

Draft

EUROPEAN ASSOCIATION OF JUDGES

RESOLUTION

on the

ENDANGERED INDEPENDENCE OF THE JUDICIARY

In

ITALY

At its meeting in Warsaw on 26 April 2024 the European Association of Judges (EAJ) was informed by its member association from Italy, namely the Associazione Nazionale Magistrati of the intention of the Italian government to amend the Constitution and the legal framework governing the judiciary by making changes to the composition of the High Council for the Judiciary.

The proposals include replacing the existing Council, which embraces both judges and prosecutors, by two separate Councils, namely a High Council for Judges and a High Council for Prosecutors. The proposals further provide that one half of the members of each council shall be appointed by the government; that the judge and prosecutor members respectively should not be elected by their peers, as is currently the case, but drawn by lot; that the Council for the judiciary will be deprived of any ability to defend the independence of any individual judge; and that the Councils may not express a view on any legislative proposals. In addition, a hierarchical structure is to be established in the judiciary

The EAJ identifies such steps as constituting a serious attack on the independence of the judiciary, an undermining of the existing balance of powers in Italy, and a clear infringement of European standards. As is evident from those standards, the overriding objective of any council for the judiciary is to protect the independence of the judiciary and the individual judge. To achieve that objective the council itself has to be independent and free from political influence by the Executive branch of

the State. Further any council has to be both democratic and effective which entails that judge members of a council should be elected by their peers, who are able to assess the qualities and abilities of candidates to contribute to the work and responsibilities of the council. The proposal that the judge members be determined by drawing lots is inconsistent with that need for effectiveness and democratic choice among the members of the judiciary. Not only external independence of judges should be guaranteed, but also their internal independence.

The EAJ also takes note of the attempts to weaken the position of prosecutors by placing them under a High Council for Prosecutors, making it more difficult for an individual to change profession from judge to prosecutor and vice versa, and by restricting the principle of mandatory prosecution. These proposed steps would not only reduce the independence of the prosecution but would also have an impact on the efficiency and effectiveness of the criminal justice system.

The EAJ therefore shares the concerns expressed by the Italian delegation of the Associazione Nazionale Magistrati on these proposed changes to the law. Although promoted by their initiators as securing the impartiality of judges and strengthening adversarial procedure within the criminal process, when viewed objectively the proposals in fact enable a wide expansion of the scope for political influence to be brought to bear on judicial decision making and thus weaken the essential prerogatives of autonomy and independence of the judiciary, which both qualify as indispensable prerequisites for the proper exercise of the judicial function in rule of law.

The EAJ therefore urges the Italian authorities to reconsider the proposals in question and to be mindful of the need for Italy not to take steps departing from European standards.

The EAJ notes further that Associazione Nazionale Magistrati remains willing to explain and exemplify the major critical issues related to the proposals of constitutional reform and their possible severe repercussions on the civil rights and liberties of citizens. The EAJ therefore strongly requests the Italian authorities to afford the Associazione Nazionale Magistrati opportunities to do so both to government and as part of wider public debate.