

# The Proposed Psychological Tests for Judges in Italy

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The recent proposal to introduce psycho-academic tests for judges and public prosecutors has sparked debates between state powers and legal practitioners. But what are the reasons behind this proposal and why is it causing such a stir?

On 26 March 2024, the Council of Ministers, headed by Giorgia Meloni at the proposal of the Minister of Justice Carlo Nordio, a former prosecutor approved a [decree](#) which is part of the reform of the judiciary ([Delegated Act No. 71 of 17 June 2022](#)), which introduces psycho-aptitude tests for the competition for future judges and prosecutors. Starting from 2026, therefore, there will be a psychological test to assess the personality of candidates. The test comprises several questions to be answered with true or false that also aim to assess the emotional stability of candidates.

The results of the psychological tests will be reviewed by university professors in psychological subjects who will be appointed by the self-governing body of the judiciary, the Superior Council of the Magistracy (Consiglio Superiore della Magistratura – CSM). The psychology professors, however, will only be present in a supporting function.

The final draft of the legislative decree is significantly different from the original proposal, which provided for the experts to be appointed by the Minister of Justice and not by the CSM. According to the government, the psycho-aptitude test is necessary to understand the compatibility of candidates' personalities with the important role they are going to play. A similar test is planned for other career paths such as those involving the armed forces and the State Police. However, the recent proposal has triggered much controversy between the government and the National Association of Magistrates, the representative and non-political body that groups Italian magistrates. And this despite the fact that the final text accepted some objections raised by the opposition and the judiciary to avoid excessive control by the Ministry.

## The Ancient Italian Debate on the Judiciary

The debate, often even open clash between politics and the judiciary has quite remote roots in Italy. Behind them is the general relationship between politics and the judicial system.

It all began between 1992 and 1994, when the “Tangentopoli” scandal shook national politics. On that occasion, the pool of magistrates known as “Mani Pulite” (Clean Hands) began an investigation into a system of bribery and corruption

that affected almost all Italian political forces, putting an end to the so-called “First Republic” and the country’s traditional main parties.

This clash has evolved over the years and has conditioned public opinion in the country. There is a polarization between those who have always defended the work of the judiciary and those who believe that judges often follow political ends (there has been talk of “[red togas](#)” or “[clockwork justice](#)”).

The debate was fueled by frequent political nominations of former magistrates, starting with those from the “Mani Pulite” pool, which prompted opponents of this phenomenon to propose attempts to reform the judicial system.

These have included numerous attempts to achieve a separation of functions, which has been demanded continuously for 30 years. It would prevent judges from being able to change functions and switch from judging to investigating or vice versa during their career. Nevertheless, the proposal to separate careers with two different competitions for judges and prosecutors and two different self-governing bodies also comes up cyclically.

More recently, an attempt was made to reform the judiciary by repealing some provisions through a referendum on 12 June 2022. On that occasion, five different questions were proposed to the voters, including those that would have involved the separation of functions and some changes to the elections of the members of the Consiglio Superiore della Magistratura.

While most voters approved the proposal, the majority of voters required for the referendum to be valid was not reached.

The CSM is also at the centre of the political debate after a recent scandal concerning political “[currents](#)” within the judiciary and how these affect the appointments of judges, and the relationship between judges, politics and the press. For this reason, it was proposed to change the way the members of the self-governing body are elected, even proposing a draw instead of an election.

## **Elements of Constitutional Legitimacy**

Beyond the issues of politics and public opinion, there are several aspects of constitutional law to be assessed in the relationship between politics, in particular the executive power, and the judicial power represented by the judiciary, always understood as a set of judges and prosecutors.

[Article 101](#) of the Italian Constitution enshrines the principle of the independence of the judge, who must exercise his function under the sole constraint of the law; this is a cardinal principle of the rule of law, which is followed by the principle of the independence of the judiciary as a whole.

[Article 104](#) of the Constitution states that the judiciary is an autonomous order independent of any other power and that the Superior Council of the Magistracy is chaired by the President of the Republic. In the following articles (105-110) it

establishes principles on magistrates, emphasising the self-organisation of power outside the control of the executive power of the government.

For these reasons, any interference by politics in what concerns the *Consiglio superiore della Magistratura*, which the Constitution places as a guarantee of the autonomy of the judiciary, can be interpreted as a violation of these principles and the separation of powers.

The first formulation of the legislative decree, according to which the psychologists on the selection board would be appointed by the government and the Minister of Justice would supervise the examinations, would have raised serious concerns. Such a system would certainly have harmed the autonomy of the judiciary, which was not in a position to be independent even in the selection of future magistrates. In that case, the Constitutional Court, if called upon, would certainly have declared the provisions unconstitutional.

The final text, on the other hand, which leaves the choice of experts to the CSM and all decisions on the selection of new judicial auditors to the competition commission with an overall assessment of all the tests, poses fewer problems from the point of view of legitimacy.

Since this provision is contained in a legislative decree of the government, which must follow the guiding principles and criteria given by the parliament in the legislative delegation, some have raised doubts as to whether the delegation was respected; in fact, a judgement of constitutional legitimacy would not seem to be able to stand on this point, because in this case there isn't an explicit provision of the delegation violated by the government's proposal.

Ultimately, despite the changes, the decree does not cease to create debate and perplexity from the points of view of practical utility and political significance. In the meantime, the Magistrates' Association has postponed a national strike hoping for further changes by the time the test comes into force in 2026.

## Testing Judges and Prosecutors

The introduction of the test is more political than practical in significance. The proponents have justified the test with a view to other professions and other legal systems. The test known by the name "Minnesota" would be one that assesses the personality of individuals but on which even the academic community of psychologists does not seem to be in [agreement](#). In addition, competitions involving a psycho-aptitude test do not concern bodies with autonomy and independence (especially from the government) such as the judiciary. In France, aptitude and personality tests had been introduced in 2009 but were considered unnecessary and abolished in 2017.

One could then argue that, since it is necessary for a magistrate to be psychologically fit to perform his or her duties, it would then make more sense to provide for a periodic evaluation for judges carried out by the CSM itself.

As it emerged from the debate, this seems more like another chapter in the long Italian clash between politics and the judiciary, where one tries to prevail over the other and gain public favour.

This reform is not about the judicial system, which is often too slow and cumbersome. Rather, it is a consequence of the recent scandals about “political” affairs within the judiciary that have undermined the figure of judges in the popular view. One of the solutions that are being put forward would be to separate the career paths of judges and public prosecutors. However, one would need to deal with the prospect of making prosecutors controllable by the government, through the Minister of Justice, or that a possible self-governing body only for prosecutors would not foster a new caste.

The system of the judiciary could be improved in various ways. Any reform should have at its core the smooth functioning of a state power with the aim of guaranteeing the justice. What we witness now is political battles.

