

# EUROPEAN ASSOCIATION OF JUDGES

## FURTHER STATEMENT

on

### **Proposed Amendments to the Constitution of the Republic of Italy**

1. The European Association of Judges (EAJ) has already on earlier occasions expressed its serious concerns over proposals which are being advanced by the Italian government in Constitutional Bill No. 1917 - “*Provisions on the Judicial System and Establishment of the Disciplinary Court*” which proposals make changes to the Italian Constitution which adversely affect the independence of the judiciary. In a resolution adopted at its meeting in Warsaw on 26 April 2024 the EAJ identified as objectionable (among others), the selection of judicial members of the Superior Council for the Judiciary by lot, the proposed splitting of the existing Council embracing both judges and prosecutors into two separate Councils, and reducing the competences of the Council, including in that reduction the deprivation of the Council’s jurisdiction in disciplinary matters. Having been informed at its meeting in Cape Town in October 2004 that the Italian government had not sought to change its proposals in order to meet the concerns set out in that resolution, the EAJ addressed a letter to the government repeating and emphasising the objections to what was proposed and urging the government to refrain from proceeding further with them.

2. Meeting on 9 May 2025 in Yerevan, the EAJ was further concerned and greatly disappointed to learn from the Italian National Association of Magistrates (ANM) that despite these serious objections which have also been expressed by the Italian judiciary and by prominent legal scholars, and despite the massive mobilization of individual Italian judges in a national strike, the Italian government continues to proceed with the legislative process without any critical reconsideration of the objectionable features contained in the Bill.

3. The ANM points out that in 1947 Italy was admired for creating a constitutional framework, which was a well- designed balance of the powers of state including the necessary safeguards for an

independent judiciary. That framework encompasses a common council for judges and prosecutors with a clear majority of members being judges elected by their peers, responsible with all issues regarding the career of judges and prosecutors among which the sensitive and important issue of conducting disciplinary proceeding. All those provisions aimed to prevent any attempts at a revival of fascism, from which Italy had suffered so much before. Many other states admired the Italian system and took it as example and for inspiration; and the Italian judiciary has several times proved its effectiveness in the fight against organized crime (Mafia) and corruption (e.g. mani polite). Dismantling important elements of a system which protects the rule of law and the Italian people from misuse of power is a retrograde step which is of wider European concern.

4. For convenience, the principal objections previously raised by the EAJ may be summarized thus:

- (a) The fragmentation of the unified Superior Council of the Judiciary into two separate Councils (one for judges, one for public prosecutors) may weaken the judiciary and pave the way for influencing criminal procedures; and the strong guarantee against undue external pressures may be reduced and the protection of the judiciary's unity and autonomy damaged.
- (b) Disciplinary procedures, which may decisively influence judges' careers, are a core competence of, and are well placed with, the body which is responsible for protecting the independence of the judiciary and which is accountable for the effectiveness of the justice system. This must also be reflected in the manner in which the relevant body is constituted and the selection of the persons from whom the body is composed.
- (c) A random selection mechanism (selection by lot) for judicial members of the self-governing bodies blatantly contradicts European standards, according to which members of judicial councils must be elected by their peers.<sup>1</sup>

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<sup>1</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, point 27, among others

5. It should also be noted that in its most recent Rule of Law report<sup>2</sup>, the Commission of the European Union expressed similar concerns regarding the envisaged reform and it will be borne in mind that the Commission has tools available to uphold the rule of law.

Accordingly, the EAJ once again urges the Italian government to reconsider the course it is pursuing and to abandon the proposed constitutional reform in its current form, with its damaging features which will not contribute to the efficiency of justice but harm the independence of the judiciary and the trust in it.

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<sup>2</sup> European Commission in its 2024 Rule of Law Report (see Chapter on the Rule of Law Situation in Italy, p. 7