JUDGMENT NO. 124 YEAR 2017

In this case the Court heard referral orders concerning legislation which imposed a maximum limit on the amounts disbursed as remuneration and pensions out of public funds to any individual working for the state (in this particular case certain senior judges), stipulating that the individual's remuneration must be reduced so as to ensure that the total amount of all funds received does not exceed the salary of the First President of the Court of Cassation. The Court dismissed the questions, holding that the rule was not directed specifically at the judiciary and applied universally across the public sector, and was moreover based on a reasonable balancing of the constitutional interests in play.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 1(489) of Law no. 147 of 27 December 2013 laying down "Provisions on the formation of the annual and multi-year budget of the state (Stability Law 2014)" initiated by the Regional Administrative Court for Lazio by seven referral orders of 17 April 2015, four of 21 April 2015, seven of 7 April 2016, one of 8 April 2016 and one of 6 April 2016, registered respectively as nos. 220 to 230 in the Register of Referral Orders 2015 and as nos. 172 to 180 in the Register of Referral Orders 2016 and published in the Official Journal of the Republic no. 44, first special series 2015 and as nos. 39 and 43, first special series 2016, and in proceedings concerning the constitutionality of Article 23-ter of Decree-Law no. 201 of 6 December 2011 (Urgent provisions on growth, equity and the consolidation of the public accounts), converted with amendments into Law no. 214 of 22 December 2011 and Article 13(1) of Decree-Law no. 66 of 24 April 2014 (Urgent measures on competitiveness and social justice), converted with amendments into Law no. 89 of 23 June 2014, initiated by the Regional Administrative Court for Lazio by the referral order of 21 July 2016, registered as no. 211 in the Register of Referral Orders 2016 and published in the Official Journal of the Republic no. 43, first special series 2016;

Considering the entries of appearance by S. B., by R. V., by G. Z., by M. C., by S. D.V., by P. V., by L. P., by C. G., by F. M. and others, by F. D.I. and others, by D. C., by M. M., by M. Z., by A. P., by V. S., by E. T., by P. L.R., by C. B. and others, by F. I., by the *Istituto nazionale della previdenza sociale* (hereafter INPS), as well as the interventions by C. B. and others and by the President of the Council of Ministers;

having heard the judge rapporteur Silvana Sciarra at the public hearing of 22 March 2017;

having heard Counsel Federico Sorrentino for F. M. and others, F. D.I. and others and D. C., Counsel Massimo Luciani for M. M., M. Z., A. P., V. S., E. T., P. L.R., C. B. and others, Counsel Mario Sanino and Counsel Paola Salvatore for S. B., R. V., G. Z., M. C., S. D.V., P. V., L. P. and C. G., Counsel Federico Tedeschini and Counsel Gianmaria Covino for F. I., Counsel Flavia Incletolli for the INPS and the State Counsel [*Avvocato dello Stato*] Gianni De Bellis for the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.– By twenty referral orders, eleven of which (referral orders no. 220 to no. 230 of 2015) were issued in proceedings initiated by senior judges on the Court of Auditors

and nine (referral orders no. 172 to no. 180 of 2016) were issued within proceedings brought by judges on the Council of State appointed by the government, the Regional Administrative Court for Lazio questions the constitutionality of Article 1(489) of Law no. 147 of 27 December 2013, laying down "Provisions on the formation of the annual and multi-year budget of the state (Stability Law 2014)", with reference to various parameters contained in the Constitution.

The contested provision prohibits the public administrations and bodies from granting all-inclusive remuneration to individuals already in receipt of pensions disbursed by public pension funds which, when added to the pension, exceed a threshold of 240,000.00 euros per annum.

The legislation also includes lifetime annuities amongst pension payments and also applies to constitutional bodies, which are required to implement the principles laid down by it "in accordance with their own systems of rules".

The limit under examination does not apply to "existing contracts and appointments until their natural expiry".

Having rejected the objections that the legislation is unconstitutional on the grounds that it breaches the principle of legitimate expectations along with Article 53 of the Constitution, the referring court asserts that the legislation contained in Law no. 147 of 2013 violates the principle of reasonableness (Article 3 of the Constitution).

Whilst benefiting from the qualified professional services of senior judges on the Court of Auditors and the Council of State who are appointed by the government, the State is alleged to have chosen irrationally to have "exempted itself" from the payment of remuneration solely because the judges appointed already receive a pension in respect of prior employment.

The objections also relate to the unjustified difference in treatment between senior judges who have successfully completed a recruitment competition and those appointed by the government: assuming equal responsibilities and competence, the contested provision purportedly discriminates against judges on the Council of State and the Court of Auditors appointed by the government, who are exposed to the risk of receiving no remuneration owing to the fact that they receive a pension in respect of other employment, compared to senior judges who have successfully completed a recruitment competition, who are remunerated in the ordinary manner.

Legislation framed in these terms is claimed to violate the right to remuneration that is commensurate with the quantity and quality of the work performed (Article 36 of the Constitution) since, in breach of the Constitution, it considers "a pension received in respect of previous employment [to be interchangeable with] remuneration for current employment, where permitted in accordance with the rights and freedoms guaranteed under the Constitution".

It is asserted that remuneration cannot be determined on the basis of the amount of the pension accrued in respect of previous gainful activity, as an element that lacks any relevance for the parameter of the quantity and quality of the work performed.

The referring court asserts a violation of Article 38 of the Constitution in that the drastic reduction or annulment of contributions allegedly compromises the social security protection guaranteed under the legal order in relation to the remuneration specifically received.

The legislation that is suspected to be unconstitutional is also considered to breach the principle requiring the proper conduct of the public administration (Article 97 of the Constitution) in that it gives rise to "an unreasonable organisation that runs contrary to

the proper conduct of the administration by indiscriminately making appointments, both remunerated and unremunerated, to positions of stated significance and sensitivity and requiring a particular commitment".

In accepting the objections formulated by the parties within the proceedings initiated by the senior judges on the Council of State appointed by the government, the referring court considers Article 95 of the Constitution to have been violated, which is invoked in conjunction with Article 97 of the Constitution: the government's power of political and administrative direction, which is expressed through the appointment of senior judges on the Council of State and the Court of Auditors and the selection of the persons considered most suitable to hold the appointment, is claimed to have been "detached from its most consistent foundation, the freedom of its exercise having been undermined".

Finally, in all referral orders the referring court asserts that Articles 100, 101, 104 and 108 of the Constitution have been breached in view of the impact of the contested legislation on the remuneration due in respect of service in judicial office: the autonomy and independence of the judiciary are asserted to be safeguarded also by the remunerative aspect, and the Constitution precludes any undue interference in this regard.

2.– By the referral order registered as no. 211 in the Register of Referral Orders 2016, the Regional Administrative Court for Lazio questions the constitutionality of the provisions concerning the "upper threshold on remuneration" within the public sector contained in Article 23-*ter* of Decree-Law no. 201 of 6 December 2011 (Urgent provisions on growth, equity and the consolidation of the public accounts), converted with amendments into Law no. 214 of 22 December 2011 and Article 13(1) of Decree-Law no. 66 of 24 April 2014 (Urgent measures on competitiveness and social justice), converted with amendments into Law no. 89 of 23 June 2014.

The referring court, which was apprised by an ordinary judge who had worked as the head of the prison administration, objects to the limitations placed on the overall annual financial remuneration of staff, including those whose relationship is governed by public law, who work as employees or on a self-employed basis for the state public administrations.

Article 23-*ter* of Decree-Law no. 201 of 2011 stipulates that the emoluments and remuneration payable out of public funds may not exceed the remuneration package of the First President of the Court of Cassation, which is currently 240,000.00 euros per annum before pension and social insurance contributions and taxes payable by the employee (Article 13(1) of Decree-Law no. 66 of 2014).

The referring court argues that this limit significantly reduces "the remuneration for the activities of an ordinary judge" in contrast with Article 36 of the Constitution, which requires that remuneration paid must be commensurate with the quantity and the quality of the work performed.

Furthermore, the restrictive provisions are claimed to result in a "corresponding reduction of the end-of-service allowance and pension payments". The reduced remuneration is claimed to impair the "provision of the social security and pension protection guaranteed by the legal order", at odds with the principle of adequacy enshrined by Article 38 of the Constitution.

A mechanism of this type is claimed to give rise to "a violation of the right to work" protected under Article 4 of the Constitution.

The choice made by the state to avail itself of the professional services of the claimant and, at the same time, “to exempt itself” from the payment of remuneration notwithstanding the extremely high “professional standard reached in view of the sensitivity of and commitment required by the duties to be performed” is claimed to be “unreasonable under constitutional law”.
In the opinion of the referring court, the repercussions of the contested provision for remuneration undermine the guarantees of the autonomy and independence of the judiciary, which also extend to remuneration.
3.– As the proceedings relate to questions that are inseparably linked and principles of constitutional law that largely coincide, they must be joined for decision in a single judgment.
4.– The questions of constitutionality raised by the referring court are not inadmissible on the grounds alleged by the parties.
5.– The question of constitutionality concerning the cumulation of pension and remuneration is not inadmissible due to the grounds alleged – regarding the issues of relevance and non-manifest unfoundedness – in the entries of appearance by the parties and in the intervention.
5.1.– As a priority matter, it is necessary to examine the objection raised by the parties that entered an appearance in the proceedings initiated pursuant to referral orders no. 172, 173, 174, 175, 177, 178 and 180 of 2016.
After presenting detailed argumentation, the parties conclude that the contested provision is inapplicable and that the exception available for existing contracts and appointments until their natural expiry applies.
The argument cannot be endorsed.
The exclusion of the exception available for existing contracts and appointments until their natural expiry relates to the issue of the relevance of the question of constitutionality.
Were that exception to apply, as invoked by the parties, the provisions restricting the ability to cumulate pensions and remuneration would not arise as an issue and the question of constitutionality raised by the referring court would be irrelevant.
As the issue relates to relevance, this Court is not required to rule on the soundness of the various contending interpretations, but only to assess whether the interpretative premise made by the referring court in order to assess the relevance of the doubt concerning the constitutionality of the legislation is implausible.
The referring court starts from the assumption that the exemption established for existing contracts and appointments has a precise substantive scope, being limited to relations that are inherently temporary. The clause does not therefore apply to a civil service relationship, which is in general stable and not subject to a pre-defined term.
As regards the discrimination brought about by such an interpretation between service relationships and temporary contracts and appointments, the referring court accepts the objections raised by the parties and concludes that it is not the more rigorous rules applicable to service relationships that are objectionable, but rather the exemption put in place by the legislator for existing contracts and appointments, precisely due to the distinctive feature of their temporary nature.
In support of the interpretation chosen, it emphasises the precise technical construal of the phrase “existing contracts and appointments” which serves to differentiate them from service relationships, which are associated with particular guarantees of stability.

From this viewpoint, the concept of appointment, which is meaningfully associated with the term “contract”, is evocative of a temporary perspective, also according to the literal meaning of the words (Article 12 of the Provisions on the Law in General [*preleggi*, enacted at the same time as the Civil Code]). The duration of the appointment, stipulated in the appointment itself, is different from the maximum legal duration of a service relationship, which applies on account of the age limits from time to time provided for by law.

In the light of this broad account of the overall situation, which is supported by detailed reasons and has carefully engaged with the countervailing assertions of the parties, it cannot be concluded that the interpretative premise of the referring court, which operates as a basis for its reasons as to the question of relevance, is implausible.

5.2.– Also the objections made by the INPS, which entered an appearance in the proceedings initiated pursuant to referral orders no. 221, 222 and no. 228 of 2015, relate to the issue of relevance.

The social security institution stresses that upholding the question of constitutionality would not have any implications for the referred proceedings, as the claimants already receive pensions that are higher than the limit stipulated for the public sector, and upholding the question of constitutionality could not bring any specific benefit in terms of the amount of the pension received.

This objection is also unfounded.

The essence of the objections lies in the fact that, precisely as a result of the contested legislation, which prevents the cumulation of pensions and remuneration payable out of public funds above a threshold of 240,000.00 euros gross per annum, the claimants do not receive any remuneration in respect of their activity as senior judges on the Court of Auditors and the Council of State.

The rules limiting remuneration referred to affect remuneration for work currently performed, and not pensions.

Were the contested limit to be removed, it would be possible to cumulate in full, as sought by the claimants, both the pensions already accrued and the remuneration for the judicial work performed.

These considerations confirm the relevance of the question raised.

5.3.– The State Counsel (*Avvocatura Generale dello Stato*) argues that the question is inadmissible for a different reason, specifically the interpretative nature of the action this Court is requested to take.

In highlighting the indiscriminate effects of the cumulative limit for pensions and remuneration, the referring court objects that the legislator did not provide for any exceptions or staggered introduction, for instance to take account also of the fact that the functions performed are more limited or attract lower remuneration.

According to the State Counsel, the objections as formulated encroach on the space reserved to legislative discretion over the configuration of the legislation and the staggering of its effects, if necessary by providing for intermediate solutions.

Also this objection must be disregarded.

Whilst it has explored the feasibility of more flexible arrangements, the referring court has called on this Court to rule the contested provision unconstitutional and not to interpret its content in a manner that is not required under constitutional law (see, for analogous argumentation, Judgment no. 16 of 2017, section 5.2. of the Conclusions on points of law).

5.4.– The State Counsel argues that the questions are also unconstitutional due to the failure to give reasons as to their non-manifest unfoundedness, with regard to the violation of Articles 100, 101, 104 and 108 of the Constitution.
This objection also cannot be accepted.
The objections, which have been formulated by the referring court in terms that are far from merely assertive and generic, are supported by the case law of this Court (Judgments no. 223 of 2012 and no. 1 of 1978), which has considered in detail the relations between the autonomy and independence of the judiciary and the rules governing the remuneration of judges.
6.– Also the question concerning the constitutionality of the limit on remuneration out of public funds raised by referral order no. 221 of 2016 does not fall foul of the objections of inadmissibility made by the State Counsel.
6.1.– The State Counsel has asserted in the first place that the question raised is irrelevant.
The breach of the limit on remuneration would be significant only were it to be ascertained that the claimant is due an allowance in respect of the previous role as the head of the prisons administration department; however, the referring court has neglected to examine precisely this issue.
Had the referring regional administrative court concluded, upon completion of the inquiry stage, that the cancellation of the allowance were legitimate, the limits on remuneration laid down by Article 23-*ter* of Decree-Law no. 201 of 2011 would not apply.
The objection is unfounded.
It can be inferred from the facts of the case presented by the referring court that the contested measure is based on various considerations pertaining to entitlement to the allowance due to the head of the prisons administration, which is covered by separate objections, and at the same time the application of Article 23-*ter* of Decree-Law no. 201 of 2011.
It must therefore be concluded that the questions concerning the constitutionality of Article 23-*ter* and the subsequently enacted Article 13(1) of Decree-Law no. 66 of 2014 must be resolved before a decision can be reached. These provisions are the prerequisite for the contested measures and must necessarily be applied in order to decide on the application (Judgment no. 203 of 2016, section 3 of the Conclusions on points of law).
The line of argumentation followed by the referring court cannot be regarded as implausible, as the contested provision must necessarily be engaged with in order to resolve the dispute.
6.2.– The State Counsel alleges that the referring court did not provide exhaustive reasons for the doubts as to the constitutionality of the legislation, but rather limited itself to referring without any critical assessment to the arguments contained in the referral orders in relation to the different issue of the cumulation of pensions and remuneration.
The objection is misconstrued.
Whilst arguing on the basis of the previous referral orders relating to the cumulation of remuneration and pensions, the referring court has provided adequate and self-standing reasons in support of its objections, which do not fall foul of the grounds for inadmissibility set forth in the intervention.
6.3.– As regards the gaps within the reasons given in support of the non-manifest unfoundedness of the questions concerning an alleged violation of Articles 100, 101,

104 and 108 of the Constitution, the arguments made by the State Counsel must be rejected on the basis of the considerations made in the examination of a similar objection (see above section 5.4 of the Conclusions on points of law).
It must be reiterated, also with regard to referral order no. 211 of 2016, that the referring court supports the objections with reference to the relevant case law of this Court (Judgments no. 223 of 2012 and no. 1 of 1978, cited above) and illustrates them through arguments that cannot be said to be insufficient or to have been categorically asserted.
7.– Therefore, the questions of constitutionality may be considered on the merits and in a unitary manner, as the contested provisions derive from a single root, notwithstanding their individual distinctive features.
They are unfounded.
8.– It is necessary to start as a priority matter from an analysis of the legislation on the maximum limit to remuneration (Article 23-*ter* of Decree-Law no. 201 of 2011 and Article 13(1) of Decree-Law no. 66 of 2014), which has been challenged by means of referral order no. 211 of 2016. This legislation in fact sets forth the general paradigm, which acts as a framework also for the provisions on the cumulation of pensions and remuneration payable out of public funds.
8.1.– The provision of a maximum limit both for public-sector remuneration and for the cumulative total of remuneration and pensions was introduced within a context of limited resources, which must be allocated in an appropriate and transparent manner.
8.2.– The limit of available resources, which is inherent within the public sector, requires the legislator to make consistent choices that seek to strike a balance between various constitutional values, such as equal treatment (Article 3 of the Constitution), the right to remuneration that is commensurate with the quantity and quality of the work performed and in any case capable of guaranteeing a free and dignified existence (Article 36(1) of the Constitution), the right to adequate pension provision (Article 38(2) of the Constitution) and the proper conduct of the public administration (Article 97 of the Constitution).
Also the provisions governing the cumulation of pensions and remuneration “interfere with various constitutional values, such as the right to work (Article 4 of the Constitution), the right to social security provision that is commensurate with the effective state of need (Article 38(2) of the Constitution) and solidarity between the different generations interacting on the labour market (Article 2 of the Constitution) within a perspective that aims to guarantee fair and effective access to the employment opportunities that arise” (Judgment no. 241 of 2016, section 5 of the Conclusions on point of law).
8.3.– In the public sector, the legislator is not precluded from stipulating a maximum limit for remuneration and for the cumulative total of remuneration and pensions, provided that such a choice, the aim of which is to balance out the various values in play, is not manifestly unreasonable.
Within this perspective, it is necessary to respect stringent prerequisites, capable of safeguarding the suitability of the limit to guarantee an adequate and proportionate balancing of the countervailing interests. The priority goal of the rationalisation of spending must take account of the resources specifically available, without demeaning the work performed by persons displaying a high level of professionalism.
8.4.– The precise imposition of a maximum limit on public-sector remuneration does not conflict with the principles referred to above.

Whilst the provisions under examination have been dictated by the difficult economic and financial climate, they make clear the need to achieve immediate savings whilst adopting a long-term perspective. Therefore, the fact that the technical report does not calculate the expected savings does not in itself indicate that the provision is unreasonable.

The multiple variables in play preclude a considered and credible *ex ante* assessment. Indeed, the parliamentary debate leading up to the approval of Article 23-*ter* of Decree-Law no. 201 of 2011 indicated that the impact of the contested provision could only be quantified "*ex post*".

However, the fact that it is impossible to quantify the reduction in spending in advance does not imply that such effects, to be estimated over the long term, will be absent, and is not at odds with the rationale of the legislation, which seeks to pursue objectives of general interest.

It is necessary to consider within this perspective the hypothecation stipulated by the legislator of the resources resulting from the application of the contested provisions, which were to be allocated each year to the fund for repaying government bonds (Article 23-*ter*(4) of Decree-Law no. 201 of 2011 and Article 1(474) of Law no. 147 of 2013), which comprises a special treasury accounting item.

Furthermore, the legislation on the maximum limit for public-sector remuneration amounts to a cost-containment measure equivalent to the other broadly applicable initiatives which the legislator has chosen to adopt in the most disparate areas (Decree-Law no. 78 of 31 May 2010 laying down "Urgent measures on financial stabilisation and economic competitiveness", converted with amendments into Law no. 122 of 30 July 2010; Decree-Law no. 98 of 6 July 2011 laying down "Urgent provisions on financial stabilisation", converted with amendments into Law no. 111 of 15 July 2011; Decree-Law no. 95 of 6 July 2012 laying down "Urgent measures to review public spending with no effect on services for citizens", converted with amendments into Law no. 135 of 7 August 2012; Decree-Law no. 66 of 24 April 2014 laying down "Urgent measures on competitiveness and social justice", converted with amendments into Law no. 89 of 23 June 2014; Decree-Law no. 90 of 24 June 2014 (Urgent measures concerning administrative simplification and transparency and to enhance the efficiency of judicial offices), converted with amendments into Law no. 114 of 11 August 2014).

These cost-containment initiatives were supported by the Court of Accounts in its 2012 Report on Public-Sector Work. The imposition of a maximum limit on remuneration establishes a remedy for the differentials, which in some cases lack a clear justification, between the remuneration of individuals at the highest levels of the administration.

In addition, since they were first applied in relation to Article 3(43) *et seq* of Law no. 244 of 24 December 2007 laying down "Provisions on the formation of the annual and multi-year budget of the state (Finance Law 2008)", the provisions on pay restraint have been accompanied by far-reaching obligations to publicise appointments. Cost containment is never pursued as an end in itself, but in conjunction with broader objectives, which seek to give transparency to the management of public funds.

The legislation under review in these proceedings pursues cost-containment goals and the overall rationalisation of spending, within a perspective that guarantees the other general interests involved, within a context of limited resources.

8.5.– The choices made by the legislator were also not unreasonable as the limit on remuneration, which is set out as a measure of rationalisation, applies generally

throughout all administrative bodies (Judgment no. 153 of 2015, regarding the imposition of that limit on local government bodies).
The limit on remuneration, which initially applied to the state administrations pursuant to Article 3(43) of Law no. 244 of 24 December 2007 laying down "Provisions on the formation of the annual and multi-year budget of the state (Finance Law 2008)", has gradually extended its scope also to non-state public administrations, independent administrative authorities (Article 1(471) and (475) of Law no. 147 of 2013) and companies owned directly or indirectly by the public administrations (Article 13(2)(c) of Decree-Law no. 66 of 2014).
Finally, as confirmation of that development in the legislation, the maximum limit on remuneration of 240,000 euros per annum has been extended also to directors, employees, self-employed staff and consultants of the body granted the concession to provide public radio, television and multimedia services whose professional services are not associated with regulated levels of remuneration (Article 9(1), (1-*ter*) and (1-*quater*) of Law no. 198 of 26 October 2016 on the "Establishment of the fund for pluralism and innovation of information and authorisation of the Government to overhaul the legislation on public support for the publishing and local radio and television broadcasting sector, the legislation on journalists' pensions and the composition and powers of the National Council of the Order of Journalists. Procedure governing the award of rights to provide the public radio, television and multimedia services").
The aspect of general applicability has already been found by this Court to be of decisive importance in reviewing other measures (Judgments no. 178 of 2015 and no. 310 of 2013).
Owing to the general scope of the legislation, which is not directed specifically at the judiciary as a "branch of state which is autonomous and independent of any other branch of state" (Article 104 of the Constitution) and does not seek to characterise the relationship with the State as a mere contractual dialectic nor to undermine the guarantees of remuneration that is commensurate with the importance of the function performed (Judgment no. 223 of 2012), the objections alleging a violation of the autonomy and independence of the judiciary are unsound.
When confronted with legislation that pursues general objectives relating to the rationalisation of the entire public sector and sets the limit on remuneration at the level of that of the First President of the Court of Cassation, no undue encroachment on the autonomy and independence of the judiciary is apparent, which is governed by the Constitution also with regard to the issue of remuneration (Judgment no. 1 of 1978).
8.6.– This limit, which has been constant since the enactment of the first legislation on maximum income thresholds – Article 1(593) of Law no. 296 of 27 December 2006 laying down "Provisions on the formation of the annual and multi-year budget of the state (Finance Law 2007)" – is now anchored to a fixed level (240,000 euros per annum), which applies irrespective of any change in the specific individual called upon from time to time to serve as the First President. The configuration of the legislation, which is in no way contingent due to any unforeseeable parameter, reveals the legislator's intention to impose a general limit, which may be ascertained *ex ante*, thereby enabling the ready – and essentially stable – planning of resources.
The limit laid down by the legislator is not inadequate, as it is linked to service in an appointment of undisputed significance and prestige. It is precisely by virtue of these characteristics that it does not violate the right to work and does not demean the professional contribution of the most qualified individuals, but ensures that the link

between remuneration and the quantity and quality of the work performed is safeguarded also in relation to the most high-level jobs.
When exercising its discretion, the legislator could indeed, according to a reasonable balancing of the interests in play, have altered the operation over time of the parameter chosen so as to ensure its enduring adequacy in the light of the overall trend in public spending and the economy.
9.– The questions concerning the constitutionality of Article 1(489) of Law no. 147 of 2013 are likewise unfounded.
9.1.– It is apparent that the choices made by the legislator are not unreasonable also in relation to the provision applicable to the cumulative payment of remuneration and pensions out of public funds, which represents the development of the legislation on salary limits examined above.
The provision under examination is consistent with other measures to contain public-sector pay and is distinguished by its particularly wide scope. It is directed at the vast category of the administrations included in the ISTAT [Italian National Institute for Statistics] list and mentions also constitutional bodies, which are required to implement it in accordance with their own systems of rules.
In objective terms, the contested provision covers all pensions disbursed by mandatory pension schemes, lifetime annuities and all items of financial remuneration (salaries, other items of basic pay, allowances, ancillary items, any remuneration for advisory tasks, appointments or cooperation on any grounds payable by any body/bodies or administration(s) included in the ISTAT list).
In the event that the limit of 240,000.00 euros per annum is breached, the amount must be reduced by the administration disbursing the remuneration and not the administration that is responsible for paying the pension.
The objections allege a violation of Article 36 of the Constitution, which is asserted to result also in a violation of Article 38 of the Constitution. Within this perspective, the breach of the principle of reasonableness, the proper conduct of the public administration, the violation of the right to work and the encroachment on the autonomy and independence of the judiciary corroborate that objection, which represents the fulcrum of the arguments contained in the referral orders received by this Court.
9.2.– Also as regards the cumulation between remuneration and pensions payable out of public funds, the legislator is required to guarantee systematic and not isolated protection for the constitutional values in play. The principle of proportionality between remuneration and the quantity and quality of the work performed also operates along this horizon.
It may be the case that there may be a significant public interest in hiring persons with particular professional expertise, who may already be receiving a pension.
Nevertheless, the limited availability of public funds justifies the need to determine in advance on a global level – on the basis of foreseeable and certain parameters – the resources which the administration may pay as remuneration and pensions.
After all, this rationale also acted as the inspiration for the provisions contained in Article 5(9) of Decree-Law no. 95 of 2012, which prohibit the granting of study or consultancy appointments to retired public-sector or private-sector workers and only allow such workers to hold managerial or directorial positions or to work in the governing bodies of administrations for no consideration.

The principle of proportionality between the remuneration and the quantity and quality of the work performed must therefore be assessed within a particular context, which does not allow remuneration and pensions to be taken into account only partially.
Having been framed in these broader terms and having taken as its point of reference a specific figure, corresponding to the remuneration of the First President of the Court of Cassation, the contested provision strikes a balance between the constitutional principles that is not unreasonable and does not unduly sacrifice the right to remuneration that is commensurate with the quantity and quality of the work performed.
9.3.– Also the objections made in relation to other aspects are unfounded.
The framework put in place by the legislator with the 2014 Stability Law is not such as to sacrifice in an arbitrary and disproportionate manner the pensioner's right to work, which may be exercised freely in the most convenient forms.
The contested provision does not undermine the autonomy and independence of the judiciary, on account of its general scope, and does not in itself give rise to arbitrary discrimination between senior judges on the Council of State and the Court of Auditors who have been appointed by the government and those who have successfully completed a recruitment competition, in the light of the arguments illustrated above in the examination of the questions relating to the limit on remuneration.
The *thema decidendum* submitted to this Court for review does not cover issues relating to the unreasonableness of the legislation on the state's right of recourse against the judges, cited by the parties that entered an appearance in the proceedings initiated pursuant to referral orders no. 172, 173, 174, 175, 177, 178 and 180 of 2016. These are in fact aspects that extend beyond those objected to in the referral orders, which circumscribe the *thema decidendum* submitted to this Court for examination, and are moreover separate from the disputed issue within the main proceedings, which does not concern the civil liability of the claimant judges.
9.4.– There is nothing to prevent the legislator, acting within a constantly evolving context of economic and social policies, from putting in place different solutions and regulating in a more flexible manner the cumulative treatment of pensions and remuneration, having regard also to the changing requirements of overall reconfiguration of expenditure, according to a considered assessment of the long-term effects of the provisions on pay restraint currently submitted to this Court for review.

ON THESE GROUNDS
THE CONSTITUTIONAL COURT

hereby,
1) rules that the question concerning the constitutionality of Article 23-*ter* of Decree-Law no. 201 of 6 December 2011 (Urgent provisions on growth, equity and the consolidation of the public accounts), converted with amendments into Law no. 214 of 22 December 2011 and Article 13(1) of Decree-Law no. 66 of 24 April 2014 (Urgent measures on competitiveness and social justice), converted with amendments into Law no. 89 of 23 June 2014, raised by the Regional Administrative Court for Lazio with reference to Articles 3, 4, 36, 38, 100, 101, 104 and 108 of the Constitution by the referral order registered as no. 211 in the Register of Referral Orders 2016, is unfounded;
2) rules that the questions concerning the constitutionality of Article 1(489) of Law no. 147 of 27 December 2013 laying down "Provisions on the formation of the annual and multi-year budget of the state (Stability Law 2014)", raised by the Regional Administrative Court for Lazio with reference to Articles 3, 4, 36, 38, 95, 97, 100, 101,

104 and 108 of the Constitution by referral orders registered as no. 220 to 230 in the Register of Referral Orders 2015 and as no. 172 to 180 in the Register of Referral Orders 2016, are unfounded.
Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 22 March 2017.