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**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

**Questionnaire with a view of the preparation of Opinion No. 15 on
specialisation of judges and courts**

Replies from Italy

1. Specialisation of courts

TYPES OF COURTS/JUDGES	(A) TICK THE BOX IF YOUR COUNTRY HAVE SPECIALISED COURTS/JUDGES IN:	(B) IF YES TO (A), TICK THE BOX IF THEY ARE SPECIALISED JUDGES/CHAMBERS WITHIN A GENERALIST COURT	(C) IF YES TO (A), TICK THE BOX IF THEY ARE A SEPARATE INSTITUTION WITHIN THE GENERAL ORGANISATION OF THE JUDICIARY	(D) IF YES TO (A), TICK THE BOX IF THEY ARE A SEPARATE JUDICIARY FORMING A SYSTEM OF THEIR OWN ¹	(E) IF YES TO (A), TICK THE BOX IF THEY HAVE A COMPOSITION INCLUDING LAY MEMBERS OR ONLY OF LAY MEMBERS ²	(F) IF YES TO (A), TICK THE BOX IF THEY HAVE A TERRITORIAL COMPETENCE DIFFERENT FROM GENERALIST COURTS (PLEASE SPECIFY IF APPROPRIATE)	(G) IF YES TO (A), TICK THE BOX IF THEY APPLY RULES (PROCEDURE, EVIDENCE, ETC.) THAT ARE DIFFERENT FROM THOSE APPLICABLE IN GENERALIST COURTS (PLEASE SPECIFY IF APPROPRIATE)
Family courts	X	X					X
Juvenile courts	X				X	X	X
Administrative courts/council of state	X			X		X	X
Immigration/Asylum							
Courts of Account	X			X		X	X
Military Courts	X			X		X	X
Tax Courts	X			X	X	X	X
Labour/social courts	X	X					X
Courts for agricultural contracts	X	X			X		X
Consumers' claims courts	X	X				X	
Small claims courts			X		X	X	X
Courts for wills and inheritances							
Patent/copyrights/trademark courts	X	X				X	X
Commercial courts	X	X				X	X
Bankruptcy courts	X	X					X
Courts for land disputes							
"Cours d'arbitrage"							
Serious crimes courts/courts of assize	X	X			X	X	X
Courts for the supervision of criminal investigations (e.g. authorising arrest, wire-tappings, etc.)	X	X					X
Courts for the supervision of criminal enforcement and custody in penitentiaries	X		X			X	X
Other, please specify:							

¹ For example, appeals on decisions of the specialised court of first instance is filed with a specialised court of appeals, council of state, etc.

² For example, composition including lay members: jurors, psychologists, engineers; please specify qualifications and system of recruitment. For example composition of only lay members: representatives of labour organisations, aldermen-échevins, justices of the peace, magistrates etc.

To what extent specialisation of courts is relevant in your system?

Specialisation of judges in Italy is relevant both to distinguish between separate judiciaries (ordinary judges and special – e.g. administrative – judges) and to establish different branches within the ordinary judiciary. In fact, jurisdiction is subdivided according to the subject matter and/or the type of legal relationship involved. From the organisational point of view, specialisation is relevant for the involvement of specialised judges (both professional and lay judges) in dealing with some relevant topics.

2. Specialisation of judges

a) Does the recruitment procedure take into account the specialised studies accomplished after the university diploma in law? Does it take into account the specialised professional experience? Please specify.

The recruitment procedure into the ordinary judiciary does not take into account specialised studies, whereas these are somehow relevant for recruitment into administrative and other special jurisdictions.

b) Are judges promoted to a higher court, or assigned to a post of chief judge, on the basis of a procedure giving relevance to specialisation? Please specify.

To some extent, promotions are dealt with by the High Council for the Judiciary according to criteria giving weight to specialisation (i.e. in social chambers, juvenile courts, experience in managing a court, etc.).

c) May a judge from a generalist court move to a specialised court, or from one specialisation to another:

<i>As to separate court systems:</i>	<i>Within the same court system:</i>
<input type="checkbox"/> by just filing an application examined on the basis of seniority and other criteria not including previous specialisation?	<input checked="" type="checkbox"/> by showing professional experience?
<input checked="" type="checkbox"/> by resigning from original post and participate to a new recruitment?	<input checked="" type="checkbox"/> by attending specialisation/reconversion courses?
<input type="checkbox"/> other?	<input type="checkbox"/> by passing a specialisation exam?

d) Does the system ensure that all judges may access specialisation (e.g. by giving them the appropriate information)?

Training offered by the High Council for the Judiciary at the national and at the local level provides for specialisation/reconversion. However, the amount of days/per capita of training involved are quite limited as compared to the changes of functions (e.g. civil-criminal) taking place in a unit of time.

e) What are for judges the criteria for access to specialisation?

f)

Judges already operating in a specialised sector are usually preferred in admission to specialised training. Most of specialisations, therefore, at an initial stage are acquired "on the field".

g) Do financial provisions exist helping judges to transfer to other towns where specialisation may be acquired?

There are no specific incentives toward specialisation. The incentives provided concern rather transfers to towns that are least requested for transfers, being irrelevant what the subject matter to deal with will be.

h) Are there access/reconversion courses to specialised functions:

- Yes, within the judicial training institute?

- Yes, organised by an institution different from the judicial training institute?

- No?

i) Are there training courses reserved only to specialised judges?

Yes.

j) Are exchanges of judicial experiences between different specialisations and/or generalist groups of judges organised?

Occasionally.

k) Do specialised positions exist in court for organisational purposes only (e.g., judge serving as spokesperson for the court; judge for the development of IT in court; judge co-operating with ADR services, etc.)?

In Italy we have some positions involving specialisations: e.g. judge for the development of IT- The existence of other positions is decided upon by the chief judge.

l) If yes, is there a specific training for this type of posts? Please specify.

Yes for IT management.

m) Do specialised judges have a higher compensation than generalist judges? Please distinguish, if relevant, according to whether the specialist judges belong to the same court system or a separate court system (e.g., in some countries, depending on the distinction between ordinary judges and administrative judges).

A relevant compensation difference exists between ordinary judges and higher paid administrative and other special judges, the latter being able to access to extra work (arbitration panels, etc.) which is usually deemed not appropriate for ordinary judges. Requests for unification of compensation by the judges association have remained unheard so far.

n) Are there special allowances, or benefits in kind, for specialised judges?

See answer to question l).

o) Are specialised judges entitled to a preferential access to higher courts? If yes, is such access limited to the specialisation field of the judge concerned?

Preference is given, limited to the specialisation field.

3. Specialisation of courts vis-à-vis specialisation of other actors of justice

a) Is the bar and/or professional associations of lawyers organised on a specialised basis in your country? Please specify.

The Bar is a unified body. Of course, free association of lawyers are sometimes organised according to specialisation.

b) In order to practice before specialised courts, have lawyers to be specialised (e.g. registered in special bar listings)?

No.

c) Is public prosecution organised on a specialised basis in your country? Please specify.

Special prosecutorial bodies exist to appear before some special judges (e.g. military courts or court of accounts). Also, specialised prosecutors' offices operate before separate institutions within the ordinary judiciary (e.g. juvenile prosecutors' office). As to the ordinary prosecution office, it is organised on the basis of specialised teams of public prosecutors, usually by types of crimes. Special sections dealing with mafia cases in the main prosecutors' offices are coordinated by a national specialised anti-mafia prosecution office.

In order to practice before specialised courts, have prosecutors to be specialised (e.g. belong to specialised department of the prosecution service)?

See answer to question c).

d) Are specialised judges assisted by specialised staff (clerks, technical staff, etc.) ? If yes, is this staff recruited on an *ad hoc* basis?

As to the ordinary jurisdiction, once more, specialisation of staff is acquired "on the field" and there are no separate recruitment procedures. Some staff in juvenile offices and similar courts are however recruited separately. Separate recruitment takes place for staff of special judges.

4. Specialisation and governance

Is your Council for the judiciary or other another equivalent independent body entrusted with the protection of the independence of judges competent for all specialised judges, as for all generalist judges? If not, please specify the specialised judges that are not under the governance of the Council.

The High Council for the Judiciary is competent only for ordinary judges. Separate self-government bodies exist for administrative and other special judges.

5. Specialisation, professional associations of judges, judicial ethics

a) Are there in your country professional associations of specialised judges?

There is one professional association for ordinary judges, and separate associations for special judges. They frequently operate in co-ordination, by way of a common consultation committee.

b) Do specialised judges have separate or common "principles of judicial ethics"³ with respect to generalist judges? If separate principles apply, please specify (i.e. separate

³ See principles of judicial ethics as defined in CCJE's Opinion No. 3 (i.e. rules having no disciplinary impact).

principles needed by exposure of specialised judges to problems affecting juveniles, family problems, labour disputes, etc.).

A general code of ethics is applicable for all professional ordinary judges. Separate codes of ethics are applicable for special judges and some lay judges.

6. Conclusion

a) Please give your opinion on the advantages and disadvantages of special courts

The Italian Constitution entered into force in 1948 prohibited the establishment of new special judges, while allowing that those already existing would remain. It favoured, on the contrary, the establishment of specialised sections within ordinary courts. According to this option, the best specialisation should take place within a unified judiciary, so as to keep the advantages of specialisation (speedier dealing with cases, sensitivity and experience vis-à-vis delicate subjects, etc.) and eliminating disadvantages (loss of professionalism by the judge, rigidity of case-law, etc.).

b) Please give your opinion on the advantages and disadvantages of specialisation of judges

The main advantage is certainly in having judges possessing non-legal expertise which is relevant for the subject matter (e.g. notions of psychology for juvenile courts, etc.). The disadvantage is mainly the risk that the judges becomes a member of an in-group, with loss of impartiality and lack of broad views preventing evolution of case-law (e.g. judges remaining too long in a post as bankruptcy judge, etc.).