GIACOMO OBERTO

Judge at the Civil Court of Turin
Deputy Secretary General of the International Association of Judges

The Italian Experience in the Fields of Judicial Ethics and Judicial Discipline

Justice must always question itself, just as society can exist only by means of the work it does on itself and on its institutions.

(Michel Foucault , *Vous Êtes Dangereux*, in *Libération*, Paris, 30 June 1983; repr. in Didier Eribon, *Michel Foucault*).

Table of contents: (a) Sources and Definition of Judicial Ethics and Judicial Discipline. - 1. World Organisations Adopt Principles on Judicial Ethics. - 2. Judicial Ethics *vs*. Judicial Discipline: a Real Dispute? - 3. Historical Background of Judicial Ethics and Judicial Discipline in Italy. - 4. References to Judicial Ethics and Judicial Discipline in the Italian Constitution. The Main Sources on Judicial Ethics and Judicial Discipline in Italy: Act (*regio decreto legislativo*) Nr. 511, 31 May 1946 and its Guidelines. - ***(b) Duties of Judges and Disciplinary Offences in the Italian Legal System***. - 5. Ethical Rules Drafted by Case Law of the Disciplinary Division of the High Judicial Council (*Sezione Disciplinare del Consiglio Superiore della Magistratura*). Judge's Conduct inside the Courtroom. Case Descriptions. - 6. Judge's Conduct outside the Courtroom. Case Descriptions. Disciplinary Liability and Criminal Liability. - 7. Government Bills about a Statute that Specifies Different Violations. - 8. The "Ethical Code" Adopted by the Italian Association of Judges. - ***(c) Disciplinary Sanctions and Disciplinary proceedings***. - 9. The Disciplinary Sanctions Provided for by Articles 19, 20 and 21, Act Nr. 511, 31 May 1946. Judge's Transfer according to Article 2 of the same Act. - 10. Procedural Rules on Disciplinary Proceedings: Who Can Start Disciplinary Proceedings against a Judge; Proceedings before the Disciplinary Division of the High Judicial Council (*Sezione Disciplinare del Consiglio Superiore della Magistratura*); Appeal before the Supreme Court (*Corte di Cassazione*). - ***(d) Conclusions***.

(a)
Sources and Definition of Judicial Ethics and Judicial Discipline

1. *World Organisations Adopt Principles on Judicial Ethics.*

Judicial ethics is being increasingly studied on international level, as it is also witnessed by the references in statements, documents and declarations issued by international organisms. The United Nations "Basic Principles on the Independence of the Judiciary" (1985) is the first act of this kind and contains some fundamental rules on judicial ethics. Article 2, for instance, states that the judiciary must "decide matters before it impartially, on the basis of facts and in accordance with the law"; article 6 states that "the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected". According to article 8, "judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary".

An entire section goes on to define regulations for discipline, suspension and removal. Article 17 safeguards the right for a judge "to a fair hearing", stating that "the examination of the matter at its initial state shall be kept confidential unless otherwise requested by the judge". According to article 19, "all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct". Lastly, article 20 says that "decisions in disciplinary, suspension or removal proceedings should be subject to an independent review".

The same (or very similar principles) can be found in the "Judges' Charter in Europe", adopted on March 20th, 1993 in Wiesbaden (Germany) by the European Association of Judges, a regional group of the International Association of Judges. Article 2, states that a judge "performs his professional duties free from outside influence and without undue delay" and article 3 elaborates that "not only must the judge be impartial, he must be seen by all to be impartial". Article 9 states that "disciplinary sanctions for judicial misconduct must be entrusted to a body made up of members of the judiciary in accordance with fixed procedural rules".

More recently, Recommendation of the Council of Europe Nr. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, exhaustively lists judge's duties (see Principle V - Judicial responsibilities), among which we find:

1. to protect the rights and freedoms of all persons;
2. to ensure that the law is properly applied and cases are dealt with fairly, efficiently and speedily;
3. to act independently in all cases and free from any outside influence;
4. to conduct cases in impartial manner;
5. not to withdraw from a case without valid reasons;

6. to explain in an impartial manner procedural matters to parties;

7. to encourage the parties to reach a friendly settlement;

8. to give clear and complete reasons for the judgements, using language which is readily understandable;

9. to participate in any necessary training, particularly in training concerning recent changes in the law.

The Principle VI, then deals with the matter of disciplinary sanctions, recommending that these kinds of infringements be handled by a "special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ or which is a superior judicial organ itself".

Even more recently, the European Charter on the Status of Judges drawn up by the Council of Europe in Strasbourg on the 8-10 July 1998 states—among others things—the following principle according to which "Judges must refrain from any behaviour, action or expression of a kind effectively to affect confidence in their impartiality and their independence" (see article 4.3.). Concerning the matter of judges' liability article 5.1. states that "The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction, as envisaged herein, is open to an appeal to a higher judicial authority".

Let me mention here as well the conclusions issued in Budapest on 15 May 1998 at the end of the Multilateral Meeting organised by the Council of Europe in Collaboration with the Association of Judges of Hungary. This document states (see point Nr. 3) that "The independence of judges must provide in return a system of disciplinary responsibility, guaranteeing the citizen an efficient and competent judicial power. This responsibility should be exercised according to procedures which ensure sufficient guarantees for the protection of individual rights and freedoms of the judge, following the rules laid down in Article 6 of the European Convention of Human Rights, by an independent authority, consisting of renowned judges. Dismissal or compulsory retirement, except for health reasons, should only be carried out on the basis of disciplinary procedures, which allow the possibility to appeal".

On 17 November, 1999 the Central Council of the International Association of Judges unanimously approved the Universal Charter of the Judge, whose Article 11 provides for that "The administration of the judiciary and disciplinary action towards judges must be organized in such a way, that it does not compromise the judges genuine independence, and that attention is only paid to considerations both objective and relevant.Where this is not ensured in other ways that are rooted in established and proven tradition, judicial administration and disciplinary action should be carried out by independent bodies, that include substantial judicial representation. Disciplinary action against a judge can only be taken when provided for by pre-existing law and in compliance with predetermined rules of procedure".

As far as the international activity of this millennium is concerned, I'd like to mention the so-called "Bangalore Principles of Judicial Conduct", approved in 2002 under the aegis of Transparency International (an organism which is neither expression of judicial associations, nor of any supra-national body). Finally, the Consultative Council of European Judges (a consultative body created by the Council of Europe) issued in November 2002 an opinion "on the Principles and Rules Governing Judges' Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality".

2. *Judicial Ethics* vs. *Judicial Discipline: a Real Dispute?*

Many scholars nowadays tend to separate ethics from disciplinary rules. In their view ethics should be that branch of moral science which treats of the moral and professional duties a judge owes the public, the lawyers and his professional brethren. Of course this definition also applies to discipline, but ethics should conform to values, rather than only to written rules. The latter should define discipline. Moreover, ethics should guide conduct which is less felt to be compulsory, than suitable or convenient. Discipline, on the contrary, should rest upon firm and mandatory rules[1].

I personally think that as jurists and as judges we must abide by the system of laws that rule us. The members of a legal—and not philosophical or religious—profession cannot attribute to judicial ethics a meaning other than that which results from the principles of judicial discipline contained in the statutes regulating this matter. This is especially true for Italian judges, since the Constitution of my country clearly states that "Judges are subordinate only to law" (see article 101).

I started my report with these remarks to introduce you to the peculiarities of the Italian system of judicial ethics, because today the judicial body of my country does, in fact, have an "Ethical Code". But the rules drawn up by the Italian Association of Judges are not part of a statute and therefore cannot be considered as law, even though they will undoubtedly influence the application of disciplinary rules provided for by the law. The current paradoxical situation in Italy can be summed up in these few words: Italy has no comprehensive statutory judicial ethical code, yet it does have a comprehensive judicial ethical code, that is neither statutory, nor binding. Presently the binding dispositions concerning this matter are scattered in many

[1] See, e.g., the presentation of the questionnaire prepared in France in 1992 by the *Institut des hautes études pour la justice* on the subject: "Le juge et son ethique" (The Judge and his/her Ethics); see also Ricciotti and Mariucci, *Deontologia giudiziaria*, I, Padova, 1995, p. VIII: "Un codice deontologico non si identifica con il corpo delle norme disciplinari, siano esse di origine legislativa o di origine giurisprudenziale. Le norme deontologiche hanno la loro collocazione nel campo dell'etica e, benchè siano state recepite nell'ordinamento positivo, non costituiscono una sorta di codice disciplinare". This seems also to be the opinion of U.S. Chief Justice Warren E. Burger: "In my judgement, the profession should regulate itself. (...) In 23 years of private practice and now 30 years on the bench, I have seen many desirable changes in the legal profession. These changes have been brought about, not by regulation from the outside, but by the profession itself—by the organised bar. In 1969, the American Bar Association, not some legislative body, took the initiative in revising the Code of Judicial Ethics, and more recently promulgated the Model Rules of Professional Conduct. We must continue this pattern of responsible self-regulation" (see Burger's *Introduction* to Eastland, Markey, Murphey, Shaman and Sharman, *Ethics in the Courts: Policing Behavior in the Federal Judiciary*, Washington, 1990, p. ix *et seq*.).

statutes and paramount rules are embodied in the case law of the Disciplinary Division of the High Judicial Council.

In order to explain—or at least to try to—the complexity of the Italian system, I shall briefly outline the historical evolution of judicial ethics in my country.

3. *Historical Background of Judicial Ethics and Judicial Discipline in Italy.*

In medieval Italy, during the era of "city-states" judges were citizens of other towns called to administer justice because of their neutrality and professional skills as scholars and lawyers. Although they did not enjoy the status of what were later to become career civil servants, they were considered a kind of private learned professional men, arbitrators or mediators. Their responsibility was a typical kind of professional liability often compared to that of doctors. Lack of skill, mistakes, professional negligence, violations of the law and corruption were judged and punished by special courts through public trials called *actiones de syndicatu* (auditing judgements), which could be brought forward by any citizen[2]. The concept based on this system has been called by scholars *isonomía*, a Greek word literally meaning "same law" and expressing the idea that judges and justiciables have the same dignity and hence must be placed on the same level[3].

This system changed radically with the wane of city-states and the rise of centralised seignories and monarchies. Thus the *actio de syndicatu* became a control instrument in the hands of the sovereigns, who claimed the power to appoint the *syndacatores*. That is to say, the judges who were meant to judge other judges. This age marked the passage from professional to disciplinary judicial responsibility and the rise of this kind of liability qualified the new status of subordination of judges[4].

This shift from professional to disciplinary responsibility characterised many regions of Europe at the end of city-states era. For instance, since the early 16th century in Central Europe the *actio de syndicatu* (*Syndikatsklage*) could be brought forward by the so-called imperial visiting judges, who represented the imperial authority and who could inflict disciplinary punishments, included the destitution of accused judges[5]. These historical proceedings reached their climax in Prussia at the time of Frederick the Great. The *Codex Marchicus* (1749), before, and the *Allgemeine Gerichtsordnung für die Preußischen Staaten* (1781), later, provided for a strict disciplinary code describing in detail the duties of the "good

---

[2] Giuliani and Picardi, *I modelli storici della responsabilità del giudice*, in AA VV., *L'ordinamento giudiziario*, Rimini, 1985, pp. 208 *et seq.* (also in *Foro italiano*, 1978, V, cc. 121 *et seq.*); see also Salvioli, *Manuale di storia del diritto italiano*, Torino, 1890, p. 523; Masi G., *Il sindacato delle magistrature comunali nel secolo XIV*, in *Rivista italiana delle scienze giuridiche*, 1930, p. 7 *et seq.*; Padoa Schioppa, *Ricerche sull'appello nel diritto intermedio*, Milano, 1967, p. 202.

[3] Giuliani and Picardi, *op. cit.*, p. 210, note 2; see also Jones, *The Law and the Legal Theory of the Greeks*, Oxford, 1956, ch. VI.

[4] Giuliani and Picardi, *op. cit.*, pp. 220 *et seq.*; see also Salvioli, *op. cit.*, p. 523.

[5] Giuliani and Picardi, *op. cit.*, pp. 222 *et seq.*; see also Arndts, *Lehrbuch der Pandekten*, München, 1861, p. 536; Ritter von Schulte, *Lehrbuch der deutschen Reichs- und Rechtsgeschichte*, Stuttgart, 1873, pp. 361 *et seq.*; Windscheid, *Lehrbuch des Pandektenrechts*, II, Frankfurt a.M., 1882, pp. 771 *et seq.*, note 1.

judge", the disciplinary punishments, and emphasising his status as career civil servant loyal to the throne[6].

On the other hand in France a similar evolution took place, where local parliaments created a special proceeding called *prise à partie,* as a form of private action for damages that could be brought forward by any citizen against a judge. In the following centuries this kind of lawsuit was increasingly used by the kings as a disciplinary control instrument that was strongly resisted by local parliaments, claiming competence for deciding in these matters[7].

It was Napoleon who harnessed the judiciary into a state bureaucracy with his statute of 20 April 1810 (*Loi sur l'organisation de l'ordre judiciaire et l'administration de la justice*). Judges were now appointed by the government; they formed part of a hierarchically organised body modelled on the same pattern as the army. Disciplinary sanctions were inflicted by "superior" judges, but the last word was reserved for the executive power. The main instrument of disciplinary control was a very general and broad provision, according to which any judge could be held disciplinary responsible if he "compromettra la dignité de son caractère" (jeopardised the dignity of his status)[8]. I would like to draw your attention to this formula, because it is nearly identical to what we can still find in Italy as the fundament of judicial disciplinary responsibility.

In fact, the kind of judiciary structured by the above mentioned French statute of 1810 is the same which was known in some Italian states before the unification in 1861. This is exactly the case of the kingdom of Piedmont and Sardinia[9], in which two different statutes—the so-called "Siccardi Act", Nr. 1186, 19 May 1851, concerning the inamovibility and discipline of the judiciary and the so-called "Rattazzi Act", Nr. 3781, 13 November 1859, concerning reorganisation of the judiciary and public prosecutors—gave the judiciary the same hierarchical and bureaucratical structure as in France, conferring on the public prosecutor office the power to bring disciplinary suits against judges. These trials had to be decided by the same court to which the accused judges belonged, but the Minister of Justice had the power to carry into effect and to execute the decisions issued by the courts.

In article 19 of the Siccardi statute we find again the same formula ("jeopardising the dignity of the judicial status") as in the Napoleonic legislation. After the unification of Italy, this prescription was embodied in the statute establishing the judicature of 1865 (Act [*regio decreto*] Nr. 2629, 6 December 1865), in which article 213 stated that a judge should be disciplinary liable when he "compromises in any way his dignity or the consideration a judge

---

[6] Giuliani and Picardi, *op. cit.*, pp. 226 *et seq*.; see also Springer, *Die Coccejische Justizreform*, Berlin, 1910; Tarello, *Storia della cultura giuridica moderna*, I, Bologna, 1976, pp. 222 *et seq*.

[7] Giuliani and Picardi, *op. cit.*, pp. 230 *et seq*.; see also Ferrière, *Dictionnaire de droit et de pratique concernant l'explication des termes de droit*, Paris, 1769, II, *Prise à partie*, p. 372 *et seq*.; Denisart, *Collection de décisions nouvelles et de notions relatives à la jurisprudence actuelle*, Paris, 1783, *Prise à partie*, n. 11; Pothier, *Traité de la procédure civile*, in *Œuvres posthumes de M. Pothier*, Paris, 1809, pp. 152 *et seq*.; Merlin, *Dizionario universale, ossia repertorio ragionato di giuisprudenza e quistioni di diritto*, Versione italiana, X, Venezia, 1840, *Presa a parte*, pp. 629 *et seq*.; Morizot-Thibault, *La responsabilité des magistrats*, in *Académie des sciences morales et politiques*, 1905, p. 590; De Haine, *Les origines et l'histoire de la prise à partie*, Bordeaux, 1928, pp. 1 *et seq*., 43 et seq.; Henry, *La responsabilité des magistrats en matière civile et pénale*, in *Dalloz*, 1933, chr., p. 97.

[8] Giuliani and Picardi, *op. cit.*, pp. 239 *et seq*.

[9] See Dionisotti, *Storia della magistratura piemontese*, Torino, 1881; Astuti, *La formazione dello stato moderno in Italia*, I, Torino, 1967; Tarello, *Storia della cultura giuridica*, Bologna, I, 1977.

must enjoy, or when he violates the duties of his office". More or less the same words can be found in the "Orlando Act" of 1908, which nonetheless tried for the first time to give a list detailing the most evident disciplinary violations[10].

After the fascist party seized power in 1922 the "Oviglio Act" (30 December 1923) came back to the Napoleonic system, showing that vague disciplinarian provisions are preferred by totalitarian governments. Disciplinary sanctions were now provided for in order to punish those members of the judiciary that "fail to accomplish their duties and conduct themselves, either in their office, or outside, in such a way to be held unworthy of the confidence and of the esteem a judge must enjoy, or when they jeopardise the prestige of the judiciary".

Of course one can imagine how strictly this principle was interpreted; Alfredo Rocco, Minister of Justice at those times, once said in the Parliament: "We do not want that the judiciary to follow a governmental or a fascist policy, but we absolutely demand that it not follow anti-governmental or anti-fascist policy"[11]. Another important head of the fascist system, and Minister of Justice, Dino Grandi, once said that "judges must show a priestly conscience, strong character, honesty and a Roman sense of the State"[12]. This minister was the chief inspirer of a new statute concerning the establishment of the judicature of 1941 (Act [*regio decreto*] Nr. 112, 30 January 1941) that was intended to place the judicial body even more under the control of the government (in the ministerial report accompanying this act Grandi said that the Minister of Justice was the "supreme head of the judiciary") and in which the above mentioned vague formula concerning the disciplinary liability was once more repeated.

More surprisingly, we find this same formula in Act (*regio decreto legislativo*) Nr. 511, 31 May 1946, of fifty years ago, concerning the guarantees for the judiciary, which was approved after the fall of the fascism in order to safeguard the independence of the judicial body. The provisions of this Act on disciplinary violations are still in force today, even though they are older than our Constitution. They shall be examined in the next paragraph.

4. *References to Judicial Ethics and Judicial Discipline in the Italian Constitution. The Main Sources on Judicial Ethics in Italy: Act (*regio decreto legislativo*) Nr. 511, 31 May 1946 and its Guidelines.*

The Italian Constitution, which came into force on the 1st January 1948, does not contemplate a code of judicial conduct. In the thirteen articles (from 101 to 113) dedicated to the judiciary system, only two references are vaguely made to this matter.

The first one is included in article 105 and deals with the functions of the High Judicial Council (*Consiglio Superiore della Magistratura - C.S.M.*). It says that, among these functions, the *C.S.M.* is in charge of taking disciplinary measures against judges. Article 107 of

[10] Mele, *La responsabilità disciplinare dei magistrati*, Milano, 1987, pp. 7 *et seq.*; see also Giuliani and Picardi, *La responsabilità del giudice dallo Stato liberale allo Stato fascista*, in *Foro italiano*, 1978, IV, cc. 213 *et seq.*; Pajardi, *Deontologia e responsabilità dei magistrati*, Milano, 1985.

[11] Mele, *op. cit.*, p. 20.

[12] Mele, *op. cit.*, p. 20, note 10.

the same Constitution then states that the Minister of Justice has the power to ask the *C.S.M.* to begin disciplinary proceedings against judges.

The High Judicial Council is an independent body which the Italian Constitution provided for in order to safeguard the independence of the judiciary from the political power (separation of powers). At this point we shall remember that in the Italian system, as in many European continental legal systems, the term judiciary also includes the members of the public prosecutors office. Judges and public prosecutors are recruited in the same way, are part of the same body and enjoy the same status. Consequently, the High Judicial Council represents and administers about 9,000 Italian judges and prosecutors[13]. It is regulated by a statute of 1958 (Act Nr. 195, 24 March 1958), subsequently amended by many statutes concerning its composition and functioning[14].

The members of the High Council are currently 27: 16 of them (the so-called "gowned members") are elected by the judges and 8 (the so-called "laymen members") by the Parliament. The other 3 members are the President of the Republic (who is also the President of the *C.S.M.*), the First President and the Attorney General of the Supreme Court (*Corte di Cassazione*). The Vice-President is elected by the Council from among the members appointed by the Parliament and effectively co-ordinates the work of this body. The High Council regulates and administers the appointments of judges, their court assignments, their transfers, and any disciplinary action. The *C.S.M.* Disciplinary Division is composed of 6 members and presided over by the Vice-President of the High Judicial Council[15].

The main source concerning judicial discipline in Italy, as it was told before, are articles 17 and 18, Act (*regio decreto legislativo*) Nr. 511, 31 May 1946.

The first of the two provisions says that "judges cannot be subjected to disciplinary measures apart from the cases provided for by this act and only following the proceedings provided for by the same act". This rule is described as a "principle of legality". With this expression we indicate that punishment cannot be inflicted if it is not provided for by the law and that it cannot be applied to conduct other than that described by the law.

Unfortunately, (as we're going to see in a moment) the Italian system lacks an exact definition of all the cases in which a disciplinary measure can be inflicted. So, the effectiveness of this rule is a little bit weakened. The real meaning of this provision is that a judge cannot be

[13] That is why, in this report, the word "judge" must always be intended as comprehensive also of the word "prosecutor".

[14] See, e.g., Santosuosso, *Il Consiglio superiore della magistratura*, Milano, 1958; Bartole, *Autonomia e indipendenza dell'ordine giudiziario*, Padova, 1964, pp. 4 *et seq.*; Volpe, *Ordinamento giudiziario generale*, in *Enciclopedia del diritto*, XXX, Milano, 1980, p. 836 *et seq.*; Guarnieri, *L'indipendenza della magistratura*, Padova, 1981; Bonifacio and Giacobbe, *La magistratura*, in *Commentario della costituzione* a cura di G. Branca, Bologna, 1986, pp. 76 *et seq.*; Pizzorusso, *L'organizzazione della giustizia in Italia*, Torino, 1985, pp. 38 *et seq.*; G. Zagrebelksy, *Il potere normativo del Consiglio Superiore della Magistratura*, in *La giustizia tra diritto e organizzazione*, Torino, 1987, p. 183; Di Federico, *"Lottizzazioni correntizie" e "politicizzazione" del C.S.M.: quali rimedi*?, in *Quaderni costituzionali*, 1990, X, Nr. 2, pp. 279 *et seq.*; G. Verde, *L'amministrazione della giustizia fra Ministro e Consiglio Superiore*, Padova, 1990; Onida, *La posizione costituzionale del Csm e i rapporti con gli altri poteri*, in *Magistratura, Csm e principi costituzionali*, Bari, pp. 17 *et seq.*; Devoto, *Governo autonomo della magistratura e responsabilità politiche*, in *Cassazione penale*, 1992, pp. 2538 *et seq.*; Ferri G., *Il Consiglio Superiore della Magistratura e il suo Presidente*, Padova, 1995.

[15] See below, paragraph Nr. 10.

disciplinarily punished unless he/she has been submitted to a trial provided for by the statutes and that no punishment can be inflicted on him/her other than those described by the statutes[16].

The situations in which a judge can be submitted to disciplinary sanctions are listed by Article 18, Act Nr. 511:

1. when he/she "fails to keep his/her duties";

2. when he/she has "conducted him/herself—either inside the courtroom or outside—in such a way to make him/her unworthy of the confidence and of the esteem a judge must enjoy";

3. when he/she "jeopardises the prestige of the judiciary".

Such indefinite principles can also be found in other legal systems. See e.g. the "Model Code of Judicial Conduct" adopted by the House of Delegates of the American Bar Association on August 7, 1990, which states in its five canons that:

1. A judge shall uphold the integrity and independence of the judiciary.

2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

3. A judge shall perform the duties of judicial office impartially and diligently.

4. A judge shall so conduct the judge's extra-judicial activities as to minimise the risk of conflict with judicial obligations.

5. A judge or judicial candidate shall refrain from inappropriate political activity[17].

---

[16] Mele, *op. cit.*, p. 35.

[17] Nevertheless it must be added that the "Model Code" exhaustively details the content of each canon: see Eastland, Markey, Murphey, Shaman and Sharman, *op. cit.*, pp. 1 *et seq*., 77 *et seq*.; Shaman, Lubet and Alfini, *Judicial Conduct and Ethics*, Charlottesville, 1990, pp. 3 *et seq*.

The American Bar Association Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association August 16, 1972. In 1990, the American Bar Association Model Code was further revised after a lengthy study. In California, the California Judges Association reviewed the model code and adopted a revised California Code of Judicial Conduct on October 5, 1992. Proposition 190 (amending Cal. Const., art. VI, ß 18(m), effective March 1, 1995) created a new constitutional provision that states, "The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics." The Supreme Court of California formally adopted this Code of Judicial Ethics effective January 15, 1996.

This is the official preamble to the text of the California Code of Judicial Ethics (1996): "Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible member of government under the rule of law.

The Code of Judicial Ethics ("Code") establishes standards for ethical conduct of judges on and off the bench and for candidates for judicial office. The Code consists of broad declarations called Canons, with subparts, and a Terminology section. Following each Canon is a Commentary section prepared by the Supreme Court Advisory Committee on Judicial Ethics. The Commentary, by explanation and example, provides guidance as to the purpose and meaning of the Canons. The Commentary does not constitute additional rules and should not be so construed. All members of the judiciary must comply with the Code. Compliance is required to preserve the integrity of the bench and to ensure the confidence of the public.

The Canons should be read together as a whole, and each provision should be construed in context and consistent with every other provision. They are to be applied in conformance with constitutional requirements, statutes, other court rules, and decisional law. Nothing in the Code shall either impair the essential independence of judges in making judicial decisions or provide a separate basis for civil liability or criminal prosecution.

Italian commentators agree that such a vague rule—one that is not based on a catalogue of specified violations—brings advantages and disadvantages[18]. On the one side, we must take into account the large uncertainty for judges, who often can find themselves in the condition of not knowing how to behave in certain situations. On the other side, we must remark that often the very broad formulation of the above described rule permits the *C.S.M.* Disciplinary Division to express a comprehensive assessment of the situation in which a judge has breached an ethical rule.

For instance, we have a certain period of time for depositing the statement of reasons for decision in judgement (normally 30 or 60 days after the decision has been taken). The *C.S.M.* Disciplinary Division has stated that recurring delays in depositing these statements of reasons for decision in judgement can justify the infliction of a disciplinary sanction. But this rule can be lightened when the recurring delays are justified by the big amount of the work done, health conditions, inadequacy of the foreseen quantity of colleagues; in a word: the *C.S.M.* Disciplinary Division can express a comprehensive judgement about the personality of the accused judge.

This example immediately shows the paramount importance of the *C.S.M.* Disciplinary Division case law, which has interpreted and applied the above mentioned general and vague principles for over forty years.

The Code governs the conduct of judges and judicial candidates and is binding upon them. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, requires a reasoned application of the text and consideration of such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system".

[18] Mele, *op. cit.*, pp. 37-39, 42-51, 56-60; see also G. Zagrebelsky, *La responsabilità disciplinare dei magistrati: alcuni aspetti generali*, in *Rivista di diritto processuale*, 1975, p. 439 *et seq.*; Vigoriti, *Le responsabilità dei giudici*, Bologna, 1984, pp. 76 *et seq.*; Pizzorusso, *op. cit.*, p. 217; Izzo and Fiandanese, *Lo stato giuridico dei magistrati ordinari*, Roma, 1986, pp. 349 *et seq.*; Cicala, *Il governo della Magistratura: I profili disciplinari*, in *Magistratura Indipendente*, 1995, Nr. 3, p. 8; Cicala, *Il sistema disciplinare: apertura di un dibattito*, in *La Magistratura*, 1997, Nr. 2, p. 21 *et seq.* This writer seems to be strongly against the current system, remarking that "Questa impstazione (i.e.: a system which is not based upon a catalogue of specified violations) poteva forse risultare soddisfacente nell'immediato dopoguerra, quando il ruolo del potere giudiziario era assai più modesto e soprattutto la collettività esprimeva una concezione dei doveri del giudice abbstanza omogenea, fondata su pochi essenziali precetti. Oggi invece la magistratura è investita da un complesso insieme di attese e di sollecitazioni, fra loro non sempre agevolmente coordinabili". Upon this theme see also Nannucci, *La tipicità dell'illecito disciplinare: un mito da rivedere. Osservazioni sulla deontologia professionale dei magistrati, alla luce della giurisprudenza della sezione disciplinare*, in *Documenti Giustizia*, 1996, Nr. 8-9, p. 1670 *et seq*. This author seems to be sceptical on the possibility for a statute to specify, one by one, all the possible violations; he prefers rather referring to a system in which duties, rather than behaviours, are specified by the law, but I can not really see the difference between the two concepts: duties, in my view, can not be identified without previously identifying the behaviours that the law wants judges to conform (or not to conform) to.

Article 18 was submitted to the Constitutional Court by the *C.S.M.* Disciplinary Division, which thought that this general and vague provision violated some articles of the Italian Constitution. But the Constitutional Court decided otherwise, upholding the provisions of article 18: see the decision Nr. 100, 8 June 1981, in *Giurisprudenza costituzionale*, 1981, pp. 843 *et seq.*; see also Morozzo della Rocca, *Disciplina giudiziaria*, in *Novissimo digesto italiano*, Appendice, III, Torino, 1982, pp. 3-4; V. Zagrebelsky, *La responsabilità disciplinare dei magistrati*, in AA. VV., *Magistratura, Csm e principi costituzionali*, Bari, 1994.

(b)
Duties of Judges and Disciplinary Offences in the Italian Legal System

5. *Ethical Rules Drafted by Case Law of the Disciplinary Division of the High Judicial Council (*Sezione Disciplinare del Consiglio Superiore della Magistratura*). Judge's conduct inside the courtroom. Case descriptions.*

In accordance with the provisions of the law, the *C.S.M.* Disciplinary Division case law distinguishes between judge's conduct inside and outside the courtroom[19]. As what concerns the first type of cases, five essential duties have been singled out by the disciplinary judge: correctness, diligence, activity, discretion, impartiality. I shall now give some concrete examples concerning each one of these duties.

(a) *Examples of violation of the duty of correctness*:

1.- counterfeiting data in official statistics in order to show that the deadlines for the deposit of the statement of reasons for decision in judgement have been complied[20];

2.- not denouncing attempts of corruption: in one case the judge received a bribe, but he immediately gave back the sum, without denouncing the man who had made such an attempt[21]; in another case a prosecutor refused the bribes offered by the relatives of a person who had been arrested and put under inquiry by him, but did not inform the chief prosecutor[22];

3.- keeping close friendly relationship with notorious criminals[23] or mafia members[24];

4.- copying the solicitor's writings in the statement of reasons for decision in judgement[25];

5.- accepting presents from one of the parties in a case heard by him[26];

---

[19] The sources for the cases referred to in the following paragraph are: Consiglio Superiore della Magistratura, *La responsabilità disciplinare dei magistrati*, IV, Roma, 1986; Consiglio Superiore della Magistratura, *Manuale dell'udienza disciplinare, Legislazione e massime della sezione disciplinare aggiornate al dicembre 1990*, Roma, 1992; Consiglio Superiore della Magistratura, *Manuale dell'udienza disciplinare, Massime della sezione disciplnare dal 1 gennaio al 31 dicembre 1991*, Roma, 1992; Mele, op. cit., pp. 35-68; Volanti, *La responsabilità disciplinare dei magistrati*, in *Nuova giurisprudenza civile commentata*, 1994, II, p. 63 *et seq*.; Ricciotti and Mariucci, *Deontologia giudiziaria*, I, Padova, 1995; II, Padova, 1997; Racheli, *La deontologia professionale dei magistrati: a) responsabilità disciplinare; b) conseguenze di carattere paradisciplinare*, report to the *Incontro di studio previsto dall'art. 22, d.pr. n. 116/88, per gli uditori giudiziari nominati con d.m. 29.9.1992*, organised by the High Judicial Council (*C.S.M. - Commissione speciale per gli uditori giudiziari*) and held in Rome, on the days 6-9 June 1994; Cicala, *Il silenzio dei giudici*, in *Rivista di diritto privato*, 1997, p. 406 *et seq*.; Cicala, *La deontologia dei magistrati di fronte alla «Bicamerale»*, in *Rivista di diritto privato*, 1998, p. 196 *et seq*.; Consiglio Superiore della Magistratura, *Manuale dell'udienza disciplinare, Massimario delle sentenze della Sezione disciplinare del Consiglio Superiore della Magistratura depositate dal 1° gennaio 1996 al 31 dicembre 1997*, Roma, 1998.

[20] Decision 1 February 1964 of the Disciplinary Division of the High Judicial Council.

[21] Decision 23 January 1969 of the Disciplinary Division of the High Judicial Council.

[22] Decision 21 June 1991 of the Disciplinary Division of the High Judicial Council.

[23] Decision 27 June 1974 of the Disciplinary Division of the High Judicial Council.

[24] Decision 28 October 1983 of the Disciplinary Division of the High Judicial Council; in this particular case the expulsion from the judiciary was applied.

[25] Decision 15 December 1983 of the Disciplinary Division of the High Judicial Council.

6.- incurring debts with one of those parties, even though these debts have been regularly paid off by the judge[27];

7.- incurring debts with a solicitor without paying them off after two years and after a written request by the solicitor[28];

8.- incurring heavy debts with a building society without paying them off, so that the latter is obliged to sue him[29];

9.- expressing as a prosecutor in a public hearing heavy and defaming remarks upon the professional correctness of a solicitor[30];

10.- using in several occasions the court's car in order to commute to the office from the judge's home, situated in another town[31];

11.- asking a colleague to let a defendant out on bail[32];

And now some cases in which no violation of the duty of correctness has been found:

1.- asking a public prosecutor information about the state of a criminal inquiry, without trying to interfere with his decisions[33];

2.- expressing grievances in public about the transfer of a police official to another public prosecutor office[34].

b) *Examples of violation of the duty of diligence*:

1.- issuing a warrant for arrest for a criminal violation which has been pardoned by a statute[35];

2.- signing blank forms for decisions, after having given his secretary the minute of the decision to copy[36];

3.- beginning hearings always late[37];

4.- failing, as a public prosecutor, to personally attend the removal of the corpse of a killed person, authorising it by phone[38];

5.- failing, as a public prosecutor, to question a HIV-positive defendant, because he feared to be infected[39].

c) *Examples of violation of the duty of activity*:

---

[26] Decisions 22 September 1989 and 25 January 1991 of the Disciplinary Division of the High Judicial Council. See also decision 22 July 1997 of the Disciplinary Division of the High Judicial Council: in this case the accused judge had avoided to give back two wine boxes he had received by one of the two parties to a civil case heard by the concerned judge.

[27] Decision 19 February 1982 of the Disciplinary Division of the High Judicial Council.

[28] Decision 22 February 1985 of the Disciplinary Division of the High Judicial Council.

[29] Decision 4 July 1997 of the Disciplinary Division of the High Judicial Council.

[30] Decision 26 June 1985 of the Disciplinary Division of the High Judicial Council.

[31] Decision 15 March 1996 of the Disciplinary Division of the High Judicial Council.

[32] Decision 14 December 1996 of the Disciplinary Division of the High Judicial Council.

[33] Decision 17 November 1971; 9 November 1990 of the Disciplinary Division of the High Judicial Council.

[34] Decision 23 February 1990 of the Disciplinary Division of the High Judicial Council.

[35] Decision 13 June 1986 of the Disciplinary Division of the High Judicial Council.

[36] Decision 11 December 1982 of the Disciplinary Division of the High Judicial Council.

[37] Decision 26 November 1982 of the Disciplinary Division of the High Judicial Council.

[38]Decision 15 November 1996 of the Disciplinary Division of the High Judicial Council.

[39] Decision 13 May 1988 of the Disciplinary Division of the High Judicial Council.

1.- recurring delays in depositing the statements of reasons for decision in judgement[40], unless the delay is justified by the great deal of work done or by serious family or health reasons[41];

2.- holding only 26 hearings in civil cases and 8 hearings in criminal cases during a period of three years and writing in the same period the reasonings of only 43 civil and 99 criminal cases[42];

3.- writing the reasonings of "only" 24 civil and 32 criminal cases during a period of six months [43];

4.- holding his own office (used as courtroom as well) in a "state of complete disorder", piling up files, old newspapers, bottles of mineral waters, two pairs of old shoes and a bicycle...[44]

d) *Examples of violation of the duty of discretion*:

1.- issuing censorious comments in the press about proceedings which are still under judicial secret[45];

2.- issuing censorious comments about the activity of colleagues[46], unless these comments are kept restricted in the court and not made public[47];

3.- declaring to the press, as deputy prosecutor, that the chief prosecutor had tried to shelve an important inquiry against a local businessman, when these facts are not proved as true[48];

4.- calling journalists in order to publicise one's investigating activity, boasting to have been the first prosecutor to deal with such a case, and claiming to have been hampered by colleagues[49];

5.- calling a press conference in order to issue negative comments upon the inquiring activity of a colleague, who had conducted the same investigation previously directed by the prosecutor issuing those statements[50];

6.- writing in the opinion of a case decided by a panel of three judges that the decision had not been taken unanimously[51].

No violation of the duty of discretion was found in the case in which the Chief Prosecutor of Milan had informed the President of the Republic of the fact that an inquiry was

[40] Decisions 10 June 1961, 7 October 1961, 14 July 1978, 8 July 1983, 8 March 1985, 26 January 1990 and 19 October 1990 of the Disciplinary Division of the High Judicial Council.

[41] Decisions 8 July 1961, 15 July 1961, 7 October 1961, 22 January 1982, 16 December 1983, 18 September 1986, 24 October 1986, 17 July 1987 and 13 October 1989 of the Disciplinary Division of the High Judicial Council.

[42] Decision 8 April 1983 of the Disciplinary Division of the High Judicial Council.

[43] Decision 20 January 1984 of the Disciplinary Division of the High Judicial Council.

[44] Decision 13 June 1997 of the Disciplinary Division of the High Judicial Council.

[45] Decision 22 July 1961 of the Disciplinary Division of the High Judicial Council.

[46] Decisions 11 November 1971 and 23 April 1974 of the Disciplinary Division of the High Judicial Council.

[47] Decision 29 January 1988 of the Disciplinary Division of the High Judicial Council.

[48] Decision Nr. 1095, 14 February 1996 of the Supreme Court (*Corte di Cassazione*).

[49] Decision 11 November 1971 of the Disciplinary Division of the High Judicial Council.

[50] Decision 14 June 1991 of the Disciplinary Division of the High Judicial Council.

[51] Decision 16 May 1997 of the Disciplinary Division of the High Judicial Council.

going to be started against the Head of the Government and that an official notice concerning the inquiry was going to be delivered to the accused Prime Minister[52].

e) *Examples of violation of the duty of impartiality*:

1.- showing favouritism towards certain court experts, addressing himself only to them in order to obtain technical advice and fixing exaggerated fees[53];

2.- choosing in a case his own family members as court experts[54];

3.- receiving money from a defendant in order to endorse, as public prosecutor, the defendant's plea to be released on bail by the investigating judge[55];

4.- not disqualifying himself from hearing a case, when there is conflict of interest[56];

5.- expressing in a public interview his point of view on a case he has yet to decide[57].

The most serious problem about these examples of case law arises from the risk of interfering with the merits of the judge's decisions[58]. The general rule that the *C.S.M.* Disciplinary Division seems to follow can be summarised as follows: a judge cannot be submitted to disciplinary sanctions simply because he/she decided a case in a certain way[59]. Nevertheless, sometimes this rule has been limited by the *C.S.M.* Disciplinary Division case law. For instance:

1.- when the accused judge had openly declared that he would not apply the law[60];

2.- when the accused judge made evident mistakes in applying the law[61], especially if these mistakes are due to gross negligence[62], unless his professional conduct can be considered on the whole as satisfactory[63], or the mistake can be justified by the concerned judge's

[52] Decision 19 July 1996 of the Disciplinary Division of the High Judicial Council.

[53] Decision 14 March 1964 of the Disciplinary Division of the High Judicial Council.

[54] Decisions 22 November 1985 and 23 November 1990 of the Disciplinary Division of the High Judicial Council.

[55] Decision 19 October 1990 of the Disciplinary Division of the High Judicial Council.

[56] Decision 12 April 1991 of the Disciplinary Division of the High Judicial Council.

[57] Decision 14 November 1997 of the Disciplinary Division of the High Judicial Council.

[58] Mele, *op. cit.*, p. 60 *et seq*.; see also Fortuna, *La responsabilità disciplinare del giudice*, in *Quaderni giustizia*, n. 9, pp. 20 *et seq*.; De Chiara, *Provvedimenti giurisdizionali e responsabilità disciplinare del magistrato*, in *La magistratura*, 1975, pp. 4 *et seq*.

[59] "The Disciplinary Section does not judge decisions, it judges behaviours": see decision 7 February 1997 of the Disciplinary Division of the High Judicial Council.

[60] Decision 10 October 1982 of the Disciplinary Division of the High Judicial Council. See also decision 11 October 1986 of the Disciplinary Division of the High Judicial Council, in a case in which the accused judge had declared he was aware he was invading the competence of the administrative power, by issuing a decision which obliged all the faculties of medicine of Italy to introduce a "numerus clausus" system, i.e. a system which limited the admission of students.

[61] Decision 18 October 1991 of the Disciplinary Division of the High Judicial Council; see also the decision Nr. 2181, 28 March 1985 of the Supreme Court (*Corte di Cassazione*).

[62] Decision 9 February 1996 of the Disciplinary Division of the High Judicial Council. See also decision 23 May 1997 of the Disciplinary Division of the High Judicial Council: in this case a public prosecutor had issued an urgent warrant for the arrest of a policeman without giving in it written reason upon the specific elements which showed the presence of the risk that the accused policeman could escape.

[63] Decision 16 January 1989 of the Disciplinary Division of the High Judicial Council.

overwork or by the complexity of the case, provided that the mistake has not produced irreparable damages[64];

3.- when the judge, in writing the opinion of a criminal case, made defamatory remarks concerning people not directly involved in that case[65].

The organisation of a judge's work can be questioned only when it appears unreasonable: thus the priority given to certain cases rather than to others is not censurable, unless it evidently appears irrational or if it violates fundamental rights, like the right to personal freedom[66].

6. *Judge's Conduct outside the Courtroom. Case Descriptions. Disciplinary Liability and Criminal Liability.*

a) As for *judge's sexual conduct* a dramatic evolution has been taking place during these last thirty years. At the beginning of the 1960s any extramarital affair was in itself an ethical violation[67] and the *C.S.M.* Disciplinary Division used to state that a judge had to make his intimate and private life conform to the principles of strict austerity[68].

Nowadays, the sexual behaviour of judges is absolutely irrelevant, unless it somehow influences the exercise of judicial duties[69]. We can read in one opinion that "the disciplinary judge does not enter a judge's home, nor he must interfere in the judge's private life"[70].

b) *Lack of correctness outside courtroom* is not only punished in case of law violations, e.g. possessing fire-arms without declaring them to the competent police authority[71], but also when a judge tries to receive favours exploiting his position in order to receive free theatre tickets or to obtain substantial discounts in shops [72], or when he pressures town police in order

[64] Decision 6 April 1989 of the Disciplinary Division of the High Judicial Council.

[65] Decision 22 February 1991 of the Disciplinary Division of the High Judicial Council.

[66] Decision 22 May 1987 of the Disciplinary Division of the High Judicial Council. This judgement confirms the routine procedure of criminal courts of giving priority to the cases in which the defendants are still under preventive detention.

[67] Decisions 9 December 1961, 4 July 1964 and 8 May 1965 of the Disciplinary Division of the High Judicial Council.

[68] Decision 25 November 1961 of the Disciplinary Division of the High Judicial Council.

[69] Decisions 18 December 1981, 29 October 1982, 11 November 1982, 29 April 1983 of the Disciplinary Division of the High Judicial Council. See also decision 20 March 1987 of the same Body, according to which an extramarital affair with two prostitutes must not be taken in account, if it does not influence the exercise of judicial duties.

[70] Decision 18 June 1982 of the Disciplinary Division of the High Judicial Council. See however decision 24 October 1986 of the Disciplinary Division of the High Judicial Council, according to which a judge is disciplinarly liable for having insulted and beaten his wife, when this fact has been known outside the family, so producing a violation of the prestige of the judiciary.

[71] Decision 1 March 1991 of the Disciplinary Division of the High Judicial Council.

[72] Decision 9 March 1963 of the Disciplinary Division of the High Judicial Council.

to avoid paying a fine[73], or a bank director in order to persuade him to give credit to a personal friend of his, who is under investigation for mafia crimes[74].

c) *Private or public, full or part-time, employment* are (generally) strictly forbidden. Art. 16, Act (*regio decreto*) Nr. 12, 30 January 1941—which is still in force today—prevents judges from having any kind of public or private, full or part-time employment, independent professions, business ventures and enterprise activities.

The *C.S.M.* Disciplinary Division applied this rule, for instance, to judges who had been working as legal consultants for solicitors or engineers[75], or who had been acting as managers of private corporations[76].

On the contrary, writing articles for newspapers is considered legal[77]. Apart from the above mentioned prohibitions, any other kind of non-judicial appointment (e.g. yearly professorship as a university lecturer) has to be authorised by the High Judicial Council[78].

d) As for *political activity* a judge can of course publicly express his/her political views[79] or take part in an electoral meeting[80], but he/she cannot take active part in a political campaign[81], unless he/she does not stand as candidate.

Membership in a political party is currently not forbidden. Numerous bills have been submitted to Parliament on this matter, but none of them have ever been passed[82]. The ethical code adopted by the Italian association of judges (article 8) forbids judges—though indirectly and through rather involved expressions—to join political parties, but, as we shall se later, these provisions do not have the same force as a law and can only indirectly influence disciplinary case law.

Judges can be elected to the Parliament, but then they are automatically suspended from their judicial functions for the whole period in which they serve as parliamentarians. They can not be elected in the same district in which they have exercised their functions until six months before they have accepted to be candidates. After having completed their term of office, they can return to exercise their functions. Judges who stood as candidates but were not elected cannot exercise their functions for at least five years in the same district in which they campaigned[83].

e) An issue which has been very intensively debated in the last years concerns the *membership of a freemasonry lodge*. The problem broke out at the beginning of the 1980s,

[73] Decision 1 February 1964 of the Disciplinary Division of the High Judicial Council.
[74] Decision 13 December 1991 of the Disciplinary Division of the High Judicial Council.
[75] Decisions 25 November 1961 and 12 May 1962 of the Disciplinary Division of the High Judicial Council.
[76] Decision 4 July 1964 of the Disciplinary Division of the High Judicial Council.
[77] Decision 14 July 1989 of the Disciplinary Division of the High Judicial Council.
[78] See Zanotti, *Le attività extragiudiziarie dei magistrati ordinari*, Padova, 1981.
[79] Decision 18 July 1964 of the Disciplinary Division of the High Judicial Council.
[80] Decision 30 September 1977 of the Disciplinary Division of the High Judicial Council.
[81] Decision 6 February 1965 of the Disciplinary Division of the High Judicial Council.
[82] The last blueprint is article 31 of the bill presented by the Government on 6 September 1995 (*D.D.L.* 3091/C).
[83] See article 8, Act (*decreto del Presidente della repubblica*) Nr. 361, 30 March 1957.

when it was discovered that a particular lodge, called P2, had been carrying out illegal activities for many years. The judges who were discovered as being member of this lodge were submitted to disciplinary sanctions, because the *C.S.M.* Disciplinary Division remarked that that lodge was a secret association, in blatant violation of article 18 of our Constitution[84].

The question remained for the "normal" membership of the freemasonry. On 22 March 1990 the plenary session of the High Judicial Council issued a declaration stating that judges should not only avoid belonging to associations forbidden by the law, but that they should also abstain from taking part:

1. in brotherhoods in which the loyalty to the organisation could be felt stronger than the loyalty to the Constitution or the duties of impartial and independent exercise of the jurisdiction and

2. in brotherhoods whose membership could endanger the citizens' confidence in the credibility of the judge[85].

On 11 November 1994 the *C.S.M.* Disciplinary Division inflicted a disciplinary sanction on a judge for his membership to a Masonic lodge, stating that the ties of Masonic solidarity, emphasised by the solemn oath of allegiance, was incompatible with the loyalty a judge owes exclusively to the law[86].

f) As concerns the relations between *disciplinary and criminal accountability*, it must be said that, until 1990, a judge found guilty of serious violations in criminal proceedings was automatically dismissed by the judiciary. Art. 9, Act Nr. 19, 7 February 1990 now states that the disciplinary accountability for judges as well as for all civil servants is fully independent from criminal accountability[87]. Consequently, even though a judge has been found guilty of murder in the first degree in a criminal case, disciplinary proceedings has to be started against him/her in order to obtain a dismissal.

The *C.S.M.* Disciplinary Division can suspend an accused judge from functions and from salary; this suspension is mandatory in the case the judge has been arrested[88].

7. *Government Bills about a Statute that Specifies Different Violations.*

As previously explained, some documents and declarations issued by international organisations seem to underline the necessity that all the disciplinary offences be clearly identified and categorised by the law. For example, the U.N. "Basic Principles on the

[84] Decision 11 November 1983 of the Disciplinary Division of the High Judicial Council, in *Cassazione penale*, 1983, pp. 750 *et seq*.; see also Mele, *op. cit*., p. 59; Carcano, *Il Consiglio superiore della magistratura e la massoneria*, in *Cassazione penale*, 1992, pp. 2885 *et seq*.

[85] The minutes of the discussion inside the *C.S.M*. that led to the declaration issued on 22 March 1990 can be seen in Consiglio Superiore della Magistratura, *Notiziario*, Nr. 11, 1990, pp. 89 *et seq*.

[86] See on this topic Cicala, *La deontologia dei magistrati di fronte alla «Bicamerale», cit*., p. 203 *et seq*. See also decisions 8 June, 15 July, 13 September, 11 October, 18 October, 3 December, 1996 of the Disciplinary Division of the High Judicial Council.

[87] Decision 19 October 1990 of the Disciplinary Division of the High Judicial Council. See also Cicala, *La deontologia dei magistrati di fronte alla «Bicamerale», cit*., p. 206 *et seq*.

[88] See below, paragraph Nr. 10.

Independence of the judiciary" (1985) provide for that "all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct" (see article 19). More clearly, the Judges' Charter adopted by the Ibero-American regional group of the International Association of Judges clearly says that "All disciplinary offences must be concretely categorised by the law" (see article 6).

The above-mentioned opinion issued in 2002 by the Consultative Council of European Judges "on the Principles and Rules Governing Judges' Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality" recommended as well a "further definition by individual member States by law of the precise reasons for disciplinary action", remarking that "At present, the grounds for disciplinary action are usually stated in terms of great generality".

Current Italian legislation does not meet this standard. On the other hand, our Constitutional Court has stated that this system is not unconstitutional[89]: so we must wait for the Legislator to change our present situation. Many bills have been proposed and discussed before the Italian Parliament in order to specify the possible ethical violations one by one. None of these has yet become law. One of the most famous bills was the one proposed by the Government in 1983 (*D.D.L.* Nr. 251/S, presented on 20 October 1983)[90], whose articles 3 and 4 described as follows the main ethical violations:

1. the violation of impartiality towards the parties;
2. the patent violation of correctness towards the parties, their attorneys, civil servants or witnesses;
3. the violation of judicial secrets;
4. the violation of the obligation of keeping one's domicile in the same town in which the court is;
5. not disqualifying him/herself from hearing a case, when conflict of interest arises;
6. professional negligence;
7. issuing summary or urgent decisions in patent violation of law;
8. persistent and unjustified violation of procedural rules;
9. recurrent delays in issuing the decisions or any other act relating to the exercise of the judicial functions;
10. having one's work done by another person;
11. interfering without any ground in the jurisdictional activity of a colleague;
12. any other behaviour that represents a serious breach of official duties;
13. repeated and grave abuse of the office of a judge in order to gain advantages for him/herself or for other persons;
14. having been condemned for certain criminal offences;
15. having in public agreed or disagreed with colleagues' decisions, in order to interfere with their activities;
16. being engaged in activities not consistent with the judiciary function;
17. being engaged in extra-judicial activities without the authorisation of the *C.S.M.*;

[89] See above, note 18.

[90] Source: Consiglio Superiore della Magistratura, *Responsabilità disciplinare ed incompatibilità del magistrato*, Roma, 1985, pp. 181 *et seq*.

18. any other behaviour which can compromise the confidence in the impartiality or in the correctness of the judiciary.

In more recent times the Government submitted to the Parliament a new bill, which seems to have good chances to become law (*D.D.L.* Nr. 1247/S, presented on 11 September 1996).

In this bill all the duties worked out by the *C.S.M.* Disciplinary division case law (correctness, diligence, activity, discretion, impartiality) are now explicitly proclaimed (see article 1). The bill distinguishes between behaviour inside and outside the courtroom. In the first category we can find (see article 2):

1. violations of the duty of impartiality (e.g., not disqualifying him/herself from hearing a case when there is conflict of interest);

2. violations of the duty of correctness in the relations with the parties, their solicitors, witnesses, colleagues (e.g., interfering with the activities of another judge);

3. violations of the law due to gross negligence, or not giving a written opinion when required by the law, or giving an opinion in which the judge does not specify the facts that induced him/her to take that decision;

4. recurrent and unjustified delays in issuing decisions or any other act related to the exercise of judicial functions; any other consistent gross disregard of the duty of activity;

5. violations of judicial secrets, or any other breach of discretion;

6. neglect by the chief justices to report to the High Judicial Council violations committed by "lower ranking" colleagues.

As for the judge's conduct outside courtroom we can find the following prohibitions (see article 3):

7. exploiting his/her position as a judge in order to obtain unjustified advantages;

8. having friendly relationships to a defendant in a criminal proceeding treated by that judge, or to a person condemned for having committed gross criminal violations;

9. being engaged in extra-judicial activities without the authorisation of the *C.S.M.*;

10. having in public agreed or disagreed with colleagues' decisions, in order to interfere with his/her activity;

11. any other public behaviour that could jeopardise the credibility of the judiciary.

In a few words, also this bill proves that any attempt to specify judicial ethical violations is bound to fail, as it appears unavoidable that the Italian legislator is not going to give up such general and vague provisions containing expressions like "jeopardising" or "prestige" or "credibility of the judiciary", and so on[91].

Both above-mentioned bills have been abandoned by the current Italian government, which, in an effort to curb judicial independence, has recently submitted to the Parliament a justice reform bill which in July 2004 was approved by one of the two legislative branches. Under the envisaged reform, judges and prosecutors will be prevented from joining political parties or discussing cases with reporters. Disciplinary liability for judges and prosecutors will become stricter and the Minister of Justice will receive larger powers vis-à-vis the High Judicial Council. As a result of this reform the Italian judiciary will enjoy a far less extended degree of independence and the state of the administration of justice in Italy will surely

[91] Also Mele, *op. cit.*, p. 57 remarks that all the blueprints concerning judicial disciplinary responsibility include such general provisions.

worsen, with seriously negative effects for the citizens. The only positive effect of this reform (if it ever will be approved) is to bring a certain degree of definition by law of the precise reasons for disciplinary action, even though in a too restrictive and punitive way towards judges and prosecutors.

To protest against these plans the Italian Association has waged last May a one-day strike which curtailed all routine court work (without affecting high-priority or time-sensitive cases). 86% of judges and prosecutors observed the strike, including 90% in Rome and the Sicilian capital, Palermo. Very recently the Italian Chief Justice, First President of the Supreme Court of Cassation, Mr. Nicola Marvulli, has expressed deep criticism against the bill, pointing out that it "creates a hierarchy among judges, which is not compliant with the judicial function"; moreover, the reform is "unconstitutional as it aims at reducing some of the tasks the Constitution bestows to the High Judicial Council".

8. *The "Ethical Code" Adopted by the Italian Association of Judges.*

In 1993, upon delegation from the Parliament, the Italian Government issued a decree, according to which all the branches of the civil service should adopt ethical codes "in order to ensure a high standard of services to the citizens". The central directive board of the Italian Association of Judges approved on 7 May 1994 an "Ethical Code for Judges"[92], which—as it has already been said—is not part of any statute issued by the Parliament and therefore cannot be considered as law. Moreover, this governmental decree of 1993 must be considered unconstitutional, because all matters concerning a judge's status can be regulated only by the law according to article 102 of our Constitution. Yet, it is undeniable that this code will somewhat influence the application of the disciplinary rules provided for by the law[93].

This "Ethical Code" is divided into three parts: (i) General principles, (ii) Independence, impartiality, correctness, (iii) Judge's conduct while exercising his/her functions. Here we find again a definition of the duties of a "good judge", together with terms like: dignity, correctness, sensitivity to the public interest, independence, impartiality, rejection of any external interference, diligence, activity.

We can also find here some of the "new frontiers" of judicial ethics: see article 3, which states[94] that judges must "preserve and increase the patrimony of their professionalism" as well as "keep abreast with the developments in their activities". Another topic nowadays felt as

---

[92] See *Documenti Giustizia*, 1994, Nr. 7-8, pp. 1485 *et seq*.

[93] As stated by Cicala, *L' «onore di Borsellino». Premesse ad una riflessione sulla deontologia giudiziaria*, in *Rivista di diritto privato*, 1996, p. 136, "Certo si potrebbe superare ogni questione giuridica sostenendo che simile testo ha un'incidenza esclusivamente morale e quindi è estraneo al mondo del diritto. Ma è difficilmente concepibile che una legge imponga la elaborazione di un atto giuridicamente irrilevante. Le norme del codice etico assumono quindi un valore: le violazioni più macroscopiche minano «la fiducia e la considerazione di cui il magistrato deve godere» (art. 18, r.d.lt. 31 maggio 1946, n. 511) e perciò costituiscono almeno potenzialmente un illecito disciplinare». The author refers here to the fact that the adoption of the "ethical code" was imposed by a law.

[94] In accordance with the above mentioned Principle V of the Recommendation of the Council of Europe Nr. R (94) 12 to Member States on the Independence, Efficiency and Role of Judges, concerning the duty to "participate in any necessary training, (...) particularly in training concerning recent changes in the law".

particularly hot is the relationship with the press and other mass media[95]. A whole article (see article 6) is dedicated to this matter, stressing three fundamental points: (i) the judge shall not stimulate the spreading of news concerning his/her activity; (ii) the judge shall respect judicial secrets; (iii) when no judicial secret exists the judge shall ensure that correct information is given, avoiding prejudicing the honour and reputation of the citizens.

As for the judges private conduct, it is forbidden to join any association that requires a solemn oath of allegiance or that can be considered secret association (see article 7): the reference to the freemasonry case is evident, though not explicit. The judge must not only be impartial, but also appear as such (see article 8); he/she shall avoid exploiting his/her position for acquiring advantages or privileges (see article 10). The two final articles are respectively dedicated to the peculiarities of the members of the Public Prosecution Office (see article 13) and to the duties of the chief justices (see article 14).

(c)
Disciplinary Sanctions and Disciplinary proceedings

[95] On this topic see Cicala, *Il silenzio dei giudici*, *cit.*, p. 401 *et seq*. This author expresses here the opinion that in modern society it is no longer possible to follow the ancient saying according to which "a judge can not speak otherwise than through his/her written opinions in judgements". He rejects also proposals according to which the law should prevent the media from publishing the names of the judges and of the public prosecutors who acted in the cases covered by journalists: "In passato, il meccanismo del consenso e della critica è stato articolato secondo un semplice schema: la critica era riservata agli specialisti, mentre il resto dei consociati accordava alla giurisdizione una fiducia di carattere generico. In sostanza si diceva «come il giudice fa, fa bene»; o quanto meno si prendeva atto dei verdetti giudiziari con rassegnata indifferenza. Questa situazione è finita ormai da oltre vent'anni. Tutti oggi sono disposti a concedere al giudice solo una fiducia specifica, mirata, revocabile; frutto di un giudizio positivo fondato sulla valutazione non solo dei suoi prowedimenti ma anche delle sue vere o presunte omissioni. Il codice di procedura penale del 1988 ha poi favorito un'ampia informazione delle vicende processuali, ancor prima del dibattimento, circoscrivendo entro limiti quanto mai ristretti il così detto «segreto delle indagini». Perciò mi appaiono antistoriche talune proposte avanzate da uomini politici appartenenti a sponde contrapposte quali Irene Pivetti, Meluzzi e Violante, e da giudici di prestigio come Vigna, che, con il lodevole obbiettivo di arginare il «protagonismo dei giudici» e di contrastare la tendenza dei «mass-media» a identificare la giustizia con questo o quel personaggio, vorrebbero sancire il divieto di pubblicare i nominativi dei sostituti procuratori della Repubblica cui è stata assegnata un'inchiesta, e le loro fotografie. Se simile aspirazione divenisse norma giuridica diverrebbe impossibile esercitare il diritto di critica nei confronti dei magistrati delle procure. Chi potrebbe mai denunciare le vere o presunte trame delle «toghe rosse», se fosse inibito di nominare le persone che si nascondono sotto quelle toghe? Proprio per questo riesce problematico reperire nella Costituzione l'appiglio che possa sorreggere una così incisiva limitazione del diritto di cronaca e di pensiero; proibendo tra l'altro di criticare nominativamente il pubblico funzionario responsabile di una attività tanto delicata come un processo. Per converso, le discussioni cui il magistrato è inevitabilmente esposto, l'ampia diffusione di notizie relative a processi, rendono talvolta utili, quando ciò non violi puntuali segreti, risposte, smentite spiegazioni. E proprio questa specificità non consente che gli interventi siano affidati esclusivamente al Consiglio Superiore della Magistratura e al direttivo della Associazione Nazionale Magistrati. In quanto il Consiglio Superiore della Magistratura ed, a maggior ragione, la Associazione Nazionale Magistrati non possono essere a conoscenza di ogni risvolto delle vicende giudiziarie, né debbono farsi garanti della esattezza delle informazioni e della correttezza delle diverse tesi giuridiche. Esiste dunque una sorta di possibilità di replica da parte dei giudici".

9. *The Disciplinary Sanctions Provided for by articles 19, 20 and 21, Act Nr. 511, 31 May 1946. Judge's Transfer According to Article 2 of the same Act.*

The disciplinary sanctions provided for by articles 19, 20 and 21, Act Nr. 511, 31 May 1946 are:

a) admonition,
b) censure,
c) loss of seniority,
d) expulsion or dismissal.

The law dictates no guidelines about the kind of sanction to be inflicted for any violation. Some rules have been indicated by the *C.S.M.* Disciplinary Division. For instance, it has been decided that a previous disciplinary measure inflicted on the same judge and for the same violation can induce a heavier sanction the next time[96].

When the *C.S.M.* Disciplinary Division inflicts censure or loss of seniority it can also remove the judge and transfer him to another court (art. 21, Act Nr. 511). This is one of the few cases in which a judge can be transferred without his/her consent.

Aside from the above described cases of disciplinary proceedings, judges can also be transferred by the *C.S.M.* "when, due to any reason and apart from any fault, they cannot exercise their functions in the office they hold in such a way as to comply with the prestige of the judiciary" (art. 2, Act Nr. 511). This is not a disciplinary measure, as is made evident by the fact that the law requires only a judge's "objective incompatibility" with the social, cultural or working "surroundings" in which he/she exercises his/her functions. Therefore, the decision is adopted not by the Disciplinary Section, but by the plenary session of the High Judicial Council and issued upon proposal by a special commission, whose task is to investigate the case and to hear the concerned judge.

10. *Procedural Rules on Disciplinary Proceedings: Who Can Start Disciplinary Proceedings against a Judge; Proceedings before the Disciplinary Division of the High Judicial Council (*Sezione Disciplinare del Consiglio Superiore della Magistratura*); Appeal before the Supreme Court (*Corte di Cassazione*).*

In the Italian legal system disciplinary proceedings against judges can be started either by the Attorney General of the Supreme Court (*Corte di Cassazione*) or by the Minister of Justice. A special division inside the Justice Department is charged to supervise and monitor the functioning of courts. An inspection in a court or in a public prosecutor's office (or in a particular division of a court or of a public prosecutor's office) can be ordered by the Minister in order to gather information on that office and, if necessary, to start disciplinary action[97]. Recently, some inspections ordered by a former Minister of Justice in the public prosecutor's

[96] Decision 19 October 1990 of the Disciplinary Division of the High Judicial Council.

[97] Upon this subject see Cardillo, *Per una radicale riforma dell'ispezione e dello schema di relazione*, in *Documenti Giustizia*, 1997, Nr. 1-2, p. 89 *et seq*. This special division is the Italian version of the French *Inspection Générale des Services Judiciares*, upon which see Geronimi, *L'inspection générale des services judiciaires*, in *Le nouveau pouvoir judiciaire*, Nr. 338 - mars 1996, p. 4 *et seq*.

office of Milan has stirred sharp criticism because it was felt as interference with some ticklish inquiries[98]. As has been remarked, the Minister of Justice has the power to dismiss a case without giving any reason for that (so-called "disciplinary discretion"): this means the Minister has the power—though not to condemn a judge—to acquit him[99].

The procedure is set forth through a formal request presented to the High Council by one of the two above mentioned authorities. The proceedings have to be started within a year from the date in which the facts justifying the start of the disciplinary proceedings were made known to one of the two entitled subjects had knowledge. Otherwise the disciplinary action becomes statute-barred[100].

The accused judge must be notified of the act containing the specification of the facts with which he/she has been charged. The inquiry is held by the office of the Attorney General, who can directly demand that either the Disciplinary Division fixes the date for the trial in camera or that a member of the same Division conducts an investigation before the trial. The accused judge can defend him/herself or can appoint a colleague as council for the defence[101].

The decree in which the President of the Disciplinary Division fixes the date for the hearing in camera must be notified to the accused judge within one year from the beginning of the procedure.

The rules of the criminal procedure apply to these proceedings[102]. According to Statute No. 44 of 28th March 2002, members of this Division are:

- The Vice President of the *C.S.M.*, who chairs this Section,
- One of the members elected by the Parliament,
- One member elected from among the judges or prosecutors of the Supreme Court of Cassation,
- One member elected from among the prosecutors performing their duties before a first instance or an appellate court,
- Two members elected from among the judges performing their duties within a first instance or an appellate court.

The total number is therefore of six. In case of parity the most favourable solution for the accused judge will prevail.

---

[98] See e.g. Cicala, *Il governo della Magistratura: I profili disciplinari*, *cit*., p. 8.

[99] See Cicala, *Il governo della Magistratura: I profili disciplinari*, *cit*., p. 8; Cicala, *Il sistema disciplinare: apertura di un dibattito, cit.* p. 21. This author retains that, at least in some cases, the law should provide for compulsory disciplinary action, in order to limit the Minister's discretionary powers.

[100] In this case the accused judge is not entitled to demand that the proceedings continue, in order to be acquitted, but the Disciplinary Division has to close the case: see decision 23 April 1996 of the Disciplinary Division of the High Judicial Council.

[101] The Constitutional Court stated that the Disciplinary Division has to appoint *ex officio* a judge as council for defence to the accused judge, if the latter has failed to do so: see the decision Nr. 220, 26 May 1994, in Consiglio Superiore della Magistratura, *Manuale dell'udienza disciplinare, Massimario delle sentenze della Sezione disciplinare del Consiglio Superiore della Magistratura depositate dal 1° gennaio 1996 al 31 dicembre 1997*, Roma, 1998, p. 23 *et seq.*

[102] It must be noticed that relevant rules are here those of the "old" code of criminal procedure, which was in force until October 23, 1989, even though the disciplinary case is dealt with nowadays. This is due to the fact that article 32, Act (*regio decreto legislativo*) Nr. 511, 31 May 1946 refers to the rules of the procedural code in force at those times (see decision Nr. 10920, 6 November 1997 of the Supreme Court - *Corte di Cassazione*).

The decision must be issued within two years from the day in which the accused judge received the notification of the decree fixing the date for the hearing, otherwise the disciplinary action becomes statute-barred. The concerned judge could nevertheless demand that the proceedings be defined through a decision.

After the proceedings have been started, and until a final decision has been issued, the Disciplinary Division can adopt provisional measures. Provisional measures pending the disciplinary proceedings consist in the possibility that the accused judge be suspended from his/her functions and from his/her salary (art. 31, Act Nr. 511, 31 May 1946). This measure is normally taken when the judge is accused of very serious violations or if there are already grave circumstantial evidence against him/her[103].

In order to obtain a better protection of the independence of the judiciary Art. 17, Act 195, 24 May 1958 (the statute that regulates the *C.S.M.*) provides that all disciplinary decisions can be appealed before the joint civil divisions of the Supreme Court (*Corte di Cassazione*). The decision can be appealed only for alleged violations of the law—and not for alleged misunderstanding of facts[104]—within 60 days either by the condemned judge or by the Attorney General of the Supreme Court or by the Minister of Justice (the last two in case of acquittal). This appeal suspends the implementation of the disciplinary measure.

(d)
Conclusions

Some closing remarks. Even in a system belonging to Civil Law, as the Italian one does, the power of a judge in interpreting and applying the law can be tremendous. The so-called "general clauses"—e.g. good faith, diligence of the *bonus paterfamilias*, correctness in executing contracts and in fulfilling obligations, public policy, public morality[105]—bestow an Italian as well as a German or a French judge almost the same power as an English colleague has, for example, in stating what "may appear (...) to be just having regard to all the circumstances", by altering maintenance agreements and adjusting rights to property between spouses, even without paying regard to the respective beneficial interests of the parties, according to sections 21, 24 and 35 (1) of the Matrimonial Causes Act (1973)[106].

The same rule also applies to many, many juridical concepts not sufficiently (or not at all) defined by the law[107], thus obliging the judge to engage him/herself in the process not only of interpreting, but also of creating what our Constitutional Court likes to call "the living law"

---

[103] Decision 2 October 1969 of the Disciplinary Division of the High Judicial Council.

[104] See on this particular point Morozzo della Rocca, *op. cit.*, pp. 2-3.

[105] See e.g. articles 1175, 1176, 1343, 1375, of the Italian civil code; articles 1133 and 1134 of the French civil code; §§ 138 and 242 of the German civil code.

[106] See on this particular topic Salter and Jeavons, *Humphreys' Matrimonial Causes*, London, 1989, pp. 246 *et seq*.

[107] We could say, using the words of the President of the German Constitutional Court: "Wir wissen, daß nicht nur Generalklauseln, sondern eine Vielzahl von *unbestimmten Rechtsbegriffen* die eigentliche Normsetzung auf den Richter delegieren oder doch *semantische Spielräume eröffnen*, die nicht nur *die eine* richtige Entscheidung erkennen lassen. Richterliches Entscheiden ist nicht nur Erkenntnis, sondern immer auch Rechtsgewinnung"(see Limbach, "*In Namen des Volkes" - Richterethos in der Demokratie*, in *Deutsche Richterzeitung*, 1995, p. 428).

(*il diritto vivente*). That is why we must expect any person who is endowed with such large powers to respect high ethical standards.

Coming back to the Italian reality, we must recognise that the data gathered on the activity of the *C.S.M.* Disciplinary Division are somewhat startling, especially if compared to other civil services. It is enough to remember, as an exemple, that between September 1990 and June 1993—a period of less than three years—the High Council has condemned to various disciplinary sanctions 160 judges out of a judicial body (at that time) of about 7,000. Five of them have been dismissed, nineteen have been sanctioned with the loss of seniority and fourteen have also been transferred; twelve have been suspended from their functions and from their salaries pending disciplinary proceedings. If we look at the data concerning 1994 we discover that the C.S.M. Disciplinary Division dealt with 92 cases. In 54 cases the accused judges were acquitted, in 55 condemned[108]. In 1995 133 cases were dealt with: 81 ended with an acquittal and 57 with a disciplinary sanction; in 1996 out of 143 cases the Disciplinary Section issued 98 acquittals and 78 sanctions; in 1997 out of 178 cases the same Section issued 134 acquittals and 47 sanctions; in 1998, until May 23, out of 79 cases dealt with by the *C.S.M.*, the Disciplinary Section issued 52 acquittals and 24 sanctions[109].

If we take into account more recent years, we can discover that, e.g. in 2003, according to the report for the inauguration of the judicial year 2004, 138 new disciplinary proceedings have been instituted either by the Prosecutor General or by the Minister of Justice. Out of these the Disciplinary Section issued 24 sanctions and 36 acquittal. It must also be added that statistical data concerning acquittals comprise also many cases in which the accused judge, in order to avoid a disciplinary sanction, resigns or retires of his own free will.

This information shows that the Italian judiciary—though with some unavoidable hesitations, contradictions and delays—is doing its best to improve itself and to keep a high standard of conduct in its ranks. This is not the advice of many observers, who blame the judiciary for not being strict enough in applying disciplinary sanctions[110]. Indeed in many cases a great role was played by the so-called *correnti*, the factions in which—like small parties—the Italian association of judges is divided and which can act as lobbies or pressure groups, trying to "save" in any way a colleague who is under disciplinary proceedings. But I think that, especially in this last period, the *CSM* Disciplinary Division has shown a great deal of concern towards the necessity of having a judiciary composed of honest and upstanding individuals.

[108] These data take into account not only the final judgement issued by the *C.S.M*. Disciplinary Division, but also the provisional decisions (either favourable or unfavourable to the accused judge) which have been issued *lite pendente*.

[109] Source: *Md*, Nr. 21, 30 May 1998.

[110] See for instance Di Federico, *Limiti ed inefficacia degli strumenti di selezione negativa dei magistrati*, in Pedrazzi, Di Federico, Ermentini, Gulotta, Meneghello, Meschieri, Onofri, Pajardi, *La selezione dei magistrati: prospettive psicologiche*, Milano, 1976, pp. 11 et seq., 21, who remarks that the disciplinary sanctions applied by the *CSM* Disciplinary Division in no way can be considered as instruments for an efficient system of negative selection of judges.