

Constitutional Court Watch

Methods and Purposes of the Constitutional Court Watch

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1. The Italian Constitutional Court is the fundamental guardian of the 1947 Constitution. Its case law gives expression to the Constitution as it lives, not only because of the position of the Court as its most qualified interpreter, but also because ordinary courts – as well as political bodies – refer to the Court and to its case law to find solutions to any legal issue related to the Constitution. The impact of the Court's judgments, therefore, goes far beyond the specific cases decided. This is uncontested with regard to judgments declaring the unconstitutionality of the challenged legislation, since the declaration results in the annulment of such legislation. However, other judgments also have general impact, precisely because of the authority that all Italian courts and political bodies recognize to the Constitutional Court and to its interpretation of the Constitution.

2. The Constitutional Court wields two kinds of power: the power to decide special constitutional controversies, and the power to perform constitutional review of legislation. The special controversies are those that arise from the distribution of power among the supreme bodies of the State, or between the central State and the Regions (Art 134, para 2, of the Constitution). The Constitutional Court also has the power to decide whether a referendum can be held, depending on whether its object falls within the domain determined by Art 75 of the Constitution. Finally, the Court decides on charges of high treason or attack on the Constitution brought against the President of the Republic (Art 90 of the Constitution).

The most important power is, however, that to review legislation, which can be carried out in an abstract or in a concrete form.

Abstract review addresses either appeals from the national government against a Regional legislative act or appeals lodged by a Region against a national legislative act. In this direct review of constitutionality, complaints must be filed within sixty days following the publication of the challenged act(s).

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When concrete review is performed, ordinary courts are empowered to refer a question to the Constitutional Court when there are doubts as to the constitutionality of a legislative provision that should be applied in proceedings before them. Thus, the Constitutional Court reviews the provisions' constitutionality on the basis of the case in which the issue arose and the concrete review takes the form of an incidental review of constitutionality.

Established in 1956, the Court delivers an average of three to four hundred judgments and orders each year. As a result, over six decades, an extremely rich body of case law was created, concerning all of the most significant issues arising in law and society, especially thanks to the incidental review of constitutionality.

Despite the quality of the judgments, their importance from a legal point of view, and their impact on society, knowledge of the activity of the Constitutional Court rarely crosses national borders, such that with only a few exceptions, the Court does not appear to play the role that it deserves in global judicial dialogue – the importance of which is underscored by President Grossi in his *Presentation* – and in the implementation of cross-fertilization processes that follows.

Several reasons explain why the transnational impact of the Constitutional Court's case law is not comparable with the longstanding tradition of the Court itself. Among these reasons, it is fair to include the relatively restricted knowledge of Italian among foreign scholars and the difficulties relating to a highly technical and complex style in drafting judgments.

3. The main purpose of this new section relates precisely to these two reasons. Indeed, the *Italian Law Journal* aims to contribute to spreading knowledge of and stimulating interest in Italian constitutional case law among foreign scholars.

Rather than providing a translation of entire judgments, brief presentations of salient decisions are provided, to highlight the main legal issues dealt with by the Court. Readers who are interested in examining such issues in further detail may access the link, provided wherever available, to the Constitutional Court's English translation of the relevant *Conclusions on points of law*.

This first issue concerns the case law of 2016. Among the two hundred ninety-two judgments and orders delivered last year, a selection was made taking into account the significance of the legal reasoning, the impact of the Court's statements, and the interest of the subject from a comparative point of view. Indeed, given the purpose of the section, the idea was to feature those judgments that, in our view, are more capable than others to give the Court a chance to have a say in legal issues that are common to different systems. In this regard, the selection focused mostly on fundamental rights, although some crucial aspects of government and of the lawmaking process were also considered.

4. The judgments selected dealt with a wide range of subjects.

Some judgments fell within the scope of family law, because they related to stepchild adoption (Judgment no 76), the relationship between a child and the same-sex partner of its biological parent (Judgment no 225) and the choice of a child's surname (Judgment no 286).

The bioethical issues arising were the fate of supernumerary embryos in medically assisted reproduction (Judgment no 84) and the regulation of advance directives (Judgment no 262).

Freedom of religion was taken into account with regard to agreements between the State and religious denominations (Judgment no 52) and to the establishment of places of worship (Judgment no 63).

The welfare State and social security is another field in which the Court rendered significant judgments, concerning the social contribution for out-of-work persons (Judgment no 173), survivors' pensions (Judgment no 174), assistance to persons with disabilities (Judgment no 213) and the right to education of disabled persons (Judgment no 275). The protection of workers was examined with specific regard to the staff of public schools employed on the basis of fixed-term contracts (Judgment no 187).

One of the most significant issues relating to free competition dealt with public transportation (Judgment no 265), while the freedom to use illicit substances was considered with reference to the cultivation of cannabis plants for personal consumption (Judgment no 109). The law on illegal substances was also examined in Judgment no 94; in that case, however, the key issue was the relationship between the contents of a decree-law and the provisions of the law that converted it into a law itself.

The judicial protection of rights was involved in judgments relating to the excessive length of legal proceedings (Judgment no 36), the limits of the exclusive jurisdiction conferred to administrative courts (Judgment no 179) and the protection against double jeopardy (Judgment no 200).

The public administration was also dealt with. In particular, the cases concerned a provision that introduced a special position in the civil service but that was subsequently abolished (Judgment no 214) and the impact, on the powers of the Regions, of a national reform concerning several aspects of the public administration (Judgment no 251).