



Italian Constitutional Court  
Annual Report 2021







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In the photo on the left, Piazza del Quirinale from a window of Palazzo della Consulta. On the next two pages, the Court in 2022 under the presidency of Giuliano Amato





# “Faith in dialogue, not only between Courts”

Interview with President Giuliano Amato

Read  
the President's  
annual report





**Mr President, 2021 is the second year of the pandemic emergency but the first in which the Court, after the few decisions of late 2020, has been called upon to rule on the emergency legislation: what common denominator has underpinned your responses? And what – if any – was the most difficult moment?**

The most difficult moment was when we had to adapt to the emergency, because we didn't know whether, and how, we would be able to carry on working, and at what price to those who turn to us. Yet we came through it because, as my predecessor Giancarlo Coraggio said, unlike the judges in the ordinary courts, who are overloaded with proceedings, we were able to set up safeguards against contagion without serious consequences. So, sometimes working online and sometimes on site, and by holding hearings with fewer lawyers, it was – I must say – easier for us than for others. But there was also a price to pay, and Covid did not spare the Court. However, we isolated it and carried on working. On the subject of emergency legislation, the cases brought before us allowed us to establish that recourse to the Decree of the President of the Council did not result in the inadmissible transferral of legislative delegation to the President of the Council. However, these cases only permitted a partial examination of the merits of the decrees. We assessed the merits concerning the postponement of limitation periods for court cases or the suspension of enforcement proceedings and evictions, applying the Constitutional Court's standard criteria of reasonableness and proportionality.

**For the first time in its history, the Court suspended the application of a law (the**

**law of Valle d'Aosta that mitigated Government virus containment measures) as a precautionary measure. Perhaps this was the moment when the gravity of the situation was first truly understood. Was it this awareness that led you to make this move?**

Certainly, the gravity of the situation played a part, making it impossible not to apply the same basic rules for addressing the pandemic across the country. It was worrying that, all things being equal, the Regions could adopt different regulations. One region may be a red zone while another might be yellow, but the criteria for establishing the zones and the rules applied in the red and yellow areas must be the same; otherwise, the public will simply be confused. That decision clarified what had not been clear at all: to fight the pandemic, the legal basis for the legislative competence in question was not responsibility for health services, which is normally shared between the State and the Regions, but the cross-border prevention of disease. This falls to the Government alone.

**Is this erosion of regional autonomy an expression of a more general return to centralism, or is it simply a response to needs arising from the pandemic?**

It is a response that only concerns the health emergency, precisely for the reasons I just mentioned. In fact, many of the Court's decisions show just how careful we have been to uphold the autonomy of the regions against challenges from the State, which have sometimes sought to assert its legislative competence beyond the limits set by the Constitution. Regional autonomy is an indispensable feature of our system of government.

**Another issue featured prominently among your decisions last year: the adequate protection of the right of children to a family and to the legal recognition of their ties with the person who has raised and cared for them and who, while not being the biological parent, de facto exercises parental responsibility. Is care (in the sense of ‘caregiving’) a fundamental right?**

In our case law, and not only in ours, there is growing awareness that all too often what is coldly and technically referred to as ‘the best interests of the child’ takes second place to interests that are far less important than those concerning the lives of children. These include caregiving, but also children’s mental development, their psychological wellbeing, and being able to count on the affection of those who love them. Parliament understood this long ago when it stated that all children are entitled to the same treatment and

abolished the distinction between legitimate and natural children. But the variety of affective relationships between human beings, families, and civil unions have forced us to address new situations that have led the ordinary courts to bring cases before us concerning inadequate or unreasonably different standards of child protection. On occasions, we were able to solve the problem ourselves; at other times, we had to remind Parliament that it was primarily up to the legislator to review its delays.

**Your decisions sometimes contain urgent requests for Parliament to act, but the Chambers are slow to respond...**

Parliament is justified by the delicacy of the matter, which – we cannot deny – involves principles and values on which opinions may legitimately differ – even profoundly. A particularly problematic area is recourse to sur-



During the inaugural press conference

rogate motherhood, a practice carried out in various countries worldwide. Our Court considers that surrogacy violates the dignity of women and thus excludes the possibility that the ‘intended parent’ of a child thus conceived can be recognised as a parent to all intents and purposes. We ruled that the child must be adopted if current legislation permits it. But what if it does not? In that case, it must become a matter for Parliament.

**Many of your decisions – on the children of homosexual couples, defamation by the press punishable with imprisonment, or life sentences, to name but a few – are the result of dialogue with the European Courts and have led to dialogue with Parliament. How did this dialogue work out in 2021? There have been successful cases where Parliament has answered a request (regarding fees for tax collection, for example); however, the latest figure concerning the Court’s ‘warnings’ to Parliament is striking, with a rise from 20 to 29 in two years. What does this trend tell us?**

The greater number of ‘warnings’ is linked to the growing complexity of the situations coming to our attention. The dysfunctions linked to social change and existing legislation lead judges to identify elements in the law that are incompatible with constitutional principles or rights. Courts then refer the matter to us. Of course, when the Constitutional Court’s decisions alone are unable to solve the problem, the cases before us become signals for Parliament to act. This explains the greater number of warnings and how natural the relationship between Parliament and the Court is. This relationship has actually begun

to bear fruit this year, and we hope it will continue to develop in the future. To tell the truth, it will also relieve us of some of the responsibilities we are forced to take on.

**How should we interpret the pattern of ascertaining unconstitutionality without declaring it, giving Parliament a time limit to intervene – a policy followed in the decisions on assisted suicide, life imprisonment without parole, and custodial sentences for journalists? Is this too in the interests of collaboration?**

In several cases, we found a way to create an interim period during which Parliament can intervene before we hand down our final decision. We did this out of respect for Parliament itself and those who brought the problem to our attention. They were cases where we were well aware that the solution open to us could only be partial, lacking the breadth of scope that only parliamentary reform can have.

**The pandemic gave the Court an incentive to modernise, and online proceedings were introduced in 2021. How do you view this historic step, and what do you think could still be done to improve constitutional proceedings?**

From the technological point of view, I don’t know how much further we can go. However, what I would like to see in constitutional proceedings is real dialogue during the hearings. All too often they are a succession of monologues by the rapporteur and the lawyers of the various parties rather than a debate with questions and answers as in other courts. There is sometimes a hint of this, but I feel we are far behind the American Supreme Court or even our own European courts.

**Speaking of technology, the Court is the only institution to use podcasts, one of the most advanced means of communication, in its work. This is now the third year running. The Court has always laid stress on communication, but adopting this channel means accepting the challenges of the present day, interpreting the 'duty to communicate' by using all the tools available. How is this challenge working out?**

It is still early days, and assessment is still ongoing, but on the whole, it is very positive. We have long felt we were surrounded by an invisible wall caused by a lack of knowledge about who we are and what we do. We have also long felt the contrast between this state of affairs and the importance of the Court's decisions for the lives of so many people over the years. It has become imperative to come down from our ivory tower, and we have done so in several ways. One of these is through our communication channels, especially among younger people, who often prefer to listen rather than read. Podcasts do not replace reading but are a complement to it. Of course, there are some disadvantages. We have been exposed to criticism – and sometimes misunderstandings – that were previously confined to an inner circle of writers and readers of law journals. But that is all part of the game, and I welcome it.

**After meeting students, prisoners, and members of the public, in 2021 the Court met (online because of Covid restrictions) representatives of the world of culture, which has been particularly hard hit by the emergency. What did the Court gain from talking to these external interlocutors? And did the different points of view (from young people, prisoners, intellectuals, citizens) seem very different to you, or is there**

**a thread running through them – a request, a common need?**

We certainly gained an understanding of how these different interlocutors see us, which was perhaps one of the things that interested us the most. Their perceptions were often different. For some, the Court is irrelevant: as far as their lives are concerned, we might as well not exist. In other cases – I'm thinking of the prisoners, we are all too relevant: more than others, those in prison have countless problems they feel should be solved in court, and many of them think that the institution best able to solve them, or most of them, is the Constitutional Court. Nevertheless, one thing they had in common particularly struck us: that old, so well-known and beloved document, the Constitution. People see it as the source of every solution to their ills. This is a high, and perhaps even too high, expectation. After all, as it has been put so wisely, it does not follow that anything we dislike is necessarily unconstitutional. Nevertheless, it is still good that citizens look to the Constitution for the solution to their problems.

**The Constitution is an example of clear, simple, and accessible communication. Words such as dignity, solidarity, equality, freedom, and justice were the starting point for Italy's reconstruction, but it is only if we recognise ourselves in those constructive and restorative words that we can look ahead to a future of peace and growth. In one of the Court's podcasts, you met the poet Franco Marcoaldi, who contrasts the language of the Constitution with the anti-language of public debate and reminds us, quoting Calvino, that the decadence of language and the decadence of civilisation go hand in hand. Where are we today, from this point of view?**

If, as I just mentioned, the Constitution is so much a part of us all, and this is also so because it is an example of clear, simple, and accessible communication: ‘good language’, to cite Marcoaldi. As Tullio De Mauro noted, the vast majority of the language used in the Constitution is everyday vocabulary that everyone understands, expressed in short, simple sentences. Lastly, they are the product of a climate – that of the aftermath of war and the first stages of reconstruction – in which solidarity, equality, dignity, and



Shortly before the swearing-in of Sergio Mattarella, the President of the Republic

faith in dialogue were part of the new daily life, no longer stained by the horrors of war and persecution that had denied solidarity, equality, and the value of mutual understanding. Hence the idea – central to the Constitution and the civilisation that our Constitution (and not only ours) has helped to build in Europe on the basis of the force of law – of faith in solutions reached not by force but through reasoning, argument, and values. This civilisation is being called into question once

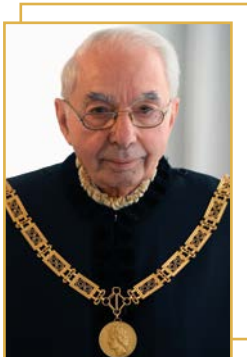
again. The fact that a country little farther from Trieste than Trieste is from Sicily is being ravaged by war demonstrates that this civilisation must be reaffirmed, invigorated, and defended.

**You decided to reaffirm all this with a concert by Maestro Nicola Piovani entitled *Il sangue e la parola*, to be held in July in the Piazza del Quirinale, the square embodying the urban symbol of dialogue between the institutions and the people. Why this choice?**

I know, of course, that in times of war a concert is not enough. Nevertheless, the theme of the concert is significant as it will not feature music alone but a cantata on a text that links our Constitution to what the Athenians saw as the birth of law 2,500 years ago. As Professor Eva Cantarella reminds us in the podcast of her conversation with Judge Nicolò Zanon, this cultural revolution was so difficult for the Athenians to accept that in 458 BC, Aeschylus celebrated the birth of the first court in his *Eumenides*: the *Areopagus*. Before that tribunal, Athena pronounces words in defence of Orestes, judged guilty of matricide and

later acquitted. The fate of Orestes was decided not in a spirit of revenge but of justice, by the strength of the arguments pronounced against him and those in his defence. A new, civilised world order was born, one that no longer relied on violence. This is what the concert stands for. Even more so, this meaning will be conveyed in Piazza del Quirinale, where the two institutions that – according to our Constitution – are guarantors of its very principles, stand side by side.

# The Court



## The President **GIULIANO AMATO**

Judge Amato was born in Turin on 13 May 1938. Professor Emeritus of Comparative Public Law, he was appointed by the President of the Republic on 12 September 2013 and sworn in on 18 September of the same year. He was appointed Vice-President of the Constitutional Court on 16 September 2020 and unanimously elected President on 29 January 2022.

## **SILVANA SCIARRA** Vice-President

Judge Sciarra was born in Trani on 24 July 1948. Full Professor of Employment Law, she was elected to the Court by Parliament on 6 November 2014 and sworn in on 11 November. She was appointed Vice-President of the Constitutional Court on 29 January 2022.



## **DARIA DE PRETIS** Vice-President

Judge de Pretis was born in Cles on 31 October 1956. Full Professor of Administrative Law, she was appointed to the Court by the President of the Republic on 18 October 2014. She was sworn in on 11 November 2014 and appointed Vice-President of the Constitutional Court on 29 January 2022.

## **NICOLÒ ZANON** Vice-President

Judge Zanon was born in Turin on 27 March 1961. Full Professor of Constitutional Law, he was appointed by the President of the Republic on 18 October 2014 and sworn in on 11 November. He was appointed Vice-President of the Constitutional Court on 29 January 2022.



## FRANCO MODUGNO

Judge Modugno was born in Rome on 3 May 1938. Professor Emeritus of Constitutional Law, he was elected by Parliament on 16 December 2015. He was sworn in on 21 December 2015.



## AUGUSTO ANTONIO BARBERA

Judge Barbera was born in Aidone (Enna) on 25 June 1938. Professor Emeritus of Constitutional Law, he was elected by Parliament on 16 December 2015. He was sworn in on 21 December 2015.

## GIULIO PROSPERETTI

Judge Prosperetti was born in Perugia on 7 December 1946. Full Professor of Employment Law, he was elected to the Court by Parliament on 16 December 2015. He was sworn in on 21 December 2015.



## GIOVANNI AMOROSO

Judge Amoroso was born in Mercato San Severino (Salerno) on 30 March 1949. He was Division President of the Supreme Court of Cassation, which elected him to the Constitutional Court on 26 October 2017. He was sworn in on 13 November 2017.

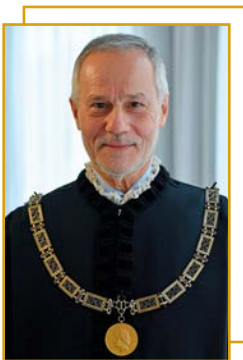
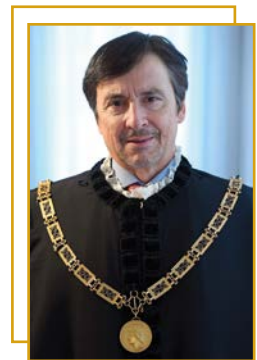


## FRANCESCO VIGANÒ

Judge Viganò was born in Milan on 1 March 1966. Full Professor of Criminal Law, he was appointed to the Court by the President of the Republic on 24 February 2018. He was sworn in on 8 March 2018.

## LUCA ANTONINI

Judge Antonini was born in Gallarate (Varese) on 27 May 1963. Full Professor of Constitutional Law, he was elected to the Court by Parliament on 19 July 2018. He was sworn in on 26 July 2018.



## STEFANO PETITTI

Judge Petitti was born in Rome on 2 September 1953. He was Division President of the Supreme Court of Cassation, which elected him to the Constitutional Court on 28 November 2019. He was sworn in on 10 December 2019.

## ANGELO BUSCEMA

Judge Buscema was born in Rome on 9 February 1952. He was President of the Court of Auditors, which elected him to the Constitutional Court on 12 July 2020. He was sworn in on 15 September 2020.





## EMANUELA NAVARRETTA

Judge Navarretta was born in Campobasso on 3 January 1966. Full Professor of Private Law, she was appointed by the President of the Republic on 9 September 2020. She was sworn in on 15 September 2020.



## MARIA ROSARIA SAN GIORGIO

Judge San Giorgio was born in Naples on 16 July 1952. Division President of the Supreme Court of Cassation, which elected her to the Constitutional Court on 16 December 2020. She was sworn in on 17 December 2020.

## FILIPPO PATRONI GRIFFI

Judge Patroni Griffi was born in Naples on 25 August 1955. He was elected to the Court by the Council of State, of which he was President, on 15 December 2021 and sworn in on 29 January 2022.




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*There were no changes to the Panel of Judges or the Presidency during 2021. The changeover took place on 29 January 2022 with the swearing-in of Judge Filippo Patroni Griffi (elected by the Council of State to replace Giancarlo Coraggio, whose mandate had expired) followed by the unanimous election of Giuliano Amato as President.*

# The year in figures

The pandemic brought a faster working pace

Judgments in 9 months

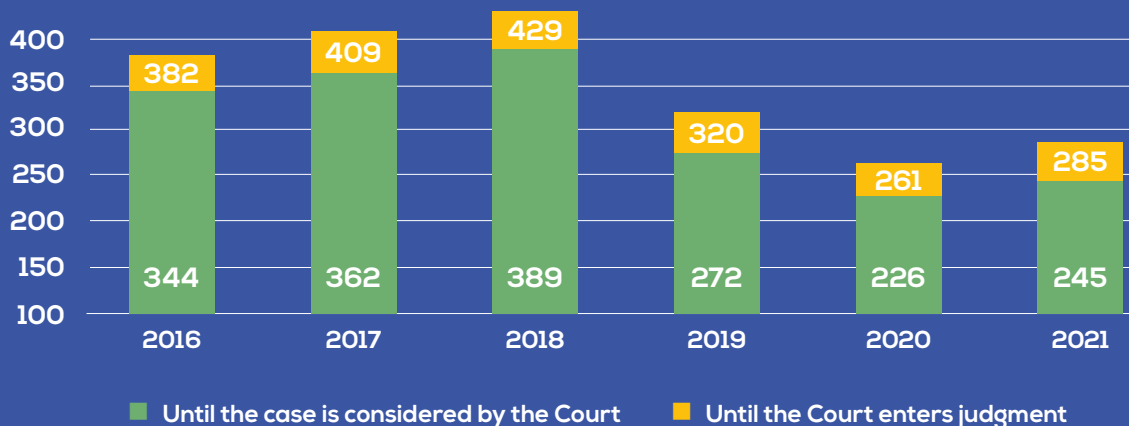
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Department Report



The cases adjudicated increased (370 compared to 326 in 2020), while the number of decisions filed diminished (263 compared to 281); the number of rulings of unconstitutionality rose (50 compared to 48), as did the proportion of judgments (206) to orders (57). The average duration of incidental proceedings, calculated from the date of publication of the referral order in the *Official Journal* of the Republic to filing the decision, rose from 261 to 285 days (i.e.,

from 8 to 9 months). However, the time taken to hear cases increased from 226 days to 245 days. On the other hand, the average duration of main proceedings fell from 407 to 390 days. There were fewer disputes between the State and the Regions, now with 65 appeals (mainly by the Government) compared with the 105 of the previous year, but the decisions on anti-Covid legislation, with the same number of cases received over the last two years (36), increased from 8 to 22.

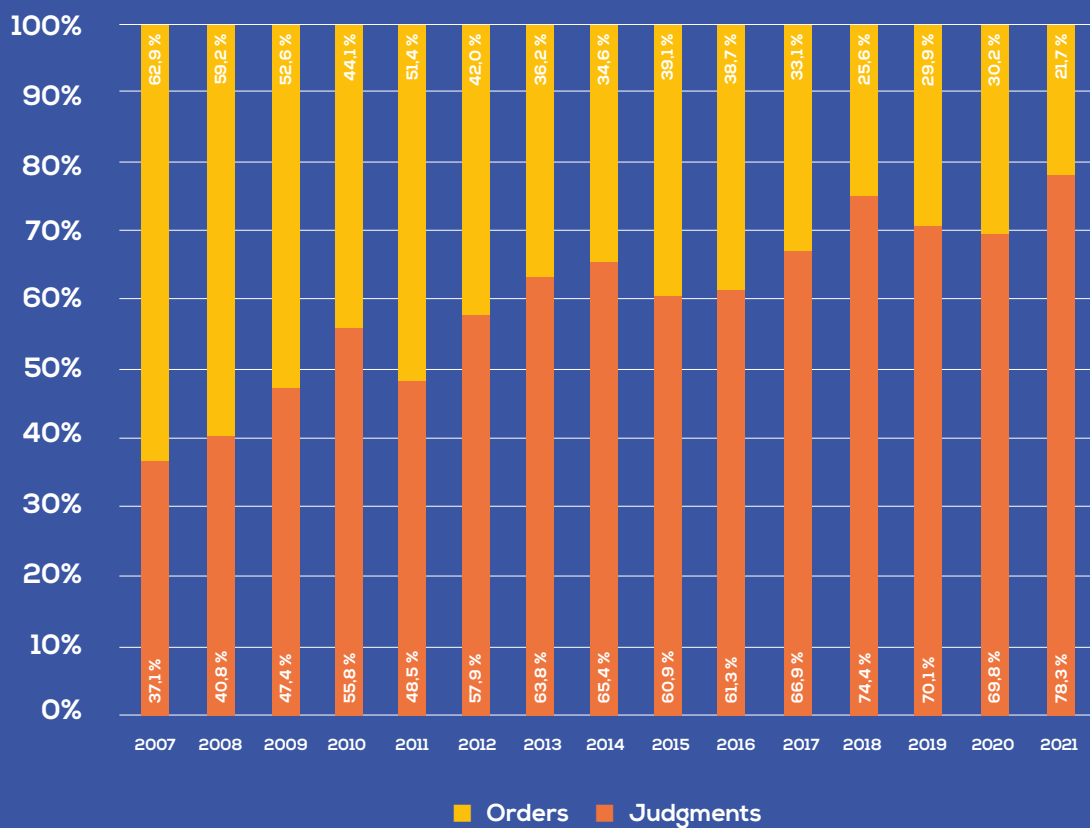
Average duration of incidental proceedings (no. of days)



This is the picture – in figures – of constitutional justice in 2021, the *annus horribilis* of the pandemic, calling for rigorous containment measures at every level. It does not differ significantly from 2020 and confirms two important trends. Firstly, there is a constant increase in the proportion of judgments to orders, with the former

accounting for almost 80% of the total number of decisions. This is the highest figure for the last 14 years and continues the Court’s tendency to decide on the merits of referrals rather than their admissibility. Secondly, the downward trend in the average duration of incidental proceedings over the last three years was confirmed.

Figures for judgments and orders (2007-2021)



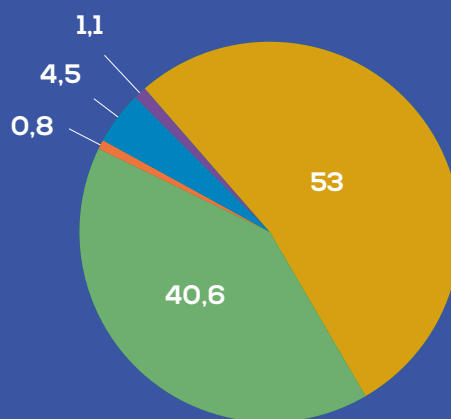
## Cases before the Court

There was an overall reduction in applications to the Court compared with the previous year. While the number of referral orders increased from 207 to 227, the number of direct appeals fell from 105 to 68, 65 of which were presented by the Prime Minister's Office. Consequently, the number of decisions filed dropped by 6.4% (206 judgments and 57 orders), 53% of which regarded incidental proceedings and 40.6% main proceedings. There was a sharp decline (-13.5%) in the number of incidental decisions (141 against the previous 163) but an equally sharp rise (+17.4%) in the number of decisions handed down in main proceedings (108 compared with 92).

# 263

decisions

141 of which concerned incidental proceedings



- Incidental proceedings
- Main proceedings
- Disputes between the State and Regions or between Regions
- Disputes between branches of State
- Correction of material errors

## More decisions on the merits

Since 2012, the constant trend has been to issue more judgments than orders, but in 2021 the number of judgments reached a record 78.3% of the total. Incidental judgments also reached the highest levels in 14 years, with 115 decisions and 26 orders. Regardless of the form of the measure, the number of rul-

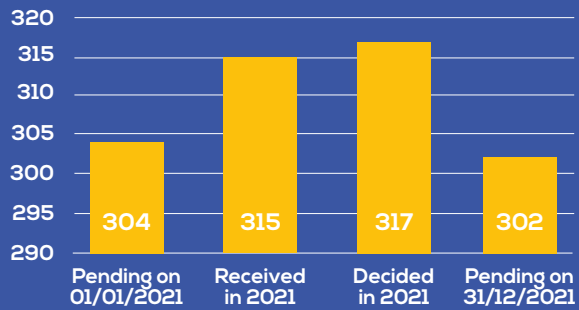
ings of inadmissibility continues to fall as the Court increasingly examines the merits of the questions submitted.

As for the outcomes of proceedings, rulings of inadmissibility fell from 84 to 75, and declarations of unfoundedness from 92 to 70, whereas pronouncements of unconstitutionality rose from 48 to 50.

## Pending cases

There was little change in the number of cases pending at the end of 2020 and 2021, with 302 in the last year. The number of cases settled was slightly higher than those coming in (317 and 315, respectively). The most significant increase in pending cases concerned incidental proceedings (205 cases compared with 172 in 2020), while the trend for main proceedings was positive. The year began with 124 cases pending, to which 68 new referrals were added, but 109 cases were settled, resulting in a balance of 83.

Cases received, adjudicated, and pending (total, 2021)



## 'Warnings' to the Legislator

The number of so-called 'warnings' to Parliament continued to grow in 2021: the 25 issued in 2020 increased to 29, covering a wide range of issues from the protection of the children of same-sex couples to life imprisonment, from the law on surnames to the regulation of charges for tax collection, and many others. These 'warnings' are invitations to intervene on specific legislation to remedy problematic, obsolete, and potentially or declaredly unconstitutional situations that the Court extends to

both tiers of Parliament in a spirit of sincere cooperation between the institutions. Intervention by the Court itself would create an imbalance in the harmony of the system, although it may intervene partially, pending a more systematic regulatory framework. The question concerning life imprisonment in 2021 is a case in point: the Court ascertained the unconstitutionality of the current legislation but did not declare it so, preferring to wait a year for the Legislator to resolve the matter. The deadline expires in May 2022.

10

in 2018

20

in 2019

25

in 2020

29

in 2021





# e-Cost: online proceedings

**D**ecember 3<sup>rd</sup> 2021 was a historic date for the Constitutional Court. At the conclusion of a long-term project accelerated by the pandemic, the e-Cost platform – the gateway to online proceedings at the Constitutional Court – went on the road. Lawyers, State Council, judges, registrars, and parties to constitutionality proceedings can now send and exchange acts and files electronically, eliminating the need for paper or sending material by post, and, above all, the inconvenience of constant travel to the Court itself to carry out many of the registry formalities. e-Cost speeds up the Court’s already well-established ‘production cycle’: with just a few clicks of the mouse, applications arrive directly at the Registrar’s Office in Rome, and, in real time, the system notifies the Presidency and the Docket Office where a rapporteur is appointed, and a date for the hearing is set. The judges and their assistants are immediately informed of new cases and can quickly download the documentation required from the platform. Lastly, once the decision has been filed, it is automatically sent to those who submitted the question on constitutionality.

Since its launch, e-Cost has lived up to the challenge of handling over 300 cases that typically come before the Constitutional Court every year, demonstrating from the outset that proceedings can now become less time-consuming.







The Registrar's Office: access to the e-Cost platform



## The Court's 'production cycle'

The Registrar's Office is where the Court's 'production process' begins and ends. Once it has received the documents where judges, the Government, the Regions, and the State institutions set out their doubts regarding constitutionality, the President – assisted by the Docket Office – fixes a date for the discussion of the case in public hearing or chambers and assigns the case to a Judge Rapporteur. On the basis of material supplied by the Docket Office and the Studies Department, or made available by the Library and the *Ufficio del Massimario*, the judges discuss the case with their law clerks (each judge has two or three).

## Law clerks

Law clerks (who may come from the judiciary or university) are key figures in preparing and studying cases on the agenda. Two weeks before each hearing, all the law clerks meet to discuss the questions before the Court, and then each one reports to her or his judge, who thus comes to the hearing with a detailed picture of all the cases to be examined and decided.



Law clerks meeting on site and remotely

## Discussion and decision

The ongoing health emergency still affects some aspects of proceedings. After discussion in public hearing, which – also in 2021 – continued to take place on the fifth floor of the Palazzo della Consulta rather than the traditional second-floor venue, the Court meets in chambers to decide and vote. Exceptionally, it may divulge its decision in advance through a press release.

The Judge Rapporteur prepares a draft ruling, which is then read aloud in chambers so that all the judges can contribute their suggestions for the final text. The decision is therefore the product of an all-round collegial effort.

Once it has been approved ‘at reading’, the decision is signed by the President and the Judge Rapporteur (except in cases of dissent), entering the public domain after being deposited with the Registry. At times, there may also be an accompanying press release. The judgment takes effect after publication in the *Official Journal* of the Republic.

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On the next two pages, the 2021 Court, under the presidency of Giancarlo Coraggio





# The 2021 Judgments

Go to the Studies  
Department Report  
and press releases



In 2021, the Court issued 22 decisions relating to the Covid-19 emergency, while the 263 rulings over the year spanned a broad range of topics: employment, the environment, health, local finance, taxes and duties, the family, juveniles, crimes and criminal enforcement. Many of the rulings were quickly reported in press releases, some of which are summarised below.



## COVID-19

In 2021, the Court handed down 22 decisions (14 judgments and 8 orders) on the rules for managing the Covid-19 emergency.

With **Order No. 4** of 14 January, the Court used its powers for the first time in the history of constitutional justice to provisionally suspend the effects of a law as a precautionary measure. The law in question, which had been challenged by the Government, had been passed by the Region of Valle d'Aosta. The Court held that Valle d'Aosta had encroached on the exclusive competence of the Central Government in matters of disease prevention (Article 117(2) Const.) by adopting less strict measures to fight the spread of Covid-19 than those established by the State. The order went on to state that application of the regional law might entail a "risk of irreparable damage to the public interest" with regard to nationwide handling of the epidemic, in addition to "the risk of serious and irreparable damage to health". The order was followed by **Judgment No. 37**, in which the Court, ruling on the merits of the same question, upheld the Government's application. In so doing, it affirmed that although Valle d'Aosta enjoys special autonomy, its legislation cannot encroach upon a sphere concerning the Covid-19 pandemic, which has spread globally and, therefore, as a matter of international prevention measures, falls under the exclusive legislative competence of the State.

In June, with **Judgment No. 128**, the Court ruled on the suspension of enforcement proceedings concerning debtors' primary residences. With the outbreak of the pandemic, the State obliged creditors not to proceed with debt enforcement on debtors' first homes, but the second extension of this suspension (from 1 January to 30 June 2021) was declared unconstitutional. While confirming that the right to housing is a "social right", the Court holds that the gradual resumption of ordinary activities can no longer justify the sacrifice required of creditors. On the same basis, in November, **Judgment No. 213** confirmed the constitutionality of the freeze on evictions for arrears established by the State during the Covid-19 emergency, but at the same time ruled out the possibility of the Government arranging further extensions beyond 31 December 2021 because "restricting the right to property has reached the maximum limit of tolerability, even considering its social function". In the event of a resurgence of the Covid-19 emergency, the Legislator can adopt measures to adequately balance the interests at stake other than suspending eviction enforcement. The emergency also affected criminal proceedings and their duration. During the period when the Italian courts were unable to hold hearings, the Government suspended the statute of limitations. However, the Court had ruled at the close of 2020 that the suspension of limitation periods from 9 March to

11 May 2020 complied with the principle of legality (Judgment No. 278) precisely because it was linked to the general postponement of proceedings imposed by a specific provision of law. Nevertheless, in accordance with the same principle, in 2021, **Judgment No. 140** declared unconstitutional the suspension of limitation periods linked to the case-by-case postponement of hearings ordered by the heads of courts as organisational measures to counter the Covid-19 emergency.

Lastly, in October 2021 the Court decided on the constitutionality of Decree-Law No. 19 of 2020, i.e., the main legislative basis of the emergency regulation enacted during the height of the pandemic crisis. In response to a question raised by an honorary judge who claimed that the decrees conferred legislative functions on the President of the Council of Ministers or extraordinary powers in breach of Articles 76, 77, and 78 of the Constitution, the Court replied, with **Judgment No. 198**, that Decree-Law No. 19 merely vested the President of the Council of Ministers with the task of implementing primary law through administrative acts detailed therein.

At the close of the year, with **Judgment No. 245**, the Court declared a law of the Lombardy Region unconstitutional because its extension of the terms of building and landscape permits did not comply with the provisions of national law.

Lastly, with **Orders No. 255** and **256**, the Court declared inadmissible two jurisdictional disputes between branches of State concerning the 'green pass' requirement to enter Parliament raised by eight members of the Chamber and one senator. The Court ruled that the applications do not pinpoint any manifest violation of the rights of members of parliament and reiterated that the interpretation and application of the respective regulations is a matter for the two Chambers to decide unhindered. Another question (**Order No. 254**) concerning the 'green pass' in schools and universities was also held inadmissible.





## CRIMINAL SENTENCES

The Court was called upon to examine the compatibility with the Constitution of life sentences that preclude eligibility for conditional release, unless the prisoner ‘cooperates’ with the investigative agencies, in particular by helping them to identify and arrest other members of the criminal organisation to which he or she belongs. As it had previously done with Judgment No. 253/2019, the Constitutional Court emphasised in **Order No. 97** of 2021 that it is not unreasonable to presume that a person serving a life sentence but refusing to cooperate with the authorities still maintains links with the criminal organisation and has therefore not been rehabilitated. However, the Constitution requires this presumption to be rebuttable, whereas, according to the law currently in force, cooperation

with the judicial authorities is the only way to have access to conditional release. The Court held that it falls to Parliament, in the first instance, to modify this aspect of the law. As it did regarding questions on assisted suicide and defamation by the press, the Court stayed the proceedings for one year (until 10 May 2022) to grant the Legislator a reasonable opportunity to amend the law.

Another provision in the Prisons Law, preventing repeat offenders serving a custodial sentence from being admitted to house arrest, with no exception even for those over the age of 70, was struck down *in parte qua* by **Judgment No. 56**. The supervisory judge will have to assess on a case-by-case basis whether they are eligible for

house arrest, taking into account the risk they pose to society.

With **Judgment No. 137**, the Court declared unconstitutional the revocation of social welfare benefits – which are based on a situation of need – for offenders convicted of organised crime and terrorism offences serving their sentences outside prison. It is unreasonable for the State to consider a person eligible for a non-custodial sentence while depriving them of means of subsistence which can only be obtained through social welfare benefits. In the wording of the judgment: “Although these persons have committed serious violations of



The Panel of Judges in chambers

the pact of social solidarity that underlies civil coexistence, those same requirements of civil coexistence dictate that they nonetheless be guaranteed the necessary means of subsistence”.

**Judgment No. 197** concerns persons subjected to the detention measure of assignment to a so-called work-house [*casa di lavoro*] after they have served their prison sentence. Such persons can also be subjected to special restrictions within the meaning of Article 41-*bis* of the Prisons Law. However, the Court warns that these restrictions must be appropriate to the circumstances of the persons concerned and actually enable them to work.

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## EMPLOYMENT

It is unreasonable that courts have a mere option – and not the duty – to reinstate workers who have been dismissed arbitrarily without an objective and reasonable cause. This is the Court’s decision in **Judgment No. 59**, declaring Article 18 of the Workers’ Statute as amended by the so-called Fornero reform unconstitutional. The judgment states that the fact that the remedy of reinstatement is optional only for economic dismissals is “imbalanced and contrary to the principle of equality”.

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## FREE ENTERPRISE

The Court declares the provisions of the Code of Public Contracts and the relevant delegated law detrimental to the freedom to conduct a business. In its **Judgment No. 218**, the Court defines “unreasonable and disproportionate” – despite the legitimate objective of ensuring an open market and genuine competition – the provision obliging holders of directly awarded concessions to entirely outsource the related activities, assigning 80% of them by tender to third parties and the remaining 20% to in-house, subsidiary, or associated companies or enterprises controlled by or connected with them. The freedom to conduct a business cannot be subjected, even for the purposes of fully upholding the principles of competition, to measures that denature it, as in the case of provisions totally sacrificing the faculty of business owners to make ordinary decisions regarding the organisation of their enterprises.

## HEALTH

**Judgment No. 168** concerns health care in the Calabria Region and its decades-long administration by a State Commissioner. The Court states that in particularly critical situations, such as the one in Calabria, it is not sufficient to impose a “change of leadership without considering the inefficiency of the entire structure that it is called to direct on behalf of the State”. The absence of any provision envisaging that the State should directly provide external personnel to meet the primary needs of the acting Commissioner’s executive committee is therefore unconstitutional, as is the requirement that the Region provide a “minimum” rather than a “maximum” quota of 25 employees.

## IMMIGRATION LAW

In **Judgment No. 9**, the Court declared the Abruzzo Region’s housing-allocation law criteria unconstitutional. These criteria are based on extended residence, which particularly penalises legally resident foreigners. As stated in **Judgment No. 7**, economic benefits to fight poverty cannot be granted on the basis of rigid criteria relating to the



territory of origin. It is therefore unconstitutional for a regional law (in this case, a law of Friuli Venezia-Giulia) to require five years' residence for access to resources intended to meet a primary and immediate need linked to poverty in general.

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## LOCAL FINANCE

After closely examining the facts, with **Judgment No. 220**, the Constitutional Court ruled unfounded the questions raised regarding the Municipal Solidarity Fund, as it had not been adequately demonstrated that cuts to the fund would impede the proper operation of municipalities. However, it added that the State's enduring delay in defining minimum levels of service prevents the full financial autonomy of local government bodies and the elimination of geographical disparities in services related to social rights.

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## MINORS AND FAMILIES

The protection of the “best interests” of the child, his or her right to care, and the emotional ties with the person who has looked after



him or her on a stable basis is a recurrent topic in many decisions rendered in 2021. Some of these, such as those concerning same-sex couples, called on the Legislator to take urgent action to remedy the current lack of protection in this regard, which may have negative consequences on the child's identity and respect for his or her dignity.

The issue, also touching on the matter of parental responsibilities, is addressed in particular in **Judgments No. 32** and **33**. The first concerns two girls born as a result of assisted fertilisation carried out abroad by a female couple whose relationship had collapsed five years later, leading the biological mother to oppose the adoption of the children by the "intended mother". The second refers to a child born in Canada through a surrogacy agreement entered into with two men married there and living in a civil partnership in Italy. The intended father had applied for recognition of his parenthood six years after the child's birth.

In the latter case (**Judgment No. 33**), the Court reiterated that surrogacy constitutes a criminal offence in order to protect the dignity of women and protect those who are particularly vulnerable from exploitation due to social and economic hardship. The judgment then focuses on the "best interests" of the child, beginning with the need to "obtain legal recognition of the ties which already exist in respect of both of members of the couple, without prejudice to the possible establishment of a legal relationship with the surrogate mother". The ruling emphasises that these ties are "an integral part of the child's very identity" living within a given community of affection, regardless of whether this is formed by a same-sex couple "since sexual orientation does not in itself affect their suitability to assume parental responsibility". The Court concluded by asking the Legislator to intervene in the first instance, also taking into account the legitimate purpose of discouraging recourse to surrogacy. It falls to Parliament to find a solution that will ensure full protection for the interests of the child in a manner most appropriate to the particular circumstances of the situation, which are very different from those concerning "non-legitimising" adoption.

The outcome is akin to that of **Judgment No. 32**, where the 'warning' to the legislator is particularly urgent, since the current legislation shows a "serious lack of protection of the child's interests". The Court urged the Legislator to find a "reasonable balance between the various constitutional interests involved, whilst respecting the dignity of the human person" in order to provide adequate protection for the rights of the child, including the "maintenance, care, upbringing, education, inheritance and, more simply, the continuity and comfort of shared habits", avoiding any imbalance in the system. Parental care is an interest to be protected without hesitation

or delay, in line with the case law of the two European Courts and the Constitutional Court itself, which has always valued social parenthood, even when this does not coincide with biological parenthood, as “blood ties are not an essential prerequisite to be recognised as a part of a family”.

**Judgment No. 133** also concerns the best interest of the child, while addressing the issue of revocation of paternity, when a man who has previously recognised a child as his own discovers that he is not the biological parent. In cases other than that of impotence, the challenged provision established a one-year time limit for the revocation, running not from the discovery of the absence of biological fatherhood but from the recognition itself. This provision was held to be unreasonable, since it prevented the person in question having access to a judgment in which “the court will always balance the interest in biological truth with the interest of the child”. However, the latter interest should always prevail after five years from the date of the formal recognition because, the Court explains, such a lengthy period of time seals a family bond and establishes the prevalence of the interest in the stability of the child’s status.

The year 2021 saw another historic decision on the subject of the family and parental equality. With **Order No. 18**, the Court was called upon to examine the current regulations on children’s surnames, and in particular to assess whether the parental agreement on which surname to attribute to a child born outside of marriage is a sufficient guarantee of the principle of equality between the parents. Under the current regulations, if no agreement is reached, children acquire the father’s name regardless of their parents’ marital status. The Court notes that automatic attribution of the paternal surname is incompatible with the fundamental value of equality and recalls that it has urged the Legislator to intervene on the matter on several occasions. Faced with the Legislator’s inaction, the Court now considers it necessary to raise before itself the broader question as to the constitutionality of the basic rule set forth in Article 262(1) of the Civil Code, which establishes that, in the absence of an agreement between the two parents, the child must only receive the father’s surname and not those of both parents.

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## OFFENCES AND CRIMINAL PROCEEDINGS

As twelve months had elapsed in vain since the Court handed down its Order No. 132 of 2020 urging the Legislator to adopt a reform of the law regarding defamation through the press, in June 2021, the Court examined once again the issue of ‘jail for journalists’. By its



**Judgment No. 150**, it declared that Article 13 of the Press Law (Law No. 47 of 1948), punishing defamation through the press with mandatory detention from one to six years, in conjunction with a fine, was unconstitutional. At the same time, it held that Article 595(3) of the Criminal Code, envisaging a prison sentence of from six months to three years or a fine for defamation through the press or other media, did not breach the Constitution.

Article 13 was deemed incompatible with freedom of expression, recognised both by the Constitution and the European Convention on Human Rights, as the fear of a mandatory prison sanction may deter journalists from fulfilling their crucial role of scrutinising the actions



of public authorities. However, a custodial sentence is not in itself incompatible with the Constitution when imposed on those responsible for hate speech, incitement to violence or “campaigns of disinformation conducted through the press, the internet or social media, characterised by the spreading of accusations seriously damaging the reputation of the victim and carried out despite the awareness that the allegations in question are – objectively and demonstrably – false”. Those who engage in such conduct – whether journalists or otherwise – certainly do not act as ‘watchdogs’ of democracy. Rather, they endanger it and may distort the results of free elections.



With its **Judgment No. 143**, the Court ruled that Article 69(4) of the Criminal Code is unconstitutional insofar as it provides that the mitigating circumstance of the ‘offence of negligible gravity’ cannot prevail over the aggravating circumstance of reoffending. Thus, persons convicted for kidnapping for the purpose of extortion may benefit from a sentence reduced by up to one third where the offence is ‘of negligible gravity’, even if they are reoffenders. **Judgment No. 178** declared automatic anti-mafia-related interdiction measures unconstitutional when adopted in relation to a final conviction for aggravated fraud for the purpose of obtaining public funds or one that is upheld in appeal. Such a crime is not, in itself, indicative of membership of a criminal organisation, unlike those listed in Article 51 of the Criminal Code; therefore, the impugned measure is disproportionate to the fight against mafia activity and is likely to cause significant damage to the freedom of economic initiative. **Judgment No. 98** established, however, that the prohibition of analogy in the application of criminal law, which is a remarkable aspect of *nullum crimen sine lege*, limits the options available to a court when interpreting the law by preventing it from applying a provision to a case that is not encompassed by its wording.

**Judgment No. 174** concerns firearms and the failure of dealers to fulfil their obligations. It is not unconstitutional to increase the severity of previously established penalties, in particular in respect of those who fail to keep a register of daily operations or to retain one for at least 50 years. **Judgment No. 185** deemed manifestly disproportionate, and therefore unconstitutional, the fixed administrative penalty of EUR 50,000 imposed on licensed gambling operators and owners of amusement arcades and betting parlours for breaching the duty to provide information on the risks of compulsive gambling. Lastly, in **Judgment No. 157**, the Constitutional Court held that it is unconstitutional to exclude non-EU citizens from access to legal aid when they cannot produce the required consular certification regarding income earned abroad.

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## PUBLIC ADMINISTRATION

With **Judgment No. 180**, the Court deemed unfounded the question as to the constitutionality of Legislative Decree No. 297/1994, which does not enable periods of teaching service in accredited independent schools prior to acquiring tenured status at a State school to be taken into account for the purposes of career progression and mobility. The Court explains that Law 62/2000 sought to guarantee the same quality standards for pupils in accredited private schools and State schools, both in terms of teaching standards and the status

of qualifications. However, this has not entailed full equivalence between the employment relationship of teachers employed at those schools and State school teachers, who are public employees. As recruitment in private schools does not require comparative selection procedures, the principles which, according to Article 97 of the Constitution, must underpin the actions of public administrations, cannot be applied to the schools at issue.

**Judgment No. 41** declared unconstitutional the provisions of Decree-Law 69/2013 on recourse to auxiliary judges as honorary magistrates at the Courts of Appeal on a stable basis. Article 106 of the Constitution provides for the appointment of honorary magistrates “for all the functions performed by judges sitting alone” and only allows honorary judges to perform collegial functions at first instance under exceptional circumstances as temporary substitutes. Therefore, they can be employed only in the courts of first instance and not in higher courts. However, the Court leaves the Legislator sufficient time (until 31 October 2025) to “ensure the necessarily gradual achievement of full implementation of the constitutional provisions”. This should avoid the annulment of decisions issued with the involvement of auxiliary judges and the appeal courts being immediately deprived of the contribution they provide in reducing the backlog of civil cases.





In its **Judgment No. 45**, ruling on the forfeiture of the right to agricultural unemployment benefit, the Court established that the rule considering the electronic publication of administrative acts a suitable form of public information is constitutional. However, in doing so, the public administration must exercise particular care when measures publicised electronically affect legal situations of constitutional importance.

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## RELATIONS WITH THE EUROPEAN COURTS

The constitutional right to remain silent applies to natural persons who, when under investigation by the National Companies and Stock Exchange Commission (Consob) or the Bank of Italy, refuse to provide these with answers that might establish their liability for an offence punishable by administrative sanctions of a criminal nature, or their criminal liability. This is the essential conclusion of **Judgment No. 84** after referring the matter to the Court of Justice of the European Union (with Order No. 117 of 2019). On 2 February 2021, the Court had clarified that the right to remain silent is an integral part of the right to a fair trial as recognised by the EU Charter, and that this right also applies within administrative proceedings that may lead to the imposition of punitive sanctions, such as those envisaged in Italian

law for the administrative offence of insider dealing.

By **Orders No. 216** and **217**, the Constitutional Court made two preliminary references to the CJEU regarding the European arrest warrant, explaining that it is for the Luxembourg Court, in the first instance, to establish in which cases – apart from those listed in national legislation implementing Framework Decision 2002/584/JHA – a judicial authority may refuse to execute a European arrest warrant.

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## TAXES AND DUTIES

Parliament immediately accepted the invitation expressed in **Judgment No. 120** to reform the current regulations on ‘collection commission’. According to the Court, the current legislation “risks disproportionately burdening certain taxpayers with the overall costs associated with activity now carried out almost entirely by the tax authorities and no longer by private concession holders”. The Court added that the system is anachronistic and a cause of inefficiency. The judgment explains that the excessive scale of uncollected public revenues, totalling around EUR 1,000 billion over twenty years, is an anomaly unparalleled on the international scenario. It is detrimental to tax collection, so that a limited number of taxpayers, identified as solvent after the taxes were assessed, are required to bear a burden of solidarity that is neither proportionate nor reasonable since it derives from the massive cost arising from the State’s substantial inability to collect taxes. The Court emphasises the urgency of reform because serious inefficiency in collection enforcement has negative repercussions on an essential part of the public revenue collection process. It impinges not only on the reasonableness and proportionality of collection commission but also has serious repercussions on the duty to pay tax, which serves to finance the system of constitutional rights.

In **Judgment No. 39**, the Court once more (after Judgment No. 158 of 2020) considers the legislative measure concerning the interpretation of transactions for the purposes of applying registration duty. It declares that it is impossible to challenge the constitutionality of a legislative measure conferring retroactive effect on a “genuine systematic provision”. This is true even when the measure arises from the intention to remedy an interpretation that has become settled in case law (including that of the Supreme Court of Cassation) but differs from the direction of legal policy that the Legislator considers most appropriate.

## THE ENVIRONMENT

In its **Judgment No. 164**, the Court declared that the Regions may not plan the development of their territory through town planning-type measures that do not comply with the State-imposed restrictions designed to protect the landscape. Moreover, the State may declare that an asset is worthy of landscape protection even when a Region opposes the decision. The Court explained that protecting the landscape reflects a ‘rationale of expansion’ that allows Regions to extend, but not reduce, the scope of protection, even in cases where landscape development falls within their remit. In such scenarios, landscape plans must be drawn up in co-ordination with the State. Also on the protection of the environment, in its **Judgment No. 201**, the Court declared unconstitutional a provision of a Veneto Regional Law allowing the owners or operators of waterway barrier works to regularise them if they were undeclared or their construction did not comply with approved projects. Regularisation impinges on the protection of the environment and the ecosystem and is reserved to State legislation, which can only permit regularisation compatible with the Cultural Heritage Code.

With **Judgment No. 189**, the Court intervened on the subject of waste management, which falls within the scope of environmental protection. According to the Court, under the current constitutional





system of competencies, Regions (in this case, Lazio) cannot delegate to municipalities the administrative functions conferred upon them by the State according to the allocation rules established in the Environmental Code.

Lastly, **Judgment No. 46** recognises the reasonableness of the 2018 Budget Law in requiring the revision of old agreements freely entered into between operators in the renewable energy sector, such as wind power and local authorities prior to 3 October 2010. This would bring them into line with the ministerial guidelines of 10 September 2010. The agreements remained fully effective until the law itself came into force (1 January 2019).

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## VOTING AND POLITICAL PARTIES

There is currently no procedure offering timely judicial protection for those eligible to stand for election in national elections. The Court remarked on this lack in its **Judgment No. 48**, in which it held that the ordinary courts have jurisdiction, as the “natural judge” of rights, in disputes concerning the “violation of the right to stand for election in the pre-election phase, when neither elected members of a parliamentary assembly nor their eligibility criteria are at issue”. This is mainly to avoid the existence of an area immune from constitutional review in the legal order. Pending enactment of the necessary legislation, a declaratory action before the ordinary courts is the only remedy to protect the right to stand and its compliance with the Constitution. **Judgment No. 35**, on the other hand, dismissed a challenge against the so-called Severino law on the automatic suspension from office of those who have been convicted for particularly serious crimes or for corruption offences. According to the ruling, the law aims to ensure the integrity of the democratic process, in addition to the transparency and protection of the administration’s public image. In **Judgment No. 207**, the Court clarifies that, under Article 67 of the Constitution, agreements between parliamentary groups and members of parliament are not binding on the latter, who are free to disregard the indications of their party.

Lastly, **Judgment No. 240** addresses a warning to Parliament by inviting the Legislator to guarantee the citizens’ right to vote in mayoral elections for the metropolitan cities. “The current legislation”, says the Court, “is contrary to the principle of equality of voting power and undermines the political responsibility of mayors vis-à-vis the electorate” It therefore falls to the Legislator, and not to the Constitutional Court, to introduce provisions enabling citizens to elect – directly or indirectly – the mayors of metropolitan cities.

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On the next two pages, the Court of 2021  
in the historic courtyard of Palazzo della Consulta







# The annual budget: report and press conference

## The Extraordinary Meeting and the annual press conference 'go live' once more

On 13 May 2021 the annual Extraordinary Meeting of the Court took place in person once again, thanks to the improving Covid-19 situation. The Court hosted the highest offices of the State, and the traditional press conference was held 'live'. These have been two key events in the life of the Court since its inception, an occasion to look back on the previous year's activities and talk with journalists. Alongside readmission of the public to the hearings from 18 May, physical attendance at these events constitutes an important signal of a return to the 'new normal' imposed by the pandemic.

## The President's report

"The particular nature of a national health service managed regionally calls for the State to robustly coordinate and correct regional inefficiencies: an inadequate exercise of its powers not only causes unequal treatment but may also undermine the basic levels of health-care across the country, a matter upon which the Court repeatedly focused also in 2020. This underlying problem has come to the fore once again, also in a scenario where the State has exclusive legislative competence in the fight against the pandemic – which should have ensured the unity of action and regulation that the nationwide dimension of the emergency required, and still requires".

This is an extract from President Giancarlo Coraggio's report on the activities of the Constitutional Court in 2020, where the main trends in the case law of the Constitutional Court are outlined. Like that of other Courts – the report states – this case law is currently facing intense social pressure to recognise new rights.



President Coraggio reading the Report on the work of 2020



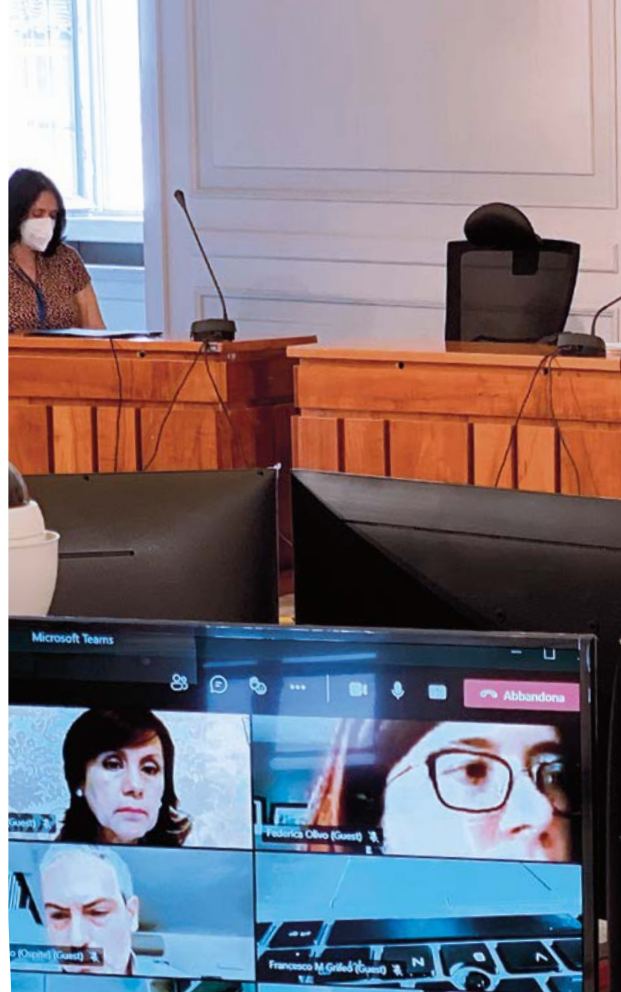
From left to right: House Speaker Fico, President Mattarella, and President of the Senate Casellati

## Talking with journalists

The 2021 traditional annual meeting with representatives of media from home and abroad saw a record attendance by twenty-six accredited journalists. In a two-hour meeting, President Coraggio answered twenty-eight questions from the audience. This has been an annual appointment since the Court was founded. It is a way of maintaining a channel of communication with civil society through the media, giving an account of its work.

The issues raised during the press conference were highly topical, such as the need for a law on homophobia or extraditing convicted terrorists from France to Italy decades after the offences had been committed. The questions even touched on the 'green pass', which was still only an idea on the Government's table. Inevitably, there were also questions about the recent ruling on life imprisonment without the possibility of parole, and how the pandemic was being managed.

The meeting received wide newspaper and television coverage and was seen as an example of transparency and accountability.

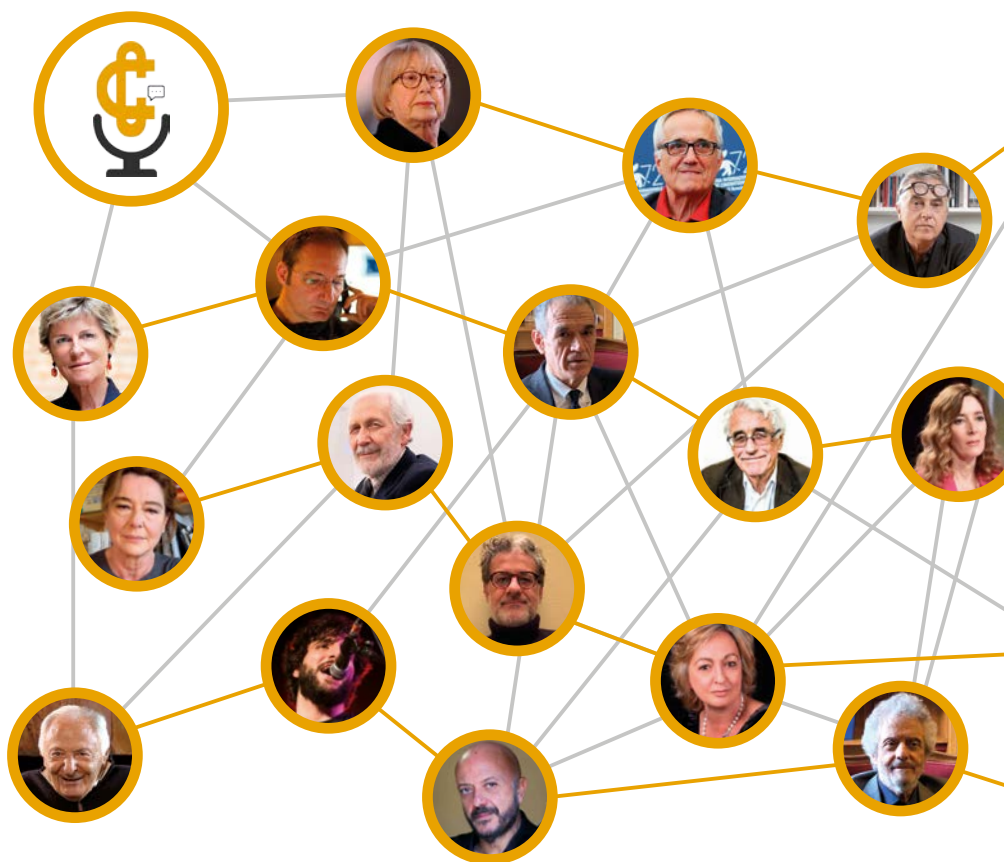




Two scenes from the press conference



# Podcasts and the concert for culture

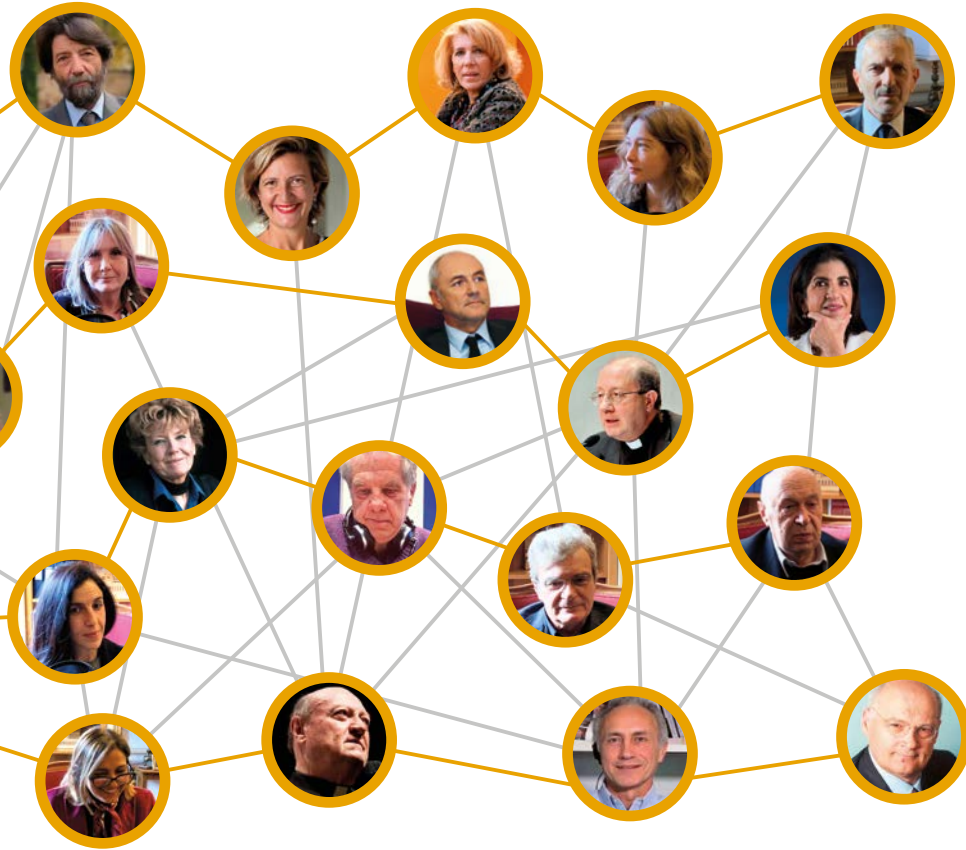


**T**he *Constitutional Court Podcast Library* was enriched in 2021 with yet more 'episodes'. Moreover, on 12 February, a new series, *MEETINGS*, was launched, with the voices of judges and writers, actors, philosophers, scientists, musicians, filmmakers, journalists, architects, historians, economists, publishers, theologians, artists, psychiatrists, poets, professors, and more... In short, the diverse world of culture – which has been especially hit by Covid restrictions – meets the

Constitutional Court, in dialogue with the judges on topics such as the secular State, attitudes to punishment, remembering tragic events of the past, the electoral law, universities, the right to love, human nature, and language and gender.

Covid-19 brought a halt to the *Viaggi in Italia* project – and therefore to face-to-face meetings – but thanks to the podcasts, the tangible reality of the voice remains, and with it, the possibility of meeting others, maintaining the strong

Go the Court's  
Podcast Library



The protagonists of the podcast meetings with the Court

(albeit virtual) link between 'inside and out' that the Court has fostered in recent years. Thirty experts and eminent personalities engaged in conversation with the judges: Natalia Aspesi, Marco Bellocchio, Stefano Boeri, Massimo Cacciari, Silvia Candiani, Eva Cantarella, Cristiana Capotondi, Gianrico Carofiglio, Evelina Christillin, Carlo Cottarelli, Colin Crouch, Veronica De Romanis, Simonetta Fiori, Luca Formenton, Bruno Forte, Fabiola Gianotti, Monica Guerritore, Emilio Isgrò, Vittorio Lingiardi, Elena Loewenthal, Francesca Mannocchi, Dacia Maraini, Franco Marcoaldi,

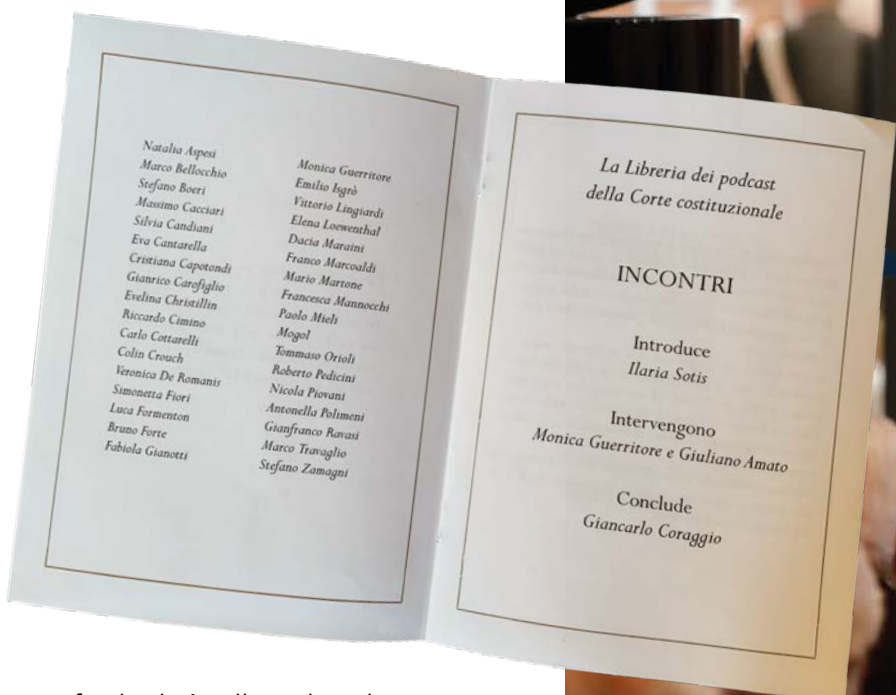
Mario Martone, Paolo Mieli, Nicola Piovani, Antonella Polimeni, Gianfranco Ravasi, Marco Travaglio, Stefano Zamagni.

To a soundtrack by Riccardo Cimino, with Tommaso Orioli and Andrea Giovalè, these thirty MEETINGS went over the darkest months of the Covid emergency until September, when all the protagonists finally met in person at the Palazzo della Consulta, in the presence of the President of the Republic and the high officials of State, to underline the central role of culture in rebuilding every community.

## 8 September, World Literacy Day The concert

“Our presence here today is a demonstration of our deepest and most heartfelt appreciation for the extraordinary opportunity these virtual encounters with representatives of the world of culture have given the judges: not only have they been a source of personal enrichment but also – and above all – an important experience in the institutional life of the Court”. With these words, President Giancarlo Coraggio opened the celebrations for the World Day of Culture and Literacy on 8th of September 2021. This date will be etched on the memory of the Constitutional Court as a testimony to the commitment of the institutions and civil society to promoting culture and awareness of active citizenship. The meeting closed with a concert by Maestro Nicola Piovani, who had also been a prominent voice in the podcasts promoted by the Court.

Go to the  
dedicated page



The programme for the day's talks and, on the next page,  
President Coraggio reading his welcome address.





A photo story



Backstage with Donatella Stasio and Nicola Piovani



Luca Formenton



Giovanni Amoroso and Emanuela Navarretta



Marco Bellocchio



Eva Cantarella and Stefano Boeri



Stefano Petitti and Angelo Buscema



Evelina Christillin, Natalia Aspesi, Vittorio Lingiardi, and Eva Cantarella



Emanuela Navarretta, Marilisa D'Amico, and Nicolò Zanon



Emilio Isgrò, Daria de Pretis, and Giancarlo Coraggio



Veronica De Romanis and Lorenzo Bini Smaghi



Simonetta Fiori and Francesco Viganò



Francesca Mannocchi and Luca Antonini



Franco Marcoaldi and Nadia Fusini



Maria Rosaria San Giorgio and Evelina Christillin



Antonella Polimeni, Silvana Sciarra,  
and Gianrico Carofiglio



Franco Gallo, Luca Antonini, Gianfranco Ravasi,  
Giulio Prosperetti, and Augusto Barbera

President Mattarella and Cardinale Ravasi



President of the Senate Casellati, President Coraggio, and Minister of Justice Cartabia



Monica Guerritore, Ilaria Sotis, and Vice-President Amato



Maestro Nicola Piovani



# The Constitutional Court & Schools: building active citizenship

**D**espite the difficulties caused by the Covid pandemic, schools and the Constitutional Court continued working together to promote a constitutionally aware culture among young people. In fact, with the reintroduction of teaching civic education in schools, the Court is taking part in a programme of lessons organised with the national broadcasting network through programmes such as *#maestri* and *La Scuola in Tivù* (all the episodes are available on RaiPlay).

Judges Navarretta, Zanon, and Antonini during the *#maestri* TV programme where they had appeared with Judges Sciarra, de Pretis, and President Coraggio



**EUROPA E ITALIA, PERCHÉ DOBBIAMO ESSERE SOLIDALI?**



# # maestri



**IL TEMPO E LE COSTITUZIONI**



**IL DOVERE TRIBUTARIO NELLA COSTITUZIONE**

Between 3 May and 2 June, the Court and the Ministry of Education organised *INSIEME verso il 2 giugno*, a series of virtual meetings between Constitutional Court judges and schools, to explore – taking the Court’s Podcast Library as a starting point – issues relating to constitutional principles and the values at the root of our life in society. The *Viaggio* involved over 1,200

students; the lessons were streamed live and are permanently available online. INSIEME concluded on 2 June, Republic Day, with a meeting between the students of the IISS Tommaso Fiore in Modugno (Bari) and President Giancarlo Coraggio, who emphasised the importance of constitutional culture in terms of “active rather than passive citizenship”.



President Coraggio meets students online as part of the INSIEME initiative



Judge Sciarra during filming of *La Scuola in Tivù*



Students with President Coraggio on the roof terrace of the Palazzo della Consulta

Last but not least, there were also some face-to-face meetings in 2021. In October, a delegation of students from the Aterno-Manthoné Technical Institute in Pes-

cara toured the Palazzo della Consulta before speaking with President Coraggio. This was before the outbreak of the Omicron variant of the virus.



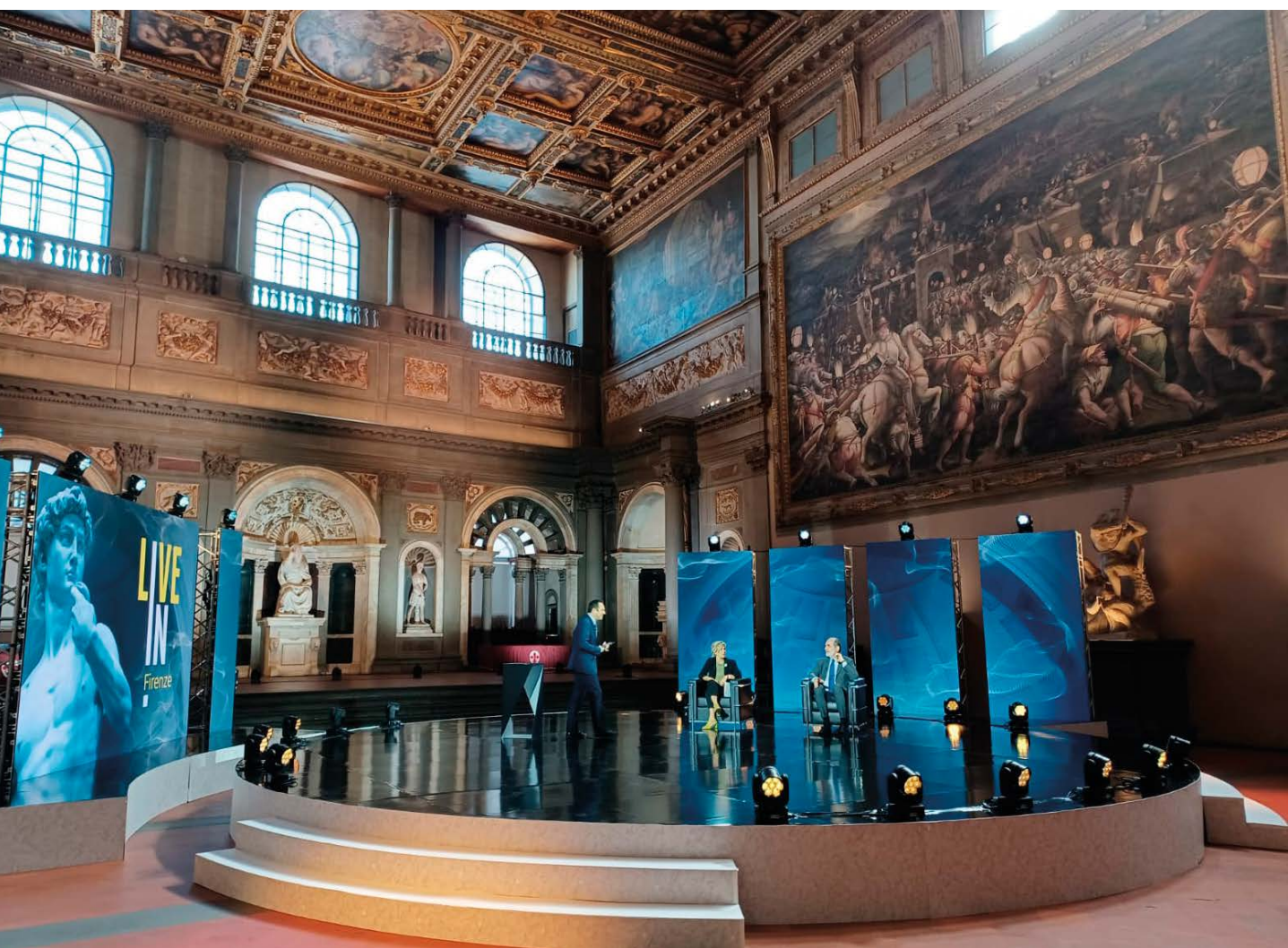
Judge Viganò's speech at the Work Orientation Fair

On 16 November, Judge Francesco Viganò spoke at the 26th Work Orientation Fair in Genoa, the annual expo on orientation, training, and work opened by the Minister of Education Patrizio Bianchi. The subject of the lecture was "Prison and Constitution".

# The Court on TV: knowing and understanding

The Court went on television in 2021 to explain decisions with a potentially powerful political and social impact, to introduce the Constitutional Court and the places where it performs its duties, to describe institutional communication, and some of the most up-to-date decisions regarding communication in an attempt to bring the institution closer to citizens. All this seeks to help the general public understand the role of the Republic's principal guarantor and its impact on the life of each citizen and the institutions.

*Sky Live in Florence: Institutional Communication with Giovanni Grasso and Donatella Stasio*





Head of Court Ceremonial, Agata Storino



## RAI ISTITUZIONI AT THE COURTS



In April, the Palazzo della Consulta opened its doors to *Rai Istituzioni* for a television series on the Courts of Justice during the pandemic. The programme proposed a thorough exploration of the Court and the historical building where constitutional review takes place. Telling the story were President Coraggio, Vice-President Giuliano Amato, Judges Silvana Sciarra and Daria de Pretis, and, telling the history of the Palazzo, the Head of Court Ceremonial, Agata Storino.





## INTERVIEWS REGARDING THE PANDEMIC ON LA7 AND RAI 2



President Coraggio gave two interviews at what was perhaps the most delicate moment during the Covid-19 emergency, a time of possibly confusing overlaps of regional and national powers, as well as evident disorientation among public opinion concerning fundamental and seemingly conflicting rights (health, education, work, free movement).

On 13 January, to conclude the *diMartedì* programme, La7 aired an extended interview by Giovanni Floris with President Coraggio on various aspects relating to the pandemic. It lasted 35 minutes and, despite the late hour, was followed by around a million people. In the light of these ratings, it was rescheduled for the following Sunday at 2 pm. In response to coverage in the newspapers and on the internet, La7 decided to rebroadcast it in full three months later, in April.



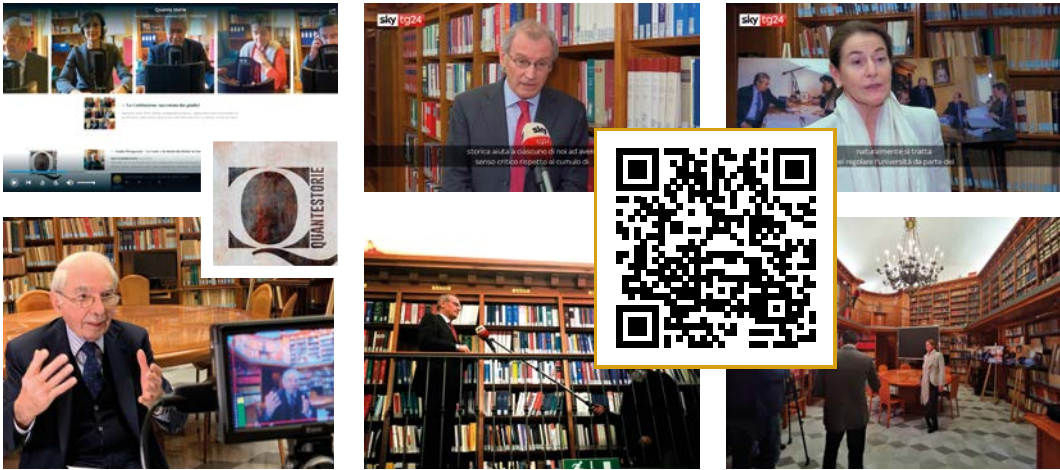
The second television interview with the President of the Court was on Rai 2, during the in-depth discussion programme *Titolo V*. It centred on the shortly to be published Judgment No. 37, which established the competencies of the State and the Region in the management of the Covid-19 emergency. The interview, conducted by Ilaria Capitani, was recorded on 26 February and broadcast the same evening. Listening to and commenting on the interview in the studio were constitutionalist Francesco Clementi, columnist Ferruccio De Bortoli, and the Director of Radio Rai 1, Simona Sala.



### RAI 3 AND SKY ON THE PODCASTS



On 12 February, during Rai 3's *Quante storie*, hosted by Giorgio Zanchini to coincide with the release of the new series of podcasts titled *INCONTRI*, the Vice-President of the Court, Giuliano Amato, explained why the Court had decided to enter into dialogue with the world of culture, and to do so through podcasts. SkyTg24 also dedicated a report to *INCONTRI*, with Pierfrancesco Ferrara interviewing Judges Daria de Pretis and Nicolò Zanon.



### INSTITUTIONAL COMMUNICATION ON SKY

During the two days of *Sky Live* in Florence, a panel entirely dedicated to institutional communication was held with representatives of the two highest-ranking guarantor institutions of the Republic: the *Quirinale* and the Constitutional Court. In an interview with Pierfrancesco Ferrara, Giovanni Grasso and Donatella Stasio explained the nature of this kind of communication (which differs from political communication) and how it works.



# Events in 2021

The pandemic seemed to loosen its grip a little between spring and autumn, enabling many institutional meetings to resume their activities, both within and outside the Palazzo della Consulta. These included courtesy visits by Italian Government Ministers (Foreign Affairs, Education), European Commissioners, and International Authorities and Institutions (Latvia, Tunisia, Germany, Israel) to events where the President or the judges of the Constitutional Court represented the Republic, bearing witness to the Court's commitment at the highest institutional levels.

This brief respite from the Covid-19 emergency also allowed the President and many of the judges to participate in conferences, debates, and anniversaries in person at home and abroad, albeit taking the necessary precautions at all times.

Here is a brief selection of some of these events.

## 2021



### 9 MAY 2021

Commemoration of the *Day of Remembrance for the victims of terrorism and bloodshed* at the Senate, attended by President Coraggio.

### 20 MAY 2021

The Palazzo della Consulta hosts the Network for Equality Conference *Gli strumenti a 60 anni dalla sentenza che aprì alle donne le principali carriere pubbliche (The Instruments 60 Years after the Judgment Opening the Principle Public Offices to Women)*, attended by President Coraggio and Judge Silvana Sciarra.







## 17 JUNE 2021

A meeting at the Palazzo della Consulta with the President of the Republic of Tunisia, Kaïs Saïed.

## 16 JULY 2021

A meeting between Silvana Sciarra and Vittorio Lingiardi at the Auditorium Parco della Musica in Rome, inspired by the podcast *La cura e le relazioni*.



## 2 SEPTEMBER 2021

The *International Conference E-united in diversity: between common constitutional traditions and national identities*, organised in Riga by the Constitutional Court of Latvia and the CJEU. The Italian Constitutional Court is represented by Judge Francesco Viganò.



## 10 SEPTEMBER 2021

Silvana Sciarra officially represents the Constitutional Court Strasbourg at the solemn hearing of the European Court of Human Rights.



## 12 OCTOBER 2021

Daria de Pretis, officially representing the Court, and Minister of Justice Marta Cartabia attend the premiere of the film *Ariaferma* by Leonardo Di Costanzo at the Rebibbia prison.

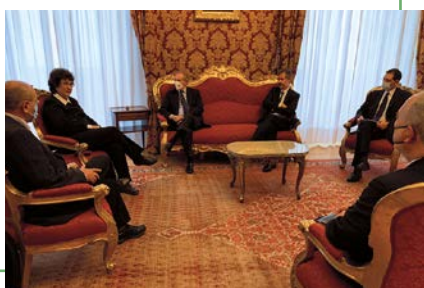


## 15 OCTOBER 2021

Giuliano Amato presents *Studi in onore di Carlo Azeglio Ciampi per i 100 anni dalla nascita* (Studies in Honour of Carlo Azeglio Ciampi for the 100<sup>th</sup> anniversary of his birth) at the Lincean Academy

## 4 NOVEMBER 2021

European Commissioner for Justice Didier Reynders visits the Constitutional Court.



## 8 NOVEMBER 2021

Israeli judge Daphne Barak-Erez visits the Palazzo della Consulta.

## 12 NOVEMBER 2021

President Coraggio attends the commemoration of the 190<sup>th</sup> anniversary of the Council of State and the 50<sup>th</sup> anniversary of the founding of the Regional Administrative Tribunals in Turin.





## 15 NOVEMBER 2021

Giuliano Amato and Silvana Sciarra attend the seminar *La Carta europea dei diritti nell'ordinamento interno e in quello sovranazionale (The European Charter of Rights in Domestic and Supranational Law)* at Palazzo Spada.

## 16 NOVEMBER 2021

President Coraggio and Judge Giulio Prosperetti attend the conference *I principi fondamentali della Costituzione italiana (The fundamental principles of the Italian Constitution)*, organised by the Rome Bar Association.



## 20 NOVEMBER 2021

Daria de Pretis and Maestro Emilio Isgrò attend the meeting *Costituzione e arte Contemporanea (The Constitution and contemporary art)*, inspired by the podcast of the same name, during Bookcity, *Fondazione Corriere della sera*, Milan.



## 27 NOVEMBER 2021

The first sitting of the Chamber took place in Montecitorio 150 years ago: President Coraggio attended the commemoration ceremony with President of the Republic Mattarella.



# 2022

# The Institution and its Offices

1

## The Secretary-General

The Secretary-General is the head of administration, which he or she represents. Duties include assisting the Court, the Bureau, and the President in its organisation and operation in addition to supervising all the Services and Offices. In November 2021, the Court appointed Councillor Umberto Zingales as Secretary-General.

2

## The Registrar's Office

This is where constitutional hearings begin, as it is here that applications to commence proceedings are submitted (as of 3 December 2021 via the e-Cost platform). The Office, which reports directly to the President, takes care of the subsequent formalities.

3

## The Docket Office

The Docket Office reports directly to the President. Its task is to carry out preliminary studies regarding orders and appeals. It assists the President in assigning cases to judges and scheduling their hearings.

4

## The *Ufficio del Massimario*

This office compiles the summaries of the Court's judgments and orders. It draws up and publishes the official law reports containing judgments and orders.

5

## The Studies Department

The Studies Department carries out systematic and documentary research on constitutional case law and scholarship of constitutional interest also at the international level.

The numbering corresponds to that of the photographs of those who work in these offices on pages 76 and 77

2 | SITES

11 | SERVICES/  
OFFICES

15 | JUDGES

44 | LAW  
CLERKS

222 | PEOPLE  
IN SERVICE

6

### The Library Service

The Library Service promotes, purchases, and preserves books and publications in addition to providing bibliographic descriptions and catalogues. It currently houses 140,000 volumes.

9

### The Accounting Department

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

7

### The General Affairs and Personnel Service

This is the administrative office for the Court's permanent, non-permanent, and retired staff.

10

### The Ceremonial Office

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

8

### The Procurement Service

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

11

### The Communications and Press Office

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



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# The piazza of the Institutions (and dialogue)

Institutions represent the irrepressible desire to be recognised because man cannot move forward in a society with other men without sharing specific aspirations and because we need a place to realise them.

*Louis Kahn, architect*

For the Italian Republic, which came into being in 1946, that place is the Piazza del Quirinale, a square imbued with symbolic meaning. The two buildings in the piazza house the Presidency of the Republic and the Constitutional Court, the highest guarantors and guardians of the Italian Constitution. The square has become “the symbol of a power that is not closed in on itself but is in dialogue with the citizens,” writes architect Paolo Portoghesi, “offering them a meeting place not removed from the living city but, in some way, encapsulating its image”. Of all the institutional seats, the Palazzo della Consulta is the one that has maintained the most substantial ties – even through its name – with the past. It originally housed the *Segretario de’ Brevi* and the Secretariate of the Sacred Congregation of the Consulta, established by Pope Paul IV in 1599 before becoming the highest judicial body in the Papal States.





For Portoghesi, the building, designed by architect Ferdinando Fuga in 1731, with its “tetragonous trapezoidal volume open towards the square with three large doors and noble face, well denotes its task of representing the authority of law, also communicating openness to the problems posed by the citizen”. In this regard, art historian Claudio Strinati recalls the highly symbolic meaning Fuga attributed to it; as he saw it, the Palazzo was intended to represent rationality, harmony, hospitality, and dialogue with the square in front of it, and therefore with the citizens. “A key to interpretation that is not only artistic,” explains Strinati, “but political, social, and ideological”.

Indeed, in his preface to the catalogue on the photographic exhibition “Il volto della Corte” in 2019, Giorgio Lattanzi, President Emeritus of the Constitutional Court, writes that “the welcome is a sort of metaphor for sharing the constitutional sentiment and the values that feed it”. In order to fully understand the value and architectural identity of the edifice, it must be seen in its urban context as part of a setting, the juxtaposition of whose elements has produced a most exceptional square, even “The most beautiful square in the world,” as Stendhal wrote in his *Roman Walks*.

When Pope Clement XII commissioned Fuga to build the new Palazzo della



From the left: the Palazzo del Quirinale, the Palazzo della Consulta, the Fountain of the Dioscuri

Consulta in 1731, the Quirinal Hill was already taking its current form, reflecting a modern conception of the State, which would soon take root across Europe and permeate urban planning. Power, and its most complex machinery, found its architectural voice in the unprecedented concept of the *place royale*. The new centre of political life was now a monumental square with its four sides occupied by the most symbolic of buildings, the seats of the State's central institutions.

Fuga, the architect of the Apostolic Palaces, had to 'invent' a building that would become the true and indispensable centre of gravity around which the 'dynamic vortex' of this scenic square would develop.

There is no single perspective axis here: the gaze follows different 'perspective telescopes'. The *manica lunga* or 'long sleeve' of Via del Quirinale, another perspective spans the city, and yet another falls onto the façade of the Quirinale. Each of these visual trajectories starts from the Palazzo della Consulta, its ultimate centre of rotation.

During the Baroque period, when architecture was exploding in a theatrical spirit, the Roman cityscape was now designed to enchant the spectator. Fuga, already influenced by nascent neoclassicism, pursued the same scenographic effect in his design for the new Palazzo della Consulta, which, thus positioned, became a revolutionary 'perspective backdrop', a sumptuous façade with two orders and thirteen bays, inclined in relation to the orientation of the square. It was to be admired 'from the side' rather than from the front.



Set on a relatively narrow and irregularly trapezoidal plot of land, flanked on one side by Palazzo Rospigliosi and, on the other, the Dominican convent of Santa Maria Maddalena, demolished in 1888, the Palazzo had to serve the papal administration, thus confirming the square's role as the new administrative and political centre of the State. It was specifically designed for public functions and would hold its central role almost uninterrupted, eventually becoming the theatre of a number of



Piazza del Quirinale from a window of Palazzo della Consulta

highly significant historical events. The historic triumvirate of Mazzini, Armellini, and Saffi established themselves here during the brief and tragic experience of the Roman Republic of 1849. With the annexation of Rome to the Kingdom of Italy, Crown Prince Umberto I and his wife Margherita of Savoy resided here for four years. Then, under the Fascist regime, the Palazzo housed the Ministry of Foreign Affairs and later the Ministry for the Colonies until the tragedy of war struck, followed by an institutional

referendum of 1946, which would lead to the birth of the Italian Republic.

It was not until 1956, eight years after the Constitution came into force, that the Constitutional Court would begin operating from the Palazzo della Consulta. Since then, this remarkable building, which is not only the focal point of a stunning urban setting, has become the symbolic home of every citizen's rights, the heart of a State that identifies with its Constitution.



# Staying connected

Thanks to its communications and its various platforms, news from the Court is made available as it happens; anyone can stay informed and understand what is happening in real time.

## THE WEBSITE

The primary means of connection with the public is the Court's website, which is constantly updated. In 2021, the website counted over 700 thousand users, totalling over 1 million sessions.

## THE APP

Launched in September 2020, the App has proved to be a very efficient tool for staying connected with the Constitutional Court and receiving news on rulings, communiqués, hearings, the agenda of proceedings, and Court summaries in real time. It has been downloaded over 15,000 times since launching. Thanks to its updates and the feedback received, the App "gives immediate access to the Court's activities," as one user put it.

## INSTAGRAM

After a 300% increase in followers in 2020 (from 8,000 to 32,000), 2021 recorded a further 50% growth on the previous year. The Court's profile now has over 52,000 followers, 53% of whom are women and 47% men. The number of young followers is growing, with 73% aged between 18 and 35, rising to 80% if we consider only female followers. The need to connect is linked to the content on offer, which ranges from press releases to podcasts; from events – including historical ones – to 'news from abroad' and moments in the life of the Court.

## TWITTER

The Constitutional Court's Twitter profile continues to grow. It has been active for only two years but has 9,800 followers – primarily professionals, politicians, and media operators. It keeps users updated on its press releases, podcasts, radio and television programmes. Live-tweeting provides real-time information on the most important events involving the Constitutional Court and content from the Studies Department.

## YOUTUBE

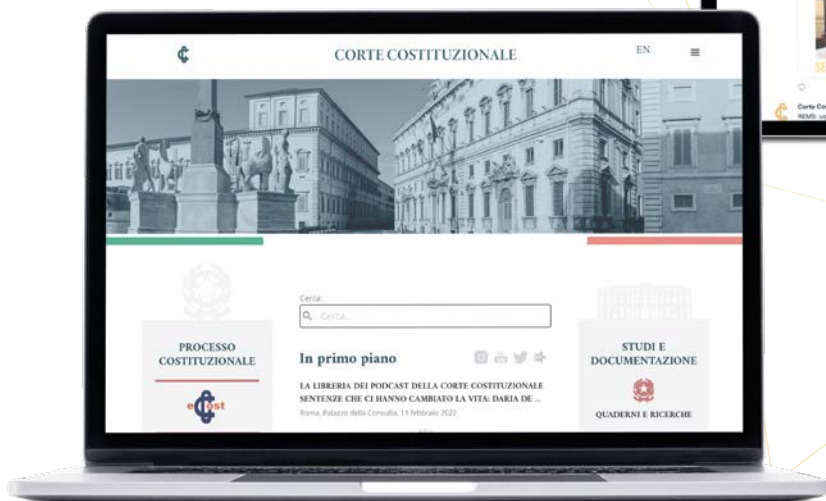
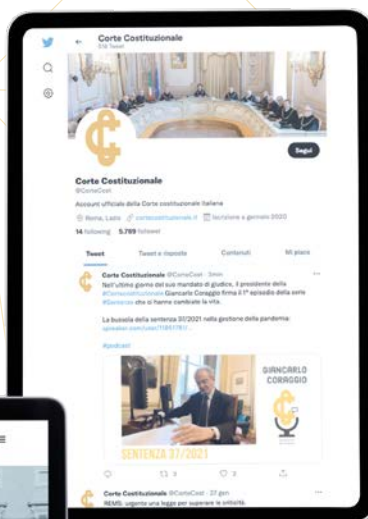
The Court's official YouTube channel has been active for four years, with around 1,500 subscribers and more than 300 videos, including podcasts, annual reports, clips of visits to prisons and schools, online lectures by the judges, and other media content about the Court. To date, the channel has reached over 133,000 views (more than 7,000 hours in total), 40,000 of which are from last year.

## PODCASTS


The public can also learn about the Constitution, the Court, and its decisions through its podcasts. The Court is the first and only institution in Italy to use podcasts – a new frontier in communication. They are followed by thousands of listeners at home and abroad: Austria, Brazil, USA, Germany, and Spain. *The Constitutional Court Podcast Library* has been offering audio recordings with judges speaking on topical issues through the prism of the Constitution since 2020.

## Instagram

**52.100** followers  
**73%** under 35  
**53%** women




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