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CONSTITUTIONAL REASONING IN THE ITALIAN CONSTITUTIONAL COURT[***]

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A. Legal, Political, Institutional and Academic Context

1. Legal and Political Culture as Context for Constitutional Reasoning

The Constitutional Court was introduced for the first time in Italy by the 1948 Constitution, enacted by the Constituent Assembly after the fall of the Fascist regime and the end of the Second World War. The Constitution established a 'constitutional democracy', that is, a form of government in which sovereignty belongs to the people and is exercised within the limits established by a 'rigid' Constitution, entrenched by a difficult amendment procedure.

Since the beginning of its activity in 1956, the Court has played a crucial role in the implementation of the Constitution, acting in accordance with legal scholarship, and has contributed to the development on the part of ordinary courts of a new, open-minded attitude towards the newly-enacted Constitution.[1] Over the years, the Court has also displayed a high level of intepretative creativity and activism, which has facilitated the evolution of the Italian legal system with a view to the establishment of a modern constitutional State in correspondence with the modernization of the Italian society.[2]

In so doing, the Court has often reached beyond the text of the Constitution, becoming one of the players of its silent trasformation. Despite the entrenchment of the Constitution, an important feature of Italian constitutionalism lies in the fact that constitutional change has largely taken place informally – that is, outside of the rules established for the enactment of formal amendments – in a variety of forms: ordinary laws with constitutional effects (such as electoral laws or the Standing Orders of each Chamber of the Parliament); constitutional conventions and practices; European law, and, last but not least, decisions of the Constitutional Court.[3]

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[1] On the relationships between the Constitutional Court and ordinary courts, that, for reasons developed in the text, are crucial for the comprehension of the Italian system of judicial review, see E. LAMARQUE, *Corte costituzionale e giudicinell'Italiarepubblicana*, Laterza, Roma-Bari, 2012.

[2] For an overview of the contribution of the Constitutional Court to the development of the Italian legal system, see E. CHELI, *Il giudicedelleleggi*, Il Mulino, Bologna, 1996; see also T. GROPPI, *The Constitutional Court of Italy: Towards a Multilevel System of Constitutional Review?*, in *Journal of Comparative Law*, 2008, 3.2 100-118.

[3] See C. FUSARO, *Italy* in C. FUSARO and D. OLIVER (eds), *How Constitutions Change. A Comparative Study*, Hart Publisher, Oxford, 2011, 211-233; T. GROPPI, *Constitutional Revision in Italy. A Marginal Instrument*

Many reasons concur in explaining this development and are deeply connected with the specific features of Italy's constitutional culture and political system.

As for the constitutional culture, the most prominent Italian scholars since the beginning have endorsed a non-formalistic view of the Constitution: according to this view, the meaning of the Constitution was supposed to reach beyond the mere written text[4] to become the product of the political, social and economic groups that at different historical times and circumstances would uphold the written text.[5] This has been the prevailing view throughout the life of the 1948 Italian Constitution,[6] together with a non-positivistic approach to constitutional interpretation,[7] which explains the important role played, over the years, by the creative interpretation of the Constitutional Court.

As for the political system, it should be noted that the 1948 Italian Constitution was the product of the political agreement reached between the various anti-fascist parties (the *Democrazia Cristiana*, DC – the Italian catholic party –, the left-wing parties – *Partito comunista* and *Partito socialista* – and some minor centrist parties). However, in May of 1947, that is, even before the entry into force of the Constitution, this agreement collapsed, due to the beginning of the Cold War on the international level. This event determined two sets of consequences. First of all, many provisions of the Constitution remained without legal implementation. Secondly, in the absence of a vast consensus, the prevailing opinion was that the procedure for constitutional revision could be resorted to only for minor changes: thus, for major changes, other informal avenues were eventually developed.

As a result of the aforementioned process, today the 'living Constitution' in Italy is conceptually very far from the 'written Constitution':[8] in this transformation, determined by the prevailing Italian constitutional culture, the Constitutional Court has played an important role.

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for Constitutional Change, in Xenophon Kontiades (ed), *Engineering Constitutional Change: A Comparative Perspective on Europe, Canada and USA*, Routledge, London, 2012, 203-227.

[4] The distinction between '*disposizionÈ* and '*norma*,' or legal 'provisions' and 'norms', was introduced by V. CRISAFULLI, *Questioni in tema di interpretazione della Corte Costituzionale nei confronti con l'interpretazione giudiziaria*, in *Giurisprudenza costituzionale*, 1956, 929, with regard to statutory interpretation.

[5] The most influential book wasC. MORTATI, *La Costituzione in senso materiale*, Giuffrè, Milano, 1939. The author, Costantino Mortati, later became a member of the Constituent Assembly and, further on, a judge of the Constitutional Court. He is considered the most influential Italian scholar in Constitutional Law.

[6] See A. BARBERA, *Ordinamento costituzionale e carte costituzionali*, in *Quaderni costituzionali*, 2010, 311.

[7] This approach is well summarized in G.ZAGREBELSKY, *Il diritto mite*, Einaudi, Torino, 1992, a book that has deeply influenced the last two decades of Italian Constitutional Law history and has been translated into many language (not in English).

[8] See S.BARTOLE, *Interpretazioni e trasformazioni della Costituzione repubblicana*, Il Mulino, Bologna, 2004,especially 241 ss.

2. The Court and Constitutional Litigation

The framers of the Italian Constitution rejected the few proposals aiming towards the introduction of a purely decentralized system of judicial review of legislation, American-style, and, in accordance with the dominant constitutional trends in post-war Europe (particularly as expressed by Hans Kelsen), they designed a system of centralized review, with the creation of an '*ad hoc*' organ of constitutional justice separate from the judiciary (art.134-137).[9]

2.1. Competences of the Constitutional Court

The functions of the Constitutional Court, as defined in article 134 of the Constitution, are those typical of constitutional tribunals.

The Court has the power:

a) to adjudicate on the constitutionality of laws issued by the national and regional governments;

b) to resolve conflicts between organs of the state, between the state and the regions, and between regions;

c) to adjudicate crimes committed by the President of the Republic (high treason and attempts to overthrow the Constitution).

Article 2 of Constitutional Law n. 1 of 1953 added an additional function to those already listed in the Constitution:

d) to adjudicate on the admissibility of requests for referendums to repeal laws, which may be promoted by 500,000 voters, or five regional councils, pursuant to article 75 of the Constitution.

Compared to other models of constitutional adjudication, especially those most recently established, these competences are notable for being apparently limited and minimalist.

On the one hand, the Italian Constitutional Court does not have some competences which are present in other constitutional systems, usually labeled as 'political': for example, in many systems Constitutional Courts have powers connected to electoral issues, supervision of political parties and the declaration of incapacity of the President of the Republic.

On the other hand, with regard to the Court's main competence of reviewing the constitutionality of laws, several limitations arise from articles 134-137 of the Constitution, Constitutional Law n. 1 of 1948 and Law n. 87 of 1953. These limitations concern the means of triggering constitutional review and the object of review.

First of all, access to constitutional review is rather circumscribed: the Italian system offers only *a posteriori*, indirect, concrete review, which arises mainly out of a separate judicial proceeding ('*a quo*' proceeding). The keys that open the door to constitutional review are primarily in the hands of ordinary judges, who therefore perform the important function of 'ga-

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[9] The debates in the Italian Constituent Assembly are summarized in A. PIZZORUSSO, V. VIGORITI and G.L. CERTOMA, *The Constitutional Review of Legislation in Italy*, in *Tem. L.Q.*, 1983, 56, 503.

tekeepers'. The constitutional proceeding begins with a 'certification order' whereby the judge suspends all proceedings and submits the question to the Constitutional Court. In that order, the judge must indicate the relevance and plausibility of the question, the law challenged and the constitutional provision allegedly violated.

There is also an avenue of direct, abstract review, according to article 127 of the Constitution, but it is rather circumscribed. The national government and the regional government may challenge, respectively, a regional or a national statute within 60 days of its publication. This way, direct review is only a tool for the guarantee of the constitutional separation of powers between national and regional governments. Neither private citizens nor parliamentary groups nor local (sub-regional) governments can directly invoke the Court's jurisdiction.[10]

Secondly, the 'object' of constitutional review is represented exclusively by laws. Delegated or administrative legislation is not reviewed by the Constitutional Court, but rather, conversely, by ordinary courts. Those courts, however, cannot annul statutes, although they can annul or set aside secondary legislation.

Furthermore, the Court may not autonomously shy away from the '*themadecidendum*' (that is, the object and parameter of review) identified in the application to the Court, as indicated in article 27 of Law n. 87 of 1953.

If we move from a simple list of the Court's functions to an analysis of the statistics about its activity, the limited nature of its powers becomes even clearer. Out of a total average of around 300-400 decisions per year in the last decade, the vast majority of the Court's activity is devoted to the constitutional review of legislation, which overshadows its other functions, in particular with regard to jurisdictional disputes between the state and the regions. This percentage has not changed over the years, although the total number of cases decided per year has been increasing, moving from 100-200 during the first 20 years to the more than 1000 by the year 1988, when the Court adjudicated most of the pending questions, previously delayed. After that date, the number stabilized around the current level.

Within the category of constitutional review of legislation, particular importance is assumed by concrete review, which has absorbed most of the Court's time during its almost sixty years of activity, although the number of questions raised by ordinary judges has decreased in the last decades, due to the 'interpretation of the statutes in conformity with the Constitution'[11] and as a consequence of the fact that a number of controversies that might be brought to the Constitutional Court are rather decided in the European context, by the ECJ (European Court of Justice, now CJEU) or by the ECHR (European Court of Human Rights), both having competing jurisdiction in cases involving the protection of rights.

At the same time, the number of direct complaints (in the state-regions relationship) has increased, mainly as a consequence of the important constitutional revision occurred in

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[10] See G. GENTILI, *A Comparison of European Systems of Direct Access to Constitutional Judges: Exploring Advantages for the Italian Constitutional Court*, in *Italian Journal of Public Law*, 2012, 159.

[11] See *infra* at paragraph A 4.

2001 that affected most of the articles of the Constitution dealing with the state-regions relationship. In the last few years the majority of decisions[12] concern this latter competence.[13]

2.2. Constitutional Litigation

The powers of the Italian Constitutional Court and the process of constitutional review were regulated in the years immediately following the entry into force of the Constitution (the Court was established in 1956) and have not changed much since then,[14] although the Constitutional Court enjoys vast discretion in interpreting its procedure and practice,thus allowing it to modify the latter - by its rules of procedure or even on a case-by-case basis - in order to achieve a desired goal or to more fully implement constitutional values.

Within this framework, certain aspects should be pointed out.In concrete control, cases are only seldom orally argued. This usually happens in two set of cases: when the parties appear before the Court and where a dismissal of the challenge on procedural grounds is not an option. In these cases, the parties appearing before the Court are not only the parties of the '*a quo*' judgment but also the national or regional governments (according to the statute challenged): third parties, *amici curiae*, etc., do not enjoy standing to participate in public hearings, despite the critical remarks of the scholarship towards this very restrictive approach of the Court.[15] In abstract review, conversely, cases are almost always orally argued: the parties are the national and the regional governments. Conflicts are always orally argued. Independently from the possibility to argue orally, parties can always submit briefs to the Court, which are usually addressed in the 'fact of the casÈ part of the judgments.[16] The Court can '*ex officio*' (on its own motion) ask for evidence or arguments, but this has happened rarely and in most cases it was just a device used in order to likely postpone complex decisions: most of the time, the Court acquires facts or other non-legal arguments informally.

2.3. Typology and Effects of Decisions

It is difficult to understand the legal reasoning of the Italian Constitutional Court without considering the typology of its decisions, especially in the constitutional review of legislation[17].

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[12] Especially among the "*sentenze*": see *infra* at paragraph A 2.3.

[13] Data about the work of the Court may be found in R. ROMBOLI (ed.), *Aggiornamenti in tema di processocostituzionale*,Giappichelli, Torino, since 1990 through 2012, and in the annual report of the President of the Court, published on the website of the Court: www.cortecostituzionale.it..

[14] See Const. Law 1/1948, Law 1/1953 and Law 87/1953. The rules of procedure of the Court, enacted in 1956, were replaced in 2008.

[15] See e.g. V. ANGIOLINI (ed), *Il contraddittorio nel giudizio sulle leggi*, Giappichelli, Torino, 1998; R. ROMBOLI (ed), *L'accesso alla giustizia costituzionale: caratteri, limiti, prospettive di un modello*,Jovene, Napoli, 2006.

[16] See *infra* at paragraph B 1.

[17] See *amplius* G. ROLLA and T. GROPPI, *Between Politics and the Law: The Development of Constitutional Review in Italy*, in W. SADURSKI (ed), *Constitutional Justice, East and West*, Kluwer Law International, The Hague, 2002, 143.

From a formal point of view, there are two kinds of decisions: '*sentenzÈ* and '*ordinanzÈ*. '*OrdinanzÈ* (orders) do not decide the question, but rather play either an interlocutory role or reject a question on procedural grounds. Usually they are motivated on the ground of lack of standing or lack of other admissibility requirements. 'SentenzÈ (judgments) are longer and more motivated decisions that decide the question submitted. All the decisions of the Court are published in the Official Journal.

According to the constitutional and legislative provisions regarding the Constitutional Court, there is a limited range of '*sentenzÈ*: they can either accept or reject constitutional challenges, and these are known respectively as '*sentenze di accoglimento*' and '*sentenze di rigetto*'.

The consequences of these two types of decisions, including their temporary effects, are rather straightforwardly defined by law and do not fall within the discretionary power of the Court.

Decisions that reject a constitutional challenge do not certify a law as constitutional; rather, they merely reject the specific challenge presented in the form in which it was raised. They are not universally binding, that is, they are not effective *erga omnes.* Thus, the same question can be raised again, on the same or different grounds, provided, however, that the judge who certified the question cannot raise it again in the same lawsuit. For this reason, such judgments are said to be effective only as between the parties, that is, *inter partes*.

On the other hand, judgments that accept a constitutional challenge are universally binding and produce retroactive effects (*ex tunc*), in the sense that the statute declared unconstitutional can no longer be applied from the day after the judgment has been published. This retroactivity finds its limits in what are usually called '*rapporti esauriti*,' which might be translated as 'concluded relationships' or '*res iudicata*'. For reasons of convenience and legal certainty, judgments do not affect situations that were already resolved by final judgments, claims that are barred by statutes of limitation, and the like. Yet, there is an exception to this rule where a final criminal conviction has been entered pursuant to the law now declared unconstitutional: the law provides that such a conviction and any related punishment should cease.

However, the Constitutional Court has since the first years of its activity developed a rich variety of judgments that arise from the need, recognized by the Constitutional Court, to consider the impact that its decisions have on the legal system as a whole and on the other branches of government, particularly the Judiciary and the Parliament.

The need to establish a relationship with the ordinary courts, which are charged with the task of interpreting statutory law, led the Constitutional Court to develop 'interpretativÈ decisions: with them the Court distinguishes between the text of constitutional provisions and the underlying norm and either indicates to the certifying judge an alternative interpretation (norm) that is consistent with the Constitution, thus rejecting the constitutional challenge (i.e. a '*sentenza interpretativa di rigetto'*), or it judges the interpretation given by the certifying judge to be contrary to the Constitution and strikes down that specific norm, but not the text itself (i.e. a '*sentenza interpretativa di accoglimento',* rarely used nowadays).

Other types of decisions have instead affected the relationship between the Court and the Legislature. An especially delicate issue has been the use of 'additivÈ judgments, whereby the Court declares a statute unconstitutional, not for what it provides, but rather for what it fails to provide. This way, the Court manages to insert new rules into the legal system which cannot be found in any statutory text. With these judgments, the Constitutional Court transforms itself into a creator of legal rules, thereby playing a role that in the Italian system belongs almost exclusively to the Parliament.

3. Judges

3.1. Requirements and Appointment

The Constitutional Court's composition reflects the effort to balance the need for legal expertise, as any judicial body, with the acknowledgment of the unavoidably political nature of constitutional review:[18] fifteen judges, chosen from among legal experts (magistrates from the higher ordinary courts, law professors, and lawyers with more than 20 years of experience), one-third of whom are appointed by the President of the Republic, one-third by the Parliament in joint session, by 3/5 majority, and one-third by the upper echelons of the judiciary. The term of office is 9 years and they cannot be re-appointed. Thus, the main feature of the judges is their legal expertise: mere politicians cannot be appointed, although it could happen that some former politicians are chosen, especially among lawyers.

The three categories have been present in almost equal proportion, although law professors have been slightly more numerous.[19] At the moment,[20] 5 of the 13 judges are law professors, 2 are lawyers and 6 are magistrates. Generally, the President of the Republic appoints scholars, whereas the Parliament elects both professors or lawyers, and the higher courts normally elect their members.

The average age is elder: appointment to the Court is seen as the conclusion of a brilliant legal career. The age of retirement is not provided and it is common that judges are appointed at age 75, when professors and magistrates take compulsory retirement from their previous occupations. At the moment, the average age is 72.

In the Court's history, only three women have served as Constitutional Court judges; at the moment, there is only one woman (a law professor). Thus, judges are usually male legal experts in their seventies or eighties, with strong legal knowledge and little or no political background.

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[18] This balance has been pointed out by G. ZAGREBELSKY, *Giustizia costituzionale*, Il Mulino, Bologna, 1988, that remains the most complete study on the Italian Constitutional Court.

[19] For some data, see P.PEDERZOLI, *La Corte costituzionale*, Il Mulino, Bologna, 2008.

[20] We completed the article on August 2014: at that time the Court had 13 members, as the Parliament had not yet renewed 2 members. Since that date, some changes occurred in Court composition.

3.2. Collegiality Principle and Exclusion of Separate Opinions

One of the main features of proceedings in the Italian Constitutional Court is collegiality. All decisions are 'decisions of the Court' and it is not possible to know the position of individual judges. A decision is usually written by a '*rapporteur* judgÈ, appointed by the President of the Court in order to study the case and to propose a solution to the Court. Only in a handful of cases throughout the Court's history the *rapporteur* has asked the President to be substituted by another judge in writing the decision, since the *rapporteur* was dissenting with the final outcome of the challenge. As a consequence, it is extremely difficult, or almost impossible, to determine the effective influence of the personality and the legal culture of individual judges (other than the *rapporteur*) on the decisions.

The exclusion of dissenting (or concurring) opinions (and the related principles of secrecy of deliberation and collegiality) has been linked by scholars[21] to the need to find a balance between politics and law. According to them, the principle of collegiality is a device protecting the Court from the pressures and interferences of politics, giving the judges the opportunity to express their opinion freely, without having to justify their individual position outside of the Court. On the other hand, the prohibition on disclosing the individual opinions of the judges has been criticized because it may result in opaque, non-transparent motivation.[22]

Over the years, some attempts to introduce dissenting opinions have been made by the Court itself, by its own rules on proceedings, but all have failed due to lack of consensus.

4. Legal Scholarship and Constitutional Reasoning

A close connection between the Court and legal scholarship has existed since the beginning of the Court's activity. Over time, a vast majority of the most qualified scholars (especially in the field of constitutional law) has been appointed to the Court; this is indeed the main professional ambition for most scholars, due to the prestige of the office and to the high salary, roughly four times that of a law professor.

Scholars devote special attention to the Court's decisions: one of the most influential Italian journals of constitutional law ("*Giurisprudenza costituzionale*") was founded in the same year the Court was established (1956) and it is almost entirely devoted to commentaries on the judgments. Scholarship is not deferential to the Court and openly displays its critical remarks. The Court, in turn, takes these commentaries seriously into account, which are compiled by the Study Department and by the judges' 'law clerks'. We can assume that scholarship strongly contributes to the evolution of jurisprudence, although explicit quotations of authors are not permitted in judgments.[23]

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[21] This is the point of view of G. ZAGREBELSKY, *Principi e voti*, Einaudi, Torino, 2005, 75 ss.

[22] C MORTATI (ed), *Le opinioni dei giudici costituzionali e internazionali*, Giuffrè, Milano, 1964; A.ANZON (ed.), *L'opinione dissenziente*, Giuffrè, Milano, 1995; S. PANIZZA, *L'introduzione dell'opinione dissenziente nel sistema di giustizia costituzionale*, Giappichelli, Torino, 1998.

[23] As we will detail further *infra* at paragraph B 3.12

As for constitutional interpretation, the absence, in the text of the Constitution, of any provision regarding its interpretation has generated an extensive scholarly debate on the possibility for art. 12 of the "*Preleggi*" ("Preliminary Rules to the Civil Code")[24] to be applied to cases of constitutional interpretation.[25] While the Constitutional Court has never made express reference to this article, it appears to have adopted a stance incompatible with the possibility to be bound by thereby. The Court has consistently avoided developing a hierarchy of interpretative methods, preferring a 'case-by-casÈ approach:[26] this 'swinging' attitude has been criticized on the part of scholarship, which has very often invited the Court to show more consideration for the text of the Constitution[27] and to embrace a more consistent approach to its own precedents.[28]

Despite these critical remarks, we can assume that some widely accepted theories regarding constitutional interpretation (interpretation in light of constitutional principles or in light of constitutional values)[29] represent the main criteria inspiring the Court's reasoning and, although never explicitly mentioned in judgments, they can be easily detected in the case law, especially in the rare decisions in which the Court has made clear its doctrine of constitutional interpretation (e.g. Dec.1/2013): "The Constitution is grounded on principles, which are tightly interconnected and need to be balanced with each other, so that the task of judicial review must be conducted with regard to the constitutional system as a whole and not to individual provisions, considered alone. A fragmented interpretation of normative provisions –

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[24] Art.12 states that "When applying the law, any other sense cannot beattributed to itother thanthe one made clear by the obvious meaning of the wordsbased on its connectiontothem,and by theintention of the legislature."

[25] The core of the debate – raised since the entry into force of the new Constitution: see F. PIERANDREI, *L'interpretazione della Costituzione*, in *Studi in memoria di Luigi Rossi*, Giuffré, Milano, 1952, 459 – lies on the specificity of constitutional interpretation with regard to statutory interpretation: in favor of this peculiarity, see e.g. G. U. RESCIGNO, *Interpretazione costituzionale e positivismo giuridico*, in *Diritto pubblico*, 2005, 19; against, see e.g. R. GUASTINI, *Ancora sull'interpretazione costituzionale*, in *Diritto pubblico*, 2005, 457. On this debate, see C. PINELLI, *Il dibattito sull'interpretazione costituzionale tra teoria e giurisprudenza*, in *Scritti in memoria di L. Paladin*, Jovene, Napoli, 2004, vol. 3 1671; T. GUARNIER, *Interpretazione costituzionale e diritto giurisprudenziale*,Editoriale Scientifica, Napoli, 2014, 3.

[26] See F. MODUGNO, *Sulla specificità dell'interpretazione costituzionale* in ID., *Scritti sull'interpretazione costituzionale*, Editoriale Scientifica, 2008, 214; A. PACE, *Interpretazione costituzionale e interpretazione per valori*, in G. AZZARITI (ed), *Interpretazione costituzionale*, Giappichelli, Torino, 2007, 109; C. MEZZANOTTE, *Tecniche argomentative e diritti fondamentali,* in S.PANUNZIO (ed), *I costituzionalisti e la tutela dei diritti nelle corti europee*, Cedam, Padova, 2007, 658.

[27] In this direction, see especially A. PACE, *Metodi interpretativi e costituzionalismo*, in *Quaderni costituzionali*, 2001, 60; G. AZZARITI, *Interpretazione e teoria dei valori: tornare alla Costituzione,* in A. PALAZZO (ed) *L'interpretazione della legge alle soglie del XXI secolo*, Edizioni Scientifiche Italiane, Napoli, 2001, 240; M. LUCIANI, *Interpretazione costituzionale e testo della costituzione*, in G.AZZARITI (ed), *Interpretazione costituzionale* cit. 49.

[28] L. PALADIN, *Le fonti del diritto*, Il Mulino, Bologna, 1996, 150.

[29] To quote just some of the more distinguished representatives of this approach (with nuances), see A. BALDASSARRE, *Costituzione e teoria dei valori*, in *Politica del diritto*, 1991, 654; F.MODUGNO, *Interpretazione per valori e interpretazione costituzionale*, in ID., *Scritti sull'interpretazione costituzionale* cit. 27 ss.; G.ZAGREBELSKY, *Il diritto mite*cit; ID., *La legge e la sua giustizia*, Il Mulino, Bologna, 2008.

be them constitutional or statutory – runs the risk of leading to paradoxes that would end up contradicting the provisions' very goals of constitutional protection".

This approach has been extended from the Constitutional Court to the ordinary courts, by way of the doctrine of 'interpretation in conformity with the Constitution', according to which, before referring a statute to the Constitutional Court, ordinary courts must attempt to give it a constitutionally-consistent interpretation, even going beyond the text, if necessary, (otherwise the constitutional question is dismissed by the Court on procedural grounds).[30] As a result of these factors – and more generally as a consequence of an evolution in legal culture, especially in the judiciary – there is nowadays a *continuum*, as far as constitutional interpretation is concerned, between the Constitutional Court and ordinary courts. The presence in the Constitutional Court of five judges of higher courts and the fact that the large majority of the law clerks are ordinary judges (even from the Court of Cassation), often acting as part-time clerks while exercising judiciary functions, has further strengthened this tendency.

B. Arguments in Constitutional Reasoning

1. The 40 Leading Cases: an Overview

In the analysis of the 40 decisions selected, the aforementioned different competences of the Court should be considered. Currently, the style of motivations is not exactly the same: differences exist especially between the constitutional review of legislation and other competences, such as in conflicts or referendum cases, mainly due to the different institutional actors involved. Among the 40 decisions analyzed, 34 have been adopted in the constitutional review of legislation (28 in concrete review, 6 in abstract control), 4 in the resolution of conflicts between organs of the state, 1 in the resolution of conflicts between state and regions and 1 in the judgment on the admissibility of the abrogative referendum. As for the timing, the distribution since 1956 shows that in the first decade (1956-1965) we find only 3 judgments; 5 judgments in the second decade (1966-1975); 5 judgments in the third (1976-1985); five judgments in the fourth (1986-1995) ; 12 judgments in the fifth (1996-2005); and 11 judgments in the sixth (not exactly a decade yet), since 2006. The reason for this is probably twofold: on one hand, the low number of decisions adopted during the first years; on the other, the tendency to avoid quoting and in favor of overruling older precedents issued by the Court itself, due to the perceived evolution of society as a whole (as far as fundamental rights are concerned) or to the change of the text of the Constitution (mainly with regard to issues of regionalism).

In most decisions (27 out of 39) the Court found the law (or the act, in conflicts cases), to be in violation of the Constitution and consequently annulled the challenged provi-

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[30] See G. SORRENTI, *L'interpretazione conforme a Costituzione*,Giuffré, Milano, 2006; M. D'AMICO and B. RANDAZZO (eds), *Interpretazione conforme e tecniche argomentative*,Giappichelli, Torino, 2009.

sion(s). In the remaining decisions (Dec. 16/1978), on the admissibility of abrogative referendum, the referendum was not admitted.

In the absence of separate opinions, the analysis has been limited only to the Court's opinion and, more specifically, to the 'Conclusions on the point of law'. We should point out that the '*sentenzÈ* are divided into two parts: the first part, 'The facts of the casÈ, is dedicated to summarizing the content of the petition and the arguments proposed by the parties in their written briefs; the second part, 'Conclusions on the point of law' begins with some paragraphs dedicated to briefly summarizing the petitions, in order to clarify the '*themadecidendum*'. The following paragraphs contain the Court's reasons, on which our study has been focused.

2. Structure of Constitutional Arguments

There is not a dominant structure in constitutional arguments[31]. The "chain structure" was prevalent in the first decades and it remains present in more recent judgments (17 of 40), but also the "leg-structure" is present (11 judgments), as well as the "dialogic-structure" (12 judgments). Several reasons for this structure – and especially for the low level of chain judgments - seem to be detected.

First of all, the collegiality principle: the lack of separate opinions pushes the Court to take more inclusive and shared decisions. It is a well–known fact, based also on the testimony of certain judges,[32] that the usual technique of decision making is to look for the broadest consensus of the Court, and that sometimes the decision is postponed until unanimity is reached. This approach imposes the author of the judgment to take into consideration all the opinions expressed in chambers by each judge, including those dissenting or concurring. One could guess that chain judgments are unanimous.

Secondly, the structure of arguments seems likely to be influenced by the presence or the absence of parties: when the Court deals with many different arguments submitted, it usually prefers a dialogic structure or a leg of chair structure.

Finally, the individual personality of the judge authoring the decision is likely to influence the structure of arguments,[33] since there are judges (often with an academic background) more inclined to write longer and articulated motivations.

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[31] The following classification has made accordingly to A. JAKAB, *Judicial Reasoning in Constitutional Courts. A European Perspective*, in *German Law Journal*, 2013, 1215.As "chain-structure" we mean a self-standing structure, in which every premise is presented as a necessary component of the argument. As "leg structure", we mean acumulative parallel structure ,in which distinct, autonomous considerations lead to the same conclusion. As "dialogic-structure" we mean that the various considerations brought up by the opinion are neither presented as necessary nor as sufficient to entail the conclusion, but as elements bearing, at least, some relevance for the issue at hand.

[32] See G.ZAGREBELSKY, *Principi e voti* cit.

[33] P.PEDERZOLI, *La Corte costituzionale* cit. 95.

3. Types of Arguments in Constitutional Reasoning

3.1. Establishing the Text of the Constitution

We found 8 judgments in which it is discussed what counts not exactly as constitutional text, but rather as 'standard of review': that is, the provisions of the Constitution, constitutional laws or other sources referred to by them or on which they are based, which are claimed to have been violated.

Currently, the Italian Constitutional Court does not use in its judgments only the Constitution and the constitutional laws, enacted according to the special procedure provided for constitutional amendments (art.138), but also certain other legal acts that do not enjoy constitutional status. These provisions are called (both by scholars and by the Court) 'interposed rules': these rules supplement a constitutional principle, whilst always retaining a lower status, and it is necessary that they comply with the Constitution.

In Dec. 9/1959, the Court excluded that parliamentary rules could be used as principles in the constitutional control over legislative procedure, since they are enacted by each Chamber in its autonomy and the control over their respect is in the hands of the President of each Chamber, and not of the Court.

In Dec. 7/1996, when the constitutionality of a motion of no confidence to a single Minister was challenged, the Court used, as a harmonizing argument, "the sources supplementing the Constitutional text, …especially parliamentary rules and common practice". These elements "supplement the written constitutional norms and define the role of constitutional bodies pursuant to unwritten principles and rules developed and established over time through the constant reiteration of consistent conducts (or, in any case, inspired by common criteria, applied to identical or similar cases): that is, in the form of fully developed constitutional conventions".

In Dec. 172/1999, the Court considered generally-recognized principles of international law as standards of review, according to art.10.1 Constitution.

In Dec. 348/2007, the Court affirmed that international treaties supplement and make operative the principle contained in art.117.1 Const., even if these do not acquire the force of constitutional law. This statement was reaffirmed in Dec. 80/2011, in which the Court explicitly labeled treaties as 'interposed rules'. The ECHR was also applied, as interposed legislation, in Dec. 138/2010, although to conclude that "the reference to national laws contained in art.12 [of the ECHR], confirms the fact that the matter falls within the discretion of Parliament".

In Dec. 80/2010, the Court struck down a statute as in contrast with constitutional and international provisions, referring the latter to the UN Convention on the Rights of Persons with Disabilities.

In Dec. 102/2008, the Court reaffirmed its well established jurisprudence, according to which, in abstract control, European Union law plays the role of 'interposed rulÈ, independently from its direct effects or lack thereof.

3.2. Applicability of the Constitution

The question about the applicability of the Constitution came up in 12 judgments, especially in the first years of activity of the Court, when the extension of its jurisdiction was at stake.

This is the case of probably the most famous decision of the Italian Constitutional Court, its first judgment, Dec.1/1956, when the binding nature of constitutional provisions was discussed. Indeed, before the establishment of the Court, in the ordinary courts, especially the higher ones, an idea of the Constitution had prevailed according to which not all constitutional provisions would be immediately binding, but rather as containing mere 'principles' and not full-fledged 'rules', some of which needed to be implemented by the legislator before they could be applied. Thus, the violation of one of those principles by a statute would not have determined the unconstitutionality of the latter, as the principles would have been only 'programs' or 'guidelines' to be politically developed. Contrary to this view, the Court affirmed the binding nature of all constitutional norms, specifying their binding character not only in relation to the government, but also to private parties, and reaffirmed its power to review any laws in contrast with the Constitution.

Another important issue concerned the possibility for the Court to control respect for constitutional rules in legislative procedures: in Dec. 9/1959 (where the possibility to control the difference between the texts of a statute approved by the two Chambers was discussed), the Court affirmed its jurisdiction, although limited to the constitutional provisions that are very short and synthetic on the matter, excluding the possibility to control respect for parliamentary rules.

In Dec. 1146/1988, the Court affirmed the applicability of the Constitution in the review of constitutional laws, moving from the statement that "The Italian Constitution expresses some principles that cannot be overthrown or modified in their core content, not even by constitutional amendments or other constitutional laws. These are not only the principles that the Constitution itself identifies as absolute limits to the amending power, such as the Republican form of government (art. 139 Const.), but also those principles that, while not expressly included among those qualified as non-amendable, are connected to the core of the highest values that lie at the very foundation of the Italian Constitution".

A more specific issue was dealt with in Dec. 102/2008, concerning the applicability of certain articles of the Constitution to the special autonomous regions: these are regions that benefit from more extensive autonomy, according to art.116 of the Constitution. For those regions, Constitutional Law no. 3/2001 provides that they would continue to benefit from the level of autonomy established by their special statutes, unless new constitutional rules would be more favorable. In this case, the Court established that the then new art. 119 of the Constitution, concerning financial autonomy of regions, was less favorable than the rules contained in the special Statute of the Region of Sardinia, thus it could not be applied to this region.

The remaining judgments dealt with two main issues: (a) the question of the primacy of EU law and (b) the question of the legislative discretion.

(a) As for the primacy of EU law, this matter was touched upon by Dec. 170/1984, 348/2007, 80/2011.

Since Dec. 170/1984, the Court, by overruling its precedents issued in the 1970's, considered that Community provisions "must have full binding effectiveness and direct application in all the Member States, without any requirement for the implementation or amendment of national laws, as instruments having the force and value of law in every state of the Community, in order to enter simultaneously into force everywhere and to achieve the equal and uniform application in relation to all addressees". Thus, a question of constitutionality raised on the basis of the violation of a European provision cannot be judged by the Court, at least when the European rule produces direct effects, since it is up to the ordinary courts to solve the legal antinomy, by way of diffuse control. Abstract control is different, and the Court reaffirmed its jurisdiction in any case in which a question of compatibility between a statute and EU law is raised in abstract control (Dec. 102/2008). This issue was also considered in Dec. 348/2007, when, conversely, the Court reaffirmed the applicability of the Constitution and its own jurisdiction in the case of violation of the ECHR, and in Dec. 80/2011, in which this approach was confirmed, despite the entry into force of the Lisbon Treaty, at least for matters that, as in that case, fall outside the EU's competence.

(b) As for legislative discretion, this issue has been raised since Dec. 53/1958, in the context of a judgment based on the equality principle, to circumscribe it as a control on the coherence of legislation. In Dec. 15/1982, the issue was the constitutionality of the duration of preventive detention in the fight against terrorism. The Court expressly avoided considering if preventive detention was in itself the best instrument to eradicate terrorism, as this evaluation is "prohibited for the judiciary, even for the Constitutional Court".

In Dec. 80/2010, conversely, the Court recognized that the discretion of the Legislature (in that case in the identification of measures to guarantee the rights of people with disabilities) is not absolute, as it finds a limitation in the respect for "an inviolable core of guarantees enjoyed by the people concerned".

In Dec. 138/2010, the Court dismissed the case of a same-sex marriage: the issue was the lack of legal recognition for same-sex marriages within the Italian legal order. The Court, after assessing that the Constitution grants also to same sex couples some form of legal recognition, added that there are several possible solutions to this legislative vacuum, as displayed by a comparative overview. It therefore follows that it is for the Parliament (and not for the Court) to determine – exercising its full discretion – the forms of guarantee and recognition for same-sex unions.

3.3. Analogies

We did not found any case of analogy, as the only instrument to fill gaps in the Constitution, although we did find 4 judgments in which some kind of analogical reasoning was developed, together with other arguments.

In 2 decisions it appears that a determination was reachedto develop some kind of 'non-written principles,' by harmonizing certain articles of the Constitution not directly affecting the issue.

In Dec. 15/1969, the Court declared unconstitutional the statute that provided the need for an authorization from the Minister of Justice to prosecute the crime of contempt of the Constitutional Court, as in contrast with the independence of the Court, and stated that such authorization had to be given by the Court itself. In the absence of specific constitutional provisions on the topic, the Court made reference to many provisions regarding the immunity of the Court, considering their analogy with those regarding the immunity of the Parliament, from which is equally absent any provision for contempt, although it is universally accepted that the prosecution must be authorized by the Parliament.

In Dec. 496/2000, the Court declared unconstitutional a regional law that submitted to regional consultative referendum a proposal of constitutional revision to be presented to the Parliament by a regional Assembly. The Court examined the constitutional role of the abrogative referendum (art.75), to conclude that, as it cannot affect constitutional rules, the same can be said for regional consultative referendums.

In the 2 remaining decisions, the Court rejected analogical reasoning suggested by the parties.

In Dec. 106/2002, the Region Liguria tried to justify recourse to the name "Parliament" for its regional Assembly (challenged by the State) on the ground of the analogy existing in the Constitution among the competences of the regional assemblies and the national Parliament. The Court indicated that the analogical argument could not be applied, as the Constitution had explicitly mentioned the organs of the region.

Finally, in Dec. 1/2013, dealing with the wiretapping of the President of the Republic's telephone conversations, the Court excluded this possibility as the silence[34] of the Constitution on this issue cannot be considered a '*lacuna*' (gap) and cannot be filled by referring analogically to the provisions on the wiretapping of the Members of the Parliament.

3.4. Ordinary Meaning of Words in the Constitution or References to the 'Wording of the Constitution' in General

References to the wording of the Constitution were found in 18 judgments, although the Court almost never relies on a pure textualist approach, which was explicitly excluded in the few decisions in which the Court tried to summarize its doctrine of constitutional interpretation.

We found only Dec. 422/1995, in which the Court decided the case mainly on the basis of textual interpretation: the law introducing 'quotas' for women in the electoral law was struck down, since according to the wording of the Constitution (arts. 3 and 51), the equality principle mandates the irrelevance of gender in the elections.

In most cases, the Court analyzed, carefully or generally, the text of constitutional provisions, to either accept or reject an argument included in the petition, as the first step in interpretation, before moving on to a different argument.

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[34] See *infra* at paragraph B 3.8.

For example, in Dec. 1/1956, the Court indicated that the distinction between freedom of expression and freedom of dissemination is not established in any provision of the Constitution; in Dec. 15/1969, the Court held that art. 137 textually affirms the independence of the Constitutional Court; in Dec. 164/1985, the Court distinguished the first and the second clause of art. 52, in order to show that the defense of the country, and not the military service, is a fundamental duty for every citizen. In Dec. 106/2002, on the use of the word "Parliament" to indicate a regional Assembly, the Court began with a textual approach (underlining that the Constitution names "*Consigli*" the regional Assemblies), but it added "the textual argument, although not completely irrelevant, cannot be considered crucial if it is not assessed in light of other arguments of constitutional interpretation" (in that case, historic-systematic arguments).

Only a few decisions have dealt explicitly with the meaning of words in the Constitution and in most of them this matter is not discussed, but rather taken for granted: e.g. Dec. 15/1982 considered the meaning of the word "provided", used in art. 13 of the Constitution, concerning the limitation on personal liberty, assumed in legal terminology. Dec. 7/1996 referred to the fact that in the *travauxpreparatoires* (preparatory works) the Constituent Assembly changed the word "personal" to "individual", referring to the responsibility of Ministers, "a change to which we cannot give only a lexical relevance, overlooking its purpose." Dec. 102/2008 referred to the meaning of the word "territory" in the Statute of Region of Sardinia, considering that it also included territorial waters. Dec. 138/2010 referred to 'social groups' recognized and guaranteed by art. 2 of the Constitution.

3.5. Harmonizing Arguments

A Domestic Harmonizing Arguments

We found domestic harmonizing arguments in 23 judgments: this is one of the preferred arguments for the Italian Constitutional Court, which includes: (a) the logic-systematic interpretation, understood as the interpretation of one constitutional provision in the context of the entire constitutional law; (b) the interpretation in light of fundamental principles; (c) the interpretation of one constitutional provision together with another ('*combinatodisposto*', i.e. combined provisions); (d) the balancing among different constitutional principles; and (e) the interpretation of the Constitution in light of ordinary legislation.

(a) The logic-systematic argument seems to be the argument preferred by the Italian Constitutional Court, which very often explicitly states its preference. In Dec. 16/1978, the Court affirmed that "textual interpretation must be integrated, when necessary, by the logic-systematic interpretation". In that judgment, the Court interpreted art. 75, which lists the statutes excluded from abrogative referendum, in light of the entire Constitution, arguing that art. 75 should not be interpreted by itself.

In Dec. 7/1996, the Court argued that "in the interpretation of the Constitution, logic-systematic argument must be preferred", subsequently engaging itself in the interpretation of several articles of the Constitution to verify if the individual motion of no confidence can be considered an implicit element of the constitutional design.

(b) The interpretation in light of fundamental principles is quite common, especially by reference to art. 2, according to which "The Republic recognizes and guarantees the inviolable rights of the person". For example, in Dec. 27/1975, on abortion, the Court interpreted art. 31 of the Constitution, regarding the protection of maternity in light of art. 2, to identify the guarantee of the fetus' rights; in Dec. 161/1985, on transsexualism, the Court interpreted the right to health in light of art. 2, to redefine the right to sexual identity. According to Dec. 223/1996, the Court held that the prohibition of the death penalty is absolute, as a consequence of interpretation of art. 27 (that prohibits the death penalty) together with the art. 2. In Dec. 172/1999, the Court referred to art. 2 - in order to interpret art. 52, on the duty of defense of the country, as including the stateless - and to art. 11, according to which "Italy rejects war", to argue that the idea of the army has deeply changed and evolved over time.

(c) We found the interpretation of one constitutional provision together with another ('*combinatodisposto*', i.e. combined provisions) in Dec. 15/1969, declaring the unconstitutionality of the authorization of the Minister of Justice to prosecute the crime of contempt of the Constitutional Court, in the absence of a specific constitutional provision on this topic.

(d) The balancing among different principles is a quite common interpretation technique as far as fundamental rights are concerned: e.g. we found it in Dec. 27/1975 on abortion, where the Court balanced the "constitutionally protected situation of the fetus" with the right to health of the mother, concluding that the absolute criminalization of abortion infringes this balance. According to Dec. 348/2007, the constitutional review of 'interposed rules', "must always aim to establish a reasonable balance between the duties flowing from international law obligations, as imposed by Article 117(1) of the Constitution, and the safeguarding of the constitutionally protected interests contained in other articles of the Constitution." Dec. 138/2010, regarding same-sex marriage, argued that art. 3 on equality is not violated by the Civil Code that has a provision exclusively for marriage between a man and a woman, as this provision is grounded on the definition of marriage contained in art. 29 of the Constitution.

(e) The interpretation of the Constitution in light of ordinary legislation is conceptually mistaken and we have not found it in the Court's judgments, unless we also consider 'legislative anachronism' in this category. In Dec. 508/2000, the Court carefully examined the evolution of the relationships between the State and religious confessions, also making reference to legislation, to underline that the criminalization of contempt of the Catholic religion (as "religion of the State") is anachronistic. In two judgments we found this argument as additional: Dec. 80/2010 argued that the limitation of the education rights of students with disabilities is inconsistent not only with constitutional and international provisions, but also with the general legislative rules on the rights of people with disabilities. Dec. 223/2012 identified the guarantee of the economic independence of the judiciary by logic-systematic interpretation, making reference not only to constitutional provisions, but also to legislative general provisions on judges' salaries.

B International Harmonization Arguments

The use of international law in order to interpret the Constitution is not explicitly accepted by the Court, which – as we examined above – since 2007, considers international

treaties as ‘interposed rules’ when the petition claims that these have been violated (Dec. 348/2007, 80/2010, 138/2010, 80/2011; Dec. 170/1984 and 102/2008 deal only with EU law).

Despite this view, we found more or less vague references to international law with some kind of interpretative purpose in 5 other decisions (in total, 11 decisions). In Dec. 161/1985, the Court referred to a decision of the European Commission of Human Rights on transsexualism, to present the legislative evolution on this topic on the international level. A similar approach can be found also in Dec. 164/1985, quoting a resolution of the European Parliament on the right to refuse to serve in the armed military service, to point out the impossibility to strike down the entire law based on conscientious objection. In Dec. 422/1995, the Court referred to a resolution of the European Parliament and two international conventions of the UN to illustrate that gender quotas in elections must be implemented by political parties and not by electoral law.

A more direct use of international law to interpret the Constitution can be found in Dec. 172/1999, which, to interpret the reference to “citizens”, contained in art. 52.1 Const., as falling also on stateless people subject to the duty of military service, makes reference to international law (exactly to a UN convention); and in Dec. 200/2012, which interpreted the matter of “competition protection” (art.117. 2 letter e), as including competition “in markets” and “for markets”, and makes reference to “the already well-established developments in European and international legal order”.

3.6. Precedents

Reference to precedents is the most widely used interpretive method, emerging from 31 judgments.

Only a few decisions do not refer to precedents. Among them, the first judgment of the Court, Dec. 1/1956 and 8 more recent judgments concerning ‘new’ issues (Dec. 27/1975, on abortion; Dec. 161/n.1985, on transsexualism; Dec. 13/1994, on the right to personal identity as the right to have a name; Dec. 422/1995, on gender quotas in elections; Dec. 7/1996, on the motion of no confidence to a single Minister; Dec. 356/1996, that for the first time established the principle of ‘interpretation consistent with the Constitution’ (constitutionally-oriented interpretation); Dec. 106/2002, on the use of the name “Parliament” to name regional assemblies; and Dec. 138/2010, on same-sex marriage). In one of those judgments (Dec. 161/1985), we found a generic reference to the “permanent case-law” (on “attidispotivi del propriocorpo”, i.e. “individual rights over onÈs own body”), without making it clear if it was case law of the Constitutional Court or of the ordinary courts.

Mostly, precedents were mentioned as individual cases, but sometimes they are referred to as “permanent and coherent case law of the Court”, followed by a long list of references (Dec. 15/1982, on preventive detention; Dec. 289/1998, on parliamentary immunities; Dec. 348/2007, on international treaties; Dec. 10/2010, on regional competences regarding social rights; Dec. 200/2012, on State competence regarding competition and markets; and Dec. 223/2012, on judges’ salaries).

Precedents are not binding in the Italian legal system: this explains why we did not find any judgment that distinguishes from earlier cases. Nonetheless, they are considered as

having persuasive authority.[35] In most of the judgments, the Court refers to precedents established in similar cases in order to follow them (here the problem arises to detect if the cases were really 'similar', as e.g. it happened with Dec. 1146/1988, where the Court quoted several precedents on the special status of fundamental principles that were not referred to in the control of constitutional laws, but which in State-Catholic Church Pactsdo not enjoy constitutional status). Instead, in 6 judgments the Court overruled its precedents. In the first decades of its activity, overruling was justified for reasons of social changes that had taken place in the meantime: in Dec. 126/1968, the Court struck down a provision on the criminalization of female adultery, arguing on the intensity of social changes; in Dec. 49/1971, on criminalization of the dissemination of birth control practices, the Court added to social changes the fact that a previous interpretative decision was passed *per incuriam*.

Dec. 440/1995 declared the unconstitutionality of the crime of blasphemy due to legislative inactivity, following a previous 1973 rejective judgment, in which the Court had warned the legislature to change the law.

In Dec. 348/2007, that established the status of 'interposed rules' for international treaties, previously considered as having the same status of statutory law, the Court explained the change referring to the scope of the constitutional revision of art.117.1 of the Constitution that took place in 2001.

No adequate reasons for the overruling can be found in Dec. 16/1978, which identified in art. 75 new limits for the abrogative referendum that were not mentioned in previous decisions on the topic. In this case, the Court first tried to hide the overruling, as it explicitly affirmed that the previous decisions were confirmed; later in the judgment, however, the Court strongly criticized its own precedents.

Also the important change in respect to EU law – and the acceptance of the Simmenthal doctrine of the ECJ, contained in Dec. 170/1984 – is not reasonably motivated: the Court only referred to the fact that "such conclusion, and arguments in favor of it, must be revised" and engaged itself in a complex work of re-reading its precedents, also in light of ECJ case-law (that is generically quoted) and of the tendency existing in "all (without exception) Member States".

3.7. Doctrinal Analysis of Legal Concepts and Principles

We found this argument in 23 judgments. We consider in this category not only (a) the cases in which the Court avoids giving any explanation, limiting itself to a stipulation without any explanation, through an axiomatic reasoning, but also (b) the application of concepts and principles not present in the black letter of the Constitution and developed by the Court and by legal scholars.[36] Among those principles, we found: (b.1) the duty of 'reason-

[35] A. PIZZORUSSO, *Effetto di « giudicato » ed effetto di « precedente » delle sentenze della Corte costituzionale*, in *Giurisprudenza costituzionale*, 1966, 1976; A. ANZON, *Il valore del precedente nel giudizio sulle leggi*, Giuffé, Milano, 1995.

[36] See A. SPADARO, *Dalla Costituzione come "atto" (puntuale nel tempo) alla Costituzione come "processo" (storico). Ovvero della continua evoluzione del parametro costituzionale attraverso i giudizi di costituzionalità*,

ableness of the legislaturÈ, (b.2) the principle of interpreting all statutes in conformity with the Constitution and (b.3) other non-written principles.

(a) Since Dec. 1/1956, the Court has displayed its preference for axiomatic reasoning: in this judgment, discussing the limitation on the freedom of expression in the absence of any textual reference in art. 21, the Court stated that "the concept of limitation is inscribed in the very concept of right". "Fundamental principles of our constitutional order" are always assumed, e.g. in Dec. 170/1984, or in Dec 1146/1988, on the limits to constitutional revision, where the Court argued that "the Italian Constitution contains some fundamental principles that cannot be subverted or changed in their core content not even by laws of constitutional revision". We can give other examples. Dec. 13/1994: "it is certainly true that, among the rights that constitute the inviolable patrimony of the human person, art. 2 recognizes and guarantees also the right to personal identity", without any other argument to support this statement. Dec. 7/1996: "according to undisputed and common opinion, the confidence of the Parliament is the necessary prerequisite for the government to remain in office". Dec. 138/2010: "social groups must be deemed to include all forms of simple or complex communities that are capable of permitting and favoring the free development of the person through relationships." Dec. 496/2000: "the principle of participation of local communities in the decisions that concern themselves is a general principle intrinsic to pluralistic democracy". Dec. 348/2007: "The requirement that the very provisions which supplement the constitutional principle respect the Constitution is absolute and inviolable in order to avoid falling into the paradox of a legislative provision being declared unconstitutional on the basis of another interposed provision, which in turn breaches the Constitution".

(b.1) The 'reasonableness principlÈ has been developed by the Court by means of an evolving interpretation of the equality principle. From article 3 of the Constitution, according to which all citizens are equal before the law, can be drawn a duty of reasonableness for the Legislature, so that it not only must regulate different situations differently, but also must avoid using arbitrary criteria. In order for a norm not to be unconstitutional, one must avoid contradictions between the goals of a law and the concrete normative rules, between the objective pursued and the legal tools used to achieve it. In sum, one must avoid irrational contradictions between the goals of the law and the content of its text (Dec. 15/1982; Dec. 361/1998; Dec. 172/1999; Dec. 102/2008; Dec. 80/2010; and Dec. 200/2012).

(b.2) The principle of interpreting all statutes in conformity with the Constitution was for the first time expressly stated in Dec. 356/1996, according to which "statutes are not declared unconstitutional because it is possible to give them unconstitutional meanings (as some judges do), but because it is impossible to give them a constitutionally-consistent interpretation". We found this principle in several judgments (Dec. 23/2011; Dec. 200/2012; and Dec. 1/2013).

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in *Quaderni costituzionali*, 1998, 343*;* G. RAZZANO, *Il parametro delle norme non scritte nella giurisprudenza costituzionale*, Giuffrè, Milano, 2002.

(b.3) We found other non-written principles, such as 'the rule of law' (Dec. 15/1969; and Dec. 364/1988), 'the fundamental principles of democratic coexistencÈ (Dec. 364/1988); 'legal certainty' (Dec. 360/1996); the 'constitutional principle of loyalty' in State-Regions relationships (Dec. 303/2003) and in the relationships between powers of the State (Dec. 23/2011); and 'trial publicity' (Dec. 80/2011).

3.8. Arguments from Silence

The Court makes reference to arguments from silence in 7 decisions, always to consider that the lack of an explicit constitutional rule does not necessarily translate into the impossibility to find, by way of constitutional interpretation, especially logic-systematic interpretation, a constitutional principle or rule applicable to the case.

In Dec. 1146/1988, the Court considered that the silence of the Constitution on the issue of review of constitutional laws cannot be interpreted as an exclusion of that control: the consequence would be a gap in the system of constitutional guarantees, concerning the more important legal norms.

In Dec. 7/1996, the Court considered that the silence of the Constitution on the individual motion of no confidence does not mean that this instrument falls outside the constitutional framework: the silence of the Constituent Assembly on the topic must be interpreted as the desire to leave open several possibilities of implementation of the parliamentary form of government.

In Dec. 172/1999, on the possibility to extend the duty of military service to non-citizens, the Court considered that the fact that the constitutional provision at issue (art. 52) only refers to citizens does not exclude that the Parliament could extend the duty to non-citizens, under certain conditions. "The silence of the constitutional provision does not mean prohibition: one should interpret [the silence] as a gap of constitutional law, in which the Legislator can use its discretional power".

In Dec. 496/2000, the Court considered that regional Assemblies can submit constitutional revision proposals to the Parliament (art. 121 explicitly refers only to a "bill to the Parliament"), as the Constitution is silent on the force of the act for which the proposal is intended. Thus, also in this case the silence of the text should not be interpreted as an exclusion.

In Dec. 303/2003, the Court considered that the absence of "city planning" - that was explicitly listed in the text of the Constitution before the constitutional revision of 2001- in the list of matters reserved to the State or of concurring legislation (according art. 117, 2 and 3), does not mean that it was no longer included in the list, as a logic-systematic interpretation of the list displays that it should be considered included in the "territory management" section.

In Dec. 223/2012, the Court excluded that the silence of the Constitution on the economic independence of the judiciary could be understood as the exclusion of this aspect from the conditions necessary to secure judicial independence.

Finally, in Dec. 1/2013, on the wiretapping of the President of Republic's telephone conversations, the Court considered that the silence of the Constitution on the guarantee of the President's privacy of communications cannot be interpreted as an exclusion of such

guarantee. Afterwards, the Court moved to a logic-systematic interpretation, dealing with constitutional rules on the position and role of the President in the Italian constitutional system.

3.9. Teleological/Purposive Arguments referring to the Purpose of the Text

Objective teleological arguments are quite common (13 judgments), although less common than other arguments. Conversely, teleological interpretation is without doubt the main argument referred to by the Court in interpreting ordinary legislation submitted to constitutional review.

In some cases, the argument pivots on the '*ratio*' (rationale) of the constitutional provision in question, as a result of the reformulation of the purpose of constitution-makers (subjective teleological arguments); therefore, it is not easy to distinguish between the two categories.[37]

For example, Dec. 16/1978: "Indeed, it is consistent with the natural scope of the abrogative referendum (according to some important indications found in the proceedings of the Constituent Assembly), the need that the question to be submitted to the electors be simple and clear". Or Dec. 7/1996: "The express indication in the text of the Constitution of the functions of the Ministry of Justice, especially with regard to art. 110 and the organizational powers thereby presented, was mainly introduced in order to clearly identify – at a time when the *Consiglio Superiore della Magistratura* was also established – the powers of the Ministry of Justice."

Sometimes, the argument is used in its pure formulation, referring to the objective *rationale* of the constitutional provision: e.g. in the already quoted Dec.16/1978, the Court established that, by excluding the law ratifying an international treaty from the possibility to be subject to abrogative referendum, the Constitution "aimed to avoid that, once the Treaty had become effective [in the Italian legal system], it would be deprived of its essential constitutional basis (pursuant to art. 80 Const.), thereby determining its non-application and making the Italian Republic internationally responsible before the other Contracting Parties". This way, the Court decided that, beyond the wording of the Constitution, not only the "law ratifying", but also the "law executing" international treaties cannot be submitted to an abrogative referendum. In Dec. 15/1982, the Court, interpreting the provision according to which "No punishment may be inflicted except by virtue of a law in force at the time the offence was committed" (prohibition against *ex post facto* laws), affirmed that "Clearly, art. 25, clause 2, of

[37] See also Dec. 200/2006, not included in our selection, on a conflict between the President of the Republic (applicant) and the Minister of Justice (respondent) concerning the granting of a pardon to a convicted criminal. In that decision, the Court firstly focused on the purpose of pardon, establishing – by referring to many historical arguments - that it has the scope "of mitigating or annulling a punishment on exceptional humanitarian grounds", then stated that "it is clear – in accordance with Article 87(11) of the Constitution – that the Head of State must be recognized as having the right to exercise this power, as a *super partes*institution", without any interference from the Minister of Justice.

the Constitution establishes a guarantee for the accused; it is also easy to understand that the true rationale of the provision is connected to a need of legal certainty".

This argument often appears in judgments related to articles of the Constitution that explicitly establish a purpose, such as art. 3 (prohibition against privileges and discriminations): Dec. 126/1968; removal of obstacles impeding women to attain results in terms of political participation: Dec. 422/1995; or art. 29 (unity of family: Dec.126/1968).

Most of the time a very general purpose appears, especially in judgments concerning State organizations, such as "the natural scope of the abrogative referendum": Dec. 16/1978; "the logic of parliamentary form of government": Dec. 7/1996; "the parliamentary function, as activity free in its purpose and of general nature": Dec. 289/1998; "the unity and indivisibility of the Republic", which implies instruments to guarantee the unity and to make the division of competences between state and regions flexible: Dec. 303/2003; "the basic fundamental configuration of regionalism": Dec. 365/2007; "the constitutional role of the judiciary": Dec. 223/2012; and "the position and role of the President of the Republic in the Italian constitutional system": Dec. 1/2013.

Probably we can include in this category the judgment that – declaring the unconstitutionality of the absolute irrelevance of '*ignorantia legis*' ('ignorance of the law') in order to discharge a person from a crime – refers to the "violation of the entire fundamental Charter and its fundamental principles", explicitly mentioning the democratic principle and the central position of the human person in the hierarchy of constitutional values (Dec. 364/1988).

3.10. Teleological/Purposive Arguments referring to the Purpose of the Constitution-Makers

Subjective teleological arguments appear in 10 judgments, although in most cases these consist in extremely general references (such as "according to the proceedings of the Constituent Assembly…": Dec. nos. 16/1978, 15/1982, 106/2002), or in a short statement ("the Constituent Assembly, as it is well-known, after long and lively debates, was firm in excluding institutional arrangements that could be also generally, configured, as federal or even confederal": Dec. 365/1997), and only rarely the Court examines directly and carefully the proceedings of the Constituent Assembly. In one case (Dec. 7/1996), the proceedings of the "Commissione Forti", a Commission established during the transitory period, before the election of Constituent Assembly, were also examined.

We did not find any case in which the proceedings concerning the procedure for constitutional revision were examined.

The arguments appear more frequently in recent judgments (we could not find any reference before 1978): the reason could be that during the first two decades of activity of the Court the style of reasoning was extremely brief and concise.[38]

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[38] A differentfinding – displaying a decline in the last decades - ispresented by L. PESOLE, *L'intenzione del legislatore costituente nell'interpretazione del parametro costituzionale*, in F. GIUFFRÈ and I. NICOTRA (eds),

In Dec. 422/1995, the text of art. 51 of the Constitution was compared to the draft project of the Constitution, to underline the inclusion, by amendment, of the explicit reference to gender equality in elections, stressing this way the "absolute equality" that justifies the unconstitutionality of gender quotas in electoral lists.

The project of the Constitution and the subsequent amendments were examined also in Dec.7/1996, regarding ministerial responsibility, to show that many references to the individual responsibility and individual no-confidence motions were present in the debate, although finally any reference was left out of the final text.

In Dec. 223/1996, the report of the Committee of 75 (an internal committee with the task of writing the first draft of the project) to the Constituent Assembly is quoted, stating that "the prohibition of the death penalty is a principle that can be qualified as 'Italian'".

In Dec. 223/2012, the proceedings of the Constituent Assembly were thoroughly quoted, by making reference to several sessions, sorted by date and time, in order to show that the silence of the Constitution on the economic independence of the judiciary should not be interpreted as if this principle were not included in the broad notion of judicial independency guaranteed by the Constitution.

Among the more detailed references, we found Dec. 364/1988, where over the course of three pages the origin of art. 27.1 ("Criminal responsibility is personal") was investigated, by carefully examining the debates in the Constituent Assembly, the amendments proposed and rejected, and also the scholarships of the time, in order to detect the purpose of the provision, that was identified as exclusion of criminal responsibility in the absence of subjective elements.

Nonetheless, the argument seems to be decisive only in Dec.138/2010, according to which the 'original' meaning of the word "marriage", as referring to the union of a man and a woman, deducted from the *travaux preparatoires*(preparatory works), "cannot be set aside through interpretation, because to do so would not involve a simple re-reading of the system or the abandonment of a mere interpretative practice, but rather the implementation of a creative interpretation".[39]

3.11. Non-legal (Moral, Sociological and Economic) Arguments

Non-legal arguments are mentioned in 12 judgments. Usually each judgment contains only one type of non-legal argument, formulated in a very generic way, without any reference to the source of information of the Court and without use of the facts-finding provisions contained in the rules on Constitutional Court proceedings.

We found the following non-legal arguments:

Lavori preparatori e original intent nella giurisprudenza costituzionale, Giappichelli, Torino, 2008, 133, 177 and by C. TRIPODINA, *L'argomento originalista in materia di diritti fondamentali,* ivi, 229, 262.

[39] See Dec. 429/1992 as the only case in which the Court explicitly stated that 'the reconstruction of the purpose of Constitution-makers, in a system with a rigid Constitution, is essential for carrying out the constitutional review of legislation'. See A. POGGI, *L'intenzione del costituente nella teoria dell'interpretazione costituzionale*, in *Diritto pubblico*, 1997, 153.

(a) Terroristic emergency: Around the end of the 1970's, Italy faced a quite complicated situation with terroristic emergency, of both neo-fascist and communist origin. This was the framework in which the Court, with Dec.15/1982, ruled that "We have to admit that a state, in which terrorism sows death - also by the ruthless murder of innocent 'hostages' - and destruction, leading to uncertainty and, therefore, the need to entrust the safety of life and property in armed escorts and private police, is in a state of emergency; however, it must agree that the emergency is a serious condition and certainly abnormal, but also essentially temporary. It follows that it legitimizes, yes, unusual measures, but that they lose legitimacy if unduly protracted".

(b) Historical considerations: With reference to gender equality in elections, the Court took into consideration the historical context in which the Constituent Assembly operated, a period in which legislative provisions excluded women from the majority of public offices (Dec. 422/1995). Some historical consideration, related to the period of time in which a specific legislative norm was approved, in comparison with the moment in which the Court is called to decide, may be found in Dec. 126/1968, with specific reference to the crime of adultery perpetrated by a wife.

(c) Economic crisis: 3 out of 40 decisions considered the economic crisis argument. A reference to the "economic downturn" is found in Dec. 348/2007 and to the "severity of the economic situation" in Dec.223/2012. Likewise, in Dec.10/2010 the Court stated that the statÈs intervention in regions' competences in order to guarantee fundamental rights is characterized by the features of exceptionality and urgency due the international economic and financial crisis that hit Italy in 2008 and 2009.

(d) Moral/Religious arguments: References to moral arguments can be found in Dec. 440/1995 declaring the unconstitutionality of the provision punishing blasphemy. Indeed, the Court considered that the practice prohibited by the challenged provision protect a value shared "by all religions that today characterize our national community, in which they have to live faiths, cultures and traditions".

(e) Social arguments: It is possible to trace a social argument in Dec. 49/1971, in which the Court, dealing with a case on the dissemination of birth control practices, considered that, due to the importance and social relevance of birth control, it was no longer possible to consider this practice as an offense to public morality, overruling its previous 1965 decision. Also in Dec.126/1968 the Court justified the overruling by referring to the "current social reality", in which the criminalization of female adultery, instead of supporting the unity of the family, can be destructive for the very unity".

We found a reference to the evolution of society also in Dec.138/2010 on same-sex marriage, establishing that the concepts of family and marriage cannot be considered to have been 'crystallized' with reference to the time when the Constitution entered into force, without taking into account, among other elements, also the evolution of society and customs.

(f) Scientific arguments: In Dec. 161/1985, on transsexualism, the Court referred to the medico-legal doctrine to define the meaning of "transsexual". In Dec.185/1998, on cancer therapies, the Court referred generically to the evaluations made by technical-scientific bodies.

3.12. Reference to Scholarly Works

The Constitutional Court, as any court in Italy, is not allowed to quote scholarly work. As a matter of fact, according to Art. 118, paragraph 3 of the "Implementing Provisions of the Civil Procedure Code" (to be applied also in Constitutional Court judgments, unless the Court decides to derogate it by its own special procedural rules), "In any case, any mention of legal scholarly work must be omitted". This is the reason behind the lack of any explicit reference to legal scholarship. However, there are a few cases in which the Court makes general references, as an additional argument in constitutional interpretation, to "scholarship" (Dec. 15/82, 364/1988, 422/1995, 348/2007, 138/2010). We can only assume, without providing any evidence, that scholarship lies behind the numerous decisions in which axiomatic arguments are used[40] and, more generally, that it constitutes the usual reference point for the Court.

3.13. References to Foreign Law

Reference to foreign law in Italian Constitutional Court judgments is not extensive (5 decisions),[41] notwithstanding the fact that the Court established since the 1980's a dedicated Foreign Law Department. Most of the references are also rather generic, referring to "choices taken and solutions followed in several countries": this is the case of Dec. 138/2010, on same-sex marriage, which refers to the different solutions adopted in different countries to indicate that there was not one compulsory solution to the problem, which remains within the boundaries of Legislator's discretion. In Dec.172/1999, on the status of stateless persons, we found a generic reference to the experience of other ECHR Member States in which there are provisions similar to those present in the Italian legal order. Dec. 170/1984 contains a reference to the fact that the direct applicability of EC law is declared by ordinary courts in "all the legal orders of Member States" of the EU, including Germany.

We found more specific references to foreign legal materials in Dec.303/2003, in which the Court, with regard to state-region competences, referred to German concurrent legislation (*konkurrierendeGesetzgebung*) and to the U.S. Supremacy Clause as aflexibility mechanism to guarantee the unity of the legal order.

The only explicit reference to foreign precedents has been found in Dec.161/1985, on transsexualism: the Court quotes some words from a 1978 *Bundesverfassungsgericht*judgment in order to clarify, from the medical point of view, the issue at stake.

3.14. Other Methods/Arguments

We only found one argument with regard to other methods and arguments. In Dec. 15/1982, the Court argued that art.25.2 of the Constitution, on the non-retroactivity of criminal

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[40] See *supra* at paragraph B 3.7

[41] Recently this long-standing attitude – see L. PEGORARO, *La Corte costituzionale italiana e il dirittocomparato: un'analisi comparatistica,* CLUEB, Bologna, 2007, – seems to be changing: in 2014 two important judgments (Dec.1/2014 on electoral law and Dec.170/2014 on the effects of sex change on previous marriage) contain several explicit reference to *Bundesverfassungsgericht* decisions.

law (prohibition against *ex post facto* laws), does not include criminal procedural law, referring also ("in addition" to its own precedents) to one judgment of the Court of Cassation.

4. Weight of the Arguments

In the 40 judgments examined, the Italian Constitutional Court reveals its preference for certain methods of constitutional interpretation: the reference to precedents is the argument most used (31 decisions), followed by the domestic harmonizing argument and the reference to principles not mentioned in the text of the Constitution (23 decisions each), by the ordinary meaning of the words (18 decisions), by the teleological textual argument (13 decisions), by non-legal arguments (12 decisions), by the international harmonizing argument (11 decisions) and by the teleological textual argument (10 decisions). Other arguments, such as reference to silence (7 decisions), to foreign legal materials (5 decisions) and to analogy (4 decisions), are almost absent. Scholarly works are not quoted at all and indirect references can be found only in 5 decisions. The Court often combines different types of arguments, displaying a syncretistic approach to legal argumentation.

If we move from a quantitative to a qualitative analysis, by trying to evaluate the weight of arguments, the picture is slightly different. Although reference to precedents is frequently present, this does not seem to be the primary argument, but generally an additional one. In some occasions, precedents have been overruled without adequate reasons and in many important decisions on new issues the Court does not seem concerned by the lack of precedents.

The main outcome of our research is that the Italian Constitutional Court is not concerned with the text of the Constitution. References to the wording of the Constitution are the necessary standpoint of many decisions, but this is only a starting point.

Textual interpretation is explicitly rejected by the Court, which stated that "pure textual interpretation is always a primitive method, and even more as far as constitutional interpretation is concerned" (Dec. 1/2013). A similar attitude is displayed by the judgments on the silence of the Constitution, which never translates into the impossibility to find, by a different method, a constitutional principle or rule applicable to the case. The Court reads the Constitution as an open text, to be supplemented by interpretation.

Similarly, the reference to the '*travaux preparatoires*' is not common and usually is considered as a backup argument. Also, the Court displays a fluctuating attitude towards this material, e.g. by considering relevant both the absence and the presence of a provision in the preliminary draft of the Constitution, depending on the case at stake. The only exception is Dec. 138/2010, in which the Court stated that "it is true to say that the concepts of family and marriage cannot be considered to have been 'crystallized' with reference to the time when the Constitution entered into force, because they are endowed with the flexibility that is inherent in constitutional principles and are, therefore, to be interpreted taking into account not only the transformations within the legal system, but also the evolution of society and customs. However, such an interpretation cannot go as far as to impinge upon the core of the provision at issue, modifying it in such a manner as to embrace situations and problems that

were not considered at all when it was enacted." Therefore, the core of the provision, that limits the evolutionary interpretation, seems in this case to have to be determined according to the 'original intent' of the Constitution-makers.

With this exception, most of the cases are decided on the basis of either domestic harmonizing arguments or by invoking principles not mentioned in text of the Constitution. Only in 6 of 40 decisions these arguments are absent and the cases are decided on the basis of precedents (Dec. 53/1958 and 289/1998), social facts (Dec.126/1968 and 49/1971, in which precedents are overruled), textual interpretation (Dec. 422/1995) and legislative inactivity (Dec. 440/1995).

Domestic harmonizing arguments seem to be the primary arguments in fundamental rights judgments, together with the unwritten principle of 'reasonableness'. In those cases, special relevance is given to the logic-systematic argument and to interpretation in light of constitutional principles, especially in light of art. 2.

In institutional cases, the primary argument seems to be the doctrinal analysis of legal concepts and principles, especially the reference to unwritten principles that are assumed by the Court without any explanation, displaying therefore an axiomatic reasoning.

Non-legal arguments (terroristic or economic emergency, historical considerations, social and scientific arguments) are generally present as additional arguments and only in very few judgments they are presented as primary arguments (mainly, as we said, to overrule precedents).

The Court is reluctant to quote extra-systemic (non-EU) materials, although things have been changing in the last few years especially with regard to international law: international treaties, although not normally used as arguments in constitutional interpretation, can now integrate constitutional principles as 'interposed legislation' in the Italian legal system. Explicit references to foreign materials are almost absent, also in judgments in which extensive comparative work has be done by Italian scholars and in which not many arguments are at stake (as in the judgment on the electoral quotas for women, Dec. 422/1995, whose reasoning, grounded on textual interpretation, has been considered particularly weak by scholars), but we can guess that they exercise an important, implicit influence.

5. Judicial Candor and Judicial Rhetoric

The judgments of the Court do not display openly the value judgments underlying the decisions. The attitude of the Court appears to be, if not secretive, certainly reserved and the Court does not engage itself in an open confrontation, neither with parties of the judgment nor with scholars.

The Court normally does not deal with all possible arguments in judgments that affirm a constitutional challenge, limiting itself to discuss the arguments on which the unconstitutionality of the statute is grounded. In the decisions where the Court rejects the challenge, the Court generally discusses briefly all the arguments submitted by the petitioner and not necessarily those submitted by the parties. In most decisions, arguments from legal scholars

are not discussed, even implicitly, although there are a few judgments dealing with scholarship, without quoting the name of the authors (e.g. Dec. 364/1988).

The language employed in decisions is technical, perfectly understandable for lawyers, but not easily accessible for non-lawyers. It is not an abstract, scholarly or professorial language, but rather a standard legal style, similar to ordinary courts. Currently, the target audience of the Court's reasoning is, especially, that of ordinary courts, which are not only the main 'gatekeepers' of the Constitutional Court, but also its main partners, since in the last decades the Court has tried to decentralize its work maximally, involving ordinary judges more deeply in constitutional review than for which the European model of judicial review normally provides, by way of the principle of constitutionally-oriented interpretation.[42]

The Court avoids any generalization and tries to decide "one case at a time", concentrating on the very specific issue in question. Nonetheless, *obiter dicta* are not absent and they provide general conceptual principles for future cases.

The degree of rhetoric is very low, almost absent, unless in the few cases in which the target audience is the legislator, mainly as the Court asks this institution to legislate or addresses a case of legislative discretion. As we said for the structure of the arguments,[43] the author of the judgment plays an important role and judgments display relevant differences in style, according to the individual personality and background of the author.

6. Length of Decisions

Decisions issued by the Italian Constitutional Court are generally not very long. The average number of pages among the 40 selected cases is 17. Despite the extensive use of its own precedents and the quite lengthy description of the parties' arguments, the Italian Constitutional Court usually does not resort to long reasoning in deciding a case. However, during the first decades of its activity, judgments were shorter than those issued in more recent years and we experience a tendency towards longer decisions.

7. Framing of Constitutional Issues

There are not any typical ways of characterizing constitutional issues, as this depends on how constitutional review is triggered. In most cases, concrete review deals with fundamental rights, whereas abstract review deals with institutional issues, although things have been changing since the constitutional revision of 2001. In the last few years it is not unusual to find fundamental rights issues raised by regions or by the government in the abstract re-

[42] See *supra* at paragraph B 4.
[43] See *supra* at paragraph B 2.

view procedure. Irrespective of how cases are conceptualized by the parties, the Court tends to reframe them in terms of 'reasonableness'.[44]

8. Key Concepts

The most popular concept invoked by the Italian Constitutional Court is 'equality' (14 decisions).

Relatively popular concepts are 'federalism' (7 decisions), 'basic procedural rights' (7 decisions), 'democracy' (6 decisions) and 'sovereignty' (5 decisions). On the other hand, 'rule of law' (4 decisions), 'form of government' (4 decisions), 'core of constitutional rights or competences' (3 decisions), 'secularism' (2 decisions), 'proportionality' (2 decisions), 'human dignity' (2 decisions), 'freedom of expression' (3 decisions), 'state form' (1 decision), 'nation' (1 decision), 'privacy rights' (1 decision) are very rare arguments.

(a) The most cited concepts:

It is not surprising that 'equality' is the most frequently mentioned concept, representing one of the fundamental concepts of the Italian system of rights' guarantees. Leaving apart the cases in which equality is invoked as part of the test of reasonableness, since the very first years of the Court's activity equality has been used with specific regard to the advancement of human rights (Dec. 53/1958).

Subsequently, the principle of equality has been invoked with reference to gender (in this sense, Dec. 126/1968, female adultery, and Dec. 422/1995, electoral quotas), religion (Dec. 440/1995 and 508/2000 – blasphemy and religious contempt), right to health (Dec. 185/1998, stating that the right to health cannot be dependent on personal economic conditions); social rights (Dec.10/2010, according to which the legislator must relieve situations of extreme need); and same-sex marriage (Dec. 138/2010).

The Court has contributed to the advancement of the democratic system as well (see Dec. 364/1988, on inevitable ignorance) and other basic procedural rights, especially since the late 1980's.

It is also interesting to underline the fact that since the second half of the 2000's, the principle of equality has been used more often in cases involving the organization of the state (see Dec. 102/2008, 10/2010 and 23/2011).

(b) Relatively popular concepts:

Another popular key concept is 'federalism', to be declined as the relationship between state and regions. In the very first years of the Court's activity, federalism was not a popular issue in constitutional case law (even because before 1970 most regions were not effectively established), and it became more frequent after the 1999 and 2001 revisions of Title V of the Second Part of the Constitution (Dec. 496/2000; Dec. 106/2002; and Dec. 365/2007). In recent years there has been a strong revival of the principle of unity, beginning with Dec. 303/2003, which has been further enhanced by the legislation and jurisprudence

[44] See *supra* at paragraph B 3.5.

issued during the economic crisis era (Dec. 10/2010). It is no coincidence that one of the relatively popular key concepts refers to 'basic procedural rights'. In particular with regard to the elements of the so-called due process (both as far as the reasonable length of judgments and the adversarial formation of evidence are concerned), Dec. n. 361/1998 is at the origin of the constitutional revision of Art. 111 of the Constitution, in which the principles of due process were expressly included in the text of the Constitution. Other relevant statements concern the legitimate impediment of the members of the Cabinet (Dec. 23/2011) and the wiretapping of the President of the Republic's telephone communications (sent.1/2013).

Within 'democracy' we have included both references to the democratic state and popular sovereignty. Referendum is an instrument for the expression of popular sovereignty; therefore, it is necessary that its questions be worded in a way that avoids coercing the choice of the voters (Dec.16/1978); at the same time popular sovereignty is the foundation of the democratic order, whose fundamental principles do include also the publicity of judgments, particularly criminal ones (Dec. 80/2011).

Democracy entails also that criminal punishment is not inflicted on those who are not in the position to be aware of the consequences of their conduct (Dec. 364/1988), while reference to pluralist democracy as an essential feature of the Italian Republic is argued in Dec. 422/1995. Pluralist democracy implies the involvement of local people in the key decisions that affect them (Dec. 496/2000). Finally, in a democratic state, constitutional immunities are not privileges granted *intuitu personae* (Dec. 1/2013).

'Sovereignty' is considered both from an internal and an external perspective. Dec. 365/2007 makes a clear distinction between sovereignty and autonomy, whereas Dec.170/1984 concerns external sovereignty, which is subjected to restrictions with regard to the relationship with the European Union. The profound transformations of the principle of sovereignty as a result of participation in the process of supranational integration have been highlighted in Dec.106/2002 and in Dec. 348/2007 where the Court reiterated the difference between EU rules and ECHR standards.

(c) Very rare concepts:

The expression 'rule of law' ('*principio di legalità'* or '*Stato di diritto'* in Italian) is not explicitly mentioned in the Constitutional text. However, there are some incidental references to this concept in constitutional case law, in the form of the principle of legality or '*riserva di legge'* (Dec. 364/1988). The principle of legality is mentioned also with regard to the functions of the Constitutional Court (Dec. 15/1969) and the relationships between State and Regions (Dec. 303/2003). Finally, a reference to the "democratic State based on rule of law" is included in Dec. 1/2013, where the immunity of State organs is discussed.

Within the 'form of government' category we included heterogeneous concepts. Constitutional jurisprudence has given a major contribution to the evolution of the form of government, recognizing the consistency with the Constitution of the individual motion of no confidence (Dec. 7/1996), as well as contributing to the balance of powers (Dec. 360/1996, 23/2011, 1/2013).

In Italy, as in Germany, constitutional jurisprudence has indicated the existence of a *Wesensgehalt*, a core content of rights, that cannot be limited. This core represents a limit to

legislative discretion (Dec. 80/2010) that persists also in times of economic crisis (Dec. 10/2010). As for the right to health, the core content includes, in cases of extreme therapeutic needs, the legitimate expectation to access specific treatments, even when these have not yet completely assessed from a scientific and legal standpoint (Dec. 185/1998).

Only 2 cases deal with 'secularism'. In Italy the principle of secularism is not explicitly recognized by the Constitution but rather is the result of constitutional interpretation, built on the combined provisions of Articles 3 and 8. The presence of this supreme principle characterizes the shape of the pluralistic State, within which different freedoms, faiths, cultures and traditions coexist (Dec.440/1995 and 508/2000).

'Proportionality' is rare in Italian constitutional case law and this circumstance can probably be explained by the fact that even if the Italian Constitutional Court is familiar with proportionality reasoning, until recent cases[45] it has not developed a real test and uses proportionality as reasonableness.[46] Thus, proportionality is only incidentally quoted with reference to a legislative measure that is found to be disproportionate (Dec. 23/2011), while with regard to state-regions relationships proportionality is invoked in order to evaluate the public interest underlying the assumption of regional functions by the state (Dec. 303/2003).

Although not expressly recognized in the text of the Italian Constitution, human dignity is interpreted essentially as the condition for the recognition of the value of every human being. The connection with an evolving legal culture more and more attentive to the values of freedom and dignity of the human person, which are protected even in minority and abnormal situations, emerges in Dec. 161/1985 concerning transsexualism, while in Dec.10/2010 the reference is to the protection of the inalienable core of human dignity.

The only reference to the 'state form', as a Republic, can be traced in Dec. 1146/1988, explicitly referring to the republican form of state as the only explicit limit to constitutional amendment, according to Article 139. Similarly, a single reference was found to the concept of 'nation', as, according to Art. 67, the Parliament is the only place of national political representation (Dec. 106/2002).

Finally, we found reference to 'freedom of expression' in 3 judgments, concerning public security issues (Dec.1/1956), the diffusion of birth control practices (Dec. 49/1971) and the conscientious objection to military service (Dec.164/1985), while the only case on 'privacy rights' deals with prerogatives of the President of Republic (1/2013).

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[45] Dec. 1/2014, on electoral law, not considered in this paper (as it was posterior to the selection of the 40 cases examined), represents one of the most important judgments of the Court's history and contains new statements on proportionality, among which is a clear adoption of the proportionality test of the ECHR.

[46] See M. CARTABIA, *I principi di ragionevolezza e proporzionalità nella giurisprudenza costituzionale italiana, intervento alla Conferenza trilaterale delle Corte costituzionali italiana, portoghese e spagnola*, Roma, 24/26-10-2013, 6, available at *www.cortecostituzionale.it*

C Comparative Perspective and Final Remarks

The style of the judgments of the Italian Constitutional Court perfectly matches the model of judgment proper to civil law countries. To wit: the 'reserved' attitude of the Court – which, as we have said, does not engage in open confrontation with the parties of the judgment and does not admit third-party intervention, the prohibition of explicit quotation of scholarship, the absence of explicit reference to foreign precedents, the fact that separate opinions are not allowed and the fact that the personal views of individuals judges are kept secret, are all elements distinguishing the Italian Constitutional Court from most of the other constitutional judges operating worldwide, with the sole exception, probably, of the French *Conseil constitutionnel*.

Despite this circumstance, in the reasoning of the Court's decisions it is routinely possible to identify many of the interpretative arguments employed by most constitutional judges, with which the Court has, over the years, developed a sort of 'hidden' communication, especially with regard to the extensive use of standards and tests (e.g., 'reasonableness' or 'balancing') and the generous interpretation given to the principle of equality. More specifically, the Court – limiting its use of positivistic arguments, such as those concerned with the ordinary meaning of words and the purpose of Constitution-makers – has developed a wide array of interpretative approaches, grounded in the systematic interpretation in light of constitutional principles and in balancing of rights. This attitude has promoted an idea of the Constitution as an "open text", calling for a progressive interpretative approach akin to the "living tree" doctrine of the Canadian Supreme Court. This way, the Court has developed through its jurisprudence new rights and principles originally not included in the black letter of the Constitution, showing a level of judicial activism similar to judges in common law countries and contributing to distance the living Constitution from the written Constitution; a feature that has become typical of the Italian constitutional system.

This combination of a high degree of jurisprudential creativity and a low degree of transparency of the decisions (and, more generally, of constitutional litigations), represents a special feature of the Italian system of constitutional adjudication and one of the most often criticized. Indeed, the high degree of interpretative discretion enjoyed by the Court may well turn into abuse, since the lack of transparency of the decisions makes it more difficult for the 'open community of the interpreters of the Constitution'[47] to control the work of the Court.

As of today, this risk remains purely prospective, and not effective, because the Court has also shown a substantial degree of prudence and the ability to engage with the other legal players of the living constitutional law: scholars, ordinary judges, legislature, the entire political system and public opinion. However, unless the Court is willing to show a higher degree of transparency and a more rigorous use of interpretative arguments, its legitimacy –

[47] With the words of P. HÄBERLE, *Die Verfassung des Pluralismus: StudienzurVerfassungstheorie der offenenGesellschaft*, Konigstein-Ts, Athenäum, 1980: this expression has become very popular in the Italian scholarship.

while at the moment secure, especially in light of the current fragmentation of the Italian political scene and of the disrepute of politicians – remains potentially at risk.

Appendix 1: Summary Table of the 40 Most Important Judgments according to Tania GROPPI and Irene SPIGNO

1.	SENT. N. 1 DEL 1956	Freedom of expression
2.	SENT. N. 53 DEL 1958	Equality
3.	SENT. N. 9 DEL 1959	Parliamentary proceedings
4.	SENT. N. 126 DEL 1968	Criminalization of female adultery
5.	SENT. N. 15 DEL 1969	Independence of the Constitutional Court
6.	SENT. N. 49 DEL 1971	Freedom of expression - Dissemination of Birth control practices
7.	SENT. N. 27 DEL 1975	Abortion
8.	SENT. N. 16 DEL 1978	Abrogative referendum – Admissibility
9.	SENT. N. 15 DEL 1982	Pretrial Detention
10.	SENT. N. 170 DEL 1984	Primacy of European Law
11.	SENT. N. 161 DEL 1985	Transsexualism
12.	SENT. N. 164 DEL 1985	Conscientious objection to military service
13.	SENT. N. 364 DEL 1988	Criminal Law – *Ignorantia legis non excusat*
14.	SENT. N. 1146 DEL 1988	Unconstitutionality of constitutional laws
15.	SENT. N. 13 DEL 1994	Right to personal identity
16.	SENT. N. 422 DEL 1995	Gender quotas in elections
17.	SENT. N. 440 DEL 1995	Blasphemy
18.	SENT. N. 7 DEL 1996	Conflict Allocation of Powers- Motion of Individual No Confidence
19.	SENT. N. 223 DEL 1996	Death Penalty – Extradition
20.	SENT. N. 356 DEL 1996	Legislative Delegation
21.	SENT. N. 360 DEL 1996	Decrees - Law
22.	SENT. N. 185 DEL 1998	Right to Health
23.	SENT. N. 289 DEL 1998	Conflict Allocation of Powers – Parliamentary Immunities
24.	SENT. N. 361 DEL 1998	Right to a fair trial
25.	SENT. N. 172 DEL 1999	Duties of non-citizens
26.	SENT. N. 496 DEL 2000	Regional Consultative Referendum
27.	SENT. N. 508 DEL 2000	Contempt of Religion
28.	SENT. N. 106 DEL 2002	Conflict Allocation of Powers – *Nomen Juris* Regional Parliament
29.	SENT. N. 303 DEL 2003	Subsidiarity Principle in State-Regions Relationships
30.	SENT. N. 348 DEL 2007	ECHR
31.	SENT. N. 365 DEL 2007	Autonomy vs. Sovereignty of Regions
32.	SENT. N. 102 DEL 2008	Financial Autonomy of Regions - European Law Interpretation - Preliminary reference to ECJ
33.	SENT. N. 10 DEL 2010	Social Rights-Regional Autonomy
34.	SENT. N. 80 DEL 2010	Rights of people with disabilities

35. SENT. N. 138 DEL 2010 Same-sex marriage
36. SENT. N. 23 DEL 2011 Prime Minister Immunity
37. SENT. N. 80 DEL 2011 ECHR - EU National Law Relationships
38. SENT. N. 200 DEL 2012 Economic Competition
39. SENT. N. 223 DEL 2012 Salaries of Judges and other Public Servants - Economic Crisis.
40. SENT. N. 1 DEL 2013 Conflict Allocation of Powers - President of the Republic

CODE: Barred decisions barred should be strike out, highlighted decisions should be added

Prof. Marta CARTABIA's list

~~5. SENT. N. 15 DEL 1969 Independence of Constitutional Court~~
~~17. SENT. N. 440 DEL 1995 Blasphemy~~
~~23. SENT. N. 289 DEL 1998 Conflict Allocation of Powers – Parliamentary Immunities~~
~~25. SENT. N. 172 DEL 1999 Duties of non-citizens~~
~~26. SENT. N. 496 DEL 2000 Regional Consultative Referendum~~
~~33. SENT. N. 10 DEL 2010 Social Rights-Regional Autonomy~~
~~39. SENT. N. 223 DEL 2012 Judges and Others Public Servants Salaries-Economic Crisis~~

1. SENT. N. 203 DEL 1989 Principle of Secularism
2. SENT. N. 10 DEL 2000 Parliamentary Immunities
3. SENT. N. 282 DEL 2002 Health, law and science
4. SENT. N. 200 DEL 2006 Presidential pardon
5. SENT. N. 151 DEL 2009 Assisted Procreation
6. SENT. N. 22 DEL 2012 Decree - law
7. ORD. N. 207 DEL 2013 EU – Preliminary ruling in judicial review of constitutionality (*giudizio in via incidentale*)

Prof. Ugo DE SIERVO's list

~~3. SENT. N. 9 DEL 1959 Parliamentary proceedings~~
~~23. SENT. N. 289 DEL 1998 Conflict Allocation of Powers – Parliamentary Immunities~~
~~28. SENT. N. 106 DEL 2002 Conflict Allocation of Powers – *Nomen Juris* Regional Parliament~~
~~31. SENT. N. 365 DEL 2007 Autonomy vs. Sovereignty of Regions~~
~~39. SENT. N. 223 DEL 2012 Judges and Others Public Servants Salaries-Economic Crisis.~~

1. SENT. N. 203 DEL 1989	Principle of Secularism
2. SENT. N. 379 DEL 1996	Parliamentary Immunities
3. SENT. N. 120 DEL 2004	Parliamentary Proceedings
4. SENT. N. 22 DEL 2012	Decree-law
5. ORD. N. 207 DEL 2013	EU – Preliminary ruling in judicial review of constitutionality (giudizio in via incidentale)

Prof. Giuseppe DE VERGOTTINI's list

~~25. SENT. N. 172 DEL 1999~~	~~Duties of non-citizens~~
~~39. SENT. N. 223 DEL 2012~~	~~Judges and Others Public Servants Salaries Economic Crisis~~

1. SENT. N. 200 DEL 2006	Presidential pardon
2. SENT. N. 224 DEL 2009	Independency of Judiciary

Prof. Marco OLIVETTI's list

~~2. SENT. N. 53 DEL 1958~~	~~Equality~~
~~13. SENT. N. 364 DEL 1988~~	~~Criminal Law – *Ignorantia legis non excusat*~~
~~17. SENT. N. 440 DEL 1995~~	~~Blasphemy~~
~~19. SENT. N. 223 DEL 1996~~	~~Death Penalty – Extradition~~
~~23. SENT. N. 289 DEL 1998~~	~~Conflict Allocation of Powers – Parliamentary Immunities~~
~~25. SENT. N. 172 DEL 1999~~	~~Duties of non-citizens~~
~~27. SENT. N. 508 DEL 2000~~	~~Contempt of Religion~~
~~33. SENT. N. 10 DEL 2010~~	~~Social Rights Regional Autonomy~~
~~34. SENT. N. 80 DEL 2010~~	~~People with disabilities' rights~~
~~36. SENT. N. 23 DEL 2011~~	~~Prime Minister Immunity~~
~~38. SENT. N. 200 DEL 2012~~	~~Economic Competition~~
~~39. SENT. N. 223 DEL 2012~~	~~Judges and Others Public Servants Salaries Economic Crisis~~

1. SENT. N. 2 DEL 1956	Unconstitutionality of security measures
2. SENT. N. 57 DEL 1958	Unconstitutionality of the High Court of Sicily
3. SENT. N. 15 DEL 1960	Art. 3 Const. – Equality and reasonableness
4. SENT. N. 69 DEL 1962	"Negative" freedom of association
5. SENT. N. 239 DEL 1984	Freedom of Association and unconstitutionality of the obligation to belong to the Israeli community
6. SENT. N. 203 DEL 1989	Principle of Secularism
7. SENT. N. 366 DEL 1991	Freedom of communication and privacy
8. SENT. N. 75 DEL 1992	Social solidarity

9. SENT. N. 282 DEL 2002	Conflict of competence between State and Region
10. SENT. N. 372 DEL 2004	Regional Statutes
11. SENT. N. 148 DEL 2008	Fundamental rights of immigrants
12. SENT. N. 1 DEL 2014	Electoral Law

Prof. Roberto ROMBOLI's list

~~32. SENT. N. 102 DEL 2008~~	~~Financial Autonomy of Regions-European Law Interpretation-Preliminary reference to ECJ~~
~~37. SENT. N. 80 DEL 2011~~	~~ECHR -EU National Law Relationships~~
~~38. SENT. N. 200 DEL 2012~~	~~Economic Competition~~
~~39. SENT. N. 223 DEL 2012~~	~~Judges and Others Public Servants Salaries-Economic Crisis~~

1.SENT. N. 18 DEL 1989	Independence of the Judiciary
2. SENT. N. 88 DEL 1991	Public prosecutor's obligation to institute criminal proceedings
3. ORD. N. 207 DEL 2013	EU – Preliminary ruling in judicial review of constitutionality (giudizio in via incidentale)
4. SENT. N. 1 DEL 2014	Electoral Law

APPENDIX 2: Analysis of the 40 Selected Judgments by Tania GROPPI and Irene SPIGNO

	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12
Judgment	**Reference of the decision?** Please give the official reference of the decision in original language	**Year?** Specify year the decision was rendered.	**Dissenting or concurring opinion in the case?** Please indicate Yes or No. If irrelevant (separate opinions not allowed), leave blank.	**Case disposition?** Please indicate (Yes or No) whether the Court found (at least partially) against the law/decision/act challenged.	**General topic?** Please specify: Fundamental Rights (F), State Organization (S), or Other (O).	**Concrete issue?** Please characterize the issue at hand, using your own words	**Structure of argument?** Please specify: Only Chain Type (C), Also Leg of Chair (L), = Dialogic Argument (D).	**Establishing or discussing the text of the constitution?** Please indicate (Yes or No) whether the opinion explicitly discusses what counts as constitutional text.	**Is the applicability of constitutional law discussed?** Please indicate (Yes or No) whether the opinion explicitly considers whether constitutional law can be applied by the Court to the case at hand (e.g. because/despite political question doctrine).	**Analogy?** Please indicate whether the opinion features any instance(s) of analogical reasoning.	**Ordinary meaning of words?** Please indicate (Yes or No) whether the opinion explicitly considers the ordinary meaning of the text of the constitution.	**Domestic harmonising arguments?** Please indicate (Yes or No) whether the opinion seeks to conciliate different constitutional requirements with one another. In case harmonizing involves international law identification should be in Q13.
1	Sentenza n.1 anno 1956	1956		Yes	F	Freedom of expression	D	No	Yes	No	Yes	No
2	Sentenza n.53 anno 1958	1958		Yes	F	Equality	C	No	Yes	No	No	No
3	Sentenza n.9 del 1959	1959		No	O	Parliamentary proceeding	C	Yes	Yes	No	Yes	Yes

4	Sentenza n.126 del 1968	1968		Yes	F	Criminalization of female adultery	C	No	No	No	Yes	No
5	Sentenza n.15 del 1969	1969		Yes	S	Independence of Constitutional Court	C	No	No	Yes	Yes	Yes
6	Sentenza n. 49 Anno 1971	1971		Yes	F	Freedom of expression – dissemination of birth control practices	C	No	No	No	No	No
7	Sentenza n. 27 Anno 1975	1975		Yes	F	Abortion	L	No	No	No	No	Yes
8	Sentenza n. 16 Anno 1978	1978		Yes (Referendum inadmissibility)	O	Abrogative Referendum Admissibility	D	No	No	No	Yes	Yes
9	Sentenza n. 15 Anno 1982	1982		no	F	Pretrial Detention	D	No	Yes	No	Yes	Yes
10	Sentenza n. 170 Anno 1984	1984		No	O	Primacy of European Union Law	D	No	Yes	No	No	No
11	Sentenza n. 161 del 1985	1985		No	F	Transsexualism	D	No	No	No	No	Yes
12	Sentenza n.164 del 1985	1985		No	F	Conscientious objection to military service	C	No	No	No	Yes	Yes
13	Sentenza n. 364 del 1988	1988		Yes	F	Criminal Law: *Ignorantialegis non excusat*	L	No	No	No	No	Yes

14	Sentenza n.1146 del 1988	1988		No	S	Unconstitutionality of constitutional laws	L	No	Yes	No	No	No
15	Sentenza n. 13 del 1994	1994		Yes	F	Right to personal identity (name)	C	No	No	No	No	No
16	Sentenza n. 422 Anno 1995	1995		Yes	F	Gender Quotas in Elections	D	No	No	No	Yes	No
17	Sentenza n. 440 Anno 1995	1995		Yes	F	Blasphemy	C	No	No	No	No	No
18	Sentenza n. 7 Anno 1996	1996		No	S	Conflict Allocation of Powers - Motion of individual no confidence	D	Yes	No	No	Yes	Yes
19	Sentenza n. 223 Anno 1996	1996		Yes	F	Death Penalty- Extradition	C	No	No	No	No	Yes
20	Sentenza n. 356 Anno 1996	1996		No	O	Legislative Delegation	C	No	No	No	No	No
21	Sentenza n.360 del 1996	1996		Yes	S-O	Decrees-law	L	No	No	No	Yes	No
22	Sentenza n.185 del 1998	1998		Yes	F	Right to Health	C	No	No	No	No	No

23	Sentenza n.289 del 1998	1998		Yes	S	Conflict allo-cation of powers-Parliamentary Immunities	C	No	No	No	No	No
24	Sentenza n.361 del 1998	1998		Yes	F	Right to a fair trial	L	No	No	No	No	No
25	Sentenza n. 172 del 1999	1999		No	F	Duties of non citizens	L	Yes	No	No	Yes	Yes
26	Sentenza n. 496 Anno 2000	2000		Yes	S	Regional Consultative Referendum	C	No	No	Yes	Yes	Yes
27	Sentenza n. 508 Anno 2000	2000		Yes	F	Contempt of religion	C	No	No	No	No	Yes
28	Sentenza n. 106 Anno 2002	2002		Yes	S	Conflict Allo-cation of Powers - *Nomeniuris*-Regional Parliament	D	No	No	Yes	Yes	Yes
29	Sentenza n. 303 Anno 2003	2003		Yes	S	Subsidiarity Principle in State-Regions Relationships	D	No	No	No	No	Yes
30	Sentenza n. 348 Anno 2007	2007		Yes	F-O	ECHR	D	Yes	Yes	No	Yes	Yes

31	Sentenza n.365 del 2007	2007		Yes	S	Autonomy vs. Sovereignty of Regions	C	No	No	No	Yes	Yes
32	Sentenza n.102 del 2008	2008		Yes	S	Financial Autonomy of Regions-European Law Interpre-tation-Preliminary reference to ECJ	C	Yes	Yes	No	Yes	No
33	Sentenza n.10 del 2010	2010		No	F-S	Social Rights-Regional Autonomy	C	No	No	No	No	Yes
34	Sentenza n. 80 del 2010	2010		Yes	F	Rights of people with disabilities	L	Yes	Yes	No	No	Yes
35	Sentenza n. 138 del 2010	2010		No	F	Same-sex marriage	L	Yes	Yes	No	Yes	Yes
36	Sentenza n. 23 Anno 2011	2011		Yes	F-S	Prime Minis-ter Immunity	D	No	No	No	No	Yes
37	Sentenza n. 80 Anno 2011	2011		No	O-F	ECHR -EU National Law Relationships	L	Yes	Yes	No	No	No
38	Sentenza n. 200 Anno 2012	2012		Yes	S-F	Economic Competition	L	No	No	No	No	No

39	Sentenza n. 223 Anno 2012	2012		Yes	F	Salaries of Judges and others Public Servants Salaries-Economic Crisis	L	No	No	No	No	Yes
40	Sentenza n. 1 Anno 2013	2013		Yes	S	Conflict Allo-cation of Powers-President of the Republic	D	No	No	Yes	Yes	Yes