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Palazzo di Giustizia - Piazza Cavour - 00193 Roma - Italia

## Open letter of EAJ

### Regarding the Turkish referendum on amendments to the constitution

The upcoming national referendum on amendments to the Turkish constitution on the segment that directly addresses the judiciary is a matter of concern to the European Association of Judges – EAJ.

Through the approval of these amendments Turkey is on the edge to abandon the constitutional democracy based on the rule of law and governed by separation of powers and a proper system of “checks and balances”. The expression of those apprehensions is neither directed against the Turkish nation nor the Turkish people, but it is based on robust objections that Turkey might lose its fundamental values shared with the democratic societies - and especially with the European Democracies - for decades.

Our technical concern is articulated in all clarity by the Council of Europe's advisory body on constitutional matters, the Venice Commission.

In its Opinion 875/2017 from 13<sup>th</sup> of March 2017 the Venice Commission expresses a strong alarm regarding the proposed amendments to the Constitution of Turkey (Turkey being a member State of the Council of Europe).

Referring to the role and position of the Judiciary in a system of checks and balances in a democratic state under the rule of law, it considered:

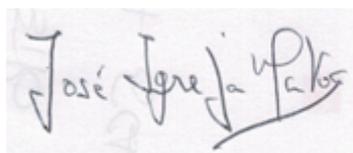
- The enhanced executive control over the judiciary and prosecutors, which the constitutional amendments would bring about, would be even more problematic, in the context in which there have already been longstanding concerns regarding the lack of independence of the Turkish judiciary. The amendments would weaken an already inadequate system of judicial oversight of the executive.
- In a presidential regime, a strong and independent judiciary is essential to settle the conflicts between the executive and the legislative powers. However, the proposed amendments weaken, instead of strengthening, the Turkish judiciary. The Council of Judges and Prosecutors, whose current composition largely meets international standards,

would be immediately reformed by providing that six of the thirteen members are appointed by the President, who would no more be a *pouvoir neutre*, while seven members would be chosen by the Grand National Assembly, over which the President would have influence and which, due to the synchronization of elections, would very probably represent the same political forces as the President. Peer judges would elect no member of the Council anymore. On account of the Council's important functions of overseeing appointment, promotion, transfer, disciplining and dismissal of judges and public prosecutors, the President's control over the Council would extend to all the judiciary. Control over the Council of Judges and Prosecutors would also indirectly enhance the President's control over the Constitutional Court.

- In a presidential system, important supervisory and control powers fall on the judiciary. The judiciary must be fully independent from the legislative and, especially, from the executive power and has to be able to check, and if necessary strike down, acts adopted by the parliament and the president. The draft amendments do not seem to be conducive to such a situation.

The European Association of Judges is a totally apolitical institution; our constant commitment is directed towards Rule of Law and the pursuit of an Independent Judiciary.

From the point of view of the European Association of Judges, it is a matter of utmost importance that anyone who may vote on the proposed amendments of the Constitution of Turkey should be acutely aware of the aforementioned consequences.

A handwritten signature in black ink on a light-colored background. The signature reads 'José Igreja Matos' with a stylized flourish at the end.

**José Igreja Matos**

*President of the European Association of Judges*