Vito Monetti

1.

The starting point of my intervention is represented by article 6 of the ECHR: "*everyone is entitled to a fair and public hearing … by an independent and impartial tribunal*".

The protection of Human Rights through the intervention of the Judiciary represents one of the fundamental aspects of the Rule of Law, a principle that is at the basis of all our States, indeed they share the common idea on the role of the Judiciary in affirming the primacy of the Laws voted by our Parliaments, democratically elected.

Since after the end of World War Second, our Democratic States belong to two European Entities, the Council of Europe and the European Union; all that implies a further identifying element, common to all our States: the national Laws must be enacted and thus enforced in coherence and through the respect of the different sources of legality we are bound to, the European Convention on Human Rights and the European Union Treaty, with its second level regulations.

We share the common idea of a Judiciary that is and must be independent and autonomous because at the same time it is and must be accountable and transparent in the taking of its impartial decisions.

"*There are two aspects to the requirement of "impartiality". Firstly, the tribunal must be subjectively impartial, that is, no member of the tribunal should hold any personal prejudice or bias. Secondly, the tribunal must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect. … the concepts of independence and objective impartiality are closely linked*".

I'm quoting a sentence by a Decision of the European Court of Human Rights[1] because it contains a principle that allows to formulate a further remark: when we are referring to the impartiality from an objective viewpoint, we take into consideration the institutional mechanisms that protect the Judiciary (that is each one of its members) by the risk of any intervention aimed to provoke a decision in favour of one of the Parties. To this end an essential tool of safeguard is represented by the autonomy, that must be considered as an indispensable pre-requisite of the independency. Autonomy intended in the etymological meaning of the word, is the possibility of the self-administration, whose opposite is the etero-directed administration, an administration managed from "outside".

According to the jurisprudence of the Court of Strasbourg, any intervention on the administration of the justice coming from outside risks to undermine also the independency of the Judiciary.

Obviously, the forms of the concrete exercise of the autonomy depend on the traditions of our States; but we must point out, too, that these principles, enshrined in all our Constitutions, must find an actual reflex in our Laws and in the concrete institutional practices as well.

The independence and the autonomy of the Judiciary - according to the principles of the Rule of Law – represent its essential "distinguishing marks", but they need an indispensable corollary; their counterbalance is assured by the principles of accountability and of transparency on the taking of the decisions.

The abovementioned two principles find a double expression:

[1] *PULLAR v. the United Kingdom*, judgment of 10 June 1996; *BRUDNICKA and others vs Poland*, judgment of 3 March 2005.

a) First, there are the judicial procedures in themselves: the dialectical presence of the relevant parties, with the possibility they are given to submit proofs and technical arguments; the duty, for the Judges, to motivate their decisions; the successive degrees of the judgement, all that ensures a full control on the respect of the rules. I'm just describing the judicial functions.

b) But we know that the concrete exercise of these functions is influenced by the "administration of the justice", two words that refer on one hand to the institutional activities related to the career of the members of the Judiciary and on the other hand to the organisation and to the concrete managing of the judicial Offices.

As already said, the administration of the justice can depend on Powers extraneous to the Judiciary or – thanks to the Autonomy – rely on the members of the Judiciary. In fact, our national systems are provided of a mixed mechanism, with competences distributed to different organs.

2.

I am in a certain extent informed on the terms of the debate in course in Germany on these topics.

A debate that is synthesised by the following sentences:

"*The discussion about Councils for the Judiciary raises questions of constitutional law. Pursuant to Art. 20 (2) Basic Law all state authority is derived from the people; it shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies. According to the prevailing opinion that means that both administrative and judicial authority need sufficient democratic legitimation ("demokratische Legitimierung") by the people, the sovereign of the democratic state. On principle there must be an uninterrupted "chain of democratic legitimation" leading from each administrative or judicial authority to the voting public (Federal Constitututional Court <Bundesverfassungsgericht>. Decision of February 15, 1978 – 2 BvR 134, 268/76, BVerfGE 47, 253, 275): The Minister of Justice acts under the responsibility of the head of the government and may be dismissed by him. The head of the government is elected and may be dismissed by parliament that derives its responsibility directly from the people. It is stated that a body which consists of a majority of judges (elected by their colleagues) and decides about the appointment and promotion of judges would not be in conformity with this principle. A "cooptation" of judges is considered as unconstitutional. In addition it is stated that the Minister of Justice can be called to account for his discharge of office while it is unclear how the necessary responsibility of a Council for the Judiciary – whose members are mainly judges who may in principle not be removed from office - towards parliament could be established …*" [2].

I have tried to gather the possible information as regards the most important organs of the Judicial Autonomy that in Germany are entrusted of the task of the administration of the justice, at local level. The Presidia. This is the essential definition of their competences:

"The allocation of cases is carried out in accordance with certain principles that are annually laid down in advance by the Presidium. A Presidium is established at every court. It consists of the president and judges elected by all judges of the court concerned. The Presidium decides in complete judicial independence about the rules according to which cases are conferred to a judge or a division of the court (schedule of responsibilities). This system of judicial self-administration ensures that the executive cannot decide which judge is to give a legal decision in a concrete individual case nor has the president of the court such a right. He has only one vote as the other members of the Presidium when deciding on the allocation of cases".[3]

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[2] O. MALLMANN, "*Federal Republic of Germany, Reply submitted to the Consultative Council of European Judges (CCJE) with respect to the Questionnaire for the 2007 Opinion concerning the Councils for the judiciary*", on the website of the Consultative Council of the European Judges.

[3] O. MALLMANN, "*Federal Republic of Germany, Reply* ... cit.

While, as far as the career questions are concerned,

"*The president of the court evaluates the work of judges and may suggest one of several candidates for promotion. His testimonial is the main basis for the decisions concerning promotions*"[4]; we know that there are intermediate organs provided fundamentally of a consultative role, it deals with a direct expression of the Judges, the Councils for judicial appointments, whose "*written opinion is not binding. The competent minister, however, should be aware of - some times public – criticism if he diverges from the council's opinion*"[5]; and there are the Committees for the Selection of Judges, expression of the Länder and of the Bundestag, finally, there is the Federal Minister along with the Regional Ministers of Justice; the Parliamentary Committees "*may decline the minister's suggestion for appointment and/or promotion of a candidate (veto right)*"[6].

These are – I wish I'm not wrong – the competences and the institutional mechanisms of checks and balance in this important Country, where there is this mixed forms of "administration of the justice".

3.

But – as we know – our States are not completely free while enacting the laws aimed to regulate these relationships between the different powers of the state. They must take into account the norms stemming from the European sources of legality.

The theme I have been given for my intervention is the European frame of reference; that is why I have wanted to begin by quoting the European Convention on Human Rights. The Convention lives through the decisions by the Court of Strasbourg; and the Court has pointed out something as far as the issue of the relationships between Judiciary and Governments are concerned. I use the word Judiciary in the widest meaning, referred to the Judges and to the Public Prosecutors as well. I add that the principles expressed by the Court of Strasbourg have found a very interesting reflex in some decisions by the Court of Justice of the European Communities and by some National Constitutional Courts.

Let's begin by the Case law of the Court of Strasbourg.

There are two recent Decisions into which very important principles are affirmed.

First there is the case Brudnicka [7], regarding a procedure before some organs under a Polish Law, the Maritime Dispute Chambers, organised according the scheme of the judicial procedures, that is with a first instance and an appeal Chamber, organs empowered to deliver decisions, whose members were appointed and dismissed by the Minister of justice.

Intervening in this institutional situation the Court of Strasbourg stated as the following:

"1. In maintaining confidence in the independence and impartiality of a tribunal, appearances may be important. Given that the members of the maritime chambers (the president and vice-president) are appointed and removed from office by the Minister of Justice in agreement with the Minister of Transport and Maritime Affairs, they cannot be regarded as irremovable, and they are in a subordinate position vis-à-vis the Ministers. Accordingly, the maritime chambers, as they exist in Polish law, cannot be regarded as impartial tribunals capable of ensuring compliance with the requirement of "fairness" laid down by Article 6 of the Convention. In the Court's view, the applicants were entitled to entertain objective doubts as to their independence and impartiality (see, mutatis mutandis, Sramek v. Austria, judgment of 22 October 1984, Series A no. 84, p. 20, § 42). There has therefore been a violation of Article 6 § 1 of the Convention".

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[4] Ibidem.

[5] Ibidem.

[6] O. MALLMANN, "*Federal Republic of Germany, Reply* ... cit.

[7] *BRUDNICKA and others vs. Poland*, judgment of 3 March 2005.

And then the Withfield case[8], that refers to the absolutely similar situation of the organs competent as for the enquiries and the subsequent adjudication on misgivings committed by a person during his state of detention in a prison. And the Court of Human rights recognised a violation of article 6 on the basis of following remarks:

- "41. *The Court recalls that in order to establish whether a tribunal can be considered "independent" - notably of the executive and of the parties to the case - regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and to the question whether the body presents an appearance of independence. What is at stake is the confidence which such tribunals in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused. In deciding whether there is a legitimate reason to fear that a particular court lacked independence or impartiality, the standpoint of the accused is important without being decisive. What is decisive is whether his doubts can be held to be objectively justified. It is further recalled that there are two aspects to the question of "impartiality": the tribunal must be subjectively free of personal prejudice or bias and must also be impartial from an objective viewpoint in that it must offer sufficient guarantees to exclude any legitimate doubt in this respect. …*
- *2. The Court observes that persons answerable to the Home Office (whether as prison officer, governor or controller in the applicants' prisons) drafted and laid the charges against the applicants, investigated and prosecuted those charges and determined the applicants' guilt or innocence together with their sentences. It cannot therefore be said that there was any structural independence between those with the prosecuting and adjudicating roles and the Government did not suggest that there was".*

So, the criteria to evaluate if a Tribunal is independent vis-à-vis the Government consist on the "*manner of appointment of its members, their term of office, possibility of removal, existence of guarantees against outside pressures*".

But it is worth to underline that the Court took into consideration also the position of the organs of the investigation and prosecution and on their regard stated:
"*3. The Court observes that persons answerable to the Home Office (whether as prison officer, governor or controller in the applicants' prisons) drafted and laid the charges against the applicants, investigated and prosecuted those charges and determined the applicants' guilt or innocence together with their sentences. It cannot therefore be said that there was any structural independence between those with the prosecuting and adjudicating roles and the Government did not suggest that there was".*
The judgement on the violation of article 6 was based also on the verified lack of independence as regards the prosecution organ.

4.

The Court of justice of the European Communities – as we know - doesn't have a very direct competence on the issues we are examining, but its continuous interventions on the field of Human Rights[9] led the CJEC to express some important positions, in particular by the well known Decision on the case Gözütock and Brügge[10].

As we know, the principle affirmed by the Court has been that "*The ne bis in idem principle, laid down in Article 54 of the Convention implementing the Schengen Agreement … also applies to procedures whereby further prosecution is barred, such as the procedures at issue in the main actions, by which the Public Prosecutor of a Member State discontinues criminal proceedings brought in that State, without the involvement of a court, once the accused has fulfilled certain*

[8] *WITHFIELD and others vs.The United Kingdom*, judgement 12 April 2005.

[9] Testified also by the far increasing application of the Charter of Fundamental Rights of the EU the CJEC is doing. On these themes, see: G. BRONZINI and V. PICCONE (editors), *"La Carta e le Corti – I diritti fondamentali nella giurisprudenza europea multilivello";* Chimienti, Taranto 2007.

[10] Judgment of the Court of 11 February 2003, *in Joined Cases C-187/01 and C-385/01 (Reference for a preliminary ruling from the Oberlandesgerich Köln and Rechtbank van eerste aanleg te Veurne): Hüseyin GÖZÜTOK (C-187/01) and Klaus BRÜGGE (C-385/01).*

obligations and, in particular, has paid a certain sum of money determined by the Public Prosecutor".

It is a duty, for the interpreter, to do a perusal of the reasoning of the CJEC Decision, comparing the principles this Court affirmed with the above mentioned principles, the ones stemming from the Court of Strasbourg.

And this effort of analysis leads us to put a question. We must consider, indeed, that when the decision to discontinue the case is taken by the Public Prosecutor, very often on the basis of a "bargain" with the defendant, the latter isn't on a situation of "full liberty", not only because he as to do with a public counterpart but above all because, if the defendant doesn't accept the bargain, a risk arises that the further course of the procedure can imply a most severe decision. Thus we must wonder if it is reasonable and institutionally correct that this particular form of "definition of the case", qualified by the Judges of Luxembourg as a "judicial precedent", could be decided by a Public Prosecutor dependent on the Government.

5.

Further elements can be identified in the case law of the Constitutional Court by a Country whose system doesn't include any High Council of Justice; it deals with the Czech Republic.

The Constitutional Court of this Country intervened twice (Decisions no. 7\2002 and no. 18\2006) declaring the illegitimacy of any power by the Government related to the career of the judges, two decisions completely coherent with general principles that are wholly shared in all our Countries.

In the first Decision[11] the Court gave an opinion of illegitimacy of some articles of a Law because of "*a disproportionate opportunity for interference by the executive into the judicial power* " given to the Minister of Justice. It dealt with: *"The powers of representatives of the executive branch, …, in relation to the evaluation of professional qualifications of judges who have already been appointed",* in particular, the Court underlined that "*The fact that the final decision on professional qualifications is in the hands of a panel of the supreme Court cannot fundamentally change anything in this conclusion …, likewise the fact that input to the evaluation of judges is also given by the judges' councils newly established by the Act, elected from among the judges at individual courts, as they have only advisory votes, which the representatives of the executive power are not required to accept".*

Similarly illegitimate was considered the competence given to the Minister of Justice as for the full supervision on the Judicial Academy.

Particularly interesting (as far as our discussion here is concerned) is the reasoning related to a further illegitimacy declared by the Court. It is related to the situation of the "*chairmen and vice-chairman of courts*", that "*also perform activities which are administrative in nature"*; according to this Law, their "double vest" empowered the Minister of justice to appoint and dismiss them on the name of the of the politically responsibilities belonging to the Minister. The Czech Constitutional observed that the positions of "*chairmen and vice-chairman of courts should be considered an advancement in a judge's career (similar to the appointment of a panel chairman), and therefore the chairman and vice-chairman of a court should also not be subject to removal otherwise than for a reason foreseen by statute and by proceedings in disciplinary proceedings, i.e. by a court decision".*

Perfectly in line with the abovementioned principles is the abstract of the second Decision by the Czech Court[12]:

"*The principle, "he who appoints, may remove", cannot be applied to relations in the context of court administration and that neither is it possible to construe the duality of the legal status of a court chief judge as an official of state administration, on the one hand, and as a judge, on the other. Accordingly, the manner in which court chief judges, including the Chief Justice of the*

[11] Pl. ÚS 7/02, by 18 June 2002

[12] Pl. US 18/06 - decided 11 July 2006

Supreme Court, are removed must be gauged by means of the maxim expressed in Art. 82 par. 2 of the Constitution; not only must the rules governing the removal of judges respect the constitutional principles of the separation of powers and the independence of the judiciary, so too must the rules for the removal of chief judges and deputy chief judges.

The office of chief judge or deputy chief judge, as well as that of chairperson of court collegia, should be considered as a career step for a judge (similarly as is the case for the appointment of the chairperson of a court panel), so that neither the chief judge and deputy chief judge of a court should be subject to removal otherwise then on the grounds foreseen in the law and on the basis of a decision of a court."

6.

As far as the prosecutors are concerned, we must quote the Constitutional Court of Hungary, that in the Decision 3\2004[13] fixed the "borderlines" between the Prosecutor general's institutional position and the competences of the institutional organs provided of the electoral legitimacy, the Parliament and the Government. In particular, the Court interpreting art. 27 of the Constitution, stated that: "*The Prosecutors general, who is elected by the Parliament, is not politically accountable to the Parliament for individual decisions taken while performing his duties. The Pg and the Prosecution service are not subordinated to the Parliament. Thus the PG may not be instructed either directly or indirectly to take or to modify any individual decision with e predefined content. The lack of political responsibility of the PG does not affect his responsibility towards the Parliament".*

7.

Having carried out this exploration of the jurisprudence, to be more exact, of the principles stated by the two European Courts and by two Constitutional Courts, it is useful to give a glance to a debate that is in course for a long in several international, institutional seats.

As I said, all our Constitutions contain the principles of the separation of the powers and of the independence of the judges, but in the last 15 – 20 years the debate on the real contents of these principles allowed to identify some further crucial issues, leading – also at a political level - to several common conclusions.

These conclusions appear perfectly coherent with the principles fixed by the two European Courts, as well by the Constitutional Courts of the Czech Republic and Hungary. Evidently, the general debate in course on these topics has reached some common viewpoints, quite well rooted between the jurists. I'll try to briefly examine the main Documents.

8)

After the proclamation, on 1985 of the UN Basic Principles on the Independence of the Judiciary[14], there was the CE Recommendation R.(94) 12[15], into which we can find the first clear signals of the ongoing debate: ***"****The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules".*

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[13] Decision 3/2004 (II. 17.) AB, by 16 February 2004

[14] Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

[15] Recommendation No. R (94) 12 of the Committee of Ministers to Member States on The Independence, Efficiency and Role of Judges (Adopted by the Committee of Ministers on 13 October 1994 at the 518th meeting of the Ministers' Deputies).

This institutional line is followed by the European Charter on the Statute for Judges; by the Resolution (97) 24 by the Committee of Ministers of the Council of Europe, on the twenty guiding principles for the fight against corruption; and finally – in a more articulated and complete way - by the Opinion no. 10(2007) by another organ of the CE, the Consultative Council of European Judges.

It is worth to quote textually the relevant points of this Document:

"10. The CCJE also takes the view that the Council for the Judiciary should promote the efficiency and quality of justice, so assisting to ensure that Article 6 of the European Convention on Human Rights is fully implemented, and to reinforce public confidence in the justice system. …

11. The CCJE recommends that the Council for the Judiciary be positioned at the constitutional level in those countries having a written Constitution, or in the equivalent basic law or constitutional instrument for other countries….

13. … The relations between the Council for the Judiciary and the Minister of Justice, the Head of State and Parliament need to be determined. Furthermore, considering that the Council for the Judiciary does not belong to the hierarchy of the court system and cannot as such decide on the merits of the cases, relations with the courts, and especially with judges, need careful handling.

15. The composition of the Council for the Judiciary shall be such as to guarantee its independence and to enable it to carry out its functions effectively.

16. The Council for the Judiciary can be either composed solely of judges or have a mixed composition of judges and non judges. In both cases, the perception of self-interest, self protection and cronyism must be avoided.

18. When there is a mixed composition (judges and non judges), the CCJE considers that, in order to prevent any manipulation or undue pressure, a substantial majority of the members should be judges elected by their peers[9] …, such a mixed composition would present the advantages both of avoiding the perception of self-interest, self protection and cronyism and of reflecting the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy …".

9)

All that is related to the Judges, while as far as the Public Prosecutors position is concerned, a proper reference must be done to the UN Guidelines on the Role of Prosecutors[16].

But the most articulated approach to the questions we are discussing here has been done by the CE Recommendation 19(2000)[17] on the Role of Public Prosecution in the Criminal Justice System.

Since its preamble this Recommendation defines the PP as an <u>impartial</u> organ:

"1. Public prosecutors" are public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system".

And then it indicates several guide-lines aimed to regulate the impartial, accountable and efficient exercise of this function, taking into account the different institutional situations the Public Prosecutors find themselves in the national systems, that is an organ of the Executive power or of the Judiciary.

"13. Where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that:

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[16] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

[17] Recommendation 19(2000) of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System *(Adopted by the Committee of Ministers on 6 October 2000 at the 724th meeting of the Ministers' Deputies.)*

a. the nature and the scope of the powers of the government with respect to the public prosecution are established by law;
b. government exercises its powers in a transparent way and in accordance with international treaties, national legislation and general principles of law;
c. where government gives instructions of a general nature, such instructions must be in writing and published in an adequate way;
d. where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law, the government being under a duty, for example:
− to seek prior written advice from either the competent public prosecutor or the body that is carrying out the public prosecution;
− duly to explain its written instructions, especially when they deviate from the public prosecutor's advices and to transmit them through the hierarchical channels;
− to see to it that, before the trial, the advice and the instructions become part of the file so that the other parties may take cognisance of it and make comments;
e. public prosecutors remain free to submit to the court any legal arguments of their choice, even where they are under a duty to reflect in writing the instructions received;
f. instructions not to prosecute in a specific case should, in principle, be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected not only to the requirements indicated in paragraphs d. and e. above but also to an appropriate specific control with a view in particular to guaranteeing transparency.
14. In countries where the public prosecution is independent of the government, the state should take effective measures to guarantee that the nature and the scope of the independence of the public prosecution is established by law.
15. In order to promote the fairness and effectiveness of crime policy, public prosecutors should co-operate with government agencies and institutions in so far as this is in accordance with the law.
16. Public prosecutors should, in any case, be in a position to prosecute without obstruction public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognised by international law.
17. States should take appropriate measures to ensure that the legal status, the competencies and the procedural role of public prosecutors are established by law in a way that there can be no legitimate doubt about the independence and impartiality of the court judges."

As we see, it draws a scheme of the PP situation following the proposed model for Judges: an organ of justice, impartial, organised in a transparent and accountable way, enjoining a clear and effective status regulated and guaranteed by the law.

10.)

Just a few final remarks.

The core-question of our discussion is the positions of the organs of control in a Country that respects the Principles of the Rule of law; the first and most important of these organs is the Judiciary, but new and different forms of similar entities, although with limited competencies, are lately arising; it is generally recognized that there is the, obvious, necessity for these organs to be independent vis-à-vis the controlled organs; it must be added that in the public areas, what Im defining as "controlled organs" are in the most part of the cases political (in a general meaning) subjects, that in a more or less way are empowered to appoint their controllers.

How to ensure the independence of these controllers and – at the same time – avoid their irresponsibility?

As far as the Judiciary is concerned, at an international level, can be quoted the example of the International Criminal Court. If we read the Statute and the Rules of procedure and evidence, we realise that the choice done by the Rome Conference was to create a judge with a long term and not renewable mandate, in this way avoiding any risk of undue pressures provoked by the prospective of having or not the mandate confirmed; and to create, beside the Court, a sort of organ of political nature (maybe it is more appropriate say: a sort of Parliament), the Assembly of

the States Parties whose function is to counterbalance the institutional position of the Court and of the Prosecutor and so avoid or at least limit the possible risks of isolation and the consequent lack of accountability.

At the national level, the response given by 20 out of the 47 Members[18] of the Council of Europe has been the creation of the High Councils for the Judiciary.

The composition and the competences vary according to the internal institutional balances; but what must be underlined is the presence, everywhere, of representatives elected by the members of the Judiciary beside members elected or designated by organs provided of a political legitimacy.

These Councils represent the balance between the abovementioned opposed principles, respect of the principle of independence for the Judiciary as well as of the principle of political legitimacy in the public administration; as for the members elected by the Judiciary, the fact that the electoral body is composed by all the members of the judicial body represents – along with the widest possibility offered to submit a candidature - a further guarantee for the internal independence, that means the independence of each one of the members of the Judiciary, in so avoiding the risk of too huge competences given to the Chief-judges. These Councils often represent the Public Prosecutors, too, at least in the Countries into which the PP enjoy a condition of no-submission to the Government.

And I want to conclude by submitting a question.

I'm referring to a theoretical situation into which the Laws proclaim the independence of the judges but their appointment, career, dismissal are completely on the hands of Parliaments or of the Governments, on the name of the principle of legitimacy that entrusts only an elected body to "administer the public activities".

Couldn't there be a risk, in this situation? I'm referring to the risk that these elected organs – thanks to their powers of administration of the justice – arrive to condition the contents of the decisions taken by the judges, without being politically responsible of those decisions because they are formally issued by the judges.

Rome – Frankfort, October 2008

Vito Monetti
Deputy Prosecutor general of the
Supreme Court of cassation, Italy
President of Medel
Magistrats européens pour la démocratie et les libertés

[18] The information is given by the European Network of Councils for the Judiciary (ENCJ), see: http://www.encj.net/encj/