PAOLA MAZZINA

Judges'[1] political rights and the ban on their membership in political parties, and systematic and continuous participation in political activities: a constitutional violation or a balanced choice?

Nel 2006 il legislatore, nel dare seguito alla riserva di legge contenuta nell'art. 98, co. 3, Cost., ha configurato come illecito disciplinare l'iscrizione e la partecipazione sistematica e continuativa ai partiti politici (dlgs. 109/2006 e successive modifiche). Sulla delimitazione del campo di azione del legislatore la Corte costituzionale si è pronunciata ancora di recente con la sent. 170/2018. Il lavoro, da una parte ricostruisce il dibattito in Assemblea costituente ed esamina il panorama istituzionale e politico nel quale si inserisce la disciplina legislativa dichiarata legittima dalla Corte; e, dall'altra, rappresenta i nodi ancora da sciogliere in materia.

I diritti politici dei magistrati ed il divieto di iscrizione e partecipazione sistematica e continuativa ai partiti politici: una violazione del dettato costituzionale o una scelta bilanciata?

In 2006, the legislators, pursuant to their prerogative established by Art. 3, co.3, Cost., classified as a violation of disciplinary rules the judges' enrollment and continuous and systematic participation in political parties (dlgs. 106/2006 and following amendments). Recently, the Constitutional Court issued an opinion regarding the limitations on the legislator's scope of action (n. 170/2018). This article wants to firstly analyze the debate during the Constituent Assembly, then examine the institutional and political framework that is the background for the Court's jurisprudence; and lastly, wants to focus on the challenges to be met on this matter.

1. The context.

The issue of internal limitations and disciplinary scrutiny for judges, examined by the "Confronto di Idee" in Archivio penale, has compelled this author to consider, due to its inevitable impact on the subject, the mandate contemplated in art. 98, co. 3, Cost. allowing the legislator to pass laws to set «[...] limitations on the right to register in political parties for judges, career military personnel on active duty, supervisors and simple police officers, diplomatic and consular representatives abroad» and the relative debate generated, recently, by legislative action and case-law concerning its appropriate application and the limitations of its scope[2].

[1] In this article, the term "judges" widely comprises members of the judiciary as judges, magistrates, district attorneys, GIPs.

[2] On the interpretation of art. 98, co. 3, Cost., *ex multis*, see *BORRÈ, Il 3° comma dell'art. 98*, in *Com-*

In a mature and democratic constitutional system, based on individual freedom, the decision of the Constituent Assembly, ensuring that everyone holding public office be guaranteed a stronger autonomy and independence but also be under a duty of being impartial and not engaged in partisan political groups, is in conformity with well-established constitutional values.
The constitutional proviso allowing for laws to set limitations to the freedom of political association for subjects who effectively hold public office, listed in 3° co., dell'art. 98 Cost., represents the Constituent Assembly's effort to reach a balance between the right of free association (art. 18 Cost., and also specifically contemplated in art. 49) and the need to protect not only the substantive, but also the appearance of, impartiality and independence for certain particularly sensitive public offices and/or activities like, most notably, the judiciary[3].
Reading the opinion that is the subject of this analysis in the context of a constitutional framework recognizing a very wide-array of political rights to all citizens, we can deduce its exceptional nature[4] and, as most scholars also agree, the interpretation that the term "limitations" should be related to the enjoyment of the fundamental rights, so that we could consider legitimate only

---

mentario alla Costituzione, Branca continuato da Pizzorusso, Bologna-Roma, 1994, 443 ss.; CARUSI, *Art. 98*, in *Commentario alla Costituzione*, a cura di Crisafulli, Paladin, Bologna-Roma, 1994, p. 443 ss.; SAITTA, *Art. 98*, in *Commentario alla Costituzione*, a cura di Bifulco, Celotto, Olivetti, Torino, 2006, vol. II, spec. 1921 ss.; COEN, *Art. 98*, in *Commentario breve alla Costituzione*, a cura di Crisafulli, Paladin, continuato da Bartole, Bin, Padova 2008, 899-900; DI FOLCO, *Art. 98*, in *La Costituzione italiana. Commento articolo per articolo. Vol. II. Parte II – Ordinamento della Repubblica (Artt. 55 – 139) e Disposizioni transitorie e finali*, a cura di Clementi, Cuocolo, Rosa, Vigevani, Bologna, 2018, 239 e ss.; nonché a RIGANO, *Costituzione e potere giudiziario*, Padova, 1982, 1 ss.; *ID.*, *L'elezione dei magistrati in Parlamento*, in *Giur. it.*, 1985, 6; TRAVERSO, *Partito politico e ordinamento costituzionale*, Milano, 1983, 180 ss.; *SENESE*, *Magistrati e iscrizione ai partiti politici*, in *Quad. giust.*, 61/1986, 6 ss.; MICALI, *La politicizzazione del giudice e l'esegesi dell'art. 98, 3° comma, della Carta costituzionale*, in *Doc. giust.*, 1995, 1235 ss.; *SILVESTRI*, *Giustizia e giudici nel sistema costituzionale*, Torino, 1997; ACCATTATIS, *Il giudice nello stato liberaldemocratico*, Firenze, 2003; *BIONDI*, *La responsabilità del magistrato. Saggio di diritto costituzionale*, Milano, 2006; ZANON, *BIONDI*, *Il sistema costituzionale della magistratura*, Bologna, 2014; e, più recentemente, DE SANTIS, *Iscrizione ai partiti politici, elettorato passivo e regime delle ineleggibilità per i magistrati nel (poco democratico) sistema dei partiti*, in *Nomos*, 2, 2017; POLIZZI, *Il Magistrato al Parlamento*, Padova, 2017.

[3] SAITTA, *Art. 98*, cit., 1911. A summary of the debate during the Constituent Assembly is at paragraph 3 below. All records relative to the Constituent Assembly sessions can be found on the site of the House of Representatives (www.camera.it).

[4] This list cannot be extended to categories other than those already listed, nor to situations other than that contemplated, that is to say, membership in a political party. See, BORRÈ, *Il 3° comma dell'art. 98*, cit., 443 ss. And in particular, 468. This analysis is also proposed by DI FOLCO, *Art. 98*, cit., 239 e ss., in particular, 242, where the author excludes that «[...] membership is limited to a purely formal act, as demonstrated by the fact that political parties' regulations assign to members specific rights and obligations (e.g., the right to present themselves as candidates supporting the elections of the party's leaders or the duty to promote memberships in the party».

those (eventual) limitations that are strictly related to the exercise of certain public functions, and only if they impact them in the minimal way sufficient to guarantee the continued impartiality of action and the prestige of those who perform them. Most people thus have the right to participate in political life, to run for office and freely express their thought, as long as these activities take place in a manner and forms that will not damage the good operation and the good name of the institution to which the employee belongs[5].

With regard to the Constituent Assembly's choice to "contextualize" the opinion under our scrutiny, thus deferring to future legislatures the decision on whether and how stringently set concrete limitations to the freedom of association under our exam, we must take into account that historically politicians have not concerned themselves much with this matter and, when they have, have done so in a very uneven manner. Now, faced with the growing possibility that judges could run for political elections (art. 8 del d.P.R. n. 361 del 1957, in the part related to ineligibility), the examination of the rules regarding regional elections, made it evident that there existed conflicts between national and regional regulations in this regard. While for administrative/local elections there are no rules in this regard (and the rule regarding appointment of a judge to a local political-administrative position is not clear), the very few rules regarding the return of judges to their respective functions at the end of the election campaign or the end of appointment are contemplated in dlgs. 160/2006[6].

---

[5] COEN, *Art. 98*, cit., 899 building upon CARLASSARE, *Amministrazione e potere politico*, Padova, 1974, 107, where the author argues that the art. 98, co. 3 limitations must be interpreted very strictly because idealogic pluralism constitutes «by itself a guarantee of impartiality» and thus actively belonging to a political party or «ideological membership even openly manifested» would be outside the limitations that the legislator may impose; confront, CERRI, *Sul principio di fedeltà*, in *Riv. trim. dir. pubbl.*, 1983, 753.

[6] In other words, judges may participate in political national and regional, provincial and city elections, and may be nominated as members of the national government and of executive bodies in every level of local government. The law sets forth the conditions of ineligibility for the judges. Regarding the national parliament elections, in compliance with art. 8 law n. 361/1957, the judges cannot be elected in the districts where they perform their judicial functions or where they exercised them within the six months prior to the appointment date. The same law forces judges to request a leave, if they run for office. Likewise, judges cannot be elected as mayor, president of a province or as local or provincial councilman in a district where they exercise their judicial functions; this ineligibility ends when the judge takes a leave before running for political office (art. 60, 6° co., dlgs. 267/2000). Similar regulations are applied to regional councils' elections (art. 5, l. 108/1968). Thus, a judge could exercise political activities as mayor, president of a region or of the provincial council, or be a councilman, while exercising judicial functions, as long as s/he respects the district ineligibility rule. In fact, the law contemplates ineligibility only in the district where the judge exercises his/her judicial functions in that particular time (art. 60, co. 6, dlgs. 267/2000). Moreover, permission for a judge to be designated directly by a local government body (for example, as councilman) in a district where s/he exercises his/her judicial functions. The only

2. Membership in political parties and continuous and systematic participation in their activities: lawfulness concerns and constitutional jurisprudence.

Within this legislative framework, art. 3, 1° co., lett. h), d.lgs. 109/2006, as modified by art. 1, 3° co., lett. d), n. 2), of l. 269/2006 that, following the mandate of 3° co. of art. 98 Cost., mentioned above, sanctions as a disciplinary violation the enrollment or the systematic and continuous participation in political parties, and specifically, involvement in activities by entities acting in economic or financial sectors which can affect the exercise of judicial functions or, somehow, tarnish the judge's image, issues that the Constitutional Court has already examined twice for constitutionality[7].

With opinions 224/2009 e 170/2018, the Constitutional Court rejected the objections of unconstitutionality under art. 3, 1° co., lett. h), dlgs. 109/2006 contained in the reformation of the judges' disciplinary code as modified by art. 1, co. 3, lett. d), n. 2), of l. 269/2009, raised, in both instances, by the

---

rule regulating this matter can be found in the Code of Ethics, where art. 8 prohibits judges from accepting candidacies or nominations for local administrations in the district where they exercise their judicial functions. On this, see CSM's policies, particularly n. 13778/2014, imposing territorial, functional and time limitations where a judge returns to his/her judicial functions after political elections. For further discussions, see, ZANON, BIONDI, *Il sistema costituzionale*, cit.

[7] In compliance with art. 1, co. 1: «The judge performs the functions assigned to him/her with impartiality, correctness, diligence, skill, confidentiality and balance, and will respect every person's dignity while performing his/her functions», and thus it would be a disciplinary violation outside the scope of proper functions: «enrollment and the systematic and continuous participation in political parties and specifically, involvement in activities of entities acting in economic or financial sectors which can affect the exercise of their functions or, somehow, compromise the appearance of the judge», cfr. art. 3, co. 1, lett. *h*) del dlgs. 109/2006, titled *"Regulation of judges' disciplinary violations, of the relative sanctions and the procedure for their application, and also modification of the regulations regarding judges' incompatibility, exoneration from office, and removal, in compliance with art. 1, comma 1, lettera f), law 25 luglio 2005, n. 150"* and subsequent amendments. In its original version, art. 1 regarding judges' duties, in paragraphs 2 and 3, now deleted, respectively provided that «the judge, even outside the exercise of her/his functions, must not behave, despite lawfulness, in a manner that would compromise his/her personal reputation, the prestige and the honor of the judge, or the prestige of the judicial bar»; and that «Violations of the duties listed in paragraphs 1 and 2 constitute disciplinary violations punishable according to articles 2, 3 e 4». While art. 3, 1° co., lett. *h*) sets forth that are disciplinary violations «enrollment and participation in political parties, or involvement in activities of political centers or entities operating in the financial sector which can affect the exercise of their functions or, somehow, compromise the appearance of the judge». From comparing all these, we can notice a detachment from a "formalist" view about judges' professional responsibility, that first hinged mainly on protecting the prestige of the judicial bar (cfr. art. 18 r.d. 511/1946, *Guarentigie della magistratura*), and the reliability, the prestige, and the propriety of the judge, and the prestige of the judicial bar, again included in the enabling act (art. 1, 1° co., l. n. 150/2005, cd. riforma Castelli) and d.lgs. 109/2006, subsequently deleted as amended by l. 269/2006. In this regard, for further study please refer to SORRENTINO, *Prime osservazioni sulla nuova disciplina degli illeciti disciplinari dei magistrati*, in *Quest. giust.*, 1/2007, 61; e DAL CANTO, *La responsabilità del magistrato nell'ordinamento italiano. La progressiva trasformazione di un modello: dalla responsabilità del magistrato burocrate a quella del magistrato professionista*, in *Riv. AIC*, 2007, 18.

CSM's disciplinary commission, and examined the special legal status of judges, since they belong to an independent and autonomous body, and are subject solely to the law.
Regarding the Court's most recent opinion, the decision we are analyzing was challenged in July 2017 by the CSM's Disciplinary Commission in the so-called "Emiliano-matter" - regarding a judge who, while on a 12-year leave, became President of the Apulia Region and, before that, he had been regional secretary and then president of the Democratic Party- in violation of article 2, 3, 18, 49 e 98 of the Constitution; he appealed a finding of disciplinary violation (punishable with a sanction from admonishment up to removal) as the conduct sanctioned was the enrollment or the systematic and continuous participation in a political party also for judges outside active duty who were on leave for election purposes in compliance with art. 8, co. 1 del D.P.R. 361/1957[8].
In particular, we must underline that the case before the Constitutional Court concerned not the outright compatibility of the provision with the Constitution (on this matter the Court already had issued opinion with sent. 224/2009), but its scope and thus the extension of the prohibition to enroll or to participate systematically and continuously in political parties by that group of judges who are not on active duty because they are running for office or were elected, as allowed by art. 51 Cost. (that recognizes the right to run for office for all citizens), and also as allowed by law[9].
The CSM Disciplinary Committee found irrational and contradictory, and

[8] Opionion dated July 28, 2017, n. 155 CSM, pubblicata su G.U. 1 special series, Constitutional Court n. 45 November 8, 2017, explained by *BIONDI*, *Può un magistrato essere legittimamente eletto con il simbolo di un partito e, nel contempo, essere processato disciplinarmente per essersi iscritto a quel partito? Note a margine del caso Emiliano*, in *www.forumcostituzionale.it*.

[9] The issue, already decided by the Court in 224/2009, was submitted again as the deciding body deemed it appropriate for new examination as the opinion would not be helpful to resolve situations where, even being equal the sanctioned provision and the constitutional parameters involved, in that situation the Court did not address the issues of constitutional validity because the judge under scrutiny had already been placed on leave to perform a technical duty; on the other hand, in this one, to exercise his right to stand for election. Regarding the Constitutional Court opinion, n. 224 del 2009, cfr. *Giur. cost.*, 2009, 2577 see, *CHIEPPA*, *Il divieto di attività politica dei giudici: meglio tardi che mai (ricordi storici delle tesi dell'associazione dei giudici)* e di *DE NARDI*, *L'art. 98, terzo comma, Cost. riconosce al legislatore la facoltà non solo "limitare" bensì di "vietare" l'iscrizione dei giudici a partiti politici (anche se sono collocati fuori ruolo per svolgere un compito tecnico)*. Confront also *FERRI*, *I magistrati e la politica: il problema del divieto di iscrizione ai partiti nella sentenza n. 224/2009 della Corte costituzionale*, published online on *Consulta OnLine* all'indirizzo www.giurcost.org. For thought about the CSM's disciplinary committee's initiative, see, BIONDI, *Considerazioni di ordine costituzionale sui limiti, per i magistrati, alla partecipazione alla vita politica (a margine di una questione di costituzionalità)*, in www.associazionedeicostituzionalisti.it, 07/04/2009.

thus in conflict with art. 3 Cost., to recognize that the judges have the right to run for office or accept political appointments while those same judges can be subjected to disciplinary sanctions for their enrollment and/or systematic and continuous participation in the life of the political parties, because they are signs of belonging actively to a partisan political side, especially when those activities are strictly connected to the nature of the appointments they hold. The Disciplinary Committee also deemed very relevant and not completely unfounded the issue of the compatibility of the above-mentioned decision and the exercise of the political rights guaranteed to each citizen by art. 49 and, more widely, by art. 18 Cost. that, together with all those freedoms listed comprehensively in art. 2, represent the essential linchpin of the entire democratic system[10].

The Court, recognizing the judges' right to run for political office while excluding their right to participate in the parties' active life, affirmed its prior orientation, reiterating that the prohibition for judges to enroll in political parties is a legitimate ban.

With opinion 170/2018, thus, the Court considered the constitutionality challenges brought by the CSM's disciplinary committee unfounded, and held that the prohibition does not impact on the fundamental political rights of the judges: one thing is the enrollment or the systematic and continuous participation in the active life of a political party, which is barred by the code of ethics, and another thing is the access to political office and appointments of a political nature that, under certain conditions, the existent legislation allows[11].

It is not unreasonable, contrary to the CSM's argument, to create a distinction between someone who is on active duty or who is on leave, whatever the reason for the leave- holding office, having a political appointment or a technical position (for example, as a parliamentary adviser) – and thus, deeming the first instance lawful and an exercise of a fundamental right, while maintaining disciplinary consequences for the other cases because, in a legal framework that still allows a judge to return to judicial duty if not elected or after completing the electoral term or the political appointment, "must be preserved the meaning of the principles of independence and impartiality, and their appearance, as essential requirements characterizing the judge's figure in every

[10] In the CSM's disciplinary committee's interpretation, within a balancing framework, the need to guarantee judges' independence may be limited, but not utterly suppressed, especially in cases where the judge was on leave for election purposes. For this reason, the prohibition according to the disciplinary code may be conflicting with articles 2, 18, 49 e 98 of the Constitution. See, Ordinanza July 28 , 2017, n. 155 del CSM, published on G.U. 1 serie speciale, Corte costituzionale n. 45 November 8, 2017.

[11] Opinion 170/2018 Corte Costituzionale, on *www.giurcost.org*.

aspect of his/her public life»[12].
It is also true, the Court continues, that we cannot ignore the role that the Constitution assigns to parties in connection with political representation and the fact that judges, in any possible electoral system, cannot run for office "alone". Even independent candidacies that result from the candidate's own prestige, must be included in a political party's list, and appointments to administrative positions (as minister or councilman) are always connected to the dynamics of the political parties.
The Court concludes that, in any event, the disciplinary judge has leeway to decide the controversies and alleged violations, because not every participation in a political event or a party activity can raise to a disciplinary violation: except for enrollment, that is already by itself proof of participation in the active life of a party, in every other case of participation, the disciplinary sanction is not automatic but its is deferred to the wise assessment of the disciplinary judge.
The Court, while affirming its orientation in the previous decision, with the decision we are examining has clearly drawn the limitations of the appealed issue, concluding a matter that has repeatedly revolved around the exact interpretation of art. 3, comma 1, lett. h, del d.lgs. 109/2006 and subsequent amendments. Thus the Court, both regarding the introduction of the utter prohibition to enroll in and to systematically and continuously participate in parties, and regarding an extension of the law, has rejected the objections raised, considering the special status of judges as persons belonging to an independent and autonomous bar and subjected only to the law.[13]

3. Creation of art. 98, co. 3, Cost. and legislative intent behind dlgs. 109/2006 and its subsequent amendments.

From an interpretation standpoint, Opinion 170/108 should be considered as deriving both from the historical and ideological background for the creation of art. 98, co. 3, Cost., and also from the institutional reasons determining its

[12] The Court, as far as balancing all rights, interprets art. 98, 3 co. Cost., as the Constitution's lo sfavore della Costituzione verso «[...] activities or behavior apt to create between judges and the parties some ties of a continuous nature, and albeit known to public opinion, with a resulting impairment of their independence and impartiality, or the appearance of it : substance and appearance of principles that are the basis for the trustworthiness that the judiciary of a democratic society must inspire». Corte costituzionale, sent. 170/2018, punto 4 del Considerato in diritto.
[13] As case law, please refer to Corte cost., n. 224 of 2009, and also, for similar arguments in a different context, see, Corte cost., n. 100 del 1981, in *Giur. cost.*, 1981, 845 ed al contributo di P. G. *GRASSO*, *Il principio* nullum crimen sine lege *e le trasgressioni disciplinari dei magistrati dell'ordine giudiziario.*

delayed implementation.
This approach provides an opportunity to remind us that, after the fall of fascism, the prohibition barring judges and judicial officials from publicly expressing their political affiliation was removed by the Justice minister Arangio Ruiz, in 1944 – and, after the Liberation, it was later confirmed by his successor Togliatti – declaring membership in those associations and political parties already existent or that were forming in Italy at the time lawful and, particularly, considering it a civil duty to participate in political life [14].
Nevertheless, the rooted mistrust of the category against parties and politics- strengthened by the experience of having endured a single party dominion, the memories of ruthless political interference into jurisdiction during fascist Italy decades, and by attitudes of isolation and closure prevailing in the judiciary of the time- made the majority of judges not interested in the changed perspective.
Such an attitude, in fact, transpires also in the debate that accompanied the drafting of our Constitution: while the Second sub-committee allowed a provision that forbade judges (and initially just them) to enroll in political parties[15] and this position was also reiterated during the Assembly to protect the judiciary's reputation[16], then when formulating the definitive wording of art.

[14] Circolare 6 giugno 1944, n. 285. In this document, the Ministry of Justice held that it would be a terrible privilege for the judges to fulfill this duty, if *a priori* their exercise of political rights was limited to the simple act of casting their votes during elections. This document conveyed the concern that some had manifested regarding protecting judicial independence, and preventing that such independence would succumb to the influences of the judge's own opinions and political relations, but concluded that, if the decisions of Italian judges could have been so easily affected by factors other than the fulfillment of their duties, it would not in any event be sufficient to prohibit their enrollment in political parties because, within or without them, the judge would not be free from his opinions and relations, which would be as effective as hidden. This reconstruction is according to *BORRÈ, Il 3° comma dell'art. 98*, cit., *443.*

[15] The possibility of an absolute prohibition to judges' enrollment in political parties was contemplated during the Constituent Assembly, where the debate in the Second committee for the Constitution started with art. 2 of the project by Calamandrei, according to whom: «The judges cannot enroll in any political party (?)». Even Calamandrei, speaking during the meeting held on December 20, 1946, stated that the question mark was necessary pursuant to a survey carried out by the magazine *Il Ponte*. The judges asked about enrollment in political parties were mostly in favor (especially among the younger judges), moving away from the trend expressed with the 1946 referendum, organized bu the Judges National Association, where, on the other hand, the participating judges expressed their opposition to the enrollment. Among the various speeches in this regard, it is notable the one by the Hon. Bozzi during the session held on December 5, 1946, according to whom «[...] the discipline is sometimes strict, and maybe will not corrupt the judge, but since he is a man, and as such susceptible to human influences, if not consciously, subconsciously, thus this prohibition that also contemplates sanctions can operate negatively or anyhow result in the appearance of such possibility».

[16] Among others, this is also Hon. Persico's opinion, expressed in the November 8,1947 session. Nevertheless, they rejected that negative and inferior view on politics that was the basis for the prohibition. On

98, 3° c. Cost., eventually, because of an amendment by Hon. Clerici, the provision went from prohibiting enrollment to the political parties only for those public officials, to the understanding that the law could impose limitations not only for them, but also for military on active duties, police officers, diplomatic representatives and consular staff abroad[17].

With regard to the judges, the need to protect their independence and -more widely- the judiciary's autonomy in a system that had finally become pluralistic, formed the basis for the choices of the Constituent Assembly, that decided to constrain the category to "only" one law (art. 101 Cost.), so as to limit it to the minimum the intrusion of the executive power, and guarantee the judge's extraneousness to the representative political system.

Thus, the judge, bound only by that law, becomes "political": not because s/he is a judge-bureaucrat depending from a given majority, according to a formal positivist model based on the monopolistic centrality of the Parliament in the production of laws of a higher level and with judges confined to the role of mere administrators of the law, but, on the contrary, making judges an integrating part of the pluralist democracy system in which the guarantee of independence is combined with a dynamic opening to an ever-evolving political system.

It is obvious that the decision to contextualize the provision, foreseeing the need to leave the burden to future legislators, is based on the understanding of the mutability of the balance between the powers and the impact on them by factors deriving from the social, historic and economic contexts.

Many observers consider, as one of the unintended consequences of that conceptual framework in the development of the Italian republican system, a breakaway from the past the fact that the judiciary – opposing the people who in the preceding period had tried to undermine the innovative power of the 1948 Carta through debasing it to mere mechanical application of its principles- would derive directly from the Constitution the potential for regulating

---

this point, see Hon. Ruggiero's speech during the November 7, 1947 session. As a background though, remained the belief, widely diffused at the time, that contrary to the enrollment -an act that allows for transparency and responsibility in each person's conduct- the law would not have been efficacious because easily circumvented through other forms and modalities of participation. Cfr. Intervento dell'on. le Mancini nella seduta antimeridiana del 14 novembre 1947.

[17] Comma 3 of art. 98 derives from the agenda submitted by representative Clerici on December 5, 1947 that, as known, introduced the argument in the Constitution preferring, over the clear prohibition, a delegation to future legislators since they believed that experience would have shown whether it was truly necessary to limit the freedom of public employees as listed in the 3° comma. Cfr. Seduta antimeridiana del 5 dicembre 1947. Danno conto dell'intero dibattito, tra gli altri, *ACCATTATIS*, *L'iscrizione dei magistrati ai partiti politici*, in ID., *Il giudice nello Stato liberaldemocratico*, Firenze, 2003; e *CARULLO*, *La Costituzione della Repubblica italiana. Illustrata con i lavori preparatorî*, Bologna, 1950.

single instances, faced with the legislators' inaction.
Likewise, along with politics' difficulty in mediating between conflicting interests equally deserving of representation, the judiciary took on an active role that in time allowed it to supplement the legislative void by fulfilling part of the legislator's role (participating in the political decision-making process) and pursuing a direct acquisition of popular consensus.
In this regard, with the exception of interventions in civil rights matters, consider the fight first against terrorism and organized crime, and later against corruption which, from "Tangentopoli" until the most recent scandals, has repeatedly afflicted the political establishment[18].
With specific reference to the latter phenomenon, the deep political and institutional crisis arising from those investigations and that, socially, has translated into politics' serious loss of credibility, not only has allowed judges to achieve "political subject" status, boosted by some judges' desire to be under the spot-

[18] Studies on this phenomenon abound, with specific reference to the matters here analyzed. See the various monographic works like: PIZZORUSSO, *Costituzione e sviluppo delle istituzioni in Italia*, Bologna, 1978; *Governo e autogoverno della magistratura nell'Europa occidentale*, a cura di Zanchetta, Milano, 1987; *GUARNIERI*, *Magistratura e politica in Italia. Pesi senza contrappesi*, Bologna, 1992; *Magistratura, CSM e principî costituzionali*, a cura di Caravita, Roma-Bari, 1994; *Governo dei giudici. La magistratura tra diritto e politica*, a cura di Bruti Liberati, Ceretti, Giasanti, Milano, 1996; *SILVESTRI, Giustizia e giudici nel sistema costituzionale*, Torino, 1997; *GUARNIERI*, *PEDERZOLI*, *La magistratura nelle democrazie contemporanee*, Roma-Bari, 2002; MOSCHELLA, *Magistratura e legittimazione democratica*, Milano, 2010; most recently, *Magistratura e politica*, a cura di Merlini, Firenze, 2016, whose essays aim at zooming in on the relationship between "politica" - expression of Parliament, Government, but also of the widely diffused need for justice coming from public opinion at large- and "magistratura" - as the judicial bar, but also the single judges or their associations representatives. Within this framework, the essays examine this relationship from an historical perspective, from the "statutario" period to the constituent and post-constituent ones, and also from a more news-oriented perspective, given the most recent proposals for law reformation. The main point of focus is the constitutional principle of separation of powers, related to the single judges as a look into their impartiality and the protection of their independence, both internal, and in particular with regard to prosecutors, as well as external. With regard to the interference coming from politics and public opinion, in the context of a fuller evolution of the judges' legal, civil and political culture. However, the principle of the separation of powers is further explored also in its meaning of the judiciary autonomy and independence, also thanks to the supervision of the CSM and its multifarious functions. A very special attention is paid to the phenomenon of the judges' extra-judiciary assignments and to the judges' direct participation in the political life. More generally, the single aspects are analyzed also in the light of the phenomenon of the increasing withdrawal of the legislator- or politics- from regulating and protecting the new rights and the consequent and progressive expansion of "para-legislative" interventions by the jurisdiction, both national and European. At the end of the book, we can find the speeches during the round table comprising judges, politicians, and CSM's representatives, who analyzed the strict relationship between the above-mentioned arguments and current politics. See, also: *Il potere dei conflitti. Testimonianze sulla storia della Magistratura italiana*, a cura di O. Abbamonte, Torino, 2017, a text that. Aside from discussing arguments such as judges' ideology between Eighteen and Nineteen Hundred, the relationship between judiciary executive and legislative powers, can be deemed a precious anthology from which to cite; e *BRUTI LIBERATI, Magistratura e società nell'Italia repubblicana*, Bari-Roma, 2018.

light and by the weakness of the political-representative system; but has also, on one hand, supported the «[...] strengthening of the technocratic bodies (less affected, in the public opinion, by political corruption) [...]»[19] and, on the other hand, «[...] the explosion of some judges' direct participation in the political race, a phenomenon supported by their *status* of purported honesty and integrity [...] ensured by the candidate's membership to a power, the judiciary, independent from the party system and thus free from deviations to the established order [...]»[20].

We cannot ignore, for the purpose of the within analysis, the political system's reaction that, rather than curing itself, preferred, instead of promoting serious actions to prevent and fight corruption, to adopt targeted legislative interventions (more to defend themselves *from* trials rather than *during* trials).

The passing of the so-called "riforma epocale" of the judiciary law (cfr. l. 150/2005) set to occur – without a definitive outcome and in an increasingly harsher conflict with the judiciary and ANM – toward the end of the XIV Legislature, is a direct outcome of this climate of great conflict, where the political establishment launches attacks against the judiciary, as an institution, and also against the single judges (not only prosecutors but also courts) up to the Corte di Cassazione and, ultimately, the Constitutional Court.

The law was approved without taking into account the criticism raised by various sides and President Ciampi sent it back to the House for new debate as the President deemed it obviously unconstitutional. However, it was approved again with mere formal changes to address the President's notes. Law l. 150/2005 took inspiration «[...] from a background foreign to the constitutional framework and tradition [...]»[21], and appears «[...] a mediocre interven-

[19] And to which, as in the case of the independent administrative Authorities, has been entrusted the monitoring of significant areas of the public administration Ed ai quali, come nel caso delle Autorità amministrative indipendenti, è stata affidata la sorveglianza di rilevanti settori della pubblica amministrazione. *MANFRELLOTTI*, *La moglie di Cesare e l'uomo ragno. Brevi note sulla partecipazione dei magistrati alla competizione politica*, in *La dis-eguaglianza nello Stato costituzionale*, a cura di *DELLA MORTE*, Napoli, 2016, 315 e s.

[20] *IBIDEM*.

[21] See, *STAIANO*, *I duellanti empatici: Corte costituzionale e legislatore in tema di giustizia*, available on *www.federalismi.it*, 20/2006 in which the author stresses, substantively, the legislator's approach of softening the system strongholds that had been established in conformity with constitutional principles; while, from a formal standpoint, he points out that «[...] the law-making delegation – which, following and established principle, typical of "high reforming value" interventions (inlcuding the judiciary reformation), presents a strong inlcusive ability, allowing for widely shared political integration processes – and instead has been used as a tool for an "exclusive simpligication", aimed at maintain the decision within a restricted parliamentary majority». See, 47 ff., also discussed in *ID.*, *Delega per le riforme e negoziazione legislativa*, in *www.federalismi.it*, 2/2007, 20 ss.; e di TARLI BARBIERI, *La partecipazione dei magistrati all'attività politica*, in *Criminalia*, 2009, 57 ss.

tion exclusively aimed at politically influencing and controlling the judiciary [...]»[22] and «[...] upsets the judiciary framework with a return to an outdated hierarchical system [...] that goes back to the 1800s model [...]»[23].
With the intent of affirming the spirit behind l. 150/2005, the dlgs. 109/2006 lists among the disciplinary violations committed outside the functions of office «the enrollment or the participation in political parties, or the involvement in activities of political or business centers» (art. 3, comma 1, lett. h), thus establishing a general prohibition for the judge to participate in political activities widely defined and, in this way, it creates the conditions for resurrecting the figure of the "judge-civil servant," someone who blindly applies the letter codified in the law and is not sensitive to pluralism and the changing needs of society[24].
A new majority in Parliament, at the beginning of the XV Legislature, tried to smooth out the most debatable aspects regarding compliance with constitutional principles, without overthrowing the cultural framework underlying l. 150/2006 and dlgs. 109/2006, passing l. 269/2006[25] that, intervening also on art. 3, comma 1, lett. h), del dlgs. 109/2006, with art. 1, 3° co., lett. d), n. 2) replaces the strongly restrictive provision regarding disciplinary violation deriving from an involvement with the "political centers", with a more specific "systematic and continuous participation in political parties" [26].
The Court, in its recent decisions, demonstrated to take into account the development of the jurisprudence and the concerns expressed during the Constituent Assembly debates on the risks that judges' participation in the party-political life could undermine the appearance of impartiality and impair their independence.
The validity of these concerns has been confirmed by the fact that we have seen a change from the judges' initial lack of interest in registering for associations and political parties, to their ever-increasing activity, and the media star

---

[22] *PEPINO*, *Una questione ed uno scontro ancora aperti. La controriforma dell'ordinamento giudiziario alla prova dei decreti delegati*, in *Quest. giust.*, 1, 2006, 54.
[23] *BRUTI LIBERATI*, *Magistratura*, cit., 327.
[24] *DAL CANTO*, *La responsabilità del magistrato nell'ordinamento italiano. La progressiva trasformazione di un modello: dalla responsabilità del magistrato burocrate a quella del magistrato professionista*, in *Riv. AIC*, 2007, 18 s.
[25] L. 269/2006, dal titolo "*Sospensione dell'efficacia nonché modifiche di disposizioni in tema di ordinamento giudiziario*".
[26] A careful examination of the legal evolution of judges' responisbility is also present in *SENESE*, *La riforma dell'ordinamento giudiziario*, in *Contributo al dibattito sull'ordinamento giudiziario*, a cura di *DAL CANTO, ROMBOLI*, Torino, 2004, 15 ss.; *DAL CANTO*, *La responsabilità*, cit., 11 ss. e, di recente, da *ID.*, *Le trasformazioni della legge sull'ordinamento giudiziario e il modello italiano di magistrato*, in *Quad. cost.*, 3/2017, 671 ss.

status of some District Attorneys, resulting in the latest trend of massive "migrations" from the judiciary to political office [27].

Moreover, these concerns have also been confirmed, if we consider the selection process for Parliamentary representatives, by the introduction of voting systems with blocked lists that allow the party *leaders,* just because of the position they hold on those lists, to choose who may have greater possibility to be elected, thus effectively taking away from the electors the right to freely express their preferences[28].

Accordingly, the decision to prefer the strict protection of judges' independence and impartiality over their individual right of political participation represents a common thread that ties all the Court's opinions and allows it to consider -without any constitutional amendments- art. 3, co. 1, lett. h) dlgs. 109/2006 and its subsequent amendments, as a satisfactory balancing compromise between the citizen-judge's right to run for office and the safeguard of the judiciary's independence (internal and external) and impartiality [29].

---

[27] Regarding the presence of judges in Parliament, see, *VENTURINI*, *I magistrati eletti al Parlamento italiano, 1861-2013: dati e metodologia* in *Riv. trim. dir. pubbl.*, 2017, 174 e ss.

[28] See the latest three voting laws: 21 dicembre 2005 n. 270; 6 maggio 2015 n. 52; 3 novembre 2017 n. 165.

[29] Some commentators of opinion 170/2018 have stressed the contradictory aspects in the holding that mainly concern the coexistence of rules that, on one hand prohibit membership in and systematic and continuous participation in political parties, but on the other hand allow to run for office and, consequently, the possibility to be part of party lists or to subsequently join political sides. This argument, shared also by other authors, takes into account the recent voting systems with blocked lists, with respect to which, the prohibition to be listed could, instead of safeguarding, undermine the «[...] judiciary prestige, since it hides information (membership to a given party) that is disclosed only at the time the judge is included in the candidate lists of a given party and is later included, if elected, in a certain parliamentary group with his/her political party». *POLIZZI, Il "caso Emiliano". I nodi ancora irrisolti del divieto di iscrizione ai partiti politici dopo la sentenza n. 170 del 2018*, in *www.osservatorioaic.it*, 3/2018, 55 ss. ed, in particolare, 62. See also *SOBRINO*, *Magistrati "in" politica: dalla Corte costituzionale un forte richiamo all'indipendenza (ed alla sua immagine esteriore)*, in www.forumcostituzionale.it; *LONGHI*, *Il divieto di iscrizione ai partiti politici collocati fuori ruolo per motivi elettorali. Riflessioni a margine del cd. caso Emiliano*, in *www.osservatorioaic.it*, 3/2018, 43 ss. Criticism has been moved also against the decision of allowing the disciplinary judge to carefully evaluate the concrete systematic and continuous participation in a party's activity, without giving to this judge any direction on how to make such an evaluation. See, *SOBRINO*, *Magistrati "in" politica*, cit., 8. The Author, even believing that appellant's contradiction/unreasonableness was not resolved, offers an interpretation of the opinion as retracing the deep meaning of the judge's independence and vested the opinion with a pedagogical value, especially regarding those judges that in the past «[...] did not have the appropriate care to maintain the right "distance" from political parties». Così, 6. *CURRERI*, *Magistrati e politica: un equilibrio quasi impossibile*, in www.laCostituzione.info, 28 luglio 2018, expresses difficulty to «[...] believe reasonable that the judge could lose his/her halo of independence and impartiality when s/he enrolls in a party but not when s/he takes on political office thanks to the support of that same party. [...] so that membership or the systematic participation in a party, as an entity inherently partisan, would irreparably impair the a judge's impartiality, which s/he must preserve, while all that would not occur by simply taking in political and insti-

Underlying the opinion, there is also a concern that, based on the possibility of returning to judicial functions after political office, the judges' behavior would undermine the trust that the judiciary should inspire in a democratic society, which the Court wants to protect in the greatest and strictest way, even risking to «[...] further limit the parties' role within the constitutional system»[30].

4. Proposed reformation: problems to solve.

The issue of judges' impartiality, as examined, is a system-wide matter and the effective resolution of this conundrum would require a series of actions: on the re-organization of the judiciary, on the relationship between the judiciary and the political power, on the current legal culture and, finally, on judges' habits and ethics.

The evolution of the relationship between the judiciary and politics requires an updated analysis on whether we need an organic and integrated framework that would take into account not only the judges' presence in political posts and their subsequent return to their prior duties, but also the interaction of this regulatory scheme with a voting system that, finally enabling voters to express their preference, could include the judge-candidate within a list that would allow for a free competition among the candidates.

The existence of rules that on one hand prohibit membership and systematic and continuous participation in political parties, and on the other hand recognize the right to run for office (resulting, if elected, in mandatory registration to parliamentary groups) through mechanisms of political selection based mainly on electoral systems with blocked lists capable of pre-determining electoral outcomes, represents a strong contradiction in the current framework, a truly hypocritical set-up that may actually foster murky ties between politics and the judiciary[31].

---

tutional office just because they are public service ("national representation" di cui all'art. 67 Cost.)».

[30] *SOBRINO*, *Magistrati "in" politica*, cit., 6.

[31] The fact that, on a national level, participating in politics is regulated by a voting system based on "blocked" lists method, according to which the votes to the list are assigned starting from the first on the list in decreasing order according to party's decisions, determines that also an "independent" nomination «of an eligible judge ...create a relationship between the judge and the party that must be kept secret because of the ban on enrollment and systematic and continuous participation in active political life". It would also be troubling a nomination achieved thanks to a certain performance of judicial functions, since in this case «either the party or the judge could utilize the performance of judicial functions for electoral purposes». From the citizen's viewpoint, both situations would reflect negatively «[...] on the citizen's free vote, because the rigid system of blocked lists does not allow him to change the ranking of the list and thus, hypothetically, he could not exclude a judge-candidate who presided over a trial against him», nor could he prevent the opposite case, where the judge returns to performing judicial

The fact that the Court, in its opinion 170/2018, avoids to resort to manipulative holdings and steers clear from making suggestions to the legislature, both regarding the matter under exam and the electoral situation, does not mean that the system is not in urgent need of rules that could overcome the critical issues that some commentators have identified in the related jurisprudence up to date.

It is not just about questioning the prohibition to enroll in a party, but also to look into the opportunity, currently allowed, for a judge to return to judicial duties in the event of electoral defeat or after holding political office.

Both cases in fact can pose a threat to the judiciary's prestige, and not a safeguard, since in the first instance, as we discussed above, membership in or association with a party is kept secret until the time when the judge is actually included in the electoral lists of a party and is subsequently enlisted, if elected, in the parliamentary group connected to that party; while in the second instance, someone who displayed a partisan demeanor during political activity is later allowed to return to perform tasks that require independence and impartiality.

As far as it concerns the first matter- related to what is contemplated in art. 3, 1° co., lett. h), del dlgs. 109/2006 and subsequent amendments, establishing a prohibition to enroll in and participate in a systematic and continuous manner in a political party – together with the motions of the CSM's disciplinary committee that generated the proceedings resulting in the two constitutional opinions examined herein, and the contrary arguments proposed by the Court in opinions 224/2009 and 170/2018, we also should report the position of those who suggest to delete the prohibition to enroll. This «[...] with the purpose of disclosing openly the judge's membership in a certain political party, and with the obligation to regulate by law such disclosure of membership in a party, if that occurred[...]»[32].

Regarding the second issue – the judges' return to judicial functions - we must also consider those who propose that the judges be barred from returning to judicial functions after political office [33], believing that «[...] judges must go down the road of political representation as a one way street, without having the possibility of any change of direction once they undertake that path, and thus not having, at the end of political office, the possibility to return to

functions after losing the elections or after holding political office and having displayed partisan behaviors that cast doubts on the judge's impartiality, even if only in appearance. *POLIZZI, Il "caso Emiliano"*, cit., 55 ss. ed, in particolare, 62 ss.

[32] *POLIZZI, Il "caso Emiliano"*, cit., 63.

[33] v., da ultimo, *CURRERI, Magistrati e politica,* cit.,

judicial functions, since they chose to abandon them for that reason»[34].
It is obvious that the positions just discussed are rather radical; they nevertheless show that the issue is very complicated because it involves conflicting needs, all deserving of consideration, that range from the judges' right to run for office without jeopardizing their professional career (like all other citizens and in compliance with 3° co. art. 51 Cost. according to which «the person who is elected to public office has a right to [...] maintain his/her job»), to the community's right to an application of the laws in an independent and unbiased fashion.
All this, obviously, concerns both the national government as well as international entities[35].
Regarding the latter, we should mention the Evaluation Report issued by GRECO (Groupe d'Etats Contre la Corruption) [36] during its 73rd plenary assembly (Strasbourg, October 17-21, 2016) and that in its fourth round of evaluation tackles the issue of preventing corruption of politicians, judges and prosecutors, in regards to the judges' participation in political life.
In particular, the GRECO Evaluation Team ("GET"), while believing that the issue of judges' direct participation in political life is very delicate because of the unavoidable risk, whether real or merely perceived, for the judiciary of becoming politicized as connected to the direct exercise of political activities, it concludes that it would be advisable to set a more clear separation between political office and judicial functions, because the existent legal framework, also for the GET, contains too many gaps and inconsistencies. The GET examined the existing laws, that do not require judges to request a leave in order

[34] *PRISCO*, *Una nuova sentenza della Corte costituzionale sull'esercizio delle libertà politiche da parte dei magistrati*, in www.federalismi.it, 26 agosto 2009, 6. It suggests to declare «ineligibility of the judges for any representative office for at least five years after they resigned the bench». G. U. *RESCIGNO*, *Note sulla indipendenza della magistratura alla luce della Costituzione e delle controversie attuali*, in www.costituzionalismo.it, 1/2007, 10 s.
[35] See, *DE SANTIS*, *Iscrizione ai partiti politici*, cit., 1 ss.
[36] Groups of States against Corruption, an entity that monitors compliance of its 49 member states with the European Council's fight against corruption measures. GRECO's monitoring includes an «evaluation round», based on the answers to a questionnaire given by a country to and also upon visits "on site", followed by an impact statement («compliance round»), during which the team examines all measures adopted to implement the recommendations issued during the country's evaluation. The team applies a process of peer evaluation, combining the competence of professionals who act as evaluators as well as representatives of the States members of the plenary assembly. GRECO's work has generated a considerable number of evaluations filled with fundamental data on politics and the measures to fight corruption in Europe. These evaluations identify achievements and failings of the legislation, regulations, politics and national institutional settings, and formulate recommendations to strengthen the States' ability to fight corruption and promote integrity. Membership in GRECO is available, with similar conditions, to the European Council's member States, and to outsiders.

to run for local office or be appointed to local government bodies, and also expressed its opinion that judges' return to their judicial functions after political office, or even after mere participation in an electoral race, deserved to be more strictly regulated. Thus, it recommended: 1) to restrict by law the simultaneous exercise of functions as both a judge and a member of local government; and, more generally, 2) to pass appropriate laws to regulate judges' political activities, in all possible forms, because of their impact on the fundamental principles of independence and impartiality, both real and perceived, of the judges.

Regarding national efforts, while Italy tries to comply with these recommendations, compliance that the GRECO will verify, the issue continues to be debated in different institutional settings. Between the position of the Government that, through its Justice Minister, has recently expressed its intention of preventing the judges who have actively participated in political life to return to their functions after holding political office,[37] and the hopes, also expressed by the Associazione Nazionale Magistrati, that the legislators will address the issue by passing appropriate laws, the positions of Consiglio Superiore della Magistratura (CSM)[38] and of the Parliament[39] deserve particular note. In 2015, the CSM expressed to the Justice Minister the need to promote an amendment of the laws regulating the judges' participation in politics, balancing the judges' right to participate in political representation activities or government operations with the imperative requirement that the judges be free from partiality, even above and beyond any suspicion of it [40]. In this regard, the CSM, based on the existing laws, of which it points out shortcomings and conflicts, advises to pass new legislation to regulate the relationship between politics and the judiciary. In particular, the CSM encourages to focus on the issue of

[37] On this point, please refer to the speech of Justice Minister Bonafede to the CSM Plenum, held on June 27, 2018, and available online: *www.csm.it*.

[38] CSM, Decision October 21, 2015: *Rapporto tra politica e giurisdizione, con particolare riferimento al tema del rientro nel ruolo della magistratura di coloro i quali abbiano ricoperto incarichi di Governo ed attività politica e parlamentare. Candidabilità e, successivamente non ricollocamento in ruolo dei magistrati che siano candidati ad elezioni politiche od amministrative, ovvero che abbiano assunto incarichi di governo nazionale, regionale e negli enti locali*.

[39] During the last Legislature, the House of Representatives approved a text regarding "Decisions regarding the candidacy, eligibility, and redeployment of judges during the political and local elections, and also appointments to posts in national and local governments and authorities" (C. 2188-A). Currently, there are two proposed laws- not examined yet – that were submitted, at the beginning of the Legislature, respectively to the Senate (A. S. 255) and to the House (A. C. 489), and both regarding "Decisions regarding the candidacy, eligibility, and redeployment of judges during the political and local elections, and also appointments to posts in the national and local governments and authorities. Amendments to the regulations regarding judges' abstention and recusals".

[40] CSM, Delibera 21 ottobre 2015 sul *Rapporto tra politica e giurisdizione*, cit.

the return to judicial functions for those who had government appointments or engaged in political and parliamentary activity, questioning those judges' eligibility and, subsequently, suggesting that the judges who ran for office in political or local elections, or were appointed to posts in the national, regional or local governments should not return to their prior functions.[41]

Parliament, during the last legislatures, despite its efforts to address these issues through various legislative actions, to date has not been able to provide definitive answers to these pressing questions. These demands are based on the understanding that it is up to the legislator to update the interpretation of art. 98, 3° co. Cost., identifying the appropriate terms and conditions with which members of the judiciary must comply if they want to hold political appointments, and restricting their possibility to return to the prior functions.

It is a very important opportunity to modify constitutional requirements according to the evolution of our jurisprudence within contemporary society, and it is also a great challenge for both Parliament and the judiciary in order to rebuild institutional relationships that comply with our constitutional intent and framework.

If judges in a republican state cannot remain neutral with respect to certain Constitutional values, at least they must not engage in blatant partisan behavior. This need is even more pressing in an historical context where, through legal interpretation, some judges could wind up integrating vague or non-

[41] In that Decision, in particular, the CSM encourages the Government to: 1) introduce the rule requiring that, regardless of the location of the territorial authority and the modality of access to the administrative position, the judge be placed on leave; 2) promote legislative action to prevent that a judge be an active administrator in the same territory where, without continuity, s/he has performed judicial functions, thus creating an objective confusion of roles and functions capable of tarnishing the appearance of impartiality; 3) promote leslative action, contemplating that the regulations regarding the eligibility of the judges appointed to public office within local authorities be complemented with requirements similar to those in effect for Parliamentary elections, that mandate, in order to safeguard the appearance of impartiality, to avoid specious exploitations of the judiciary work done and that judges not run for office in the territories subjected, in whole or in part, to the jurisdiction of the offices where they worked or have performed their functions for a substantial period prior to the date of their candidacy, increasing the actual limit to six months and making distinctions between elective office and political appointments; 4) introduce, as far as the so-called "external councilmen", stricter limiting regulations, as they are appointed without being elected and are substantially co-opted by the regional or local leader at the moment of their appointment, establishing more severe time restrictions to dispel the suspicion that judiciary duties previously performed might have caused the "appointment" by politicians; 5) regulate the cases where the extended engagement in political and institutional activities determine, at the end of political office, the transition to the District Attorney's or public management offices; 6) regulate, in alternative, a judge's right to preserve his/her job, after engaging in political-institutional activities for a long time, by offering a different public function, as long as it is similar in type, salary, and professional prestige; 7) introduce, in cases where the judge returns to his/her functions after holding office, limitations to their decisional powers, with assignment to judicial panels.

existing laws with their own opinions, thus becoming the "actual legislators". And that, as Dante would put it, is the narrow, but unavoidable, path to "see again the stars".