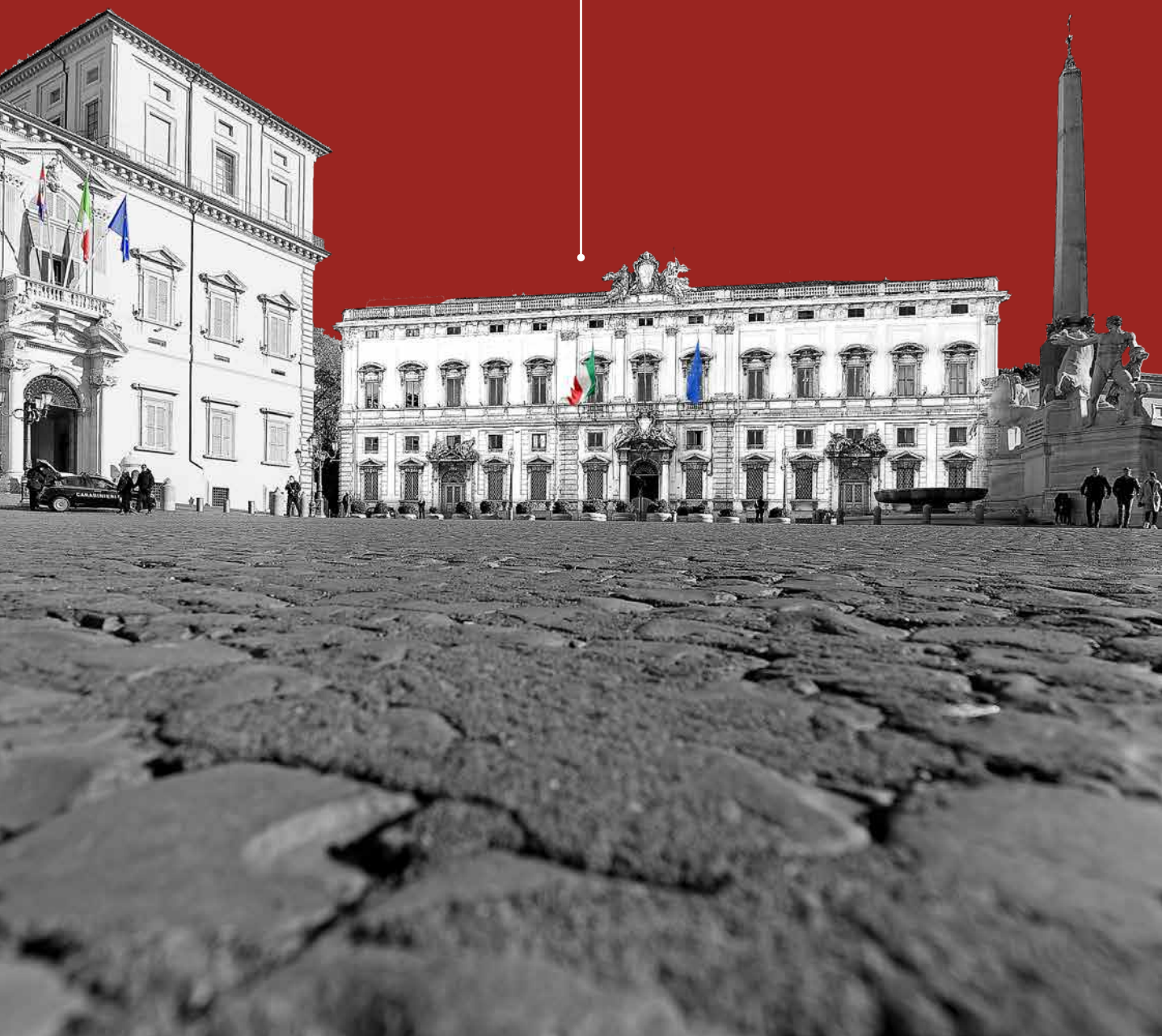




Italian Constitutional Court Annual Report 2023





**Italian Constitutional Court
Annual Report 2023**



6 **“The Court is an attentive guardian of the Constitution. But the Constitution does not belong to the guardians. It belongs to everyone.”**

Interview with the President Augusto Antonio Barbera

12 **The Court**

16 **The year in figures**

22 **The 2023 decisions**

38 **The Annual Report**

40 **Press conferences**

42 **Women and the Court**

46 **The Court, podcasts and video interviews**

50 **Touring across Italy – The Constitutional Court in schools**

54 **The Court and children**

56 **The Court on TV**

60 **The Year’s events**

66 **The Institution and its Offices**

In the photo on the left, the façade of Palazzo della Consulta

Next page, the Panel of Judges in public hearing, chaired by Augusto Antonio Barbera since 12 December 2023



“The Court is an attentive guardian of the Constitution. But the Constitution does not belong to the guardians. It belongs to everyone.”

Interview with the President Augusto Antonio Barbera



President Barbera, the Court is composed of fifteen judges who must definitely speak with one voice. Do the decisions made in chambers with a strong emphasis on collaborative discussion enhance the authority of the Court?

“When I became a constitutional judge, I was struck by the extent to which collegiality permeates the life of the Court, so there is no aspect of a decision that is not subject to thoughtful exchange among all of us at our regular Monday chambers meetings, even down to the smallest choice of words and the position of commas! So we can say that every one of our decisions is taken unanimously. Not, of course, that it is shared by everyone: it would be naive to believe that there can be only one solution to constitutional issues. But drafting a constitutional judgment and its subsequent reading and approval eschew any logic of exclusion; majorities in the Court are formed and disbanded every time with no prejudice whatsoever and, of course, no political bias.”

Could the Court’s decision to no longer include the rapporteur’s name and surname in Court press releases detailing judgments be interpreted as another step towards adopting a unified voice within the Court?

“This change serves to maximise collegiality and resolve the inevitable conflicts that every legal issue potentially raises. All the Court’s decisions are the result of exchanging different opinions, which reflect a variety of professional backgrounds and cultural sensitivities. Additionally, there is a desire to avoid excessive personalisation when making judgments known outside the Court.”

In public discourse, concerns often arise regarding potential limits affecting the Court’s independence. Do you believe that the rules on the composition of the panel of judges are robust and comprehensive enough to prevent this from happening?

“I believe that these rules are actually a safeguard for the independence of the judges. The Court is made up of fifteen judges. Five are elected by the highest judicial bodies (three by the Court of Cassation, one by the Council of State, and one by the Court of Auditors) through secret ballot. Five, most of them academics, are appointed by the Head of State alone, to ensure a certain pluralism of cultural

background and gender. Another five are elected by the two chambers of Parliament in joint session, requiring a very strong majority (if a two-thirds majority is not reached, a three-fifths majority is necessary), also through secret ballot, which is inevitably influenced by swing voters. There has to be agreement among parliamentary groups for the election of these judges, which I welcome as an expression of political pluralism! Collegiality and the preservation of confidentiality in chambers – and I must emphasise this – are additional assurances of the judges’ autonomy, especially those appointed by Parliament, enabling them to be independent of the political groups that proposed them.”

The judges exhort Parliament through ‘warnings’, although often nothing comes of them. However, you only make headlines when you strike down a law that is in conflict with the Constitution...



Read the
Annual Report

“What makes headlines are the rulings that declare a law unconstitutional, which, naturally, upsets the majority that supported it. And this has happened with *all* the majorities: from the older ones in the political centre to those on both the centre-left and centre-right. But we should also take into account the rulings that dismiss constitutional challenges, upholding legislation passed by all the majorities up to now.”

Do you have any particular judgment in mind?

“Recently, for example, newspaper headlines have given particular prominence to some provisions struck down by the Court pertaining to the Jobs Act, while previous rulings confirming the legislature’s

decisions regarding the Act were reported with much less fanfare.”

Much has been written about disputes that may arise between parliaments and the courts, and between governments and the courts. It is not uncommon to hear arguments that political institutions do not tolerate the autonomy of supervisory bodies.

“Given their respective functions, it is natural that there may sometimes be some critical dialogue: the courts too must be careful not to encroach on the parliamentary sphere. In the report for the Extraordinary Meeting of the Court, I focus on a point that I consider crucial: mutual respect. In a constitutional system based on the separation of powers, respect for the autonomy of judicial decisions corre-



sponds to the equally significant respect for the decisions of legislative institutions, in an expression of popular sovereignty.”

You say that in a complex system like ours, interpreting the Constitution is not the exclusive task of the Court and should potentially be shared among all the institutions. Could you add something more on this topic?

“The Constitution should not be read as a ‘stand-alone’ text but as a radiating part of a broader ‘constitutional order’, fuelled by the constantly evolving ‘material base’ on which it rests, whether it is represented by parliament, the judges, or the broader social fabric. It is also in this context that the Constitutional Court seeks to involve the parliamentary institutions in making decisions that necessarily require a ‘less rigid’ reading of the Constitution. But this interpretation is primarily driven by this Court, which must be the ‘Guardian of the Constitution’ while taking care never to construct, by using only the tools of interpretation, a very fragile ‘Constitution of guardians.’”

And what if this participation is lacking?

“This is the profound meaning behind the Court’s requests to Parliament, urging it to intervene, for example, on questions concerning the end of life. This kind of collaboration has previously yielded results regarding the regulation of abortion and civil unions, decisions that stem from converging judgments by the Constitutional Court subsequently followed by legislative actions.”

It is also true, however, that words of concern from the Court to Parliament

have repeatedly fallen on deaf ears. Even regarding matters relating to social and ethical issues of particular importance for citizens.

“Naturally, the Court cannot relinquish its role as a guarantor, which, when faced with repeated legislative inaction, also entails ascertaining and declaring consolidated fundamental rights now demanded by a continuously evolving social conscience. I am thinking, in particular, of the recommendations concerning the recognition of children born abroad through procedures prohibited in Italy, but which cannot constitute grounds for discriminating against them. What is more, legal ambiguities are prompting municipalities to pursue diverse and sometimes conflicting courses of action.”

In your opinion, can people feel fully protected by the Constitutional Court?

“Unfortunately, the structure of the constitutional review process, which depends on a question being raised by a court during its proceedings, has not allowed us, at least so far, to intervene with regard to the serious infringement of rights carried out by large multinational private groups that control the governance of social media platforms. The Court has done much in terms of freedoms, but strong limitations persist on the major digital platforms that regulate citizens’ lives.”

The Court’s decisions sometimes have significant financial implications for the state budget, potentially burdening future generations with increased public debt.

“The budget balance, safeguarded by Article 81 of the Constitution, affects

both present and future generations. The substantial interest payments, nearing €90 billion in 2024, divert resources that could otherwise be allocated to essential areas like education, healthcare, and infrastructure... When assessing the constitutionality of a provision, if it lacks a direct and conflicting relationship with a constitutional norm, it is essential to weigh it against other constitutional interests and values, including the budget balance. Therefore, after the usual discussions with my colleagues, I would like to propose setting up a panel of experts from the Studies Department to assess the impact of decisions on expenditures, revenue reduction, and administrative procedures. However, it is important to note that these assessments would be purely advisory.”

Decided to abolish the reference to a “Constitutional Court composed of gentlemen judges” from the judgments.

“It’s a question of form. But it was still a necessary step to take if we are to abandon linguistic legacies from the past. I would also like to mention another small initiative that we are undertaking with the General Commander of the Carabinieri: a number of women Carabinieri will soon be stationed at the Court command to support their male colleagues on duty here at Palazzo della Consulta. While recognising that the journey towards gender equality is long and complex, involving quite different issues, the Court has consistently been at the forefront of this endeavour.”

Can you remind us of some of the Court’s achievements in this regard?

“It was thanks to one of the Court’s landmark decisions that women gained access to judicial and prefectural careers for the first time. Additionally, regulations concerning abortion, the decriminalisation of adultery, a crime that was solely attributed to women, the lifting of the ban on promoting contraceptives,

as well as the protection of women’s health in assisted reproduction have been addressed. Decisions regarding double surnames and various other



The judges of the Court are no longer only “gentlemen”. In the inaugural non-judicial hearing you chaired, the judges unanimously de-

issues have also contributed to gender equality. However, legal changes alone are not enough, and we must also address societal norms, interpersonal dynamics, and what Michel Foucault termed the ‘microphysics of power’ in order to truly achieve gender equality.”

As part of the Court’s extensive tour of schools in Italy, which recommenced in September 2023 and will continue into the next academic year, constitutional judges are engaging in dialogue with students from various high schools across all regions. Might it be possible to consider consolidating this experience in the future to involve a greater number of teachers and students?

“The schools tour has been a great success! It is an excellent initiative by Paolo Grossi, thanks also to collaboration with the Ministry of Education. I plan to renew contacts with Minister Giuseppe Valditara in order to expand the scope of this initiative together, focusing especially on the teachers responsible for teaching the new civic education syllabus so as to achieve a ‘multiplier effect’ from this valuable experience.”

On the European level, sources and parameters of reference are multiplying, taking on not only national but also European Union and international dimensions. Within this broad and, at times, complex framework extending beyond the confines of State authority, has the Court’s approach changed along the journey towards greater protection of rights and the person?

“Since the judge in Berlin whom Bertolt Brecht had the miller of Potsdam hope for is no longer enough, an increasing number of courts are being

called upon to enforce a growing number of charters: national constitutional courts, the Court of Justice of the European Union, the European Court of Human Rights, and even ordinary courts, which are also equal players on peripheral fronts.”

Sandwiched between these courts and ordinary courts, which sometimes interact directly with the former, don’t national constitutional courts risk marginalisation?

“Not exactly, but the position of the Italian Court is not an easy one, as it must simultaneously uphold the national Constitution, enforce European law, and ensure the observance of the provisions of the Convention on Human Rights or the European Social Charter. In this context, Judgment No 269/2017 introduced the concept of the so-called double preliminary ruling. In the case of a preliminary reference to the Court of Justice, with the incidental proceedings before this Court – possibly initiated prior to the reference to the Luxembourg Court – a lower court ensures that the question is examined from the perspective of the Italian Constitution in order to bring out, if it is not considered well-founded, any further aspect worthy of consideration from the perspective of European Union law.”

Doesn’t this mean playing down the importance of European law and the role of the Court of Justice?

“Quite the opposite! It is now beyond question that constitutional adjudication has become a privileged forum for the application of European Union law, both in terms of supplementing safeguards and enriching their significance in the light of the principles inherent to EU law.”

The Court

The Court presided over
by Augusto Antonio Barbera



The President



**AUGUSTO ANTONIO
BARBERA**

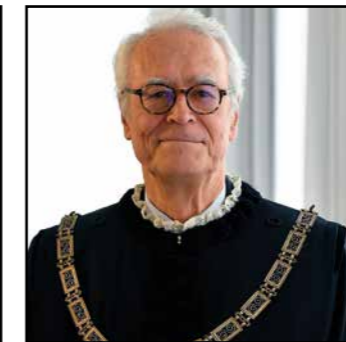
Professor Emeritus of Constitutional Law, he was elected to the Court by Parliament on 16 December 2015 and sworn in on 21 December of the same year. He was elected President on 12 December 2023.

The three Vice-Presidents



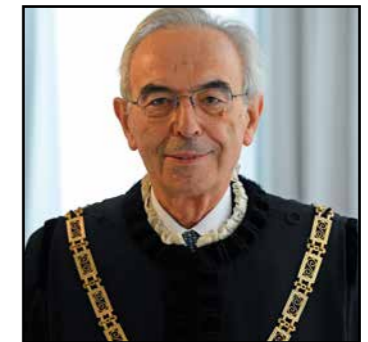
**FRANCO
MODUGNO**

Professor Emeritus of Constitutional Law, he was elected to the Court by Parliament on 16 December 2015 and sworn in on 21 December of the same year. He was appointed Vice President on 12 December 2023.



**GIULIO
PROSPERETTI**

Full Professor of Employment Law, he was elected to the Court by Parliament on 16 December 2015 and sworn in on 21 December of the same year. He was appointed Vice President on 12 December 2023.



**GIOVANNI
AMOROSO**

Judge Amoroso is a former Division President at the Court of Cassation, which elected him to the Constitutional Court on 26 October 2017. He was sworn in on 13 November of the same year and appointed Vice President on 12 December 2023.

In the photo on the left, the Panel of Judges, chaired by Augusto Antonio Barbera, in chambers in the Sala Pompeiana at Palazzo della Consulta



**FRANCESCO
VIGANÒ**

Full Professor of Criminal Law, he was appointed to the Court by the President of the Republic on 24 February 2018 and was sworn in on 8 March of the same year.



**LUCA
ANTONINI**

Full Professor of Constitutional Law, he was elected to the Court by Parliament on 19 July 2018 and was sworn in on 26 July of the same year.



**EMANUELA
NAVARRETTA**

Full Professor of Private Law, she was appointed to the Court by the President of the Republic on 9 September 2020 and was sworn in on 15 September of the same year.



**MARIA ROSARIA
SAN GIORGIO**

Judge San Giorgio is a former Division President at the Court of Cassation, which elected her to the Constitutional Court on 16 December 2020. She was sworn in on 17 December of the same year.



**FILIPPO
PATRONI GRIFFI**

Judge Patroni Griffi is a former President of the Council of State, which elected him to the Constitutional Court on 15 December 2021. He was sworn in on 29 January 2022.



**STEFANO
PETITTI**

Judge Petitti is a former Division President at the Court of Cassation, which elected him to the Constitutional Court on 28 November 2019. He was sworn in on 10 December of the same year.



**ANGELO
BUSCEMA**

Former President of the Court of Auditors, which elected him to the Constitutional Court on 12 July 2020. He was sworn in on 15 September of the same year.



**MARCO
D'ALBERTI**

Professor Emeritus of Administrative Law, he was appointed to the Court by the President of the Republic on 15 September 2022. He was sworn in on 20 September of the same year.



**GIOVANNI
PITRUZZELLA**

Full Professor of Constitutional Law, he was appointed to the Court by the President of the Republic on 6 November 2023. He was sworn in on 14 November of the same year.



**ANTONELLA
SCIARRONE
ALIBRANDI**

Full Professor of Economics Law, she was appointed to the Court by the President of the Republic on 6 November 2023. She was sworn in on 14 November of the same year.

In 2023, three judges left the Constitutional Court. On 11 November, President Silvana Sciarra, together with Vice Presidents Daria de Pretis and Nicolò Zanon, ended their nine-year term of office. On 14 November 2023, two new judges were sworn in: Giovanni Pitruzzella and Antonella Sciarrone Alibrandi. On 12 December, Augusto Antonio Barbera was elected to lead the Court, appointing Franco Modugno, Giulio Prosperetti and Giovanni Amoroso as Vice Presidents.

The year in figures

Figures for 2023



Read the Studies
Department reports

In 2023, the Constitutional Court handed down 229 rulings (180 judgments and 49 orders). This represents a decrease of 15.2% compared with 2022 (270) and is significantly below previous numbers.

Over the last fifteen years (2009-2023), the average number of decisions between 2009 and 2013 was

340, with 277 between 2014 and 2018, and 267 between 2019 and 2023.

Once again, the decrease in absolute values compared with the past is due to the smaller number of applications and referrals received.

In fact, while the number of referral orders received in 2023 (170) slightly

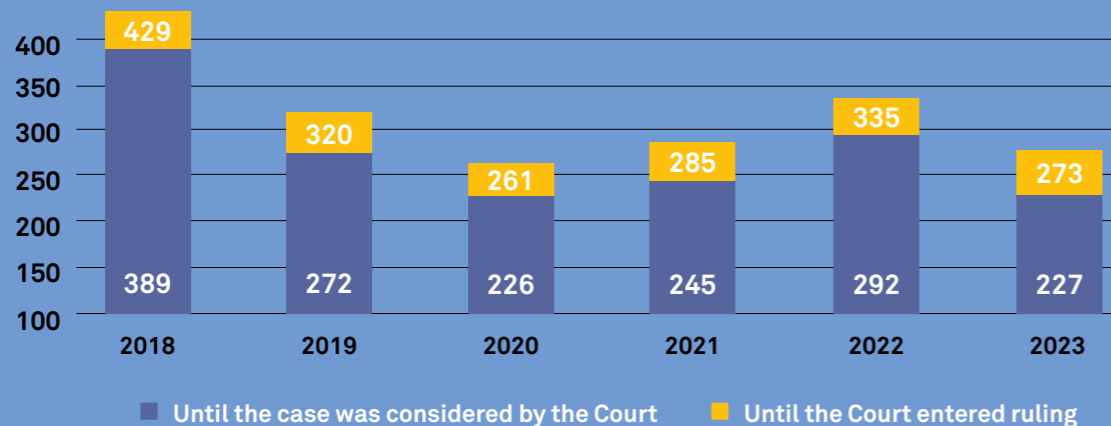
exceeded those of 2022 (160), the 35 direct applications received confirm the trend, showing a significant decrease (-59.3%) compared with the 86 recorded in 2022.

Regarding the various types of proceedings, the 229 decisions of 2023 are distributed as follows: 140 (115 judgments and 25 orders) in incidental proceedings concerning constitutionality; 70 (58 judgments and 12 orders) in proceedings on constitutionality by direct application; 2 judgments concerning disputes between the State, the Regions, and the Autonomous Provinces, and 13 decisions concerning disputes between

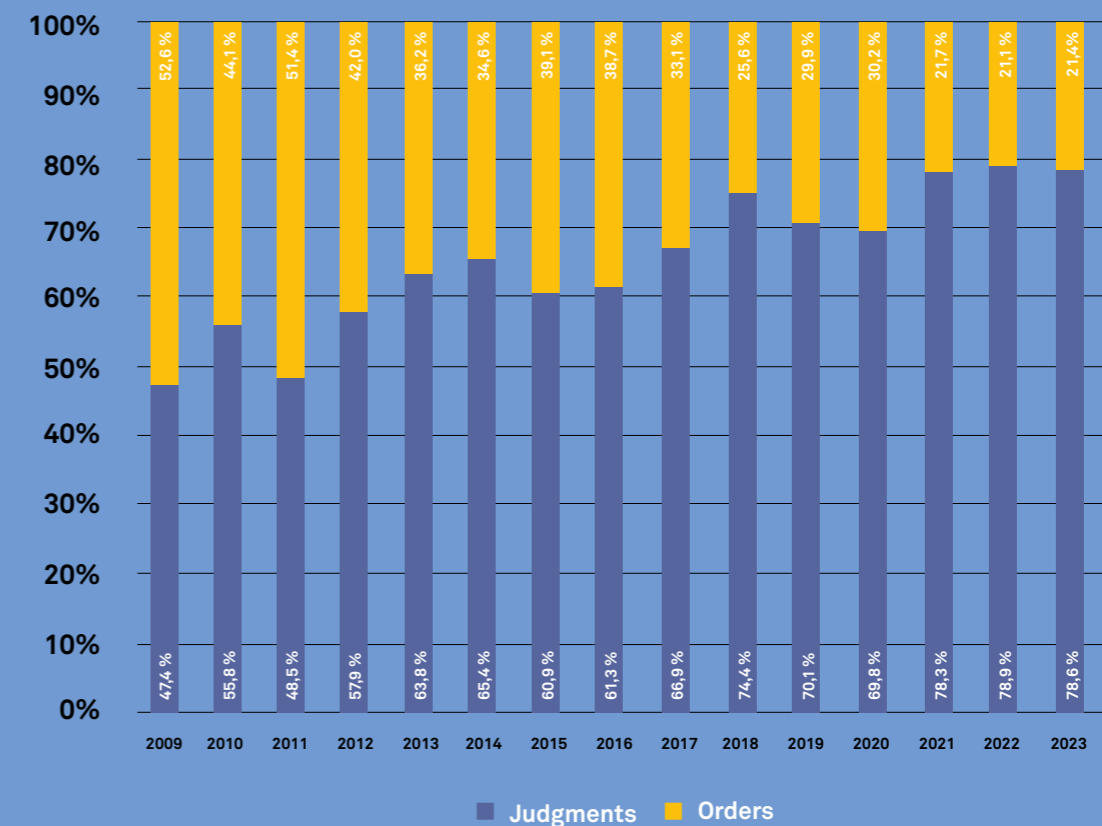
branches of state (8 orders regarding admissibility and 5 decisions on the merits). The picture is completed by 4 orders for the correction of material errors, while no rulings were made regarding the admissibility of referendums.

In percentage terms, incidental proceedings account for 61.1% of the decisions, while proceedings by direct application stand at 30.6% of the total. The remaining disputes can be broken down as follows: disputes between State and Regions, or between Regions, account for 0.9%, disputes between branches of state 5.7%, and 1.7% for the correction of material errors.

Average duration of incidental proceedings (no of days)



Proportion of judgments to orders (2009-2023)



The response to the demand for constitutional justice

In 2023 too, the 140 decisions on incidental proceedings made up the most significant share of the Court's work, amounting to twice the total number of proceedings by direct application.

Despite a slight decrease (-12.5%) on the 160 decisions of 2022, the figure for 2023, as a percentage of the total decisions (61.1% and 59.3% respectively), is still higher than in 2022.

The 70 decisions handed down in proceedings by direct application in 2023 show a decrease of 16.7% compared with the 84 in 2022. Similarly, the percentage in relation to the total number of decisions (30.6%) is lower than in 2022 (31.1%). Once again, the exceptional nature of the data from 2012 (47.5%) and 2013 (45.7%) is confirmed, with decisions in proceedings by direct application significantly outweighing decisions in incidental proceedings before the Constitutional Court.

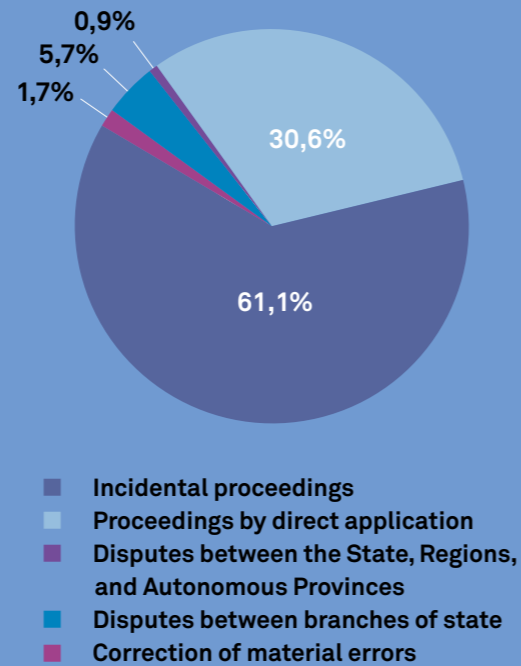
In 2023, there were 2 judgments regarding disputes between the State, Regions, and Autonomous Provinces, which was half the figure for 2022 (4 decisions). Similarly, the percentage in relation to the total number of decisions fell from 1.5% in 2022 to 0.9% in 2023.

The situation regarding disputes between branches of state remained almost unchanged, as there were 13 decisions in 2023 and 12 in 2022. Rulings on admissibility (8 in 2023 and 11 in 2022) continued to outnumber those on merits (5 in 2023 and 1 in 2022).

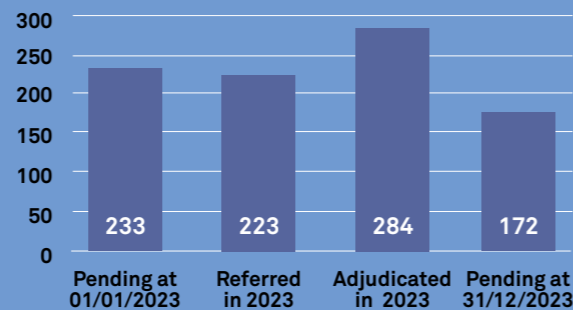
Incidental proceedings

These arise during court disputes, where a court, required to apply a legislative provision or act having force of law that appears potentially incompatible with the Constitution, raises a question of constitutionality of its own motion or at the request of either party.

229
decisions
of which 140
concerned
incidental review



Cases referred, adjudicated, and pending (total, 2023)



Pending cases

At 1 January 2023, 233 cases were pending. Over the year, 223 new cases were received, and 284 were settled. The total of 172 judgments pending at the close of the year is significantly lower than at the close of 2022 (-26.2%). Breaking down the figures per type of proceedings, 147 incidental proceedings were pending at 1 January 2023, and, over the year, 170 new cases were received and 185 settled. The number of cases pending at 31 December 2023 stood at 132, a 10.2% drop compared with the previous year. The figures relating to proceedings by direct application show a very marked reduction (-60.8%) in the number of pending cases, with 31 cases still to be settled compared with the 79 at the start of the year. In 2023, 35 applications were received, and 83 were settled.

With regard to disputes between the State, Regions, and Autonomous Provinces, the number of pending cases (2) remains unchanged since 1 January 2023. Over the year, 3 cases were received and 3 were settled.

As for disputes between branches of state, the figures regarding the admissibility phase are examined separately from those of the merits stage.

There were fewer pending cases regarding admissibility at the close of the year (1) than at the end of 2022. At 1 January 2023, 3 disputes were pending. Over the year, 6 were received and 8 were settled.

Regarding the merits phase, 6 disputes are pending, while at 1 January 2023 there were 2. Over the year, 9 disputes were received and 5 were settled.

The duration of Constitutional Court proceedings

The time scales for cases before the Court continue to be reasonably short. The main figures concern the interval between the publication of the referral order or application and the discussion of the case. The average duration of incidental proceedings from the date of publication of the referral order in the *Official Journal* to discussion in public hearing or in chambers was 227 days; this is lower compared with the last two years (292 days in 2022 and 245 in 2021) and similar to 2020 (226). The duration of proceedings by direct application, from publication of the application in the *Official Journal* to discussion, was 251 days,

a marked reduction on previous years (324 days in 2022, 351 in 2021, 372 in 2020). The average duration of disputes between the State and the Regions, or between Regions, was 172 days from publication of the application in the *Official Journal* to discussion. Although this is slightly longer than in 2022 (159 days), it is still less than in 2021 (331 days) and 2020 (180 days). Regarding disputes between branches of state, the average time from publication of applications declared admissible in the *Official Journal* to discussion was 170 days. This too is shorter than in both 2022 (202 days) and 2021 (174 days).

Proceedings by direct application

These are a means for the State to challenge regional laws, or a Region to challenge State laws or acts having force of law or other regional laws when the distribution of legislative authority under Article 117 of the Constitution is considered not to have been respected.



View from the terrace of Palazzo della Consulta

The 2023 decisions



Go to the Studies
Department report
and press releases

In 2023, the Constitutional Court handed down 229 decisions and, once again, was called upon to address many issues significant in the lives of the citizens. The matters examined included adoption, maternity leave, public employees' severance pay, taxes, the education system, and vaccines. Other decisions concerned residence permits, road safety, procedural rules, and prisoners. Regarding disputes between branches of state, decisions were handed down on the wiretapping of members of Parliament and the definition of "correspondence", including in the form of WhatsApp messages.



ADOPTION

The legislation on **full adoption** does not preclude courts from allowing, in the best interest of the child, the preservation of certain socio-emotional relationships with members of their **biological family**. In **Judgment No 183**, the Court clarified that reference in the challenged provision to the termination of relationships with members of the biological family always concerns legal and formal ties of kinship. By contrast, it cannot be categorically assumed that the termination of social and emotional relationships always serves the best interest of the child. Therefore, courts are not prevented from assessing whether such an interest exists.

In its **Judgment No 135**, the Court established that **adult adoptees** may add the **adopter's surname** to their own rather than having it placed first, when doing so serves to protect their right to personal identity and the adopter also agrees to the surnames appearing in this order. The Court thus declared unconstitutional the Civil Code provision which laid down that the adopter's surname should come before that of the adoptee.

AGRICULTURE

The Court declared in **Judgment No 75** that the law of the **Sicilian Region** establishing a **Regional register of products with municipal designation** (*denominazione comunale "De.Co."*) as a tool for the safeguarding, protection, and promotion – particularly of territorial agri-food and gastronomic productions – is not incompatible with EU regulations on PDO (Protected Designation of Origin), PGI (Protected Geographical Indication), and TSG (Traditional Speciality Guaranteed) designations. Municipal designation is a "certificate of

territorial identity" which identifies the origin and historical-cultural ties between a specific typical product and the municipal territory.

BANKS

In **Judgment No 108**, the Court considered the reform of the Bank of Italy's capital and taxation treatment and held that the proposed **substitute tax** on the higher values of the shares held by the participants in this capital is not unconstitutional. Indeed, the registration of the new values has nonetheless resulted in the creation of new value for shareholders, thus constituting an indicator of their taxpaying capacity.

WAR CRIMES AND CRIMES AGAINST HUMANITY

With **Judgment No 159**, the Court declared that the termination of enforcement proceedings against Germany for compensation for war crimes and crimes against humanity committed during World War II is not unconstitutional. The Court determined that enforcement procedures are subject to the (so-called restricted) immunity of States, as previously acknowledged in favour of Germany by the International Court of Justice in The Hague. It also concluded that the automatic termination of ongoing procedures is balanced by the protection provided through the creation of the "**Ristori**" Fund, which matches the sums awarded in final judgments.

EMERGENCY DECREES

In **Judgment No 215**, the Court ruled on the need for **consistency in the amendments made during the conversion of a decree-law**. Specifically, it declared unconstitutional the new regulations concerning the Sicilian Chambers of Commerce – introduced by the conver-

sion law through an amendment – as they were unrelated to the contents and purposes of the original decree-law. The Court reiterated that a conversion law may not include provisions unrelated to those in the decree-law, thus preventing the simplified procedural process from hindering the normal dynamics of parliamentary debate.

PRISONERS 41-BIS

Article 41-*bis* of the Prison Administration Law does not always require the use of “full-height” glass partitions during interaction with underage family members. When a legal provision clearly aims to prevent the exchange of items during visits between prisoners under special detention conditions and their families, the measures implemented for this purpose must be appropriate to the specific circumstances, taking into account the rights of both the prisoners and their **underage family members**. This is the conclusion reached in

Judgment No 105, which declares that it is possible to provide a constitutionally oriented interpretation of the legislation, ensuring humane treatment for detainees, while also safeguarding the overriding interest of minors.

BUILDING AND URBAN PLANNING

With regard to building and urban planning, regulations in the Puglia Region that repeatedly extended the so-called **Housing Plan**, also bypassing urban planning rules, were found unconstitutional in **Judgment No 17** for breach of the fundamental principle of requisite adherence to existing urban planning regulation.

REGIONAL AND LOCAL AUTHORITIES

With **Judgment No 60**, addressing issues related to regulations in the Sardinia Region, the Court declared that it falls to the national parliament,



through uniform regulations applicable across the entire national territory, to determine the maximum number of consecutive **elective terms for mayors of small municipalities**. This is consistent with the Constitution and, in particular, with the principle laid down in Article 51, which, ensuring the fundamental right to stand for election, requires that all citizens, regardless of gender, have equal access to elective offices: a matter regulated by the national parliament.

SPORTS FEDERATIONS GOVERNING BODIES

Concerning sports, with **Judgment No 184**, the Court declared unconstitutional the restriction that limits presidents and members of the governing bodies of local branches of national sports federations and affiliated sports associations to serving for no more than **three terms**. While the aim of the norm to avoid “**position privileges**” and ensure **equal opportunities** for all candidates may theoretically justify restrictions on access to positions, the drastic nature of the measure adopted runs counter to the constitutional principle of proportionality.

PUBLIC FINANCE

In **Judgment No 165**, the Court declared unconstitutional a law of the Sicilian Region that provided for multiple interventions and measures without adequate **planning** and suitable **financial coverage** in the fiscal year in question. In so doing, the regional government seriously disregarded the importance of the budget cycle, which is a significant public good, being a set of documents capable of providing citizens with accurate and transparent information. The judgment also determined that the ultimate purpose of the budget

is to reconcile different and potentially conflicting interests, including through decisions regarding allocation, to ensure the effective exercise of fundamental rights. These decisions must strike a delicate balance while respecting financial constraints, including supranational obligations, as well as the principle of equity across generations.

With **Judgment No 70**, the Court held that submitting the approval of the three-year requirement plan for **regional health personnel** to an Advisory Board and Joint Committee is a measure which, as it serves primarily to safeguard the balance of public finance, is applied only to the regions where a **recovery plan** is in place and which are subject to stringent initiatives to contain spending and guarantee essential levels of healthcare. This decision also concerned the role of the regions in **professional training** and **urban regeneration**.

SOURCES OF LAW

With **Judgment No 138**, the Court declared unconstitutional a provision of the Campania Region concerning the **deregulation of the administrative organisation** of the regional government offices. The decision determined that the challenged regional provision did not sufficiently outline the criteria for the exercise of regulatory power. On the contrary, with regard to deregulation, the general regulatory rules may not be excessively broad, as they must have “a scope of action sufficient to constitute the foundational choices of the regulatory framework of the subject of the deregulation”.

INFRASTRUCTURES

As for **Judgment No 6**, the Court was asked by a number of regional authorities to assess various provisions of

the national reform concerning the **programming of port systems** and the **planning of national ports**. The decision, which declared some of the challenged provisions unconstitutional, addressed the relationship between the State and the Regions in an area, such as that of “civil ports”, marked by concurrent legislative competences. The national legislation was thus justified “at the source” in intervening to meet the “comprehensive” need to improve ports in terms of structural work and their integration into the national and international logistics chain. At the same time, it was reaffirmed “downstream” that State legislative intervention must be “subsidiarily” accompanied by forms of collaboration with regions and local authorities, which must be conducted in good faith.

MAFIA INTERDICTION

In **Judgment No 101**, the Court addressed the extraordinary administration by the prefecture of companies affected by **Anti-mafia measures** which allowed them to complete the execution of specific contracts entered into with public authorities essential for the fulfilment of overriding public interests under conditions of controlled legality. Reiterating that the interdiction order defends legality against the infiltration of organised crime in the economy, the Court interpreted the challenged article of the Anti-mafia Code in a manner consistent with the Constitution and the principle of legality. Even if the appeal against the interdiction is rejected by the administrative court, and in the absence of a provision for the confiscation of the entire proceeds, the interdicted company retains the **right to compensation** for what it produced using its own resources during the period of supervision. Specifically, it retains the right to the value of the services rendered, with-

in the limits of the benefit obtained by the public authority. This amount is then adjusted to account for the compensation owed to the commissioners, any damages owed to the contractor, or the assets subject to confiscation.

PUBLIC EMPLOYMENT

With its **Judgment No 84**, the Court determined that, concerning the regulation of public employment and contracts relating to it, the principles established in national law constitute standard **boundaries of private law** based on the necessity, arising from the constitutional principle of equality, of ensuring uniformity throughout the national territory with regard to the fundamental norms governing relationships between private individuals. Consequently, these standards are also applied to the regions with special statutes. Also deemed unconstitutional were certain provisions of the Sicilian Region aimed at **granting permanent employment** status to personnel without clearly defining the entities involved, determining the necessary resources for their concrete implementation, or their availability in the budget.

LEGISLATION

In its **Judgment No 110**, regarding a provision of the Molise Region concerning construction, the Court asserted that “**irremediably obscure**” laws, leading to “intolerable uncertainty when applied in concrete cases”, are contrary to the principle of reasonableness outlined in Article 3 of the Constitution. The Court deemed the challenged regional law unconstitutional as it failed to provide “any reliable guiding criteria for the public authorities vested with the task of assessing whether or not to authorise a given application to carry out construction works submitted by a private individual”.

Additionally, it caused difficulties for private individuals to “exercise their right of defence in legal proceedings against any decision not to grant such an authorisation by the public authorities, precisely because of the vagueness of the requirements of the law which should protect them against the arbitrary use of administrative discretion”.

PREVENTIVE MEASURES

In its **Judgment No 2**, the Court determined that, with regard to individuals previously convicted for offences committed with criminal intent and consistently engaging in criminal conduct, a Chief of Police cannot unilaterally order the **prohibition of possession or use of mobile phones as a preventive measure**. As this measure impinges on freedom of communication, the public safety authority may suggest it, but the final decision rests with the judicial authority.

MILITARY LAW

With **Judgment No 216**, the Court declared unconstitutional a national provision that revoked an article of the Military Code, citing a breach of the principles of reasonableness and legitimate expectations. The provision entitled **officers in permanent service** in the Army, Navy, and Air Force holding a military pilot’s licence to a **bonus** upon termination of their service when they reached retirement age. The provision that was declared unconstitutional led to **unjustified retroactive effects**, directly contradicting *ex post facto* the rationale of the repealed bonus regulation, which was originally designed to discourage military pilots from seeking better pay elsewhere. The declaration of unconstitutionality resulted in the repealed provision being reinstated.



PUBLIC ORDER AND SECURITY

In its **Judgment No 69**, the Court rejected a number of questions raised by the Government regarding a law of the Lombardy Region which established regulations on local police services and supplementary **urban security policies**. The judgment differentiates the various concepts of ‘security’ in the reasoning, distinguishing in particular between what is termed ‘primary security or security in the narrow sense’ and what is referred to as ‘supplementary security’. The first, consisting in the **prevention and repression of crime** and the **maintenance of public order**, falls under the exclusive jurisdiction of the State, except the local administrative police, which is under residual regional responsibility. Instead, the second

involves a range of actions “aiming to improve the **living conditions** of the (...) territories”, for which the regions are responsible within the scope of their competencies. Thus, there exists a pluralistic dimension, allowing for “functions corresponding to numerous and diverse regional and local competencies, as well as potential cooperation among regions and between these and the branches of state”.

EQUAL OPPORTUNITIES

Judgment No 211 marks a significant milestone in the gradual affirmation of the principles of non-discrimination between men and women. In this decision, the Court identified a violation of the fundamental right to **equal treatment** in a case involving delays in assigning posts to women who had won an open competition procedure but were on ma-



ternity leave at the time. Specifically, it declared unconstitutional prison police personnel regulations which deferred the appointment of women competition winners for the position of deputy inspector if they were on maternity leave during the training course following the selection. This delay postponed their career advancement until the conclusion of the subsequent course. The Court concluded that deferring their appointment unjustly **discriminated against women** based on grounds of maternity status and risked discouraging the decision to have children.

PARLIAMENT

In a jurisdictional dispute between branches of state concerning the constitutionality of seizing correspondence proposed by the Senate in the **Renzi case**, in **Judgment No 170**, the Court declared that the Public Prosecutor’s Office at the Florence Court could not seize, without **prior authorisation of the Senate**, **email and WhatsApp** messages to or from Mr Renzi stored in electronic devices belonging to third parties, subject to seizure orders in criminal proceedings even against the Member of Parliament himself. These messages were, in fact, considered as coming under the constitutionally protected notion of “correspondence”. The protection of correspondence does not cease when the recipient receives a message but endures as long as it remains topical and relevant to the interlocutors.

On the same subject, the Court upheld the Senate’s application for constitutional review regarding the wiretaps ordered and used by the Turin Court in the **Esposito case**. In its **Judgment No 227**, the Court determined that it was not within the purview of the judicial authorities who investigated and subsequently indicted Stefano Esposito

for trial to order, execute, and use wiretaps against another defendant without seeking authorisation from the Senate at any time. This wiretapping was unquestionably intended to gain access to the Member of Parliament’s sphere of communication.

Lastly, the Court upheld the application for constitutional review brought by the Disciplinary Section of the Superior Council of the Judiciary in the **Ferri case**. At the heart of the dispute, which was settled by **Judgment No 157**, was a request for authorisation made by the Disciplinary Section of the Superior Council to use wiretaps obtained during criminal proceedings against others initiated by the Public Prosecutor’s Office at the Perugia Court. The decision with which the Chamber of Deputies had denied authorisation to use the wiretaps involving the prosecutor on leave through parliamentary mandate was revoked because the Constitutional Court ruled that the use of wiretaps did not require prior authorisation as claimed by the Chamber of Deputies, as the investigation “was unquestionably not also intended to intercept Mr Ferri’s communications”.

RESIDENCE PERMITS

The Court determined, in **Judgment No 88**, that automatically denying **renewal of a residence permit for work** in the case of a **conviction for minor drug trafficking** is unconstitutional. It is for the Chief of Police to specifically assess the danger to society posed by a convicted foreigner. Consistently with the case law of the Court of Justice of the European Union, the Court clarified in its reasoning that while the legislature has broad discretion in regulating the entry and residence of aliens in the national territory, it must do so within the bounds of a reasonable and pro-



portionate balancing of the rights and interests at stake. Considering the minor nature of the offence in question, automatic denial was held to be clearly unreasonable.

FLIGHT PERSONNEL

In its **Judgment No 143**, the Court once again addressed the issue of the **rights of aircrew**, which end within only two years from disembarkation after the termination of the contract, rather than five years during the course of the period of employment. The question was dismissed due to the unique nature of the employment relationship of aviation personnel, which is characterised by extreme **mobility**. The Court determined that the different expiry of the time limit was justified because the decision-making process leading to the interruption of the limitation period requires careful consideration, involving consultation with a lawyer, which may not be feasible when the employee is away from their usual environment.

CIVIL PROCEDURE

In its **Judgment No 222**, the Court declared unconstitutional an article of the Code of Civil Procedure insofar as it permits **preliminary technical advice** for the purposes of settling disputes arising from contractual breaches, unlawful acts, but not for all **claims** stemming from other legal instruments or criminal acts. The exclusion of certain claims leads to a distinction without reasonable justification and infringes upon the right to defence to the detriment of the holders of the excluded claims, a right which is not precluded by the wide discretion of the legislature in procedural matters.

CRIMINAL PROCEDURE

With regard to the **Regeni trial**, in its

Judgment No 192, the Court determined that the procedural rules to be applied when a defendant charged with torture at the hands of the State is absent cannot lead to de facto immunity. The Court, in fact, declared unconstitutional an article of the Code of Criminal Procedure insofar as it fails to stipulate that the court can proceed **in the absence of the defendant** for offences committed through acts of torture as defined by the New York Convention against Torture. This is especially relevant when, due to lack of cooperation by the defendant's State of nationality, it is impossible to prove that the defendant, although aware of the proceedings, was also made aware of the trial. The Court, however, reaffirmed the right of the defendant to a new trial in their presence for review of the merits of the case.

A person under investigation, or a defendant in a criminal trial, must always be expressly informed of the **right not to answer** questions concerning their personal circumstances. This was established by the Court in its **Judgment No 111**. Indeed, both the Constitution and international provisions protecting human rights allow for the imposition of a duty on a person suspected of committing a crime to provide the prosecuting authority with their personal details. However, there is no obligation on the suspect or accused person to provide further **personal information**, as there is no requirement for them to cooperate with the investigation and trial against them.

ASSISTED REPRODUCTIVE TECHNOLOGY

On assisted reproductive technology, the Court confirmed in its **Judgment No 161** that the **man's consent** after fertilisation of the oocyte is **irrevocable**. Indeed, the father has no faculty to reconsider his decision. The Court held that the bal-

ance struck by the legislature was not unreasonable. Considering the protection of the mother's physical and psychological health and the dignity of the embryo, limitation of the man's freedom of self-determination by the prospect of paternity was deemed reasonable. The judgment also clarified that the search for a potential alternative balance between the conflicting needs at hand can only be a matter for the legislature.

PUBLIC ADMINISTRATION

Judgment No 92 emphasises that the **principle of good performance** referred to in Article 97 of the Constitution constitutes the cornerstone of administrative life and means that the regulations on the organisation of offices must be inspired by a criterion of congruence

and non-arbitrariness with respect to the goal to be pursued. For this reason, the discretionary powers of both State and regional law-making bodies are constrained with regard to decisions concerning the **hiring of personnel** and must consider the specific needs of the administration, also establishing criteria for assigning duties to employees.

CRIMES AND PUNISHMENTS

Regarding **family homicides**, in its **Judgment No 197**, the Court declared unconstitutional the absolute prohibition for courts to reduce a sentence due to **mitigating circumstances**. Even in trials for murder committed against a family member or cohabitee, courts must have the discretionary power to **evaluate** whether to reduce the sentence due to the mitigating circumstance of provo-



cation and general mitigating circumstances **on a case-by-case basis**.

ADMINISTRATIVE PENALTIES

Administrative penalties, like criminal ones, must adhere to the **principle of proportionality**. The punishment imposed should be commensurate with the gravity of the offence committed. In cases where the penalties are pre-established, it is necessary to ensure that the penalty is appropriate to all conduct punished in the same manner, including less serious offences. In its **Judgment No 40**, the Court declared unconstitutional the provision that imposes an administrative fine “of fifty thousand euros” on the **oversight bodies** monitoring **Protected Designation of Origin or Protected Geographical Indication** production for each failure to comply with the rules or obligations set out in the quality control manuals, instead of a range “from a minimum of ten thousand to a maximum of fifty thousand euros”. The Court replaced the unconstitutional provision with another one that was constitutionally compliant to prevent the sentencing gap from leading to a breach of EU requirements.

ROAD SAFETY DRIVING LICENCES

In its **Judgment No 194**, the Court confirmed that **driving licences** are to be revoked in the event of a road traffic accident involving **driving under the influence of alcohol** exceeding 1.5 g/l. The Court determined that the accessory sanction of **licence revocation** is not a punitive measure disproportionate to the intrinsic seriousness of the offence committed, even when a road accident does not result in personal injury or death.

With **Judgment No 195**, the Court also

held that a sentence of three years' imprisonment is reasonably proportionate for a driver who, having caused serious injuries, **attempts to flee** the scene of the accident. By failing to stop and offer assistance, a driver engages in **'wilful misconduct'**, demonstrating a conscious decision not to take responsibility for their actions.

THE EDUCATION SYSTEM

Judgment No 223 declared unfounded the applications of the Tuscany, Emilia-Romagna, and Puglia Regions against various State provisions concerning the regulation of the **allocation of school principals and directors** of general and administrative services within the education sector, as well as their **distribution among the regions**. In contrast, the Court ruled that it is unconstitutional for the regions not to be consulted regarding the adoption of the State decree allocating regulated funds. The reasoning part of the judgment stated that **“none of the challenged provisions entails the closure of schools”** and that the “new legislation, at least in the first year of implementation, does not even lead to a reduction in the overall number of principals allocated to each of the applicant regions”. The Court also observed that the national legislation has “the declared goal of implementing the reorganisation of the school system envisaged in the NRRP (National Recovery and Resilience Plan)” and aims, in short, to improve the efficiency and effectiveness of the system, primarily by adopting the criterion of regional school population.

HEALTH FACILITIES

In its **Judgment No 32**, the Court declared unconstitutional a provision of the Puglia Region insofar as it established a series of exemptions from the principle

stating that authorisation for the construction and operation of **healthcare and social-health facilities** does not entail binding effects for the purpose of the institutional **accreditation process**. Specifically, the Court determined that, in accordance with State legislation, the procedures for authorisation and institutional accreditation of healthcare and social-health facilities are independent of each other, as they aim to evaluate different and non-overlapping need indices.

SEVERANCE PAY

In its key **Judgment No 130**, the Court found that delaying the payment of severance pay to **public employees** who have retired due to age or service limits runs counter to the constitutional principle of fair compensation, which regards not only the appropriacy of the sum but also timely payment. The Court thus urged Parliament to promptly address the gradual removal of this delay, indicating the means and methods for implementing the required reform, considering the significant financial implications involved in its elimination.

TAXATION

With **Judgment No 46**, the Court held that the principle of proportionality also extends to administrative tax penalties. Regarding the provision allowing for the potential reduction of penalties by up to half, the Court, in a constitutionally oriented interpretation, considered that if a **taxpayer acts in “good faith”** and makes efforts to eliminate or mitigate the consequences of the offence, this should be one of the factors warranting a reduction.

In **Judgment No 47**, the Court examined a provision in the Statute of **taxpayers’ rights** insofar as it lacks **intra-procedural cross-examination in desk audits** con-

ducted by the Revenue Agency. While recognising the inadequacy of the current legislation, the Court found the question inadmissible, as resolving the identified question concerning constitutionality requires a systemic intervention, which is the sole responsibility of Parliament.

COMMON USE

In its **Judgment No 119**, the Court determined that the provision establishing the **inalienability** of privately owned land encumbered by common use introduced in 2017 is incompatible with the Constitution as it fails to exclude lands owned by private individuals on which residents of the municipality or suburb still have right of way. The Court found that **inalienability** has no reasonable connection with the aim of ensuring the social function of private property, and that the challenged provision gives rise to an “unreasonable configuration and, consequently, an **unconstitutional encroachment on property**”.

VACCINES

The Court discussed various issues related to health and vaccination in particular. In its **Judgment No 14**, the Court affirmed that the legislature’s decision to subject **healthcare personnel to mandatory vaccination** as a measure to curb the spread of the virus during the **Covid-19** pandemic by limiting its circulation was neither unreasonable nor disproportionate, given the circumstances of the epidemic and the scientific evidence available at the time.

In its **Judgment No 15**, the Court also concluded that for **workers** employed in **residential, social-assistance, and social-health facilities**, mandatory vaccination to prevent SARS-CoV-2 infection, rather than requiring diagnostic tests

(swabs), was not an unreasonable or disproportionate measure, considering the scientific data available. The challenged legislation struck a reasonably fair balance between an individual’s right to choose their treatment and the coexisting and reciprocal rights of others, in addition to the interest of the community. This was particularly necessary to safeguard healthcare facilities from the risk of being unable to

fulfil their vital function. Furthermore, in **Judgment No 16**, the Court declared inadmissible the question concerning the constitutionality of a provision that did not limit **suspension from exercising the health profession** in the event of non-compliance with the vaccination obligation only to services or tasks involving **personal contact** or that entail the risk of spreading Covid-19 in any other form.



Law clerks

Law clerks, who may come from either the judiciary or academia, play a crucial role in preparing and examining the cases on the agenda. Every two weeks prior to hearings, all the clerks convene to discuss the issues before the Court. Each one then reports to their respective judge, providing them with a comprehensive understanding of all the cases to be discussed and decided upon during the hearing.



The Panel of Judges chaired by Augusto Antonio Barbera in the Green Room of Palazzo della Consulta
Behind the judges, a 17th-century Flemish tapestry depicting episodes from the Old Testament

Report on the Court's initiatives in 2022

Keywords: family, minors, gender equality, pandemic, health, person, environment, landscape, climate, sincere collaboration, solidarity, the individual and authority, employment, social security, business



At the extraordinary meeting of the Court, attended by the Head of State and high-ranking State officials in the Salone Belvedere of the Palazzo della Consulta on 13 April 2023, President Silvana Sciarra presented the Annual Report on the initiatives of the Constitutional Court during 2022.

In the words of the President, the extraordinary meeting solemnly “marks the passage of time”, highlighting its role as an occasion for reflecting “on the work done by constitutional judges and by those belonging to the Constitutional Court community who facilitate the exercise of judicial functions”.

Building on its ties with Europe and the world, President Sciarra reiterated the vision of “a Court that is vigilant and at the same time permeable, dynamic, projected into broader jurisdictional universes, on the basis of the clauses in our Constitution showing an opening towards Europe and the world”.

She then mentioned a number of judgments as “examples of case law conscious of the expansion of horizons that EU law affords, even when it imposes limits on national courts.”

President Sciarra then looked back over the year's work, highlighting key themes such as the family, minors, gender equality, the pandemic, healthcare, the person, the environment, landscape, climate, sincere cooperation, solidarity, authority, employment, social security, and business. She revisited each of these topics, recalling some of the most significant decisions handed down during the year. She remarked that these words encapsulate

“the function of the Court that ensures respect for the Constitution, constantly open to dialogue with Parliament, which is called upon to give concrete effect to these rights”.

She also mentioned the Court's return to its original courtroom after temporarily relocating to a larger space during the pandemic. This courtroom holds significance as the primary and symbolic “place of communication and transparency”, where “one witnesses – as is the tradition – the ritual of a Court that listens, attentive to the person and to the protection of primary interests”. It is an occasion to emphasise the role of the Court as “guarantor in respect of the division of

competences between the State, the Regions, and the Autonomous Provinces; arbiter in disputes concerning the allocation of powers between the State, the Regions, and Autonomous

Provinces as well as in conflicts between central institutions; determined, in admissibility proceedings on referendum questions, to protect the rights of the citizens called to vote”.

Lastly, returning to the Court's relationship with the European Court of Human Rights and the Court of Justice of the European Union, the President highlighted the “increasingly harmonious coordination of argumentative techniques” and improved compliance with standards of reasonableness and proportionality. “Consistency between deliberative processes,” she concluded, “serves to strengthen democracy and the rule of law, undisputable prerequisites in the creation of peace”.



President of the Republic, Sergio Mattarella, and President Silvana Sciarra

In the photo on the left, the panel of judges chaired by Silvana Sciarra until 11 November 2023 standing on the monumental staircase of Palazzo della Consulta

Press conferences

The Presidents meet journalists
on 13 April and 12 December



The customary press conference was held following the extraordinary meeting of 13 April.

Responding to questions from journalists, President Silvana Sciarra also addressed a number of topical issues, including the Court's interactions with Parliament and European law, the need to protect the rights of minors, life sentences without parole, balancing crimes and sentencing, the rights of foreigners, work and the problem of low wages, striking a balance between constitutional rights and scientific progress, and the European social security system. A picture has emerged of a resolute and empathetic Court, open to dialogue both with Parliament in a spirit of "institutional respect", and with the Court of Justice in a "symbiosis between national constitutional values and the foundational values of the European Union". A Court always mindful of the dignity of the person and protective of their rights.

The press conference was broadcast live on RaiNews24.

On 12 December, Professor Augusto Antonio Barbera was elected President. His first act was to appoint Judges Franco Modugno, Giulio Prosperetti, and Giovanni Amoroso as Vice Presidents. In his inaugural press conference, the President emphasised several key issues: the relationship between the Court and Parliament, votes of confidence, major amendments, constitutional reforms, and gender equality. The President also defended the complex mechanism governing the election of the fifteen constitutional judges, designed to safeguard the independence and autonomy of the Court.

President Barbera will remain in office until 21 December 2024, the day his nine-year mandate as a constitutional judge will expire.

On the left, President Silvana Sciarra during the press conference of 13 April
Above, Augusto Antonio Barbera's first press conference as President of the Court

Women and the Court

The words “comprising the gentlemen” will be removed and replaced by “comprising”, following the words “Italian Republic, in the name of the Italian people, the Constitutional Court” in the captions of the judgments and orders.

42

The Court, chaired by Professor Augusto Antonio Barbera, meeting in non-judicative chambers on 21 December, unanimously approved a change of strong symbolic value.

Indeed, following this decision, the captions of judgments and orders now read “the Constitutional Court, comprising”. The phrase “comprising the gentlemen” no longer appears. This formula has accompanied the work of the Court from 1956 to this day, throughout the decades when the panel of judges was exclusively male. The expression continued in use even though eight women judges have gradually joined the bench.

Six of them were appointed by Presidents of the Republic (Fernanda Contri, Maria Rita Saulle, Marta Cartabia, Daria de Pretis, Emanuela Navarretta, Antonella Sciarrone Alibrandi), one was elected by Parliament in joint session (Silvana Sciarra), and one was elected by the Court of Cassation (Maria Rosaria San Giorgio).

The Court also ruled that the term “relatrice”/“redattrice” (“rapporteur” and “drafter” in the feminine) should always precede the name of the woman judge entrusted with drafting a judgment, rather than “relatore/redattore” in the masculine.

43



Judgments

Judgment No 33/1960
WOMEN IN THE JUDICIARY

Judgment No 126/1968
ADULTERY

Judgment No 27/1975
ABORTION

Judgment 131/2022
DOUBLE SURNAMES

Judgment No 161/2023
ASSISTED REPRODUCTIVE TECHNOLOGY



Podcasts

Maria Rosaria San Giorgio
THE DOOR OPENED TO WOMEN
BY JUDGMENT NO 33/1960

Daria de Pretis
THE COURT AND WOMEN

Daria de Pretis
JUDGMENT NO 131/2022
ON DOUBLE SURNAMES

Daria de Pretis
THE MOTHER’S SURNAME IN THE COURT’S
DECISIONS FROM 1988 TO 2021

Carlo Cottarelli and Emanuela Navarretta
EQUAL OPPORTUNITIES

Nicolò Zanon
JUDGMENT NO 27/1975 ON ABORTION



FERNANDA CONTRI

MARIA RITA SAULLE

MARTA CARTABIA

SILVANA SCIARRA

DARIA DE PRETIS

EMANUELA NAVARRETTA

MARIA ROSARIA SAN GIORGIO

ANTONELLA SCIARRONE ALIBRANDI





On the left., the women judges of the Constitutional Court: from left, Emanuela Navarretta, Maria Rosaria San Giorgio, Antonella Sciarrone Alibrandi. Below, from left to right, Marta Cartabia, first female President of the Constitutional Court, Daria de Pretis and Silvana Sciarra, respectively Vice President and President until 11 November 2023

On 4 November 1996, President of the Republic Oscar Luigi Scalfaro appointed lawyer Fernanda Contri, former Minister for Social Affairs in the Ciampi government, as a constitutional judge. Almost thirty years have passed since that historic date: Judge Contri – later elected Vice President of the Court – was succeeded in 2005 by Professor Emerita of International Law Maria Rita Saulle, appointed by the President of the Republic, Carlo Azeglio Ciampi. His successor, Giorgio Napolitano, welcomed two more women university professors to Palazzo della Consulta. In 2011, Professor of Constitutional Law Marta Cartabia, who served first as Vice President and then as President of the Court from 2014 to 2020, before becoming Minister of Justice in the Draghi government, and, in 2014, the Rector of the University of Trento, Professor of Administrative Law Daria de Pretis, who served as Vice President of the Court from 2022 to 2023. Also in 2014, a professor of employment law, Silvana Sciarra was elected during a joint session of Parliament, marking the first time that senators and deputies had elected a woman. Judge Sciarra presided over the Court from September 2022 to November 2023, having previously served as Vice President. Maria Rosaria San Giorgio, Division President at the Court of Cassation, was the first woman to be elected to the Court (in 2020) by her fellow judges. Again in 2020, President of the Republic Sergio Mattarella appointed Professor of Private Law Emanuela Navarretta to the Court. Lastly, in November 2023, he selected Professor of Economics Law Antonella Sciarrone Alibrandi.



The Court, podcasts and video interviews

Grabenwarter, Abrantes, Conde-Pumpido Tourón, Fabius, Sciarra, Antonini, along with a tribute to Caravita



President Silvana Sciarra interviewed by Dino Martirano, Head of Communications at the Italian Constitutional Court

46

The Constitutional Court Podcast Library was further enriched in 2023 in an initiative now in its third year. The Library was launched on the highly symbolic date of 2 June 2020, on the first Republic Day to be celebrated after the pandemic emergency, and the podcasts of the Court's interviews and meetings are now also released in video format. For recordings and interviews conducted in a foreign language, the Court introduced voice-over Italian translations by its Studies Department.

The first podcast of 2023 was dedicated to the event "At the roots of the principle of reasonableness", which took place in the Court Library on 23 March in memory of Professor Beniamino Caravita di Toritto. The event was presented and chaired by Vice President Daria de Pretis, President of the Library Commission, which promoted it. Anna Maria Poggi, Professor of Public Law Institutions at the University of Turin, looked

back over Caravita's professional and academic career. Constitutional Judge Franco Modugno then delivered an introductory speech, followed by discussions on reasonableness and proportionality led by President Emerita Marta Cartabia and Andrea Morrone, Professor of Constitutional Law at the University of Bologna. The conclusions were delivered by the President of the Court, Silvana Sciarra.

In addition to the study meeting between the Austrian and Italian Constitutional Courts, which took place in May, the Communication and Press Office conducted an interview with the President of the Austrian Constitutional Court, Christoph Grabenwarter, published in both audio and video podcast format as part of the Court Interviews series. The conversation focused on the topics of the meeting, which were dedicated to end-of-life judgments and the relationships between Constitutional Courts and Parliament. The interview

with President Grabenwarter, conducted in the Salotto Rosso of the Palazzo della Consulta, where guests and delegations are traditionally received, is available on the Court's website and its YouTube channel.

In June, new video interviews were recorded during the fourth meeting between the four constitutional courts of Italy, France, Spain, and Portugal. This meeting, held at Palazzo della Consulta, focused on environmental issues and the health and rights of future generations. In addition to Court President Silvana Sciarra, the President of the French Conseil Constitutionnel, Laurent Fabius, Prime Minister from 1984 to 1986, the President of the Spanish Tribunal Constitucional, Cándido Conde-Pumpido Tourón, and the President of the Portuguese Tribunal Constitucional, José João Abrantes, answered questions on the topics discussed during the meeting. The four interviews are available in video format on the Court's website

and its YouTube channel. The audio versions can also be found on Spreaker, Spotify, Apple Podcasts, and the other major podcast platforms.

Finally, the most crowded shelves of the Library are growing again, with a reflection by Constitutional Court Judge Luca Antonini on the unanimously approved Constitutional Law No 1 of 26 September 2023, which adds a new paragraph to Article 33 of the Constitution: "The Republic recognises the educational and social value of all kinds of sport, as well as its role in supporting physical and psychological health". Judge Antonini then reflected on an amendment that establishes the recognition of sport as one of the fundamental values protected by the Constitution. Following inclusion of the environment – introduced in 2022 through the amendment of Articles 9 and 41, and passed by a vast majority in 2023 – "Sport also finds a place in the Constitution", as the title of the podcast runs.

47

Interviews and podcasts



CHRISTOPH GRABENWARTER

CÁNDIDO CONDE-PUMPIDO TOURÓN



LAURENT FABIUS

JOSÉ JOÃO ABRANTES



Go to the interviews



LUCA ANTONINI



Go to the podcasts



I Podcast della Corte

The meeting in memory of Professor Beniamino Caravita di Toritto



The meeting in memory of Professor Beniamino Caravita di Toritto held in the Court Library



Touring across Italy

The Constitutional Court in schools



Go to the website



President Silvana Sciarra and Minister Giuseppe Valditara
at Galileo Galilei Industrial Technical Institute in Rome

50

In 2023, the “Touring across Italy – The Constitutional Court in schools” programme resumed its activities, bringing lectures by some of the Constitutional Court judges to secondary schools across Italy. This initiative, launched in 2018, seeks to introduce students to the Constitutional Court and give them a better understanding of its role in upholding the Constitution and protecting fundamental rights and freedoms.

This outreach programme has already involved numerous institutions, generating much interest among students and their teachers from the outset.

Their collaboration has proven invaluable to the success of these meetings.

After an interruption due to the Covid-19 pandemic, the project resumed in 2023 thanks to a new Memorandum of Understanding between the Constitutional Court and the Ministry of Education and Merit, signed by President Silvana Sciarra and Minister Giuseppe Valditara.

The new Tour began on 27 September in the Auditorium of the historic Galileo Galilei Industrial Technical Institute in the Esquilina area of Rome. The event was attended by all the constitutional judges. The school principal, Elisabetta

Giustini, Court President Silvana Sciarra, and Minister of Education and Merit Giuseppe Valditara addressed the audience. President Sciarra spoke with the students on the subject of “Present and Future Generations: The Constitutional Court and Rights”.

The second event took place in Maglie (Lecce), where the President met students from the Leonardo Da Vinci Scientific High School to discuss the topic “The Constitution Looks to the Future”. Following this, in Milan, the Vice President of the Constitutional Court Nicolò Zanon held a conversation with the students of the Galilei-Luxemburg Institute

of Higher Education on the function of the Court, illustrating what the judges do and the work of the Court. The last event in 2023 saw Vice President Daria de Pretis engage in dialogue with students from the Fabio Filzi High School in Rovereto (Trent) on the role of the Court. She provided some details about the Constitutional Court and the significance of its decisions for the lives of all.

The Constitutional Court’s tour will continue in 2024 and will also proceed in the next school year, with a schedule that includes Emilia Romagna, Sicily, Tuscany, Sardinia, Veneto, Campania, and gradually other regions of Italy.

51



52

Silvana Sciarra inaugurates the School Tour 2023-2025
at Galileo Galilei Industrial Technical Institute in Rome on 27 September 2023



Silvana Sciarra in Maglie (LE), at the Leonardo Da Vinci
Scientific High School on 3 October 2023



53

Nicolò Zanon visits Galilei-Luxemburg Institute of Higher Education
in Milan on 6 October 2023



Daria de Pretis in Rovereto (TN),
at the Fabio Filzi High School on 19 October 2023

The Court and children



Go to the website

A special day at the Constitutional Court

54

A special day at the Constitutional Court: on 30 October 2023, Palazzo della Consulta hosted the pupils of class 5B of Rome's Sergio Bonelli Primary School. The initiative is part of an educational and civic programme carried out in conjunction with teachers and school administrators. It is aimed at guiding children in exploring the institutions, also opening the doors to the Court's ancient chambers where the "judge of laws" operates.

The first gathering took place in the Grand Chamber, which hosted a pilot edutainment event. In attendance alongside the children were the President of the Constitutional Court, Silvana Sciarra, Judges Giovanni Amorosio and Maria Rosaria San Giorgio, together with primary school teach-

ers Gabriella Delia and Anna Sarfatti, who writes children's books centred on the Constitution. The children were told about the stages and regulations governing public hearings, deemed the primary and most transparent means of communication embraced by the Court.

After months of preparation under the guidance of school principal Daniele Storti, the pupils then presented an original "Goose Game" based on knowledge of the articles of the Italian Constitution in the Salone Belvedere. The children sang rhyming songs on the topic of the rights and duties of citizens as outlined in the Constitution, made more tangible thanks to the work carried out at school and an exciting visit to Palazzo della Consulta.



55

The Court on TV

The Constitution, freedom,
personal identity

Silvana Sciarra



Nicolò Zanon



Daria de Pretis



Silvana Sciarra

A RAI SPECIAL DEDICATED TO THE 75TH ANNIVERSARY OF THE ITALIAN CONSTITUTION

President Silvana Sciarra appeared on a special RAI state broadcasting network programme tracing the milestones leading to its inception and dedicated to the 75th anniversary of the Italian Constitution. The Constitution's journey began on 25 June 1946, when the Constituent Assembly convened in Rome, elected by millions of Italians to draft a new Constitution for the Republic following the institutional referendum of 2 June 1946. The journey ended with the conclusion of the Assembly in 1947 and the entry into force of the Constitution on 1 January 1948.

“The Constitution is a living and vital charter” – said the President – “and it is up to young people especially to keep it alive”. President Sciarra went on to recall how firmly the freedoms and rights that the Constitution gives us are acknowledged and upheld, emphasising that “as citizens, we must continuously defend these freedoms and never take them for granted”. The Constitutional Court does this every day in its work as “judge of laws” and as a guardian institution. The President stressed the importance of reading the Constitution and the writings of our Constituent Assembly, which convey a particularly dynamic cultural atmosphere through flawless Italian prose that is both clear and extremely effective. “What emerges in those pages” – she added – “is the centrality of the human person manifest not only in the individual but also in the social bodies promoted by the Italian Constitution”. Lastly, Judge Sciarra recalled, among the many illustrious members of the Constituent Assembly, Aldo Moro and Giuseppe Dossetti, author of some “wonderful pages on the subject”. “Reflecting on those images and writing” – the President concluded – “we also relive our responsibilities as citizens mindful of the defence of freedoms and rights”.



Nicolò Zanon

58

RAI CULTURA “ALLA SCOPERTA DEL RAMO D’ORO” AN EPISODE DEDICATED TO FREEDOM

Free expression of thought means being able to think, say, write, and demonstrate; enjoying this freedom defines who we are as human beings and as a society. This was how the dialogue between Rai Cultura host Edoardo Camurri and Vice President Nicolò Zanon opened.

Professor Zanon remarked that the primary safeguard of freedom of thought lies in the separation of powers, which prevents authority from being concentrated in a single entity, institution, or individual, thus mitigating the risk of its abuse. He then mentioned Article 21 of the Constitution, which sets forth the right to express one’s ideas, describing it as “a cornerstone of our Constitution”. The Constitutional Court has described this right over the years in forceful terms: in 1969, for instance, as “the cornerstone of the democratic order”; in 1971, as “perhaps the highest of the primary and fundamental rights”, and in 1985 as “the cornerstone of democracy in the legal system as a whole”. Vice President Zanon recalled that the Court’s first judgment, No 1/1956, declared a provision unconstitutional precisely because it was incompatible with Article 21, and that since then, the “judge of laws” has repeatedly defended this right in many significant decisions. The discussion then turned to the subject of tolerance and how the concept of rights also implies boundaries, and that freedom of expression entails accepting different opinions. He also spoke about interaction via social networks: a technological development to be managed with confidence, “confidence in dialogue, ideas, and pluralism”.



Daria de Pretis

59

RAI CULTURA “ALLA SCOPERTA DEL RAMO D’ORO” AN EPISODE DEDICATED TO THE RIGHT TO A NAME AND PERSONAL IDENTITY

Starting with the question “Who decides what we should be called?”, Rai Cultura host Edoardo Camurri invited Vice President Daria de Pretis to address various topics, from gendered language to the importance of the right to identity.

Professor de Pretis recalled her decision to be addressed as “Rectress” rather than “Rector” during her tenure as the Chancellor of the University of Trent prior to her appointment as a constitutional judge, stating that “it was a small yet significant battle; one that helped me realise the importance and power of language”. She then emphasised the fundamental importance of recognising and guaranteeing the right to personal identity, “which both defines us and sets us apart from others”. The presenter referred to the entry into force in 1975 of the new family law, which established equality between wife and husband but did not eliminate the principle of the automatic transmission of the father’s surname to the children. However, the Constitutional Court did so through a 2022 ruling that declared the principle of the patronymic unconstitutional. Today, the Vice President explained, the rule is to assign the child both surnames in the order decided on by the parents, unless they both agree to do otherwise. But what are the factors in our society that jeopardise the right to identity? For Vice President de Pretis, “it is primarily conformity to a single model”. She concluded by saying that “differences and rights are also safeguarded by the Constitutional Court, which intervenes if legislative measures stifle the opportunity to nurture one’s unique identity”.

The Year's events

The year 2023 has been an intense one for the Constitutional Court, rich in meetings and appointments, both nationally and internationally. Numerous events were dedicated to fostering dialogue between courts and legal experts from around the globe. Additionally, the Court launched various initiatives to promote and disseminate constitutional culture to a wider audience, including the younger generations.

60



13 JANUARY 2023

Study seminar on *The Court and Parliament: 'warnings', adjournments, and collaboration*. Speeches delivered by Professors Paolo Carnevale, Massimo Luciani, and Roberto Pinardi. The proceedings are currently in press.



27 JANUARY 2023

President Silvana Sciarra speaks at the *Solemn Hearing* of the European Court of Human Rights in Strasbourg.



27 JANUARY 2023

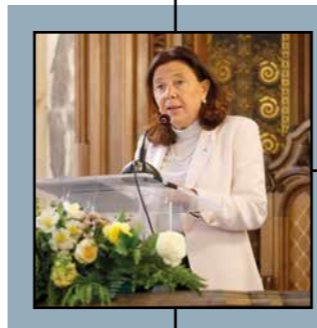
Vice President Daria de Pretis at the Quirinal Palace is the official representative of the Constitutional Court for the *Remembrance Day* commemoration.

61



3 FEBRUARY 2023

President Sciarra represents the Court at Palazzo Vecchio in Florence on the day dedicated to the memory of Professor Paolo Grossi.



28 FEBRUARY 2023

Constitutional judge Emanuela Navarretta at the University of Pisa for the inauguration of the 679th academic year with a lecture on the topic of the right to health.



2 MARCH 2023

Judge Maria Rosaria San Giorgio delivers a keynote speech at the Nunziatella Military School in Naples as part of the initiatives promoted by the Ministry of Defence to celebrate the 75th anniversary of the Italian Constitution.



8 MARCH 2023

The President of the Constitutional Court, Silvana Sciarra, Vice President Daria de Pretis, with Judges Maria Rosaria San Giorgio and Emanuela Navarretta at a ceremony commemorating *International Women's Day* at the Quirinal Palace.



14 MARCH 2023

Judges Giovanni Amoroso and Stefano Petitti participate in the ceremony opening the judicial calendar for tax-related cases in the Sala della Regina of Palazzo Montecitorio.



16 MARCH 2023

A meeting with the Association of Italian Jewish Communities at Palazzo della Consulta. In attendance, President Silvana Sciarra, Vice President Daria de Pretis, Judges Giovanni Amoroso, Luca Antonini, Angelo Buscema, Franco Modugno, Stefano Petitti, Giulio Prosperetti, and Maria Rosaria San Giorgio.



27 MARCH 2023

Vice President Daria de Pretis and Judge Francesco Viganò participate in the 2023 Day of the Jurist in Milan, organised by Bocconi University. President Emerita Marta Cartabia was also present.



28 MARCH 2023

Judge Giulio Prosperetti represents the Court at a ceremony in Rome commemorating the centenary of the Air Force, with the President of the Republic in attendance.



5 MAY 2023

The European Courts and climate change. President Silvana Sciarra speaks at the congress, organised in Berlin by the Federal Constitutional Court of Germany on *Climate Change as a Challenge for Constitutional Law and Constitutional Courts*. Judge Marco D'Alberti also took part in the meetings between the European Courts.



15 MAY 2023

President Silvana Sciarra and Judges Amoroso, Petitti, San Giorgio, and Viganò participated in the inauguration ceremony of the Naples branch of the *Scuola superiore della magistratura* in Castel Capuano.



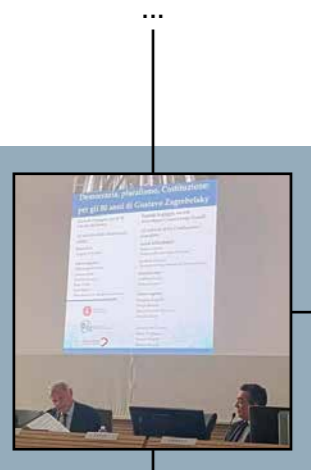
17 MAY 2023

Vice President de Pretis at the presentation of the volume *Potere e costituzione* at Palazzo Montecitorio. Judges Amoroso, Antonini, Buscema, D'Alberti, Modugno, Patroni Griffi, Petitti, and Prosperetti were also present.



5 JUNE 2023

President Silvana Sciarra at the *International Economics Festival* in Turin.



16 JUNE 2023

Vice President Nicolò Zanon speaks at the conference on *Democracy, pluralism, Constitution: for the 80th birthday of Gustavo Zagrebelsky*, organised by the University of Turin.



19 SEPTEMBER 2023

President Silvana Sciarra and former Presidents Giuliano Amato and Giancarlo Coraggio, with President of the Republic Sergio Mattarella, participate in a solemn ceremony in the Chamber of Deputies at Palazzo Montecitorio to commemorate the 75th anniversary of the Constitution's coming into effect. All the constitutional judges attended.



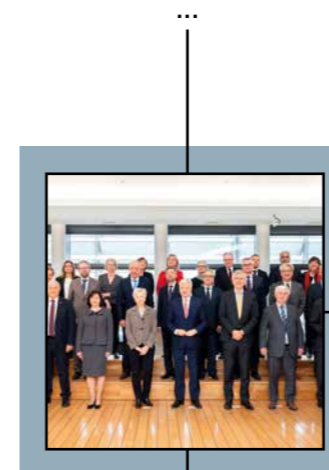
12 OCTOBER 2023

The Court of Auditors, a safeguard for the public administration. Judge Angelo Buscema speaks at Palazzo Sclafani in Palermo at the first session of the *Justice at the service of the nation* symposium, organised by the Court of Auditors. Talks were given by President Sciarra, Vice President de Pretis and Judge Amoroso, among others.



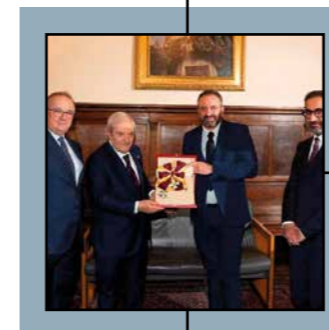
8 NOVEMBER 2023

President Emeritus Giuliano Amato receives the Giuseppe Chiarelli Award at the ceremony introduced by Judge Giulio Prosperetti. Talks by Former President Giovanni Maria Flick and Giovanni Pitruzzella, Advocate General of the Court of Justice of the European Union.



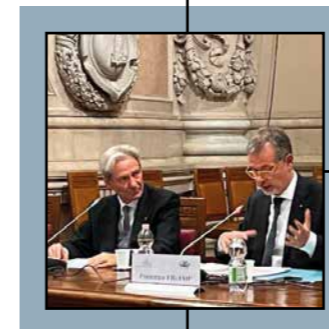
10 NOVEMBER 2023

President Silvana Sciarra speaks at the *Conference of Presidents of the Constitutional Courts of EU Member States* in Brussels.



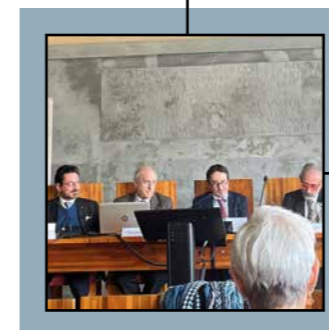
12 NOVEMBER 2023

Augusto Antonio Barbera, Acting President of the Constitutional Court, speaks at the round table on *The first twenty years of the Supervisory Board: assessment and prospects*, which took place in the Great Hall of the University of the Republic of San Marino.



28 NOVEMBER 2023

Constitutional judges Amoroso and Viganò speak at the conference for the centenary of the Court of Cassation on the subject of *The Court of Cassation and the Constitutional Court*. Acting President Barbera and Judges Prosperetti, Petitti, Navarretta, San Giorgio, D'Alberty, and Sciarrone Alibrandi participate in the proceedings.



28 NOVEMBER 2023

Judges Angelo Buscema and Luca Antonini participate in the 6th *National Public Accounting Conference* at Ca' Foscari University of Venice.

The Institution and its Offices

Behind the scenes of the Court



The Secretary General of the Court, Umberto Zingales

THE SECRETARY GENERAL

The Secretary General is the head of the Administration, which he represents. Duties include assisting the President, the President's Bureau, and the judges in organising and running the Court, as well as supervising all the Services and Offices. Councillor Umberto Zingales was appointed Secretary General of the Court in November 2021.

THE DOCKET OFFICE

The Docket Office reports directly to the President. Its task is to carry out preliminary studies regarding referral orders and applications for constitutional review. It assists the President in assigning cases to judges and scheduling their discussion in public hearing and in judges' chambers.

THE UFFICIO DEL MASSIMARIO

This office compiles the summaries of the Court's judgments and orders. It draws up and publishes the Official Reports of judgments and orders. In collaboration with the President's law clerks, it ensures that the approved texts of decisions adhere to the editorial criteria established by the Court.

THE REGISTRY

This is where constitutional proceedings begin, as it is here that referral orders and applications for constitutional review are submitted (as of 3 December 2021 via the e-Cost platform). The Registry, which reports directly to the President, handles the subsequent formalities.

THE GENERAL AFFAIRS AND PERSONNEL SERVICE

This is the office for the administration of permanent staff and all those in service at the Court, as well as pensioners.

THE ACCOUNTING DEPARTMENT

The Accounting Department manages the Court's budget, overseeing administration and accounting related to contracts, expenditure, and measures concerning personnel.

THE STUDIES DEPARTMENT

The Studies Department carries out systematic and documentary research on constitutional case law and scholarship of constitutional interest at home and abroad. It is also responsible for publications in English.

THE PRESS AND COMMUNICATIONS OFFICE

This office is responsible for communications and relations with the press, also through the Court's institutional website and social networks. It operates in accordance with the President's directives.

THE PROCUREMENT SERVICE

The Procurement Service drafts contracts relating to the functioning of the Court, as well as its operations and activities. It is also responsible for routine maintenance of the Court's premises and artistic and historical heritage.

THE LIBRARY SERVICE

The library holds prestigious book collections and promotes the use of the Court's bibliographic heritage. It currently houses some 145,000 volumes. It conducts research to support the Court's judicial activities and gathers national and international documentation. The library also hosts events for scholars.

THE CEREMONIAL OFFICE

This office is responsible for the participation of the President, Vice Presidents, judges, and the Secretary General in public events and ceremonies, in addition to courtesy and official visits.

THE CARABINIERI COMMAND AT THE CONSTITUTIONAL COURT

The Command provides protection services for the President of the Court and surveillance and security services for the constitutional judges during institutional activities and on the various premises of the Constitutional Court.



For news and to learn more about
the activities of the Constitutional Court, see:

www.cortecostituzionale.it

Twitter, Instagram and YouTube

A Constitutional Court Press
and Communications Office production

Project and editorial director

Dino Martirano

Graphic design

Altri paesaggi

Collaboration on the texts

Francesco Bianco

Maria Grazia Carianni

Anna Desideri

Andrea Giovalè

Francesca Menna

Acknowledgements

The General Secretariat

The Studies Department

The Registry

The Docket Office

The *Ufficio del Massimario*

Photo credits

Ettore Ferrari (ANSA)

Giuseppe Lami (ANSA)

Luigi Narici

The illustration on page 55, by Serena Riglietti, is taken from the book *La Costituzione raccontata ai bambini* by Anna Sarfatti, courtesy of Mondadori

Printed in March 2024

English translation by the Studies Department
of the Italian Constitutional Court

On the inside back cover, from left to right, the previous ten Presidents of the Constitutional Court: Gaetano Silvestri, Giuseppe Tesaurò, Alessandro Criscuolo, Paolo Grossi, Giorgio Lattanzi, Marta Cartabia, Mario Rosario Morelli, Giancarlo Coraggio, Giuliano Amato, Silvana Sciarra



