

JUDGMENT NO 71 YEAR 2026

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

[omitted]

Conclusions on points of law

6.– By referral order of 24 September 2025, registered as No 204 in the 2025 Register of Referral Orders, the Seventh Division of the Council of State raised, with reference to Articles 24, 111 and 117(1) of the Constitution, the latter in relation to Article 47 CFREU and Article 6(1) ECHR, questions concerning the constitutionality of Article 29(5) of Legislative Decree No 116/2017, as replaced by Article 1(629)(a) of Law No 234/2021, which provides that the “participation” of honorary members of the judiciary (also known as honorary judges) in confirmatory assessment procedures pursuant to Article 29(3) “is conditional upon a renunciation of all further claims of any nature whatsoever resulting from previous honorary appointments”.

In particular, according to the referring court, the contested provision violates the right to a defence and the right to a fair trial since: “a) it renders access to the confirmation procedure conditional upon the prior, blanket renunciation of the ability to invoke within court action all rights and claims arising in relation to previous appointments; b) it limits excessively and disproportionately the right to pursue court action as a result of a prior, blanket renunciation imposed by law; c) it imposes restrictions on the right of access to judicial relief, which is guaranteed under the Constitution, as a consequence of mere participation in a public entrance competition; d) it induces the private party to unfairly sacrifice judicial relief for previous claims in order to be able to bring future claims, as such essentially imposing a choice between pursuing existing litigation and the submission of a request for confirmation; this entails a renunciation of all prior claims and the stabilisation of the employment relationship with future effect, which is presented as consideration for the definitive renunciation and settlement of all previous claims, even if they are the subject of ongoing proceedings; e) it interferes with the equal status of the parties to the proceedings, vesting the public party with an unjustified advantage; f) it violates the right of citizens, in this case of workers, to effective relief before a court of law under conditions of equality, without allowing a public party, such as the Ministry of Justice, to infer benefits from the effects of legislation enacted by the State that is liable to frustrate the fulfilment of the legal rights actioned by private parties; and g) it unduly interferes with a decision concerning pending proceedings to which the State is party, through the Ministry of Justice, by bringing about a favourable outcome for the defendant public party, and a corresponding unfavourable outcome for the private claimant, thereby definitively precluding a decision on any claim relating to the period falling prior to stabilisation as a result of a declaration that the claim is procedurally inadmissible due to a supervening lack of interest”.

It is also argued that Article 117(1) of the Constitution has been violated in that the supranational interposed parameters invoked also “guarantee [...] the right to effective

relief and a fair trial, as an expression of shared values of freedom, legal certainty and justice as well as the principles of democracy and the rule of law". The imposition of a general renunciation of prior claims as a precondition for access to the confirmation procedure is tantamount to the creation of "an unreasonable privilege for the State to the detriment of the rights of workers, which also violates the European principles of effective judicial relief and the right of workers to obtain effective redress".

7.– By the questions raised, the referring court asks this Court to review the constitutionality of the contested provision also in the light of an "integrated provision" ("*parametro integrato*") of constitutional law, comprised of a provision of EU primary law (Article 47 CFREU) and a provision contained in the Constitution (Article 24).

7.1.– This is permitted according to the case law of this Court in view of the choice made by the Constitution in Article 117(1) to locate the Constitution itself and "obligations under Community law" within a common horizon, thus providing for their combined application as an integrated provision.

As has been acknowledged since Judgment No 170/1984, Article 11 of the Constitution has enabled the principles of the primacy and direct effect of EU law, both genuine architraves of the European legal order, to be placed on a constitutional footing. Article 117(1) of the Constitution, as replaced by Article 3 of Constitutional Law No 3 of 18 October 2001 (Amendments to Title V of Part II of the Constitution) not only reinforced the constitutional foundation for those principles – which set the European Union apart in structural terms from international organisations – but also under certain circumstances justifies the integration of constitutional provisions with the provisions of EU law within what may be defined as a single "block of constitutionality" ("*blocco di costituzionalità*").

The strictly dualist vision of relations between EU law and national law that was initially embraced within the case law of this Court (Judgments Nos 170/1984 and 183/1973) reflected a phase during which the scope of EU law was circumscribed, essentially being limited to the creation of the common market. That vision was premised on a clear separation between the Constitution and EU law and also between their respective principal interpreting bodies, namely this Court and the Court of Justice. Within the framework of relations between two legal systems that were considered to be clearly distinct and autonomous, which was based on a clear division of competence between them, the ordinary courts were charged with the task of reviewing the compatibility of Italian law with EU law, subject as the case may be to a reference for a preliminary ruling to the Court of Justice, along with the power to disapply national law where it was incompatible with provisions of EU law with direct effect, while this Court acted as the defender of constitutional identity according to the doctrine of "counterlimits" ("*controlimiti*"). In view of the above, the two courts were destined to progress along different tracks without ever meeting, unless their respective positions ended up clashing with each other under the "counterlimits" doctrine.

The progressive expansion of the scope of EU law, which inevitably overlaps with a considerable portion of constitutional law, the extent of which is considerable, has altered the relationship described above between the two legal orders.

It is important to consider in particular: the classification by the Court of Justice of the treaties as the "basic constitutional charter" (Court of Justice of the European Communities, judgment of 23 April 1986 in Case C-294/83, *Les Verts*); the broad

interpretation of its powers and the resulting weakening of the principle of conferral (a phenomenon known as “competence creep”); the recognition, by the Treaty of Lisbon, of the Charter of Fundamental Rights of the European Union as having the same legal status as treaties; the classification of the Charter within the case law as a “shadow” that always follows EU law (at least since the judgment of the Court of Justice, Grand Chamber, of 26 February 2013 in Case C-617/10, *Åklagaren*), with the result that any “situations” falling within the scope of EU law are subject to the Charter (and thus not only in those cases in which national lawmakers implement EU law); and the recognition by the Court of Justice of the binding effect of the values enumerated in Article 2 of the Treaty on European Union, starting from the rule of law (CJEU, full court, judgments of 16 February 2022 in Case C-156/21, *Hungary*, and Case C-157/21, *Poland*). Within a system founded on the principles of the primary and direct effect of EU law, all of these factors have resulted in the legal systems of the European Union and of the respective Member States becoming increasingly integrated and interdependent in the manner that will be clarified below.

These transformations have been expressly addressed by the constitutional case law adopted since Judgment No [269/2017](#). Specifically, this judgment recognised the competence of this Court to apprise itself also of national provisions that violate the Charter of Fundamental Rights of the European Union “due to the typically constitutional stamp of its contents”, as “[t]he principles and rights laid out in the Charter largely intersect with the principles and rights guaranteed by the Italian Constitution (and by other Member States’ constitutions). It may therefore occur that the violation of an individual right infringes, at once, upon the guarantees enshrined in the Italian Constitution and those codified by the European Charter”.

The case law cited vested the ordinary courts with the power to choose whether to disapply the national provision, subject as the case may be to a reference for a preliminary ruling to the Court of Justice, or to refer a question of constitutionality to the Constitutional Court where the provision is considered to violate both the CFREU and the Constitution.

Since then, this Court has stopped ascribing any importance to the “container” for the provision of EU law that has been violated – which therefore need not necessarily be the CFREU (Judgments Nos [44/2020](#), [11/2020](#) and [20/2019](#)) – and has also accepted that a question of constitutionality may be referred also where the dual violation involves not a right under national law but rather a constitutional principle, such as the principle of equality (Judgment No [15/2024](#)), provided in all instances that an aspect of constitutional law is engaged in view of the nexus with constitutional interests or principles (Judgments Nos [1/2026](#), [147/2025](#), [93/2025](#), [31/2025](#), [7/2025](#), [1/2025](#), [210/2024](#) and [181/2024](#); Order No [21/2025](#)).

In any case, the jurisdiction of this Court “cannot in any way hinder or limit the power of the ordinary courts to seek a preliminary ruling from the Court of Justice and not to apply domestic law that is incompatible with EU law (CJEU, Grand Chamber, judgment of 22 June 2010 in Joined Cases C-188/10, *Melki*, and C-189/10, *Abdeli*; CJEU, Grand Chamber, Judgment of 22 February 2022 in Case C-430/21, *RS*)”. Ultimately, it is the ordinary courts that must rule, having regard to the characteristics of the specific case, whether to disapply the law or to refer a question of constitutionality, without prejudice

to the option of making a preliminary reference to the Court of Justice pursuant to Article 267 TFEU (Judgment No [210/2024](#)).

The current framework governing relations between the systems is therefore characterised by a variety of remedies designed to ensure the full efficacy of EU law and, by definition, to prevent any preclusion. The system of centralised constitutional review is not at odds with a mechanism for the diffuse implementation of EU law, but rather cooperates with it in establishing increasingly more integrated protections (amongst many, Judgment No [15/2024](#)), as this is precisely the objective of the reference to EU law made by the combined provisions of Articles 11 and 117(1) of the Constitution.

It will always be the individual court that chooses the most appropriate remedy, having regard to the objective characteristics of the facts before it, considered in terms of the requirements of positive law. However, dialogue “with this Court, which is called upon to render a ruling *erga omnes*, proves particularly fruitful when the interpretation of the applicable legislation is characterised by uncertainties, when a public authority continues to apply the disputed rules, when the questions of interpretation involve systemic impact, destined to have effects far beyond the concrete case, or, again, when a balancing of constitutional principles is required” (Judgment No [181/2024](#)).

Moreover, “a preliminary reference may also be made by this Court when apprised of a question of constitutionality, where there are doubts concerning the interpretation of EU law. Indeed, the Court of Justice has the task of ensuring, through its interpretation, the uniform application of EU law, thereby guaranteeing the equality of the Member States under EU law (Article 2 TEU). The ‘community of courts’ and ‘dialogue’ conducted among them, premised on the principle of sincere cooperation, promote the full implementation of the principle of the primacy of EU law and ensure the proper functioning of the inter-dependencies among the various national and EU legal systems” (Judgment No [210/2024](#)).

Since the legal systems are no longer rigidly separated, but are integrated and interdependent without any form of hierarchy, in order to ensure their correct operation it is therefore necessary to apply to its fullest extent the principle of loyal cooperation, which is recognised both under EU law (Article 4(3) TEU) as well as Italian constitutional law (amongst many, Judgments Nos 88/2012, [87/2012](#), 379/1992 and 168/1963), which thus has the status of a fundamental principle governing the constitutional space common to the EU and the Member States.

7.2.– There is no doubt that the criterion of competence plays a crucial role in governing relations between the two legal systems, which remain separate, given that according to the fundamental principle of conferral (Article 4(1) TEU), the Union only exercises the powers vested in it under the treaties. The principle of conferral is therefore one of the architraves of the relationship between EU law and national law. However, this does not have the effect of creating watertight compartments that are capable of separating the European and national legal systems. This is because the respective competences often intersect and overlap, which has occurred in particular following the substantive expansion of EU law recalled above. It is also because, even when a matter – such as for example citizenship or, as in the case under examination, the judicial system – falls within the competence of the Member States, national laws must nonetheless be harmonised with EU law as regards all “situations” falling within the scope of the latter (amongst many,

CJEU, Fourth Chamber, judgment of 25 April 2024 in Joined Cases C-684/22 to C-686/22, *S.Ö., N.Ö., M.Ö., M.S. and S.S.*, paragraph 34).

In order to prevent friction, conflicts and inconsistencies that might undermine legal certainty and weaken the necessary trust among the Member States and between them and the Union, the Court of Justice, national constitutional courts and national ordinary courts (to which it falls to make the choice as to the most appropriate legal remedy under the objective circumstances of the case) must therefore cooperate with one another with the shared objective of ensuring the proper functioning of the integrated and interdependent EU and national systems.

7.3.– Naturally, the requirement of cooperation does not negate the difference between the roles and tasks of the respective courts. In particular, as was clearly stressed in Judgment No 31/2025, it does not negate the distinction between the competence of the Court of Justice to ensure the uniform application of EU law, providing a binding interpretation of it for all Member States within proceedings concerning references for a preliminary ruling, which is the keystone of the European legal order, and this Court's competence to issue definitive interpretations of the Italian Constitution, with the power to provide constitutionally informed interpretations of national law in order to ensure that the national legal order is consistent with the Italian Constitution.

Moreover, the Court of Justice operates according to dogmatic schemata that do not always coincide with those used within the individual Member States, and dialogue between the two courts is required for this reason too. Above all, within the field of the protection of fundamental rights “it is essential for national constitutional and supreme courts to be able to ‘make [their] own contribution to rendering effective the possibility, discussed in Article 6 of the Treaty on European Union (TEU) [...] that the corresponding fundamental rights guaranteed by European Union law, and in particular by the CFREU, be interpreted in harmony with the constitutional traditions common to the Member States, also mentioned by Article 52(4) of the CFR as relevant sources’” (Judgment No [7/2025](#)).

Within this context, cooperation among courts may occur in different ways.

Where there are doubts concerning the content of EU law that is relevant within proceedings concerning the constitutionality of legislation, this Court will make a reference for a preliminary ruling to the Court of Justice (amongst many, Judgments Nos [210/2024](#); Orders Nos [21/2025](#), [161/2024](#), [29/2024](#), [217/2021](#), [216/2021](#), [182/2020](#), [117/2019](#) and [24/2017](#)), and will normally set out the national constitutional requirements that it asks the latter to take into account within its decision. Nonetheless, it falls to the Court of Justice to frame them within a pan-European perspective, providing the interpretation of EU law that the national courts must adhere to.

However, when the content of EU law is clear, once it has established that the issue has a constitutional dimension, this Court will apply the EU law directly, supplementing the internal constitutional provision with EU law, as interpreted by the Court of Justice as the case may be. In this way, this Court acts as an enforcer of EU law, ensuring its primacy and full effect, which can be ensured by the *erga omnes* effects of judgments making a finding of unconstitutionality (Judgment No [15/2024](#)), as well as by the “vast range of decision making techniques” (Judgment No 1/2025) that can be used to guarantee those principles.

This does not affect the ability of this Court to apply a national standard for the protection of a constitutional right that is more stringent than that provided for under the CFREU. However, this is subject to the proviso that the primacy, unity and efficacy of EU law must be respected (CJEU, Grand Chamber, judgments of 26 February 2013 in Case C-617/10, *Åklagaren*, and in Case C-399/11, *Melloni*; and judgment of 5 December 2017 in Case C-42/17, *M.A.S. and M.B.*; see also Judgment No [177/2023](#) and Order No [216/2021](#)) and, within areas that have not been fully harmonised, that rights derived from EU law must be coordinated with constitutional rights and principles.

Finally, when fundamental principles or rights that define the constitutional identity of the Italian Republic are at stake – in all instances in keeping with the identity of the Union as defined by the shared values pursuant to Article 2 TEU –, this Court may suggest *ex ante* to the Court of Justice how these principles can be accommodated within the ambit of EU law or in any case that the Court of Justice apply the guarantee of respect for the constitutional identities of the Member States laid down in Article 4(2) TEU (CJEU, Grand Chamber, judgment of 7 September 2022 in Case C-391/20, *Cilevičs* and others), reserving the right as a last resort to apply the exceptional doctrine of “counterlimits” (Judgments Nos [115/2018](#), [238/2014](#), 284/2007, 170/1984 and 183/1973; Order No [24/2017](#)) .

8.– Applying the general principles set out above, it is necessary first of all, as a preliminary matter, to reject the request made by the State Counsel (*Avvocatura generale dello Stato*) to remit the case to the referring court in order for it to reassess the relevance of the questions in the light of the *Pelavi* judgment issued in the meantime on 4 September 2025 which, according to the intervener, requires the referring court to disapply the contested provision solely insofar as it requires the renunciation of paid leave.

Specifically, the constitutional dimension of the questions is evident. They concern the inviolable right to a defence (Article 24 of the Constitution) and the principle of a fair trial (Article 111), and this is not affected by the fact that the *Pelavi* judgment was issued (after the hearing at which the case before the referring court was submitted for decision but) before the referral order was filed on 29 September 2025. As such, that judgment cannot in any case be regarded as a *ius superveniens* (Judgment No 23/2026).

Moreover, it is particularly appropriate to initiate constitutional review proceedings as the broad national dispute initiated by honorary members of the judiciary (below, points 15 and 19) has resulted – and continues to result – in different outcomes also in terms of the recognition of the protection afforded to workers under EU law. As such, it is only by the intervention of this Court that an additional guarantee of the primacy of EU law can be provided, and above all a benefit that is “far from negligible” can be ensured for the “value of legal certainty, which is of constitutional significance” (Judgment No 147/2025; see also Judgment No 1/2026).

9.– Secondly, and again as a preliminary matter, due to the various, repeated indications provided by the Court of Justice – which will be discussed below – there is no need to make a reference for a preliminary ruling pursuant to Article 267 TFEU (Court of Justice, Grand Chamber, judgments of 24 March 2026 in Case C-767/23, *Remling*, and of 6 October 2021 in Case C-561/19, *Consorzio Italian Management and Catania Multiservizi*; as well as the judgment of 6 October 1982 in Case C-283/81, *Cilfit* and others).

Indeed, as regards the provision contested within these constitutionality proceedings, the current question appears to be “materially identical with a question which has already been the subject of a preliminary ruling in a similar case” (*Cilfit* judgment) by the Court of Justice in the *Pelavi* judgment (on which, see below point 20.5), and the interpretation of the provisions of EU law relevant in this case is “based on the Court’s case-law” (*Remling* judgment), and in particular on the judgments in *UX*, *PG*, *Peigli* and *Pelavi* (on which see below in detail at point 20).

10.– On the merits, the questions raised with reference to Articles 24 and 117(1) of the Constitution, the latter in relation to Article 47 CFREU, are well-founded as set out below, whereas those raised with reference to Articles 111 and 117(1) of the Constitution, the latter in relation to Article 6(1) ECHR, are moot.

11.– As a general matter, the provision of primary EU law supplementing a parameter of constitutional law may in turn be extended to provisions of secondary EU law, which are therefore relevant within constitutionality proceedings.

This is the case in these proceedings, in which the national provision has been contested to the extent that it precludes the exercise of the constitutional right to a defence as well as the right to obtain effective redress, which is guaranteed by the CFREU. The provision is therefore liable to negate individual rights guaranteed also under secondary legislation, such as the right to paid leave (Directive 2003/88/EC) and the prohibition on discrimination between permanent and fixed-term workers on the one hand and between part-time and full-time workers on the other hand (respectively, the Framework Agreement on fixed-term work and the Framework Agreement on part-time work concluded on 6 June 1997, annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 98/23/EC of 7 April 1998).

The actual issue at stake in the case under examination is specifically the protection of those rights. Since there is a close interdependence between procedural and substantive positions, the underlying problem that must be addressed is whether the national provision (contested in these proceedings), which obliges honorary members of the judiciary to renounce entirely certain rights conferred under EU law pertaining to prior relationships, in return for stabilisation, is compatible with EU law. If the question is answered in the affirmative, the right to take action to uphold those rights will not have been violated. Conversely, if those rights cannot be renounced in return for stabilisation, as is required by the law, then to prohibit the pursuit of court action in order to uphold those rights would amount to a violation of Article 24 of the Constitution and Article 47 CFREU.

12.– In order to reach a decision in these proceedings, it is therefore necessary first of all to describe the role of honorary members of the judiciary within the constitutional system (below, point 13) and, albeit briefly, within the legislative system and in practice (below, point 14). This will be followed by an examination of the scope of the claims brought by them within the proceedings (below, points 15, 18 and 19), an illustration of the action taken in relation to this matter by the European Commission and the parliamentary reform enacted in 2017 (below, respectively points 16 and 17), and finally a description of the individual rights conferred upon those judges by EU law, as interpreted by the Court of Justice (below, points 20 and 21).

13.– Article 106(1) of the Constitution lays down the rule that “[m]embers of the judiciary are appointed by means of competitive examinations” – subject to the exception provided for under paragraph 3 of that Article that “[f]ollowing a proposal by the High Council of the Judiciary, full professors of law and lawyers with fifteen years of practice and are members of a professional register for higher courts may be appointed as Cassation councillors for outstanding merit” (Judgment No [41/2021](#)) – and then goes on to provide in paragraph 2 that the law on the organisation of the judiciary “may provide for the appointment or election of honorary members of the judiciary for the discharge of all the duties entrusted to individual judges”.

Within the constitutional system the judicial functions vested in the ordinary courts are therefore performed by on the one hand by professional judges, who have been appointed as employees following a public entrance competition; these judges carry out their professional duties on an exclusive basis and without any *ex ante* restrictions in terms of subject matter, and on the other by honorary members of the judiciary, who have not been appointed following a entrance competition and do not have employee status. The latter judges may only be charged with performing “minor” judicial functions (in terms of the “level of complexity”: Judgment No 267/2020), and, precisely on account of their honorary status, perform judicial activities on an occasional and “concurrent” basis (again, Judgment No 267/2020).

Therefore, the respective preparation and commitment required for appointment, the manner of appointment, the tasks and functions carried out and consequently the respective responsibilities are different.

This Court has already held that this structure is “the culmination of a complex debate, during the work of the Constituent Assembly, with regard to the most suitable methods of recruiting judges in line with the fundamental principle of autonomy and independence of the judiciary from any other power (Article 104(1) of the Constitution), the notion that judges be subject only to the law (Article 101(2) of the Constitution) and the ban on appointing extraordinary or special judges (Article 102(2) of the Constitution)” (Judgment No [41/2021](#)).

According to that model, the requirement that appointments must be made on the basis of entrance competitions as a prerequisite for access to the professional judiciary is a fundamental and indispensable principle as it guarantees “that all citizens are afforded the chance to become members of the ordinary judiciary, in keeping with Article 3 of the Constitution, avoiding any discrimination, including gender discrimination”, ensures “the technical and professional qualification of judges, considered a necessary condition for the exercise of judicial functions”, and helps “ensure the separation of the judiciary from the other powers of the State and its very independence, so as to safeguard the judicial system [...] as a fundamental element of the Republic’s legal order” (again, Judgment No [41/2021](#)).

Accordingly, the constitutional system governing the judiciary obliges lawmakers to regulate the contribution provided to the administration of justice by lay judges within the narrow confines of an honorary appointment.

This relationship is characterised by the fact that: a) it is compatible with the conduct of gainful or professional activity (Judgments Nos 267/2020 and 70/1971; Orders Nos 174/2012, 479/2000, 272/1999 and 57/1990); b) appointments are inspired by discretionary political considerations rather than technical, administrative reasons

(Judgments Nos 41/2026 and 319/1994); c) the rules applicable to the performance of service are derived almost exclusively from the decision on appointment (Judgments Nos 41/2026 and 319/1994); d) the appointment is normally limited in time (Judgments Nos 41/2026 and 319/1994); e) compensation is paid in the form of allowances and not remuneration (Judgments Nos 41/2026, 220/2005 and 319/1994; Orders Nos 272/1999, 594/1989 and 379/1989); and f) the functions performed are “undertaken voluntarily out of a sense of civic duty and social dignity, and cannot be classified as professional activity” (Judgment No 70/1971).

It is on the basis of these characteristics of an honorary member of the judiciary – in contrast to a professional judge, who works exclusively as a professional judge, as well as having passed an entrance competition – that this Court has always rejected the questions of constitutionality raised over time seeking to obtain equivalent treatment as regards the various aspects of the legal status and remuneration of the two, clearly distinct, classes of judge (Judgments Nos 267/2020 and 60/2006; Orders Nos 174/2012, 479/2000, 272/1999, 57/1990, 594/1989, 515/1989 and 379/1989).

Ultimately, the Constitution categorically excludes the view that professional judges and honorary members of the judiciary have the same legal and economic status. Any other position would entail a violation of the fundamental principles of equality and access to the judiciary by entrance competition, which contributes to the safeguarding of the equally fundamental principle of the independence of the judiciary from other branches of state (Judgment No [41/2021](#)), with the objective of ensuring the greatest possible protection for the rights of citizens.

These are “supreme” principles that “shape the identity of our Constitution” and as such “cannot be subverted or amended in terms of their essential content even by legislation amending the Constitution or by other constitutional laws (Judgment No 1146/1988)” (Judgment No 125/2025).

14.– In order to cope with the widely known and steadily increasing workload of the judiciary, and in order to fulfil the pressing demands for swift and effective justice, having regard also to the constitutional principles of the reasonable length of trials, over time the legislature to some extent and above all the practice of the judiciary have departed from this constitutional framework.

First of all, the tasks and functions vested in honorary members of the judiciary have been expanded at the legislative level (this Court has already taken this scenario into account in Judgment No [41/2021](#), cited above, with specific reference to auxiliary appellate judges, and in Judgment No 172/2021, with reference to honorary judges), given the tension with the constitutional design, which requires only marginal recourse to such figures.

Correspondingly, under the terms of circulars of the High Council of the Judiciary (*Consiglio Superiore della Magistratura*, CSM) and instructions of heads of service, honorary members of the judiciary have in practice been used on a far from occasional basis (as highlighted by the Court of Justice in the *UX* judgment, which will be considered in greater detail below). Secondly, in order to fulfil these needs, until the 2017 reform entered into force the legislature repeatedly extended the appointments of various honorary members of the judiciary in spite of the fact that, under the terms of the constitutional model recalled above, these appointments had originally been intended to be limited in time and renewable on a limited number of occasions (with regard to

magistrates, see the Order No 23/2023 of this Court directing the remittal of the case file to the referring court, which had raised questions relating to provisions that had allowed the appointment of the claimant in the proceedings before the referring court to be renewed for sixteen years).

However, it is important to point out that, despite this departure from the spirit of the constitutional model, the respective roles and functions of honorary members of the judiciary and professional judges have remained clearly distinct both in legislative terms and also as regards the actual performance of the work of a judge: this is because – as mentioned above – only the former are selected by entrance competition, and also because the expansion of the competences of the latter has generally speaking been limited to less serious cases.

15.– In view of the circumstances described, as mentioned above honorary members of the judiciary have pursued court action on a broad scale over the last few years before both the ordinary courts and the administrative courts.

Within that litigation, based on the argument that they have *de facto* been working as employees of the Ministry of Justice, the judges in question have brought a series of claims, concerning mainly: a) establishment of an employment relationship identical or equivalent to professional judges, or in any case of an employer-employee nature, or more recently “under the terms of” EU law; b) recognition of the right to remuneration, including in terms of paid leave, equivalent to or proportionate with that of professional judges, or in any case typical of an employee worker, or more recently under the terms of EU law; c) recognition of the right to pension and social security entitlements (insurance against sickness and accident, maternity leave, etc.) identical to or in any case proportionate with that of a professional judge, or in any case typical of an employee worker, or more recently under the terms of EU law; d) recognition of the right to an end-of-service lump sum payment identical or in any case proportionate with that of a professional judge, or in any case typical of an employee worker, or more recently under the terms of EU law; and e) recognition of the right to compensation for harm caused by the misuse of successive appointments, which are regarded as fixed-term contracts under EU law.

16.– In parallel, the European Commission has launched an infringement procedure concerning both the recourse to successive fixed-term appointments for honorary members of the judiciary and various aspects of their legal status and remuneration, which were considered to violate EU law on worker protection.

Following numerous exchanges between the Commission and the Italian Government, procedure No 2016/4081 resulted in the adoption of two separate initiatives: 1) as regards “newly appointed” honorary members of the judiciary (i.e. following the entry into force of Legislative Decree No 116/2017), the launch of infringement proceedings before the EU Court of Justice in Case C-863/25, filed on 19 December 2025; 2) as regards “long-term” honorary members of the judiciary, i.e. those in service at the time the 2017 reform came into force, the initiation of a new infringement procedure (No 2025/2159) on 8 October 2025, notice of which – concerning primarily the provisions, including those contested in these proceedings, requiring the renunciation of claims arising in relation to previous honorary appointments – was filed within the proceedings by the State Counsel, having been instructed to do so by the direction of the President of 22 January 2026.

17.– As is known, in order to address the situation described, ordinary legislation was adopted first to enact the 2017 reform, and later to introduce various amendments to that reform.

As regards specifically “long-term” honorary members of the judiciary – i.e. those affected by the contested provision – the legislature decided, insofar as is relevant within these proceedings, to make provision for their stabilisation.

In particular, Article 29 of Legislative Decree No 116/2017, as amended first by Article 1(629) to (633) of Law No 234/2021 and later by Law No 51 of 15 April 2025 (Amendments to the legislation on honorary members of the judiciary), provided for the creation of a “[l]ist to be drawn upon until exhaustion for honorary members of the judiciary currently in service” (the current heading of Article 29).

Access to that list can be gained by any person under seventy years of age by a “permanent” confirmation procedure (paragraph 1). The procedure involves an oral discussion, lasting a maximum of thirty minutes, of a practical case drawn from substantive and procedural civil law or substantive and procedural criminal law, depending upon the area in which the candidate has served as an honorary member of the judiciary (paragraph 4).

The honorary members of the judiciary in question may:

a) decide not to participate in the confirmation procedure, in which case they cease to hold office (paragraph 7); in such an eventuality, they have the right – with the option of refusal – to an indemnity of EUR 2,500 or EUR 1,500, before withholding tax, for each year of service during which they held hearings either on at least eighty days or on fewer days, under all circumstances up to a total amount not exceeding EUR 50,000 gross; receipt of the indemnity entails a renunciation of any other claim of any nature whatsoever in relation to the honorary appointment that has come to an end (paragraph 2);

b) participate in the confirmation procedure, which “is conditional upon a renunciation of all further claims of any nature whatsoever resulting from previous honorary appointments” (paragraph 5) notwithstanding that, if the assessment procedure is not successfully completed, they “have the right, with the option of refusal”, to the indemnity mentioned above (paragraph 2).

Essentially, it follows from the combined provisions mentioned that the renunciation of prior claims imposed by law applies if the honorary member of the judiciary: i) participates in and successfully completes the procedure; ii) participates in but does not successfully complete the procedure, and chooses to receive the indemnity; or iii) does not participate in the procedure, ceases to hold office and chooses to receive the indemnity (in other words, renunciation follows successful completion of the procedure, or alternatively acceptance of the indemnity).

It is worth pointing out that the interpretation of the combined provisions of paragraphs 2 and 5 of Article 29, which provide that renunciation results not from mere participation in the confirmation procedure but from successful completion (or alternatively acceptance of the indemnity), has been accepted both by the State Counsel and by the Ministry of Justice in Circular No 0102105.U of the Department for Judicial Affairs of 10 May 2022.

The scenario at issue in the proceedings before the referring court falls under point i) and is governed by Article 29(5), i.e. the contested provision. On the other hand, the scenarios falling under points ii) and iii) are not at issue in those proceedings and are governed by paragraph 2, which therefore has – correctly – not been contested by the referring court.

18.– The claims illustrated at point 15 derive from the imposition under the contested provision on long-term honorary members of the judiciary to renounce to any claim whatsoever as a consequence (not of mere participation in but rather) of successful completion of the confirmation procedure (i.e. stabilisation).

19.– As mentioned above, the proceedings launched before the national courts seeking to enforce those claims have led and continue to lead to disparate outcomes, which it is not necessary to illustrate in these proceedings in detail.

It is sufficient to note that, whereas the claims brought by honorary members of the judiciary within proceedings on the merits have been accepted in full or in part on various occasions, the higher courts – with limited and more recent exceptions (Court of Cassation, Employment Division, Judgment No 12488 of 11 May 2025; Council of State, Seventh Division, Judgment No 2716 of 2 April 2026) – have rejected them (amongst many, Court of Cassation, First Civil Division, Judgment No 30121 of 14 November 2025; Employment Division, Judgments No 10080 of 14 April 2023 and No 13973 of 3 May 2022; First Division, Judgment No 4386 of 10 February 2022; Council of State, Seventh Division, Judgments No 2723 of 20 March 2024, No 1334 of 9 February 2024, No 931 of 30 January 2024 and No 6291 of 28 June 2023), highlighting the different nature of the functions performed and roles of professional judges and honorary members of the judiciary, as a reflection of the fundamental constitutional framework of the judiciary recalled above.

On the other hand, on the two occasions on which this Court has been called upon to rule on this subject matter within incidental proceedings, the proceedings have been resolved with procedural rulings (Orders Nos 23/2023 and 215/2022).

20.– The Court of Justice has issued several rulings within the ambit of the subject matter at issue, having been called upon to rule on the compatibility with EU law: a) of the national law in force prior to the 2017 reform (as amended from time to time), to the extent that it did not guarantee honorary members of the judiciary the right to paid leave, did not recognise their right to pension and social security entitlements, in contrast with professional judges, and allowed the conclusion of successive fixed-term contracts without providing for any effective, dissuasive measures; and: b) of the provision contested in these proceedings to the extent that it renders the stabilisation procedure for long-term honorary members of the judiciary contingent upon the renunciation of rights resulting from previous honorary appointments.

20.1.– In its judgment in *UX*, the CJEU held, as far as is relevant in this case, that Article 7(1) of Directive 2003/88/EC and Article 31(2) CFREU must be interpreted, having regard to the right to paid leave, “as meaning that a magistrate who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, may fall within the concept of ‘worker’ within the meaning of those provisions, which it is for the referring court to verify”.

The judgment also stated, as regards the prohibition on discrimination against fixed-term workers, that Clause 4(1) of the Framework Agreement on fixed-term work precludes national legislation which does not provide for an entitlement on the part of magistrates to thirty days' paid annual leave, such as that provided for ordinary judges, where those magistrates fall within the concept of "fixed-term workers" within the meaning of Clause 2(1) of that Framework Agreement, and are in a situation "comparable" to that of professional judges, unless such a difference in treatment is justified by the differences in the qualifications required and the nature of the duties undertaken by those judges, which it is for the court making the preliminary reference to verify.

20.1.1.– As regards the first aspect (the right to paid leave), according to the Court of Justice, once the national court has established that certain conditions obtain, honorary judges could fall under the "concept of 'worker'" under EU law and their compensation could be deemed to be equivalent to actual remuneration.

First of all, according to the CJEU, for the purposes of applying Directive 2003/88/EC, "the concept of 'worker' cannot be interpreted differently according to the law of the Member States but has an autonomous meaning specific to EU law" (paragraph 88). Within that perspective, "any person who pursues real and genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a 'worker'" (paragraph 93), and "the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he or she receives remuneration" (paragraph 94).

Moreover, from this standpoint, "the *sui generis* legal nature of an employment relationship in national law can in no way whatsoever affect whether or not the person is a 'worker' for the purposes of EU law" (paragraph 96).

Secondly, on the issue of compensation, the Court of Justice recalled that "it must be examined whether the sums received by the applicant were paid to her in return for her professional activity" (paragraph 97), and "the mere fact that the duties of a magistrate are classified as 'honorary' by the national legislation" is irrelevant also for that purpose (paragraph 100).

Finally, as far as the "hierarchical relationship" that is also characteristic of the European concept of worker is concerned (which "must, in each particular case, be assessed on the basis of all the factors and circumstances characterising the relationship between the parties", paragraph 103), the CJEU noted that it had been held within the proceedings before the national court that the magistrates: "are obliged to comply with the charts indicating the composition of the magistrates' court to which they belong, as those charts govern in detail and in a binding manner the organisation of their work, including how case files are assigned and the dates and times of hearings" (paragraph 109); "must observe the instructions of the Head of the service" and the CSM's "specific and general decisions pertaining to organisation" (paragraph 110); "must be permanently available and are subject, from a disciplinary perspective, to obligations that are similar to those of professional judges" (paragraph 111). In those circumstances, considered together, the Court of Justice concluded that "at an administrative level, magistrates perform their duties in a legal relationship of subordination that does not affect their

independence when adjudicating, which it is for the referring court to verify” (paragraph 112).

20.1.2.– With regard to the prohibition on discrimination against fixed-term workers, the CJEU recalled several general principles, which have been repeatedly asserted within its case law.

It stressed to this effect that: a) Clause 3(1) of the Framework Agreement on fixed-term work “encompasses all workers without drawing a distinction according to whether their employer is in the public, or private, sector and regardless of the classification of their contract under domestic law” (paragraph 115); b) although it falls to the Member States to define “in accordance with national law and practice” the terms “employment contract” or “employment relationship”, which are relevant under the Framework Agreement, this is “on condition that they respect the effectiveness” of Directive 1999/70/EC and the general principles of EU law (paragraph 117).

It follows that the concept of fixed-term worker under Clause 2(1) of the Framework Agreement “may encompass a magistrate appointed for a limited period, who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, which it is for the referring court to verify” (paragraph 134).

Having brought the role of magistrate within the concept of fixed-term worker, the Court of Justice went on to consider the applicability of the principle of non-discrimination, which aims to prevent fixed-term workers being treated less favourably than “comparable” permanent workers in respect of “employment conditions” (i.e. legal status and remuneration), unless there are “objective grounds” (paragraph 136).

In this regard, the CJEU identified (paragraph 139) the comparable permanent worker as the professional judge, applying the criteria enumerated within its case law, which require that consideration must be given to “a number of factors, such as the nature of the work, training requirements and working conditions” (paragraph 143).

In particular, the parameters on which the “comparability” – for anti-discrimination purposes – of the magistrates with professional judges is based have been identified as follows: 1) both belong to the judiciary and perform judicial functions in civil and criminal matters and conduct settlement procedures in civil matters; 2) pursuant to Article 10 of Law No 374/1991, magistrates are subject to the duties of ordinary judges; 3) both are required to comply with the charts indicating the composition of the magistrates’ court to which they belong, which govern in detail and in a binding manner the organisation of their work, including how case files are assigned and the dates and times of the hearings; 4) both must observe the instructions of the “Head of the service” and the CSM’s specific and general decisions pertaining to organisation; 5) both must be permanently available; 6) both are subject to the CSM’s disciplinary powers where they fail to comply with their ethical duties and professional obligations; 7) magistrates “are subject to the same rigorous criteria as those applicable to the professional aptitude assessment” of ordinary judges; 8) magistrates are subject to the same rules on civil liability and financial damage caused to the State as those prescribed by law for professional judges (paragraph 146).

Having noted the above, the CJEU nonetheless acknowledged that “proceedings reserved to honorary judges and, in particular, to magistrates, are not as complex as those entrusted to ordinary judges” and that, “under the second paragraph of Article 106 of the

Italian Constitution, magistrates may only sit as single judges and cannot, therefore, be assigned to collegiate courts” (paragraph 147).

The Court of Justice therefore once again left the national court with the task of determining, taking account of the considerations set out above, “ultimately [...] whether a magistrate such as the applicant in the main proceedings is in a situation comparable” to that of a professional judge (paragraph 148).

It then went on to add that, if it is concluded that they are comparable, “it must still be verified whether there is an objective ground justifying a difference in treatment” (paragraph 149).

In this regard, in the light of the arguments submitted in the proceedings by the Italian Government, the Court of Justice also held that “the differences between the recruitment procedures” for magistrates and professional judges, and in particular “the special importance attributed by the national judicial order and, more particularly, by the first paragraph of Article 106 of the Italian Constitution, to the competitions specifically designed for the recruitment of ordinary judges, nevertheless appear to indicate that the tasks that the latter must carry out are of a particular nature and the qualifications required for the performance of those tasks are of a different level” (paragraph 161).

Although “the differences between the recruitment procedures” for magistrates and professional judges “do not necessarily require that magistrates be deprived of paid annual leave corresponding to that provided” for professional judges (again, paragraph 161), the need to reflect these differences in professional practice between magistrates and professional judges could indicate that different treatment may respond to “a genuine need” and may be considered proportionate to the objectives pursued (paragraph 162), notwithstanding that the task of carrying out that assessment falls exclusively to the national court (paragraph 163).

20.2.– The findings made in the judgment of 16 July 2020 were reiterated in the *PG* judgment (paragraphs 30 and 31), in which the CJEU held that:

- Article 7 of Directive 2003/88/EC, Clause 4 of the Framework Agreement on part-time work, and Clause 4 of the Framework Agreement on fixed-term work preclude “national legislation which does not provide for an entitlement for magistrates to 30 days’ paid annual leave or to a social security and pension scheme deriving from the employment relationship, such as that provided for ordinary judges, if that magistrate comes within the definition of ‘part-time worker’ within the meaning of the Framework Agreement on part-time work and/or ‘fixed-term worker’ within the meaning of the Framework Agreement on fixed-term work and is in a comparable situation” to that of a professional judge;

- Clause 5(1) of the Framework Agreement on fixed-term work precludes “national legislation pursuant to which a fixed-term employment relationship can be renewed a maximum of three times successively, each renewal being for a duration of 4 years and for a total duration that does not exceed 16 years, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship”.

The Court of Justice recalled first and foremost that, in adopting the *UX* judgment, it had already “held, in essence, that the concept of ‘fixed-term worker’ referred to in Clause 2(1) of the framework agreement on fixed-term work, must be interpreted as

encompassing a magistrate appointed for a limited period, who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, which is, however, for the referring court to verify”.

Moreover “it follows” from the *UX* judgment that “the existence of an entrance competition specifically designed” for professional judges “to enter the judiciary, which is not intrinsic to the appointment of magistrates, allows the latter to be excluded from entitlement to the benefit of all the rights afforded” to professional judges (paragraph 47).

Thus, “although certain differences in treatment may be justified by the differences in the qualifications required and the nature of the duties entrusted to ordinary judges, complete exclusion of magistrates from any right to leave and from all forms of pension and social security protection cannot be accepted in the light of Clause 4 of the Framework Agreement on fixed-term work or Clause 4 of the Framework Agreement on part-time work” (paragraph 53).

As regards Clause 5 of the Framework Agreement on fixed-term work, after recalling that the national legislation prohibits, in the public sector only, a succession of fixed-term contracts from being converted into an employment contract of indefinite duration, the CJEU held that, in order for the law making provision for magistrates “to be regarded as compatible with the Framework Agreement on fixed-term work, the domestic law of the Member State concerned must include, in that sector, another effective measure to prevent and, where relevant, punish the abuse of successive fixed-term contracts” (paragraph 62), and that the mere provision for a limit to the number of successive renewals and the maximum duration of those fixed-term contracts does not constitute such a measure (paragraph 57).

The Court of Justice accordingly observed that “from the information provided by the referring court that no provision of Italian law makes it possible to punish in an effective and dissuasive way the improper renewal of fixed-term employment relationships within the meaning of Clause 5 of the Framework Agreement on fixed-term work” (paragraph 64).

20.3.– Following a reference for a preliminary ruling by the referring court in these proceedings concerning the same dispute that gave rise to these incidental constitutional proceedings, the Court of Justice has once again issued a ruling in the *Peigli* judgment.

The CJEU has held that:

- Article 7 of Directive 2003/88/EC and Clause 4 of the Framework Agreement on fixed-term work preclude “national legislation which, in contrast to what it provides in respect of ordinary members of the judiciary, does not give honorary members of the judiciary in a comparable situation any entitlement to remuneration during the holiday period when judicial activity is suspended, or to the benefit of compulsory social security and insurance protection against workplace accidents and illnesses”;

- Clause 5(1) of the Framework Agreement on fixed-term work precludes national legislation pursuant to which the employment relationship of honorary members of the judiciary can be renewed successively without there being any provision, in order to limit abuse of such renewals, for effective and dissuasive penalties or for the conversion of the employment relationship of those members of the judiciary into an employment relationship of indefinite duration.

However, after reiterating that “the existence of an entrance competition specifically designed for the recruitment” of professional judges, “which is not intrinsic to the appointment of honorary members of the judiciary, allows the latter to be excluded from entitlement to the benefit of all the rights” afforded to the former (paragraph 53), the Court of Justice asserted in its reasons that “although certain differences in treatment may be justified by the differences in the qualifications required and by the nature of the duties entrusted to ordinary members of the judiciary, complete exclusion of honorary members of the judiciary from any right to paid leave and from all forms of pension and social welfare protection cannot be accepted in the light of Clause 4 of the framework agreement” (paragraph 54).

As regards the misuse of successive fixed-term contracts, the judgment held that: “it appears, subject to verification by the referring court, that the renewals of the employment relationship of the applicants in the main proceedings, in the light of their number, appear to have been used to cover needs which were not temporary, owing, for example, to a sudden and unforeseeable increase in litigation, but rather to meet the fixed and permanent needs of the Italian judicial system” (paragraph 70).

20.4.– By the judgment of the First Chamber of 12 September 2024 in Case C-548/22, *M.M.*, the Court of Justice ruled inadmissible, due to serious inadequacies in the argumentation, a request by the Magistrate in Fondi, which asked whether “the mechanism provided for in Article 29 of Legislative Decree No 116” was compatible with EU law “in so far as that national provision, while allowing the fixed-term employment relationship of an honorary member of the judiciary to be converted into an employment relationship of indefinite duration, would prevent that member of the judiciary from obtaining the same remuneration as that received by ordinary members of the judiciary performing comparable duties, since that conversion would entail the waiver, by operation of law, of any claim arising from the cessation of the previously performed duties as an honorary member of the judiciary”.

20.5.– Most recently, the judgment in *Pelavi* of 4 September 2025, which has been cited on numerous occasions, has ruled on the compatibility of the provision contested in these proceedings with EU law.

In its ruling, the Court of Justice held that Clause 5(1) of the Framework Agreement on fixed-term work, read in conjunction with Clause 4 of that agreement, Article 7 of Directive 2003/88 and Article 31(2) CFREU, precludes “national legislation, intended to penalise the misuse of successive fixed-term employment contracts, which makes the application, for serving honorary members of the judiciary, to participate in an assessment procedure in order to be confirmed until the age of 70, subject to the requirement to waive the right to paid annual leave arising from EU law, relating to their previous honorary employment relationship”.

In its reasons, the CJEU recalled that “where there has been misuse of successive fixed-term contracts or relationships, a measure offering effective and equivalent guarantees for the protection of workers must be capable of being applied in order duly to penalise that misuse and nullify the consequences of the breach of EU law” (paragraph 53).

The Court of Justice also noted that “the Framework Agreement does not lay down a general obligation on the Member States to provide for the conversion of fixed-term employment contracts into contracts of indefinite duration” (paragraph 56) and that

Member States have the power, but not an obligation, in the form of measures to prevent or to penalise misuse of successive fixed-term employment contracts, to convert fixed-term employment relationships into relationships of indefinite duration. If the Member States choose that option, it is not necessary to ensure a right to compensation in addition (paragraphs 58, 59 and 60).

As far as the right to leave is concerned, the Court of Justice reiterated that, if it is established that honorary members of the judiciary “are in a situation comparable” to that of professional judges, it is necessary to ascertain whether there are “objective reasons justifying” such difference in treatment between the two categories of judges (paragraph 68).

The CJEU therefore went on to add that it has “already held that the existence of a detailed method of recruitment by means of a competition reserved solely for positions” of professional judges for the purposes of access to the judiciary, which therefore does not apply to the recruitment of honorary members of the judiciary, allows the latter to be excluded from entitlement to the benefit of all the rights afforded to the former. “However, although certain differences in treatment may be justified by the differences in the qualifications required and by the nature of the duties entrusted to ordinary members of the judiciary, complete exclusion of honorary members of the judiciary from any right to paid leave cannot be accepted in the light of Clause 4 of the Framework Agreement” (paragraph 70).

This reasoning leads to a twofold conclusion.

On the one hand, according to Clause 5(1) of the Framework Agreement on fixed-term work, “the conversion of the fixed-term employment relationship into an employment relationship of indefinite duration constitutes, in principle, an effective penalty for such abuse” (paragraph 75).

On the other hand, however, that clause “cannot be interpreted as meaning that the application of measures taken by a Member State to penalise the misuse of successive fixed-term employment contracts and to nullify the consequences thereof could be conditional on a requirement, for the worker concerned, to waive a right conferred on him or her by EU law pursuant to Clause 4 of that agreement. Clause 5(1) and Clause 4 of the Framework Agreement have independent scopes, designed to penalise such abuse and to ensure equivalent treatment of workers when they work on the basis of a fixed-term employment relationship, respectively” (paragraph 77).

Ultimately, “the national legislation which penalises the misuse of successive fixed-term employment relationships by providing for the possibility for an honorary member of the judiciary to have his or her relationships converted into an employment relationship of indefinite duration cannot be conditional on a requirement, for that member of the judiciary, to waive the rights conferred on him or her by EU law” (paragraph 78).

21.– As a general matter, without prejudice to the principle of non-discrimination and the right to leave guaranteed also under primary EU law, EU law has protected the rights of workers considered by the Court of Justice by adopting harmonisation directives (and now under Article 153(2)(b) TFEU), which set minimum standards, i.e. “general principles and minimum requirements” (as stated in the preamble to the Framework Agreement on part-time work and, framed in similar terms, the preamble to the Framework Agreement on fixed-term work). These directives leave a margin for

discretion to the Member States, which may therefore regulate the economic content of those rights according to the specific nature of the relationships relevant under the respective national legal orders (see on this aspect also Article 7(1) of Directive 2003/88/EC).

As regards the issue that is directly relevant in this case, for EU law as interpreted by the Court of Justice:

- the classification chosen within national law as an honorary member of the judiciary is irrelevant, and it is necessary to establish specifically whether the honorary member of the judiciary has performed services typical of an employment relationship under EU law, which is deemed to be the case where “real and genuine services” are provided “which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration” (judgments in *UX* and *PG*);

- the subjection of honorary members of the judiciary to the charts governing in detail and in a binding manner the organisation of their work, the instructions of the head of the service and the CSM’s decisions pertaining to organisation, the requirement to be available for work and the existence of disciplinary responsibility similar to that of professional judges are symptomatic indications of the existence of such an employment relationship (paragraphs 109 and 111 of the *UX* judgment);

- given the existence, as a matter of fact, of an employment relationship as described above, honorary members of the judiciary are entitled to paid leave and, by virtue of the prohibition on discrimination against part-time and fixed-term workers, to pension and social security entitlements;

- these entitlements, and more generally the terms of employment (i.e. remuneration and legal status) of honorary members of the judiciary who are workers in the manner clarified above need not be the same as those of professional judges, who are deemed to constitute a “comparable” category solely for the purposes of the principle of non-discrimination, to the extent that they are engaged in a “similar” occupation (Clause 3(2) of the Framework Agreement on fixed-term work and point 2 of Clause 3(1) of the Framework Agreement on part-time work);

- the fact that professional judges, in contrast to honorary members of the judiciary, are appointed following a public competitive examination, carry out duties and perform tasks of greater complexity (judgments in *UX*, *PG* and *Peigli*) constitute an “objective ground” (Clause 4(1) of the Framework Agreement on fixed-term work and the Framework Agreement on part-time work) for treating the two categories differently;

- the stabilisation of honorary members of the judiciary is a non-mandatory measure to sanction effectively and with dissuasive effect the misuse of successive fixed-term employment contracts; at the same time, however, it does not have to be associated with an additional right to compensation;

- however, where such stabilisation is preferred by the Member State, it cannot be contingent upon a blanket renunciation by honorary members of the judiciary of (not only the right to leave but also) all rights pertaining to the prior employment relationship that are vested in them by EU law.

22.– Therefore – it is important to stress – EU law and Italian constitutional law are substantively consistent, with the latter providing that the remuneration and legal status

of honorary members of the judiciary cannot be deemed to be equivalent to that of professional judges (Judgments Nos 267/2020 and 60/2006; Orders Nos 174/2012, 479/2000, 272/1999, No 57/1990, 594/1989, 515/1989 and 379/1989), including with regard first and foremost to the aspect of remuneration. This was moreover accepted by the referring court which – correctly in this respect – did not raise any questions of constitutionality in relation to this aspect (and moreover did not refer the matter for interpretation by the Court of Justice by the previous reference for a preliminary ruling).

23.– In the light of the account set out above of the legislative and case law framework, the contested provision does not withstand the objections made by the referring court.

The blanket renunciation of claims arising in relation to the previous appointment constitutes – as was recognised by the State Counsel itself – consideration according to law for the stabilisation of long-term honorary members of the judiciary, which was introduced as a remedy for their successive fixed-term appointments objected to by the European Commission.

23.1.– However, taking account of the way in which this legislation is framed, it violates EU law.

Indeed, as recalled in the previous section, according to the Court of Justice stabilisation may represent a remedy in the form of specific performance for the violation of EU law caused by the misuse of successive fixed-term employment contracts, and as such does not need to be provided in addition to pecuniary compensation (*Pelavi* judgment, paragraphs 58-60; see also the judgment of the First Chamber of 8 May 2019 in Case C-494/17, *Rossato and Conservatorio di Musica F.A. Bonporti*, paragraph 40).

Again according to the CJEU, although it does resolve the unlawful act, stabilisation cannot by contrast replace the different, and more detailed, substantive relief conferred upon workers by EU law (see again the *Pelavi* judgment, paragraphs 78 and 79).

23.2.– Contrary to the assertions of the State Counsel, this position is not at odds with that taken by this Court in Judgment No 187/2016 concerning staff working in schools.

Indeed, the abuse identified in that case was rectified exclusively by the payment of compensation for losses resulting from precarious status. This is because the staff working in schools were pursuing court action solely with the objective of obtaining such compensation, and not therefore of securing relief in respect of the employment relationship, as it was common ground in that case that they had the status of (fixed-term) employees.

23.3.– In the light of the constitutional status of honorary members of the judiciary and the differences between their tasks and powers and those of professional judges, the “objective ground” expressly provided for under the Framework Agreements mentioned above, as well as the reference to “conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice” contained in Article 7(1) of Directive 2003/88/EC – both of which have been cited in the case law of the Court of Justice on honorary members of the judiciary – justifies the differences in their remuneration compared to professional judges, including with regard to the relationship prior to stabilisation.

Thus, when making provision for the stabilisation of honorary members of the judiciary, the legislature could by all means have made detailed provision governing the financial rights vested in them in terms of paid leave as well as pension and social security entitlements, having regard also to the remuneration actually received by them. It would in any case have been required to reconcile the need to recognise those rights with the constitutional principle that prevents them from being treated as equivalent to professional judges, and also with the factual circumstance – and legally relevant consideration – that honorary members of the judiciary perform different work from professional judges, which is characterised in particular by its lower level of complexity and hence the more limited effort and expertise required to perform it (and both the exception from the principle of recruitment by entrance competition and the 2017 reform are based on these differences).

Within the context of a legislative initiative of this type, the legislature could also have taken account on the one hand, subject to compliance with the proportionality principle, of the greater benefit arising for honorary members of the judiciary if it is chosen (which choice is not however mandated under EU law) to stabilise them in order to rectify the unlawful misuse of successive fixed-term employment contracts objected to, and on the other hand of the overall financial impact of the legislation (Judgments Nos 31/2025, 130/2023 and 234/2020), which would in any case be subject to a review as to its reasonableness by this Court.

Conversely, when exercising the legislative discretion limited by the principles of constitutional law and EU law referred to, the contested legislation does not simply determine the financial essence of the rights under EU law of honorary members of the judiciary relating to appointments made prior to stabilisation. On the contrary, it requires those honorary members to renounce entirely their claims in relation to such appointments, as such preventing them from pursuing court action, or as is the case in the proceedings before the referring court, from pursuing action previously launched in order to uphold such rights.

Accordingly, that provision violates the right to judicial relief under Article 24 of the Constitution, which is one of “the supreme principles of our constitutional order, within which the guarantee to all persons and at all times of a judge and the right to judicial proceedings in relation to any dispute is intimately related to the very principle of democracy” (Judgment No 18/1982 and, for a similar ruling, Judgments Nos 48/2021 and 82/1996) and at the same time, by way of Article 117(1) of the Constitution, the right to an effective remedy before a tribunal pursuant to Article 47(1) CFREU (Judgment No 65/2024).

23.4.– In contrast to the position sustained by the President of the Council of Ministers, the freedom of choice left to honorary members of the judiciary, who could decide not to accept stabilisation and rather pursue their court action, is not sufficient to resolve the violation of the Constitution.

That freedom is excessively restricted in that renunciation is required under all circumstances in return for stabilisation which (despite being inconsistent with the proper operation of the principle of recruitment by entrance competition) can exceptionally be allowed where its purpose is to offset the violation of EU law. However, it is not permitted if it is used as a disproportionate instrument for fundamentally depriving honorary

members of the judiciary of the ability to pursue court action for a broader range of substantive claims guaranteed under EU law.

24.– In the light of the considerations set out above, Article 29(5) of Legislative Decree No 116/2017 must be declared unconstitutional – to the extent that it provides that the rights conferred by EU law in relation to paid leave and pension and social security entitlements must be renounced as a prerequisite for successful completion of the confirmation procedures referred to under paragraph 3 of that Article – on the grounds that it violates Articles 24 and 117(1) of the Constitution, the last-mentioned in relation to Article 47 CFREU. The remaining challenges are moot.

25.– It will be for the legislature to set out criteria for quantifying the financial content of the rights derived from EU law of honorary members of the judiciary for the period falling prior to stabilisation, especially as regards the period falling prior to the reform introduced by Legislative Decree No 116/2017. Such rights must be commensurate with the qualitative and quantitative activity performed as well as the fact that the work is, generally speaking, not carried out on an exclusive basis.

Pending the enactment of such legislation, it will fall to the ordinary courts to quantify the financial extent of the above-mentioned rights under EU law to leave as well as pension and social security entitlements where they establish, as a matter of fact and in accordance with the framework set out by the Court of Justice, that the specific case referred to them for scrutiny involves an employment relationship as a matter of EU law. When doing so, they must act at all times in accordance with the constitutional principles referred to above, and in particular the principle that the remuneration of honorary members of the judiciary must not be equivalent to that of professional judges.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

declares that Article 29(5) of Legislative Decree No 116 of 13 July 2017 (Organic reform of the honorary judiciary and other provisions on magistrates, and transition provisions on honorary members of the judiciary in service, adopted pursuant to Law No 57 of 28 April 2016), as replaced by Article 1(629)(a) of Law No 234 of 30 December 2021 (State budget for financial year 2022 and multi-year budget for the period 2022-2024) is unconstitutional to the extent that it provides that the rights conferred by EU law in relation to paid leave and pension and social security entitlements must be renounced as a prerequisite for successful completion of the confirmation procedures referred to under paragraph 3 of that Article.

Decided in Rome at the seat of the Constitutional Court, Palazzo della Consulta, on 24 February 2026.

Signed:

Giovanni AMOROSO, President

Giovanni PITRUZZELLA, Judge Rapporteur