

## Italy/High Council for the Judiciary

### Италия/Висш съвет на магистратурата

#### 1-2-3-4-5) Mission, powers and membership of the High Council for the Judiciary

The Italian Constitution defines the existence, composition, and tasks of the High Council for the Judiciary (Consiglio Superiore della Magistratura hereinafter C.S.M.).

According to the Italian Constitution, the Council is in charge of the **recruitment, assignment, transfer, promotion and disciplining of magistrates** - judges and public prosecutors – (as stated in section 105 of the Constitution). Article 105 also states that rules governing the judiciary and the judges are laid out by ordinary law.

The Constitution pays special attention to the autonomy and independence of the judiciary, in reaction to executive dominance during the fascist period. To effectively implement the safeguards applying to autonomy and independence of the judiciary, the drafters of Italian Constitution decided that the judiciary would not be managed by entities belonging to the executive and/or legislative powers; accordingly, they set up the High Council for the Judiciary.

The C.S.M. is the self regulation and self – governing body of the judiciary.

Under section 104 of Italy's Constitution, the C.S.M. includes **three members of their own right** : they are **the President of the Republic** – who also chairs the C.S.M. -, **the President of the Court of Cassation** (the Italian Supreme Court), **and the Prosecutor General at the Court of Cassation.**

As for elected members the Constitution does not specify their number; however it provides that **two-thirds of them must be elected by magistrates (professional judges and prosecutors) from out of the various categories** (these are the so called *career members* ), whilst **one-third must be elected by the Houses of Parliament in joint session from out a shortlist of university professor in law and lawyers with at least fifteen years of professional seniority** (these are the so called *lay members*).

Under Italy's Constitution **elected members hold office for four years and may not be re-elected for the next term.**

The Council must elect, from out of the lay members, a deputy-Chair, who will chair the plenary assembly of the C.S.M. whenever the President of the Republic is absent, or else upon the President's delegation, as well as chairing the Presidency board; the latter is in charge of fostering

the Council's activities, implementing the resolution adopted by the C.S.M., and managing budgetary funds – given that the C.S.M. is autonomous as for accounting and financial matters.

Accordingly, both **the number of elected members and the mechanism for their election are set forth in statutes** – Act. No. 195/1958, as subsequently amended by Act No. 696/1975 and Act No. 44/2002, along with Presidential decree No. 916/1958 and the internal regulations adopted by the C.S.M. regulate sitting up and operation of the C.S.M..

**As of date**, Act No. 44/2002 – which amended section 1 of Act No. 195/58 – provides that the **C.S.M. is made up of 24 elected members**, of which **16** shall be **career members**, and **8** shall be **lay members**.

**Lay members are elected by the two Houses of Parliament in joint sitting by secret ballot**; a majority of three-fifths of the members of Parliament is required at the first two ballots, whilst a majority of three-fifths of the voting members is enough as from the third ballots onwards.

**The members to be elected among career magistrates** must be chosen as follows: **two magistrates from the Court of Cassation** (Supreme Court) (judges and public prosecutors); **four magistrates discharging prosecution functions** in front of lower instance Courts; **ten magistrates discharging judicial functions** in lower instance courts.

**Career magistrates are elected by majority voting in a single nationwide constituency for each of the categories to be elected**; individual candidates may run for election and must be presented by no less than twenty-five and no more than fifty magistrates. Each voter is given three cards for the three nationwide constituency and votes for one magistrate for each of the said categories as described above.

Within the Councils existing in Europe, a distinction can be made between the **Southern European model**, in which the body is constitutionally rooted and only fulfils primary functions in safeguarding judicial independence – such as giving advice on the appointment of members of the judiciary or exercising disciplinary powers with regard to these members – and the **Northern European model**, in which the Councils, in addition to primary functions such as advice on appointments and disciplinary judicial procedures, have rather far-reaching powers in the area of administration (supervision of judicial registry offices, case loads and case stocks, flow rates, promotion of legal uniformity, quality care etc.) and court management (for example, housing, automation, recruitment, training, etc.) and, in addition to that, play an important part in the budgeting of courts (involvement in setting the budget, distribution and allocation, supervision and control of expenditure, etc.).

On the ground of the distinction described above, Italian C.S.M. should surely be held to adhere to the Southern Europe model.

### **6-7-8) Staff, structure, commissions**

The Council has its own administrative staff, with a Secretary General (a member of the judiciary) in charge of it. Tasks that are not purely clerical (e.g., legal research; supervision of drafting of minutes of meetings, etc.) have been so far performed by members of the judiciary attached to the Council with the function of “judicial attachés”. **Members of the judiciary serving in the C.S.M. are presently 18** (including the Secretariat General). Clerical and other administrative tasks are performed by **employees** of the several categories (**at present in the total number of 243**). Since the reform entered into force in 2006 calls for the **suppression of judicial posts in the C.S.M. staff**, political statements have now been made in order to keep this form of co-operation between judges/prosecutors and the C.S.M..

The staff – thanks to a recent reform – is autonomously and fully managed by C.S.M. itself, according the general rules of public administration; in the past, it was provided by the Ministry of Justice.

Every decisions of the C.S.M., in its ordinary functions, is deliberated by the **plenary assembly**, that is the only entity entitled to represent the final will of the body.

However, the preliminary work of information, investigation and proposal for the decisions to be taken by the plenary assembly is conducted by the referring committees.

C.S.M. is structured in ten referring commission each one is dealing with different specific matters, as follows:

**The First Committee** deals with claims made by the public against single judges and public prosecutors; with the issue of incompatibility – for functional and environmental reason, or due to personal relations with other magistrates or lawyers – of judges and public prosecutors in the Courts; with the so called “*protective declarations*” (It. “*pratiche a tutela*”), which are resolutions declaring that an attack to the judge or prosecutor (coming from the press or from any other actor on the public arena) violates judicial independence, adopted to protect judges’ and prosecutors’ independence.

**The Second Committee** deals with internal regulation of functioning of the C.S.M.;

**The Third Committee** is competent on the matters of assignment of judges and public prosecutors to the courts and transfers to different posts;

**The Fourth Committee** makes proposal in the fields of conferment of judicial functions to newly appointed magistrates; periodic professional appraisal and career advancements of judges and public prosecutors; authorization of extra-judicial activities of magistrates;

**The Fifth Committee** deals with the assignment of executive and semi-executive posts, through the professional appraisal of candidates in order to choose the most suitable magistrates as heads of the judiciary offices;

**The Sixth Committee** is in charge for giving opinion and proposal concerning the regulation of judiciary system and every other general issue related to it.

**The Seventh Committee** deals with organisations of judiciary offices, evaluating the criteria adopted by the Heads of each Court to manage distribution of judges and appointment of magistrates to the cases within every single office;

**The Eighth Committee** is competent in the field of lay and honorary magistrates;

**The Ninth Committee** deals with the competitive public examination for the selection of magistrates; the mandatory training for newly appointed magistrates; continuing training of magistrates. In the latter task it avails itself of the **Scientific Committee**, a collegial teaching body composed of qualified magistrates and university professors;

**The Tenth Committee** deals with the financial budget.

## 9) Important historical events

Although it had been approved after the last world conflict and envisaged in the Italian Constitution of 1948, the *Consiglio Superiore della Magistratura* (C.S.M.) was not officially created until 1958 and fully operational until 1959.

## 10) Present and future important projects

As part of Constitutional revision being effected in Italy at present, in a very controversial public debate, proposals concerning the C.S.M. have also been presented by government. It is proposed to include new sections to article 104 and 105 of the Italian Constitution. In accordance with the proposal, following the **separation of the magistrate's careers**, **two Councils** for the Judiciary will be established, one C.S.M. for the judges and one C.S.M. for the public prosecutors.

The imposition of **disciplinary measures** would, in accordance with the proposals, be entrusted to **another body**, namely a court yet to be established (Alta Corte di Disciplina).

## 11) How is the independence of the respective Council guaranteed

The independence of Italian C.S.M. is guaranteed by the Constitutional rules governing its **structure, composition and exclusive competence and functions**.

The **budgetary autonomy** constitutes a mean to safeguard its capacity to effectively pursue its own tasks, without any conditioning from outside.

Furthermore, the law also provides **autonomy and independence of single members** of the C.S.M., stating that they may be **removed only by vote of the Council**, upon the report of a specific Committee entrusted with verification of powers, in the case that a situation of pre-existing ineligibility or incompatibility is not removed, or supervenes during tenure. **The situations giving rise to removal are specified** in the texts of law 195/1958 (e.g., for members elected by Parliament, retaining membership in the legal profession, membership in the board of commercial corporations or managing a business enterprise; for members of the judiciary, being a judge or prosecutor serving at the Ministry of Justice; for all members, having a close relative among other members, being member of Parliament or Regional Councils, being a Minister, etc.). Members of C.S.M. are also suspended “de iure” in the case of criminal (for judges, also disciplinary) charges for intentional crimes being brought against them; they are removed “de iure” if such charges are upheld by Court decision.

Art. 32 bis of law No. 195/1958 protects the **freedom of expression** of the members of C.S.M. stating that they are **excepted from any form of liability** in consequence of the opinions expressed in the exercise of their functions and relates to the subject of discussion.

## **12) Budget for the judiciary**

**Courts’ activities are funded**, except for what follows, **on the State Budget - Ministry of Justice**. This corresponds to the Constitutional provision of art. 110, which states that: *“Except for matters within the competence of the High Council for the Judiciary, the organisation and direction of all services connected with the administration of justice will be the responsibility of the Minister of Justice”*.

The present accounting and administrative laws concerning the budget for the judicial systems in Italy provide for a centralised setting of all budget items.

As most expense items are directly managed by the Ministry of Justice, with a few exceptions in which funds are transferred from the Ministry of Justice to the Presidents of Courts of Appeals and General Prosecutors of the same Courts, not in a judicial capacity but in their capacity as Delegates of the Ministry, the latter make provisional proposals only concerning the items they manage.

On the other hand, in order to guaranteeing independence, the **High Council for the Judiciary itself has full autonomy of spending a budget** which is allocated annually to it within general allocations of the State budget. A specific budget Committee (The Tenth) is formed within C.S.M..

In recent years the amount of budget allocated to C.S.M. has been **around thirty millions Euros**. It is divided among the different allocations connected with the functions of the self governing body. The major expenses are generally related to the **training activities** – with the organizations of a number of more or less 80 centralized study meetings for about 9.000 magistrates every year – and to the **cost of personnel** – comprising members (27), judicial staff (18) and administrative employees (243) of the Council.

### **13) Present composition of the Council**

At present Italian C.S.M. is composed by three members of their own right, sixteen career members and eight lay members, as provided by the regulation above mentioned.

Its mandated started on **August the 2°, 2010**, and will consequently expire on **August the 2° 2014**.