



Press Office of the Constitutional Court

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*Press release of 6 June 2019*

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## IT IS UNCONSTITUTIONAL TO CONVERT SENIOR MANAGEMENT COMPENSATION INTO PERSONAL PENSIONABLE EARNINGS

The Constitutional Court continues in its efforts to remove, from the legal system, unconstitutional provisions on the payment of sums not established in the law governing public-sector employment.

In Judgment no. 138, filed today (Judge Rapporteur: Aldo Carosi), the Constitutional Court declared unconstitutional certain provisions of a law of the Autonomous Province of Bolzano and the Trentino Alto-Adige Region that converted senior management compensation payments into personal pensionable earnings upon termination of the management appointment.

It is significant that – as occurred in a similar case regarding the Liguria Region – the bodies that referred the questions to the Court’s incidental review were the competent regional divisions of the Court of Auditors.

The Constitutional Court highlighted that the Court of Auditors’ judgments of equalisation of the Regions’ accounts enables legal action to be taken against violations that are otherwise likely to go undetected, and that for this very reason are even more insidious for a healthy financial management of public expenditure. Indeed, it was emphasised that (a) usually, there is no party that can directly defend tax authorities’ interest in the proper expenditure of public resources in litigation; and (b) the contested provisions were not challenged, within the limitation period applicable, by the Government, the sole entity empowered to directly enforce the penalties attached to the overrunning of spending constraints on employment expenditure. Therefore, these penalties became ineffectual due to the commencement of the limitation period and the ensuing expiration of the time limit.

The Court specified that the contested provisions give rise to a direct violation of the principles protecting budgetary equilibrium and expenditure coverage, thereby affecting “the expenditures in the final balance for financial year 2017, the amount thereof and the remunerative aspects that the State legislator had expressly refrained from regulating, when exercising its exclusive competence.”

Finally, the Court rejected the argument submitted by the Autonomous Province of Bolzano that a positive balance can compensate for the fact that expenditures for pension payments and related social security contributions lack legitimacy. Indeed, budget surpluses cannot be compared to company profits, which may be used at the competent management board’s absolute discretion.

Rome, 6 June 2019