

“Article 10” Committee

Turin, 17 November 2016

To CEPEJ

Copy to

Italian Minister of Justice Hon. Andrea Orlando

Vice President Superior Council of the Judiciary Hon. Giovanni Legnini

This Committee hereby intends to report the untruthful data notified by Italy in response to several queries raised by the CEPEJ, which, consequently, depicted a position that was partly not faithful to justice in Italy in its 2014 and 2016 reports. The data regards the magistrates who are defined in Italy as “honorary”.

With reference to both editions of the report, the matters of interest are numbers 46, 48, 49 and 57.

To show the incorrect nature of the data disclosed by Italy and to show the consequences on the assessments prepared by the CEPEJ, we must first explain what “honorary magistrate” means in Italy, and explain the functions of some of the figures classed as honorary magistrates, in particular court honorary judges, honorary deputy prosecutors and justices of the peace.

Court Honorary Judges and Honorary Deputy Prosecutors

Court honorary judges (hereinafter “Court Honorary Judges”, Italian “Giudici Onorari di Tribunale” - G.O.T.) and honorary deputy prosecutors (hereinafter “Honorary Deputy

Prosecutors”, Italian “Vice Procuratori Onorari” - V.P.O.) are **recruited by means of a competitive qualification (i.e. a technical-administrative procedure that is non-discretionary)** and were introduced into the legal order by Italian Legislative Decree no. 51/1998. Differently to professional magistrates, they only work at the ordinary court (whilst the former may also go about their duties, as they pursue their career, at the higher levels of jurisdiction and other bodies of ordinary justice).

They have legal training: the minimum requirement is a degree in law, but as they are recruited by means of a competitive qualification, they have additional qualifications apart from the university degree (qualified to pursue the profession of lawyer, specialisation diploma to access the legal professions - corresponding to a second level masters degree, university research doctorate, etc.). Differently to professional magistrates (recruited by means of a competitive exam), they may pursue other professions, without prejudice to the **limits of incompatibility established by law**.

Court Honorary Judges are competent in the functions of the ordinary court (Articles 43 and 43 bis Royal Decree no. 12 of 30 January 1941, hereinafter the “Legal Order”). Introduced to supplement professional magistrates, as from 2004, the High Judicial Council (*Consiglio Superiore della Magistratura*) has envisaged **the permanent, ordinary assignment to Court Honorary Judges of entire roles, regardless of the lack or impediment of professional judges** (Circular of the High Judicial Council on the 2004/2005 legal office tables).

Honorary Deputy Prosecutors are prosecuting magistrates who are competent to represent the Public Prosecutor before the ordinary court established with single magistrates and before the justice of the peace, as well as in some civil proceedings, as well as having limited investigation competences (72 Legal Order and Art. 50 of Italian

Legislative Decree no. 274 of 28 August 2000). The office in which they serve is the court prosecutor's office.

Please note that the proceedings discussed by the Honorary Judges and Honorary Deputy Prosecutors do not differ from those discussed by professional magistrates in terms of the type of rite. They have the same technical profile. For example, decisions on criminal matters passed by Court Honorary Judges must also be grounded (the Italian legal system is part of the civil law model). Trials are governed by the same rules of procedure. We have already said that competences on subject matter are comparable.

The instituting law envisaged a three-year appointment, which could only be renewed upon completion of an assessment by the High Judicial Council (Articles 42 quinquies, 71 Legal Order). In fact, since 2004, they have always been extended by law (the last extension dates to 31 May 2016). No Court Honorary Judge and no Honorary Deputy Prosecutor, from 1998 to date, has resigned from office due to expiration of the terms.

They are remunerated in accordance with Article 4 of Italian Legislative Decree no. 273 of 28 July 1989, as amended by Italian Decree Law no. 151/2008. This envisages, for both Court Honorary Judges and Honorary Deputy Prosecutors, a **gross indemnity of Euro 98 per hearing** (which can be doubled if the hearing lasts more than five hours). This envisages, for Honorary Deputy Prosecutors only, a daily attendance fee equal to a gross indemnity of Euro 98 for the preliminary work carried out outside the hearing (acts relating to the investigation phase), to be carried out at the legal offices (Art. 4 of Italian Legislative Decree no. 273 of 28 July 1989, as amended by Italian Decree Law no. 151/2008). It should, therefore, be specified that **not all the work is remunerated**. The law does not envisage the remuneration of the drafting of sentences nor of the studying of the files (this must be clarified as **a working commitment that is effectively full-time**

does not coincide with a daily liquidation of attendance fees). The following examples should help clarify this. In one day, a Court Honorary Judge can hold a civil hearing (which lasts less than five hours), in which five trials are held. He is remunerated only with a gross fee of 98 euros, but the law requires him to study the acts of five cases (often worth several hundred thousand euros) and provide grounds for the sentences. An Honorary Deputy Prosecutor can be delegated to represent the Public Prosecutor in a hearing in which twenty criminal trials are held, thereby accruing the right to receive two attendance fees, if the hearing runs over the five hours (the days spent studying the acts of the files are not remunerated, nor is the fulfilment of all requirements subsequent to the hearing).

For Court Honorary Judges and Honorary Deputy Prosecutors, the legislator does not envisage any remunerated holidays nor any form of social security, nor indeed any form of maternity leave indemnity (although as from 2006 the application of compulsory maternity, as for employees, has been applied on the basis of a resolution passed by the High Judicial Council, with consequent violation of Directive 2006/54/EC of the European Parliament and Council of 05 July 2006 and of the Charter of Fundamental Rights of the European Union, given that female magistrates on maternity leave suffer a complete loss of income for five months).

JUSTICES OF THE PEACE.

The figure of the justice of the peace was instituted by Italian Law no. 374/1991 and, like the Court, is the ordinary judge of first instance (*Art. 1, Royal Decree no. 12 of 30 January 1941*) and exercises jurisdiction in civil and criminal matters (Art. 1, Italian

Law no. 374/1991), with exclusive competence in terms of value and subject matter (the court of appeal against such decisions is the ordinary court): on civil matters (Articles 7, 752, 745, 80 of the Italian Code of Civil Procedure; Art. 34, Italian Legislative Decree no. 150/2011, which abrogated Art. 22 bis of Italian Law no. 689/1981) and the conciliative function in a non-contentious setting (Art. 322 of the Italian Code of Civil Procedure); on criminal matters (Articles 4 and 5 of Italian Legislative Decree no. 274/2000), on immigration (Articles 10 bis, 13 et seq. of Italian Legislative Decree no. 286/1998).

Below is the data recorded by the Ministry of Justice respectively on 14 March 2015 (criminal) and 11 August 2015 (civil), which represents the dispute submitted to the Office of the Justice of the Peace and is useful to compare with that of the Court in the same period.

Statement 1-quinquies: Criminal justice - Justices of the Peace

YEAR	Type of proceedings	Number	Change with respect to previous year
2011	Registered	232,381	-
	Defined	224,118	-
	Final pending	157,180	-
2012	Registered	223,867	-3.70%
	Defined	215,753	-3.70%
	Final pending	165,031	5%
2013	Registered	220,446	-1.50%
	Defined	215,465	-0.10%
	Final pending	172,439	4.50%

Statement 1-quater: Criminal justice - Ordinary courts

Year (solar)	Type of proceedings	Number	Change with respect to previous year
2011	Registered	1,323,014	-
	Defined	1,265,022	-
	Final pending	1,240,291	-
2012	Registered	1,313,995	-0.70%
	Defined	1,223,302	-3.30%
	Final pending	1,294,695	4.40%

2013	Registered	1,319,962	0.50%
	Defined	1,262,114	3.20%
	Final pending	1,314,511	1.50%

Statement 1-quinquies: Civil justice - Justices of the Peace

JUSTICES OF THE PEACE		Change with respect to previous year
<i>Legal year 01.07.2010-03.06.2011</i>		
Registered	1,517,287	
Defined	1,609,240	
Final pending	1,605,381	
<i>Legal year 01.07.2011-03.06.2012</i>		
Registered	1,435,726	-5.4%
Defined	1,535,086	-4,6%
Final pending	1,445,340	-10.00%
<i>Legal year 01.07.2012-03.06.2013</i>		
Registered	1,347,354	-6.2%
Defined	1,454,637	-5,2%
Final pending	1,319,654	-8.7%
<i>Legal year 01.07.2013-03.06.2014</i>		
Registered	1,272,999	-5.5%
Defined	1,344,081	-7,6%
Final pending	1,248,572	-5.4%

Statement 1-querter: Civil justice - Ordinary courts

ORDINARY COURTS		Change with respect to previous year
<i>Legal year 01.07.2010-03.06.2011</i>		
Registered	2,701,949	
Defined	2,678,707	
Final pending	3,479,281	
<i>Legal year 01.07.2011-03.06.2012</i>		
Registered	2,647,659	-2.0%
Defined	2,745,916	+2.5%
Final pending	3,395,881	-2.4%
<i>Legal year 01.07.2012-03.06.2013</i>		
Registered	2,776,978	+4.9%
Defined	2,841,100	+3.5%
Final pending	3,328,455	-1.0%
<i>Legal year 01.07.2013-03.06.2014</i>		
Registered	2,748,864	-1.0%
Defined	2,991,047	+5,3%
Final pending	3,086,272	-7.3%

The Justices of the Peace currently operating were appointed having passed the general competitive qualification (Art. 4, 4 bis, 5 Italian Law no. 374/1991), called in 1998 (Ministerial Decree of 3.12.1998).

The same comments made in the paragraph above apply: they have legal training and other qualifications over and above a university degree, and they may pursue other professions without prejudice to the limits of incompatibility set forth by the law.

The instituting law envisaged a four-year mandate (Art. 5, Italian Law no. 374/91), which could be renewed for a second term of office (thereafter, the legislator envisaged an additional mandate), as long as approved by the High Judicial Council (Art. 7, Italian Law no. 374/91). After expiry of the third four-year mandate, however, all Justices of the Peace in service were extended *ex lege* (last extension dates to 31 May 2016).

According to the instituting law, the Justice of the Peace is remunerated at “piece rates”: they are paid a gross figure of €36.15 per hearing, €56.15 per sentence and €10.33 per court order or archiving decree, in addition to a monthly indemnity of €258.23 (Art. 11, Italian Law no. 374/1991).

Just like the Court Honorary Judges and the Honorary Deputy Prosecutors, also the Justices of the Peace do not benefit from **remunerated holidays nor any form of social security, nor indeed any form of maternity leave indemnity (despite the fact that they must abstain from work for five months, just like regular employees).**

DEFINITION OF THE HONORARY NATURE OF THE LEGAL FUNCTIONS.

In Italy, there is no regulatory definition of an honorary magistrate.

However, the following theoretical definition is shared, regulating their economic treatment: “It is a function that is provided not as a professional activity, but rather as a spontaneous participation that goes beyond normal life occupations” (thus reported the MP Giovanni Leone, during the works of the Constituent Assembly).

This definition (dogmatically) justifies the failure to pay honorary magistrates a remuneration and afford them social protection.

A magistrate must be impartial, independent and autonomous and can only guarantee that (appearing so) if he is financially independent, i.e. only if:

- in being a “fixed-term” magistrate, upon expiry of the mandate, he continues to retain his own income from another form of working activity;
- in not having any form of remuneration, but rather only indemnity, he earns sufficient income and has his own worker rights guarantees (social security, welfare for illness, holidays, maternity leave) assured by another form of working activity.

The need to fulfil these conditions stems from a systematic interpretation of essential domestic legislation and European sources (Articles 101 and 104 of the Constitution; 6 of the Human Rights Convention, **Art. 47 ECHR**).

DISTORTION OF THE HONORARY NATURE.

The increase in the dispute has resulted in a use of the Justices of the Peace, the Court Honorary Judges and the Honorary Deputy Prosecutors that differs from that originally envisaged: they are no longer used on an occasional basis and have the same competences as professional magistrates.

In actual fact, the Justice of the Peace had initially been chosen as the heir to the conciliator judge¹, competent on conciliation matters and judgements of fairness. The assignment of competences of lesser complexity (which would have allowed for the occasional exercise of the duties) justified the creation of this honorary figure. Over time, however, the office of Justice of the Peace was assigned increasing competences, often in highly technical matters and, therefore, necessarily requiring an involvement on the part of the Justices of the Peace that went well beyond the limit of an “occasional” nature (the only aspect in common with the Justice of the Peace in the United Kingdom is, in fact, the name).

The Court Honorary Judges and the Honorary Deputy Prosecutors were originally introduced merely to supplement professional magistrates, but in any case with comparable competences (in the case of honorary judges, the competences are identical). In this case too, the function originally assigned justified the introduction of the honorary figure, declaring that the Court Honorary Judges and Honorary Deputy Prosecutors merely stood in for the professional magistrates in the event of their absence or, in any case, only performed simple affairs. The incessant increase in the demand for justice has instead required their intensive use, also due to the technical difficulties involved in the cases assigned them, requiring a great deal of time in order to be properly addressed (see 1 and 2 attached). Regarding the Court Honorary Judges, the High Judicial Council duly acknowledged this by resolution passed on 25 January 2012 amending the organisational modules and allowing for their more extensive use, due to the pressing needs to process disputes (as, in actual fact, was already the case). The current situation sees not only the effectively exclusive assignment of certain matters to honorary judges (such as seizures

¹ The figure of the Conciliator was eliminated by Italian Law no. 374 of 21.11.1991.

of securities) but also the assignment of proper roles, with workloads equal to those borne by professional judges in extremely delicate cases (in the civil sector, worth several hundred thousand euros, in the criminal sector for crimes sanctioned with long prison sentences).

A similar situation effectively arises with reference to honorary deputy prosecutors, who carry out the duties of public prosecutors in 98 percent of hearings held before courts with a single magistrate and one hundred percent of hearings before the Justice of the Peace (effectively with the exclusive assignment of competences)². In this case too, the effort required, due to the complexity of the proceedings dealt with, goes well beyond an occasional nature, in terms not only of the duration of the hearings, but also of the time spent studying the files (not remunerated) as it is necessary to enable the efficient handling of the discussion phase.

It is simply not possible to entirely measure the contribution made by the Justices of the Peace and the Court Honorary Judges in settling disputes, because for Court Honorary Judges, there are no comparative statistics, but it is useful, in this respect, to just mention the article published in the legal journal “Questione Giustizia” no. 3/2016, entitled *Seguendo le orme dell’Europa dentro i confini domestici*, written by Antonella Di Florio³, which estimates as follows: “the honorary judges (Justices of the Peace and Court Honorary Judges) have handled, and continue to process, in the civil sector, 40% of the jurisdiction”. This percentage underestimates the total contribution of the Court Honorary Judges and the Justices of the Peace (if the records of the Ministry of Justice specified above are considered) but, even more so, the figure is fairly significant if we

² The legislator has increased the competence of the Honorary Deputy Prosecutors (investigations for crimes the competence of the Justice of the Peace and requiring criminal sentencing orders), with the consequence that they are now effectively employed by the public prosecution, even outside the actual hearings themselves.

³ Judge at the Court of Rome, President of Chambers.

consider that the number of professional judges indicated in the 2016 CEPEJ report (6939 units in 2014, moreover including newly-appointed professional judges, who have not yet come into office - 680 according to the data of the High Judicial Council) must refer not only to the first instance, but also to higher instances (Courts of Appeal and Supreme Court of Cassation) and other ordinary bodies of justice. The clarification is useful in proving that the majority of the Justices of the Peace and Court Honorary Judges **go about these duties on a full-time basis**. The same considerations apply to Honorary Deputy Prosecutors, who represent the Public Prosecutor in 80 percent of first instance trials before the Court and in 100 percent of trials before the Justice of the Peace. It is easy to conclude that the majority of the Honorary Deputy Prosecutors also go about these duties **on a full-time basis**, if we consider that, in 2014, the Honorary Deputy Prosecutors in service numbered 1776, as compared with 2,108 professional magistrates in service in the prosecuting offices of all levels (Courts of Appeal and Supreme Court of Cassation).

REFORM.

The legislation examined briefly thus far has been partly superseded by **enabling law no. 57/2016**, which, in order to fully enter into force, must be implemented through legislative decrees delegated to the Government. The legislation is pejorative, but in any case, it must be specified that the previous regulations governing remuneration **will in any case remain in force for the next four years**.

The new regulations unifies the Justices of the Peace and Court Honorary Judges into a single category, called “honorary justices of the peace” (hereinafter “Honorary Justices

of the Peace”, Italian “Giudici di Pace Onorari” - G.O.P.). However, as we have said, for the next four years, they will continue to be remunerated on the basis of the related previous regulations, and it subjects the latter, along with the honorary deputy prosecutors, to the **same regulations** (recruitment methods, remuneration, term of office, disciplinary measures, etc.).

According to the new regulations, **the existing office of the Justice of the Peace** remains (with an extension of the subject-specific and value-related exclusive competences), in which the current Justices of the Peace and the former Court Honorary Judges, will act as single magistrates (in any case, the Court Honorary Judges will enter the office of the Justice of the Peace, whereas, to date, they have acted as judges in the Court - however, it is pointed out that a great deal of competences previously attributed to the court, have now been transferred to the office of the Justice of the Peace⁴). The Honorary Justices of the Peace will also be used in the ordinary court, where they shall act as judges (both single magistrates and members of panels). Moreover, both the Honorary Justices of the Peace and the Honorary Deputy Prosecutors must enter the Trial Office, i.e. an organisational model within which they respectively assist the professional judges of the court and the professional public prosecutors at the court (the current Justices of the Peace only optionally enter there).

As regards **the remuneration**, the enabling law lays down only the principles, but not the *quantum*. It establishes a double regime for remuneration: a fixed “indemnity” and a

⁴ Merely by way of example, we need merely consider that the office of the justice of the peace will be competent to rule on cases relating to securities worth up to Euro 30,000, cases of compensation for damages caused by the circulation of vehicles and boats worth up to Euro 50,000 and property expropriation proceedings at the debtor’s premises and the expropriation of property of the debtor held by third parties. Please also note that, according to unofficial estimates, competences on civil matters transferred by the ordinary court to the office of the justice of the peace account for 30 percent of all current disputes. Considering that the procedure is the same as that of the ordinary court, we fail to understand why, merely because the same activity is carried out by judges defined as “honorary, it should not be considered as a working (or “professional”) activity.

“variable indemnity”. **The variable indemnity should be liquidated according to objectives achieved**, i.e. in violation of Recommendation no. 12/2010 of the Committee of Ministers to the Member States on judges adopted during the 1098th meeting of the Delegates of Ministries held on 17.11.2010, which bans “systems that cause the essential elements of remuneration to depend on performance, insofar as these can create difficulties in terms of the independence of judges”. Moreover, Italian Law no. 57/2016, although envisaging the variable part of the remuneration according to incentive, establishes that **the variable part shall only be paid at the end of the year, meaning that, on a monthly basis, the Honorary Justices of the Peace and the Honorary Deputy Prosecutors shall no longer have sufficient income by which to maintain themselves (unless they are to take out loans whilst awaiting liquidation of the variable remuneration at the end of the year)**. As mentioned, the enabling law does not specify the *quantum*, but the technical report to the draft government law no. 1738/15 (approved by Italian Law no. 57/2016) calculated, prospectively, a **gross annual remuneration of 25 thousand euros** if achieving all objectives. **This would be a monthly average, overestimated, of 1500 net of tax - of which at least one third paid at the end of the year -, without any social security contributions, illness indemnity, maternity indemnity or holidays (note, moreover, that the 2015 Stability Law envisaged a cut to the funds to be allocated to remunerate the magistrates in question, of at least 14 million euros for the following two years)**. The new law **provides for no form of social protection**. As regards the social security contributions, it delegates the Government to regulate a **social security regime “at no cost to public finance”** (which equates to an optional form of social security, save for the financial incapacity to provide for such). As regards the term of office, it establishes that Justices

of the Peace, Court Honorary Judges and Honorary Deputy Prosecutors in service prior to the approval of the reform, **shall remain in service for further four, four-year periods** (save for confirmation following professional assessment by the High Judicial Council). For new Honorary Justices of the Peace and new Honorary Deputy Prosecutors, it envisages an appointment of four years, which can thereafter only be renewed once. The extensions established thus far and the renewal planned for the future, therefore, represent an abuse of fixed-term employment, in violation of **Directive 99/70/EC of the Council of 28 June 1999**. **It is specified that precisely with reference to this latter violation, the European Commission brought infraction proceedings against Italy (in response to the report made and reference under number CHAP (2015)0034)**. Domestic legislation must, in fact, be considered incompatible with Clause 5, point 1, letter a) of the Framework Agreement insofar as, faced with the provision for bankruptcy proceedings to recruit “official” magistrates (i.e. the professional magistrates already mentioned) for a far smaller number than the roles effectively needed to cope with the workload of the Italian magistrates as a whole, authorises the use of honorary magistrates in a repeated manner, to carry out duties equivalent to those of the “official” magistrates, in response to permanent needs. “Honorary” is the “label” used to define the magistrates involved in this petition; however, for all the reasons described, it is now commonly thought that these are professional magistrates, insofar as they have legal training and carry out legal duties as their main activity. As a further proof of this, please note that in the government report on the draft law 1738/15, approved by Italian Law no. 57/2016, it was the government itself that defined the price paid for the activity carried out as “**remuneration**”. It should also be considered that the income paid is taxed,

thereby providing further evidence that it is not merely indemnity, but rather the remuneration of a working activity.

We would also recall the sentence of the European Court of Justice, which in 2012 had already ruled on a similar case to that of the honorary magistrates envisaged by the Italian order (case C-393/10, “O’Brien”), on the petition for a prejudicial ruling brought by the Supreme Court of the United Kingdom under the scope of a dispute between a magistrate belonging to the category of “recorders” and the Ministry of Justice, where the first, having left service upon reaching the retirement age, asked to receive an old age pension. The petition was based on the interpretation of clause 2, point 1 of the framework agreement on part-time work stipulated on 06 June 1997, contained in the annex to Directive 97/81/EC of the Council, of 15 December 1997. In this sentence, the European Court of Justice extended the notion of worker to also include the English part-time magistrates party to the case, and declared that the referral judge should have assessed whether or not there were objective grounds on which to exclude recorder magistrates from the framework agreement, considering that they performed the same duties as full-time magistrates (the petitioner was legally granted the right to a pension and the Ministry of Justice established a late payment regime, to give all recorders time to submit an administrative petition for the same right). The sentence mentioned is also useful in view of the fact that the new law, **in increasing the workforce, tends to transform all the magistrates in question in part-time professional magistrates (almost full-time, it is expected, in the event of an individual economic need to achieve all objectives, which constitute the parameter for establishing the “variable” part of the remuneration)**, whereas at present, the majority carries out the duties on a full-time basis. We therefore note the

effect that the new law will have on all magistrates who thus far (for the most part, for more than ten years), have carried out the legal functions as their sole working activity, and who find themselves in an age group in which it is difficult to find a different job, without the State providing for any safeguards⁵.

ITALY'S RESPONSES TO THE QUERIES RAISED BY THE CEPEJ NUMBER 46, 48, 49 and 57.

In addition to the Justices of the Peace, the Court Honorary Judges and the Honorary Deputy Prosecutors, in Italy other judges are also employed, also referred to as “honorary”. These are members of the legal bodies for children in the first and second instance, experts of the Supervisory Courts, judges at the Tax Commissions and specialised agrarian chambers (these have no legal training and have another profession, which is instead their main one)⁶.

In responding to the queries raised by CEPEJ, Italy did not correctly present the actual reality of the magistrates who are internally defined as “honorary”, thereby altering the assessment of the independence of judges in Italy and productivity.

On the one hand, the case of the incorrect representation of reality is of a qualitative nature: with exclusive reference to the magistrates defined as “honorary” in Italy, with legal training (justices of the peace, court honorary judges and honorary deputy

⁵ V. the article published in the legal journal “Questione Giustizia” on-line, entitled *L'ingiustizia nata dalla giustizia*, by Chiara Spada, lawyer, collaborator with the Faculty of Administrative Law, Turin University - http://questionegiustizia.it/articolo/l-ingiustizia-nata-dalla-giustizia_18-03-2016.php).

⁶ In Italy, other non-professional judges are used: popular judges, members of the Assize courts and Assize courts of appeal, concerned by the queries of CEPEJ 50 and 51.

prosecutors), it should be pointed out that in actual fact they are not used on an occasional basis, but rather full-time or semi full-time (i.e. the exercise of the legal duties has become their main form of work) and Italy has concealed this fact.

On the other hand, the case of the incorrect representation of reality is of a quantitative nature: Italy only partly revealed the number of magistrates defined as “honorary” in service in Italy.

In order to draft the report published in 2014 on the state of justice in Europe, in 2012 the CEPEJ had prepared questionnaires for various countries, asking how many judges were in service in the various categories: 1) “professional” magistrates, part-time and full-time; 2) occasional “professional” magistrates; 3) “non-professional” magistrates. The CEPEJ explained that “professional” magistrates have legal training and are remunerated for carrying out the duties of magistrate, regardless of whether they did so on a full-time, part-time or occasional basis (the latter in the event of a temporary need, with a frequency, in Europe, that ranges between 15 and 50 days a year). “Non-professional” magistrates are instead those with no legal training and are not remunerated for being judges but rather offer their services to justice in a very limited manner.

Italy answered, classifying Justices of the Peace, Court Honorary Judges and Honorary Deputy Prosecutors as “non-professionals”. This is simply not the case, both because they have legal training and because, for the majority, their main work is the fulfilment of their legal functions.

With reference to the 2014 CEPEJ Report, Italy declared that it had 3275 “non-professional” judges in service, indicating a number that is not only smaller than the total

number of Justices of the Peace and Court Honorary Judges (at the time, 4690), but also entirely ignoring all other figures of effectively honorary judges in service at other offices (supervisory courts, children's courts, tax commissions, specialised agrarian chambers, etc.).

The honorary public prosecutors (honorary deputy prosecutors) were instead indicated by Italy as “non-professional” public prosecutors, opening a case defined by the CEPEJ that is entirely unique.

In the **2016 CEPEJ report**, the category of Justices of the Peace, Court Honorary Judges and Honorary Deputy Prosecutors **was, once again, not correctly represented**. In fact, once again, they were not classified as professional magistrates. Moreover, although classifying Justices of the Peace and Court Honorary Judges as non-professional judges, Italy declares a smaller number than the actual one: in 2014, in fact, 1927 Justices of the Peace and 2042 Court Honorary Judges were in service, for a total of **4029** units, in addition to the other categories of effectively non-professional judges according to the CEPEJ classification⁷), whilst Italy declared just **3068** non-professional judges (professional judges in service **at all bodies of ordinary justice** in 2014 numbered a total of 6939). In 2014, there were 1776 Honorary Deputy Prosecutors in service⁸.

⁷ Not to mention the honorary judges working at the Tax Commissions and specialised agrarian chambers, according to the High Judicial Council, the other effectively honorary judges (Supervisory experts, members of the legal bodies for children in the first and second instance, in 2012 numbered **1500**).

⁸ In analysing the Italian situation, the 2016 CEPEJ report highlighted the fact that the public prosecution had a particularly heavy workload (in 2014, there were **2108** professional public prosecutors - source: High Judicial Council), yet specified, on the one hand, that the **honorary deputy prosecutors** were also used in the criminal sector, but, on the other, that the data available did not allow for any measurement of the impact of the use of this staff on the workload of professional public prosecutors.

Given that the Justices of the Peace and Court Honorary Judges are professional judges (who carry out their duties as their main work - part-time or full-time), in addition to falsifying the productivity rate of professional Italian judges, **Italy also avoided the query about their remuneration (which only regarded professional judges) and, therefore, their level of independence.** The same conclusion must be drawn for Honorary Deputy Prosecutors. The consequence is evident in terms of the assessment of CEPEJ on the fairness of judgement on the basis of the independence of the accusation body, also by virtue of Art. 11 of the explanatory memorandum of Recommendation CM (2010) 12, which regards, not only the judging parties, but also the public prosecution, when, as in Italy, the accusation body is independent of the executive body. It is clear, in fact, that the measures regarding remuneration indicated to guarantee independence (and, therefore, a fair judgement) also apply to professional public prosecutors, and, therefore, also to honorary deputy prosecutors.

Moreover, neither did Italy correctly answer query no. 49.1, which asked which cases were dealt with by non-professional magistrates. It must be stressed that, to date, the Court Honorary Judges have dealt with all cases that are competence of the ordinary court. Italy instead responded that Italian “non-professional” judges only dealt with minor infractions and civil disputes. This is not the case: they actually also deal with employment disputes, non-contentious civil cases (for example on the protection of those not of sound mind and body) and petitions against decisions of the competent authorities on asylum law matters⁹. The Justices of the Peace deal with proceedings aimed at

⁹ The only cases that will be removed from the competence of the Court Honorary Judges in the future, following the reform, are employment cases.

validating and extending the treatment of foreigners whilst awaiting expulsion and the challenge of expulsion brought by non-EU citizens.

In criminal matters, Court Honorary Judges are competent for all crimes for which the court is competent (both as a single magistrate and as a panel). The Honorary Deputy Prosecutors deal with all cases the competence of the Single Magistrate Court.

In conclusion, the responses are incorrect and this contributes to the downsizing of the use of magistrates defined as “honorary” in Italy, classified in the responses to the CEPEJ as “non-professional”, and conceals the fact that they are “precariously-employed” magistrates.

CONCLUSIONS.

In light of all the foregoing observations, this Committee hereby asks the CEPEJ to revise its assessment of justice in Italy, to express an opinion on the treatment of the Honorary Judges, the Justices of the Peace and the Honorary Deputy Prosecutors and to consider the Italian Government accountable for the incorrect data reported in formulating the specified reports.

In recalling what was specified by the European Commission in Communication COM(2015) 116 final PART ½-¹⁰, according to which “*the improvement in the quality, independence and efficiency of the legal systems is also a priority*” both for the protection of

¹⁰ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN CENTRAL BANK, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - EU Justice Scoreboard 2015, Brussels, 9.3.2015 COM(2015) 116 final.

the investments and for “*the essential function of preserving the values on which the EU is based*”, it must be observed that the violation of the principles of independence, autonomy and social protection of the Court Honorary Judges, Justices of the Peace and Honorary Deputy Prosecutors puts Italy in clear conflict with the values on which the EU is based and in a deficient position with respect to the shared objectives of improving and making the Italian justice system efficient.

For this reason, this Committee also asks the CEPEJ to take all the necessary initiatives to ensure that Italy recognises and guarantees, in reference to Court Honorary Judges, Justices of the Peace and Honorary Deputy Prosecutors, the application of the principles on which the EU is based.

Paola Bellone

Chairwoman of the “Article 10” Committee

With the support of “July 6” Movement.



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Attachments:

- 1) Delegation of authority of an honorary deputy prosecutor (this delegation legitimizes the presence of the honorary deputy prosecutor at a hearing and it is conferred by the Prosecutor of the Republic, i.e. the magistrate who is the head of the Prosecutor Office: on the delegation the presence of the honorary deputy prosecutor and the length of the hearing are officially stamped by the chancellor – **in this case from 9:12 to 19:10**; the hearing the delegation refers to took place in the criminal court of a tribunal and was held by an honorary deputy prosecutor in a tribunal; this

delegation proves the work done by court honorary judges and honorary deputy prosecutors).

- 2) Monthly attendance sheet (in some Prosecutor Offices, honorary deputy prosecutors have badges, like the ones government workers have, which register attendance, start and lengths of stay in the tribunal – the “PRE. EFF.” Column refers to the actual attendance, i.e. the overall time spent in the office in a single day; this sheets proves that the working hours are full time).
- 3) European Committee Of Social Rights, Decision On The Merits, 5 July 2016, *Associazione Nazionale Giudici di Pace v. Italy*, Complaint No. 102/2013.