Italian Constitutional Court

Legal summary

Judgment No 50/2026

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THE COURT ADOPTED A CONSTITUTIONALLY CONFORMING INTERPRETATION TO UPHOLD A PROVISION MAKING CERTAIN FINAL ACQUITTAL BINDING IN TAX PROCEEDINGS

In Judgment No 50/2026, the Constitutional Court examined Article 21-*bis* of Legislative Decree No 74/2000, which gives binding effect to a final criminal acquittal in tax proceedings. The referring courts alleged violations of **Articles 3, 24, 53**, **102** and **111 of the Constitution**.

The Court held that the challenges were **unfounded, subject to a constitutionally conforming interpretation**. As a general rule, criminal acquittal binds the tax court when both proceedings concern the same material facts. This legislative choice was not manifestly unreasonable: it protects the taxpayer, avoids contradictory findings and promotes simplification and legal certainty between criminal and tax proceedings.

The binding effect is nevertheless excluded in two situations. First, where the tax case depends on legal presumption unavailable in criminal proceedings, the acquittal binds the tax court only if the criminal court positively established that the relevant fact did not take place. Second, it is not binding where the acquittal results solely from evidence being inadmissible under criminal procedural rules, although that evidence may lawfully be used in the tax proceedings. So interpreted, Article 21-*bis* preserves the autonomy of the tax court and is compatible with **Articles 3, 53, 102 and 111 of the Constitution**, while also avoiding an unjustified restriction of the fiscal evidentiary system.

Main proceedings

The Second Instance Tax Court of Piedmont (*Corte di giustizia tributaria di secondo grado*, or "CGT of Piedmont") and the First Instance Tax Court of Rome (*Corte di giustizia tributaria di primo grado*, or "CGT of Rome"), collectively the "**referring courts**", challenged Article 21-*bis* of Legislative Decree No 74/2000 (the "**challenged provision**"), which gives binding effect to final criminal acquittals in tax proceedings where "the fact did not take place" or "the defendant did not commit it".

The underlying tax dispute concerned the alleged bogus establishment of a company's tax residence abroad ("*esterovestizione*") of a Swiss company, said to have been used to avoid Italian taxation. The referring courts considered that a final criminal acquittal would require the tax assessments to be annulled automatically.

The referring courts doubted of the constitutionality of the challenged provisions.

Complaints

The referring courts argued that the challenged provisions breached **Article 24 of the Italian Constitution (IC)** because the Inland Revenue Agency (*Agenzia delle entrate*) would be bound by a criminal judgment despite not being able to fully defend the tax claim in the criminal trial (breaching the **right to defence**). They also alleged breach of **Article 3 IC** because – unlike Article 652 of the Code of Criminal Procedure – the challenged provision does not require that the injured party has intervened in the criminal proceedings as a civil claimant or has been placed in a position to do so before the acquittal (thus breaching the **principle of reasonableness**). They also referred to **Article 97** (**Efficiency and impartiality of the public administration**).

The CGT of Rome raised three separate challenges. First of all, under **Article 3** and **53** (**Ability-to-pay principle**) **IC**, it claimed that granting an acquitted taxpayer automatic judicial annulment of the notice of tax assessment or the tax collection notice, even when they exhibit an ability to pay, creates unequal treatment and undermines the duty of solidarity to contribute to public expenditure. Further, under **Article 102(1)** (**Judicial proceedings are exercised by ordinary judges**) and **Article 111(1)** (**Jurisdiction is implemented through due process**) **IC**, the CGT of Rome stated that the provision entirely deprives the tax court of any power to assess the findings contained in the criminal acquittal. Finally, under **Article 111(1) and (2)** (**Adversarial proceedings and right to be informed of the charges**) in connection with **Article 24 IC**, according to the referring court the provision undermines equality of arms: the taxpayer can rely on a criminal acquittal in tax proceedings, whereas the tax authority cannot give equivalent effect to a criminal conviction.

Decision of the Court

The Constitutional Court (the "**Court**") declared the challenge under **Article 97 IC** inadmissible, for the referring courts' failure to explain it. It rejected, on the merits, the challenges under **Articles 3, 24, 53, 102(1), 111(1) and 111(2) IC**.

Reasons for the decision

The Court declared the **challenge under Article 97 IC inadmissible**. Both referring courts mentioned Article 97 but failed to explain why the provision was relevant or how good administration was impaired.

The Court reconstructed the history of the relationship between criminal and tax proceedings. It contrasts with the older, authoritarian model of the precedence of tax proceedings,[1] under which the criminal court was effectively bound by tax decision, with later constitutional case law rejecting that model.[2] The system then moved toward the full dual track model (*doppio binario pieno*), where criminal and tax proceedings are autonomous, although this created risks of inconsistency and duplicate burdens for the taxpayer.

The full autonomy of criminal and tax proceedings produced practical difficulties: taxpayers acquitted after lengthy criminal proceedings might still have to await the conclusion of parallel tax litigation, and the two courts could reach conflicting conclusions on the same facts. The challenged

[1] "*Pregiudizialità tributaria*": the requirement that tax assessment be finally determined before criminal proceedings may continue.
[2] Culminating in Constitutional Court, Judgment No 88/1982.

provision therefore gives binding effect in tax proceedings to final acquittals based on the non-existence of the act or on the defendant not having committed it. In doing so, it pursues **legal protection and compliance with the *ne bis in idem* principle**.[3]

The provision also reflects the broader shift from an authoritarian relationship between the tax administration and taxpayers towards **cooperation and enhanced evidentiary safeguards**. This approach treats taxation as part of the constitutional covenant (financing civil and social rights) rather than as an expression of taxpayer subjection, whose historically conflictual character has helped foster tax evasion.

The **challenge under Article 24 IC was rejected**. The referring courts had argued that the Inland Revenue Agency's right of defence was infringed because it could not intervene in criminal proceedings to protect the State's fiscal interest directly, but only to claim damages arising from tax evasion. The Court rejected that premise. It must first be clarified that criminal tax offences are not concerned with the fiscal interest as such, but are instead aimed at safeguarding the proper fulfilment of tax obligations and duties. Those obligations and duties are themselves an expression of the mandatory duty of solidarity to contribute to public expenditure under Articles 2 and 53 IC — a duty compromised by tax evasion. The public prosecutor pursues that public interest in criminal proceedings and is supported by the Revenue Police (*Guardia di Finanza*).

The Court also stressed that the 2024 reform strengthened cooperation between prosecutors and the Inland Revenue Agency, requiring exchanges of information when tax-crime proceedings are brought.[4] More generally, criminal proceedings for tax offences are now closely linked to the recovery of the evaded tax: confiscation, non-punishability, mitigating circumstances, and plea bargaining all depend in various ways on settlement of the tax debt. The Inland Revenue Agency may also participate as a civil claimant for damages and, as an injured party, may file submissions and indicate evidence. **Therefore, the tax claim is not left unprotected in criminal proceedings**.

The challenge under Article 3 IC based on comparison with Article 652 of the Code of Criminal Procedure was also rejected.[5] The Court held that the comparison was unpersuasive. Article 652 of the Code of Criminal Procedure concerns private injured parties seeking restitution or damages, who cannot be bound by a criminal judgment delivered in proceedings in which they did not participate. By contrast, the challenged provision concerns the taxpayer's position following a criminal acquittal on the same material facts.

The Court also **rejected the argument that the challenged provision is unequal because it favours only the taxpayer, not the Inland Revenue Agency, thus breaching Articles 24 and 111 IC**. The asymmetry is justified by the legislative delegation, which specifically required binding effect for final acquittals, not convictions. The Court also noted the relevance of fair trial concerns and referred

[3] Constitutional Court, Judgment No 149/2022.

[4] Legislative Decree No 87/2024, Article 129, adding paragraph 3-*quarter* of the implementing provisions of the Code of Criminal Procedure.

[5] Article 625(1) of the Code of Criminal Procedure sets forth that a final criminal acquittal is binding on civil or administrative proceedings for restitution and damages for loss only if the injured party has intervened in the criminal proceedings as a civil claimant or has been placed in a position to do so.

to European Court of Human Rights (**ECtHR**) case law, pursuant to which ignoring a criminal acquittal in later tax proceedings was found problematic.[6]

The Court rejected the remaining challenges (the first under Articles 3 and 53 IC, the second under Articles 102(1), 111(1) and 111(2)) **by giving the challenged provision a constitutionally oriented interpretation**. As a rule, a final criminal acquittal stating that the fact did not take place or that the defendant did not commit it is binding in the parallel tax proceedings when both courts are assessing the same material facts. This also applies where the acquittal reflects insufficient or contradictory evidence, since criminal procedure uses the higher standard of proof beyond a reasonable doubt and the challenged provision seeks to promote consistency and legal certainty between the two proceedings.

There are, however, two important exceptions. First, where tax law relies on **legal presumptions** that cannot be used in criminal proceedings, the acquittal binds the tax court only if the criminal court positively established that the relevant fact did not take place, including by accepting the taxpayer's evidence rebutting the presumption. An acquittal based merely on the prosecution's failure to prove the case beyond a reasonable doubt is insufficient. Second, the challenged provision does not apply where the criminal acquittal resulted exclusively from evidence being inadmissible under criminal procedural rules, if that evidence may lawfully be used in tax proceedings. In those cases, the tax court retains the power to assess the evidence under tax law rules. In conclusion, the challenged provision must be interpreted as meaning that a final criminal acquittal is generally binding in tax proceedings, subject to two exceptions: (a) where the tax case involves legal presumptions, unless the criminal court positively establishes that the relevant fact did not take place; and (b) where the acquittal results solely from evidence being inadmissible in the criminal proceedings, although that evidence may lawfully be used in the tax proceedings.

This interpretation preserves the autonomy and evidentiary specificities of tax proceedings and complies with **Articles 3, 53, 102 and 111 IC**.

Type of proceedings	Constitutional review by referral order
President of the Court	Giovanni Amoroso
Judge rapporteur	Luca Antonini
Composition of the Court	Giovanni Amoroso (President), Francesco Viganò, Luca Antonini, Stefano Petitti, Angelo Buscema, Emanuela Navarretta, Maria Rosaria San Giorgio, Filippo Patroni Griffi, Marco D'Alberti, Giovanni Pitruzzella, Antonella Sciarrone Alibrandi, Massimo Luciani, Maria

[6] ECtHR, judgment of 22 October 2024, *Tasoncom v. Moldovia* (Application No 59627/15).

	Alessandra Sandulli, Roberto Nicola Cassinelli, Francesco Saverio Marini
Delivery of the judgment	13 April 2026
Challenged provisions	Article 21-*bis* of Legislative Decree No 74/2000 (New rules on offences relating to income tax and value added tax, pursuant to Article 9 of Law No 205/1999), introduced by Article 1(1)(m) of Legislative Decree No 87/2024 (Reform of the tax penalty system, pursuant to Article 20 of Law No 111/2023)