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THIRD EUROPEAN CONFERENCE OF JUDGES
"Which Council for Justice?"

Opening speech by Senator Nicola Mancino, Vice-Chair of the Italian High Council for the Judiciary

In opening the proceedings of the Third European Conference of Judges, I would like, first of all, to extend a warm welcome to the Deputy Secretary-General of the Council of Europe, the President and members of the Consultative Council of European Judges, and all the representatives of various foreign authorities gathered here today. I would also like to welcome and thank the national authorities attending the conference, in particular the Minister for Justice, who cooperated so efficiently with the High Council in the preparation of today's event.

The attendance of such a great number of highly qualified participants in the proceedings of this, the Third European Conference of Judges, provides a tangible expression of the attention paid, by various parties and from differing perspectives, to the international dimension of law, an issue representative of a fundamental reality, both for individual judges and for all the judiciaries of States moving within the orbit of the European area.

The globalization of markets, social phenomena of planetary significance, such as migratory flow and the globalization of the economy, create immediate effects on the daily demands made on justice, enacted by the various national judiciaries in response to the requests of users, whom, within such a system, are increasingly found to extend beyond the confines of national borders. As a consequence, the various judiciaries are called upon to provide suitable answers, within reasonable time frames and of the highest quality, so as to guarantee full effect to the rights of injured parties.

Within this context of an increasingly extended Europe, lay certain processes of integration which cannot be postponed any further, where differences must be overcome through far-reaching and coherent synthesis: the constitution of a European area of justice, freedom and security represents not only an objective of the highest priority, but also, at the same time, an essential instrument for the attainment of such integration.

The conventions agreed upon, the Charter of Nice, the initiatives of European Community institutions, the decisions of the Court of Justice and the European Court of Human Rights, are all heading in this same direction, although the path to be run is not always smooth.

The judiciaries of the European area are deeply entrenched within this construction process, lending their full support to the direction in which the process is headed and for years have been making every effort to ensure that progress is both concrete and long-lasting.

It should be recalled that, amongst the various institutions involved in the creation of such a common area of justice, is the **Council of Europe**, instituted back in 1949 and for this reason considered the "oldest" European political organization. In truth, the Council of Europe's plan of action is extremely dynamic and vital, since the objectives of the Organization have recently been identified in the promotion of human rights, in the state of law and democracy, and in the fight against terrorism, organized crime and the trafficking of human beings.

The High Council for the Judiciary has not neglected to make contributions of its own to this institution, with regard to the various initiatives with which the bodies of self-government have been involved. In particular, the **Consultative Council of European Judges** has been greeted with great favour by the High Council, promptly

appointing an Italian judge to act as its delegate from the time that the body was first constituted, and present in the year 2000 following the wishes of the Council of Europe's Committee of Ministers. The Consultative Council of Judges represents a concrete step forward in the strengthening of judicial power within Member States of the Council of Europe, both from the perspective of its independence from other powers and the professional development of individual judges, and also for the purpose of increasing European citizens' confidence in the legal systems.

The Italian judge originally appointed by the High Council for the Judiciary is, today, the Chair of the Consultative Council, a position which further highlights the commitment and effectiveness of the work undertaken so far.

As to the Italian High Council for the Judiciary, I can confirm that it has undertaken, as one of its own tasks, that of supporting and facilitating similar developments, adopting the most coherent of solutions in all its programmes and activities. It has done so, and continues to do so, within the framework of those competencies with which it has been assigned by Constitution, in terms of the representation and administration of Italian judges.

Within this context, one of the ambits where the High Council has exercised its competencies is that concerning the European training of judges. The Council has introduced European Law into its annual programme and was one of the founders of the **European Judicial Training Network** (EJTN), on the basis of its conviction that alongside the creation of a European common area of justice, the judiciaries themselves would also have to be able to cooperate and concur, in addition to coming together for collaborative encounters.

Indeed, judicial cooperation postulates the reciprocal recognition of sentences and other judicial orders, as well as a certain rapprochement between national

legislations. The headway which has already been made on a European level of justice now calls for significant improvements to be made to judges' training and updating, so as to propagate a shared knowledge of jurisdiction.

It is my view, and one I share with others, that the training of judges is one of the prerogatives assigned to the High Council for the Judiciary by the Italian Constitution; and consequently, any possible reforms in this connection must give due consideration to this principle at any time in which new structures are determined and specifically delegated for the provision of training activities for the judicial body. Indeed, there is a clearly a direct tie between the *independence* and *training* of judges, in view of the fact that the constant attention to technical capabilities and the awareness of professional ethics represent the fundamental conditions needed to ensure that the practice of jurisdiction is based on real autonomy and independence.

Updating and training are also essential aspects in the solution of another issue, that concerning the reasonable duration of trials: in fact, the ability of an answer to respond to the demands of justice also depends, in addition to unavoidable reforms to legal proceedings, on the theoretical and practical training of the judge.

Training, and the diffusion of a spirit of mutual trust between the judiciary and the judicial system, represents the very reason for existence of the **European Network of Councils for the Judiciary** (ENCJ), whose Charter was signed in Rome on May 20th, 2004, in the offices of this High Council. This is a Network which the Italian Council wished for intensely and contributed to its institution, taking part in the first, preparatory meeting held in the Hague in November, 2003. In the intervening years, the Council has continued with its strong and constant commitment, investing considerable resources in order to foster the life of the Network. I would like to recall that the first Chairman of the Network, elected by acclamation, was a member of the previous board

of the Italian High Council for the Judiciary; Professor Luigi Berlinguer, one of the speakers here at this important Conference.

I should not, however, fail to mention that there exists a great diversity in the institutions put in charge of the administration of the national judiciaries, and which are part of the Network, differences in terms of both history and characteristics.

These considerations lead us to the main subject-matter of our meeting: namely, a reflection on the existence, structure and role of these independent bodies which the various national systems place at the crossroads between executive and legislative power, to guarantee the independence of jurisdictional bodies.

In many countries of the European Union, the judiciary was administered until quite recent times by the Ministry of Justice. It was only with the institution of an intermediary body of guarantee, put in charge of the administration of the judiciary, and which we might define in generic terms as a Council for the Judiciary, that we have witnessed the taking shape of new models governing judicial bodies and thus, an equilibrium, which was not present before, between the judiciary and the authorities politically responsible for them.

As has been noted, there are States in which the Councils for the Judiciary are endowed with deliberative powers with regard to appointments, career progression and disciplinary measures for judges, such as Sweden, Denmark, Italy and Spain; and other States where the Councils for the Judiciary play a purely advisory role in the appointment of judges and the exercise of disciplinary action; whereas some States have no such intermediary institution which could be considered analogous to the High Council for the Judiciary, and where the politically responsible authorities of government are in charge of managing the judiciary, such as Germany, Austria, and as of 2005, also the United Kingdom.

The Italian Constitution identifies the High Council for the Judiciary as a united body, of constitutional importance, guarantor of independence for all members of the judiciary, be they judges or magistrates of the Public Prosecutor. The Italian High Council for the Judiciary is assigned decision-making powers regarding the status of individual judges: their employment, transfer and promotion, in addition to being competent for disciplinary matters.

The Italian High Council for the Judiciary is presided over by the Head of State. Its structure is composite in nature: the law provides that two thirds of its members be judges, elected by the judges themselves, and that the remaining third comprise tenured university professors of law and lawyers having been in practice for fifteen years, appointed by Parliament in the course of a general session.

A mixed composition of this sort has the advantage of guaranteeing the participation of a technically highly qualified component in the self-government of the judiciary, a component which on the one hand encourages a certain cultural osmosis between the various fields of legal knowledge and, on the other, prevents self-referentialization between judges.

The role of the High Council, as defender of the autonomy and independence of the judiciary, has been carried out, despite the alternation of political parties in power, with the greatest of efforts made to overcome the tension between politics and justice, in order to regain a sense of serenity and a balance of institutional relations, in full respect of the freedom of expression, opening wide the doors to dialogue, in the pursuit of solutions, which might be as widely-shared as possible, of those issues concerning the administration of justice.

Through its work, the High Council for the Judiciary is well aware that one of the most serious problems faced by justice is that concerning the duration of trials, since the lack of solution to this issue weakens citizens' confidence in judges and exposes us to severe criticism throughout Europe.

In this connection, the Council has set about identifying possible indicators of efficiency; the rational collection of data on the activities carried out by judicial offices; the distribution of resources; the promotion of professionalism; changes to circulars which have recently been approved, in an attempt to streamline council procedures. In seeking to recover efficiency levels, particular care has been taken with the recently approved reform dealing with the recognition of competencies, within judicial offices, of head judges and heads of administration respectively. Indeed, it is the heads of judicial offices who play a leading role in the recovery of efficiency.

The subject of reassignment of office, pursuant to article 2 of the law on the safeguards afforded to members of the State legal service, also deserves a brief mention.

This represented the only instrument available to the High Council for the Judiciary for its intervention in difficult situations, in which the credibility of the State legal service was called into question, in respect of the guarantee on irremovability, as established under article 107 of the Constitution. Following reforms introduced in 2006, the new wording of article 2 of the law on the safeguards afforded to members of the State legal service provides for the administrative competence of the High Council for the Judiciary only in those cases in which the reassignment of a judge's office comes about for reasons independent of any fault of the judge, such so as to render it impossible for him or her to execute their duties with complete independence and impartiality.

As a consequence, with its decision of July 19th, 2006, the High Council for the Judiciary reformulated the functional ambits within which it may intervene in related matters, specifying that the precondition for the reassignment of office, pursuant to the new article 2 of the law concerning the safeguards afforded to members of the State legal service, comes into play when the situation entailing the impossibility of executing one's duties with complete independence and impartiality is not subsumable in any disciplinary case in point and is not ascribable to any fault on behalf of the judge.

So, our experiences in this initial period of application of the new provisions have shown that this scaling down of Council powers in this particular matter has indeed deprived this Body of self-government of crucial instruments of intervention, precisely in those situations which are the most difficult, characterized by the concurrent presence of conduct having diverse importance, the very presence of which undermines the credibility of jurisdiction. I would also like to point out that the new regulations on precautionary measures, which may be adopted in the course of disciplinary proceedings, are, in view of the diversity of related preconditions, simply not sufficient to remedy this existing problem. The failure of an office to run smoothly and efficiently does not necessarily postulate recourse to disciplinary procedures.

Drawing to the end of my speech, I would like to highlight that, within those States belonging to the Council of Europe, a certain variability of choice is noted in connection with the governing of the judiciary, which do, nonetheless, exist within a shared cultural framework. Indeed, setting aside those specific, different traits, a "*European model"* of Councils for the Judiciary seems to come into view, founded on the independent, administrative authorities of Constitutional standing, set up to safeguard the independence and autonomy of the judiciary, representing a far from marginal element of *constitutional traditions shared throughout Europe.*

The problems inherent to such a European model are however detectable: in the composition of the body itself, on an elective basis, comprising both judges and non-judge jurists, frequently present in various proportions; with regards to competence, in connection with both the appointment of judges, career progression and responsibility for disciplinary procedures; and in terms of the great variance of powers, ranging from purely advisory to directly deliberative (mainly in the formulation of advice, which may be mandatory to varying degrees).

In conclusion, I would make the observation that further effort is required for the "European model of a Council for the Judiciary" to be given a definitive outline, which might usefully be developed from the basis of objectives set out by the Organization of the Council of Europe, dictated in particular; by the need to safeguard human rights and to guarantee the supremacy of law; from the outcome of agreements on a continental scale, aimed at the harmonization of the social and legal practices of Member States; and from fostering an awareness of a European identity, founded on shared values which transcend cultural diversity.

To all those present, I would like to express my heartfelt wish that this Third European Conference of Judges might truly represent a further step forwards towards the construction of a common area of justice, freedom and security, for all the citizens of Europe.

Thank you for your attention.