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CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation of the CCJE Opinion No. 16
on the relationship between judges and lawyers
and the concrete means to improve the efficiency and quality of judicial proceedings

Replies from Italy

A. Professional ethics, conduct and responsibility of judges and lawyers

- Does your country have a Code of Ethics or equivalent for judges? (please specify)
Italy was the first, among European countries, to have a code of ethics for judges (and prosecutors). Reference to it is contained in Opinion no. 3 of the CCJE. For the background to the adoption of the ethical code, please see Italy's answer to the questionnaire in preparation of Opinion no. 3. The code was amended in November 2010, and the new version is available on the CCJE's website as an appendix to an article
[\(\[http://www.coe.int/t/dghl/cooperation/CCJE/Onenparle/Foro_italiano_Magna_Carta.pdf\]\(http://www.coe.int/t/dghl/cooperation/CCJE/Onenparle/Foro_italiano_Magna_Carta.pdf\)\).](http://www.coe.int/t/dghl/cooperation/CCJE/Onenparle/Foro_italiano_Magna_Carta.pdf)
- Does your country have a Code of Ethics or equivalent for lawyers? (please specify)
The movement in Italy for the adoption of ethical codes extended to lawyers. The original text was approved by the National Council of the Bar Organization during the session of April 17th 1997; several modifications were approved thereafter. The text in force may be found here:
[\(<http://www.consiglionazionaleforense.it/site/home/area-cittadino/codice-deontologico-forense.html>\)](http://www.consiglionazionaleforense.it/site/home/area-cittadino/codice-deontologico-forense.html)
- Does your country have any joint codes, rules and/or regulations concerning ethics of judges and lawyers? (please specify)
No. Please note that, due to the fact that judges and prosecutors belong to the same career in Italy, the ethical code for judges also applies to prosecutors; some specific rules apply to judges, and some apply to prosecutors.
- Does your country plan to establish codes, rules and/or regulations concerning professional ethics, conduct and responsibility of both judges and lawyers, or to develop the existing ones?
No.
- Does your country have any rules and/or regulations dealing in any manner with the issues of relations between judges and lawyers or is there any intention to establish such instruments in a joint manner for both groups (judges and lawyers)? If yes, please specify
No. Please note that both ethical codes of judges and lawyers contain rules governing relationships with the other profession.
- In your opinion, what are the main principles which should govern the ethics of:
 - judges ?
Independence and impartiality.
Integrity.
Diligence and obligation to keep professionally updated.
Social sensitivity.
 - lawyers?
Independence from the interests of clients.
Integrity.
Diligence and obligation to keep professionally updated.

B. Training of judges and lawyers

- Which are, in your country, the training institutions:
 - judges ?
The Italian School for the Judiciary
 - lawyers?
The National Bar Association
- Which kind of training curricula (initial and continuous training), in brief, do these training institutions have:
 - judges ?
Initial and continuous training.
Complementary training for newly recruited judges and prosecutors.
Common training with other professions (including lawyers); most courses are open to lawyers.
 - lawyers?
Training of candidates to the Bar examination (in local Bar Schools)
Some complementary training for newly recruited lawyers (in local Bar Schools)
A limited number of national events (please consider that lawyers in Italy are more than 240.000, so that a true continuous training for all is impossible); a system of "credits" (i.e. recognition of training offered by qualified Bar associations) has been used so far to guarantee access of lawyers to training; a new law has kept obligation of training, but has abolished the "credits" system.
- What is the duration of the initial training:
 - judges ?
18 months.
 - lawyers?
There is no initial training as such (i.e. training after recruitment); before recruitment, an "apprenticeship" period is mandatory in a lawyers' firm.
- Does the initial training include issues related to the professional ethics, conduct and responsibility of judges and lawyers, their relations with each other, as well as their co-operation with a view of fair and efficient conclusion of judicial proceedings?
Yes. However, the issue of the obligation of lawyers to co-operate with a view of fair and efficient conclusion of judicial proceedings is a debated issue, especially in criminal proceedings.
- Are there joint training courses for judges and lawyers?
 - If yes:
 - what is their content and duration?
See above for what concerns "opening" of courses for judges also to a limited number of lawyers.
 - are they mandatory for judges and lawyers?
No.
 - how are these courses funded?
Budget of the Italian School for the Judiciary.
 - If not, are they planned or discussed?
N/A.

C. Efficiency and quality of judicial proceedings

- Are there any procedural instruments to facilitate the interaction between judges and lawyers during the proceedings? If yes, please specify.
No judge-lawyers conferences are provided in the criminal proceeding. In the civil proceeding, a recent law has established the introduction of a calendar of hearings discussed with the parties.

- If not, how are they planned?
N/A
- How is the communication between judges and lawyers organised? Is it efficient? Are there computerised information systems to that end?
N/A
- Are there possibilities, procedures and mechanisms for judges and lawyers to come to an agreement concerning the judicial resolution of the case?
N/A
- If yes, is such agreement compulsory?
N/A
- Do they negotiate certain phases of the procedure?
N/A. See above as for the calendar of hearings. Practice of calendars also exists in criminal hearings.
- Are there any legal instruments (substantive or procedural) which potentially could be used by judges to ignore, to disregard or in any manner to avoid taking into consideration the claims, demands and arguments of lawyers?
No. As a matter of fact, judges are obliged to give reasoning on almost all arguments and requests of the parties.
- Are there any legal instruments (substantive or procedural) which potentially could be used by lawyers to delay the consideration of the case, or to affect in any way its fair and efficient resolution?
Unfortunately there are abuses of the following: disqualification of judges; coexisting need of lawyer to appear in other cases; refusal to agree on use of evidence gathered before other judges; submission of excessive lists of witnesses; changes of lawyers in order to obtain a delay to prepare defence; delay in presenting some procedural exceptions that could have been raised before, so as to have declaration of voidness of long procedural phases; etc. Many of the obstructing behaviours could be avoided by reforming the statute of limitations, as prescription of crime now runs also during the trial.
- To what extent does the successful interaction between judges and lawyers depend on objective factors such as legislation, structures and procedures? Are there any plans to improve them?
Successful interaction between judges and lawyers depends on objective factors such as legislation, structures and procedures. E.g., changes in procedures, not allowing obstructive behaviours, could improve relationships as both judges and lawyers would not discuss any longer on "debatable" issues. Also, existence of an "office of the judge", where lawyers could apply, would improve contacts between the two categories.
- To what extent does such interaction depends on subjective factors such as the patterns of behaviour of individual judges and lawyers, their understanding of their role and responsibility, and/or their wish to work together in order to improve the procedure, etc.?
Very little. E.g., if legislation allows obstructive behaviours, competition with the lawyers profession will oblige lawyers to adopt such behaviours in the interests of clients.
- How would you assess the relationship between judges and lawyers in your country? Are there any plans to take steps to improve the legal culture and to foster co-operation between judges and lawyers?
The relationships is good in general. However, especially in the past, there have been tensions between some associations of criminal lawyers and the judges' association.

D. Role of judges and lawyers in responding to the needs of parties
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- Please give some examples of co-operation between judges and lawyers in specific categories of cases (e.g. those ending in the peaceful settlement in civil claims).
The peaceful settlement in civil claims is the main example of this co-operation.
- Do you have any possibility in your country for lawyers to become judges, and vice versa? If yes, is it frequent?
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It is very frequent that judges have been attorneys at the beginning of their legal experience; some return to the Bar after retirement. The law provides that experienced lawyers are admitted as judges to the Court of Cassation.

- Can lawyers act, in your country, as deputy judges and if so, under what conditions ?
Yes. No specific limitations, other than the duty of abstention in cases to which they are associated. Justices of the peace are also frequently practising law at the same time, but not in the area in which they administer justice.

E. Judges, lawyers and media

- Have there been any reflections in the mass media as regards the relations between judges and lawyers and their co-operation?
Yes. The media have been often involved in spreading conflicts, when existing. Co-operation, instead, does not seem to be a matter of interest.
- To what extent lawyers and judges comment in the media on pending cases and on judgments?
Unfortunately it is very frequent that lawyers comment even pending cases, and even in talk shows which sometimes provide alternative views and ask witnesses etc. In some cases prosecutors have made personal declarations to the press (the law providing that press conferences are given by chief prosecutors or their delegates).