



Ministero dell'Interno

Concorso pubblico, per titoli ed esami, a 250 posti per l'assunzione a tempo indeterminato di personale altamente qualificato per l'esercizio di funzioni di carattere specialistico, appartenente al profilo professionale di funzionario amministrativo, area funzionale terza, posizione economica F1, del ruolo del personale dell'Amministrazione civile dell'interno, da destinare esclusivamente alle Commissioni territoriali per il riconoscimento della protezione internazionale ed alla Commissione nazionale per il diritto di asilo, indetto con decreto ministeriale del 26 aprile 2017, pubblicato nella Gazzetta Ufficiale della Repubblica Italiana 4^a Serie Speciale "Concorsi ed Esami" numero 33 del 2 maggio 2017

Art. 10, comma 3, lett. a) del Bando di Concorso - *READING AND USE OF ENGLISH*

READING AND USE OF ENGLISH I

COMPOSITION OF THE CONSTITUTIONAL COURT

Article 135 of the Constitution outlines the essential characteristics of the composition of the Court, which adjudicates as a unitary body rather than in panels. The Court's composition reflects a need to ensure a combination of excellence in legal skills with an attitude appropriate to the legal discussion of policy-oriented issues. This explains why, according to Art. 135, par. 1, of the fifteen Judges attached to the Court, five are appointed by the President of the Republic, five by Parliament in joint session, and five by the highest ordinary and administrative courts. Although the President of the Republic is not technically part of the Executive Branch, the way in which Judges of the Constitutional Court are recruited reflects how Montesquieu's traditional division of powers is used to reach a sort of equilibrium within the Court. It also reflects the above-mentioned ambiguous nature of the Court: it is a partly judicial and partly political body. Taking its composition into account, the Italian system can be considered an intermediate model between, for example, the German one, where the *Bundesverfassungsgerichtshof* [Federal Constitutional Court] is entirely elected by Parliament, and the American one, where the Judges of the U.S. Supreme Court are nominated by the President of the United States and confirmed by the Senate.

Parliamentary appointments to the Italian Constitutional Court are made by secret ballot and require a two-thirds majority, which becomes a three-fifths majority after the third unsuccessful ballot. If one compares this system with the quorums needed for the election of the President of the Republic, the conclusion could be reached that it requires a broader consensus to become a Constitutional Court Judge than the Head of State. The special majorities required for the election ensure that the appointment has the consent of various political forces represented in Parliament; the same kind of convention applies to appointments made by the President of the Republic, who informally seeks the advice of the sitting Judges. As to the Judges to be appointed by the Supreme Courts, the implementing laws provide that three of them are appointed by the Supreme Court for civil and criminal cases (the Court of Cassation,

Corte di Cassazione), and one each by the Supreme Court for administrative law cases (the Council of State, *Consiglio di Stato*) and the Court of Audit (*Corte dei Conti*). The clear political character of the appointments by the President of the Republic and the Parliament is balanced by the professional qualifications required by Art. 135, par. 2 of the Constitution. Constitutional Judges are selected from among Judges of the highest Courts (even if retired), and law professors and attorneys of at least twenty years' experience.

The independence of the Constitutional Court and its Judges is assured in several ways. First of all, the Court has the full authority to verify the formal prerequisites for the appointments of its Judges. Second, the Court has full organizational and financial autonomy, which entails among other things the power to make its own rules of procedure, and jurisdiction over its employees. Considering that in Italy, as in most civil law countries, the Courts are not vested with any rule-making power, and that generally every step of the ordinary civil and criminal procedure must be regulated by law, recognition of such a power in the Constitutional Court is of considerable importance and shows its peculiar role in the Italian system of government. In fact, in order to justify the nature of the Court's power, these norms are qualified as "rules of a supreme body", and therefore ranked as primary sources of law, given the position of the Court as a "constitutional organ" independent from all other state organs.

The independence of individual Judges is pursued through a non-renewable, nine-year term of office. The term of office is the same as many other European Constitutional Courts (Spain, Portugal, Hungary, and Poland). It is similar to that of the German Federal Constitutional Court (twelve years) and is rather long considering other institutional positions: the President of the Republic is elected for seven years: and each Judge holds his office for a term almost double that of ordinary members of Parliament, elected for five years. Moreover, a nine-year term is long enough to guarantee a consistent and coherent case law.

Only the Court itself may remove Judges of the Constitutional Court (but note that no Judge has ever been removed). Judges are immune from legal responsibility for acts done and opinions expressed in the course of their office. The Constitution and other laws also provide for the incompatibility of the office of Judge with many other duties and activities, both public and private.

The Judges of the Court elect the President of the Court from among their members, for a renewable term of three years. The President tends to be elected based only on his seniority, and sometimes for only a few months before his nine-year term expires.

Even though the general principle of collegiality applies to the Court, the President is vested with important powers. He represents the Court publicly and before the other political organs of the State, and gives the annual address on the state of the Court. The President chooses the reporting Judge for a case, who is in charge of writing the final opinion. Moreover, the President convenes the Court in *Camera di Consiglio* (behind closed doors) when the parties to the case have not filed an appearance before the Judge and when a case is manifestly inadmissible or unfounded. Eleven Judges are required to decide a case, but in case of parity, the vote of the President prevails.



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READING AND USE OF ENGLISH I

After reading the text, answer the following questions:

1. What is the composition of the Constitutional Court according to Article 135, paragraph 1 of the Italian Constitution?
2. Why is Montesquieu's traditional division of powers used in the recruitment of Constitutional Court Judges?
3. As to the choice of Constitutional Court Judges, is it correct to say that the Italian system can be considered an intermediate model between the German and the American one? Why?
4. How are parliamentary appointments made and what is the majority required?
5. As to Constitutional Court Judges to be appointed by the Supreme Courts, what do the implementing laws provide?
6. How is the political character of the appointments by the President of the Republic and the Parliament balanced?
7. How is the independence of the Constitutional Court and its Judges assured?
8. How long is the Constitutional Court Judges' term of office? Is it renewable?
9. Can Constitutional Court Judges be removed? Has this ever happened so far?
10. How is the President of the Constitutional Court elected? What are his powers?