THEMIS 2012

(Erfurt, 14th – 18th May 2012)

MAGISTRATES' ETHICS AND DEONTOLOGY

Justice delayed is justice denied

Can magistrates' ethics and deontology play a role in addressing unreasonable delays in delivering justice?

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I. Justice delivery in a reasonable time as an internationally recognized principle. It is undisputed that promptness in delivering justice is a fundamental aspect of a fair trial, as stated by key international standards, including ECHR[1] and more recently the EU Nice Charter of Fundamental Rights[2]. This principle has been spelt out over time by many judicial decisions[3], with a significant role being played by the Strasbourg Court in its interpretation of article 6[4] of the European Convention on Human Rights, that enshrines the right to a reasonable length of trials[5]. Both civil litigants and criminal defendants must be protected against excessive delays in legal proceedings, as delays may jeopardize a judicial system's effectiveness and credibility[6].

The Court has often stated that reasonableness depends on the specific features of each case. The ECHR distinguishes thus between justifiable judicial delays due to case complexity and necessary accommodation of parties' needs, and unjustified delays that originate from poor case management or lack of judicial resources[7]. When deciding whether a delay is reasonable, the court will examine factors such as the complexity of the case, the applicant's conduct and the manner in which the matter was dealt with by administrative and judicial authorities.[8] Complexity stems from a number of factual circumstances that influence the way the case is handled and the timing of each case. In criminal cases complexity may affect investigation and/or trial phases and arise from the number of defendants, the type of crime, the type of investigation needed[9]. Complexity may arise from courts having to apply a newly enacted legislation[10]. In some cases, though, the ECHR found that the length of time itself was a sufficient parameter to find that the delay was unreasonable.[11] As the unreasonable length of trials constitutes in itself a breach of the right to

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[1] Article 6 of ECHR states that: "*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and imparticleial tribunal established by law*".

[2] Article 47: "*Everyone is entitled to a fair and public hearing within a reasonable time by an independent and imparticleial tribunal previously established by law*".

[3] Worth noting a recent decision by the ECJ on this matter, delivered on the basis of article 47 of the Nice Charter (C-385/07 Der Grüne Punkt – Duales System Deutschland GmbH vs. Commission of the European Communities). The Court highlighted that in the specific case delivery of judgment in a reasonable length of time was of particular importance as: "*infringement of competition rules, the fundamental requirement of legal certainty on which economic operators must be able to rely and the aim of ensuring that competition is not distorted in the internal market are of considerable importance not only for an applicant himself and his competitors but also for third parties, in view of the large number of persons concerned and the financial interests involved*".

[4] Connected to such right is the right not to be detained for an unreasonable time pending a trial.

[5] The ECHR has held that it is unrealistic to translate reasonable delays into a fixed number of days, weeks, months of years, or various periods depending on the seriousness of the offense.

[6] ECHR, H. vs. France (1989).

[7] In ECHR, Zimmermann and Steiner vs. Switzerland (1983), a period of three and a half years was held to be excessive for an administrative law appeal at a single instance as adequate steps had not been taken to deal with a backlog of cases.

[8] Suzanne Galand-Carval, The European Court of Human Rights Declares War on Unreasonable Delay, 1996 .

[9] For instance in investigating complex economic crimes, involving transnational aspects, cooperation with authorities in several countries may be required; this necessarily causes delays in investigations and evidence gathering.

[10] ECHR, Pretto and others vs. Italy (1983): the Court considered a period of three and a half years in civil proceedings not unreasonable. It held that, although there had been some avoidable delays, they did not amount to a breach of article 6.

[11] This happened for instance in the case ECHR, Milasi vs. Italy (1987), where criminal proceedings lasted almost ten years in a single instance; in ECHR, Baggetta vs. Italy (1987) where proceedings lasted thirteen years including the appeal phase, or ECHR, Capuano vs. Italy (1987), where civil proceedings lasted ten years. In the latter the Court found it unnecessary to closely scrutinize appeal proceedings (lasting four years) as such a period of time appeared as such excessive and followed earlier stages of proceedings which had lasted ten years.

fair trial, the Court stated the principle that domestic law should guarantee a separate legal procedure giving an effective remedy (including in terms of the amount of compensation awarded[12]) to those complaining about excessive length of proceedings; by failing to do so a State would violate ECHR article 13[13]. The Court also adopted a strict interpretation of what amounts to a reasonable length of trials in other types of cases where, for a variety of reasons, speed is crucial[14]. In such cases, even though authorities may not have caused undue delays according to ordinary standards, they may have failed to use the exceptional diligence necessary to ensure speed of trial[15]. Where delays are caused by parties, the ECHR does not take them into account in order to decide whether excessive length of proceedings amounts to a breach of article 6[16]. If delay is caused by a private party, though, the State may still be responsible if the court seriously failed to take steps to ensure timely proceedings[17]. Delays caused by heavy workloads and case backlogs may not be excusable if no measures were taken by the State to make Court workloads more manageable[18]. Such measures may include prioritizing cases on the basis of the legitimate interests of parties that are involved in the case.

If ECHR decisions have played a significant role in highlighting the importance of timely judicial proceedings and in defining what a reasonable length of a trial is, a very important role is played by monitoring and analysis of country situations at European level, in order to devise effective measures to solve the problem and spread best practices. The Council of Europe has made a substantial effort at monitoring and analyzing roots and causes of excessive length of trials. The European Commission for the Efficiency of Justice[19] analyzes length of judicial proceedings in European judicial systems and causes of delays; has through time suggested measures to improve efficiency[20]. CEPEJ also established the SATURN Centre [21]**;** it gathers information on member States' judicial timeframes[22] in order to support member States in implementing policies aiming to prevent violations of the right to a fair trial within a reasonable time. "Saturn" Guidelines for judicial time management states the need to individualize "*predictable and optimal*

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[12]ECHR, Tomasic vs. Croatia (2006)

[13] ECHR, Kudla vs. Poland (2000)

[14] For instance stricter requirements exist for child care proceedings, as time may be of particular importance for the child's welfare, for instance as certain decisions may become with time irreversible – ECHR, H. vs. United Kingdom (1987).

[15] ECHR, X. vs. France (1992),

[16] ECHR, H. vs. United Kingdom (1987)

[17] ECHR, Guincho vs. Portugal (1984)

[18] ECHR Martins Moreira vs. Portugal (1988)

[19] The European Commission for the Efficiency of Justice (CEPEJ) was established on 18 September 2002 with Resolution Res(2002)12 of the Council of Europe's Committee of Ministers, aiming at promoting respect for rule of law and fundamental rights in Europe. A special focus of the Commission is implementation of ECHR's Article 5 (right to liberty and security), article 6 (right to a fair trial), article 13 (right to an effective remedy), article 14 (prohibition of discrimination). Its mission is "*the improvement of the efficiency and functioning of justice in the member States, and the development of the implementation of the instruments adopted by the Council of Europe to this end".* The Council of Europe adopted a number of Recommendations on ways to ensure fairness and efficiency in delivering justice.

[20] It has for instance published a Compendium de bonnes pratiques pour la gestion du temps dans les procédures judiciaires, including a definition of "*predictable and optimal timing*" and a list of specific measures to contain the length of proceedings.

[21]Study and Analysis of Judicial Time Use Research Network, founded on 22 January 2007.

[22] It analyzes types of cases, waiting times in the proceedings in each country, existing guidelines for judicial time management etc. and promotes the adoption and/or revision of such guidelines where the need arises.

length" of each judicial proceeding, providing concrete suggestions to courts, judges and other professionals involved, States [23].

If timely justice is a right and an obligation upon the State, a difficult issue, however, is how to ensure a reasonably prompt justice without significantly reducing the quality of the judicial process, in an environment of insufficient and shrinking resources. Main factors at play are considered to be legislation – most prominently procedural norms – and resources. More recently another main positive force has however started to be taken in consideration, especially by European States, where the strain of increasing caseloads is widely felt on judicial systems (although to differing degrees in each country): the proactive approach by judges and prosecutors to time and case management. Such proactive behavior has come to be identified as a judge's ethical duty – and sanctioned disciplinarily. While this new vision highlights an important factor that has always existed, albeit often ignored, at the same time a risk arises to overplay what can be achieved by judges' "willpower" and time management alone, if serious "macro" issues about legislation and resources are not properly addressed by the State. Our thesis is that a renewed focus on judges' and prosecutors' individual and collective proactive approaches to delivering justice has an important role to play in addressing this serious issue. However, it is exactly in the most difficult situations, where delays are pathologic and endemic, that such role should not be overestimated and that ill-conceived attempts at "enforcing" judicial ethical rules relating to time management through heavy-handed and imbalanced disciplinary measures should not be attempted, as it is important to avoid creating or exacerbating other problems, such as a decrease in the quality of decisions or a significant threat to judges' and prosecutors' independence and impartiality.

II. Ethics, deontology and discipline are at the core of contemporary reflection on the role of justice in a democratic society. Ensuring ethically sound behavior by members of the judiciary is often a politically significant question, that relates to the balance of power between the executive and the judiciary, in every country. This balance is forever shifting in time, although goals remain unchanged: increased confidence in justice, in prosecutors and in judges, justified by appropriate and transparent behavior both at individual and collective levels. Confidence in justice finds today its justification in transparency, in antithesis to pre-democratic societies' focus on secret and discretion. To achieve this goal jurisdiction must be open and transparent: civil society needs justice and, at the same time, needs to see and to criticize it. Thence a

[23]Saturn Guidelines were adopted by CEPEJ in December 2008. They state: "*The judicial bodies should be organized in the way that encourages effective time management. Within the organization, the responsibility for time management or judicial processes has to be clearly determined. There should be a unit that permanently analyses the length of proceedings with a view to identify trends, anticipate changes and prevent problems related to the length of proceedings*". They also affirm that: "*The duty to contribute to appropriate time management is shared by all the authorities responsible for the administration of justice (courts, judges, administrators), and all persons involved professionally in the judicial proceedings (e.g. experts and lawyers), each within his competences*".

central role of ethics and deontology in every discourse and practical approach to justice in a democratic society.

First, though, we need to analyze what these two words mean. When we talk about ethics we refer to an attitude, an intention that underlines a person's strive to act according to shared principles and core values, with the aim of achieving the common good. Deontology is a body of principles which guide this intention and must be implemented in delivering justice. If ethics remains in the internal sphere of each individual, deontological rules take ethical values into the external realm of his/her professional action. However, bodies of deontological rules also often include rules relating to "professional duties", moral and legal; they are partially the result of technical regulation, which includes processes of control and sanctions, mostly in the disciplinary realm. This is probably due to the fact that, in a secular, multicultural society, often the only point of convergence is considered (rightly or wrongly) to be the law. Deontology, thus, becomes a basis for disciplinary, legal regulation of behavior; rules may be used as tools to sanction specific behavior[24]. However, we should not forget that the relevance of deontological principles does not coincide with their disciplinary significance: they have a positive role to play as an ethical guidance tool for judges and prosecutors to proactively interpret their respective roles, a framework that impinges on that area of discretion and initiative that belongs to each judge and prosecutor[25].

The Council of Europe's model, developed over the last 10 years, moves from the assumption that respecting deontological standards for judges and prosecutors counterbalances their wide-ranging powers. It rests on the distinction between ethical and disciplinary dimensions of deontology. Therefore deontological standards should not coincide with an exhaustive and pre-defined list of prohibited actions to be sanctioned through a disciplinary system. They are self-control rules; they are based on the assumption that law implementation is not a mechanical process and implies the use of a discretionary power; such discretionary power is, for judges, a source of responsibility towards society. In this context it is crucial that deontological principles evolve from judges' professional bodies, as they can not be imposed by others (legislative or executive powers) but embody ingrained values which are collectively shared by the professionals involved[26]. This is the approach adopted by the Magna Charta of European judges[27] as well as by the UN Bangalore Principles of Judicial conduct[28].

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[24] Some countries, for instance Russia, have adopted deontological rules with a nearly exclusive disciplinary significance.

[25] This is the assumption underlining some of the most recent European standards. The Bordeaux Declaration, adopted in 2009 by the Consultative Councils of European Judges and Prosecutors (CCJE and CCPE) states it is crucial for an efficient and effective delivery of justice that all professionals involved share legal and ethical principles (Article10).

[26] CCJE, 2002 Recommendations.

[27] Council of Europe's Consultative Council of European Judges, Magna Charta (2010), article 18: "*Deontological principles, distinguished from disciplinary rules, shall guide the actions of judges. They shall be drafted by the judges themselves and included in their training*"

[28] It is worth noting that the Bangalore Principles (proclaimed in The Hague in November 2002) were first elaborated by a group of common law lawyers, then modified and enriched through dialogue with and amendments brought by a group of civil law lawyers and practitioners. As such they embody a common approach and philosophy that straddles the traditional European divide between civil and common law traditions.

In this context it is important to ascertain whether there is a role to be played by the implementation of deontological rules by judges in solving the problem of justice delayed. European and international approaches to judges' deontology have recently started to focus on such role, as specific links are explored between judges' ethics and efficiency and effectiveness of justice. Provided that States play their roles in ensuring sufficient resources and appropriate procedural rules, it is a judge's duty to act in a way to ensure timeliness in judicial proceedings. Amongst the implementation measures of the UN Bangalore Principles it was deemed a duty of the judiciary to "*institute modern case management techniques to ensure the just, orderly and expeditious conduct and conclusion of court proceedings*"[29]. A crucial role is to be played by active management of cases by judges, including through early setting of time-tables, continuous hearing of a case, rather than spreading it over several weeks, and pro-active control measures to defuse techniques used by parties to delay proceedings. The Council of Europe's Committee of Ministers issued a Recommendation in 2010[30] that shifted in focus compared to the previous one of 1994. A high emphasis was put on efficiency in justice systems; efficiency, i.e. the ability by an independent and impartial judiciary to produce quality decisions in a reasonable time, was considered the main challenge for European judicial systems[31]. In its chapter V, relating to efficiency of justice, seen as a corollary of the right to effective defense of a citizen's rights, the Recommendation states that every single judge has a duty to ensure an effective and efficient treatment of each case.[32] However, significantly the next paragraph clarifies that States are bound to devote the necessary resources to ensure an effective and efficiency delivery of justice and to enable each judge to act efficiently in full respect of the judiciary's impartiality and independence[33]. Similarly, the 2008-2009 ENCJ report highlights both the importance of promptness in delivering justice as a fundamental aspect of quality and effectiveness, and the equal weight in ensuring promptness played by legislation, which should not slow down proceedings, technical background (i.e. resources) and the attitude of judges[34].

In a matter such as reasonable length of judicial proceedings, it is clear that the effective play of deontological principles (intended as body of ethical rules compelling the judge to act at his/her best) cannot find an outlet if basic preconditions are not provided by the State. An environment must be created, made of reasonable and workable procedural rules, physical resources (people, goods and services) etc., within which

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[29] A document highlighting such measures was adopted by the "Judicial Integrity Group" at its Meeting held in Lusaka, Zambia in January 2010.

[30] Council of Europe Committee of Ministers, Recommendation CM/REC (2010).

[31] Explanatory memorandum on the draft Recommendation CM(2010)147, 17.11.2010.

[32] Recommendation CM/Rec(2010), article 31. "*Efficiency is the delivery of quality decisions within a reasonable time following fair consideration of the issues. Individual judges are obliged to ensure the efficient management of cases for which they are responsible, including the enforcement of decisions the execution of which falls within their jurisdiction*." .

[33] Recommendation CM/Rec(2010), article 32 " *The authorities responsible for the organization and functioning of the judicial system are obliged to provide judges with conditions enabling them to fulfill their mission and should achieve efficiency while protecting and respecting judges' independence and impartiality*." Article 33. "*Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently*. "

[34] European Network of Councils for the Judiciary, Judicial Ethics report 2008-2009.

a judge can and must deliver justice, not in a mechanical way but with the appropriate and deontology-driven discretionary power. This is even more important if one considers that, in a context of insufficient and diminishing resources, the need for sufficiently fast proceedings may clash with other aspects of quality-driven delivery of justice: guarantees for appropriate participation of parties involved in a proceeding, for instance; even more strikingly, high-quality procedure and decision. This is exacerbated by the ever increasing complexity of laws that need to be implemented. A judge working in an average EU country has to deal with multi-layered bodies of law, some of them based on conflicting principles or legal concepts: national law (at various levels: constitutional law, statutory provisions, regulations by the executive, jurisprudence), local administrative law (regional, even municipal), EU law, ECHR standards and Court decisions, international standards. This requires an effort (in terms of research, training, continuous updating, etc), unheard of until a few decades ago, that is highly costly in terms of individual and collective resources, including, most importantly, time. Thus it becomes more difficult, though strategic, to find a balance between speed and "technical" quality of delivery; a heavy emphasis on "speedy trials" may underplay the consequences on other quality aspects of proceedings being undermined in a resource-deprived environment. In other words, would a democratic society bear that, in the name of "fast justice", decisions are taken without sufficient respect for procedural safeguards or even insufficient study of legal issues? Where is the balance point, in the context of insufficient and even shrinking resources?

If we look at national deontological codes, we can see that the issue of the duty to ensure a reasonable length of trial as a precondition for effective justice is not prominent and is just beginning to be taken into account. In 1994 the Italian National Magistrates' Association adopted a Deontological Code[35], amongst the first of its kind in Europe[36]. In this first version the Code did not refer explicitly to a judge's duty to deliver justice in a reasonable time; however, in its 2010 updated version, a judge is required to "*do whatever is in his/her power to ensure a reasonable length of the proceedings*"[37]. Thus, in a country where unreasonable delays in judicial proceedings reach endemic proportions, the Code finds a specific role to play in judges' (and prosecutors') deontological strive to act so as to avoid unwarranted delays, whilst recognizing that there are limitations to what judges and prosecutors can do in this respect. Other European countries' codes devote some attention to the same topic: the Moldovan Code, for instance, states that every judge must carry out

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[35] The origins of such code are peculiar: the Italian Parliament in 1992 delegated the Government to adopt deontological codes for all public employees (Law 421/1992). In turn, the Government (Legislative Decree 546/1993) mandated the National Association of Magistrates to adopt a Deontological Code, for both judges and prosecutors, which was enacted in 1994. For a brief discussion on the debate on the constitutional framework of the Code's difficult birth, see Raffaele Sabato, "Il codice etico dei magistrati italiani: un esempio per l'Europa" in E. Bruti Liberati, L. Palamara (eds.) Cento anni di Associazione Magistrati, Ipsoa Wolters Kluwer, 2009

[36] Some European countries, many of them formerly countries "in transition" have adopted magistrates' deontological codes, such as the Czech Republic Slovakia, Moldova; Slovenia, which had adopted a code in 1972, renewed it as an independent country in 2001. Such codes are generally enacted by their respective representative Assemblies of judges, they are separated from a body of disciplinary rules and are often based on US codes' templates. Most countries have refrained from such tool and resort to other methods to ensure knowledge of and compliance with deontological rules by judges and prosecutors, for instance through training.

[37] http://www.associazionenazionalemagistrati.it/codice-deontologico.aspx

his/her judicial duty not just diligently, efficiently and orderly, honorably but also in a timely fashion[38]. Infrequent addressing of the issue may be related both to the relatively small number of States where deontological codes were adopted – in other countries a specific level of attention to this issue may be more difficult to detect - and to the relatively recent development of a discourse on efficiency and time management as deontological issues for members of the judiciary, as traditionally the focus was on impartiality, independence, and irreproachability of conduct. Moreover, while issues around resources have consistently been seen as central in solving the problems of justice where it is pathologically delayed, a new consciousness is developing around the need for result-driven and pro-active approaches by judges themselves on the issue[39].

III. Italy: a case study Most countries, "affluent" societies including most European ones, face problems arising from delays in delivering justice. The Strasbourg Court has over time decided hundreds of cases against some countries for failure to deliver judgments within a reasonable time. Recommendations have been issued over the years by the Council of Europe on measures to solve the issue at national levels. Compliance with such recommendations has not always been satisfactory.

Some countries have suffered from unreasonable delays in delivery of justice more than others, and Italy is a particularly telling case. In this context we, as newly appointed judges, believe it is useful to briefly highlight what are the causes of the problem, what have been the attempts to solve it and what role is envisaged and is played by judges' deontological rules and their implementation.

It is well known that the Strasbourg Court has over the years decided hundreds of cases against Italy for failure to deliver judgments (in criminal, civil or administrative cases) within a reasonable time. Such veritable deluge of ECHR decisions started in the 1980s[40] and continues virtually unabated to the present time. At the end of the 1990s[41] the Court observed that the frequency with which violations of this provision were found against Italy reflected a continuing situation that had not been remedied; it thus stated that such violation constituted a practice of systematic human rights breaches incompatible with the Convention. A political standpoint followed such judicial reiterated decisions: in 1997 The Council of Europe's Committee of Ministers stated that excessive slowness in judicial proceedings constitutes an important danger for the rule of law in Italy[42]. In 2000 the Italian State was threatened to see its right to vote in Council of Europe's Committee of Ministers curtailed or suspended until effective measures were taken to address the situation.

Calls for reform prompted some reaction by the State. In 1999 the Italian Constitution was modified, through the introduction of an explicit reference to reasonable duration of judicial proceedings amongst the

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[38] Moldova Judicial Code of Ethics, 2000. For information on this Code see for instance http://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/Ethics/Paper1_en.asp.

[39] For specific instances of judge-driven problem solving in this field see below part V.

[40] ECHR, Foti and others vs. Italy and Corigliano vs Italy (1982) in relation to criminal proceedings; Capuano vs. Italy (1987) in relation to the duration of civil proceedings.

[41] An explicit statement is to be found in ECHR, Bottazzi vs. Italy (1999).

[42] CoE Committee of Ministers, Resolution DH (97) 336 of 11 July 1997.

requirements of fair trial[43]. It is first and foremost a rule intended for the law-maker, who is bound to ensure that laws regulating judicial proceedings guarantee a sufficiently fast conclusion for them. The Constitutional Court[44], whilst observing that the right to a trial in a reasonable amount of time was already enshrined in article 24 of the Constitution, even before the 1999 amendment, recognized the importance of bringing the Constitution explicitly in line with article 6 of ECHR and of expressing more clearly one of the rights that are considered to be at the core of the key provision of article 2 of the Constitution[45]. In 2001 a new law was designed to improve the situation, including by introducing the right of every person involved in a trial to be paid compensation by the State in case of unjustified gross delay in the delivery of a decision[46]. Law no. 89/2001 ("Pinto Act") was introduced to stop the flooding of claims for excessive length of judicial proceedings in Italy to the European Court of Human Rights. It states the right of each person to obtain from the State compensation for economic and moral damage caused by the unreasonable excessive length of any trial. Courts of Appeal have jurisdiction over such cases; proceedings may be started within six month from the date on which the contested decision has become irrevocable, or even during the trial. Compensation is due irrespective of whether the appellant was victorious or unsuccessful in the main proceedings. This new law has not contributed to solve the problem of excessive length of proceedings[47]; rather it has increased the workloads of Courts of Appeal and the State's budget deficit[48]. Paradoxically claims are being lodged before the European Court of Human Rights because of excessive length of these compensation trials pending before Courts of Appeal; in other cases applicant to the ECHR complained about the low level of compensation paid by the Italian State[49].

Such provisions, as well as a number of legal reforms[50] have brought about only partial and mixed results[51], partially due also to prevailing external factors such as the exponential growth of case numbers from the late 90s[52].

What is the magnitude of the problem today? The problem in Italy of excessive length of trials, civil or

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[43] Amended article 111 of the Constitution states that "*the law ensures a reasonable length of judicial proceedings*".

[44]Constitutional Court, Decision 305/2001.

[45] Article 2: "*The Italian Republic recognizes and guarantees inviolable human rights [...]"*.

[46] Law no. 89/01 or "Pinto Act" takes its name from the name of the Parliamentarian who proposed it.

[47] D. Carnevali (2006), "La violazione della ragionevole durata del processo: alcuni dati sull'applicazione della 'legge Pinto'" in C. Guarnieri e F. Zannotti (eds), Giusto processo?, Milano, Giuffrè, pp. 289-314: This author conclusively states that: "*The Pinto Act is an expensive and useless placebo which has just tried to sweep problems under the carpet"*.

[48] M. Fabri, The right to trial within a reasonable time and short-term reform of the European Court of Human Right , 2009, pp.12

49 in ECHR, Cocchiarella vs. Italy (2006), and nine other Italian cases, the applicants complained about amount of compensation for unreasonable length of proceedings awarded under the Pinto Act. The ECHR found in these cases that the amounts awarded by Italian courts ranged between 8% and 27% of the amounts the ECHR itself awarded in similar cases originating from Italy.

[50] Amongst them are: several reforms of civil and criminal procedure; establishment of honorary members of the judiciary (Justices of the Peace and Deputy Honorary Prosecutors), whose introduction was intended to decrease the enormous caseload of judges and prosecutors, with mixed results; most recently the introduction of compulsory Alternative Dispute Resolution as a pre-condition to initiate civil proceedings in most subject matters; stringent disciplinarily relevant requirements in terms of "productivity" and caseload management for judges.

[51] For instance an immediate effect of the introduction of law 89/01 was a exponential increase to cases pending before Courts of Appeal which were charged of deciding the compensation cases, which caused increased delays for other cases pending before the same courts.

[52] For a brief discussion of factors at the root of the Italian situation see below part V.

criminal, has assumed truly alarming proportions. The average time to conclude first degree trials is 533 days, shorter only than in Malta, Monaco, San Marino and Bosnia-Herzegovna. The length of a criminal trial, from the first day of investigations to a the trial's opening hearing is on average 3 years for cases dealt with by one judge and 2.7 years for trials handled by a panel of judges. From the beginning of the trial to delivery of a decision further 302 days must be added for rulings handed out by single judges and 560 days for panel rulings[53].

A legitimate concern relates to whether this situation may be due to magistrates' workloads or even their industriousness. Thus, our investigation must compare the request for justice with the response that Italian magistrates offer, taking also into account that, due to the specificity of their role, data on man/hours on each case do not exist[54].

Statistical data provided by the 2010 CEPEJ's report[55] show that, in the civil sector, Italy's judges receive per year and per capita a number of cases second only to Russia.[56] Italian judges, faring worse only than Russian judges, manage to conclude 2,693,564 civil proceedings per year, compared to 1,645,161 in France, 1,324,577 in Spain and 1,069.043 in Turkey. Despite this considerable effort, the inflow of new cases is higher that the number of concluded cases; this has led to a backlog, as of December 2008 of 3,932,259 pending civil cases, with a growth of 149,104 cases during 2008 alone. The high number of new cases (ca. 1,1 million cases/year more than France, who has a very similar judicial system) is a conspicuous part of the problem, though by no means the only one. In the criminal justice sector matters may be even worse[57]. In Italy magistrates receive more requests for criminal justice per year than in any other European state[58]. Italian criminal judges somehow manage to keep up with this pace and "come in first place" in Europe in the number of concluded trials/year[59]. Nevertheless Italy remained worst performer in terms of pending procedures in the courts at the end of 2008 with 1,205,576 cases , followed by Turkey with 720.127 and Spain with 259,358[60]. If, by and large, Italian magistrates do manage to process a very high number of cases and almost keep up with inflow of new cases, it seems that causes of excessive length of proceedings must be found elsewhere[61].

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[53] This data was provided by the Supreme Court and refers to the past 15 years. Today the average length of criminal procedures reaches 240 days.

[54] Data are collected on inflow of cases per each judge/court and on output, mainly decisions; not on hours worked on each case; a forecast on time per case is deemed to be unfeasible as there are many variables that influence the amount of time spent on each case.

[55] Data provided in the 2010 Report were gathered officially in each country, detailing the situation as of 31 December 2008; at times inconsistencies in data collecting in individual countries are reflected in the report.

[56] Italian judges face 2,842,668 new civil cases annually; they are 1,774,350 in France, 1,620,000 in Spain and 1,117,212 in Turkey.

[57] A word of caution: the Report itself states that data comparison is more difficult in this sector due to the diversity of judicial systems.

[58] In 2008, 1,280.282 new cases were brought before the courts for "severe infractions"; in Turkey, which holds second place, new cases were in the same period 796,920; in France 610,674 and 496.855 in Poland.

[59] With 1,204,982 cases defined compared to 758,610 in Turkey, 618,122 in France, and 499,014 in Poland.

[60] Please note, though, that France did not disclose the number of pending criminal trials.

[61] For an analysis of the issue on the basis of CEPEJ's report 2010, G. PAVICH," Spunti di riflessione sul rapporto Cepej", Critica Penale, 2010, vol. 2/3, 2010, pp. 79 ff..

IV. Causes of excessive length of trials . Factors influencing the length of a procedure are many: a critical one are procedural rules. Important issues arise, for instance, from criminal procedure rules which are designed so as to cause delays from the first hearing, as they force adjournment of hearings. Statistical data show that this happens in 69.7% of cases [62]; in a further 1.7% of cases the trial "goes back" to the phase of investigations, as the case has to be handed back to the prosecutor; only in the 28.6% of cases a decision is pronounced during the first hearing. Adjournments are the majority of the outcomes of hearings and this is due to, for the most part, omission or invalid serving of acts of the procedure[63].

One of the key factors of such state of play is the complexity of our notice serving system (relating also to summons to appear). Current method of notice serving is by delivery of a copy of the act by a court officer; only in case of emergency, can the judge (not the prosecutor) request that it be served by phone, telegraph, fax or email (although this is never possible when the person to be served is the defendant).[64] With progress in telecommunications as well as in related regulations, including in methods to ensure certainty of delivery, such as by certified email, notification systems could be simplified so as to save time and money[65]. As much as 7.8% of hearings are adjourned due to irregular serving of summons to the defendant[66]. It is a principle recognized at European level that the trial may start only if the defendant has received notice of the trial itself; therefore it would be advisable that summons to appear are served by police officers. Furthermore, at the moment the defendant's appointed defence counsel may legitimately refuse notification of summons[67]; in this case serving has not been validly carried out and must be tried in other ways. This causes a great number of serious delays and may be used on purpose by defendants to avoid the trial.

Regulations on invalidity of trial introductory acts are also a factor producing delays; although the current Criminal Procedure Code is based on a common law template, rules on invalidity of acts still stem from the previous Code, based on an "inquisition" model, where the judge at the same time leads investigations and decides the case. In an "inquisition" framework it is understandable that many and detailed rules were set forth to guarantee the defendant against invalidity of initial acts; such invalidity could be claimed for the first time in all phases of the trial, including before the Supreme Court, without any time limit. In an accusatorial system this set of rules serves no purpose, as the presiding judge has no ties with the prosecution and a number of measures are provided for to guarantee the defendant even before the

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[62] A.A.V.V., "Temi di discussione per la razionalizzazione e semplificazione del codice di procedura penale", La Magistratura, 1 /2, 2006, pp. 123 ff..

[63] The methods used to arrive to these conclusions was empirical and deductive. We began with the analysis of data from statistics prepared by the Rome Bar office in 2007. This analysis wants to reconstruct, in statistical terms, the various reasons for widespread adjournments affecting the average length of trials.

[64] Articles 148 and 149 of the Italian Code of Criminal Procedure.

[65] Solutions of shortcomings in legislation are often found by judges. Recently, the Supreme Court stressed that in emergency situations they must consider valid serving of summons to appear to defendants if there is evidence that they had knowledge of such summons, even if serving does not happen in the ways prescribed by law (Supreme Court, section VI, 10.2.2010, n. 244428).

[66] Serving of summons to appear is regulated by article 157 of the Criminal Procedure Code.

[67] Article 157, par. 8bis Criminal Procedure Code.

beginning of the trial. Preserving this set of rules in the current system causes significant delays and often an annulment of entire trials even after decisions by the Court of Appeal and the Supreme Court. A number of measures could be taken to overcome such problems; for instance the principle could be applied that if the act reaches its goal, as set by law, it is considered valid and its "formal" invalidity may not be taken into account.

A further cause of delays may be found in the principle whereby all evidence must be provided and discussed before the very same judge who will decide the case (principle of "immediateness"). If any change occurs, for instance due to illness or maternity leave of a single or panel judge, evidence acquisition must be undertaken again, unless all parties agree to consider valid evidence previously acquired. This rule does not apply to trials for particularly serious crimes[68] where oral testimonies' acquisition has to be repeated only if the new presiding judge deems it necessary for specific reasons; therefore evidence given before the previous judge or panel of judges may be used for decision without the need to acquire the consensus of parties. In these cases the law-maker prefers to privilege the principle of reasonable length of the trial rather than the principle of immediateness. The rule set for organized crime trials could be extended to all trials; there would be no Constitutional law infringement as the principle of "immediateness" is not constitutionally protected, while the duty to ensure a reasonable length to trial is legally binding after the introduction of art. 111 in the Constitution.

As far as civil cases are concerned, obstacles to a speedy trial may also be found in procedural rules: for instance, the judge has no discretionary power to speed up the proceedings, as s/he is compelled to respect statutory timeframes set by the Civil Procedure Code. Between the day in which the summoning act has been served to the defendant and the day of the first hearing before the Judge, at least ninety days (or, if summons must be served abroad, 150 days) must elapse in order to ensure the defendant's right to arrange his/her response[69]. At the first hearing, each party may ask for an adjournment of at least 80 days, in order to clarify claims and spell out evidence and, even if the judge considers the case ready to be decided, such delay must be granted.

V. Attempts at redressing the situation. Several attempts have been made at addressing the situation. Such measures may be classified as follows: 1) legislation aimed at modifying procedural or other norms whose implementation was considered amongst causes of delays 2) legislation aimed at ensuring a high degree of industriousness and "positive behaviour" from judges and prosecutors, mainly through disciplinary norms (and sanctions) 3) proactive initiatives by judges and courts to improve practices and find solutions

1) Changes in procedural law. As far as civil procedure is concerned, several interventions by the law-maker ensued from 2005 onwards, aiming at shortening trials. For instance, Law 80/2005, significantly

[68] For instance in trials for organized crime. Article 190 bis para.1 Criminal Procedure Code.
[69] Article 163-bis of the Civil Procedure Code.

concentrated the trial's first phase in a single hearing, where regular serving of writs and parties' appearance before the court is checked and the case starts to be discussed. Previously, these two activities were spread over two hearings, thus causing delay due to such mandatory adjournment[70]. After further amendments in 2009[71] every technical expert appointed by the judge must send his/her report to parties before filing the final version of the report. Parties may express their critiques or observation on the report; the final expert report filed in the Court's registry office must discuss such comments. This rule aims at preventing parties from obtaining adjournments of the hearing set after the deadline for filing the final version of the report and to enable the judge to have a comprehensive view, on paper, of parties' exceptions and the expert's replies to them. Furthermore, after 2009 judges must write more synthetic decisions, focusing on a concise explanation of reasons in fact and in law of the decision[72]. This is quite a remarkable innovation, as traditionally decisions were very long and detailed, as every step of the decision had to be motivated, in order to enable parties to appeal[73]; evidently such requirement implied a large effort by the judge on each case, irrespective of the complexity or importance of the case. In order to reduce Courts' workloads mandatory mediation has been introduced[74] : a party who wishes to file a case on matters included in a list set by law[75] must invite the other party to attempt an amicable settlement of the dispute before an accredited mediation body. The judge who is already invested with a case may recommend mediation also in cases where mediation is not mandatory; in such cases amicable settlement before a mediator is attempted if all parties agree. Mediation, as well as settlement promoted and attempted directly by and before the judge[76], may become valuable tools to decrease Courts' workloads, in line with European guidelines on efficiency of justice[77].

As far as criminal procedure is concerned, we cannot record equally significant legislative innovation. Discussions over substantive and procedural amendments to criminal law have been heated in recent years; unfortunately they've never progressed beyond reform proposals. The only "response" to problems relating to excessive length of criminal trials came with disciplinary provisions[78], along with a few organizational measures which will be addressed in the following paragraphs.

2) Monitoring judges' work and disciplinary measures Through a reform of Judicial Regulations[79] a new

[70] Articles 180, 183 and 184 Civil Procedure Code.
[71] Article 195 Civil procedure Code, amended by Law 69/2009.
[72] Article 132 Civil Procedure Code; previously the judge had to also write in his/her decision a resumé of the trial.
[73] There are few limitations to the right to appeal decisions; as a precondition for their admissibility appeals must however state clearly what part of the judge's decision must be overruled.
[74] Legislative Decree 28/2010.
[75] Such as real estate, inheritance, leases, loans, claims for damages arising from road accidents or medical negligence or libel.
[76] Article 185 Civil Procedure Code.
[77] See CEPEJ 2010 Report on efficiency and quality of Justice, par. 6; Recommendation Rec (2002)10 of the Council of Europe's Committee of Ministers to member States on mediation in civil matters.
[78] Included in so called "Pinto Act" see above part III.
[79] This is a set of legal rules governing the overall set up of the judiciary.

system of evaluation of magistrates' work was introduced [80]. Magistrates' professional performance is considered a preliminary condition necessary to ensure efficiency and quality in the administration of justice[81]. All magistrates are subject to a periodic evaluation every 4 years for 7 cycles, i.e. until they reach their 28th year of service. Evaluation is undertaken by a commission within the CSM[82], who takes into account opinions expressed by the relevant judicial committee[83] and documentation arising from ordinary random inspection. Evaluation criteria refer to technical skills, industriousness, diligence and effort; "objective" parameters to rank performances are set by CSM to this end. The two factors that more directly impinge on "length of trials" are industriousness and diligence. The former refers to productivity, to be defined in terms of the number of cases dealt with, quality of decisions and case management, and time needed to conduct trials, compared to pre-determined parameters; such parameters are individualised according to specific features of each sector and, within it, each specialised field. Specific features of the Court where the judge works, such as organizational and structural conditions, as well as the degree of cooperation of each judge in addressing common problems in the office must be taken into account[84]. Individual performance is compared with average time in completing proceedings, similar in type and complexity, drawn from statistics compiled each year. Diligence is defined as "devotion" ; reference is made also to punctuality in respecting deadlines for filing decisions. Evaluations do not result in compilation of a classification list amongst magistrates of the same level, like in other European countries[85]; rather, evaluation may result in a "positive", "not positive", and "negative" overall assessment. "Negative" and "not positive" assessments may lead the magistrate to losing the right to periodic wage raises for two years; with a second "negative" assessment, s/he is suspended from service.

At the level of disciplinary responsibility of the magistrates, reform of Judiciary Regulations[86] introduced in our system the offence of unjustified delay in undertaking activities relevant to the judicial function[87].

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[80] D.Lgs. 160/2006, as modified by L. 111/2007. For an in-depth reflection on the reform see G. Federico, Ordinamento Giudiziario. Uffici giudiziari, CSM e l'autogoverno dei magistrati, Padova, Cedam, 2008.

[81] The need for a periodic evaluation of magistrates' work is recognised Europe-wide. In France evaluation is undertaken by means of self-evaluation coupled with assessments by the Head of Court and the President of the Court of Appeal or the General Attorney. Positive evaluations may conduct to a faster career progression. In Germany evaluation may be done only so as not to affect the judge's independence; evaluation relates to technical skills, character, social behaviour. The Head of Court expresses a synthetic opinion through formulas drawn from a pre-determined scale from "insufficient" to "average" and "exceptional". In Spain evaluation takes place only if a judge wants to progress from first degree or Appeal magistrate to Supreme Court Judge. In Portugal the system is very articulated and it is based on the results of periodic inspection.

[82] Consiglio Superiore della Magistratura (Supreme Judiciary Council), the self-governing national body provided for by the Consitution.

[83] Judicial Committees are established locally in the office of each Court of Appeal; they deal with day-to-day matters falling within the remit of the judiciary's self-governing bodies. They are made up mainly of elected representatives of magistrates and a few members of legal professions.

[84] CSM Regulation no. 20691 of 8 October 2007.

[85] In countries such as Germany and France periodic evaluation results in a classification list for those receiving an overall positive assessment; for an analysis of evaluation systems in Germany see G. Federico., "Recruitment, professional evaluation and career of judges and prosecutors in Europe Austria ,France, Germany ,Italy, The Netherlands and Spain", in Lo Scarabeo, Bologna, 2005, pp. 135 ff..

[86] Currently, the disciplinary responsibility of ordinary magistrates is regulated by D.Lgs. 109/2006.

[87] Article 2 , para. 1, letter q) D.Lgs. 109/06 refers to repeated , serious and unjustified delay in undertaking acts; it qualifies as "*not serious*" those delays that do not exceed three times the terms set by law for completion of an act. See S. Erbani,"Gli illeciti

Typology of delays are the following: a) delay in the compilation and filing of decisions, in violation of specific terms; b) delay in managing the trial (unjustified adjournment of hearings, postponement of oral evidence acquisition, which appears unreasonable etc.); c) delays as a consequence of wrong interpretation of substantive or procedural norms (for instance, interruption or suspension of a trial in cases not regulated by law). For delays to be disciplinarily relevant they must be repeated, seriousness and unjustified.[88] Delays are relevant in evaluating a magistrate's productivity and diligence, although, due to the specific features of a magistrates' work, defining productivity prompted an ongoing debate, as it is not identifiable through clear and measurable parameters[89]. Through analysis of decisions by the Disciplinary Committee established within CSM, a duty of "*reasonable self- organization of the magistrate*" emerges: the duty to act diligently is connected to efficient work organization along criteria of efficiency and reasonableness[90]. A magistrate's conduct is thus punished if repetitive and serious delays are unjustified, unless absolutely exceptional circumstances are proven to have influenced the situation.

What are disciplinary consequences if the unreasonable length of the trial has been already ascertained under Pinto Act before the disciplinary proceeding comes to an end? Analysing CSM disciplinary decisions it emerges that in no case a magistrate was sanctioned on the basis of a civil decision based on Pinto Act. Disciplinary proceedings are autonomous and decisions taken on the basis Pinto Act are not binding for the disciplinary trial[91]; for a delay relevant under Pinto Act to be disciplinarily relevant, a magistrate's fraudulent intent or negligence must be proven to violate an obligation placed upon him/her. Furthermore the judiciary must have been damaged in its credibility for disciplinary responsibility to ensue. In sum, the State takes responsibility for any dysfunction regardless of the magistrate's disciplinary fate. Some have used such data to conclude that international calls to increase magistrates' responsibility, a critical factor for the success of measures aimed at reducing delays in trials[92], are being ignored; on the other hand focusing exclusively on disciplinary measures as "the way" to minimize delay, without acting on legislation and on resources, appears to be unrealistic.

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disciplinari dei magistrati", in Ordinamento giudiziario: organizzazione e profili processuali, Milano, Giuffrè, 2009; D. Cavallini "I ritardi dei magistrati nell'adempimento delle loro funzioni", in Gli illeciti disciplinari dei magistrati prima e dopo la riforma del 2006, Cedam, 2011, p.199 .

[88] F. Sorrentino, "I giudici lumaca nel mirino della riforma. Linea dura sul ritardo negli atti d'ufficio", in Diritto e Giustizia, n. 37, 2006, p. 115.

[89] A special working group was created within CSM to study this issue in 2008, as well as "*case flow commissions*" locally.

[90] *Ex multiis* , Italian Supreme Court decision no.18698/2011.

[91] Article 5 of Law 89/01 states that the request for damages under Pinto Act is communicated also to the General Prosecutor before the Supreme Court. This communication is the procedural link between the trial for damages under Pinto Act and a possible disciplinary proceeding: the General Prosecutor may start disciplinary proceedings. S/he must start them only if a detailed indictment against a specific magistrate emerges from the communication. Rarely this happens as it is generally difficult to identify the magistrate (amongst the many who may have handled the case) « guilty » for unreasonable delays; it is also difficult to understand whether delays are reiterated, as reiteration relates to several trials and not one F. Sorrentino, "I giudici lumaca nel mirino della riforma. Linea dura sul ritardo negli atti d'ufficio", in Diritto e Giustizia, n. 37, 2006 p. 121

[92] M. Fabri, "Giusto processo e durata ragionevole dei procedimenti", in Carlo Guarnieri and Francesca Zannotti (eds.) Giusto processo?, Padova, Cedam, 2006, , p. 356 ff.. Also see Cepej, Compendium of best practices on time management of judicial proceedings.

3) Proactive initiatives by magistrates at devising best practices Since the early years of the new millennium, the Italian judiciary revealed awareness on the issue: its self-governing body, CSM expressed serious concern even before enactment of Pinto Law. It issued two Resolutions[93] containing recommendations and guidelines to Courts' managers and magistrates to undertake actions to ensure the reasonable length of judicial proceedings inspired by ECHR decisions recommendations by the Council of Europe's Committee of Ministers. As a result and in the belief that magistrates' initiative could play a decisive role in providing a long-term solution to the, the then President of the First Instance Court of Turin, set up the first pilot project on case management in Italy, named "Strasbourg Program"[94]. the Program was conceived as an "old" civil cases monitoring activity; such cases were grouped according to the number of years each of them had been pending and dealt with through to a special program to be complied with by the assignee judge, with priority over other cases. The Program soon became the "manifesto" of guidelines on dealing with "old" cases. The philosophy behind the Strasbourg Program has disciplinary and deontological implications: it prevents both judges and court personnel from being subjected to disciplinary proceedings or requests for damages under art. 5 of Pinto Act[95]. It also outlines new deontological duties of magistrates, to act as "case managers" to ensure a reasonable length to trials. Magistrates' management skills must be considered as important as their independence and impartiality. This principle is now reflected also in the Magistrates' Ethical Code of Conduct[96]. It includes organizational recommendations to magistrates: for instance, the judge should not allow any adjournment of the hearing upon request of defence counsels, unless it appears to be absolutely necessary for reasons that must be spelt out in the minute of the hearing[97]; s/he should minimize the number of hearings to examine the evidence, exercise the power to reduce the excessively long witnesses lists, refuse to accept witness evidence when the witness is summoned to confirm documents on which there is no disagreement amongst parties.

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[93]Resolutions 15.09.1999 and 6.07.2000 issued by the Sixth Commission of the CSM (which deals with Judiciary Reform and Administration for the he CSM), respectively in http://www.csm.it/circolari/0915_6.pdf and www.csm.it/quaderni/quad_116/116.pdf.

[94]The Strasbourg Program's aim to shorten the judicial timeframes and the means to pursue it are fully reflected, on a European Level, by the Saturn Guidelines adopted by the CEPEJ on December 2008. The Guidelines state the principle that time management issues must be approached as highly important as they have a strong influence on implementation of fundamental rights, such as the user's right of access to justice. Therefore time management must take into account the principle of equality, that may be compromised if the time management is not made in an impartial and objective manner. The original version of the Turin's program, dating back to December 2001 and updated in May 2006 is available on *www.diritto.it/osservatori/giustizia_costituzione/.../legge_pinto.pdf*; the latest version of the Program was published in December 2008; the program was extended to all First Instance District Courts in the Piemonte and Valle d'Aosta Districts. After reviewing results obtained through implementation of the program, the Court of First Instance of Turin was awarded a special mention within the "The Crystal Scales Justice Award-2006", by the Council of Europe in 2006; for a comment of the innovative aspects of the Program, in comparison with the Saturn Guidelines, see http://giacomooberto.com/studio_sul_Programma_Strasburgo.htm.

[95]Although Pinto Act states the liability of the State for damages, the State may in turn obtain redress by the magistrate involved through deduction of a fraction of wages for one year.

[96]Article 3 and Article 4 of the Ethical Code, November 2010; Article 3, states that: "*The magistrate carries out his functions with diligence and industriousness, striving to achieve an efficient, high-quality and effective response to the requests for justice*"; the last paragraph of article 4 states that "*the magistrate shall adopt proper organizational measures to pursue targets of efficiency in the judicial service*".

[97] This is an interpretation of articles127 and 175 of the Civil Procedure Code.

The results ensuing from implementation of the Strasbourg Program pilot scheme led to legislative changes, which extended good practice to all Courts at national level, for instance by introduction of mandatory compilation by the civil judge of a trial calendar[98] in the hearing when s/he decides on admission of evidence. This provision adopts the principle of judicial timeframes agreement, addressed by the Strasbourg Program and Saturn Guidelines[99]. The calendar must spell out dates of all subsequent hearings up until the time the judge decides the case. The deadlines set in the calendar shall not be delayed, unless serious reasons occur; if the judge fails in meeting the deadlines set in the calendar, it is now stated in law that s/he may incur in disciplinary liability[100]. This last provision has however prompted concerns, as unpredictable events may occur throughout the proceeding, thus causing a failure to meet deadlines[101]. Due to chronic understaffing of courts, it is possible that a magistrate may be called to help face a temporary (or permanent) crisis at Court level[102]. In such cases, will the magistrate be deemed responsible for failing to meet deadlines set out in the calendar or would such events be considered as "serious reasons" and deemed to be sufficient justification of the failure? It is desirable that future disciplinary proceedings activated under this provision will balance failure in complying with the calendar with the real-life working conditions, which may neutralize even the most brilliant management skills.

Court and case management issues, already addressed both in the Strasbourg Program and the Saturn Guidelines[103], have been also approached by the judiciary self-governing body (CSM) in its autonomous regulations implementing Judicial Regulations on Courts organization[104] . Regulation P. 21241/2008 stated that Heads of Courts, while drafting organizational proposal for 2009-2011, should carry out an analysis of Court workloads, with special reference to cases pending for more than three years, and account for the achievement of targets set in the previous organizational proposal, or explain the reasons in case of failure to meet set targets. These principles were reiterated in the Regulation of 2011[105]; Head of Courts must set priority targets for the 2012-2014 period; amongst priorities a plan must be drafted to close "old" cases and an organizational plan devised to achieve set targets. Thus the self-governing body appears to show sensitivity to the improvement of organizational profiles, as proper case management at Court Level is deemed to be a key measure to avoid delays.

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[98] Article 81 bis of the Civil Procedure Code Implementing Provisions, introduced by article 52 of Law 69/2009, thereafter amended by article 1-ter letters a) and b) of Law Decree 138/2011 converted into law by Law 148/2011.

[99] See Saturn Guidelines, par. B particle V, "*Timing agreement with parties and lawyers*" and Article 4 of the latest version of the Strasbourg Program.

[100] This disciplinary provision was added by letter b), article 1-ter of Law Decree No. 138/2011 converted into law by Law 148/2011;

[101] For instance: a witness may not appear at the hearing settled; a technical expert may not attend the hearing set for his/her appointment; parties may communicate an hitherto unexpected chance to reach a friendly settlement, while asking for an adjournment of the hearing, request which may appear to be reasonable.

[102] This has recently happened in small-size Courts where a large scale event produced a sudden inflow of new cases; for instance, when Parmalat company went bankrupt, Parma Court was suddenly faced with a large scale inflow of civil cases (as well as large scale and complex criminal proceedings);

[103] Strasbourg Program, version 2008, articles 1 and 2; Saturn Guidelines particle IV, Guidelines for court managers.

[104] Articles 7-bis e 7-ter of the Judicial Regulations (R.D. 30.1.1941 No. 12).

[105] Regulation 19199 of July 2011, which sets criteria for organizational plans to be spelt out by Heads of Courts for 2012-2014.

The Italian law-maker followed suit recently. A new law[106] states that Heads of Courts, within the 31st of January of each year, must draw up a program for the management of civil, administrative and tax proceedings; such plan must include measures to reduce loads of "old" cases taken by spelling out priority criteria that are homogeneous and objective. The program must also spell out what results were achieved in the previous year and explain the reasons in case of failure to meet them. It seems that an efficient justice service should be based on criteria similar to the management of businesses, through policies devised to obtain the best results out of resources available in a given moment in time.

As for criteria in setting priorities in dealing with criminal matters and priority setting in fixing hearings, one must remark firstly that the principle of mandatory prosecution set forth in article 112 of the Italian Constitution guarantees the prosecutor office's independence from executive power; however, it leads to an overload of criminal proceedings that may be hardly defined within a reasonable time. The law-maker tried to establish some objective criteria to identify proceedings to be prioritized. In 2000 the Criminal Procedure Code was amended[107] by identifying priority criteria defined through the nature of the crime[108], or on whether the defendant is detained before trial or is a relapsed offender. Priority is given also to "special procedures"; "immediate" trials[109] are prioritized over ordinary trials. Special provisions[110] also exist for trials for crimes committed before the 2nd of May 2006. As such crimes may be pardoned, the trials may be postponed in order to ensure priority treatment to proceedings listed in article 132bis of the Criminal Procedure Code.

Despite the importance of such organizational measures, we believe that efficiency in the criminal justice system may be achieved only through structural reforms to both substantive and procedural law: we will highlight some of our proposals below.

VI. Conclusions and proposals: Our analysis highlighted the significant contribution by the judiciary to ensure respect for each person's right to obtain a decision within a reasonable time. A renewed deontological focus on the importance of organizational skills for judges and prosecutors has ensued. Members of the judiciary have also acquired awareness, over the last ten years, that, when it comes to efficiency of justice, the principle of independence cannot be invoked as a justification for bad management: on the contrary, it must be balanced with the deontological and disciplinary duty to respect deadlines, targets and priorities and be subjected to constant monitoring on target achievement. Despite such efforts, a wide-

[106] Article 37 of Law Decree No. 98/2011, converted into Law No. 111/2011.

[107] Article 132bis of the implementation measures of the Criminal Procedure Code was amended by Law Decree No. 341/2000 converted into Law No. 4/2011, subsequently amended by Law Decree No. 92/2008 converted into Law No. 125/2008; in 1998 a previous amendment introduced through article 226 and 227 of Legislative Decree No. 51/1998 introduced a similar provision, which however applied only to cases introduced after entry into force of the law. The reform of the year 2000 introduced single judge rulings. Article 226 provides that priority treatment should be ensured to cases relating to serious offences; another criteria is danger for effective evidence gathering which may be caused by delays.

[108] Organized crime, violation of health and safety criminal norms laws, immigration are amongst priority matters.

[109] Article 453 of the Italian Code of Criminal Procedure;

[110] Article 2-ter of Law Decree No. 92/2008, converted into law No. 125/2008.

spread internal public opinion still associates distortions in justice delivery to magistrates' negligence; too often they are considered a privileged power group, mainly responsible for all delays in providing users with justice. As objective data gathered by CEPEJ reports keep telling a different story, especially on Italian magistrates' qualitative and quantitative standards of productivity, this opinion appears to be misleading and dangerous at the same time. While overestimating magistrates' responsibility in the failure to solve the problems of the justice system, it does not sufficiently highlights the role, in ensuring timely justice, that must be played by the State, which must create some basic pre-conditions to effectively deliver justice. At the same time this opinion undermines the public's trust towards the judiciary; its loss of legitimacy hinders achievement of the goal of building a society based on law and justice. We believe that further targeted actions should be undertaken by key actors such as law and policy makers. They have the power and responsibility to create an environment of rules and resources capable of enhancing the deontology-driven work of judges and prosecutors and of restoring public confidence in justice. Measures to be adopted should include the following:

A more efficient use of economic resources allocated to Courts should be pursued. The judicial system needs to have sufficient resources to cope with its workload in due time[111]. Although Italy has the highest State budget allocated to the judicial systems amongst countries monitored by the 2010 CEPEJ Report[112], the high number of small Courts[113] spread throughout the country disperses resources and causes inefficient use of resources. Moreover, the systematic lack of resources was worsened by the 6.9 % decline in the budget committed to Italian justice from 2006 to 2008[114].A further step towards a more efficient and more targeted use of resources may be represented by a provision introduced in September 2011[115] which authorizes the Government to reorganize the distribution of judicial offices so as to reflect geographical local distribution of population etc. and by abolishing small offices.

Human resources allocated to justice shall be increased[116]: numbers of employees in the Courts should be increased and non-permanent staff should be provided to support judges in tasks, such legal research and even writing minutes of hearings in civil trials, tasks that for the time being judges have to undertake themselves. First steps in the direction to create a "judge's office" have been taken through local Courts' agreements[117] with Universities and Bar Councils, whereby trainees are assigned to Courts' Offices to support the judge, while receiving in return training and benefits from hands-on experience.

Substantive and procedural reforms should be undertaken in the criminal law sector: the most effective measures to ensure the right to a trial within a reasonable time mainly rely on law-makers' initiatives.

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[111] A principle stated also in article 4 of the Bordeaux Declaration and Chapter II , par. A f the Saturn Guidelines.

[112] See CEPEJ 2010 Report, page 16;

[113]They are 1289 the second highest number in Europe after Turkey's (CEPEJ's 2010 report, table 5);

[114]See CEPEJ 2010 Report page 18 and 19; from January 2011 magistrates' salaries have also been reduced after introduction of Law Decree 78/2010.

[115] Article 1 of Law No. 148/ 2011.

[116]See CEPEJ 2010 Report pages 127-134.

[117] Such agreements, initially concluded on a voluntary basis, have now been regulated by law: article 37 of Law Decree No. 98/2011 converted into law No. 111/2011.

Deflationary measures shall be adopted, in order to reduce Courts' workloads and make their work more effective. As far as substantive law is concerned, the "decriminalization issue" shall be addressed as a priority: since the last "decriminalization law" was enacted[118], at least 310 new crimes or offences have been introduced in the Italian legal system. Both the Criminal Code and special laws include provisions on offences often punished with a fine only, or with mild custodial sentences; they are subjected to a short statute of limitation term, which neutralizes the effectiveness of the judiciary's response. However, the duty to pursue these crimes makes workloads much heavier and wastes energies which should be devoted to more relevant cases. Most of these smaller offences should be transformed into administrative offences[119], as they can be prosecuted by administrative authorities with the same degree of effectiveness. Recently the Italian Government drafted a Bill[120], where the decriminalization issue is approached.[121]As far as lesser offences are concerned, the Bill introduces suspensions of the trial with probation, a measure borrowed by juveniles' criminal procedure[122]. Reformers believe such measures to have an effect of considerable decrease in the number of trials to be brought to sentencing [123], as, in case of positive outcome of the probation period, the Court will declare the offence extinguished; many time-consuming procedural activities will be avoided. The draft Bill also introduces suspension of trial if the defendant cannot be traced[124]: this would bring the Italian State in line with ECHR decisions, whereby the right of the defendant to attend the trial shall be ensured as a corollary of the right to a fair trial enshrined in article 6 of the ECHR. Moreover, it will also have a deflationary effect on courts' workloads, as proceedings *in absentia* where the defendant cannot be traced are a considerable percentage of overall criminal proceedings. Furthermore, we deem it necessary to review statute of limitation rules[125] , which unreasonably compress the time available for trial, especially in complex proceedings with multiple defendants. As a consequence, most defendants and their counsels instrumentally use rules aimed at guaranteeing a fair trial, by recurring to delaying tactics or abusing of the right of appeal, in order to prolong trial times and ensure that the trial does not end with a conviction.

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[118] Legislative Decree n. 507/1999 declared that a number of conducts previously considered criminally relevant offences were not to be considered as such and therefore not pursued.

[119] For instance those punished with a fine only or alternatively with a fine or imprisonment.

[120]Draft Bill No.5019, which the Italian Minister of Justice presented to the Italian House of Representatives on 29th of February 2012.

[121]Article 3 states that offences punishable with a fine only shall be transformed- with some exceptions due to the sensitive nature of protected interests in some cases- into administrative offences; other offences punishable with custodial sentences or a fine, shall be decriminalized.

[122] Article 28 of Presidential Decree No. 448/1998.

[123]See the insights of the Pisapia Commission reform proposal of the Italian Code of Criminal Law established by Decree of the Minister of Justice on 30.7.2000, available on www.giustizia.it.

[124] Article 4 of the Draft Bill in comment;

[125] Rules on the statute of limitation are complex and cannot be dealt with in this paper; by and large one may say that, differently from what happens in most other judicial systems, time elapses from the date the offence or crime is committed and does not stop when judicial proceedings are started; rather, it continues to run during the trial, with the consequence that a trial may be before the Appeal or Supreme Court and be stopped at that stage due to the statute of limitation being applied.

Credible proposals have been put forward for a long awaited reform: whether anything will come out of them depends mostly from political will[126].

Loyal cooperation by all stakeholders: last but not least, we believe that solving the problem of delays in justice delivery cannot be achieved without loyal cooperation by defense counsels, who are key stakeholders. CEPEJ reports reveals that Italy has the highest number of lawyers amongst all monitored countries and one of the highest ratio compared to the number of inhabitants[127]: this is a situation deemed to be a cause for an increase in litigation and consequently in Courts' workloads. Lawyers could however have an important positive role to play; they could contribute by avoiding the use of delay tactics, promoting alternative dispute resolution means, persuading their clients to amicably settle their disputes whenever possible, promoting acceptance of conciliation proposals put forward by the judge during a civil trial.

Lastly, a beneficial role would be played by enhanced awareness amongst private individuals and professionals involved that they have a right to access to justice and that the right to a fair trial cannot be disjointed from their duty to cooperate towards a more efficient and effective judicial system.

[126] For instance a commission of prominent jurists has proposed a reform along the lines of relevant provisions in the French criminal system. See Recommendations by the Pisapia Commission reform proposal mentioned above.

[127] CEPEJ 2010 Report states that in Italy lawyers are 332,1 per 100.000 inhabitants (compared to 266,5 in Spain, 260,2 in Portugal, 75,8 in France) ; they number 32,4 per professional judge (compared to 25 in Spain, 14,5 in Portugal and 8,3 in France); overall they are 198.000, compared to 120.691 in Spain, 48.461 in France, 39.312 in Greece, 27.623 in Portugal.