

**Giuseppe Tesauo Memorial Conference,
Eulogy of a ‘*Giurista-Gentiluomo*’
Naples, 1–2 July 2022**

One year after the death of Giuseppe Tesauo, AISDUE, the Italian Association of European Union Law Scholars, in co-operation with the University of Naples Federico II, the Council of the Naples Bar Association, the Naples-based academic publisher Editoriale Scientifica, and the law firm Bonelli Erede, devoted a two-day conference to the life, professional activity, and legacy of the late Neapolitan jurist Giuseppe Tesauo.

The conference did not just survey the contributions that Giuseppe Tesauo made in the various fields in which he worked as a jurist, but also delved into the human figure behind the positions he held over time. The personal recollections of his colleagues, collaborators, heirs, and friends represented the added value of the event.

As most speakers have pointed out, it was arduous to talk about Giuseppe Tesauo’s life and work in his different capacities as two separate topics. On the one hand, his experiences helped define his opinions, methods, and actions. On the other hand, his personality and ideas have always connected and held together every aspect of his life.

The first day of the conference, chaired by Professor Antonio Tizzano, President of AISDUE and former Vice-President of the European Court of Justice (ECJ), was held in the Aula Magna of the University of Naples Federico II and was devoted to Giuseppe Tesauo’s activity as Justice and President of the Italian Constitutional Court, as Professor and as Advocate General at ECJ.

A number of prominent figures offered their welcome addresses: Professor Matteo Lorito, Rector of the University of Naples Federico II, Professor Sandro Staiano, Dean of Federico II Faculty of Law, Professor Vittorio Amato, Dean of Federico II Faculty of Political Sciences, and Professor Giulio Prosperetti, Justice at the Italian Constitutional Court. Right from the welcome addresses, which were inevitably the result of personal memories, some of the essential traits of Giuseppe Tesauo’s personality emerged: his ability to demonstrate both rigour and affection, his ability to always express his Neapolitan essence, and the autonomy of his career path from that of his father, who was also a leading jurist in Italian academia and a member of the Italian Parliament. In short, throughout the conference, the various speakers described Giuseppe Tesauo as ‘a *giurista-gentiluomo*’ – a jurist and a gentleman – ‘who served the institutions with wisdom and balance’ (G. Prosperetti).

The first session, introduced by Professor Fabio Ferraro, Director of the Federico II Postgraduate Course in European Union Law, was devoted to Giuseppe Tesauro's tenure at the Italian Constitutional Court, where he served as President from July to November 2014 and Justice from November 2005 to November 2014. Speakers included Raffaella Niro, Professor of Public Law at the University of Macerata, Valeria Piccone, Judge at the Court of Cassation, and Luigi Salvato, Attorney General at the Court of Cassation, who were part of the 'Tesauro cabinet' at the Constitutional Court.

Their talks focused on the day-by-day work at the 'Tesauro cabinet', which operated in an 'extended family' atmosphere that combined passion and rigour with light-heartedness and humour. The speakers emphasised that Justice Tesauro was not isolated in an ivory tower; on the contrary, institutional contacts stimulated his team's activities just as more informal meetings. His humility and deep respect for human dignity emerged not only in his legal thinking but also in his interpersonal relationships.

These anecdotes about the day-by-day life of the 'Tesauro cabinet' went hand in hand with the speakers' account of the vision underlying Justice Tesauro's approach to constitutional law: i.e. a deep commitment to the effectiveness of judicial protection. For him, the principle of effectiveness of protection was intertwined with the principles of proportionality and reasonableness. As he stated, 'a judicial system can only be such if it ensures the protection of everyone who turns to it'. Therefore, his *ethos* was the protection of individual and collective rights. Consequently, Justice Tesauro sought ways to maximize the effectiveness of judicial protection, such as teleological interpretation combined with an *effet utile* reading of the rights of individuals.

Hence, Justice Tesauro championed the centrality of the Constitutional Court within the national constitutional order and in the relationship with European Courts. His years at the Constitutional Court were the years of that Court's opening towards Europe. He worked hard to shorten the distance between the Constitutional Court and the two European Courts by promoting judicial dialogue. One can see a symbiosis between his pro-European convictions and his commitment to the judicial protection of individuals, in line with the Italian Constitution, European Union Law, and the European Convention on Human Rights (ECHR).

The speakers recalled in unison that during his nine years at the Constitutional Court, there were some memorable rulings behind which everyone could single out Justice Tesauro's fundamental contribution. Among these, it is worth mentioning the first preliminary reference to the ECJ made by the Italian Constitutional Court in the context of an incidental proceeding (Order No. 207/2013), which marked the complete overruling of its earlier jurisprudence according to which the Italian Constitutional Court did not consider itself 'a court or tribunal' for the purpose of the preliminary ruling procedure. Similarly, the 'twin judgments of 2007' (Nos. 348 and 349/2007) defined the rank of Italy's international commitments, and notably of those stemming from the ECHR, in the Italian hierarchy of legal sources and the Constitutional Court's role in reviewing domestic statutes at variance with those commitments. The speakers also mentioned Judgment No. 238 of 2014, handed down during Giuseppe Tesauro's term as President of the Constitutional Court, which

affirmed the prevalence of the constitutional right to judicial protection of the victims of Nazi crimes *vis-à-vis* the customary principle of State immunity, thus reaffirming the centrality of the individual also in the context of international relations.

The academic activity of Giuseppe Tesauo was the subject of the second session, introduced by Professor Patrizia De Pasquale, Secretary General of AISDUE. Speakers included Professors Roberto Adam, Sergio Carbone, Ornella Porchia (currently Judge at the General Court of the European Union), Talitha Vassalli di Dachenhausen, and Ugo Villani.

The speakers first outlined Giuseppe Tesauo's academic career, which started with Professor Rolando Quadri in Naples in the field of international law. Without ever denying his 'internationalist origins', Professor Tesauo has always believed in the autonomy of the Community legal order. Moreover, he argued that the European Communities needed time to pursue the path opened up by *Van Gend en Loos* and the other 'constitutional' rulings of the ECJ. Similarly, legal scholarship needed time to contribute to the conceptualization of Community law as a legal order separate from international law and domestic law. While always recognising that the European Communities originated from 'international' treaties, Professor Tesauo strongly opposed the acritical transposition of international law challenges and solutions to Community law. Legal integration, he believed, was the specificity of the path taken by the Communities, a path led step by step by the ECJ in cooperation with national courts.

Professor Tesauo was one of the first Italian academics to devote his career exclusively to Community Law, thus setting an example for an entire generation of Community law scholars and, more recently, of EU law scholars. His activity undoubtedly contributed to making EU law an autonomous discipline of legal studies in Italy.

Professor Tesauo forged relationships with many other academics in Italy and abroad, as shown by the diversity in the 'origins' of the participants to his memorial conference. Some speakers fondly recalled his countless talks, from the most formal to the smallest and most spontaneous ones. By the same token, Professor Tesauo always acknowledged, with great openness and frankness, the role and weight of other Italian academics in the development of Community law as an academic discipline.

The speakers emphasised that Giuseppe Tesauo never stopped being a professor, even when he took up institutional roles. On the contrary, as an Advocate General at the ECJ, he maintained his curiosity and developed his ideas with great freedom and independence. In this connection, the speakers recalled how, while working on the famous *Factortame* case, he had excerpts from the famous Italian jurist and attorney Piero Calamandrei translated into French and distributed to the ECJ judges to illustrate the importance of interim measures.

Similarly, Professor Tesauo always paid great attention to the research process, rather than just its outcomes, especially when the choice of a specific line of argument led his team to outcomes different from the ones initially foreseen. The speakers also remarked that Professor Tesauo's theoretical endeavours always sought to solve concrete, real-life problems.

In this spirit, throughout his career, Professor Tesauro constantly encouraged young scholars to pursue their academic endeavors. In his last interview, published in 'Lo Stato' in June 2021, he denounced the bureaucratisation of universities and the underlying dangers of this process for younger scholars.

The third and last session, introduced by Professor Roberto Mastroianni, currently Judge at the EU General Court, was devoted to Giuseppe Tesauro's 'Luxembourg period' (1988–1998), i.e. his tenure as Advocate General at the ECJ. That panel gathered some of Advocate General Tesauro's former *référéndaires*, such as Professors Massimo Condinanzi, Roberto Mastroianni, Rita Ciccone, and Attorney Anselmo Barone, as well as some of his former colleagues in Luxembourg, i.e. Professors Koen Lenaerts, former Judge of the Court of First Instance of the European Communities, currently President of the ECJ, José Luiz Da Cuz Vilaça, former Judge and Advocate general at the ECJ and President of the Court of First Instance, and Paolo Mengozzi, former Judge at the Court of First Instance and Advocate General at the ECJ.

Professor Mastroianni painted a vivid picture of the working environment of 'Tesauro cabinet' and announced that Postgraduate course in European Union law at Federico II University, which Giuseppe Tesauro contributed to establishing, will be named after him. President Lenaerts recalled, in addition to the high quality of the Opinions presented by Advocate General Tesauro, the friendliness and informality of the relationship with him in Luxembourg.

The speakers on this panel had the opportunity to share with Advocate General Tesauro also moments of daily work 'behind the scenes'. These recollections revealed his intellectual curiosity in exploring areas far removed from his usual academic interests. However, he always remained loyal to the values he held dearest: the effectiveness of judicial protection and the principle of legal certainty.

The speakers also noted that Giuseppe Tesauro's academic mindset characterized his tenure as an Advocate General, a role that he conceived as that of a 'professor in the service of the Community' (M. Condinanzi). Nevertheless, he always valued the relationship between the ECJ and national courts and made sure that his Opinions would provide practical guidance to those courts in the protection of individual rights stemming from Community law.

As in the session devoted to the Constitutional Court, this panel was an opportunity to review some of Advocate General Tesauro's most influential opinions. The most quoted one was undoubtedly the one in *Factortame* (C-213/89), where Advocate General Tesauro argued that a national court must have the power to disapply national law at variance with Community law, even if that power was incompatible with the United Kingdom constitutional tradition of the sovereignty of Parliament. The speakers also mentioned two Opinions rendered by Advocate General Tesauro on the principle of non-discrimination: the *Kalanke* case (C-450/93), concerning the sensitive topic of gender quotas, and case *P. v. S.* (C-13/94), concerning the dismissal of a transsexual individual, in which Advocate General Tesauro masterfully applied the principle of equality.

The second day of the conference was chaired once again by Professor Antonio Tizzano, President of AISDUE. It took place at the 'Alfredo De Marsico' Law Library

in Castel Capuano, Naples' former courthouse, and was devoted to Giuseppe Tesauo's activities as President of the Italian Competition Authority and as Attorney of the Naples Bar.

The introductory remarks were delivered by Antonio Tafuri, President of the Naples Bar Council, Giuseppe De Carolis, President of the Naples Court of Appeal, Patrizia Intonti, President of the Board of Directors of the 'De Marsico' Library, Elisabetta Garzo, President of the Naples Court, Raffaele Sabato, Judge of the European Court of Human Rights, and Mario De Dominicis, Professor and CEO of the academic publisher Editoriale Scientifica.

The first session was devoted to Giuseppe Tesauo's activity at the Italian Competition Authority (*Autorità Garante della Concorrenza e del Mercato*, hereafter 'AGCM'), of which he was President from 1998 to 2005. Speakers included Giuseppe Maria Berruti, President of Chamber of the Court of Cassation and CONSOB Commissioner (the Italian financial markets regulator), Roberto Chieppa, Secretary General of the Presidency of the Council of Ministers and former President of Chamber of the Council of State, Francesco Sclafani, State Attorney, Guido Stazi, Secretary General of the Italian Competition Authority, Mario Todino, Partner at Jones Day Law Firm, and Paolo Ziotti, Attorney at Studio Legale Clarizia.

Once again, personal memories and anecdotes provided insights on President Tesauo's mindset and approach to antitrust law. When became President of the AGCM, that institution was still in its infancy and Italy's liberalisation policies had just begun. President Tesauo's task, therefore, was to 'bring European competition law to Italy'. Such a task required the implementation of concepts that did not fit easily with Italy's existing legal framework. Presidents Tesauo's term at AGCM contributed to introducing a new approach to the market, where the relationships between market players had not only a private law relevance, but also a public law one.

The speakers also recalled Giuseppe Tesauo's initial misgivings about taking the a role inherited from Giuliano Amato, who had just served as Italy's President of the Council of Ministers. Amato had an 'institutional' view of AGCM's role *vis-à-vis* the judiciary. Tesauo's view, instead, focused on the protection of individual rights and was based on his European experience.

In particular, President Tesauo never sought to shield AGCM from judicial review, nor did he seek a special status for the AGCM in disputes before Italian courts. In President Tesauo's view, AGCM had to affirm its independence *vis-à-vis* the legislative and the executive branch, not the judiciary one. Judicial review was, for President Tesauo, the opportunity to test the limits of the AGCM's powers and remit. Thus, President Tesauo's main concern was not winning individual cases, but embedding AGCM's role within the rule of law.

The speakers also highlighted how President Tesauo boosted AGCM's international reputation. His role was pivotal in the early days of the International Competition Network, whose first annual conference was held in Naples in September 2002, during President Tesauo's term at the AGCM.

Finally, the speakers recalled President Tesauo's great adaptability, open-mindedness, and firmness of convictions during his time at the AGCM. He would

carefully examine every case entrusted to the AGCM. So much of his experience as an attorney also came to the fore in his role as AGCM President. His way of constructing arguments and his unconditional respect for judicial review owe much to his longstanding experience in litigation.

The last panel was devoted to Giuseppe Tesauero's career as an Attorney of the Naples Bar. This panel was composed of Professors Raffaele De Luca Tamajo, Ferruccio Auletta, and Gian Michele Roberti, and of Attorneys Claudio Tesauero and Francesco Avolio.

Attorney Tesauero practised the legal profession intermittently throughout his life and brought to it all the knowledge, methods, and experience he had gathered from his other assignments. Thus, in his 'lawyering style', one finds a constant attention to practice and to the simplicity of argumentation, devoid of unnecessary theoretical minutiae.

In turn, Giuseppe Tesauero's background as an attorney profoundly influenced his understanding of his other roles. This is particularly evident from Giuseppe Tesauero's focus on effective judicial protection and his unwavering commitment to justice, equity, and fairness. The Constitutional Court's landmark ruling on the rights of Nazi crimes victims, his Opinion to the ECJ in the *Factortame* case, his constant emphasis on the importance of the role of national courts owe so much to Giuseppe Tesauero's experience as 'simple attorney', as he used to call himself.

Finally, this session was also an opportunity for speakers to recall how Giuseppe Tesauero spoke, often with remarkable foresight, on many fundamental issues of public interest today, first and foremost on European integration, right up to the Conference for the Future of Europe, and on the importance of safeguarding the Union's values for future generations.

As reported by many speakers at the event, the journalist Bartolo Scandizzo provided an accurate description of Giuseppe Tesauero's legacy in his obituary published in the weekly magazine *Unico* on 14 July 2021. Giuseppe Tesauero was an example of 'how a person can take up, exercise, and leave public offices while remembering, at all times, that only if one is above all a man, can one provide a service to humanity'.

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