JUDGMENT NO. 41 YEAR 2021

In this case, the Court heard two referral orders from the Supreme Court of Cassation questioning the constitutionality of Articles 62 to 72 of Decree-Law No. 69 of 21 June 2013 insofar as they provide that a certain category of honorary judges, i.e. auxiliary appellate judges, are to be permanent members of Court of appeal panels, an eventuality that in the opinion of the referring court violated Articles 102 and 106 of the Constitution limiting the role of honorary judges to the exercise of judicial functions vested in single-member courts as opposed to multi-member courts.

In ruling the questions to be well-founded the Court examined the history of the various reforms of the honorary judiciary that had taken place in the legal system over the years and its own case law. Although a literal interpretation of the Constitution limited honorary judges to performing the functions of "single judges" in the broad sense of single-member court judges, it had been held that legislation allowing honorary judges to perform the functions of multi-member court judges on an exceptional and temporary basis in first instance proceedings was constitutional. However, under the challenged provisions, auxiliary appellate judges were appointed on a permanent rather than a temporary basis to court of appeal panels and would be ruling not at first instance but on appeal.

Therefore, the Court found that the challenged provisions had gone too far in expanding the functions that could be performed by honorary judges, unconstitutionality that was not avoided by the fact that the offending legislation contained provisions on incompatibility, abstention and recusal so as to safeguard the independence of the judges concerned.

That said, the Court was conscious of the undeniable impact that the decision of unconstitutionality would have on the administration of justice in light of the key contribution of auxiliary judges in tackling backlogs at appeal level. One could not ignore other constitutional values of equal if not higher rank, such as the administration of justice, which would be at risk if the effects of the declaration of unconstitutionality were to run retroactively from the date that the challenged provisions entered into force. A balance had to be struck so as to afford the legislator time to remedy the situation, the deadline for which the Court set as 31 October 2025 coinciding with the timeframe already established by law for completing the reorganisation of the role and functions of the honorary judiciary. Auxiliary appellate judges could operate until that date subject to complying with all of the other provisions guaranteeing the independence and impartiality of those honorary judges.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 62 to 72 of Decree-Law No. 69 of 21 June 2013 (Urgent provisions for the revival of the economy), converted, with amendments, into Law No. 98 of 9 August 2013, initiated by the Supreme Court of Cassation with two referral orders of 9 December 2019, registered respectively as Nos. 84 and 96 in the Register of Referral Orders 2020 and published in the Official Journal of the Republic Nos. 28 and 34, first special series 2020.

Having regard to the entries of appearance filed by Daniele Vetrano, Ernesta D'Alessio and Giuliana D'Alessio, in their own right and in their capacity as heirs of Paolina Orlandi, and by UnipolSai Assicurazioni S.p.A., as well as the interventions filed by the President of the Council of Ministers and those, out of time, filed by Paola Ambruosi and others;
after hearing Judge Rapporteur Giovanni Amoroso at the public hearing on 13 January 2021;
after hearing Counsel Carlo Testa for Daniele Vetrano, Ernesta D'Alessio and Giuliana D'Alessio, in their own right and in their capacity as heirs of Paolina Orlandi, Counsel Giovanni Gori for UnipolSai Assicurazioni S.p.A., and State Counsel Francesco Sclafani for the President of the Council of Ministers, the latter connected remotely in accordance with point 1) of the Decree of the President of the Court of 30 October 2020;
after deliberation in chambers on 25 January 2021.

[omitted]

Conclusions on points of law

1.– By means of referral order of 9 December 2019 (Referral Order No. 84 of 2020), the Supreme Court of Cassation has raised, with reference to Articles 106(1), 106(2) and 102(1) of the Constitution, questions as to the constitutionality of Articles 62(1), 65(1), 65(4), 66, 67(1), 67(2), 68(1) and 72(1) of Decree-Law No. 69 of 21 June 2013 (Urgent provisions for the revival of the economy), converted with amendments into Law No. 98 of 9 August 2013, insofar as those provisions grant auxiliary appellate judges [*giudici ausiliari di appello*], as honorary judges, the status of members of panels of court of appeal divisions.
The referring court alleges that the challenged provisions – which establish and regulate the new figure of "auxiliary judges" [*giudici ausiliari*] – infringe Article 106(2) of the Constitution, which provides that honorary judges may be appointed only for all of the functions performed by single judges. That is because, contrary to constitutional case law holding that the participation of honorary judges on panels is lawful only on a temporary basis or in exceptional circumstances, auxiliary appellate judges are appointed structurally to panels on which they perform judicial functions, being required to hear and decide, including as judge rapporteurs, at least 90 civil cases per year, without any statutory limit being laid down as to the subject matter or value of the cases to be heard, except for those heard by the court of appeal ruling as a sole instance court.
The referral order emphasises that the doubt as to constitutionality also arises with reference to Articles 106(1) and 102(1) of the Constitution, from which it is clear that the Constituent Assembly made an inescapable decision to entrust the exercise of judicial functions in general to professional career judges.
2.– By means of referral order of 9 December 2019 (Referral Order No. 96 of 2020), the Supreme Court of Cassation has raised, with reference to Article 106(2) of the Constitution, questions as to the constitutionality of Articles 62 to 72 of the same Decree-Law No. 69 of 2013, as converted, insofar as, taken as a whole, those articles provide for and regulate the assignment to honorary judges, as court of appeal auxiliaries, of the functions of a judge exercisable as a member of a panel instead of those exercisable as a "single judge", the sole ones permitted by the cited constitutional provisions.
The referring court notes that assigning honorary judges the functions of a judge exercisable as a member of a panel of an ordinary district court [*tribunale ordinario*] is considered lawful in constitutional case law only if there are temporary needs or exceptional situations and without affecting the status of the judge.

The referring court submits that the challenged provisions exceed the limits of the functions that may be performed by the honorary judiciary, including on the basis of the principles set out in constitutional case law, in so far as auxiliary judges have been incardinated within a judicial office, such as the court of appeal, which always decides in panels and normally at the appeal stage, with the result that they perform functions which are entirely comparable to those of court of appeal judges.

3.– Preliminarily, consideration should be given to the document labelled "intervention/brief", by which, on 11 January 2021, in the run-up to the public hearing, a number of auxiliary appellate judges expressed their views on the questions as to constitutionality raised by the Supreme Court of Cassation's two referral orders. That document does not constitute an intervention, which would in any event be inadmissible in a number of respects, but an opinion in the nature of an *amicus curiae* brief.

As such, the opinion is equally inadmissible because, leaving aside any other reason, it was filed after the deadline of twenty days from the publication of the referral orders laid down in Article 4-*ter*(1) of the Supplementary rules for proceedings before the Constitutional Court.

4.– The questions raised by the two referral orders largely overlap both as regards the challenged provisions and the constitutional provisions relied upon, and are in any event objectively connected.

Therefore, the two incidental proceedings must be joined.

5.– Preliminarily, it must be stated that the conditions for the admissibility of the questions as to constitutionality raised by the two referral orders are met, in terms of relevance.

It is undisputed that the challenged provisions condition the correctness of the composition of the court, within the meaning of Article 158 of the Code of Civil Procedure, for the decisions challenged in the main proceedings, in that they were delivered by a court of appeal panel that included an auxiliary judge (amongst many, Supreme Court of Cassation, Third Civil Division, Judgment No. 19741 of 19 September 2014); correctness challenged by the appellants in both sets of Supreme Court of Cassation proceedings through a separate ground of appeal.

The fact that the doubts as to constitutionality are not manifestly unfounded is amply and precisely argued in the referral orders.

The doubts as to the constitutionality raised by the Supreme Court of Cassation are essentially based on the fact that the permanent assignment to court of appeal panels of the auxiliary judges referred to in Articles 62 *et seq.* of Decree-Law No. 69 of 2013, as converted, who fall within the category of honorary judges, on the basis of a staffing plan until all positions are filled, could be in conflict, above all, with Article 106(2) of the Constitution. A provision which, also in the light of constitutional case law, would permit honorary judges to sit on panels solely on a temporary basis and to deal with exceptional situations.

Moreover, the order registered as Referral Order No. 84 of 2020 stresses that the doubts as to constitutionality are all the more corroborated if one takes account of other provisions of the Constitution, such as Articles 106(1) and 102(1), which reflect a clear choice for entrusting the exercise of judicial functions to professional judges only. In essence, Article 106(2) of the Constitution cannot be interpreted as sanctioning the assignment to honorary judges of all the functions that a career judge may perform as such, including those of membership of a panel, without infringing the limits within which

the Constitution has exceptionally allowed honorary judges to play a role in the exercise of judicial functions.

6.– Before examining the questions, it is worthwhile to briefly outline the relevant legal framework.

With the stated aim of reducing the duration of civil proceedings at court of appeal level, in order to achieve the objectives set out in the management programmes referred to in Article 37 of Decree-Law No. 98 of 6 July 2011 (Urgent provisions for financial stabilisation), converted, with amendments, into Law No. 111 of 15 July 2011, the challenged provisions have created the unprecedented figure of auxiliary appellate judges, whose task is to augment the panels and write a certain number of decisions for each year.

In particular, Article 63 of Decree-Law No. 69 of 2013 provides for the appointment, by decree of the Minister of Justice, after deliberation of the High Council of the Judiciary [*Consiglio superiore della magistratura*] (CSM), of a total maximum number – originally set at 400 – of auxiliary judges, selected from among retired judges and State counsel, professors, university researchers and lawyers, on the basis of certain qualifications, amongst which priority – on the basis of amendments made at the time of conversion into law – is to be afforded to lawyers, with preference given to younger candidates, provided always that they have been enrolled for at least five years.

Auxiliary judges are distributed among the various courts of appeal operating at national level, on the basis of a staffing plan determined by decree of the Minister of Justice, after consulting the CSM, specifying the posts available for each court and within the maximum limit of 40 per court (Article 65(1) of the aforementioned decree). Auxiliary judges are appointed for five years, a term that can be extended once for a further five years, following the procedure laid down for appointment (Articles 67(1) and 67 (2) of the decree).

Therefore, the ‘natural’ destination of auxiliary judges is membership of court of appeal panels until all available positions are filled.

The only legal limitation on what those judges do is laid down in Article 62(2) of Decree-Law No. 69 of 2013, whereby they may not be called upon to sit on panels in which the court of appeal rules as a sole instance court, except in proceedings for obtaining fair compensation in the event of a breach of the right to a trial within a reasonable time provided for in Law No. 89 of 24 March 2001 (Provision of fair compensation in the event of a breach of the right to a trial within a reasonable time and amendment of Article 375 of the Code of Civil Procedure).

Article 68(1) of that same Decree-Law No. 69 of 2013 also provides that career judges must constitute the majority of the panel, of which only one auxiliary judge may be a member.

In order to preserve their independence, Article 69 of the said decree establishes that auxiliary appellate judges may not work in the district in which they are enrolled at the time of their appointment or have been enrolled in the previous five years and are obliged to abstain – and thus may be recused if they do not do so – not solely in the cases governed by Article 51 of the Code of Civil Procedure but also in those in which they have been associated or otherwise connected (through their spouse, relatives or other persons) with the firm of which one of the parties’ defence counsel has been a member or is a member. Auxiliary appellate judges must also abstain if they have previously represented, as a lawyer, one of the parties to the proceedings or their legal counsel, or have acted as a

notary public for one of the parties to the proceedings or their legal counsel (Article 70 of Decree-Law No. 69 of 2013).
In addition to the possibility of a five-year extension of their term of office, auxiliary judges are subject to annual confirmation for the purpose of constant verification of their work (Article 71 of Decree-Law No. 69 of 2013).
Finally, Article 72(1) of Decree-Law No. 69 of 2013 expressly provides that "auxiliary judges shall acquire the legal status of honorary judges".
7.– On a more general level, it is also appropriate to briefly examine, for the purposes of legally framing the issues raised by the referral orders, the key stages of the reforms of the honorary judiciary in our judicial system.
The first honorary judges, appointed after the unification of Italy by Royal Decree No. 2626 of 6 December 1865 on the organisation of the judiciary, were the honorary vice-praetor [*vice pretore onorario*] and the judge-conciliator [*giudice conciliatore*].
In particular, the honorary vice-praetor was an honorary official outside the ranks of the judiciary, originally empowered solely to attempt to resolve disputes through conciliation, who was subsequently granted jurisdiction to decide contentious matters in the civil and criminal arenas limited to the administration of justice involving so-called minor matters. Already at that time, the characteristic function of this type of honorary judge – recruited from among law graduates who had reached the age of 21, notaries and practising attorneys appointed by royal decree – was to assist the praetor [*pretore*] in the exercise of the latter's judicial functions.
Judge-conciliators were appointed by the King acting on the proposal of municipal councils from among citizens who, irrespective of their legal qualifications, were at least 25 years old and resident in the municipality. The appointment, which lasted three years, was an honorary position and without remuneration, but was useful for the purposes of subsequent access to public employment. Originally, judge-conciliators could, if unable to arrive at an amicable settlement of the dispute between the parties, decide the case themselves, within a very limited sphere of jurisdiction that was, however, subsequently extended.
Over the years, judge-conciliators provided significant assistance to professional judges, who thus came to be entrusted with a limited percentage of disputes, to the extent that, from the end of the 19th century and for the first few decades of the 20th century, judge-conciliators resolved a very high percentage of disputes in civil matters (with peaks of over 80 per cent).
Therefore, at the time of the drafting of the Constitution, these two 'figures' of honorary judges (judge-conciliator and honorary vice-praetor) were both included with the realm of single-member courts whereas the district courts were exclusively multi-member courts sitting in panels and staffed by career judges, in substantial continuity with the previous set-up.
Even after the entry into force of the Constitution, a judge-conciliator continued not to be required to possess any particular technical-legal qualifications and, established in each municipality, was appointed by the CSM from among the Italian citizens residing in the municipality concerned who were suited to worthily performing, by virtue of their independence, character and prestige, the functions of honorary judge. The term of office was three years, renewable. The jurisdiction of judge-conciliators was limited to small claims in the civil field and included some matters considered to be trivial.
The figure of the judge-conciliator – which had carried with it considerable dignity and importance between the end of the 19th and the beginning of the 20th century, both

because of how widespread judge-conciliators were throughout the country and because of the volume of business handled – gradually diminished in the decades following the entry into force of the Constitution due to a number of factors. A progressive decline that ended up inverting the proportion of matters dealt with by the honorary and the career judiciary in civil litigation at first instance, amidst a growing demand for access to justice. The lack of confidence in judge-conciliators, not least because of the difficulties encountered by municipalities in meeting operating costs, led the legislator – despite the attempt made in Law No. 399 of 30 July 1984 (Increase in the limits of the jurisdiction of judge-conciliators and praetors) to revitalise the role through expanding the jurisdiction of the judge-conciliator by value and empowering them to decide according to equity – to abolish the role and establish the figure of the justice of the peace [*giudice di pace*] as the new honorary judge for minor disputes. That change was brought about by Law No. 374 of 21 November 1991 (Establishment of justices of the peace).

8.– The backlog that had built up over time in the ranks of professional judges, partly as a result of the gradual reduction in the work of judge-conciliators and, subsequently, as a result of the delayed implementation of the aforementioned law establishing justices of the peace, gave rise to a series of more limited measures aimed at reducing the number of cases pending before the courts. Those measures were implemented, in particular, by Article 90(5) of Law No. 353 of 26 November 1990 (Urgent measures for civil proceedings), as amended by Article 9 of Decree-Law No. 432 of 18 October 1995 (Urgent measures for civil proceedings and on the transitional provisions of Law No. 353 of 26 November 1990, relating to the same proceedings), converted, with amendments, into Law No. 534 of 20 December 1995, and by Law No. 276 of 22 July 1997 (Provisions for the resolution of pending civil litigation: appointment of additional honorary judges and the setting up of decentralised divisions in the ordinary district courts), which thus established a new type of honorary judge, the "additional honorary judge" [*giudice onorario aggregato*] (GOA).

Subsequently, at the end of the 1990s, the legislator made profound changes to the structure of the courts of first instance. Legislative Decree No. 51 of 19 February 1998 (Rules on the establishment of single-member first-instance courts) abolished the local courts presided over by the praetors [*preture*] and transferred their jurisdiction to the district courts. This was accompanied by the concomitant amendment of Article 48 of the Royal Decree on the Organisation of the Judiciary, which, together with certain provisions inserted in the Code of Civil Procedure (Articles 50-*bis* to 50-*quater*), established the general rule, albeit not without the exceptions expressly laid down by law, that at first instance district courts would sit as single-member courts.

The same legislation that established single-member courts at first instance also amended Royal Decree No. 12 of 30 January 1941 (Organisation of the judiciary) by replacing honorary vice-praetors, who had worked alongside praetors, and by introducing the figures of district court honorary judge [*giudice onorario di tribunale*] (GOT) for adjudicatory functions and honorary deputy prosecutor [*vice procuratore onorario*] (VPO) for prosecutorial functions.

Article 43-*bis* of the Royal Decree on the Organisation of the Judiciary – later repealed in the 2016 reform of the honorary judiciary (see *infra*) – provided as follows: "Career and honorary judges shall perform at the ordinary district court the judicial work assigned to them by the president of the district court or, if the district court is constituted in divisions, by the president or other judge heading the division. Honorary judges may not hold court hearings except in cases where ordinary judges are prevented from attending

or are absent. In the assignment provided for in the first paragraph, the criterion to be followed is that honorary judges shall not be entrusted with: a) in civil matters, the handling of interim proceedings and possessory actions, except for applications made during the trial on the merits or in actions in defence of rights of ownership of real property; b) in criminal matters, the functions of judge for preliminary investigations and judge for preliminary hearings, as well as the handling of proceedings other than those provided for in Article 550 of the Code of Criminal Procedure".

This rule therefore assigned a district court honorary judge the same ancillary role previously entrusted to an honorary vice-praetor, confirming and apparently extending – since the expression "as a rule" in the (simultaneously repealed) Article 34 of the Royal Decree on the Organisation of the Judiciary was not reproduced – the prohibition on holding hearings except in cases where ordinary judges were absent or prevented from attending.

Moreover, a district court honorary judge could operate in both civil and criminal matters within the limits of the jurisdiction vested in the district court sitting as a single-member court. Additionally, especially in recent years, the need to tackle a substantial backlog of cases and to decide civil proceedings within a reasonable timeframe (including in order to avoid substantial public expenditure due to numerous judgments for fair compensation for the unreasonable duration of trials) had ended up facilitating – also by virtue of the circulars issued by the CSM on the formation of tables for judicial offices – both the granting of 'independent' roles to district court honorary judges and, as regards what is more relevant here, their deputising for professional judges even on panels (Supreme Court of Cassation, Joint Civil Divisions, Judgment No. 12644 of 19 May 2008).

It should also be noted, from a separate point of view, that Article 245 of Legislative Decree No. 51 of 1998 had originally set a term of five years within which district court honorary judges would have to be unequivocally removed from the system, a deadline which at the time was considered appropriate for a comprehensive reform of the honorary judiciary in accordance with the principles set out in Article 106(2) of the Constitution, expressly referred to by the abovementioned provision. However, in spite of what that provision dictated, the various honorary judges in the judicial system continued to operate, from one extension to the next, until a final deadline was set at "no later than 31 May 2016", pending a comprehensive reform consistent with the above-mentioned constitutional provision.

9.– As a result also of the frequent claims made by honorary judges in connection with remuneration and social security, the legislator undertook a comprehensive reform of the honorary judiciary in Legislative Decree No. 116 of 13 July 2017 (Comprehensive reform of the honorary judiciary and other provisions on justices of the peace as well as transitional rules on honorary judges in service, pursuant to Law No. 57 of 28 April 2016), implementing the delegation of legislative power contained in Law No. 57 of 28 April 2016 (Delegation of power to the Government on the comprehensive reform of the honorary judiciary and other provisions on justices of the peace).

This reform has reduced the figures in the honorary judiciary at first instance to two, namely the honorary justice of the peace [*giudice onorario di pace*] for adjudicatory functions and the honorary deputy prosecutor [*vice procuratore onorario*] for prosecutorial functions. Honorary judges will have to be recruited by the local judicial councils on the basis of a selection process based on qualifications and the relevant rankings will be submitted for approval to the CSM, whose decision will then be followed by actual appointment by decree of the Minister of Justice.

The appointment lasts four years and may be renewed just once. It is not exclusive in the sense that it is compatible with other professional activities, to the extent that the honorary judge cannot be required to work more than two days a week.
The new "honorary justices of the peace" will be assigned to the offices of justices of the peace and will at the same time join the district court as members of that court's adjudicatory function alongside professional judges, with the possibility of exercising delegated judicial powers under the instructions and supervision of professional judges.
In that latter role, honorary judges are to be entrusted with tasks that are preparatory and instrumental (study, legal research in the scholarly literature, preparation of draft measures, assistance also in chambers: Article 10(10) of Legislative Decree No. 116 of 2017) to the exercise of judicial functions, which remain the preserve of professional judges. Professional judges may delegate honorary judges, with reference to specific civil proceedings, investigative and decision-making judicial powers concerning individual acts (adoption of measures "resolving simple and repetitive questions", provisional awards following non-contestation of the claim, hearing of witnesses, conciliation involving the parties and payment of fees to auxiliaries) including proceedings that fall within the remit of the district court sitting as a multi-member court "provided that they are not particularly complex" (Article 10(11)). In some cases (limited to "non-sensitive" matters and small claims) honorary judges may be empowered "to issue final measures" (Article 10(12)).
At the same time, the jurisdiction of justices of the peace in both civil and criminal matters has been redefined.
However, the aforementioned Legislative Decree No. 116 of 2017 has been the target of various criticisms, mainly concerning the situation of honorary judges already in service on the date of entry into force of the reform. With the aim of overcoming the relevant issues, a bill to amend the law was proposed by the Minister of Justice during 2019, which is currently making its way through the Parliament (Bill A. S. No. 1516) and whose wording has been unified with that of other bills (Bills Nos. 1438, 1555, 1582 and 1714). Moreover, in several respects, the entry into force of the reform has been postponed until 31 October 2025 (Article 32 of Legislative Decree No. 116 of 2017).
10.– It is within this regulatory context that the challenged articles 62 to 72 of Decree-Law No. 69 of 2013, as converted, fit. Those provisions have introduced the figure of auxiliary appellate judges into the mix of the honorary judiciary in order to tackle the backlog in civil matters at court of appeal level, as attested by the statistical data produced by the Government in the course of the parliamentary proceedings.
Auxiliary judges stand out, compared to the other honorary judges already known to our legal system, for the fact that they are permanently assigned to an office, such as the court of appeal, which always decides as a multi-member court and almost exclusively at the appeal stage. Hence the doubts as to constitutionality expressed in the referral orders.
As already mentioned, they are not appointed by competition, but by decree of the Minister of Justice after deliberation by the CSM, based on verification of the requirements prescribed by law (Articles 63 and 64 of Decree-Law No. 69 of 2013. They acquire "the legal status of honorary judges" (Article 72(1)) and are permanently assigned, for a period of five years which may be extended by another five years (Articles 67(1) and 67(2)), to a panel of judges exercising the relevant judicial functions. In the panel in which they are judge rapporteurs, they are called upon to decide at least ninety proceedings per year (Article 68(1)), without there being any limit – as to subject matter or value – in the civil proceedings that can be assigned to them (Article 62(1)), with the

exception solely of "proceedings in which the court of appeal rules as a sole instance court" (Article 62(2)). They are part of panels, in accordance with the staffing plan adopted in each court of appeal taking into account the pending and unassigned cases (Article 65(1)), commensurate with the need to facilitate the adjudication of civil proceedings, including those relating to labour and social security, consistent with the priorities identified annually by the presidents of the courts of appeal with the programmes provided for in the previously mentioned Article 37(1) of Decree-Law No. 98 of 2011, as converted.

The use of auxiliary judges at courts of appeal has also been extended by subsequent legislation.

Article 256 of Decree-Law No. 34 of 19 May 2020 (Urgent measures in the field of health, support for work and the economy, as well as social policies related to the COVID-19 epidemiological emergency), converted, with amendments, into Law No. 77 of 17 July 2020, has increased their number – which previously, as a result of Article 1(701) of Law No. 205 of 27 December 2017 (Budget of the State for the financial year 2018 and multi-year budget for 2018-2020) had been reduced to 350 – to 850 units and, at the same time provides that presidents of the court may assign them also to panels in criminal matters.

From a separate point of view, it is worth noting that Articles 1(961) to 1(981) of Law No. 205 of 2017 introduced a number of measures aimed at facilitating the adjudication of civil proceedings in tax matters pending before the Supreme Court of Cassation. Articles 1(962) and 1(963) provide for the appointment – by decree of the Minister of Justice, after deliberation by the CSM, acting on a proposal made by the Governing Council of the Supreme Court of Cassation in its expanded composition pursuant to Article 16 of Legislative Decree No. 25 of 27 January 2006 (Establishment of the Governing Council of the Supreme Court of Cassation and new rules governing judicial councils, in accordance with Article 1(1)(*c*) of Law No. 150 of 25 July 2005) – on an extraordinary and non-renewable basis, for a period of three years, of a maximum of fifty auxiliary judges, for the performance of honorary service in the tax law division of the Supreme Court of Cassation. Those auxiliary judges – who have now almost completed their duties, so delimited to a three-year period, in view of the exceptional need to deal with the backlog in that division – were selected in accordance with the provisions of the legislation in question only from among ordinary judges, including members of the Supreme Court of Cassation appointed for outstanding merit, who had been retired for no more than five years at the time of submission of the application and who had completed a length of service of not less than 25 years.

11.– That being so, the questions of constitutionality with reference to Articles 106(1) and 106(2) of the Constitution, which are capable of being examined together, are well founded, and those relating to the infringement of Article 102(1) of the Constitution have been absorbed.

12.– In laying down that "judges are appointed by means of competitive examinations", Article 106(1) of the Constitution expresses the Constituent Assembly's clear choice for a general rule to the effect that ordinary judges – who, empowered and regulated by the provisions concerning the judiciary, exercise "judicial functions" (Article 102(1) of the Constitution) – are to be appointed subject to passing a public competition. An exception to that rule is the possibility, provided for in Article 106(3), that following a proposal by the CSM, full university professors of law and lawyers with fifteen years of practice and registered in the special professional rolls for the higher courts may be appointed for their outstanding merits as judges of the Supreme Court of Cassation.

This structure, which derives from Articles 106(1) and 106(3) of the Constitution, constitutes, as can be seen from the preparatory works, 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).
The general rule of a competitive examination has been identified as the one best suited to help ensure the separation of the judiciary from the other powers of the State and its very independence, so as to safeguard the judicial system, which the Constitution, in Title IV of Part II, sets out as a fundamental element of the Republic's legal order.
This Court has long made it clear that the general system of recruitment by competitive examinations is instrumental to the independence of the judiciary, observing that, although the said requirement laid down in Article 106(1) of the Constitution essentially constitutes a rule guaranteeing fitness to perform judicial duties, it nevertheless contributes to strengthening and augmenting the independence of the judiciary (Judgment No. 1 of 1967), not unlike the guarantee of non-removability (Article 107(1) of the Constitution).
Firstly, competitive examinations guarantee 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 (Judgment No. 33 of 1960).
Secondly, they ensure the technical and professional qualification of judges, considered a necessary condition for the exercise of judicial functions. In fact, a competitive examination is designed to verify an initial uniform standard of legal knowledge, destined to be refined over time, as a minimum but essential guarantee of the exercise of judicial functions in a neutral manner.
This Court has emphasised in this regard that "the function of interpreting and applying the law requires the possession of legal technique" on the part of judges (Judgment No. 76 of 1961).
13.– The Constituent Assembly did not, however, provide in absolute terms for the exclusive exercise of judicial functions by judges appointed following a competitive examination.
On the one hand, it contemplated the possibility, subject to the strict principle of legality, of forms of direct participation by the people in the administration of justice (Article 102(3) of the Constitution), an option that has been implemented in criminal trials by the existence of lay judges [*giudici popolari*] selected in the assize courts [*corti di assise*]. Specialised divisions may also be set up in the ordinary courts for certain matters, including with the participation of qualified citizens who are not members of the judiciary (Article 102(2) of the Constitution), provided that the independence of the body is guaranteed (Judgment No. 108 of 1962).
On the other hand, the Constituent Assembly had to deal with a factual situation that, at the time and for a long time, witnessed the exercise of judicial functions also by a judiciary that was not ordinary, in the sense of professional judges appointed following a competitive examination, but honorary, appointed in a different way, as described above. The system at that time was set out in Article 4 of the Royal Decree on the Organisation of the Judiciary which, in its original wording, differentiated the honorary judiciary from the professional judiciary, because it considered judge-conciliators, vice conciliators and honorary vice praetors as "belonging" to the judiciary as honorary judges (second

paragraph) whereas auditors (*uditori*), judges of all levels at the local courts, district courts and superior courts as well as public prosecutors (first paragraph) "constituted" the judiciary.

The Constituent Assembly's choice was essentially a conservative one. It was considered that an honorary judiciary – which had already existed for a long time and which, in the system of the administration of justice in minor matters, had played a role generally assessed in positive terms – could be compatible with the general rule of judicial functions exercised by a professional judiciary to which membership is gained through competitive examinations.

That compatibility was reflected in the wording of Article 106(2) of the Constitution: "The law on the organisation of the judiciary may permit the appointment, including by election, of honorary judges for all the functions performed by single judges".

And such single judges were – as mentioned above – the honorary judges at the time of the Constituent Assembly: judge-conciliators, including vice conciliators, and honorary vice praetors (Article 4(2) of the Royal Decree on the Organisation of the Judiciary as per its original wording).

Both of them exercised only the functions vested in single-member courts and could thus well qualify as "single judges". The Code of Civil Procedure, which had recently come into force, distinguished precisely, as regards the power to direct hearings, between single judges sitting alone and panels of judges sitting together (Article 127 of the Code of Civil Procedure). The Royal Decree on the Organisation of the Judiciary also distinguished at that time between the role of the praetors, i.e. the single-member courts of first instance, and the judiciary that sat in panels. The distinction was so clear that the passage from one role (single judge) to the other (judge sitting as part of a panel) took place by competition (Article 143 of the Royal Decree on the Organisation of the Judiciary).

The equating of a judge sitting alone as a single-member court of first instance with a "single judge" was also bolstered by the fact that the honorary judges of the time (and for a long time until the 1990s) were the judge-conciliators and the honorary vice praetors, typical (exclusively) single-member court judges of first instance, assigned to deal with small claims.

Just as the distinction between the professional and the honorary judiciary was also clear, one that has been a constant in this Court's case law.

Also recently (Judgment No. 267 of 2020), with reference to justices of the peace, the Court has stated: "The different method of appointment, rooted in the provision of Article 106(2) of the Constitution, the non-exclusive nature of the judicial functions exercised and the level of complexity of the matters dealt with take account of the heterogeneity of the status of justices of the peace, which explains the "honorary" status of their service, affirmed by the legislator ever since the establishment of the figure and reaffirmed during the 2017 reform". The Court has also previously (Order No. 174 of 2012) emphasised that it is impossible to equate the positions of honorary judges and judges who exercise judicial functions professionally and exclusively, and that it is impossible to compare these positions for the purposes of assessing compliance with the principle of equality, due to the fact that they exercise judicial functions in different capacities, which are characterised by exclusivity only in the case of ordinary judges who carry out their duties professionally (Judgment No. 60 of 2006, Orders No. 479 of 2000 and No. 272 of 1999).

14.– Article 106(2) of the Constitution, however, refers to "all" the functions performed by single judges, an expression that helps to define the figure of an honorary judge in relation to a professional career judge.

On the one hand, that provision expressed the Constituent Assembly's wish to limit the functions of honorary judges to the administration of justice involving minor matters, as this was considered to be that handled by the "single judges" of the time, deliberately excluding them from multi-member court panels.
On the other hand, there was also the fact that an honorary judge of the time (namely, a vice praetor) could do more than exercise the functions of a "single judge". He or she could sometimes perform judicial functions as part of a panel, i.e. functions attributed not to a "single judge" but to a multi-member court (usually) of first instance, such as the district court. In fact, Article 105 of the Royal Decree on the Organisation of the Judiciary, dealing with the issue of deputising for judges in divisions of the district court, provided that if a division lacked or was prevented from having its president or any of the judges necessary to constitute a panel, the president of the district court, when he or she could not make good the absence with judges from other divisions, could delegate, in order, a praetor, a junior judge [*aggiunto giudiziario*] or a vice praetor, to fill in. It was therefore possible for an honorary judge, such as a vice praetor, to act as a member of a panel of judges on an exceptional basis and as a substitute when no ordinary judge was available. In any event, this was a case of filling in for a judge of a multi-member court of first instance, such as the district court, and never of a court of appeal or the Supreme Court.
The question then arose as to whether or not the exercise – by an honorary judge, albeit on an exceptional and transitional basis – of judicial functions pertaining to a multi-member court panel was compatible with the provision of Article 106(2) of the Constitution, which – as already mentioned – limits the role of the honorary judiciary to the exercise of the functions of a "single judge", since it was surmised that, if an ordinary career "single judge" could temporarily and exceptionally exercise the functions of a member of a panel of judges, so too could an honorary judge.
The question of constitutionality came before this Court only a number of years after the Constitution had come into force and only when the transitional period by which the Royal Decree on the Organisation of the Judiciary had to be overhauled, even partially, so as to bring it into line with the Constitution, was deemed to have expired (Judgment No. 156 of 1963).
The decisions of this Court setting out the contours of the figure of the honorary judiciary, falling within the paradigm of Article 106(2) of the Constitution, are essentially Judgments No. 99 of 1964 and No. 103 of 1998.
15.– Initially, the question of the constitutionality of Article 105 of the Royal Decree on the Organisation of the Judiciary – as per its original wording retained by Article 42 of Law No. 195 of 24 March 1958 (Rules on the Constitution and operation of the High Council of the Judiciary), which provided in general for the survival of the 1941 provisions on the organisation of the judiciary that were not incompatible with the new law – was raised with reference to Article 106(2) of the Constitution.
This Court (Judgment No. 99 of 1964) first of all stated that the functions that may be performed by honorary judges are those of the "single judge (praetor and conciliator)", thus confirming the plain reading that the "single judge" is a judge of a single-member court of first instance.
It then proceeded to clarify that the reference in Article 106(2) of the Constitution to "all the functions performed by single judges" must "be understood as a general indication of the office to which honorary judges may be appointed to exercise judicial functions". Therefore, if a "single judge", as was the praetor, could be called upon – in the event that the conditions for deputising laid down in Article 105 of the Royal Decree on the

Organisation of the Judiciary were met – to complete the composition of a panel of the district court, which is of course a multi-member court, then an honorary judge, such as the honorary vice praetor, could also lawfully do so, since it was a case of "temporary and exceptional functions deriving from an assignment to deputise", without thus altering the status of the latter who, even in the exercise of those functions, remained an honorary judge. This very special exercise of judicial functions vested in a multi-member court judge was held to be consistent with the constitutional provision cited, because it fulfilled the "exceptional needs of the administration of justice".

The overall result of this interpretation – functional, rather than strictly "originalist" – was to conceive an honorary judiciary that, although not confined to exercising the functions of a judge of a single-member court of first instance as a literal reading of the provision would dictate, could on an exceptional and temporary basis also perform the functions of a judge of a multi-member court, participating in panels of the district court.

16.– This line of case law was continued by Judgment No. 103 of 1998, which declared unfounded the question as to the constitutionality of Article 90(5) of Law No. 353 of 1990, as amended by Article 9 of Decree-Law No. 432 of 1995, as converted. This provision established that for all cases pending on 30 April 1995, honorary vice praetors could deputise for professional judges called upon to form panels of judges of a district court in civil matters "even in the absence of the conditions [...] laid down" by Article 105 of the Royal Decree on the Organisation of the Judiciary (i.e. the provision previously scrutinised by the Court in Judgment No. 99 of 1964).

In this ruling, the Court adopted an interpretation of the challenged provision conforming to the Constitution, considering that the wording thereof establishing an exception in reality "solely pertains to the order of precedence" as regards substitution.

In doing so, this Court drew a clear line in the sand.

What, based on the wording, could have heralded an extension of the figure and role of the honorary judiciary, inherent in the provision that assignment to panels of a district court could occur "even in the absence of the conditions [...] provided for" by Article 105 of the Royal Decree on the Organisation of the Judiciary – and hence potentially even in the absence of the requirement of deputising for a career judge – was precluded by the Court's interpretation thereof in way that conformed to the Constitution, which greatly limited the scope of the amendment. In order to conform to the provisions of Article 106(2) of the Constitution, it still had to be a "precarious and occasional assignment" referring to "single hearings or single trials".

It is the exceptional and temporary nature of an honorary judge's assignment to deputise for another that averts "the risk of the emergence of a new category of judges". In fact, it is very clearly stated that "the substitution, correctly understood, does not transform honorary judges assigned to a single-member court judicial office, on an exceptional basis, into judges belonging to a multi-member court".

17.– The figure of the honorary judge already provided for by the Constitution (Article 106(2)), which is compatible with the general rule that appointments of judges should be made by competitive examination (Article 106(1)), was therefore better defined: that figure is a single judge, because a judge of a single-member court of first instance, who can only exceptionally and temporarily sit on the panels of a district court.

The provisions brought to the attention of this Court in the two judgments cited above – both Article 105 of the Royal Decree on the Organisation of the Judiciary and Article 90(5) of Law No. 353 of 1990 – envisaged the assignment of an honorary judge to perform

the functions of a multi-member court judge on an exceptional and temporary basis, and even then, only on panels of a district court.

18.– After the creation of justices of the peace, as an exclusively honorary single-member court judge of first instance, replacing the conciliators (about which see Judgment No. 150 of 1993), the rules governing deputising on district court panels including by honorary judges, were recast in Article 43-*bis* of the Royal Decree on the Organisation of the Judiciary, introduced by Article 10 of Legislative Decree No. 51 of 1998. That latter provision stated that honorary judges at an ordinary district court were to carry out the judicial tasks assigned to them by the president of the court or, if the district court was constituted in divisions, by the president or by another judge heading the division.

They could hold hearings only when ordinary judges were prevented from attending or were absent.

That provision was repealed by Article 33(1)(*a*) of Legislative Decree No. 116 of 2017, when the reform of the honorary judiciary was launched. However, a similar rule was laid down in Article 12 of that same legislative decree, further to which honorary justices of the peace, who exercise trial functions, may be assigned to sit on the civil and criminal panels of the district court, when the conditions set out in the preceding Article 11 are met and when, due to extraordinary and contingent circumstances, no other organisational measures can be adopted. In other words, the district court (or one of its divisions) must have vacancies, non-temporary absences of judges or partial or total exemptions from judicial service that reduce the work of the professional judges assigned to the district court or division by more than 30%. Alternatively, it is necessary, in order to justify such use of honorary judges, that the number of pending civil and criminal proceedings exceed certain thresholds, precisely calculated according to the criteria of Article 11.

In addition, honorary justices of the peace, who are to form the panels, may be assigned only to cases pending at that date and no more than one honorary justice of the peace may sit on a panel.

There are also exclusions: in any case, an honorary justice of the peace may not be assigned, in the civil sphere, to sit on panels in bankruptcy proceedings and on panels of specialised divisions and, as regards jurisdiction in criminal matters, may not sit on panels of a review court [*tribunale del riesame*] or when proceedings are brought for the offences indicated in Article 407(2)(*a)* of the Code of Criminal Procedure.

19.– Ultimately, the interpretation of Article 106(2) of the Constitution given by this Court in the aforementioned rulings, corroborated over time by the same ordinary legislation just mentioned, on the solely exceptional possibility of assigning honorary judges to a district court panel, has set a red line for the honorary judiciary, coinciding with the figure of a judge of a single-member court of first instance, who, only under certain conditions and as a substitute, may also participate in the performance of functions vested in a district court panel.

The existence of this limitation has also been confirmed by the circumstance that, when consideration was given to expanding the role of the honorary judiciary, there was a parliamentary initiative for passing a constitutional law, namely, Constitutional Bill No. 4275, introduced in the Chamber of Deputies on 7 April 2011 with the object of reforming Title IV of Part II of the Constitution. That bill envisaged the elimination from the text of Article 106(2) of the Constitution of precisely the words “for all the functions performed by single judges”, thus leaving just the wording whereby the law on the organisation of the judiciary could make provision for the appointment, including by election, of

honorary judges, so as to allow such appointments also for functions exercised by a panel of judges.
The initiative got nowhere.
Nevertheless, two years later, ordinary-level legislation (Decree-Law No. 69 of 2013) – albeit for an appreciable reason, i.e. "[i]n order to facilitate the adjudication of civil proceedings, including those in the field of labour and social security" – introduced, without changing the Constitution (as regards Article 106(2)), a new and unprecedented figure among the ranks of the honorary judiciary, namely the figure of auxiliary appellate judge, that the challenged provisions concern. Those judges were assigned functions performed not by "single" judges, as Article 106(2) of the Constitution required and still requires, but typically by judges sitting as part of a panel and on appeal, such as those performed by the courts of appeal.
The fact that the challenged provisions provide for the performance of the functions (not of single judges, but) of judges sitting as part of a court of appeal panel, which the auxiliary judges are structurally part of, as described above, is – in light of what has been said so far – completely outside the system and radically contrary to Article 106(2) of the Constitution together with Article 106(1) of the Constitution.
Auxiliary appellate judges cannot be equated with "single judges" because they are called upon to exercise judicial functions as part of a panel of judges of a multi-member court, such as the court of appeal, and in proceedings on appeal.
That unconstitutionality is not removed by the provisions of the challenged provisions governing incompatibility, abstention and recusal (Articles 69 and 70 of Decree-Law No. 69 of 2013), in order to ensure, in any event, the independence and impartiality of the judges, which operate at a different level from that of the concrete implementation of judicial protection.
Nor is it relevant that the recent reform of the honorary judiciary (initiated by Legislative Decree No. 116 of 2017, in conceiving the figure of honorary justice of the peace as being that of a single judge, in as much as he or she sits alone and can only exceptionally and temporarily sit on a district court panel) no longer proposes or even considers the figure of auxiliary appellate judge.
20.– In conclusion, Articles 62 to 72 of Decree-Law No. 69 of 2013, as converted, are unconstitutional.
21.– Finally, there is a need to take into account the undeniable overall impact that the decision of unconstitutionality is bound to have on the judicial system and on the administration of justice in the courts of appeal.
The contribution of auxiliary judges to date has been significant and is appreciated in the reports of the presidents of the courts of appeal on the state of the administration of justice in the individual districts. Their contribution to the elimination or reduction of the backlog of civil litigation has also been ensured by the express provision of Article 68(2) of Decree-Law No. 69 of 2013, which requires that in the panel in which they are a judge rapporteur, each auxiliary judge must decide at least ninety proceedings per year, one-eighth of which must concern orders for compensation for breach of the right to a trial within a reasonable time.
It is clear that the loss of such a contribution would immediately cause serious harm to the administration of justice, all the more so in the current situation, in which there is an urgent need to reduce the time taken by the courts, including in the civil sphere, in which auxiliary judges have worked and continue to work in the courts of appeal.

22.– In general, in the face of a violation of the provisions cited when seeking a review of constitutionality (such as, in the case in point, the inconsistency of the new figure of honorary judge with Articles 106(1) and 106(2) of the Constitution), it is possible that there are other constitutional values of equal – and even higher – rank, which would be at risk if the effects of the declaration of unconstitutionality were to run (retroactively, as a rule) from the date that the challenged provision entered into force.

The balancing of these values has been carried out by the Court in a number of judgments, also exceptionally modulating the effects of the decision over time. This route is not precluded by the eventuality that, in incidental proceedings, a declaration of unconstitutionality taking account of the foregoing may not be of any real use to the parties in the main proceedings, since the relevance of the question must be assessed, for the purposes of its admissibility, at the time of the referral order.

The Court has done so with regard to the administration of justice in the case of the appointment of military judges (Judgment No. 266 of 1988) and the public nature of hearings in tax proceedings (Judgment No. 50 of 1989).

The decision that has left the greatest mark on this line of case law is Judgment No. 10 of 2015, which declared that a provision imposing a tax (a corporate income tax surcharge on excess profits of energy and oil companies) was unconstitutional as of the day following the publication of the judgment in the Official Journal of the Republic. The Court stated that "the retroactive application of this declaration of unconstitutionality would result first and foremost in a serious violation of the balanced budget requirement under Article 81 of the Constitution" and would result in "irremediable detriment to the requirements of social solidarity, and hence a serious violation of Articles 2 and 3 of the Constitution".

Subsequently, the Court (Judgment No. 246 of 2019) gave continuity to those principles, reiterating that there may "exceptionally be a need to balance them against other constitutional values and principles, which would, in theory, be seriously impaired if those effects were to date back, as a rule, retroactively to the date on which the challenged provision entered into force" (most recently, Judgment No. 152 of 2020).

In earlier times, this Court (Judgment No. 13 of 2004) – in declaring the supervening unconstitutionality of a provision of a national law relating to the powers of a regional school manager, following a change of competence in the wake of the amendment of Title V of Part II of the Constitution – has even held that the challenged provision "must [...] continue to operate" in that it was intended to lapse only when the regions, within their territorial scope and in respect of the continuity of the education service, had attributed, by regional law, powers over the staffing of schools to their own bodies.

23.– Likewise, in the context of the present case, it is important to note that the interaction of the values at stake highlights, in the immediate future, the above-mentioned harm to the administration of justice and thus to judicial protection, which is a bulwark of every fundamental right since the Court is well aware of the need to "avoid shortcomings in the organisation of the judiciary" (Judgment No. 156 of 1963).

It is therefore necessary – as a solution in this case that is constitutionally adequate to safeguard the protection of such values – that the declaration of unconstitutionality of the challenged provisions leave the legislator sufficient time to ensure the "necessary gradualness in the complete implementation of the constitutional legislation", in particular, Article 106(2) of the Constitution, as and even more than in the above mentioned ruling on the military judiciary (Judgment No. 266 of 1988). To this end, the *reductio ad legitimitatem* can instead be achieved, using the tried and tested technique of

an additive ruling, by inserting in the challenged provision a final deadline by (and not beyond) which the legislator is called upon to intervene.
To this end, of relevance – as a legislative stipulation already present in the legal system and useful to guide the decision in the present case – is the provision, laid down at the time for the (new) figure of honorary judges introduced by Legislative Decree No. 51 of 1998 (further to which the amendments to the legal system, by virtue of which such honorary judges could be assigned to an ordinary district court and a public prosecutor's office at an ordinary district court) would apply "until the overall reorganisation of the role and functions of the honorary judiciary in accordance with Article 106(2) of the Constitution is implemented" (Article 245 of that legislative decree).
A similar limitative approach – in order to avoid immediate harm to the administration of justice – is also possible in the current legislative context, which sees a reform in progress of the honorary judiciary (Legislative Decree No. 116 of 2017), the full entry into force of which has already been postponed in several respects to 31 October 2025 (Article 32 of said legislative decree) and which is currently the subject of initiatives for further reform, under consideration by Parliament (Bill No. S1516, whose wording has been unified with that of Bills Nos. 1438, 1555, 1582 and 1714). Consequently, the challenged legislation can be declared unconstitutional insofar as it does not provide that it applies until the completion of the reorganisation of the role and functions of the honorary judiciary within the timeframe provided for by the aforementioned Article 32 of Legislative Decree No. 116 of 2017. Therefore, due to the impact of competing values of constitutional rank, affording the challenged legislation temporary constitutional leeway vis-à-vis Articles 106(1) and 106(2) of the Constitution.
During this period, court of appeal panels that provide for the participation of no more than one auxiliary judge per panel that comply with all the other provisions mentioned above guaranteeing the independence and impartiality of those honorary judges will remain lawful, including in the main proceedings that this present case concerns. In this regard, it is possible to repeat – *mutatis mutandis* – what has already been affirmed by this Court in Judgment No. 103 of 1998 with reference to another type of honorary judge whose "impartiality in judging is guaranteed by the concepts of abstention and recusal, which are sufficient remedies in this regard".
24.– Therefore, Articles 62, 63, 64, 65, 66, 67, 68, 69, 70, 71 and 72 of Decree-Law No. 69 of 2013, converted with amendments into Law No. 98 of 2013, must be declared unconstitutional insofar as it is not provided that they apply until the reorganisation of the role and functions of the honorary judiciary is completed within the timeframe laid down by Article 32 of Legislative Decree No. 116 of 2017.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having joined the proceedings,
declares that Articles 62, 63, 64, 65, 66, 67, 68, 69, 70, 71 and 72 of Decree-Law No. 69 of 21 June 2013 (Urgent measures to relaunch the economy), converted with amendments into Law No. 98 of 9 August 2013, are unconstitutional insofar as it is not provided that they apply until the reorganisation of the role and functions of the honorary judiciary is completed within the timeframe laid down by Article 32 of Legislative Decree No. 116 of 2017 (Comprehensive reform of the honorary judiciary and other provisions on justices of the peace, as well as transitional rules on honorary judges in service, pursuant to Law No. 57 of 28 April 2016).

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 25 January 2021.

Signed by: Giancarlo CORAGGIO, President

Giovanni AMOROSO, Author of the Judgment