

Mandate of the Special Rapporteur on the independence of judges and lawyers

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(Please use this reference in your reply)

23 October 2025

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 53/12.

It has come to my attention that on 29 May 2024, a draft constitutional bill that proposes amendments to articles 102, 104, and 105 of the Italian Constitution, which govern the autonomy and organisation of the judiciary, was proposed. In this connection, considering that the proposed amendments to the Italian Constitution provide an opportunity to strengthen human rights protection, I would like to provide some analysis from the perspective of international human rights standards on the independence of the judiciary.

This letter is not meant to be an exhaustive analysis of all aspects of the constitutional amendments. Rather, I would like to offer the following comments on the amendments, in the hope that this reform will bring Italy's legal framework on the independence of the judiciary closer in line with the obligations of your Excellency's Government under international human rights law. Specifically, I make reference to the right to a fair trial and the independence of the judiciary, which are protected both in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which Italy ratified on 15 September 1978.

Article 10 of the UDHR guarantees everyone the right to a fair and public hearing by an independent and impartial tribunal, while article 14 of the ICCPR stipulates that: "Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." Furthermore, in its general comment No. 32 (2007) on article 14, the Human Rights Committee emphasized that the right to equality before the courts and tribunals and to a fair trial is fundamental to the protection of human rights and serves as a procedural means of safeguarding the rule of law. The role and status of judges and public prosecutors is closely linked to these rights.

According to the current Italian Constitution and what is known as the principle of unity of the judiciary, ordinary judges and public prosecutors are all magistrates, have a common career structure, and are governed by the High Council for the Judiciary. At present, a single *Consiglio Superiore della Magistratura* (CSM, High Council of the Judiciary) exercises self-governing authority over the entire judiciary.¹ That framework included a unified council for judges and prosecutors, with a clear majority of members being magistrates elected by their peers. This body was entrusted with all matters relating to judicial and prosecutorial careers, including the sensitive and vital responsibility of conducting disciplinary proceedings.

¹ https://www.quirinale.it/page/csm_en

I welcome the objectives stated by the Government of Italy to strengthen judicial impartiality, prevent functional overlaps and conflicts of interest, as well as enhance public confidence in the justice system, through these amendments. However, I would like to highlight the following aspects for consideration, in line with international standards on the subject.

Career Separation and Dual High Councils

The bill introduces a formal separation between the careers of judges and public prosecutors, creating two distinct professional paths. This would end the current practice whereby judges may become prosecutors and vice versa. The stated objective is to ensure that those who adjudicate cases have not previously served as accusers, thereby reducing the risk of bias or undue influence.

The reform further proposes the creation of two separate High Councils – one for judges and one for public prosecutors – while maintaining the institutional safeguard of the President of the Republic presiding over both. These bodies would oversee appointments, career progression, and disciplinary matters.

Proposals to amend the structure of the judiciary, and the procedures that govern the judicial and prosecutorial appointments, career and discipline, should be carefully assessed to ensure they comply with international standards. This reform proposal introduces a fundamental change in the structure of the Italian judiciary and may deprive the public prosecution service of the status and guarantee of external independence that the Constitution currently ensures by the principle of the unity of the judiciary, which implies a common set of guarantees for judges and prosecutors and a common Superior Council.

Article 14 of the ICCPR and the Basic Principles on the Independence of the Judiciary, establish that States must ensure that those who exercise a judicial function are free from interference, intimidation, hindrance or harassment. A fundamental principle of judicial independence is that judges should not be subjected to threats or put at risk of harm² due to their work or the content of their independent decisions and judgments. As it relates to prosecutors, international standards in this area emphasize that “prosecutors play a fundamental role in the administration of justice, and that the rules governing the performance of their important functions should (...) contribute to a fair and equitable criminal justice system and to the effective protection of citizens against crime”.³

Upon the creation of separate councils for each function, utmost care must be taken to ensure that the new councils remain free of political influence and possible control by the other government branches, and that the key functions of these councils, such as appointment and disciplinary proceedings, comply with universal and regional human rights standards. It is also essential to ensure that a division of the High Council does not leave judges and prosecutors more vulnerable to external pressure. I note that

² Basic Principles on the Independence of the Judiciary, principle 2

³ Guidelines on the Role of Prosecutors, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990, UN Document A/CONF.144/28/Rev.1 p. 189 (1990).

if the President continues to have a role in these Councils, it should be a symbolic one, in order to ensure their independence.

As it relates to judges, I would like to recall that international standards provide that any appointment procedure must guarantee judicial independence, both institutional and individual, and impartiality, both objective and subjective.⁴ Judges should be selected based on their training or qualifications in law, as well as their integrity and ability.⁵ The method of judicial selection must include safeguards against judicial appointments for improper motives.⁶ This mandate has repeatedly emphasized that a candidate's integrity, legal training and qualifications are crucial elements in the appointment of judges,⁷ and has underlined the importance of "prioritizing non-political appointment procedures, strictly linked to professional quality and merit, and commitment to the values of the rule of law and the standards outlined in the Basic Principles on the Independence of the Judiciary."⁸

My predecessor, Special Rapporteur on the Independence of Judges and Lawyers Gabriela Knaul, emphasized that "When assessing the independence and impartiality of prosecutors, it is important to examine both the structural independence of the prosecution service and its operational independence and impartiality, or functional independence. The lack of autonomy and functional independence can undermine the credibility of the prosecuting authority and undermine public confidence in the administration of justice".⁹

A further key element of the proposed constitutional reforms is the introduction of a lottery system for appointing members of the envisaged two "new" High Councils, replacing the current method of election by Parliament and the judiciary. The bill does not yet specify how this system will be implemented. It merely states that one-third of the members will be selected at random from a list of full university professors of law and lawyers with at least fifteen years of experience, compiled by Parliament. The remaining two-thirds will be selected from among judges and prosecutors, in numbers and procedures to be defined by law. Special care should be taken when setting up these Councils. Members should be selected for their merit and ability to carry out their essential role with competence and integrity.

For the judicial career, I wish to recall that although there is no standard model to follow in setting up a judicial council, its composition should guarantee its independence and enable it to carry out its functions effectively. However, there is a trend at the international level for judicial councils to have a mixed composition, and for a majority of members to be judges elected by their peers.¹⁰ Judicial selection processes should ideally be carried out by an independent authority¹¹ and should

⁴ Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, principle 1 (hereinafter "Basic Principles on the Independence of the Judiciary").

⁵ Basic Principles on the Independence of the Judiciary, principle 10.

⁶ Basic Principles on the Independence of the Judiciary, principle 10.

⁷ A/HRC/44/47/ADD.2 (2 June 2020), para. 104, A/HRC/11/41 (24 March 2009), para. 27.

⁸ A/HRC/50/36/ADD.1 (11 May 2022), para. 112.

⁹ A/HRC/20/19 para. 26.

¹⁰ A/HRC/38/38, para. 66.

¹¹ /HRC/44/47/ADD.2 (2 June 2020), para. 104, A/HRC/11/41 (24 March 2009), para. 27; A/HRC/23/43/ADD.1 (24 May 2013), para. 112.

guarantee the effective participation of civil society and citizens to ensure that the selection is based on merit, integrity and ability.¹²

For the prosecution service, I note that my predecessor highlighted that a competitive public selection process was an objective way to ensure the appointment of qualified candidates to the profession of prosecutor. Further, “Recruitment bodies should be selected on the basis of competence and skills and should discharge their functions impartially and based on objective criteria. This body should be composed by a majority of members from within the profession in order to avoid any possible political or other external interference”.¹³

High Disciplinary Court

The amendment proposal not only splits the High Council, but it also removes one of its key functions concerning disciplinary proceedings. The reform proposes the establishment of a new High Disciplinary Court to impose sanctions on judges and prosecutors – a function currently exercised by the High Council. The Court would consist of 15 members appointed for a non-renewable four-year term. Its president would be elected from among judges appointed by the President of the Republic or selected at random from a list compiled by Parliament in joint session.

Out of the fifteen members, six would be “lay” members and nine would be judges or public prosecutors. Appeals against first-instance judgments delivered by the High Disciplinary Court would be heard by the same Court, rather than by the Supreme Court of Cassation, as currently provided for by law. This is a particularly troubling aspect of the reform. It risks undermining judicial independence, given that the same body would act at both first and second instance, as well as eliminating the possibility of appeal to the Court of Cassation.

The proposed nomination procedures risk undermining the democratic legitimacy of the Councils by reducing the role of judges and prosecutors in selecting their own representatives. According to European standards, at least half of the members of judicial councils should be judges elected by their peers.¹⁴ While the aim of random selection is to ensure objectivity, the proposed procedure does not guarantee peer election and therefore raises serious questions.¹⁵

Independent review of decisions taken in disciplinary proceedings involving suspension or removal from judicial office is a guarantee of judicial independence recognized in international and regional standards. Principle 20 of the Basic Principles on the Independence of the Judiciary explicitly requires that judges have the opportunity to appeal against disciplinary decisions or decisions to remove them from office. At the regional level, the Council of Europe has recognized the right of judges to appeal decisions made in disciplinary proceedings.

Disciplinary proceedings against prosecutors must be conducted in full compliance with current international norms and standards. Guideline 21 states that

¹² A/HRC/38/38 (2 May 2018), paras. 72, 76.

¹³ A/HRC/20/19, para. 62.

¹⁴ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 27.

¹⁵ 2024 Rule of Law Report – Country Chapter on Italy, European Commission, p. 6.

“Disciplinary offences committed by prosecutors shall be provided for by law or regulations. Complaints against prosecutors alleging that they have acted clearly outside the scope of professional standards shall be dealt with promptly and impartially in accordance with the relevant procedure. Prosecutors shall have the right to a fair hearing. Decisions shall be subject to independent review.” Guideline 22 states that “Disciplinary proceedings against prosecutors shall ensure an objective assessment and decision. They shall be determined in accordance with the law, the code of professional conduct and other established ethical rules and standards and bearing in mind these Guidelines”.¹⁶

I would like to take this opportunity to highlight that, in her report specifically on the work of prosecutors, former Special Rapporteur Gabriela Knaul underscored that: “Prosecutors should enjoy reasonable conditions of service, including tenure, where appropriate, and adequate remuneration and pensions commensurate with the important role they play in the administration of justice [...], that they enjoy security of tenure, and that, “bearing in mind the importance of the role of prosecutors, their dismissal should be subject to strict criteria.” The report further indicates that an adequate framework should be established to deal with internal disciplinary matters and complaints against prosecutors, who in all cases should have the right to appeal – including before the courts – all decisions concerning their careers, including decisions taken in disciplinary proceedings¹⁷.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please explain how the above-mentioned amendments to comply with Italy’s obligations under international law, in particular with the principles and standards protecting the rights to due process and fair trial guarantees, enshrined in international human rights instruments, including in the ICCPR.
3. Please indicate the measures taken by your Excellency’s Government to review the proposed amendments to the Constitution in light of the observations shared above.

In conclusion, I urge careful review of the proposed amendments in order to ensure that they strengthen judicial independence and individuals’ rights to a fair and public hearing by a competent, independent and impartial tribunal, as guaranteed by article 14 of the ICCPR.

I stand ready to engage in dialogue with Your Excellency’s government on this very important matter and to provide any technical advice it may require in ensuring the proposal is fully compliant with international human rights obligations.

¹⁶ Guidelines on the Role of Prosecutors, mentioned above.

¹⁷ A/HRC/20/19 paras. 66, 67 and 70

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers