



**Italian Constitutional Court
Annual Report 2020**





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EMBEDDED IN REALITY: THE CONSTITUTIONAL COURT IN 2020

Interview with President Giancarlo Coraggio



Mr President, 2020 was the year of the pandemic. The Court had to reorganise its work to ensure ongoing constitutional justice during the emergency. Since April, judges and lawyers have been participating in the Court's public hearings remotely, and judgments may now be signed electronically. The statistics for 2020 show a drop in the number of pending cases, with proceedings now taking less than nine months, having the shortest average duration since 2016. Overall, it's a fairly positive picture. Would you agree?

In reality, the restrictions arising from the pandemic have not had a negative impact on the Court's "production", as it were, and the number of cases pending has actually dropped. Thanks to the efforts of the Secretary General and the staff, the Court holds its public hearings and meetings in chambers remotely. It is remarkable how quickly my colleagues and the Bar adapted to using this technology, although the lack of direct and personal face-to-face interaction was no small sacrifice. It should be mentioned, however, that the Constitutional Court benefited from its undeniably privileged position compared with other judicial offices thanks to its relatively smaller number of cases and its financial and technical resources.

As in the past, the Court has shown concern for civil society, opening its proceedings to

"outside voices" with its decision taken in January to accept *amicus curiae* briefs and hear expert witnesses in some fields. A year on, what thoughts can you share about this new experience, which brings the Court more into line with other countries?

It is certainly positive. Although the admission of *amicus curiae* briefs is alien to our judicial tradition, it was fairly easy to introduce them in Constitutional Court proceedings, which have special features both in terms of purpose and legal effects.

The Court's judicious use of this new faculty (we accepted 28 out of 64 applications in 12 out of a total of 326 cases) enriched the discussion of our cases without adding delays, as the *amici curiae* only participate through written briefs. The experts also made important contributions on some occasions. For example, in the 2020 proceedings on the "Positions Entailing High Levels of Responsibility" of tax agencies, which gave the Court a better insight into some specific technical aspects. Increasing involvement of civil society – noted favourably in the 2020 EU Rule of Law Report – has had a very positive effect.

In 2020, the number of judgments continued to grow with respect to the number of orders, as did the tendency for the Court to overcome admissibility issues and address the merits of the questions. The Court also continued to fill the gaps in consti-

Read the President's
Annual Report



tutional protection, even in the absence of a single solution to fill the gap created by a declaration of unconstitutionality. Would you say these trends are now well established?

Regarding the first question, it is generally true that, whatever the form of the ruling – be it a judgment or an order – the number of rulings of inadmissibility continues to fall, due to better formulation of referral orders and appeals, as well as the Court’s greater willingness to examine the merits. I personally welcome this trend because I have always thought, in my many years working as a judge, that any rulings of inadmissibility amount to a defeat for justice.

And the second question?

This touches on a sensitive aspect of the role and function of the Court: its relationship with the legislator. Essentially, the approach of the Court is one of self-restraint vis-à-vis legislative discretion. This approach has traditionally led the Court to abstain from declaring the unconstitutionality of a law when such a declaration would require the Court to replace the legislative solution with one of several possible alternatives, the choice of which lies, in principle, within the discretion of the legislator. Over time, the changing circumstances in which constitutional justice operates, the emergence of new fundamental rights, and an increasing awareness of the need to effectively protect them, have compelled the Court to step in even in such instances where an exercise of discretion proves necessary in order to find a

suitable remedy against Constitutional breaches.

Nevertheless, we have been extremely cautious in this approach, by trying to shape the remedies afforded by our judgments according to patterns that already exist in the law. The leading case here is Marta Cartabia’s Judgment No. 40 of 2019, remodelling penalties for drug offences on the basis of those already provided for in legislation governing the same area. The Court also followed this pattern in other rulings of 2020.

Would you say that the “sincere co-operation” between the Court and the legislator is generally effective?

It must be said that the judgments where the Court calls upon the legislator to amend the law are on the rise, while most of these calls are regrettably not followed by any legislative action. Nevertheless, one good example of sincere co-operation is the review of the monthly allowance due to persons with total invalidity: immediately following the Court’s decision that the allowance was insufficient to meet the recipients’ basic subsistence needs, the legislator moved to adjust the amount of the allowance. I realise of course, especially in the current political climate, that Parliament is facing challenges of equal delicacy and importance. Nevertheless, the Court will continue to underline the need for stronger co-operation between the two institutions. This difficulty in seeing our decisions implemented sets the context for the procedural innovation which took place through our 2019 judgment on assisted suicide. In this case, as is widely known, the Court did not

simply call for legislative action, as it used to do in the past. Having concluded that the law in force at the time was unconstitutional, Parliament was given a deadline within which to act, and, at the same time, a new hearing was scheduled, making it clear that if the legislator failed to take action by the deadline, the Court would intervene directly (Order No. 207/2018). Following the legislator's inaction, after a year had elapsed, the Court took action and declared the impugned provision unconstitutional.

The same exceptional route was followed in 2020 regarding prison sentences for the crime of defamation by the press, which the Court held incompatible with the Constitution and the European Convention on Human Rights (Order No. 132 of 2020). The legislator is still in time to act on this question (the deadline being 22 June 2021), and it would be welcomed if Parliament showed greater concern for a matter that involves one of the cornerstones of democracy.

Another sign of the Court opening up during the pandemic is the introduction of podcasts. The Court's Podcast Library was set up in 2020 in a bid to further promote constitutional culture. You are the only institution to make use of this new means of communication in your institutional work too – in the Annual Report, for example. 2020 also saw the launch of the Court's mobile app, the new website, and its Twitter profile, all of which would appear to reinforce the image of an open and modern institution. Do you share this view?

Absolutely. It is a new way of viewing the relationship between civil society and the institutions. Modern technology in communications has a degree of openness that has never been possible before now, and I must say, the results have been extremely positive; there has been real and growing public interest. Our social media channels have proved to be precious tools for channelling information on the Constitution and the work of the Court in a more modern and effective way, and they are particularly popular with young people and women.

2020 also saw the launch of a new series of podcasts, called ENCOUNTERS, featuring personalities from the world of culture. Following the outreach to students, detainees, and the general public, dialogue with the "outside world" is still ongoing. How would you assess this new initiative?

I would say it is extremely positive. It has opened up a dialogue on some key topics, such as the electoral system, information, university, and the family, as well as the environment, science, literature, and art. Not only has this consolidated the Court's openness to civil society, but it has truly enriched us, the judges, as clearly emerges from the comments of my colleagues, who have been taking part in the project with enthusiasm. I have always felt that judges risk becoming somewhat inward looking, and I am increasingly convinced that opening up to social, economic, and cultural realities is essential in an institution such as the Court, whose decisions will inevitably have an impact on these very realities.

THE JUDGES

2020 saw a 20% turnover among the judges at the Constitutional Court. Three said farewell to the *Palazzo della Consulta*, having served their terms of office: Marta Cartabia, Aldo Carosi, and Mario Morelli, and another three took their place on the bench: Emanuela Navarretta, Angelo Buscema, and Maria Rosaria San Giorgio. Judge Navarretta was appointed by the President of the Republic, while the other two were elected by the Court of Auditors and the Supreme Court of Cassation respectively.

This was also the year of the three Presidents: in September, nine months after her election, Marta Cartabia passed on the baton to Judge Morelli, and he, in December, passed it on to Giancarlo Coraggio, who confirmed Giuliano Amato as his Vice President.



GIANCARLO CORAGGIO

Born in Naples on 16 December 1940, Judge Coraggio, married with three children, was elected to the Constitutional Court on 29 November 2012 by the Council of State, of which he had served as President since January of the same year. He was sworn in on 28 January 2013 and has served as a constitutional judge since then. After being appointed Vice President of the Court on 16 September 2020, he was elected President on 18 December.



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 was sworn in on 18 September of the same year. He was appointed Vice President on 16 September 2020.



SILVANA SCIARRA

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. She was sworn in on 11 November 2014.



DARIA DE PRETIS

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 and was sworn in on 11 November 2014.



NICOLÒ ZANON

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. He was sworn in on 11 November 2014.



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.

THE YEAR IN NUMBERS

Read the Studies
Department Report



THE PANDEMIC – NO OBSTACLE TO EFFICIENCY

A sharp fall in the duration of proceedings
Fewer pending cases

In 2020, the Court handed down 281 judgments, 10 fewer than in 2019. But what stood out most this year, marked by the pandemic and new ways of working, was the efficiency of the Court's response. Although the demand was slightly lower than in 2019, the Court confirmed its levels of "production": 2020 began with 314 pending cases, and 332 came in by the end of the year. The Court adjudicated 342 in all. The final tally was 304 pending cases, with a 3.2% decrease compared with 2019. In particular, incidental proceedings saw a decline, with a drop of 12.2% from 196 to 172.

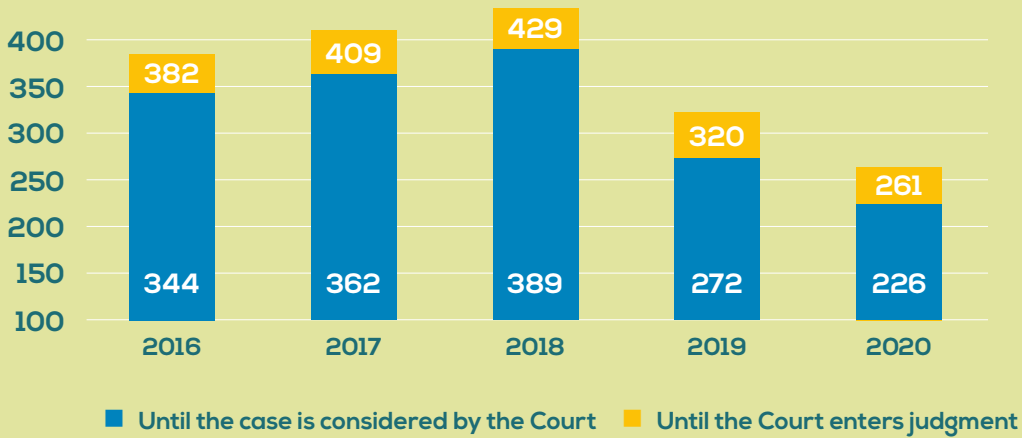
Above all, there was a clear reduction in response times, now at their shortest since 2016. On average, 226 days

elapsed between the date of publication in the *Official Journal* of referral orders for incidental review and the date of the hearing, "significantly less than the times recorded in preceding years" according to the Court's Studies Department. The result is the same if the duration is calculated up to entry of judgment (261.35 days, i.e., 8.7 months, rising to 407.18 days for direct appeals, whose length, however, also depends on delays caused by pending negotiations between the State and the Regions). Once again, incidental proceedings accounted for the greater part of the cases brought before the Court, with a total 163 decisions, though a slight decrease (-4.7%) was recorded in comparison with the 171 of 2019.

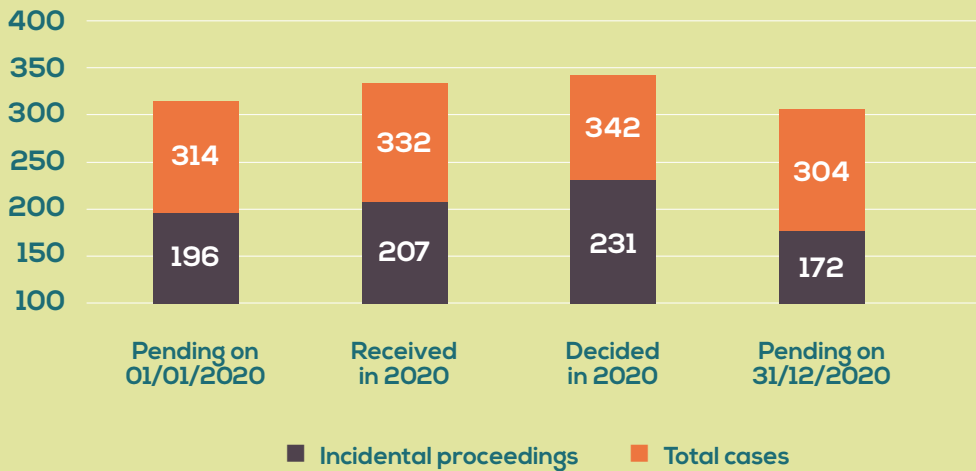
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The year in numbers

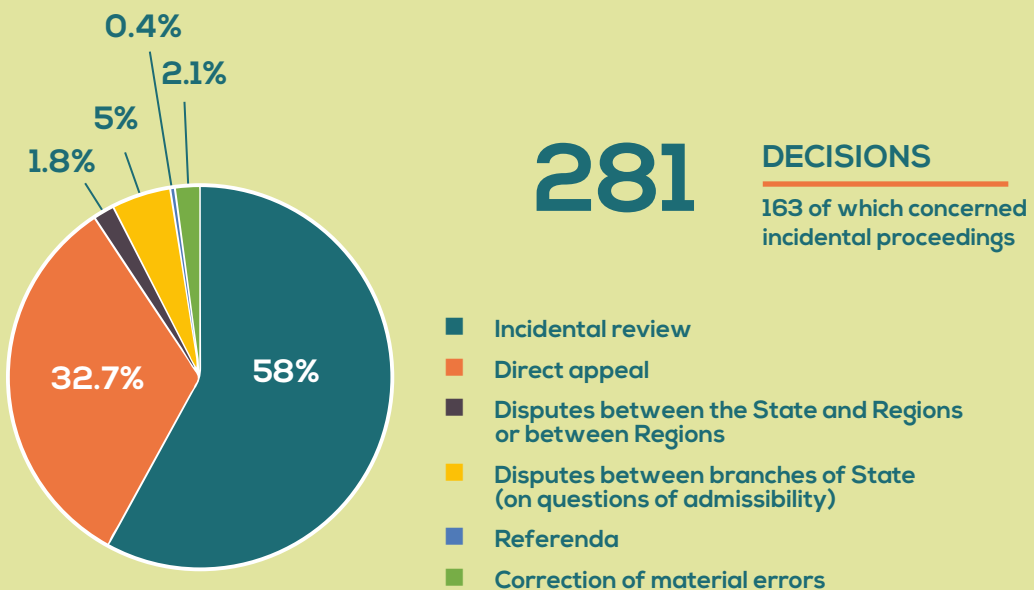
Average duration of incidental proceedings (no. of days)



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



Total number of judgments in 2020 by category

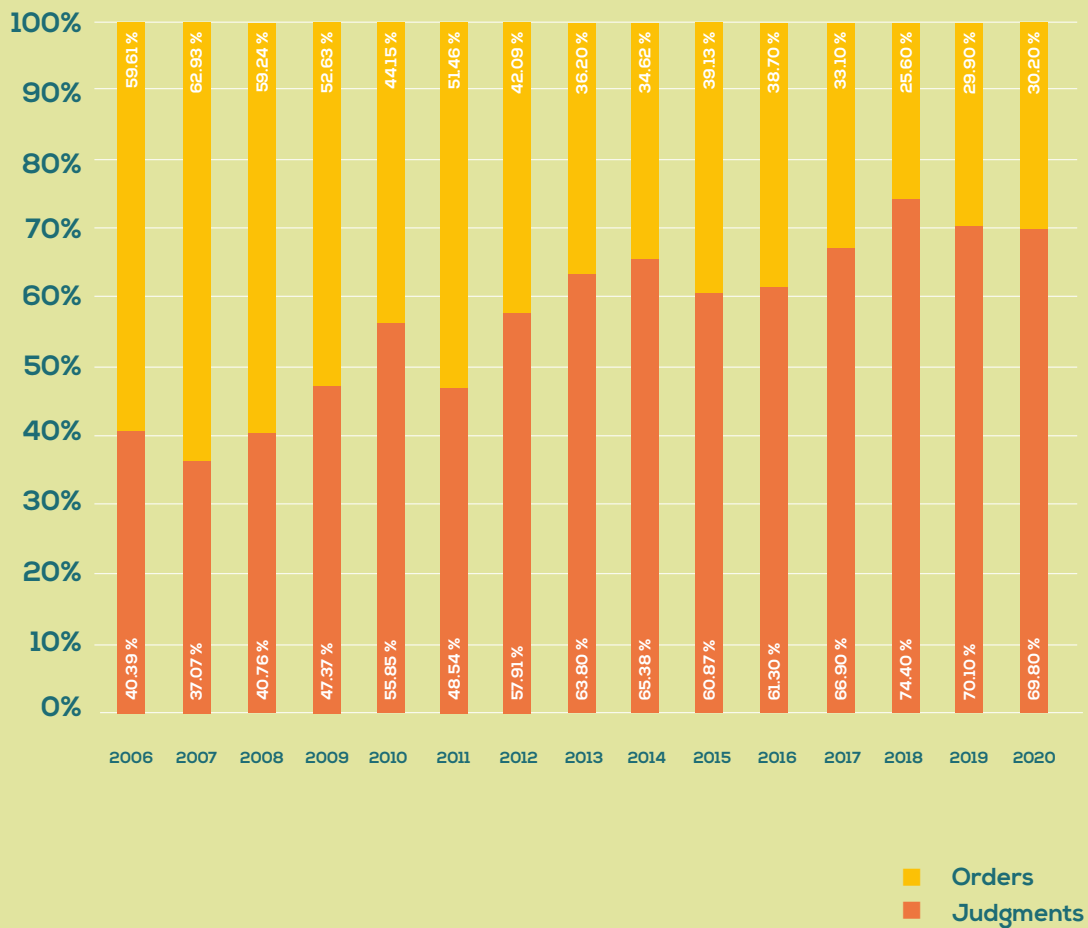


GROWING NUMBERS OF RULINGS ON THE MERITS

The trend of overcoming obstacles to admissibility continued, with the Court handing down far more judgments than

orders, which shows its growing willingness to address the merits of the questions.

Figures for judgments and orders (2006-2020)



INCREASED “WARNINGS” TO THE LEGISLATOR

2020 saw an increase (from 20 to 25) in the number of so-called “warnings” to the legislator, where the Court calls upon Parliament to take action in a certain area – in a spirit of sincere institutional co-operation – in order to provide a remedy to amend legislation in force which is not in line, or fully in line, with constitutional standards, and the Court itself is not in a position

to directly afford one. In 2020, such “warnings” concerned a large variety of areas: criminal law and criminal enforcement, local finance, parental responsibility, custodial sentences for the offence of defamation by the press, the establishment of compensation for unlawfully dismissed workers, a solidarity levy on pensions, road traffic injuries, and much more.

25

in 2020

20

in 2019

14

in 2017

10

in 2018

2020 JUDGMENTS

In 2020, the Constitutional Court was called upon to decide on questions involving criminal procedure, crime and punishment, and numerous branches of the law, including employment, the family, the environment, tax, and many others. Timely and detailed information about many of the decisions was provided through press releases, some of which are summarised below.

Marta Cartabia presiding over the panel of judges



Read the decisions
and press releases



Aliens

In a longstanding tradition of sincere co-operation between courts, **Order No. 182**, following the procedure for preliminary referral, brought a question before the Court of Justice of the European Union (CJEU) with regard to birth and maternity benefits (the so-called “*Bonus bebé*”, or “baby bonus”) for third-country nationals. With **Judgment No. 186** the Court found the first “Security Decree” (No. 113 of 2018) unconstitutional, as it prevented asylum seekers from registering at registry offices. According to the Court, rather than increasing public safety, the decree limited the public authorities’ ability to control and monitor the territory and infringed the principle of equal dignity.

Chambers of Commerce

The Court ruled that the legal provisions reforming the Chambers of Commerce did not breach the principle of sincere co-operation between the State and the Regions (**Judgment No. 169**). The Government and the regional authorities had, in fact, held numerous discussions on the decree implementing the enabling law.

Community service

With **Judgment No. 131**, the Court widely acknowledged third sector organisations at the local level (as representatives of a “caring society”) and their specific ability to contribute, together with public bodies, to the general good.

Crime and punishment, criminal procedure and enforcement

In one of the first decisions of the year, **Judgment No. 32**, the Court held that the provisions of a recent anti-corruption law precluding, for most corruption offences, the application of non-custodial penalties during the execution of the sentence cannot be applied retroactively to those who have been convicted of offences committed before the entry into force of the new law. The Court explained that these provisions are not limited to “mere changes” to the rules governing the execution of the sentence envis-

aged at the time of the offence, but have “transformed the scope of the penalty and its actual impact on the detainee’s personal liberty”. They cannot therefore be applied to crimes committed before [the new law] came into force.

Judgment No. 97 ended the total ban on the exchange of objects of modest value (such as food, soap, detergents, etc.) between inmates belonging to the same “Socialisation group” held under Article 41-*bis*. Later, with **Judgment No. 113**, the Court ruled on the 24-hour deadline for challenging decisions regarding temporary permissions to leave the prison, considering it too short and also detrimental to the detainee’s right of defence and the rehabilitational purpose of the sentence. With reference to health, **Judgment No. 73** declared unconstitutional the ban on reducing the sentences of repeat offenders on grounds of their partial mental infirmity, while with **Judgment No. 245** the Court concluded that a law aimed at preventing the temporary release of particularly dangerous prisoners for reasons related to the Covid-19 pandemic was not incompatible with the required standards of health protection for the inmates.

As for substantive criminal law matters, the Court urged (with **Order No. 132**) the legislator to reconsider the penalties for defamation by the press. The Court followed here the same approach as in the *Cappato* case (**Order No. 207/2018**), postponing its decision by one year (to June 22, 2021) so as to allow Parliament to pass new regulations, failing which it would intervene. With **Judgment No. 260**, the Court declared that the exclusion of summary judgments for crimes punishable with life imprisonment was



neither unreasonable nor arbitrary, and, with **Judgment No. 278**, rejected a challenge to the suspension of the statute of limitations adopted during the COVID-19 emergency, as such a measure was “tied to the suspension of trials”. **Judgment No. 102** focused on the best interests of children, holding that it was unconstitutional to automatically suspend the parental responsibility of individuals convicted of international child abduction. Such an offence is admittedly a very serious one, the Court observed, but this accessory penalty should be applied only if it effectively promotes the interests of the child. With **Judgment No. 156** the Court extended the scope of application of the *de minimis* defence also to crimes with no minimum prison sentence, but whose upper limit exceeds 5 years.

Judgment No. 252 established that also personal and house searches authorised via telephone require a warrant. Telephone authorisation does not protect the right of persons under investigation to know (and later to challenge before a judge) the reasons why the search has been ordered, thus limiting their fundamental right to privacy, as the reasons remain within the confines of a telephone conversation between the Public Prosecutor and the police. The Court stated that, in this case too, a warrant must be provided within forty-eight hours, adding that the legislator could set a different deadline, but since there must be no legislative gaps in the interim, it was necessary for the Court to remedy the lack of constitutional protection. Lastly, with **Judgment No. 34** the Court declared unfounded the question concerning Article 593 of the Code

Marta Cartabia presiding over the panel of judges



of Criminal Procedure limiting the Prosecutor’s right to appeal against convictions to cases where (i) the nature of the offence is modified, (ii) an aggravating circumstance has not been considered, or (iii) a punishment other than the ordinary penalty for the crime is handed down. The Court established that this limitation serves the (constitutionally fundamental) purpose of ensuring the reasonable duration of trials and reducing the workload of Courts of Appeal.

Employment (private and public). Welfare and social security

In 2020, one brick in the wall of the recent labour market reform – the so-called Jobs Act – fell: the one that anchors the calculation of compensation for dismissal due to formal or procedural flaws to length of service alone. Especially in cases of modest seniority, the Court observed with **Judgment No. 150** that “both the compensatory function and the deterrent effect of indemnities [were] appreciably reduced” by the annulled provision. Later, with its **Judgment No. 212**, the Court ruled that a request for an interim measure is sufficient to challenge transferral and other acts undertaken by an employer (including dismissal). **Judgment No. 164**, on the other hand, declared that the institution of POERs (“positions entailing high levels of responsibility”) without public competition set up in the tax agencies is not in breach of the Constitution, as these are neither managerial nor temporary positions. In the field of social welfare, of particular note is **Judgment No. 152**, in which the Court stated that “the monthly amount of invalidity allowances for persons with total invalidity, currently standing at 286.81 euro, is undeniably and manifestly insufficient to meet its recipients’ minimum subsistence

Mario Morelli presiding over the panel of judges



needs”. It therefore called upon the legislator to raise the allowance. In the meantime, it established that those unable to work in any way due to total invalidity are entitled, from their eighteenth birthday, to the disability allowance of at least 651.51 euro which the law already grants them when they reach the age of 60. From allowances that fail to guarantee the “minimum subsistence” level to “golden pensions”: **Judgment No. 234** established that the legislator can freeze automatic increases to high pensions and impose a solidarity levy on their recipients, but only in compliance with the constitutional principles of reasonableness and proportionality. This also extends to the duration of the measure: precisely because of its disproportionate length, the Court struck down the five-year solidarity contribution envisaged by the 2019 State Budget Law.

Local authorities

Judgment No. 4 declared that it is unlawful to use cash advances to alter the result of administration and cover new expenses.

Mafia crime

Judgment No. 57 confirmed the lawfulness of extending anti-mafia interdiction measures to private business activities.

Nation and Regional Government / Healthcare

Judgment No. 53 confirmed the constitutionality of Puglia Regional Law No. 66/2018 on opening a first aid service (*guardia medica*) to manage less serious cases in all hospital emergency rooms in order to reduce the burden placed on them. According to the Court, setting up such offices is not envisaged in the provisions of the National Collective Agreement on General Practitioners.

Public administration

“Organs of the national health service delaying payments to their suppliers must make provision, in the contracts of the general and administrative directors, for a specific condition that a least 30% of their performance bonus will depend on compliance with the statutory deadlines for payment”. With this declaration contained in its **Judgment No. 78**, the Court upheld the national regulations on supplier payment deadlines in the health sector.

Public health and EU funds

Basic levels of healthcare and social welfare must be provided in full, and the EU funding available for this purpose must be used without delay. This is the conclusion of

Judgment No. 62, striking down two provisions of Sicily Regional Law no. 8/2018 which allowed these funds to be used for purposes other than the financing of basic levels of medical and hospital assistance.

Public housing

It is unreasonable to deny public housing to any Italian or foreign national who has not been resident or working within the territory of the Region concerned for at least five years. With its **Judgment No. 44**, the Court held that the five-year requirement is incompatible with the social function of the service.

Public works and ports

The case of the collapse and reconstruction of the Morandi Bridge also reached the Constitutional Court: **Judgment No. 168** explained that, with reference to the so-called Genoa Decree, the urgency of starting work to restore the motorway section, and the



Press Office of the Constitutional Court

Press release of 27 July 2020

MORANDI BRIDGE: THE REASONS FOR THE JUDGMENT CONCERNING THE "GENOA DECREE" HAVE BEEN FILED

The urgent need to start works to restore the motorway section; the doubts as to the appropriateness of awarding those works to the concessionaire undertaking, in light of the seriousness of the collapse of the motorway overpass known as the Morandi Bridge; the initial results of the administrative investigation into the event. These are, very briefly, the reasons that led to the exclusion of *Autostrade Spa* (ASPI) from the demolition and reconstruction of the Bridge by means of Decree-Law No. 109 of 2018 (the so-called Genoa Decree).

These are part of the reasons provided by the Court in Judgment No. 168, filed today (Judge Rapporteur: Augusto Barbera) to explain why the Genoa Decree, challenged by the Regional Administrative Court of Liguria, was not declared unconstitutional.

As partly announced before the judgment was filed (see the 8 July 2020 press release), the judgment closes with three declarations of unfoundedness, and four of inadmissibility, of the questions raised. In particular, the Court held inadmissible the question concerning the obligation imposed on ASPI to meet the costs associated with reconstructing the Morandi Bridge and expropriating the relevant property. This, because the Regional Administrative Court did not specify the grounds on which the obligation had been imposed: whether conclusively, or merely on a provisional anticipatory basis, pending checks as to the liability of the concessionaire to pay compensation.

The judgment explains that ASPI was excluded from the demolition and reconstruction of the overpass in two stages. First, the legislator established that these activities did not engage the agreement involving ASPI and, therefore, the undertaking's duty to provide demolition and reconstruction services would not be enforced even though ASPI was willing to fulfil it.

doubts as to whether restoration should be entrusted to the concessionaire given the seriousness of the incident and the initial results of administrative investigations, offer a constitutionally flawless justification as to why *Autostrade Spa* (Aspi) had been excluded from the work of demolishing and reconstructing the Bridge. With **Judgment No. 208**, the Court also held that the State had the constitutional right to set up a Messina Strait Port Authority.

Security and public order

Judgment No. 236 declared unconstitutional the law of the Veneto Region on “neighbourhood watch schemes” because public order and security are remitted to the State alone. According to the Court, however, nothing prohibits national legislation to regulate “neighbourhood watch schemes” directly. This would encourage the active participation and empowerment of citizens in more effective crime prevention and would be in line with the principle of “horizontal subsidiarity” enshrined in Article 118 of the Constitution.

Tax and duties

Judgment No. 262 declared the non-deductibility from the amount liable to tax on business income (IRES and IRPEF) related to the single municipal tax (IMU) paid in relation to operating property unconstitutional. This is, as the Court explained, “an inherent tax cost, the deductibility of which cannot be precluded after the legislator has, at its discretion, adopted the criterion of taxation of net income for tax on business activity without compromising the coherence of the tax system.” **Judgment No. 158** rejected questions of constitutionality regarding Article 20 of the Consolidated Law on Registration Tax on the interpretation of deeds submitted for registration. The Court explained that, in this case, the legislator had intended to reaffirm the “document duty” nature of the registration tax, without taking into account extratextual elements and related legal acts with no textual relationship to the document in question.

The electoral law and referenda

In 2020 the Court declared inadmissible (with **Judgment No. 10**) the request for a referendum aiming at amending the electoral law currently in force, as its success would have resulted in a radically different text than the original one. The Court then reiterated that when a referendum concerns the electoral law pertaining to a constitutional body or one of constitutional importance, it must ensure that the resulting legislation, following the success of the referendum, will be self-executing, i.e. capable of allowing elections to be held immediately. With four **Orders (Nos. 195, 196, 197 and 198)**, the Court then declared inadmissible a further four disputes on jurisdiction concerning the reduction of the members of parliament and the “election day” of September 2020 (constitutional referenda and regional elections).

The environment and landscape

Judgment No. 240 stated that in the area of landscape planning the Regions may not act alone but must involve the Ministry for Cultural Heritage and the Environment. Specifically, the procedure for creating regional plans must include constant, equal, and sincere dialogue between Regions and the State in order to reach general agreement and a unified approach to safeguarding the landscape. In another ruling, **Judgment No. 276**, the Court found that the Lazio Region had not acted unconstitutionally in extending the *Appia Antica Park*, which blocked a building programme already approved by the Municipality of Marino and the Region itself.

The family and the protection of minors

The personal identity of a child is not only linked to biological reality but also to the emotional and personal ties that develop within the family: **Judgment No. 127** therefore “upholds” the standing of parties to challenge a former recognition of the child made in the awareness of its falsehood, provided that the *favor veritatis* is balanced with other constitutional values. **Judgment No. 230**, on the other hand, leaves it to the legislative discretion whether to recognise same-sex parenthood within a relationship between two women in a civil partnership for the greater protection of the child’s interests.



The Judiciary

In **Judgment No. 267**, the Court held that it is unreasonable to grant only tenured judges the reimbursement of legal defence costs relating to proceedings concerning civil, criminal, or administrative responsibility, whereas justices of the peace enjoy no such right. As the latter share the same adjudicatory function, of the utmost constitutional importance, justices of the peace must be allowed to work in an untroubled and impartial manner, without running the financial risk of unfounded liability actions.

The State Budget Law

The standing of individual parliamentary deputies

The challenges lodged by some members of Parliament and parliamentary groups against the way the draft law for the 2020 Budget Law was approved were ruled inadmissible (**Order No. 60**). The Court saw no evidence of serious and manifest violations of the parliamentary prerogatives.

Giancarlo Coraggio presiding over the panel of judges



JANUARY

“Open” proceedings

Following the pattern set the year before, 2020 began in a spirit of openness, also in terms of proceedings before the Court: in the light of the resolution of 8 January, proceedings are now open to representatives of civil society, allowing them to express their opinions in relation to the questions on the agenda.

Amici curiae

The Court is now open to the so-called *amici curiae*: non-profit groups, institutional bodies, trade associations, and non-governmental organisations. If and when they represent a collective or widespread interest relating to the matter at hand, they may submit brief written opinions during proceedings, providing the judges with useful information for the resolution of the case.

In its small way, this is something of a revolution for Italy, bringing the Court closer into line with the practice of a number of supreme and/or constitutional courts in other countries.

With the same resolution, the Court also announced its readiness to hear “outside opinions” from experts, who may now be heard in the presence of the parties when the Court needs to

“learn more” about some specific field. In 2020, it accepted briefs from 28 *amici curiae* (out of 64 applications) in the course of 12 out of a total of 326 proceedings. They ranged from the Tenants’ Union to the Rosario Livatino Research Centre, from Lawyers representing LG-BTI rights to the National Association of Adoptive and Foster Families, as well as the Luca Coscioni Association for Freedom of Scientific Research and the Pope John XXIII Association, not to mention the Criminal Lawyers’ Association and the National Tax Lawyers’ Association, to name but a few.

The Court steps out of the *Palazzo*

The diary for the start of 2020 held more events than ever. In addition to the usual January events, such as the solemn hearings of the European Court of Human Rights in Strasbourg and the Italian Supreme Court of Cassation, there were also numerous screenings, both in Italy and abroad, of the docufilm showing the encounter between judges of the Court and detainees, *Viaggio in Italia: la Corte costituzionale nelle carceri*, directed by Fabio Cavalli and co-produced by Rai Cinema and Clipper Media. The film was released in June 2019. As of September, the Presidents and Judges of the Court were frequent guests at these events as part of the *Viaggio del Viaggio* initiative. This project aims

to bring the Court and members of the public together in venues such as cinemas, theatres, auditoriums, cultural institutions, court houses, schools and prisons.

Silvana Sciarra, Viaggio del Viaggio, Bari



Nicolò Zanon, Viaggio nelle scuole, Milan



Marta Cartabia, Viaggio del Viaggio, Rome



FEBRUARY

Using multimedia



February brought great news on the multimedia communications front: the Court took a leap forward with its new website and social media channels. On 11 February, the new version of the institutional website went on-line with new graphics and content, easier access, and a wealth of news all updated in real time. Also at the start of the month, the Court launched its official Twitter profile. After its appearance on YouTube and Instagram, the *Consulta* is consolidating its communications strategy using social media to quickly bring its activities directly to an ever-wider audience.

The progress of this new communications strategy proved to be particularly interesting.

Twitter

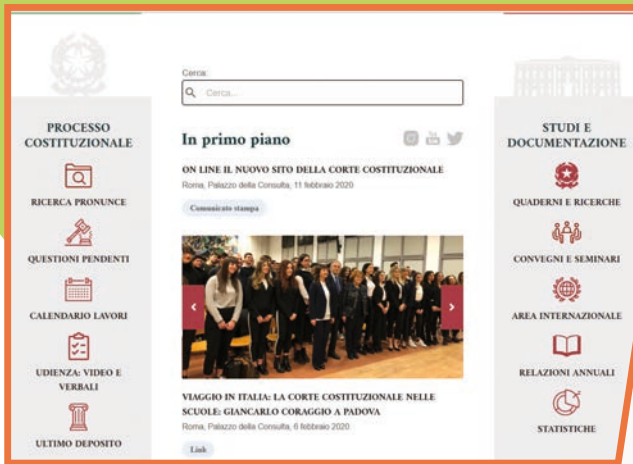
The Court's profile on Twitter, the most popular social media platform among professionals, journalists and politicians, but with a smaller and more specialist audience than Instagram, count-



ed an average of 250 new followers per month (reaching around 2,800 by the close of the year).

But the number of followers is not the only measure of interest on Twitter. There is no shortage of @CorteCost tags sharing tweets relating to the Court, and there are similar numbers of retweets, likes, and comments on the Court's communications.

In 2020, 270 tweets (averaging more than 24 per month) provided information on the Court's decisions and its various initiatives. Users showed particular interest in topics such as gender equality or digital innovation. This became something of a necessity but also a virtue in 2020, thanks to the pandemic.



32,600 followers
+300% in 2020

+ 30% number of women
in 2020

70% followers
under 35



Women 51%
Men 49%



Two examples out of many are the news that the entire Court Library catalogue (with over 130,000 volumes) is now available online, and a tweet announcing the “Paperless Court”, publicising the first judgment to bear a digital signature, in this case that of Judge Rapporteur Nicolò Zanon.

The information available on Twitter is a living testimony to the efficacy of communication using digital and multimedia platforms that are both timely and institutional, yet accessible to all. They are also reliable and consistent and allow the Court to get to know the public – and the people to get to know the Court.

Instagram

Instagram followers (starting from the summer of 2016) quadrupled from 8,200 to 32,600 in 2020. The Court’s profile is popular with all age groups, especially the younger generation, whom the *Consulta* particularly aims to reach: a good 70% of its Instagram followers are aged between 18 and 34. The number of female followers rose from 38% in 2019 to 51% in 2020.

Il Viaggio in Italia - Around Italy

In addition to the traditional opening ceremonies of the judicial year attended by President Marta Cartabia (Court of Appeal of Milan) and Vice President Aldo Carosi (Court of Auditors), the Court and its judges are involved in the *Viaggi nelle scuole* project, with Giancarlo Coraggio in Padua and Augusto Barbera in Bologna, and especially in *Viaggio del Viaggio*, presenting Fabio Cavalli's film on life in prison.

Catanzaro

“How many doors close in times of sorrow, darkness, difficulty, and despair?”, asked President Marta Cartabia, guest of the National Association of Judges and Public Prosecutors at their screening of the film *Viaggio in Italia: la Corte costituzionale nelle carceri* in Catanzaro, a mafia heartland. The President invited the audience to step outside their own worlds and look beyond. This is a duty for everyone, and most of all for the institutions: “All it takes is a small but important gesture, the strength to look each other in the eye”, she said. For Luca Poniz, President of the Association, the film is “an extraordinary journey: one that breaks down, not only symbolically, the distance that has always separated judges from the people. But people are always at the heart of the law”.



Vicenza

Judge Daria de Pretis describes the film *Viaggio nelle carceri* presented by the Bar Association in Vicenza as “the story of a meeting of two human realities that are at odds in appearance alone”. The images “disprove” this apparent distance: “Not only are the Court and prisons not far apart, but they can, and must, make contact; they must get to know each other and acknowledge each other within the same community: our community”.



Paris

“It wasn’t easy to make this film, because the first shot always had to be the good one”, director Fabio Cavalli told the audience at the Institute of Italian Culture in Paris for the screening of the docufilm *Viaggio nelle carceri della Corte*, also attended by Judge Daria de Pretis. “This film – she explained – plays an important role in constitutional culture, especially as, thanks to the many requests for screenings, the Court is now talking to people about the Constitution, which is an extraordinary gain for constitutional culture”.



And then a “journey” inside the Court itself

February also saw another new “Journey”, this time inside the *Palazzo della Consulta*, an occasion to learn about its history but also to introduce the Constitutional Court itself. Accompanied by President Cartabia, journalist Giovanni Floris, host of the political talk-show *di-Martedì*, presented the work of the constitutional judges in protecting, defending, and promoting the Constitution.



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MARCH

The pandemic breaks out



From openness to closure: COVID-19 spread relentlessly across the country, bringing it to a halt and imposing a policy of isolation.

The *Viaggio del Viaggio* was interrupted on 2 March in Stockholm, where Judge Silvana Sciarra was just in time to describe the judges' "sensational experience in communications", with the *Viaggio nelle carceri* and the documentary that accompanied it. Then came the lockdown. Despite everything, the Court never ceased its work and communication with the "outside world".

Lockdown

The health emergency put a stop to the month's public hearings from 9 March. Other activities that did not involve travelling were allowed to continue in order to guarantee constitutional justice while limiting travel, transfers, and groups of people, even though the work of the Constitutional Court normally requires the presence of defence lawyers from around the country.

The Court therefore “embrace[d] the spirit of the government measures” to combat the emergency caused by COVID-19, also striving to limit the impact on the work of the judges. At the same time, it began to examine new ways of carrying out hearings, exploring the opportunities provided by technology to ensure full service.

Measures to prevent the interruption of proceedings

Shortly before the end of the month, when it was now clear that lockdown would continue for the foreseeable future, the Court took a first step towards the resumption of public hearings, albeit with special procedures and conditions in place. The press release of 24 March summarised the measures adopted by decree of the President after deliberation by the panel of judges: cases of exceptional gravity and urgency would be heard without delay; questions in chambers would be discussed

remotely, and public hearings would be postponed until the end of the emergency unless the parties request a decision based on the documents filed. The judges would meet remotely, also when deliberating in chambers. The preamble to the decree reads: “The current emergency situation makes it necessary to operate in a spirit of sincere co-operation with the other institutions of the Republic, in a shared effort to address the current situation”.



APRIL MAY

Remote hearings and the Annual Report via podcast

This was perhaps the most difficult time, because still no end to the pandemic was in sight. The Court took full advantage of the technology available to perform its institutional functions, with remote working for staff and hearings held via videoconferencing. The traditional Extraordinary Meeting on the previous year's activities, to be held with the highest authorities of State, was cancelled, but – for the first time ever – the President's Report was also published as a podcast.

President Cartabia meets the foreign press



Remote hearings, a "painful necessity"

Decisions based on case files relating to questions due for public hearing or, at the request of one of the parties, after remote oral proceedings, as well as deliberation in chambers and other judges' meetings in videoconferencing, are some of the measures introduced by the Presidential Decree of 20 April concerning Court business from 5 May until the end of the COVID-19 emergency. But the word "end" would not be pronounced in 2020.

Having abandoned the Yellow Room, where hearings traditionally take place, the Court now meets in the Conference Room on the fifth-floor of the *Palazzo della Consulta*, where safety measures can be followed more easily, above all



Remote judicial assistants' meeting

keeping a safe distance. The “remote proceedings” can be viewed on large video screens.

The changes in detail

Judges can now meet in chambers and hold public hearings remotely. Cases set for discussion are decided on the basis of the documents filed and any briefs submitted if none of the parties requests to present oral arguments, which will then be heard remotely. These procedures do not apply to exceptionally serious or urgent cases which the President, after consultation with the panel of judges, considers it necessary to hear immediately in open court. In this case, the hearing will be conducted in compliance with health and safety requirements.

Naturally, the Annual Extraordinary Meeting and press conference on the Court’s activities over the past year did not take place. However, the President’s Report (with its numerous annexes) was published on the website, also featur-



ing in a podcast, exploiting all available multimedia channels to provide statistics and information on the activities of the Court to interested members of the public in a transparent, complete, and accessible way.

“Full implementation of the Constitution requires a joint commitment, with the active and sincere co-operation of all the Institutions, including Parliament, the Government, the Regions, and the Judiciary. This co-operation is also the key to facing the emergency. The Constitution does not envisage a special law for exceptional times. This is a conscious choice, but it offers a compass by which to ride the storm in times of crisis, starting precisely from the principle of sincere co-operation between institutions, which is the institutional projection of solidarity among citizens”. This is an extract from President Marta Cartabia’s Report. In an effort to rebuild the traditional dialogue with the media, the President of the Court met the foreign press in videoconference for the first time in the Court’s history.



JUNE

The Podcast Library



La Libreria
dei Podcast



The Podcast Library of the Constitutional Court was launched on 2 June 2020. Following on from the other initiatives and adopting one of the most popular means of communication today, it plays a real part in promoting constitutional culture.

On 9 June, the Court opened the doors of the *Palazzo* to the public once again, although numbers were limited for health reasons, thus giving access to hearings, which are also held remotely. This was one of the first important signs of a return to normality, although it would take a month (until 7 July) before hearings could be resumed in person. In this transition towards (a new) normality, on 2 June *The Podcast Library of the Constitutional Court* was launched. The Court set up this unprecedented initiative (also for the institutions) in an effort to maintain the link between “inside” and “out” that had been so ably represented by the *Viaggi in*

The Constitutional Court Library





Italia (involving schools, prisons, and the public at large) before being abruptly cut short by the health crisis.

After its test run with President Cartabia's Annual Report, the podcast has become the main means for the ongoing promotion of constitutional culture.

The date set for the launch of the Library, namely 2 June, Republic Day, is highly symbolic, as the aim of the new project is to spread and strengthen a feeling of belonging to the *res publica*, understood as a community of women, men, and institutions committed to implementing the constitutional values underpinning our common life. Indeed, the first podcast was dedicated to the Republic and was "signed" by President Cartabia.

Each podcast is "signed" by a judge of the Constitutional Court and is dedicated to either the life and activities of the Court itself or to crucial themes and moments in our history as a republic, told from the perspective of the Constitution and constitutional case law. These stories are accessible to anyone and can also be used for teaching purposes. They are meant to be a lasting aid to understanding the

past, present, and future.

For example, listeners can discover why the Constitutional Court came into being and why it took eight years for it to become operational. They can learn about how life has changed for women, workers, immigrants, and prisoners through the work of the Constitutional Court. They can also come to understand more clearly that fundamental rights have a cost, and that the levels of constitutional protection depend on economic considerations, but that there are also rights that cannot be negotiated. Listeners can also study the Court's decision-making and voting mechanisms, thus gaining insight into their impact on the lives of individuals and institutions.

The podcasts, released every Friday, generally have a duration of 20 minutes which includes the musical additions. They are relayed by the Treccani website and various radio stations.

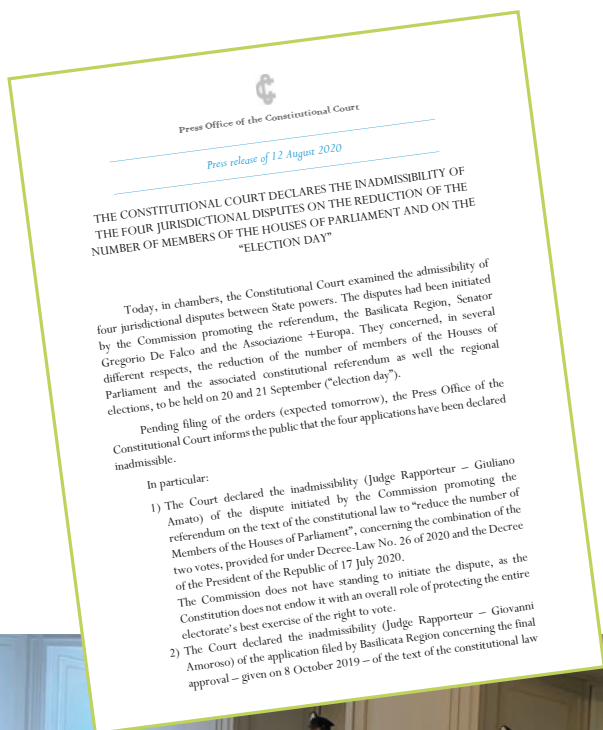
The project has been made possible also thanks to the voluntary contribution of a number of skilled professionals (technicians and musicians) who share the aim of promoting constitutional culture.

JULY

The “new normal” for hearings

July saw a return to normality for the Court – which had never completely interrupted its business and even managed to make up for ground lost in March. But it was a new normality. As of 7 July, judges and lawyers were able to attend hearings in person, though judges could participate remotely. The Court continued to meet on the fifth floor of the *Palazzo*, where safe distances can be respected more easily. The end of the month brought four conflicts between Branches of the State concerning the reform reducing the number of members of Parliament, and election day. And for the first time in its history, the Court was convened for a mid-August hearing.





The Court Library catalogue goes online

The Court made the entire catalogue of its Library available online via the OPAC Sebina digital platform at this time. It is now possible to consult it directly and look for detailed information on – and the precise location of – each one of the over 130,000 volumes of the Court's bibliographic heritage housed in the Library.



Public hearings are held in the Conference Room

AUGUST SEPTEMBER

The Court's mobile app and digital signatures

After an illusory lull in the health crisis over the summer, with the arrival of the autumn season the Court took a long, hard look at its future plans and the flexibility of its organisation. Once again, the goal was to maintain constitutional justice, which cannot, and must not, stop.

The August hearing and digital signatures

On 12 August, the Court met in chambers to decide on the four conflicts between branches of State concerning the reduction of the number of MPs and the election day. The next day, the President, the Judge Rapporteur, and the Chancellor signed the judgment using digital signatures. This too was a first in the history of the Court.

The App



The Court launched its mobile app on 9 September. A new means of communication that can be updated directly and in real

time is now able to provide information on the activities of the Constitutional Court, allowing users to receive notifications about the latest rulings and press releases via smartphone or tablet. But this is not all. The app follows the Court's entire "production cycle", starting with its Agenda, which includes information about the most important questions to be examined during the hearings. A search function offers the curious easy access to the Court's entire case law (decisions and principles).



New judges and a new President



September was also a time of change for the judges and the President of the Court. Two days before the end of her term of office, Marta Cartabia, the first woman to head the Constitutional Court, “took her place” in the *Sala delle Donne* at the Italian Chamber of Deputies: her photograph joined the portraits of the twenty-one female members of the Constituent Assembly, Presidents of the Chambers of Parliament, and other “first” ladies in the Institutions.

Two new judges and a new President

On 12 September, the terms of office of Vice President Aldo Carosi and President Marta Cartabia came to an end (Judge Cartabia took her leave with a podcast on *The Court and Europe*).

Angelo Buscema, elected by the Court of Auditors, and Emanuela Navarretta, appointed by the President of the Republic, now stepped in. Both took the oath on 15 September and took part in the election of the new President of the Court the following day.

The panel of judges elected Mario Mo-



relli President by majority vote, applying the traditional criterion of seniority. He in turn appointed Giancarlo Coraggio and Giuliano Amato as deputies. President Morelli will remain in office until 12 December.

Mario Rosario Morelli is a judge of the Supreme Court of Cassation, but from 1973 he also worked for almost thirty years (up to 2000) as an assistant at the *Palazzo della Consulta*. During that time, he took part in the preliminary investigation to the only constitutional criminal trial for ministerial offences (the “Lockheed” trial). He went on to assist President Francesco Saja in clearing the backlog that had accumulated as a result of this proceeding.

The virus continued to take its toll during the three months of his presidency, and President Morelli signed a decree

extending the possibility of remote attendance to lawyers should the health emergency not allow them to be present in person.

The last of his 185 judgments, which he signed as President and Rapporteur, was No. 230/2020. With this judgment the Court invited the legislator to intervene, also in the best interests of minors, with regard to the recognition of the same-sex parenthood of two women in a civil union. While stating that no constitutional provision mandates such recognition, the Court adds that the Constitution does not exclude different outcomes, which must, however, be assessed by the legislator. It was to these issues that President Morelli dedicated his podcast of farewell – the so-called *New Rights* (his previous podcast had been on *The Court and Foreigners*).

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OCTOBER NOVEMBER

The Court goes into the schools



The health crisis has brought serious problems for schools. The Court thus agreed to contribute to the education of young people through a series of television lessons on the Constitution, organised by Rai Scuola.

President Morelli explained “The three pillars of the Constitution: equality, solidarity and dignity”, followed by Judge Luca Antonini’s talk on the subject of “Rights and duties”, while Judge Francesco Viganò explained why the Constitutional Court is necessary.



Francesco Viganò recording for “La Scuola in Tivù”

The Court also plays a role in education and culture through its podcasts from the Podcast Library. Over the past months, Augusto Barbera gave a talk on how the Court came into being, and Franco Modugno spoke about the Court’s first judgment. In other podcasts, Giulio Prosperetti explained the procedure for bringing an appeal before the Constitutional Court, and Giuliano Amato described the difficult relationship between the Court and Parliament in addressing so-called sensitive issues, while Silvana Sciarra was tasked with explaining employment disputes, and Luca Antonini shed light on the world of non-profit organisations.



Luca Antonini recording for “La Scuola in Tivù”

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DECEMBER

Coraggio elected President
A record number of women
at the Court

The year closed with the election of 2020's third President, Giancarlo Coraggio. The vote was postponed for a few days due to delays at the Supreme Court of Cassation in electing a judge to replace Mario Morelli at the *Consulta*. The vote went to Maria Rosaria San Giorgio, the first woman to be elected by the Supreme Court of Cassation; she was sworn in at the Quirinale on 17 December, bringing the number of women judges at the Constitutional Court to four, the highest number since its foundation.





On 18 December, the full panel unanimously elected Giancarlo Coraggio President of the Court, and he, in turn, appointed Giuliano Amato as his deputy. The President will remain in office until January 2022. For the first time in the history of the Court, the customary post-election press conference was held in mixed form: part in person and part in videoconferencing. This allowed as many journalists as possible to take part in a time of



health crisis. The press conference was also streamed live on the Court website. The pandemic itself, compulsory vaccination, relations between the central Government and the Regions, and a growing number of women judges were the main topics of discussion with the media. On this last point, Coraggio said that the greater number of women in the Court was an important development but was only a signal, while true equality was “still far off”.



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