**Yet another "incomplete" reform of the honorary judiciary:
towards the end of the figure of non-professional judge or towards a new beginning?**

 **Written by Rosita Silvestre**

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The troubled path of reforms of the honorary judiciary seems to have come to an end with the latest reform in progress, under consideration by the Senate, contained in the government-initiated bill no. 1322, presented to the Chamber of Deputies on 5.7.24 and linked to the 2024-2026 budget maneuver, containing "*changes to the discipline of honorary magistracy as regards the legal, economic and social security regime."[[1]](#footnote-1)*

The new provisions are aimed at giving a definitive response to the European Commission's findings regarding the infringement procedure of 15 July 2021[[2]](#footnote-2), followed by a supplementary letter of formal notice in July 2022 and a reasoned opinion in July 2023 for failure to align with European legislation on fixed-term or part-time work and working hours.

The objections were raised by the European Commission not only with reference to the condition of honorary magistrates in service on 15.8.17 but also for those who entered service later, since Italy did not provide substantial answers or adopt measures to remedy the issues identified and to prevent any further abuse.

**1.La thorny issue of the "exhaustion quota".**

The first remarks of the European Commission were made to Legislative Decree no. 116 of 2017, known as the Orlando reform, the first to be censured by the Court of Justice of the European Union with the UX ruling for violation of European regulations on fixed-term or part-time work[[3]](#footnote-3). Over the years, (stubbornly) partial and incomplete reforms, censured by the European Commission and which have made it necessary for the European judge to intervene to ensure compliance and effectiveness of European Union law, have highlighted the lack of cooperation and collaboration between the European Commission itself, the Italian Government, refractory to its findings and the European judge who has also met the resistance of a part of the Italian jurisprudence.

In particular, both the legitimacy and the merits, in interpreting and applying the decisions of the European judge, with reference to supranational and national legislation, has not been unequivocal and has not been constant, especially on the concept of comparability of the honorary magistrate to the professional counterpart, ascertained the condition of fixed-term worker of the honorary magistrate and many decisions are of a contrasting sign[[4]](#footnote-4).

Such interpretations, almost constantly to the detriment of honorary magistrates, with rare exceptions[[5]](#footnote-5) , with sometimes questionable reasons, have in fact nullified the right to the effectiveness of judicial protection (before an impartial judge), due to the resulting distrust in any form of compensatory protection .
Also relevant is the circumstance that the Ministry has not even considered settlement and conciliation proposals to put an end to the ongoing litigation.

There was a lack of interpretative stability in the decisions of the Italian judges also due to dissonant regulatory provisions that intervened during proceedings, some of which ended with a declaration of cessation of the subject matter of the dispute, while a decisive intervention by the Constitutional Court would have been desirable. Furthermore, the hesitation or inability of the State to approach definitive resolutions is evident, also due to the closure manifested by a part of the career judiciary. The anomalous situation caused by repeated and twenty-year extensions of a function that for the most part has been carried out full-time, has prompted the Italian Government to navigate between the need to define the issue and the objective difficulty of finding shareable and fair solutions for all (heterogeneous) categories of honorary magistrates (Honorary Court Judges, Honorary Deputy Prosecutors and Justices of the Peace) especially in line with constitutional and European principles

2. **The inadequacy of the Cartabia reform.**
The resulting picture is the inadequacy of the regulatory provisions censured by the European Commission, both with the reform of the honorary judiciary carried out by Legislative Decree no. 116 of 2017, in implementation of the delegation conferred on the Government by Law no. 57 of 2016, and with the linked to the budget law of 30.12.22, and, in particular, of art. 1, paragraph 629 (known as the Cartabia Reform)[[6]](#footnote-6).

Confirmed honorary magistrates are paid a remuneration based on the salary and the thirteenth month's salary, of the judicial administrative staff of Area III, economic position F3, F2 and F1 according to the number of years of service. In addition, those who opt for the system of exclusivity of the function are also paid a judicial allowance equal to twice the administrative allowance due to judicial administrative staff.

In the meantime, with art. 2 DL. 131/24, Article 15-bis, paragraph 2, of Decree-Law No. 75 of 22 June 2023, converted with amendments, by Law No. 112 of 10 August 2023, was introduced, which provides for a social security and welfare scheme both for those who opt for the exclusive regime who are enrolled in the Employee Pension Fund of the INPS Compulsory General Insurance and for those who opt for the non-exclusive one who are enrolled in the INPS separate management and retain any registration with the Pension provision for professional income only.

The regulation implementing Article 21 L 247/12 of the Cassa Forense, in Article 1, paragraph 5, provided that subjective and supplementary contributions were also calculated on the indemnity deriving from the positions of honorary magistrates and many honorary magistrates have opted (or have been induced to opt) for the non-exclusive regime to preserve the continuity of contributions. Others, on the other hand, preferred cancellation from the Professional Register. These are, generally, those who have accumulated a few years of contribution payments or have already reached a minimum of contribution years to accrue the old age pension at 70 (with at least 35 years of contribution seniority).

The withheld stabilization, which, in fact, conceals a stability in functions or the increase of the age limit from 68 to 70, in any case, does not entail (nor could it entail, in the light of the constitutional principles repeatedly enunciated) a transformation of the relationship into subordinate employment and, therefore, is not comparable to the so-called "tenure", which, rather, it requires a real competitive procedure for the definitive permanent employment of the precarious worker who has worked at the institution in which he is hired by gaining some experience.

It therefore concerns areas of public law where, pursuant to Article 97 of the Constitution, access is by competition, while honorary judges have repeatedly been defined as voluntary (private) workers who perform public functions. However, the verification of professionalism and/or suitability provided for by the aforementioned Article 29, defined as a mild procedure, is not considered to be such.

3.**La reform of the reform: DDL 1322 /2024**.
DDL 1322, currently being examined by Parliament and strongly urged by trade associations, in essence, introduces further substantial changes to art. 1 paragraph 629 of Law 234/21, which also, as mentioned, was considered inadequate by the European executive to remedy the remarks made to the Italian State on the working conditions of honorary magistrates.

It has been noted that the legislation in question does not guarantee an adequate remedy for any abuse in the repetition of fixed-term contracts [[7]](#footnote-7)and does not remedy the violation of European law. Thus, also in the light of the new reform, it must be excluded that for confirmed magistrates, stability in functions up to the age of 70 can be qualified as a relationship of subordination[[8]](#footnote-8).

Indeed, it cannot be revoked in doubt for honorary magistrates who access confirmation, that the stabilization (rectius, stability) in the functions is considered a compensatory sanction in specific form (a solution repeatedly highlighted also in parliamentary questions) which involves, further, the definitive waiver of any further claim as to the previous honorary relationship, although "confirmation up to 70 years does not imply a change of status but only determines the extension of the honorary relationship until retirement age" (so much is read repeatedly, in the appearances of the State Attorney's Office).

As an (abused) example, the precarious school workers are frequently cited[[9]](#footnote-9). For these, the Ministry of Education has been authorized to an extraordinary plan of permanent recruitment and in the state of estimates a fund had been established for payments in execution of judicial measures concerning compensation for damages resulting from the repetition of fixed-term contracts.

For precarious school workers (as for other fixed-term and/or part-time employees) career reconstruction would also be envisaged, given that the related contribution and social security charges had already been recognized during the relationship. Honorary magistrates, on the other hand, are not bound by a stable relationship under public law but by a de facto service relationship and have not enjoyed the rights associated with this type of relationship (holidays, illness, social security, maternity, severance pay).

**4. The new categories of the role until exhaustion.**
The new decree being examined by Parliament provides for a conspicuous increase in remuneration of € 58,840 per year for thirteen months, which, in addition to social security charges, is little different from the maximum limit of € 72,0000 already provided for "piecework" justices of the peace, consequently making new improvements to their economic condition.

Nevertheless, an exponential increase in jurisdiction (for all lay judges) is also envisaged as of October 2025. On the social security issue, however, doubts and unknowns remain about the future pension to which the contingent will hardly be able to access given the average age of the confirmed magistrates.
For non-exclusive magistrates, in order to ensure the simultaneous performance of further work or professional activities, a remuneration of € 25,000 per year is envisaged (increased after the vigorous protests of the non-exclusivists) and, in order to respond to the European findings, they should in any case carry out a working time of 16 hours instead of the 36 of the exclusivist magistrates.

In fact, to date they still manage the same roles and have the same number of hearings according to the organization tables of the offices approved by the CSM and in force.
Moreover, they are subject to the resolutions of the Presidents of the Courts to whom in addition to the supervisory activity is delegated also that of coordination and organization of the offices, pursuant to Article 8 of Legislative Decree 116/17.

The non-exclusivists, in fact, would suffer an unjustified reduction in remuneration compared to the Cartabia reform despite having faced an evaluation test at more favorable economic conditions, with the consequent waiver of any claim related to the previous relationship, which, pursuant to Article 29 c 5, operates by law and which, it is believed, would not deprive the magistrate of the rights related to the previous relationship, but it would only serve to exclude a duplication of compensation.

For all, ultimately, it remains precisely the risk of the recognition of previous rights in addition to compensation, for the abusive repetition of the fixed-term contract; Therefore, a large part of the category still requires compensation resolutions that will be delayed in coming, while, at the same time, it hopes for the future possibility of obtaining a possible free reunification with the contributions already paid to other social security institutions, an institution far more favorable than cumulation and aggregation.

**5. Honorary magistrates "ad extremum diem permanere!"**
The issue relating to honorary magistrates who have ceased to function also remains unresolved.

Article 29 c.5 of Legislative Decree No. 116/17 as reformed by Article 1 paragraph 629 .5 of Law 234/21, recognizes honorary magistrates who have not submitted an application for reconfirmation or who for any reason do not pass the verification, without prejudice to the right of refusal, an indemnity determined in a lump sum, as full compensation for the losses suffered due to the unlawful repetition of the honorary relationship. The aforementioned indemnity, which ultimately assumes a mere remedial function and therefore not necessarily commensurate with the injury, remains inclusive of any claim relating to the previous relationship, (holidays, maternity, social security, severance pay and compensation for the unlawful repetition of the contract) and is not considered proportionate to the seriousness of the abuse (it would seem to take on a merely symbolic value, as highlighted by the European Commission).Furthermore, it is not dissuasive and does not guarantee that unlawful conduct can be repeated[[10]](#footnote-10), taking into account the perennially troubled conditions in which the Public Administration operates due to chronic lack of personnel and the wide and frequent recourse to non-professional judges by the Italian State.

If we consider the extent of the waiver of all rights and claims related to the previous employment relationship and the refractoriness to implement the indications of the European judge, with a consequent aggravation of the precarious conditions of honorary magistrates, as can be seen from the references of the European Commission, the criterion for determining the indemnity/compensation provided for by Article 29[[11]](#footnote-11), is not sufficient to compensate for the damage caused by the abusive use of the fixed-term contract.

There is more. The aforementioned indemnity cannot be considered an effective sanctioning measure to ensure a necessary deterrent effect against abusive practices of recourse to fixed-term and/or part-time employment contracts.

Moreover, the "safeguard clause" does not offer guarantees of an alternative, equitable, just and proportional resolution to the advantage received by the administration, being, in fact, devoid of consequences while it appears rather aimed at relieving the State of further and heavier economic burdens rather than sanctioning its unlawful behavior.

Ultimately, recourse to the judicial authority would seem to remain the last instrument of protection for honorary judges who remain dissatisfied with government resolutions, while in many respects, the quarrels relating to the division of competence and/or jurisdiction between administrative judges and civil judges are still not completely resolved.[[12]](#footnote-12)

It should be added that, with the entry into force of Legislative Decree no. 156 of 7 September 2012, which implements the delegation for the revision of the judicial geography through the reorganisation of the offices on the territory and the suppression of many offices of the justice of the peace, many documents relating to the activity carried out are no longer available with concrete risks that the indemnity/compensation will not be made possible or will undergo an appropriate reduction for reasons not attributable to them.

The one-off allowance is also subject to taxation.[[13]](#footnote-13) Also on this aspect, interpretative difficulties have arisen that have not yet been completely overcome and clarified taking into account the not well-defined nature of this indemnity (compensation for equivalent / indemnity) and in the interpretation the resolutions of the Revenue Agency have been recalled, which with specific reference to the provisions of art. 6 and 51 of the Consolidated Income Tax Act, had the opportunity to clarify:” The aforementioned provisions enshrine the principle of all-inclusiveness of employment income, i.e. the total taxability of everything that the worker receives "[[14]](#footnote-14)in relation to the employment relationship". On the other hand, for public employees, with reference to the damage from violation of European Union law for the unlawful repetition of fixed-term contracts, the judge of legitimacy takes a different view than the Revenue Agency and recognizing the compensatory and non-income nature, ruled in the sense of the exemption. Administrative jurisprudence also appears to be of this opinion, establishing that compensation for damage from abusive repetition of fixed-term contracts obtained by school precarious workers, teachers and ATA staff, is not subject to taxation.

With regard to a possible increase in the aforementioned allowance, an amending proposal submitted to the II Commission in the referent published on 17.10.24 which provided in any case, was withdrawn and no longer represented.

Ultimately, for the honorary judges, the criterion for calculating the liquidation of the damage from tort for abusive repetition of the fixed-term contract is not certain and is not specifically provided for while for workers in the public administration an indemnity from 4 to 24 months of the last salary is expressly provided, based on the seriousness of the abuse and the overall duration of the contracts . It should be added that a criterion for payment which does not in any case take account of the different conditions of employment, payment and payment of the respective allowances of honorary judges who have ceased to hold office cannot be considered fair .

**Concluding** remarks.
Despite the efforts made with the new discipline, we are still far from a definitive resolution of the problems related to a role that is completely hybrid and not provided for by the Constitution, in a very complex framework that over the years, has turned into a saga with an ending that remains suspended, in which I really feel at home? Many questions of the protagonists still remain unresolved.

In fact, honorary magistrates confirmed for an indefinite period have lost the honorarity of the function and can no longer be considered volunteers but, at the same time, they have not acquired the specific status of professional judges having not taken a competition (also given the constitutional prohibition of the institution of special or extraordinary judges pursuant to art. 102).

Furthermore, the predominantly compensatory and compensatory nature of the measures envisaged does not guarantee and does not gratify most of the honorary magistrates confirmed or who in any case, have ceased their functions, who have once again reported to the European Commission the discriminatory conduct of the Government towards them, considering the measures adopted neither fair nor satisfactory for all those who have provided, for years, the same activity in the service of justice.

However, taking into account that in the Italian system the use of the proximity judiciary has become disruptive and a constant necessity with the expectation of a conspicuous increase in skills for the year 2025, will honorary magistrates, such as the young Holden, be able to find a place to feel at home? In the meantime, it could be hoped for the provision of a professional honorary judge with specific skills, adequately remunerated, who enjoys all the welfare and social security guarantees, with the possibility of using his experience, qualifications and training acquired to transit to other administrations or destined to transit, with competitions specifically intended, in the career judiciary.

1. Italian Parliament - Bill S. 1322 - 19th Legislature [↑](#footnote-ref-1)
2. INFR. 2016/4081 [↑](#footnote-ref-2)
3. EU Justice, judgment of 16 July 2020, C-658/18, UX v. Government of the Italian Republic ( Status of Italian Justices of the Peace), [ECLI:EU:C:2020:572]. [↑](#footnote-ref-3)
4. ex pluribus, Court of Naples sec. Work of 26.11.20 ; Court of Vicenza 16.12.20, which recognizes the magistrate salary class HH03. On the contrary, cf. Cass. civ 13973/22 which, as for the GOTs, does not consider them comparable to professional judges for remuneration purposes. [↑](#footnote-ref-4)
5. read the judgment Court C no. 267 of 2020 which also recognizes the reimbursement of legal expenses to honorary magistrates, [↑](#footnote-ref-5)
6. Studies in the Chamber of Deputies - justice sector, Changes to the honorary judiciary in the 2022 budget law, https://temi.camera.it/; G.DI CAMPO, New paths for the honorary judiciary?, in Questione giustizia, 2021. [↑](#footnote-ref-6)
7. Reference is again made to the contrary judgment of the Court of Milan of 22.2.23 [↑](#footnote-ref-7)
8. Reference is also made to the Constitutional Court. of 13 January 2021 no. 41 on auxiliary judges. [↑](#footnote-ref-8)
9. C. giust. EU, judgment of 26 November 2014, C-22/13, C-61/13, C-62/13, C-63/13, C-161/13, Mascolo, [ECLI:EU:C:2014:2401]. [↑](#footnote-ref-9)
10. Id. C.giust.UE of 27.6.24 which highlights the risk for the so-called post-Orlandini honorary magistrates [↑](#footnote-ref-10)
11. €2500 for 80 hearings and €1500 for less than 80 annual hearings, with a maximum gross of €50,000 with further deductions for periods equal to or less than six months. [↑](#footnote-ref-11)
12. Reference is made to the Lazio Regional Administrative Court judgment of 1 September 2021, no. 9484, which rejects the claims made with the application initiating the proceedings in so far as they concern the recognition, in favour of the applicants, of the status of ordinary magistrate and in the remainder remits the agreements before the civil court given that the jurisdiction over such a claim, which in practice tends to the recognition of an atypical subordinate public employment relationship, cannot be considered devolved to the administrative judge. Sentence of the Council of State of 27.11.24 which, in reform of the sentence of the Emilia Romagna Regional Administrative Court no. 304/23, declares the mandatory territorial and functional jurisdiction of the Lazio Regional Administrative Court [↑](#footnote-ref-12)
13. in this regard, reference is made to the provision of 19 October 2023 - Question - Honorary magistrates terminated - Tax treatment of the indemnity for failure to submit the application to participate in the confirmation procedure pursuant to Article 29 of Legislative Decree 116/2017. Ref. prot. DAG no. 201426.E of 9.10.2023. [↑](#footnote-ref-13)
14. Answer of the Italian Revenue Agency of 23/06/2022, no. 344 [↑](#footnote-ref-14)