European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Response questionnaire project group Timeliness

Consiglio Superiore della Magistratura (Italy)

1. The Court System and Available Statistics

1.1. The Court System.

Standard jurisdictional functions include two main sectors, namely, the criminal and the civil one. Penal judgments are initiated by the Public Prosecutor, who is also a member of the judiciary.

Several modifications have been made to the civil process for the purpose of making it more rapid and efficient.

The Italian Code of Penal Procedure was completely reformed in 1988, representing a shift from an inquisitorial system to an adversarial system, based on the principles of equal treatment of the prosecution and the defense and of the oral submission of evidence before the judge at public hearings.

Standard judicial functions are discharged by career judges as well as by lay (or honorary) judges. The honorary judiciary is composed by the following: justices of the peace – having competence, both in the civil and penal sectors, on matters which are outside the jurisdiction of career judges -; court lay judges, supporting court activities; lay deputy public prosecutors, as attached to public prosecutor's offices; experts attached to juvenile courts and the juvenile division at appellate courts; jury members in assize courts; experts making up the courts competent for supervision over the enforcement of sentences; and experts making up specialized court divisions handling agrarian law matters. In the early years of 2000, the "temporary" divisions, composed by lay judges who handled civil litigations pending as at 30 April 1995, operated for a six-year period or thereabouts.

Civil and criminal matters in Italy are presently handled by the justices of the peace, the courts, the appellate courts, the Supreme Court of Cassation, the juvenile courts and the magistrates and courts in charge of supervising the enforcement of sentences. All of the aforesaid magistrates perform their functions at first instance, with the exception of the Court of Appeal - a court of second instance - and of the Italian Supreme Court (N.d.T.: Court of Cassation), which has competence solely over judgments of lawfulness.

Moreover, there are a number of specialised divisions set up at the Civil Court in charge of handing specific cases such as, by way of example, those related to labor, industrial and intellectual property, bankruptcy, lease agreements and agrarian contracts matters.

The reform regarding the single judge of first instance was accompanied by the restructuring of the courts of first instance. According to the new system, single-judge courts decide on minor cases and courts en banc on more complex cases.

A number of special judges, in addition to the judiciary, are also provided for: 1) the Court of Auditors, which has competence over accounting matters; 2) the military courts, which have competence over matters related to military offences committed by members of the armed forces; 3) the Regional Administrative Courts, as courts of first instance, and the Council of State, as the single-judge court of second instance, exercising administrative jurisdiction.

The administrative court may review the legality (and not the merits, understood in the sense of opportunity) of administrative acts: actions for annulment of the administrative measures are brought before the administrative court on grounds of lack of competence, infringement of the law or abuse of powers.

The High Council for the Judiciary administers only ordinary magistrates, who perform functions of a penal and a civil nature.

1.2. Statistic information on Courts, judges and cases

As of November 18th, 2010 the staff of the Italian judiciary numbered 10,151 magistrates, of which 8,418 in post at the Courts. Of the latter, 6,326 are judging magistrates and 2,092 prosecuting magistrates.

The Italian judicial system is composed by the following: 1 Supreme Court of Cassation, 26 Courts of Appeal and 165 Courts.

In the year 2009 the Italian Supreme Court (Court of Cassation) handled a total of 75,418 case filings and settled 80,902 cases. The civil courts handled 28,418 case filings and settled 31,257 cases. The penal courts handled 47,000 case filings and settled 49,645 cases.

In the year 2009 the Courts of Appeal, that is, courts of second instance, handled a total of 267,836 case filings and settled 211,265 cases. The civil courts handled 163,650 case filings and settled 135,245. The penal courts handled 104,186 case filings and settled 76,020 cases.

Overall, in 2009 the courts of first instance handled 4,239,850 case filings and settled 4,050,292 cases. The civil courts handled 2,852,552 case filings and settled 2,782,299 cases. The penal courts handled 1,387,298 case filings and settled 1,267,993 cases.

In the year 2009 the justices of the peace, or lay judges, handled a total of 2,168,636 case filings and settled 1,914,466 cases. The civil courts handled 1,925,291 case filings and settled 1,694,876 cases. The penal courts handled 243,345 case filings and settled 219,590 cases.

1.3. Statistic information on processing time

The average duration of civil proceedings in 2009 was as following:
1,195 in the Court of Cassation; 1,549 days for cases brought before the Courts of Appeal; 977 days for cases brought before the Courts.

The average duration of penal proceedings in 2009 was as follows:
204 days for cases brought before the Court of Cassation; 747 days for cases brought before the Courts of Appeal; 495 days for cases brought before the Courts.

2. Statistics, Requirements and Transparency

2.1. What statistics are provided for on a regular basis?

Regular statistics are processed on an annual basis by the Ministry of Justice concerning data related to the jurisdictional, civil and penal activities carried out by the courts.

Such data contain both objective elements and statistical notes representing, by way of example: the average duration of proceedings, both civil and penal, held at each type of court; the index of work load in civil and penal matters; the number of case listings handled and of cases settled.

Another set of statistical data will soon be gathered, again on an annual basis, by the High Council for the Judiciary, according to the gathering criteria indicated by the Struttura Tecnica per l'Organizzazione (N.d.T.: Technical Office for Organization), recently set up at the High Council for the Judiciary. This Office, composed by ten magistrates from different courts in possession of the necessary organizational, computer and coordination skills, will operate for a three-year period.

The primary objective of the Struttura Tecnica per l'Organizzazione is to point out the methods adopted for the acquisition of statistical data concerning the work loads of magistrates and the flow of proceedings and pending lawsuits, with the aim to promote the dissemination of best methodological and operating practices, also experimenting new and innovative computer techniques. The first acquisition of such data, to be made by each Court of Appeal district, will be presented at national level during the opening of the judicial year 2011.

The Struttura Tecnica per l'Organizzazione enables the High Council for the Judiciary to exchange the gathered data with the Ministry of Justice. This is a particularly significant and delicate issue, considering that the data held by the Ministry of Justice are only objective and quantitative in nature, whilst those acquired by the Struttura Tecnica of the High Council for the Judiciary provide also a qualitative and dynamic overview of the context examined.

Statistical data on court activities are in fact acquired also for the purpose of monitoring the average dispute resolution standards and average performance standards, which form the basis for evaluating the industriousness and expertise of individual magistrates.

2.2. Are provided statistics published?

If not published, to whom are they available?

Is bench marking encouraged?

The statistics processed by the Ministry of Justice are not normally published and are available only to the Ministry itself. In order to obtain and analyse such data, a specific request must be formulated by the High Council for the Judiciary.

The statistical data of the High Council for the Judiciary and the analytical data subsequently processed are made available to all magistrates. The data that is to be gathered at national and district level during the opening of the judicial year 2011 will be published.

"Bench marking" is by all means encouraged.

The agreement to be stipulated in the near future between the High Council for the Judiciary and the Ministry of Justice, with the aim to guarantee the continuous exchange of data between the two institutions, is extremely significant. Considering the disparate nature of the data held by said institutions, such continuous transfer of information becomes highly relevant as it provides for greater transparency and greater efficiency in the performance of court activities.

2.3. Is processing time of individual cases transparent?

The data relating to specific civil cases are made available, normally via a web page, by the defense lawyers in that case. Such data concern the entire evolution of the case, from the time it is filed to its disposition.

Those who are not part of the defence in the case can also gain access to the web page, but they can only obtain the registration number and the date set for the first hearing.

These data are made available to the office of the clerk of the court, which is an administrative office set up to serve the magistrates and the President of the same court.

With respect to criminal proceedings, the obvious need to keep information secret and confidential prevents the disclosure of any data to subjects (magistrates and attorneys) who are not specifically and directly involved in the proceedings.

2.4. Are requirements for processing time stipulated?

The Italian judicial system provides for the need to meet reasonable time-limits for the handling and resolution of proceedings.

Such provision is contained in Law no. 89 of March 24th, 2001, which regulates the implementation of a specific procedure for the request of accusation of the Italian State for equitable compensation, in case of financial or non-financial loss suffered as a result of the actual infringement of the time-limit referred to in Article 6, paragraph 1, of the Convention for the protection of human rights and fundamental freedoms, ratified and approved in the Italian judicial system.

2.5. What are the consequences of exceeding required/reasonable processing time according to national rules or practice?

The consequences of exceeding the reasonable time-limit set for the handling and resolution of proceedings are, as mentioned above, the accusation of the Italian State for equitable compensation in favor of the party concerned, in application of what is provided for by Law no. 89 of 2001.

In order to ascertain the infringement, the court will consider the level of complexity of the case and, accordingly, the behavior of the parties and of the judge handling the case, as well as that of any other authority summoned to appear or in any way involved in the resolution of the dispute. The court will assess the amount of compensation due by establishing the financial loss caused by the period of time exceeding the reasonable time-limit for dispute resolution, or, in case of non-financial loss, also by providing for adequate forms of publicity of the claim of breach.

In extremely serious cases, a regulatory action can be brought against the magistrate responsible for the delay.

There are no provisions, whether in Italian law or in standard practice, for the possible reduction in the workload of magistrates who are responsible for such delays.

2.6. Can the parties and others make a complaint about the processing time?

If so to whom?

Any party claiming to have suffered financial or non-financial losses as a result of the infringement of the time-limit referred to in Article 6, paragraph 1, of the Convention for the protection of human rights and of fundamental freedoms shall be entitled to initiate action, as provided for by Law no. 89 of March 24th, 2001, by proposing an appeal for fair compensation to the legally competent Court of Appeal.

2.7. Are user surveys on processing time carried out?

If so, how often?

No specific surveys have been conducted on the delays or on the compliance with the time-limits for handling proceedings. The Ministry, however, performs periodical investigations at the courts.

Only the data relating to the number of sentences and prosecuted subjects due to the infringement of the reasonable time-limit for dispute resolution have been acquired. These data are gathered on an annual basis by the Ministry of Justice.

The repeated, serious and unjustified delay in filing a judgment constitutes breach of discipline.

3. Reduction of Caseload and Facilitating Court Procedures

3.1. Which means of reduction of caseload are used?

The Italian judicial system does not contain any general no-challenge clauses preventing the parties to a case from challenging the sentence at second instance, even though it is not in conflict with the Italian Constitution. This inevitably results in a larger number of appeals also at the Court of Cassation.

The objective of reducing the number of appeals before the Court of Cassation has been pursued for a long time, although it is constrained by the limitations set out in Art. 111 of the Italian Constitution according to which "appeals to the Court of Cassation in cases of violations of the law are always allowed against sentences and against measures on personal freedom".

Appeals in criminal proceedings can be deemed to be inadmissible strictly for formal reasons, whilst only judgments for payment of a sum of money are unappealable.

An attempt to reduce the workload was made in 2006, by denying the Public Prosecutor the right to challenge criminal judgments of acquittal; this provision was declared unlawful by the Constitutional Court.

Ordinary civil proceedings and proceedings before the justice of the peace provide for the non-reviewability of the judgment whenever the decision is deemed to have been taken in an equitable manner.

Several attempts have been made to reduce the number of appeals before the Court of Cassation.

A first attempt, dating back to 2006, provided for the obligation – under penalty of inadmissibility of the appeal – to formulate a clear legal query at the conclusion of each plea in law.

The provision, applied very strictly by the Court of Cassation and considered undesirable by lawyers and attorneys, was struck down in 2009.

The objective of reducing the work load assigned to the Court of Cassation is now pursued through the provision of a sort of "filter on Cassation", that is, a mechanism for

screening appeals entrusted to a special division of the Supreme Court, which has competence over the conduct of such preventive screening in closed session (that is, non-public hearing).

In order to enhance the value of "precedent", the appeal was to be declared inadmissible: 1) in case it did not provide evidence capable of affecting the orientation of the Court's case-law; 2) whenever there is no infringement of the principles governing fair trial.

The use of alternative dispute resolution instruments has recently grown in frequency, as the Italian legislator introduced the institute of mediation in ordinary civil proceedings, already provided for in juvenile criminal proceedings.

Civil mediation, which was introduced for a specific deflationary purpose, can be optional in case of agreement between parties or compulsory in certain given cases (such as those concerning the following: apartment buildings, rights in rem, succession arrangements, lease, compensation for damage caused by motor vehicles, etc.). Under the latter circumstances, mediation must be conducted under penalty of the case being unprosecutable.

Compulsory settlement in the course of proceedings are provided for, also generally, in ordinary civil proceedings and in divorce proceedings.

Furthermore, particular settlement procedures are provided for in labor proceedings, also having recourse to trade union associations and settlement commissions external to the courts; other forms of dispute resolution, through the method of settlement and arbitration, are identified by collective bargaining.

None of the Italian Courts adhere to the (N.d.T.: stare decisis) principle whereby a decision taken by another magistrate is binding, not even in the case where such decision is given by the same court or by the Court of Cassation. Only in judgments before the Court of Cassation is the principle of binding precedent adopted, that is, in the event that a division of the court disagrees with the principle proclaimed by the court en banc, the former is legally bound to refer the appeal decision to the latter.

3.2. Are any special easy procedures available?

The Italian judicial system provides for special rapid procedures in both civil and penal proceedings.

In civil cases the court may, in the course of the proceedings, issue an order for immediate measures that are enforceable even before the dispute has been settled, such as an order to pay the sums not contested by the parties, an order for payment of sums due, for the

handing-over of property or for the concealment of assets, within the limits of the evidence deemed to have been adduced. By special procedures involving a summary examination the civil court may do the following: at the creditor's request, issue an *inaudita altera parte* decree for the payment of a sum of money, of a specific quantity of fungibles or for the delivery of specific chattels, which can always be relied upon by the debtor; take precautionary measures, when a prima facie case of the applicant's request has been shown or when there is a risk of damage; take urgent measures, when there is a risk of imminent and irreparable damage being caused to the right claimed; take measures, under the same urgent circumstances, to protect the right of possession, accepting any requests of reinstatement and retention of possession.

The parties may also, after meeting certain requirements, settle their disputes by arbitration rather than in the national courts.

Special procedures are provided for also in criminal proceedings. In a number of them, shorter trial times are compensated by a reduced penalty for convicts (as is the case in the fast-track trial, plea bargaining and criminal decree of conviction). These are: the fast-track trial, in which, at the defendant's request, the trial is resolved in the preliminary hearing, using any procedural documents produced until that time; the giudizio direttissimo, which does not include an adversarial stage nor a preliminary hearing, given that the defendant arrested in flagrante delicto is tried immediately; plea bargaining, where a penalty agreed upon directly by the parties is applied without the need to acquire further evidence; the immediate trial, in which, following the Public Prosecutor's decision unchallenged by the defendant, or at the latter's request, an adversarial stage is set without going through a preliminary hearing; the criminal decree of conviction, which is characterized by the absence of cross-examination and the issue of a decree of conviction *inaudita altera parte* at the Public Prosecutor's request, in the case where only a fine is to be imposed on the defendant.

3.3. What simplifications of ordinary procedures are applied?

The possibility to hear written evidence has recently been introduced in the Italian Code of Civil Procedure by a new regulation providing for the possibility to submit written evidence if the court (after having heard the parties and with regard to the subject of the case) so decides. The filing of written evidence is not, however, allowed in criminal proceedings, with the exception of evidence acquired by the defendant after the defense investigations have

been carried out; in such case, these are only steps taken by the parties which do not have the evidential value inherent in the evidence taken by cross examination of the parties.

The purpose of the taking of evidence in criminal proceedings by videoconference is not to simplify the ordinary procedure, but rather solely to guarantee the safety of the witness, recourse to which is normally made in trials involving defendants accused of participating in Mafia-style organizations.

3.4. Give examples of practices used within ordinary procedures to speed up ordinary procedures.

A good example of the best practices adopted in ordinary procedures for the purpose of abbreviating them is that of the so-called hearing protocols.

Such agreements have in fact been stipulated in many courts and approved by all the categories concerned (hence also by lawyers), which regulate the procedures for carrying out procedural activities during a hearing. Several aspects are regulated by the latter, among which, by way of example: the keeping and preparation of hearing registries, the time schedule of hearings, the time-window for the handling of cases, the procedures for substituting attorneys and the adjournment requests.

Many programmes for the organization of the courts were designed directly by the single courts, as part of the regional organisational programmes funded by the ESF, with the aim to digitalise court records. All these projects are presently underway.

“Informatic desk points” have been set up at several courts to improve the service delivered by Italian justice in its dealings with the public.

Other examples of best practices include the signing of agreements between courts, universities and the Consiglio dell’Ordine degli Avvocati providing for various forms of collaboration between young graduates and lawyers and the magistrates or courts. These forms of collaboration are unofficial.

Furthermore, ample experimentation was conducted on the telematic transfer of certain phases of the trial, pending its wider application to the management of the complete trial process.

Other experiences reported by a number of courts provide for the telematic communication of notices of the clerk of the court relating to civil proceedings and the

digitalisation of records of first instance decisions, including the posting on the web of information on first instance rulings.

4. Increase of Capacity and Improvement of Processing

4.1. Do you try to limit processing time by an increase of courts or increase or reallocation of judges or cases?

In Italy, no attempt has been made to date to shorten trial times by increasing the number of courts, whilst ample discussion is devoted to a number of legislative measures designed to eliminate the smaller courts by integrating them with larger ones with the aim to transfer magistrates to the courts with a heavier work load.

A redistribution of magistrates was carried out in 1999 by assigning a larger number of penal affairs to single-judge courts, whilst the courts en banc, made up of three magistrates, had competence solely over more serious offences.

By law of 2001 the new figure of district magistrate was introduced, who are responsible for substituting their Court of Appeal district colleagues who are on leave for any one of the following reasons: illness, pregnancy, maternity, precautionary suspension from office awaiting criminal or disciplinary proceedings.

For the purpose of providing temporary support to courts in difficulty, a number of inter-district substitution institutes were also provided for – that is, by assigning magistrates from other Court of Appeal districts – as well as in-district substitution – that is, by assigning magistrates from the same Court of Appeal district – in cases of serious work overload. The substitution occurs at the request of the persons concerned or, in the alternative, on their own motion.

There are times when the number of competitions for admission to the judiciary are increased, with the aim to increase court staff. Various solutions have been proposed, including the re-employment of already retired magistrates.

The redistribution of cases was laid down by law strictly for civil proceedings, by introducing the so-called “temporary” divisions. Through the latter, non-professional single-judge courts (and the so-called Honorary Judges) assumed competence over older and less complex cases. This experience, which is now concluded, did not entirely fulfill its primary aim to reduce the work load of professional magistrates.

No other proposals for the redistribution of cases have been made nor are they legally provided for, although in practice the head of a given court, when faced with a difficult situation, may decide on its own motion to assign any given case to other magistrates within the same court.

4.2. Do you try to limit processing time by taking on assistance from deputy judges, trainee judges, or juridical assistants?

Honorary magistrates do not assist career judges; rather, they have competence over specific matters as provided by law.

In addition to the figure of Honorary Judge, who is no longer operating, there is that of Honorary Judge of the Court, who has competence in the civil and penal fields solely over cases referred to a single judge. Their term of office is three years, renewable for another three-year term, and they are paid an amount by way of attendance fees for each hearing held.

The most prominent figure of honorary judge is the justice of the peace, who has competence by law in the civil and penal fields over cases of lesser value and importance.

The justices of the peace are selected in accordance with very strict age and skill criteria and must undergo a three-month training period in the civil and penal fields. Justices of the peace are paid a fixed salary in addition to an indemnity based on the number of issued measures. Their term of office is four years, and can be reappointed twice.

Trainee magistrates carry out their activities under the guidance of the court to which they have been assigned, and are not empowered to take any decisions autonomously. They prepare judicial measures and make single submissions at the hearing, such as, by way of example, the taking of evidence. Their assistance does not actually shorten trial times, also on account of the fact that the courts to which they are assigned dedicate considerable time to their training.

The Italian judicial system does not provide for a figure in charge of assisting or collaborating directly with the magistrates.

4.3. Do you try to limit processing time by facilitating processing of cases?

In Italy, in the larger courts, there are divisions which are specialised in dealing with specific matters, especially in the civil field (for example: labor, industrial and intellectual

property, bankruptcy, lease and agrarian agreements). This undoubtedly sound procedure, at times laid down by law, did not however quite deliver in terms of shortening trial times.

No legislative measures whatsoever have ever been taken to reduce the time required to carry out oral hearings.

The practice of abbreviating the grounds for judgments has been gradually and widely adopted by magistrates, specifically for the purpose of shortening trial times. At times, the same judge will prepare preprinted forms to be used for the resolution of simple and serial cases (as is the case in the penal field to give grounds for the so-called "plea bargaining", or in the civil field to give grounds for separation and divorce cases, or cases concerning social security and welfare matters).

In some cases, a set of standard techniques for the formulation of judgments are also adopted within the same court.

Information technologies are widely used by all Italian magistrates, both in the evaluation and decisional phase of the trial and in that related to the actual formulation of the judgment.

It should also be stressed that there is an increased awareness, both on the part of the legislator and of the magistrates and prosecutors, of the use of information instruments, as a means for shortening trial times, thus increasingly enhancing the possibility of adopting the instruments of the so-called telematic process.

The latest legislative innovations, although still in the experimental stage, have facilitated the launching of the digitalisation of the civil and criminal process, providing for the obligation to serve any and all communications and notices via electronic means through the use of certified e-mail.

4.4. Do you try to limit processing time by giving secretary or juridical assistance to individual judges?

No, the possibility of giving secretary or juridical assistance to individual judges has never been provided for. This is one of the most frequent requests made by the Associations representing Italian magistrates to the political leaders.

4.5. Do you try to improve court proceedings or increase the capacity of courts by any scientific, experimental or technical project?

No, there are no scientific or experimental projects in Italy aimed at increasing the capacity of the courts in handling lawsuits more efficiently.

The recent reform of the Italian judicial system has provided for the granting of wider powers to the heads of the courts, who are now also responsible for the administration and management of the financial resources made available to them.

The division of jurisdiction between the magistrates of the same court is set out in the so-called "lists", drawn up by the head of the court and approved by the High Council for the Judiciary. Such lists, valid for a three-year period, lay down the procedures for organizing the judicial activities to be carried out at a given court. In particular, they define the court organizational structure, including the various divisions, the individual magistrates assigned to the latter and the criteria for assigning judicial cases.

5. Other initiatives

5.1 Have other initiatives concerning timeliness been undertaken or are they contemplated?

No, there are no other initiatives currently underway in Italy concerning timeliness. A real interest on this issue is however growing, especially after the principle of reasonable duration of the process was introduced in the Constitution (Art. 111 of the Italian Constitution). In other words, an attempt is made to abbreviate lengthy processes by developing and promoting best practices capable of shortening the time needed to settle a dispute.

The greatest hindrance in achieving this objective has been the huge load of processes already pending before the Italian courts (the bigger backlog is in the civil courts). In fact, finding a solution to lengthy trials is not an easy task, especially when, even before such innovations are implemented, there is a huge backlog of cases which is very difficult to reduce.