

Final remarks

Mister President of the Republic, Authorities, Ladies and Gentlemen

1. A *chiaroscuro* picture

The analysis of the administration of justice in Italy offers - as the entire country - a *chiaroscuro* picture.

The data in the analytical part of this report show elements of criticality as well of improvement. Last year, the civil field increased by 9.8% the number of resolved cases with respect to the previous year. Incoming cases also rose, but less, i.e., by 1.9%¹.

A higher number of resolved cases with respect to incoming ones entailed a 6.5% reduction in the number of pending cases, which went from 3,321,149 to 3,106,623. This is certainly a positive datum, considering that ten years ago the number of pending civil cases was over 5 million. However, the disposition time was still too long².

The situation in the criminal field was somehow similar: the length of the proceedings, in general, increased in the various courts, although with variations between them. There was a total of 2,540,674 pending cases (i.e., a reduction of 3.8% with respect to the previous year). The ratio between incoming and resolved cases, though, was opposite to the one in the civil field, given that the reduction of pending cases in the criminal field was the consequence of less incoming cases, while the number of resolved cases was in general stable³.

The reduction in the number of recorded offences is not a univocal indicator: overall, it indicates an improvement in our country's civil coexistence.

In 2021, the number of crimes rose slightly compared to 2020, when a significant reduction was registered due to the pandemics, nevertheless crimes diminished by 12.6% compared to a "normal" year such as 2019. An increase was registered in specific categories of crime, in particular a huge growth of computer crimes. It is worth highlighting the cases of acts of violence and threats against specific categories

¹ Cf. Part one, para 2.1.

² Cf. *ibidem*, the data on *disposition time*.

³ Cf. Part one, paras 3.1 and 3.2.

of people, such as journalists or local administrators. Totally unacceptable remained the number of accidents at work and occupational illnesses and was particularly high in insecure and heavy jobs. INAIL, the National Institute for Insurance against Accidents at Work, reported that in the first ten months of 2021 it had received over one thousand notifications of fatal accidents at work.

On the other hand, acquisitive crimes were overall less, and an encouraging indicator of our positive civil coexistence came from the data on homicides. In 2021 Italy had 295 wilful murders [omicidio volontario]⁴. This datum is one of the best of all European countries, which as a whole have the best data in the world. The numbers were quite different in the past. In 1991 there were nearly 2,000 homicides. Subsequently their number slowly and gradually decreased to 359 in 2018, 317 in 2019 and 287 in 2020.

There are many explanations to this trend, one of which is that there has been a constant increase in the number of wilful murders with a known perpetrator, which went from 40% in 1992 to 73% in 2016⁵.

However, one datum is appalling: out of 295 victims of homicides in 2021, 118 were women, 102 of whom were murdered in a family/affective context, and 70 by their partner or former partner⁶. This pattern has been constant in recent years and is associated with a worrying increase in domestic crimes: a clear sign of unresolved tensions in gender relations and of an unresolved equality. This is an area in which the State - Parliament in the first place – is strongly involved requiring prosecutors to act attentively and swiftly as well as to enforce the law strictly. However, a repressive response cannot reach the causes of a deep discomfort which our society must address in a broader dimension, starting from the environments of formation and development of personality.

2. Reforms, resources, capabilities

The *chiaroscuro* picture briefly outlined above reveals the combination of truly critical aspects with positive ones, and this enables us to direct and project constructively our

⁴ Source: Ministry of Interior, Department of Public Security, Central Directorate of Criminal Police, *Report of 3 January 2022*.

⁵ Research by BARBAGLI-MINELLO on the data in the Archive of the Ministry of Interior, the results of which are summarised in the work *L'inarrestabile declino degli omicidi*, in *Lavoro.info*, May 2017. See also ISTAT, *Delitti, imputati e vittime dei reati. La criminalità in Italia attraverso la lettura integrata delle fonti della giustizia*, Roma, 2020.

⁶ Report cited in footnote no. 3.

action. An exclusively negative interpretation not only would be untruthful, but it would also induce to consider the situation to be unchangeable, legitimizing inactive and defeatist attitudes.

The last decades have been characterized by continual legislative interventions in the field of justice, but nearly always implicating no expenditure. Today, the National Recovery and Resilience Plan [Piano nazionale di ripresa e resilienza (PNRR)] involves a multiplicity of reforms - either already under way or under development (criminal proceedings, civil proceedings, insolvency law, rules on the organization of courts, tax justice, honorary justice, prison system, just to mention the main ones) – that are characterized by two novelties: (1) they are supported by significant funding enabling to provide them with human and material resources; (2) they are subject to mechanisms for results reporting, in accordance with a strict timetable, up to the 2026 final budget.

These are crucial innovations, but do not solve the problems of a course of action in which delegated legislation is the most complex and delicate phase i.e., the cornerstone of a real change. The Government has shown to be fully aware of how decisive the stage of the concrete implementation of the reforms is.

On our part, we are aware of how decisive is the way in which the judiciary, within its competence, will be able to enforce the new provisions and make the best possible use of the resources available.

The potential of the Office for Trials [Ufficio per il processo] is also dependent on this ability.

As regards criminal proceedings, it will be necessary to apply rigorously the new criteria of judgment introduced for the dismissal of a case [archiviazione], the pre-trial hearing [udienza preliminare], or the filtering hearing [udienza filtro], so that the trial hearing [dibattimento] is carried out only if the elements acquired with the investigations allow for a reasonable prediction of conviction; to achieve this it will be necessary to rebalance the proportion of Public Prosecutors [pubblici ministeri] and Judges in charge of Preliminary Investigations [giudici per le indagini preliminari].

Even at the Court of Cassation, the appreciable rationalization of the proceedings introduced by the reform of civil proceedings will bear fruit if we are able to run it judiciously and effectively. At the same time, it will be important that the lower

courts' judges [giudici di merito] use wisely the new instrument of referrals to the Court of Cassation for a preliminary ruling [rinvio pregiudiziale]⁷.

3. Judges and Prosecutors

One issue remains critical: that of the number of judges and prosecutors. The 2020 report of the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) indicates that the number of human resources in the justice system in Italy is rather lower than in other European countries. Compared to Germany, for example, in Italy per 100,000 persons there are 11.6 judges and 37.1 administrative staff; 3.7 prosecutors and 14.1 administrative staff; and 388.3 lawyers. In Germany, per 100,000 persons there are 24.5 judges and 65.1 administrative staff; 7.1 prosecutors and 14.5 administrative staff; and 198.5 lawyers⁸.

The imbalance is evident and has strong repercussions on the justice system. With regard to administrative staff, the choices made in the PNRR contribute to a complete reversal from the civil servants' recruitment freeze of the past decades that led to a progressive reduction in the number of employees and an increase in their average age, with obvious negative implications.

However, the situation of judges and prosecutors is critical because there are over 1,300 vacancies (and their established number is in any case insufficient, as emerges from the CEPEJ report mentioned above). This shortage will be filled only in part (and not in the short run) by the judiciary recruitment exam already under way as well as the one that has started recently.

Indeed, the recruitment exam is of crucial importance for the judiciary, also for giving a correct solution to the complex issue of the honorary judiciary which combines the expectations acquired through years of work with the relevant constitutional requirements.

As a matter of fact, the last recruitment exams have constantly highlighted the difficulty of having sufficient successful candidates to fill all the posts available, leading to reasonably conclude that many university courses do not manage to provide the necessary basis for successfully passing that exam. And there are also

⁷ On these important aspects of the reform of civil proceedings, see Part two, Chapter 6, paras 3.3.3 and 3.3.7.

⁸ For a closer understanding of the Report see CANZIO e FIECCONI, *Giustizia. Per una riforma che guarda all'Europa*, edizioni Vita e pensiero, 2021.

doubts as to whether it is advisable to maintain the recruitment exam conditional on having previously performed a series of activities after the degree in law. These activities not only increase the time necessary before being able to sit for the recruitment exam, but also raise the age of candidates and introduce unfair income selection mechanisms, while probably do not improve the quality of their preparation, or perhaps even introduce a gap between the time of the degree and the exam, with the effect of dissipating part of the knowledge previously gained at university.

In addition to all that, the recruitment exams have revealed the problem of the candidates' poor writing skills. Luca Serianni, professor of history of the Italian language, has described why it is absolutely necessary to keep in the school syllabus both the Italian composition paper and written papers in general; I would like to stress the importance of writing "summaries" to stimulate the ability to synthesise required by the procedural code, which provides that judgments must be clear and concise.

4. The Court of Cassation

A *chiaroscuro* situation is also that of the Court of Cassation. The work last year has been out of the ordinary.

In 2021, the seven criminal chambers received 46,298 applications and resolved 47,040, with a clearance rate of 101.6%: the backlog therefore decreased, although slightly, to 23,736 cases. More importantly, the average disposition time was 211 days, which is well below one year⁹.

The six civil chambers received 31,544 applications and resolved 40,776 (40.1% more than 2020 and 23.3% more than 2019)¹⁰. The clearance rate was 129.3%. The Court of Cassation had never decided as many civil cases in its 100-year history¹¹. It should also be noted that it decided a greater number of older cases¹².

All this contributed to reducing the backlog of cases from 120,473 at the end of 2020 to 111,241 at the end of 2021, i.e., a reduction of 9,232 cases. This is an important achievement which marks a reversal of the backlog's steady growth over the last twenty years. However, the backlog remains at over 110,000 cases and constitutes

⁹ Cf. Part two, Chapter 3, para. 2.

¹⁰ Overall, the civil decisions published by the Court, including interim decisions [ordinanze interlocutorie], have been 42,143.

¹¹ The highest level reached in the past was in 2019 with 33,045 resolved cases. A chart of resolved cases since 2012 is in Part two, Chapter 3, para 1.2.

¹² Cf. Part two, Chapter 3, para 1.4.

the Court's most serious problem, making the time taken to resolve civil cases unacceptable, even though the disposition time last year was reduced to considerably lower levels than in the past¹³.

The causes of the backlog are well known and mainly relate to the transfer to the Court of a huge number of major cases, without backing it up with new staff. Among the most relevant areas are: cases concerning salaried civil servants, consequent to having moved the relevant competence from administrative to ordinary judges; tax litigation cases at last resort, which was decided when the Central Tax Commission [Commissione centrale tributaria] reached an unmanageable backlog of over 450,000 cases¹⁴; lastly, due to the elimination in 2017 of the appellate instance in international protection disputes, the Court had an increase of incoming cases in this category from about 300 per year to 6,026 in 2018 and 10,366 in 2019, and then settling in any case on very high numbers.

This suggests that the major disputes that engulf the Court have as their parties - whether as plaintiffs or defendants - Ministries, Public Administrations, the Inland Revenue [Agenzia delle entrate], the National Social Security Institute [Istituto nazionale della previdenza sociale – INPS], in other words the State, thus causing a circular phenomenon whereby the number of cases in which the State is a party proliferates to such an extent as to undermine the main judicial institution of the State itself.

The debate on the possible solutions to what has been called " the siege of the Court" has been going on for some time. Two famous assemblies of the judges of the Supreme Court raised the need for a constitutional amendment, given that the possibility provided by Article 111 of the Constitution of applying to the Court of Cassation indiscriminately against any judgement given by an ordinary or special court has been causing for decades tens of thousands of applications for cassation to the Court. This does not enable the Court to perform its priority mission, which is to bring unity and consistency to the interpretation of the law [nomofilachia], and thus to ensure the equality of all citizens before the law. This delicate operation requires that a small number of judges be engaged in examining a limited number of cases. It is not reasonably possible to fulfil this function having to decide about eighty thousand cases every year.

¹³ Cf. Part two, Chapter 3, para 1.5.

¹⁴ On this issue and its consequences for the Court cf. CAPPABIANCA, *La questione tributaria nell'ambito della Corte suprema di cassazione*, in *Foro it.*, 2017, V, 177; as well as CANTILLO, in AAVV, *La giustizia tributaria italiana e la sua Commissione centrale*, Milano, 2005, 168.

Until this crucial issue is solved, the way forward is to rationalise the system as much as possible, reinforcing the most important filter, namely a properly conducted trial on appeal. It is not surprising that the two most troublesome areas are - as we have seen - those in which the appeal instance has been eliminated (international protection) or is highly critical (taxation).

The data on international protection show that in 2021 the Court made 9,348 decisions in this matter, more than half of which (4,995, i.e., 53.4%) were dismissed as inadmissible. This indicates that the Court of Cassation receives applications - often benefiting from State legal aid - that pose problems of merit and not of legality, thereby burdening the Court with a heavy and essentially useless workload.

Tax litigation cases - at the two instances of merit - are not the competence of ordinary courts. But a few years ago the legislators decided to assign to the Court of Cassation the third and final instance of these cases which have become increasingly complex. Besides many trivial cases, most of which end in the lower courts of merit, there is a large number of cases of great legal and economic importance, which inevitably end up in the Court of Cassation (and this is the reason why, while tax cases over the years have been decreasing in the lower courts, the flow of applications to the Court of Cassation has remained substantially stable). In 2021, the value of the cases dealt with by the Tax Chamber of the Court exceeded EUR 9 billion, and the rate of upheld applications against the decisions of the Regional Tax Commissions [Commissioni tributarie regionali] was much higher than that of ordinary cases: 5,713 upheld applications, compared to 4,271 rejected ones¹⁵.

There is a very broad consensus on the need to reform the system of tax justice by entrusting it to judges who deal with it on a full-time basis. At present, the members of the Regional Tax Commissions (starting with their 1,450 judges) have a second professional job. This would be a key issue to solve. Out of the 40,756 civil cases resolved by the Court last year, 15,518 were tax cases (38.1% of the total) and almost half of the backlog was related to this field. A proper reform of the tax justice system is perhaps the best way of addressing the problems of the proceedings before the Court of Cassation, thereby rebalancing the workload of the highest court of the judicial system.

6. Diligence and cooperation

¹⁵ Cf. Part two, Chapter 3, para 1.9.

While waiting for these key issues to be solved, the justices at the Court of Cassation will continue to carry out their work with the same great diligence they had last year.

The analytical part of this report shows the quantity and especially the quality of the work carried out by the United Chambers and the Simple Chambers¹⁶ of the Court of Cassation, often in dialogue with the European Courts¹⁷, as well as with the other Italian Courts.

The support of the administrative staff, with their competence, adaptability, and hard work was essential.

Equally essential was the dialogue with the Procurator General's Office [Procura generale] and the Bar, that gave their full and loyal cooperation in facing extraordinary and unprecedented professional and logistic problems.

The ability to work in silence and in cooperation with the other key actors in the administration of justice is the best way for overcoming the present difficult period that the judiciary is experiencing.

Most of the members of the judiciary have the human and professional resources for regaining trust with the citizens, being aware that, as Voltaire wrote, “the honour of judges, like that of other men, lies in correcting their mistakes”¹⁸.

¹⁶ Cf. Part two, Chapter 4.

¹⁷ Cf. Part two, Chapter 5.

¹⁸ VOLTAIRE, *Trattato sulla tolleranza*, Milan, 1995 (Paris, 1763), p. 41 – *Treatise on Tolerance* http://assets.cambridge.org/97805216/49698/excerpt/9780521649698_excerpt.pdf p.9.