedings before the civil jurisdiction in Italy". In this resolution the Committee, while recognising and praising the measures adopted by the Italian authorities to overcome the slowness of judicial proceedings, decided to keep Italy under scrutiny for a year to see if the measures adopted actually help to prevent new violations of the Convention.

In response to this criticism, and presumably to the observations and recommendations of other human rights bodies, Italy has tried in the last two years to improve the performance of its judiciary with regard to the speed of trials so as to fully respect the international standards that require trials to take place within a reasonable time. For this purpose Italy has introduced new institutions into its legal system and widened the powers of others.

Structure

The ordinary Italian judiciary is composed of a Supreme Court of Cassation which is the highest tribunal in the country, Appeal Courts and a system of lower courts that has recently been restructured. The Court of Cassation is based in Rome and has national jurisdiction to review sentences passed by lower courts, but only on questions of law. Appeal Courts are located in each judicial district - a total of 29 - and hear cases on questions of law and fact.

The lower court system is composed of Justices of the Peace at the bottom, which were introduced by law in 1992 and are fully operative since 1995. On 2 June 1999 a reform introducing single-judge Courts of First Instance (*Giudice Unico di Primo Grado*), to replace two other tribunals of first instance, was implemented. The single-judge courts replace the one-judge courts of first instance for minor criminal and civil cases (*Pretura*) and the first instance tribunals for more serious civil and criminal cases (*Tribunale*). The reform, which has already started and will take some time to be fully implemented, is aimed at making the first level of the justice system simpler and more expeditious. It implies the suppression of some 502 posts of *Pretura* and 100 posts of prosecutors which are attached to them, but on the other hand it will increase the number of single-judge tribunals.

Justices of the Peace, originally with jurisdiction over minor civil cases, were given additional jurisdiction over minor criminal cases not involving prison punishment in 1999. These cases were formerly dealt with by the *Pretura* and so this reform hands over part of their jurisdiction to the Justices of the Peace.

The new single-judge Courts of First Instance (*Giudice Unico*) were first given jurisdiction over civil matters. Jurisdiction over criminal matters was due to be transferred also to these new tribunals in January 2000, but a last minute measure postponed the transfer until June 2000 as a result of certain problems of implementation that could not be solved on time. Apparently, the law of procedures applicable in criminal matters needs to be adapted for the operation of the new tribunals. There were also administrative and procedural problems to be solved before the new tribunals could assume full jurisdiction over criminal matters.

The implementation of the *Giudice Unico* in the bigger cities has also been problematic in that the populations they are to serve in the cities are very large and a single judge, dealing with civil and criminal matters at the same time, would obviously be insufficient. For this reason a special status has been given to the tribunals in the cities and major towns and a bench of judges sits instead of a single judge, with additional "chambers" when necessary.

To try the most serious crimes there are also special courts called Courts of Assizes (*Corte de Assise*) at the first level, and Appeals Courts of Assizes at the appeals level. These courts sit as benches composed of two professional judges, one of whom presides, and six lay members who sit together and rule on both the facts and the law, which distinguishes them from jurors.

Public prosecutors are considered part of the judiciary, as magistrates. In fact, all magistrates, as members of the judiciary, can perform the tasks either of judges or prosecutors, as the Council of the Judiciary sees fit. During the past years there have been multiple legislative initiatives to separate the careers of these two positions within the judiciary and some are still under study in parliament. The Prosecutor has a monopoly over criminal prosecutions. According to the Constitution he or she is bound to prosecute whenever a crime has been committed. He or she can also order the arrest of a suspect at any time although his decision is subject to review by a judge.

There is a judge of preliminary inquiries (Giudice delle Indagini Preliminari) whose role is to control the legality of the Prosecutor's acts. At the request of the Prosecutor this judge examines the evidence and decides whether it is sufficient to warrant a trial. At the same time the judge decides whether the accused should be detained pending their trial, and his decision on the matter is subject to review by a special tribunal on liberty (Tribunale della Libertá).

There is a Constitutional Court with fifteen members, one third of whom are appointed by parliament, another third by the President of the Republic and one third by the supreme ordinary and administrative courts, for a period of nine years. The functions of the Constitutional Court are judicial review of the constitutionality of laws and the arbitration of conflicts of competence between state organs, or between the central government and the regions.

Appointment and Security of Tenure

Judges and prosecutors are appointed through public and competitive examinations organised by the High Council of the Judiciary (Consiglio Superiore della Magistratura), an autonomous body under the 1948 Constitution (Article 104 of the Constitution). This body has powers to decide on employment, assignments and transfers, promotion and disciplinary measures for judges (Article 105). It is headed by the President of the Republic who, together with the President of the Court of Cassation and the Prosecutor General attached to it, are ex officio members of the High Council. In addition to these there are a further thirty members who are elected as follows: two thirds are voted in by all ordinary judges of all categories and one third is elected by parliament in joint session of its two chambers. The elected members of the High Council remain in office for a non-immediately renewable period of four years. By the end of 1999 a proposal was underway for a referendum on a rule that would allow judges to elect their representatives in the Council from among all serving judges, and not only from those included in the list prepared by the High Council itself.

Article 107 states that judges may not be removed from office, dismissed or assigned to other courts or functions unless following a decision of the High Council of the Judiciary, taken in accordance with the guarantees of defence established by the rules of the judiciary or with the consent of the judge in question.

With regard to discipline, the Minister of Justice, who plays an important role within the judiciary, as provided for by the Constitution, has the power to instigate disciplinary proceedings against magistrates (judges and prosecutors alike). The Prosecutor General attached to the Supreme Court of Cassation has the same power. However, it is for the disciplinary chamber of the High Council to ultimately decide on the matter.

Administration and Resources

General responsibility to administer all services related to the judiciary is in the hands of the Minister of Justice. In matters of organisation or distribution of courts the Minister of Justice has to consult with the Council of the Judiciary, but is solely responsible for providing all the material needs of the judiciary, including the recruitment and management of personnel, adequate premises and equipment, among others. The Minister of Justice is also empowered to carry out inspections and inquiries or to request information from the administrative heads of every court in relation to the functioning of the justice system.

The budget allocated to the judiciary has experienced a slight increase in recent years. In 1998 it amounted to 1.38 per cent of the general national budget and in 1999 and 2000 it rose to 1.40 per cent.

Constitutional Reform: Due Process of Law

By a constitutional law (Law 2, published on 23 December 1999), Article 111 of the Constitution was amended by adding a paragraph that guarantees the right to due process of law in all judicial proceedings. The amendment states that due process of law should always be afforded in every proceeding before the courts, and, more precisely, in criminal proceedings where the accused shall have the right to be promptly informed of the charges against him or her and be allowed time and conditions to prepare his or her own defence. The accused shall also have the right to examine or have examined witnesses against him or her and to present witnesses in his or her favour under the same conditions. The amendment also establishes the principle whereby all evidence being produced during trial should be subject to contradiction by the other party. Finally, it establishes the legal right to be tried within a reasonable time. The old Article 111 did not contain a similar provision, nor did one appear in any other part of the Constitution. The amendment introduces an internationally recognised right into the Italian constitutional system.

The full implementation of this constitutional amendment is, however, proving to be somewhat problematic. Its intended immediate application, which extends to currently ongoing criminal trials, may paralyse the proceedings because of a lack of adequate implementing legislation. Some confusion in judicial circles has already been generated and there are fears that the predictability of the legal system will suffer due to a change of the procedural rules in ongoing proceedings. By January 2000 the necessary implementing legislation was ready to be approved in the form of an urgent decree-law.

Clean Hands (Mani Pulite) Anti-Corruption Operations

The mani pulite operation continued during 1999 in its eighth consecutive year. However, the initial impetus has faded away and the Milan pool of judges and prosecutors denounced the presence of an increasing number of obstacles which impede the carrying out of their anti-corruption investigations, at a time when corruption is re-emerging. In February 1999, when the campaign celebrated its eighth anniversary, authorities and magistrates made a positive appraisal of their work, but also denounced the persistence of formidable obstacles. On that occasion, the Chief Prosecutor of Milan, Mr. Gerardo D'Ambrosio, declared that "investigations are more and more difficult in a time when corruption re-emerges, and successive reforms have had the effect of extending the duration of proceedings". The declarations were backed by former Chief Prosecutor, Mr. Paolo Di Pietro, and the National Magistrates Association. Mr. Di Pietro stated in particular that "in eight years the parliament has only approved norms making the investigations more difficult, slowing down the proceedings and allowing those accused to escape convictions". Many people under investigation, amongst them politicians, have accused the magistrates of abuse of power, violating human rights, such as the right to be presumed innocent, and of abuse of the institution of preventive detention.

Figures issued on the occasion and disseminated by the press illustrate the magnitude and importance of the operations during the past eight years: 2,565 people were investigated, of

whom 1,408 were actually prosecuted or have been already convicted, but only four are serving prison sentences.

During 1999 anti-corruption trials involving some prominent politicians, such as former Prime Ministers Mr. Bettino Craxi, Mr. Silvio Berlusconi and Mr. Giulio Andreotti continued. These and other defendants accused the magistrates of being politically motivated.

On 11 March 1999 a court of Milan acquitted former Prime Minister, Mr. Berlusconi, of tax fraud. It was the first acquittal after three convictions. Later, in October, the Court of Appeal in Palermo confirmed the acquittal of Mr. Berlusconi. Another Appeals Court overturned one of his convictions for the use of an "offshore" account to channel funds to Mr. Craxi's party in 1991. However, a judge in Milan decided on 26 November 1999 that there was enough evidence to sustain a trial against Mr. Berlusconi on charges of bribing judges in a case linked to the sale of a supermarket chain. A former Defence Minister in Mr. Berlusconi's Cabinet was also sent to stand trial for the same charges, which also include false accounting for funds allegedly used for bribery. The trial is due to start in March 2000. In yet another case Mr. Berlusconi is due to stand trial on charges of channelling "unaccountable funds" for illegal party financing between 1991-1995, through one of his offshore companies.

The highest criminal court ordered a retrial of Mr. Bettino Craxi, former Prime Minister, on charges of illegal party financing. He had already been found guilty in four other corruption cases and sentenced to a total of 26 years in prison. In January 2000 he died in his self-imposed exile in Tunisia after refusing to go back to Italy for medical treatment. The Chief Prosecutor for Milan, the leader of the *mani pulite* operations, had said in October 1999 that Mr. Craxi would not risk immediate transfer to prison if he returned for medical treatment. This was confirmed in November when a court in Milan ruled that he could return to Italy and serve his convictions for corruption under house arrest.

On 24 September 1999 a tribunal of Perugia, composed of professional judges and lay people, acquitted former Prime Minister, Mr. Giulio Andreotti, of charges of ordering the murder of an investigative journalist in 1979. The trial started in 1996. All other defendants, including well-known Mafia members, were also acquitted. In another case, Mr. Andreotti was also cleared of charges of collusion with the Mafia by a three-judge tribunal in Palermo on 27 October 1999.

Outstanding Cases

Sofri Case

In January 2000 Mr. Adriano Sofri and two other members of the leftist group "Continuous Struggle" were convicted by the Court of Appeal of Venice for the murder of a police inspector in 1972. The Sofri case started in 1988 and underwent a series of trials and retrials due to alleged irregularities. In August 1999 Mr. Sofri was provisionally released pending his retrial which was ordered by the Supreme Court of Cassation.

The convictions, and the sentence of 22 years of imprisonment, raised considerable criticism among the public in Italy, not only because of the excessive length and the cumbersome proceedings of the trials, but also because the convictions were largely based on the late and confusing testimony of a police collaborator considered biased and unreliable. The

comparison with other trials was inevitable and it was noted that in one of the trials against Mr. Berlusconi the testimony of another police collaborator was not considered reliable.