

The Honorary Jurisdiction in Europe - Systems in comparison

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The report of the CEPEJ ¹(European Commission for the Efficiency of Justice constituted by the Committee of Ministers of the Council of Europe in September 2002) of 2014, referring to the 2012 data, shows that non-professional judges or lay judges (lay judges) are generally voluntary, they are compensated for their expenses and, in some cases only, also for the work done on time; They take, however, binding decisions in the Courts and can judge both within the Courts by composing the panels formed by professional judges, or as monocratic judges.

The Cepej report also provides another interesting figure for the purpose of obtaining useful comparative information, namely the ratio between the number of fees and the number of togats per 100,000.00 inhabitants: in the Nordic countries, traditionally close to the common law systems, The number of fees is far higher than that of the togati with the highest peak in Norway, where 850 fees per 100,000.00 inhabitants were recorded.

In Italy, on the other hand, we have the lowest number of honorary judges, namely 5.5 out of every 100,000 inhabitants

The non-professional (or lay) judge in various European countries is commonly characterised by instability and does not provide either a professional framework or previous training aimed at carrying out judicial activity: Honoraria is based on voluntary service in relation to recognised professional experience and good repute. There is also no provision for compensation in a stable form, but only, mainly, the reimbursement of expenses incurred.

Now, these principles of voluntary, experience and professional good repute have been recalled and contained in Recommendation 12/2010 and must certainly be applied - depending on the implementation of the principles brought by art. 6 of the ECHR - in

¹ Draft of the legislative decree on the organic reform of the honorary judiciary - impact analysis of regulation (A.I.R.)

relation to the independence and impartiality of honorary judges, the requirement that they carry out their work in offices with adequate resources and the need to contribute to creating a sufficient number of judges.

The prevailing almost gratuitousness of the assignments and the recognition only of reimbursement of expenses, however, escape, instead, the application of the precautions imposed by art. 55 on remuneration.

In Italy an anomalous system has been created because the functioning of the jurisdiction - entrusted, according to the constitutional design, to ordinary magistrates established and regulated by the rules of the judicial system (102 Cost), with only residual provision for honorary magistrates (art. 106 Cost) of which the appointment is also allowed elective - it is based, currently, on a significant presence of honorary judges without which some offices would be paralyzed: despite the fact that the professional judiciary is numerically preponderant (According to the 2014 CEPEJ data, in 2012, 6,384 judges were appointed against 3,275 honorary judges divided into peace judges and GOP, which corresponds to 5.5 judges for 10.6 togati per 100,000 inhabitants).

The establishment of honorary judges in 1998 represented the creation of a substantial precariat based on repeated extensions and characterized by a remuneration considered, at least for the GOP, insufficient. In addition, both the GOP and the GdP have no social security or welfare cover.

This situation, quite normal compared to the European lay judges whose presence in the courts is occasional or, at any rate, completely voluntary (with the absence, therefore, of real compensation and with the payment of mere expenses), is incongruous in the national reality if you just think that the honorary judges (between Justices of the Peace and GOP) manage in the civil sector 40% of the jurisdiction, in many cases with presences in Many cases daily, in the hearing which follows the drafting of the measures taken.

The GOP and the VOPs, established by D. lvo 51/1998 (c.d. legge Carotti) modified by L. 127/2008, are still waiting for a general reorganization of their role, modified by

D. Lgst. 116/17, c.d. Orlando Law partially amended by the law and pending further amendment with L

From what has been said so far it emerges that the honoraria in Italy is quite different from that existing in the rest of Europe, There are GOP and VPO who have been serving in the same office for more than 20 years and who are being used stably to replace the absent or insufficient ordinary judges.

The choice that has been made with the reform, seems from a distant part of the honorary model existing in the rest of Europe, where the non-professional judiciary dispenses from the office for the process because it assumes, since such "organizational unit" exists in almost all countries and is made up of a staff of graduates and employees who assist the judge in his decision and, often, provide for the extension of the measures taken by him.

During the various reforms, there were more powers for the Justice of the Peace, as well as the inclusion of the honorary judge in the structure of the office for the trial.

In relation to this structure it should be noted that in the experiences of some foreign systems this figure is already present for a long time².

In Austria, each judge is assisted by two graduate assistants (for a maximum of two years), who are responsible for case-law research, drafting judgments and also, in the presence of the magistrate, dealing with the trial phase.

In the **Netherlands**, each judge is assigned one or two assistants, either graduates or students, plus an employee. Students work part-time and are responsible for drafting the simplest sentences, verbalizing them, preparing the trial record

In **Poland**, too, there are graduate students working alongside the judge.

In **France**, a Secretaires greffier assists the magistrates in carrying out their activities.

² Higher Council of the Judiciary - Ninth Commission - Traineeship and Vocational Training. Study meeting n. 5924 "the organizational measures and virtuous practices for the good functioning of civil judicial offices"

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The conference is attended by delegations from Austria with President Enalj Rainer Sedelmayer, Bulgaria with delegate Mimo Gracia, and in liaison Teams the vice president of the Finnish association of lay judges, Ovavi Kuikka. From Poland, our honorary colleague Krzysztof Bartochowski sent a written report.

In my brief intervention I would like to make a reference to the realities of the other associations present in Enalj

Austria

Judges who are not dismissed and who perform their duties on a voluntary basis shall be assigned to specific cases. These include honorary or sworn judges in criminal trials and lay judges with specific expertise dealing with commercial, labour and social security cases as well as certain administrative proceedings³.

Belgium

The appointment as a lay judge in commercial matters shall have a term of five years. If you are unable to hold the office, you must ask the court's professional judge to take over for the time required. You may also resign or ask not to be extended after the end of your term.

In relation to the work performed, the honorary judges receive a reimbursement of € 40.75 per hearing, with a minimum session of 3 hours at each hearing. This amount does not include the pension contribution related to the honorary function as it is flanked and is fully compatible with other profession already exercised for which the last social security burden is provided⁴.

³ <https://e-justice.europa.eu>

⁴ Paulette Vercauteren - Belgio

Denmark

The Danish administration of the Court, the administrative authority⁵ dealing with the general administration of the Danish courts, contacted by me, has provided me with some information concerning the treatment of lay judges and juries in criminal matters. First, the Court states that the term "honorary judge" does not exist in the Danish judicial system.

It is foreseen, however, that in some criminal trials, the panel of judges will be composed of lay judges and jurors in these cases they are part of the "legal" judges.

Lay judges and jurors are appointed for a term of four years, after which they may be reappointed for another four years. When you contribute as a lay judge or a juror, you are not considered to be employed by the Danish courts.

Being a lay judge or a juror in criminal trials is a civic duty. When you are called to serve as a lay judge or sworn in a criminal trial, the employer may cut your salary for the period when you were unable to wait at work. You can claim exemption from being a lay judge or a sworn judge if you cannot perform your duty without risking your health. The legal basis for this exemption is found in the Administration of Justice Act, section 71.

Judges and jurors are paid 1,100.00 DKR per day (approximately 140.00 euro) and 120.00 DKR per night (approximately 16.00 euro) in addition to reimbursement of hotel and travel expenses.

The payment of lay judges and jurors is regulated in administrative act number 712 of 17 November 1987, with subsequent amendments. The administrative act relating to the payment of judges and lay jurors does not include the mention of pension.

Scotland

I have contacted the Scottish Justices Association⁶, which is the representative body of Justice of the Peace (JP) in Scotland.

⁵ Danish Court Administration

⁶ Dennis Barr JP - Scotland

All JPs in Scotland are lay volunteer judges and only receive reimbursement for their work. The amount of expenditure is decided centrally and is set at relatively low levels, which means that in some cases the full amount of actual expenditure is not reimbursed. The Justices of the Peace are selected through interviews, prior to public advertising campaigns to recruit new Justices of the Peace. All Justices of the Peace are required to receive 24 hours of formal legal training before taking up their duties. Thereafter, the Justices of the Peace are required to attend a minimum of 12 hours of additional training each year.

A Justice of the Peace must serve with a legally qualified legal adviser who ensures that all strict legal matters are properly handled.

The Justices of the Peace only handle cases with relatively low value limits, which means, by definition, that they are relatively minor crimes. The maximum penalty a Justice of the Peace can impose is limited to 60 days' imprisonment, 100 hours of community service, a fine of £2,500 or three years' suspension from driving. Finally, the special feature of Scottish Justices of the Peace is that they deal only with criminal cases and cannot deal with civil law cases.

As for the work commitment, it is foreseen that Justices of the Peace must serve on 12 separate occasions each year with the clarification that a morning or afternoon session counts individually, so if a Justice of the Peace serves for a whole day, Two sessions are considered to have been completed.

Sweden

The association of lay judges in Enalj has about 3500 members, with forecast to increase by 2025 to 5000 even ⁷if the objective represented at the Swedish government is to reach 10,000 lay judges.

This association has a national committee of 11 people and a part-time administrative employee whose costs are reimbursed by the Swedish government. The association is a publisher of a website and a newspaper.

⁷ Stefan Blomquist Outgoing President of the Swedish Association

The commitments pursued include those relating to remuneration, training, the recruitment of honorary judges, general working conditions and safety and the formation of opinion

The problem of fees and salaries remains unresolved. Honorary judges receive 250 SEK (23.40 euro) for half a day (3 hours) or 500 SEK (46.80 euro) for a full day⁸.

France

FNAPTE⁹ is a French association founded in 1992. We are members of ENALJ since May 1993. Today we have almost 250 members throughout France. Each member pays a membership fee of 23 euros. FNAPTE receives a grant from the Ministry of Justice but remains independent. The main tasks of FNAPTE are to promote exchanges between evaluators, publicise this mission to the general public, represent evaluators at the Ministry and participate in the training of evaluators. It is run by twelve elected and voluntary directors. It has about thirty local representatives in France.

The Juvenile Lay Judges are citizens appointed for four years renewable by the Minister of Justice. The assessors must be sworn in before taking office. The assessors must be of French nationality and over 30 years old. They are chosen for their background and interest in children's issues. The assessors work (mainly) in a wide range of occupations (bank clerks, clerks, industrialists, doctors, teachers, workers etc.).

They are recruited from every social class, after applying to the Juvenile Court of their place of residence. This social and professional diversity is particularly important. In the event that they are unable to carry out their professional activities while providing the service of the hearing, experts receive an allowance amounting to 1/30 of the average salary of the magistrates of the court (approximately 100 euros gross).

⁸ Linda von Beetzen President of the Swedish association 2019- 2022

⁹ Guillaume Joubert President of FNAPTE president@fnapte.fr

The juvenile court (which judges minors between 13 and 18 years of age) is composed of a professional magistrate (juvenile judge) and two assessors. (lay judges). Each has a vote during the deliberation that decides on the guilt and the sanction of the minor.

In October 2021, a juvenile justice reform came into force in France with the main objective of reducing trial times and limiting the detention of minors.

Juvenile justice in France is based on two fundamental principles: the primacy of education over repression and reduced criminal responsibility for children.

The new Juvenile Criminal Justice Code (CJPM) provides for a break in the procedure with a first trial on the sanction. (within three months of the crime). If the child is found guilty, a period of educational probation with obligations for the child begins and the victim is immediately compensated.

A second trial is held on the sanction (within nine - twelve months from the first trial) which takes into account the evolution of the minor from the first trial.

These major changes require further training for evaluators, in which the FNAPTE association is involved.

Spain

Finally, I would like to mention the Spanish question, since the situation represented by my colleagues in the Spanish Community Courts over the last few years is not good at all.

During my presidency, in 2022 I was contacted by the secretary of the council of the association FEDEAJUPA ¹⁰(the Spanish Federation of Lay Judges)

The current situation in Spain regarding peace justice has been described as "devastating" and close to an end. In fact, since 2021 the activity of lay judges has begun to gradually cease with a forecast of the definitive closure of this degree of justice in 2025.

This situation has been brought to the attention of public opinion in Spain but also of institutions outside it. Already from the ENALJ conference in London 2011, the

¹⁰ President Francisco Lasheras – secretary Manuel Angel Lopez Garcia

President of the Spanish association sent a letter entitled "Lay judges under threat: the case of Spain" then reported in the official documents of Enalj

Over the years, Spanish lay judges have complained about the implementation of "[...] a path that has emptied the figure of popular judges after a long process of discrediting from within (the organization and the judicial bureaucracy itself) and from without (politicians); a process that has questioned our independence, effectiveness, professionalism and authority; a process that has exposed us to unfounded public contempt and led to the gradual loss of the skills we had".

When the European Charter of People's Judges was signed in 2012, an intellectual debate started in Spain on the convenience of the existence of a single Professional Justice or a model in which there also existed a Non-professional Justice, that it play a role of proximity, acting as support and facilitation for Professional Justice. The first text was the one on which the official, political and judicial position of Spain was assessed while the second was the position of the lay judges, supported by ENALJ and protected by the then Vice-President of the European Commission, Viviane Reding.

Subsequently in 2015, the current Spanish Penal Code (Código Penal) came into force and provided for the elimination of minor offences (faltas), or actions less serious than a crime, from the Spanish legal system. Summary trials (juicios de faltas) were the competence of the Spanish lay judges, who carried them out with all procedural guarantees.

In the past these small issues, which were actually vital to preserve peace and conviviality among neighbors, have been addressed with complete satisfaction by both sides. Minor insults and threats have been dealt with by small economic sanctions; public aggression and disorder, by house arrest; and the breaking or damaging of public property, by community service.

The Spanish justice of peace has always condemned this provision, which in the intentions of the Spanish government is part of the plan for the modernization of justice, called "Justicia 2030". This is a medium-long term plan that frames the draft law on organizational efficiency of the administration of justice (Anteproyecto de Ley

de Eficiencia Organizativa de la Administración de Justicia). This draft openly suggests that, given the lack of competence of lay judges and the low relevance of their actions, they have become an anachronistic and empty figure, and as such currently not necessary. Therefore, it is concluded that the medium-term cessation of this figure, framed in the aforementioned Justicia 2030 plan, is appropriate.

Spanish lay judges are accused of being unprofessional, as the Spanish institutions consider efficiency to be a prerogative of the professional judiciary. For this reason, the cessation of the figure of the proximity judges is seen as an imperative condition to achieve the modernization of the Spanish justice.

The planned material and legal changes will be implemented gradually and concern the 7,000 Spanish courts/peace tribunals (Juzgados de Paz), that is legal entities in each municipality managed by a lay judge, will be transformed into municipal justice offices, Administrative entities for court proceedings conducted exclusively by public officials. When this change will take place in a Spanish Municipality, the corresponding lay judge post will be terminated, and subsequently any lay judge post in the country towards the eradication of peace justice and lay judges in about three years.

The deep crisis has led to the dissolution of some historical peace justice associations, such as the ADJP (Asociación Democrática de Justicia de Paz) in Andalusia, signatory of the 2012 European Charter in Brussels.