

# Council of Self-government of Tributary Justice





## **Council of Self-government of Tributary Justice**

Senate of the Republic  
Rome  
Friday 29 September 2017

### **The deontology of tributaries judge and the disciplinary responsibility**

**Alfredo Montagna**

President of Disciplinary Commission  
of  
Council of Self-government of Tributary Justice

# Outline

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# Introduction

- **It is an honour for me to represent the position of the Council of Self-government of tributary justice**
- **The Council considered fundamental for Tributary Judge function:**
  - **The Deontology**
  - **Formation and updating**

# Disciplinary responsibility

- **Due to the practise of disciplinary control that we are able to monitor the deontological approach of a Magistrate**
- **This monitoring concerns both the functional and extra functional behaviour**
- **The disciplinary responsibility is a primary requirement for the independence of the judiciary**
  - **Balance point between the autonomy of the function and the guarantee of the service rendered**

# Disciplinary responsibility (2)

- **The autonomy and the independency is not a personal privilege**
- **The disciplinary control is a protection tool for the citizen against any possible degeneration**

# Ethics code of tributary justice

- **Development of control rules to ensure that activities are carried out with:**
  - **Diligence**
  - **Professional engagement**
- **The Tributary Justice has its own deontological code elaborated by the tributary Magistrates association**
- **Magistrates Association is a private law subject**
  - **Violation of rules only has relevance**
    - **Within the Association**
    - **Against Association members**

# Disciplinary proceedings

- **The Disciplinary Judge is a collegiate board composed by**
  - **eleven members elected by tributary magistrates**
  - **four members nominated by the Parliament**
- **Through a request to the Council of Self-government, the disciplinary proceeding is promoted by**
  - **President of Cabinet**
  - **President Regional Tributary Committee**
- **The Council of Self-government entrust a member to carry out preliminary investigations and will:**
  - **proceed to archiving if no disciplinary results are found**
  - **contest the blame to the accused if ascribed charge are disciplinary relevant**
- **The accused is allowed to:**
  - **examine and extract a copy of the judicial acts**
  - **submit his justifications within thirty days after notification.**

# Disciplinary proceedings (2)

- **Expiring the thirty days the Council of Self-government, through the president of competent Board, entrust a member of the Council to:**
  - **proceed with the inquest**
  - **close the inquest within 90 days**
- **The President of the Council, at the end of the inquest, fixed via decree the date of the discussion in front of Council**
  - **The date must be notified to the accused at least 40 days before**
  - **The accused can present his defence up to ten days before the fixed date of the discussion**

# Disciplinary proceedings (3)

- **The discussion in front of Council normally take place in a public session**
- **The Council of Self-government has the right to decide for a close session if:**
  - **the ascribed charge does not concern the exercise of judicial function**
  - **there is a need to protect the right of third parties**
  - **there is a need to protect the credibility of jurisdiction function**
- **The Council of Self-government, after the conclusion of the discussion, immediately deliberates in the boardroom**
- **The disciplinary sanction deliberated by the Council of Self-government is indeed applied only after the decree of the Ministry of Economy and Finance.**

# Deadlines

- **The disciplinary action must be promoted within one year from the day when the President of the Cabinet and the President of the Regional Tributary Commission have been informed on the relevant disciplinary fact.**
- **The communication of the presidential decree must be made within one year of the beginning of the inquest and the decision must be taken within two years.**
- **It should be noted that the duration of the deadline time will be interrupted if:**
  - **The judge has been prosecuted or arrested for the same criminal act**
  - **The disciplinary sanction deliberated by the Council of Self-government is indeed applied only after the decree of the Ministry of Economy and Finance.**

# Deadlines (2)

- **It should be noted that the duration of the deadline time will be interrupted if:**
  - **The judge has been prosecuted or arrested for the same criminal act**
  - **During the disciplinary action a constitutional legitimacy issue will be raised**
  - **The accused is subject to survey or specialist verifications**
  - **The disciplinary action is postponed at the request or for the impediment of the accused or his defender**
  - **If the results of civil, criminal or administrative proceedings must be decided before the disciplinary one**

# Preliminary considerations

- **The decision to perform jurisdictional functions needs to have several qualities:**
  - **Constant cultural care**
    - **Exams will never end**
  - **Strong moral strain**
    - **Strongly motivated**
    - **Always in contact with society around us**
  - **Humility**
    - **Jurist Calamandrei sad: "*Gentlemen judge your power is so great that humility for you is the price due so that you are legitimate to exercise it*"**

# Current picture

- **The disciplinary system built by the legislator in 1992 was subject to strong criticisms**
- **With the 2014 regulation the Council tried to redesign the system but unfortunately the law itself was the point of greater inadequacy**
- **With the issuance of the Legislative Decree dated 24 September 2015, n. 156 a substantial modification of the disciplinary system was made as far as:**
  - **The sanctions,**
  - **The identification of disciplinary relevant facts or behaviours in the**
    - **Enunciation of the fundamental duties of the magistrate**
    - **Specification of a series of typical hypotheses of violation**

# Current picture (2)

- **The current system covers five different disciplinary sanctions :**
  - **The warning;**
  - **The censorship;**
  - **Suspension from functions;**
  - **The interdiction to perform a managerial assignment;**
  - **Removal from the appointment**
- **In Legislative Decree dated 2015**
  - **The penalty being ranged from one month to two years instead from one or six months taking correctly into consideration the recidivism**
  - **The System was simplified for a better verification and disputing on the abnormal delay in the preparation of the dispute decision**

# Final consideration

- **Every disciplinary justice system is subject to critical reservations**
  - **"managed" by the same components in the professional category and sometimes referred to as "domestic" by meaning "domesticated"**
- **It must be pointed out that some criticisms of domestic jurisdiction are the result of a superficial reading of statistical data. The allegations of corporativism is reasonless**
- **According to the CEPEJ (European Commission's Efficiency of Justice) report in 2012, in 2010 started disciplinary proceedings:**
  - **The Italian with 2% of the magistrates**
  - **The Spain with 1% of the magistrates**
  - **The France with 0.1% of the magistrates**

# Final consideration (2)

- **From a reformist point of view**
  - **to consider disciplinary functions entirely disconnected from those of the Administrative function**
  - **to consider an election for the judges of the Disciplinary Section,**
  - **the unification of the disciplinary system made up of the various representations of different magistrates**
  - **the creation of a High Court of disciplinary Justice for any magistrates order.**

# Final consideration (3)

- **The disciplinary justice must be inspired by a balanced rigour.**
- **The need for rigour is closely linked to the extreme delicacy of the functions**
- **The Tributary Magistrature exercises, in almost all cases, judicial functions with professionalism, abnegation, spirit of sacrifice and total devotion**
- **Acting with the utmost balance to avoid that isolated professional falls are penalised**

# Conclusion

**And it is with this commitment  
that I thank you for your attention.**

**GRAZIE PER L'ATTENZIONE**

