

Italian Constitutional Court

Legal summary

Judgment No 71/2026

ECLI:IT:COST:2026:71

THE COURT INVALIDATED COMPULSORY WAIVERS BY CONFIRMED HONORARY JUDGES AS INDIRECTLY RESTRICTING ACCESS TO JUSTICE UNDER CONSTITUTIONAL AND EU LAW

The Constitutional Court declared unconstitutional the norm requiring confirmed honorary judges to waive rights arising from their previous service, in particular paid annual leave and pension and social-security entitlements guaranteed by EU law.

The decisive parameters were Articles 24 and 117(1) of the Constitution, read together with Article 47 of EU Charter of Fundamental Rights as an “integrated constitutional parameter”. **Requiring honorary judges to choose between continuing in office and enforcing accrued rights disproportionately restricted access to justice and effective judicial protection.** The formal possibility of refusing confirmation did not make the waiver genuinely voluntary.

The Court nevertheless reaffirmed that honorary and professional judges need not enjoy identical remuneration or status, given their different recruitment and functions under Article 106 of the Constitution. Parliament may determine the proportionate financial value of the accrued rights but cannot abolish them.

Main proceedings

The Italian Council of State (the “**referring court**”) referred to the Constitutional Court (the “**Court**”) a challenge concerning Article 29(5) of Legislative Decree No 116/2017 ¹ (the “**challenged provision**”). The challenged provision requires that honorary judges who wish to remain in office until the age of seventy to undergo a confirmation procedure, and waive all claims arising from their previous service.

The main proceedings were brought by honorary judges seeking treatment comparable to that of professional judges, including proportionate remuneration, payment for untaken leave and compensation for the abusive renewal of fixed-term appointments. In its 2024 *Peigli* judgment, the Court of Justice of the European Union (the “**CJEU**”) had already ruled that European Union (EU) law precludes denying comparable honorary judges certain employment protections and allowing successive renewals without effective measures against abuse.²

¹ Legislative-decree No 116/2017, concerning comprehensive reform of the honorary judiciary and other provisions concerning justices of the peace, together with transitional rules governing serving honorary judges, pursuant to Law No 57 of 28 April 2016.

² CJEU, judgment of 27 June 2024, Case C-41/24, *Peigli*.

Two appellants participated successfully in the confirmation procedure, thereby preserving their future positions but automatically losing their pending claims. The referring court considered that this mechanism forces honorary judges to choose between continued employment and judicial protection of accrued rights.

The referring court was doubtful of the compliance of the challenged provision with the Italian Constitution (IC).

Complaints

According to the referring court, the challenged provision violated **Articles 24 (Right to defence) and 111 (Right to fair trial) IC**. The honorary judges were **litigants asserting accrued rights**, not judges exercising judicial functions. Article 24 IC protected their ability to pursue those claims, while Article 111 IC protected the fairness and equality of the pending proceedings; conditioning confirmation in office on abandoning the claims impaired both guarantees

It also breached Article **117(1) (Compliance with international obligations) IC**, in conjunction with **Article 47 of the EU Charter of Fundamental Rights (CFREU) and Article 6 of the European Convention on Human Rights (ECHR)**, which **guarantee effective judicial protection and a fair hearing**.

Decision of the Court

The Court declared the challenged provision incompatible with **Article 24 IC and Article 47 CFREU (through 117(1) IC)**. It considered that the complaints under Article 111 IC and Article 6 ECHR needed no further examination.

Reasons for the decision

The challenged provision required long-serving honorary judges who successfully completed the statutory confirmation procedure, thereby securing continuity in office, to waive all claims arising from their previous honorary appointments.

The Court treated Article 24 IC and Article 47 CFREU as an integrated constitutional parameter. In line with the approach developed since Judgment No [269/2017](#),³ it explained that constitutional rights and EU fundamental rights form part of a single “block of constitutionality” (“*blocco di costituzionalità*”). In simple terms, Italian law and EU law were once treated as largely separate systems. Since Judgment No 269/2017, the Court has recognised that they increasingly overlap, especially in protecting fundamental rights, and may therefore assess national legislation under both the Italian Constitution and the EU Charter.

Where national legislation conflicts with both EU law and the Constitution, ordinary courts have three options: they may disapply it, request a preliminary ruling under Article 267 of the Treaty of the Functioning of the European Union (**TFEU**), or raise a constitutional question. These remedies are complementary rather than mutually exclusive: constitutional review must not restrict ordinary

³ Constitutional Court, Judgment No 269/2017.

courts' powers, as confirmed in *Melki and Abdeli, RS*,⁴ and Judgment No [210/2024](#).⁵ Constitutional review is particularly useful where uncertainty, persistent administrative practice, systemic consequences or constitutional balancing call for an *erga omnes* ruling.

Although the principle of conferral under Article 4(1) of the Treaty of the European Union (TEU) preserves distinct competences, national and EU systems are increasingly integrated and interdependent. Loyal cooperation under Article 4(3) TEU therefore requires dialogue among ordinary courts, the Constitutional Court and the CJEU. Where EU law is clear, the Constitutional Court may apply it directly; where doubts remain, it must seek guidance from the CJEU, while retaining exceptional recourse to constitutional counter-limits ("*controlimiti*"). The Court considered a further reference unnecessary because the relevant EU-law questions had already been answered by the CJEU.

The Court reaffirmed that honorary and professional judges cannot have identical legal and economic status. Under Article 106 IC,⁶ professional judges are recruited through competitive examination, serve on an exclusive basis and may exercise judicial functions without being confined in advance to specific subject matters. Honorary judges traditionally perform limited, non-exclusive and less complex functions. As recognised in the Court's case law, these differences justify distinct remuneration and employment conditions.⁷ Equal treatment therefore does not require honorary judges to receive the same pay and enjoy the same legal status as professional judges.

However, the practical employment of honorary judges has progressively departed from this constitutional model. Their functions have expanded, their appointments have been repeatedly renewed and their work has frequently met permanent needs of the judicial system. The CJEU consequently held in *UX*,⁸ *PG*⁹ and *Peigli*¹⁰ that honorary judges providing genuine services for remuneration may qualify as workers under EU law. Where their situation is comparable to that of professional judges, their complete exclusion from paid leave and pension or social security protection is incompatible with Article 7 of Directive 2003/88¹¹ and the Framework Agreements on fixed-term and part-time work.¹² EU law also requires Member States to implement effective and deterrent measures against the abusive renewal of fixed-term relationships.

The decisive authority was *Pelavi*.¹³ It established that stabilisation may itself constitute an effective remedy for the misuse of successive fixed-term appointments, and need not necessarily be

⁴ CJEU, Grand Chamber, judgments of 22 February 2022 in Case C-430/21, *RS*, and 22 June 2010 in Joined Cases C-188/10 and C-189/10, *Melki and Abdeli*.

⁵ Constitutional Court, Judgment No 210/2024.

⁶ Which reads, in the relevant part: "Judges are appointed through competitive examinations. The law on the regulations of the Judiciary allows for the appointment, also by election, of honorary judges for all the functions performed by single judges."

⁷ Constitutional Court, Judgments Nos [41/2021](#), 267/2020, and 60/2006.

⁸ CJEU, judgment of 16 July 2020 in Case C-658/18, *UX*.

⁹ CJEU, judgment of 7 of April 2022 in Case C-236/20, *PG*.

¹⁰ CJEU, *Peigli*.

¹¹ Directive 2003/88/EC of the European Parliament and of the Council of 4 July 2003 concerning certain aspects of the organisation of working time.

¹² Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

¹³ CJEU, judgment of 4 September 2025 in Case C-253/24, *Pelavi*.

accompanied by additional compensation.¹⁴ Stabilisation cannot, however, be made conditional upon renunciation of separate substantive rights conferred by EU law, particularly paid annual leave under Article 7 of Directive 2003/88, Article 31(2) CFREU and Clause 4 of the Framework Agreement on fixed-term work.

This distinction formed the core of the Constitutional Court's reasoning. The legislature was entitled to select stabilisation as the remedy for abusive renewals, although EU law did not require that particular solution. It could also have regulated the financial value of the judges' accrued rights, taking account of their different responsibilities, less complex work, non-exclusive service, remuneration already received and the overall financial consequences. Such differentiation would have been justified by the "objective grounds" recognised in the EU Framework Agreements and in *UX*, *PG* and *Peigli*.

The challenged provision, however, did not merely determine or limit the financial content of those rights. **It required their total renunciation and prevented honorary judges from bringing, or continuing, proceedings to enforce them.** Stabilisation was thus used to deprive them of rights independent of the abuse that stabilisation was intended to remedy. **This was incompatible with Article 24 IC, under which access to a court is a supreme principle closely connected to democracy itself, and with the right to an effective remedy under Article 47 CFREU.**

Moreover, the violation was not cured by the judges' formal freedom to refuse stabilisation and continue litigation. **In substance, they were required to choose between retaining their professional position and enforcing rights guaranteed by EU law.** The Court considered that choice excessively restrictive and disproportionate. The case was also distinguishable from the Court's prior ruling No [187/2016](#)¹⁵ concerning school staff, where compensation only addressed the harm claimed, namely the consequences of precarious employment. Here, stabilisation could remedy abusive renewals but not substitute payment for accrued leave and pension or social security entitlements.

The Court therefore declared the challenged provision unconstitutional insofar as it required waiver of EU law rights to paid leave and pension and social security entitlements as a condition for confirmation. The challenged provision violated Articles 24 and 117(1) IC, the latter in conjunction with Article 47 CFREU. The challenges under Article 111 IC and Article 6 ECHR were consequently moot.

Parliament must determine the financial value of the accrued rights, reflecting the nature, quantity and non-exclusive character of the work. Pending legislation, ordinary courts must quantify them without equating honorary judges' remuneration with that of professional judges.

Type of proceedings	Constitutional review by referral order
President of the Court	Giovanni Amoroso

¹⁴ CJEU, judgment of 8 May 2019 in Case C-494/17, *Rossato and Conservatorio di Musica F.A. Bonporti*.

¹⁵ Constitutional court, Judgment No [187/2016](#).

Judge rapporteur	Giovanni Pitruzzella
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, Maria Alessandra Sandulli, Roberto Nicola Cassinelli, Francesco Saverio Marini
Delivery of the judgment	12 May 2026
Challenged provisions	Article 29(5) of Legislative Decree No 116/2017, as replaced by Article 1, paragraph 629 (a) of Law No 234/2021.