



DISCERNING

the Italian Constitutional Court

Role, functions, guarantees

DISCOVERING





Discovering the Italian Constitutional Court

Role, functions, guarantees





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A Court for everyone

A booklet
to understand it better

There are many good reasons
to learn more about an institution
which may have a profound
impact on our lives.

- **Constitutional judges carry out oversight** functions that are essential to ensuring that laws comply with the Constitution and resolving jurisdictional disputes between branches of state, between the State and Regions and among Regions.
- **The Italian Constitutional Court engages** in dialogue with international courts, the Court of Justice of the European Union and the European Court of Human Rights.
- **The role of constitutional judges** pertains not only to the inalienable rights guaranteed to all citizens and minorities but also to the binding duties of solidarity that each of us must fulfil.
- **The Court helps us strengthen our** sense of belonging to a community: we can all rely on independent and autonomous judges who ensure that the rules enshrined in the Constitution, the cornerstone of democratic coexistence, are adhered to.



The Constitution is
not protected by the
Constitutional Court
alone: it belongs
to all citizens and
represents the
“deal” that unites
them, embodying the
foundational values
and the spirit of an
entire community.

Constitutional judges shed light on
the laws they are asked to examine,
providing a “safety valve” for the balance
of the democratic system. The Court’s
unappealable decisions may profoundly
affect people’s everyday lives.

The Court in the Constitution

The Constitution, the fundamental law of the Italian Republic, addresses the Constitutional Court, defining its characteristics and rules.
This is where its history begins.

The Constitutional Court is established in Title VI, Part II of the Constitution, entitled “Constitutional Guarantees”. Articles 134, 135, 136 and 137 are dedicated to it, addressing its functions, composition, the duration of a judge’s mandate and incompatibilities, the election of the President and the effects of the Court’s decisions, particularly concerning laws that are declared unconstitutional. The Constitution sets forth that no appeal is allowed against the decisions of the Constitutional Court.



1948

Entry into force of the Constitution

The Constitution entered into force on 1st January 1948, stating that a constitutional law would later define the conditions, forms and timing for initiating proceedings, and that an ordinary law would establish other necessary rules for the Court’s establishment and functioning. A constitutional law enacted in 1948, followed by another constitutional law and an ordinary law, both passed in 1953, thus led to the creation of the Court.

1955

Establishment of the Court

Lengthy debates and doubts raised by several members of the Constituent Assembly, who were concerned about the power of a limited panel of judges to annul laws passed by Parliament, coupled with the high quorum required for Parliament in joint session to elect five judges – which often entails the challenging task of finding common ground among political forces – delayed the actual establishment of the Constitutional Court until 1955.

1956

The Court’s first hearing and its first judgment

The Court held its first hearing in 1956 and issued its first ruling that same year. Since then, the decisions of the impartial and independent panel have upheld the values, rules and fundamental principles enshrined in the Constitution and repealed or amended legislative provisions that conflict with it, ensuring their compliance with constitutional standards.

TODAY

Upholding the Constitution in an ever-changing society

The Constitutional Court, which is explicitly provided for in the Constitution, recognises the pivotal role played by the Constitution: constitutional judges must apply, foster, interpret and safeguard it and, in so doing, defend the foundational principles of the Italian Republic, but must also adapt its interpretation to new sensibilities and the changes our society is undergoing.

The Court's composition

How many constitutional judges are there?

15



Who elects or appoints them?



[5] are appointed by the **President of the Italian Republic**

By what majority?

Of their choice



[5] are elected by **Parliament in joint session**, i.e. by the Chamber of Deputies and the Senate

Two-thirds majority of the members in the first three ballots, three-fifths majority of the members in any subsequent ballots



[5] are elected by **high courts** (three by the Court of Cassation, one by the Council of State and one by the Court of Auditors)

Absolute majority (half plus one members of the electoral body) and run-off election between the most voted candidates, if necessary

Who can become a constitutional judge?



Justices

in office or retired, from high courts (Court of Cassation, Council of State, Court of Auditors)



Full professors

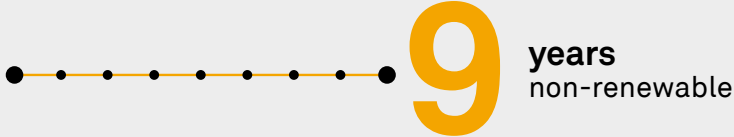
of law



Lawyers

with at least 20-year standing

How long is a constitutional judge's term in office?



Who elects the President?

The **constitutional judges** elect one of their members to serve as President

By what majority?

The election is held by secret ballot and requires an **absolute majority** (at least eight votes if the Court is composed of fifteen judges). If no candidate secures a majority after the second ballot, a run-off election is held between the two most voted candidates

How long does the President serve?

The President **serves a term of 3 years** or until the expiration of their mandate as a constitutional judge, whichever comes first. The President **may be re-elected**

The Court's functions

What are the
Constitutional Court's duties?



Constitutional review

of laws and acts having the force of law issued by the State or Regions

[1] **Constitutional review by referral order**
When a judicial body has doubts as to the constitutionality of a law that it must apply when deciding on a case, it may raise the issue before the Constitutional Court.

Constitutional review by direct application
When a Region believes that a State law or another Region's law interferes with its sphere of competence, it may apply directly to the Constitutional Court. If the Government questions the constitutionality of a Regional law, it may also seize the Court.

Jurisdictional disputes

[2] **Disputes concerning the allocation of powers (State – Regions)**
A Region claiming a violation of its constitutional autonomy may raise a jurisdictional dispute against the State or another Region. If the State deems that a Region's act exceeds regional competence or infringes on State powers, it may initiate a jurisdictional dispute against that Region. These disputes concern non-legislative acts.

Jurisdictional disputes between branches of state
(The Chamber of Deputies, the Senate, individual members of Parliament, the Government, judicial bodies, constitutionally relevant bodies, referendum committees, etc.)
Any branch of state may raise a jurisdictional dispute if it believes that the powers the Constitution vested in it have been violated by another branch of state.

Proceedings on the admissibility of referendums for the repeal of legislation

[3] The Court decides on the admissibility of referendums proposed under Article 75 of the Constitution by either at least 500,000 voters or five Regional Councils to repeal, in whole or in part, a law or an act having the force of law (i.e. legislative decrees or decree-laws).

Criminal proceedings against the President of the Republic

[4] The Court decides on accusations against the President of the Republic for high treason or attempts to subvert the Constitution. These proceedings involve the ordinary judges of the Court as well as sixteen additional judges, randomly selected from a list of forty-five citizens eligible for election to the Senate. This list is compiled every nine years by Parliament using the same method employed for appointing constitutional judges.

Constitutional review proceedings

How are **constitutionality issues and disputes raised?**



By referral order

submitted by courts during proceedings



By direct application

submitted by the State or Regions



By application in the event of disputes

submitted by the State, Regions or branches of state

What happens

between the submission of a referral order or an application and the Court's decision?

- [1] ● **The Registry** receives the referral order or application and the relevant documents by electronic means and records them. It then supervises all the stages of the proceedings and performs all the relevant tasks (it requests the publication of the documents in the *Official Journal of the Italian Republic* and, if necessary, in the *Official Bulletin of the Regions*; it then handles the various steps: appearance of the parties, interventions in the proceedings, filing of documents, records and briefs, notifications to the parties)
- [2] ● **The Docket Office** performs a preliminary review of referral orders and applications
- [3] ● **The President** assigns individual cases to one or more judge rapporteurs for the

preparatory phase and schedules a public hearing or a hearing in chambers

- [4] ● **The judge rapporteur** carries out an in-depth examination of the case, assisted by their research assistants and using the studies and reports provided by the Studies Department
- [5] ● **The case is dealt with at a public hearing or in chambers**
- [6] ● **Judges discuss the case and reach a decision.** The judge rapporteur drafts either a judgment or an order, which is then reviewed and approved by the whole panel
- [7] ● **The decision is signed by the President, the judge rapporteur and the Registrar**
- [8] ● **The Registry** files the judgment or the order and is responsible for its publication

How are cases dealt with,
at public hearings or in chambers?

Public hearings



Cases are dealt with at a public hearing when the parties enter an appearance before the Court. The parties are represented in court by private counsels, regional counsels (if the case involves a regional law) or State counsels (who represent the President of the Council of Ministers). Additionally, briefs may be submitted by *amici curiae* pursuing collective or widespread interests pertaining to the constitutional case.

Hearings in chambers



Cases are dealt with in chambers either when no parties enter an appearance or under specific circumstances (when questions raised in proceedings initiated by referral order are manifestly unfounded or inadmissible, as well as when the case file is returned to the referring court). Judges convene in closed sessions. All decisions, including those concerning cases discussed at a public hearing, are made in chambers.

The Court’s case law

What decisions can the Court issue?

The Court issues either **judgments or orders**. Rulings can be on the merits, when the Court examines and decides upon the issue, or procedural, when the Court identifies deficiencies or legislative changes that prevent the examination of the merits of the case.



Judgments

[Judgments upholding referral orders or applications]
declare that the challenged provisions are unconstitutional and result in the removal of unconstitutional laws or provisions from the legal system

[Judgments declaring referral orders or applications inadmissible]
identify deficiencies in referral orders or a failure to fulfil any requirements of constitutional proceedings

[Judgments dismissing referral orders or applications]
declare the question raised unfounded, thereby keeping the legal provisions in force



Orders

[Orders declaring questions manifestly inadmissible]
are issued when the minimum requirements for raising a constitutional question are not met

[Orders declaring questions manifestly unfounded]
are issued when the Court has already declared the question unfounded

[Orders returning the case file to the referring court]
are issued when a legislative change has occurred requiring the referring court to decide on the issue

Peculiar types of decisions

[Manipulative judgments] The declaration of unconstitutionality only refers to part of the challenged provision, allowing the rest to remain in force. “Manipulative” judgments modify either the text or the scope of a law to ensure its compliance with the Constitution. These can be of the following types:

[Additive judgments]
add new elements to a law which are necessary to align it with constitutional principles.

[Ablative judgments]
lead to the removal of certain segments from a law or reduce their scope so as to ensure that it is in line with the Constitution.

[Substitutive judgments]
entail that a segment in a law is substituted so as to make the provision compliant with the Constitution.

[Interpretative judgments] These judgments address the interpretation adopted by the referring court or well-established in practice (“living law”). Interpretative judgments may be of two types:

[Judgments denying the suggested interpretation]
clarify the constitutionally compliant interpretation and deny the alleged defect.

[Judgments upholding the suggested interpretation]
declare that a specific interpretation of a provision is unconstitutional and prohibit drawing an unconstitutional rule from such interpretation.

[Judgments introducing a principle] These judgments declare that the challenged provision is unconstitutional and introduce a general principle helping legislators in drafting constitutional laws and judges in identifying a rule applicable to the specific case for the time being.

[Warnings to Parliament] In the event of questionable constitutionality or insufficient implementation of constitutional principles, the Court, while respecting institutional roles, invites Parliament to take action. In certain cases of confirmed violations of the Constitution, the Court may urge Parliament to pass the necessary legislation, staying proceedings and setting a deadline. If inaction persists, the Court will resolve the case and grant relief by issuing a judgment upholding the referral order or the application.

Life-changing judgments

Why is the Constitutional Court crucial in everybody's life?



Because the Constitutional Court safeguards the rights enshrined in the Constitution and ensures that its principles are complied with by preventing the application of laws conflicting with it. The Court addresses the widest range of issues to protect fundamental rights, often in areas closely tied to people's lives such as freedoms, labour, family relationships, health and education. Many of its rulings have profoundly impacted and changed citizens' lives. Listing them all here is impossible, but let us recall some of the most significant ones.

Freedom of expression: In its very first decision, [Judgment No 1/1956](#), the Constitutional Court declared that a law was unconstitutional because it violated Article 21 of the Constitution, which protects freedom of expression and stipulates that the press may not be subjected to any authorisation or censorship.

Women's access to State and judiciary leadership roles: With [Judgment No 33/1960](#), the Court allowed women to pursue careers previously barred to them. The Court declared that a 1919 law was unconstitutional to the extent that it excluded women from public offices involving the exercise of political rights. Following this ruling, in 1963 a specific law granted women access to all public offices, professions and jobs, including the judiciary.



Female adultery and equality between spouses: While Judgment No 64/1961 declared that punishing female adultery only was constitutional since it served to protect family unity, in [Judgment No 126/1968](#) the Court affirmed the equality of spouses and in [Judgment No 147/1969](#) it ruled that punishing wives – and not husbands – for the offence of adultery was discriminatory.



Contraceptives: [Judgment No 49/1971](#) recognised that disseminating information on contraceptives was constitutional.



Right to strike: In [Judgment No 290/1974](#), the Court affirmed that the right to strike may only be restricted when constitutionally relevant interests are to be protected. In the same ruling, the Court stated that the exercise of this right cannot justify dismissal.

Abortion: [Judgment No 27/1975](#) declared that the criminalisation of abortion was unconstitutional to the extent that it punished the person practicing an abortion on a consenting woman even when continuing the pregnancy could damage or pose a serious risk to her health.

Private radio broadcasting: In [Judgment No 202/1976](#), the Court established that private radio stations were constitutional as long as they broadcast locally.

Coercive persuasion: In [Judgment No 96/1981](#), the Court declared that the criminalisation of coercive persuasion was unconstitutional due to its possible arbitrary application: in the absence of clear criteria to establish its severity, any fact entailing a person's psychological dependence on another could be deemed as an offence.

Conscientious objection: [Judgment No 164/1985](#) declared that conscientious objection and non-armed military service or civil service in lieu of armed military service were constitutional.

Religious education in schools: In [Judgment No 203/1989](#), the Court acknowledged the right to choose whether or not to attend Catholic religious education in schools, without such a right leading to any form of discrimination.

Passive smoking: In [Judgment No 202/1991](#), the Court highlighted the need to grant an effective and comprehensive protection from the possible damage caused by second-hand smoke, given that health is a primary fundamental right guaranteed by the Constitution.

Fair representation of political parties and groups: Following [Judgment No 420/1994](#) on the applicability of internal pluralism to public radio and television broadcasters, [Judgment No 155/2002](#) sanctioned the obligation of broadcasters to ensure fair representation of participants in political communication broadcasts.

Family reunification: [Judgment No 28/1995](#) recognised the right of immigrant workers to family reunification when they can ensure that their family members live in “normal living conditions”.

Mother's surname: While in Judgment No 176/1988 the Court declared that giving the father's surname to children was constitutional, in [Judgment No 61/2006](#) it defined this practice as a “legacy of a patriarchal conception of the family” and of an “outdated marital power, no longer consistent with the principles of the legal system and the constitutional value of equality between men and women”. [Judgment No 131/2022](#) eventually declared the automatic assignment of the father's surname unconstitutional.

Assisted reproductive technology: [Judgment No 151/2009](#) affirmed that limiting the creation of embryos to three per implant, without considering the woman's subjective circumstances, was unreasonable. It also recognised the possibility for the doctor to assess each case individually. [Judgment No 162/2014](#) then established that the prohibition on heterologous fertilisation techniques was unconstitutional where absolute and irreversible causes of sterility or infertility have been diagnosed. In [Judgment No 161/2023](#), the Court confirmed that a man may not withdraw his consent to implantation of a fertilised ovum into a woman's uterus since consent is instrumental to safeguarding pre-eminent interests, such as the protection of the mother's physical and psychological health and the dignity of the embryo.

Leave for caregiving: In [Judgment No 203/2013](#), the Court recognised the right of a cohabiting relative or relative-in-law within the third degree to leave to care for disabled family members.

Adoption: In [Judgment No 278/2013](#), the Court acknowledged the adoptee's right to receive information on the identity of their biological mother who had chosen to give birth anonymously. [Judgment No 79/2022](#) affirmed that the protection of the child's



interest requires that all adopted children be guaranteed recognition of the kinship relationships arising from adoption.

Stalking: [Judgment No 172/2014](#) examined the offence of stalking, finding no grounds for considering it unconstitutional.

End-of-life decisions: In [Judgment No 242/2019](#), and again in [Judgment No 135/2024](#), the Court, in the prolonged absence of a law regulating the matter, set forth the requirements for access to assisted suicide: the patient must suffer from an irreversible pathology, consider their physical or psychological suffering intolerable, depend on life-support treatment and be able to make free and conscious decisions.

Life sentence without parole: As early as in 1993, while affirming the constitutionality of life sentence without parole, the Court observed that “preventing access to penitentiary benefits to those convicted of specific serious crimes who do not cooperate with justice entails a ‘significant reduction’ of the rehabilitation purpose of the sentence”. Since 2019, a number of rulings have begun to open up new perspectives on life sentence without parole. In [Judgment No 253/2019](#), the Court deactivated the automatic mechanism precluding those who choose to remain silent from being granted non-custodial measures. If rewarding those who cooperate with justice is constitutional, punishing those who do not cooperate is unconstitutional, since lack of cooperation would prevent consideration of any other circumstance relevant to the individual case.

Rights of totally disabled persons: In [Judgment No 152/2020](#), the Court declared that the provision setting forth that increases to the disability pension were granted to totally disabled civilians “aged sixty years and over” instead of “aged eighteen years and over” was unconstitutional.

Correspondence of inmates under special prison regime (Article 41-bis): In [Judgment No 18/2022](#), the Court declared that the provision making the correspondence between inmates under the so-called hard prison regime and their defence counsels subject to monitoring was unconstitutional, as it violated the right of defence enshrined in the Constitution.

Volunteer work: In [Judgment No 72/2022](#), the Court emphasised the pivotal role of volunteers within the 2017 reform of the third sector. It stated that voluntary work stems from the relational nature of human beings who, in the search for meaning to their existence, find fulfilment in opening themselves to the needs of the others.

Inmates' right to conjugal visits: In [Judgment No 10/2024](#), the Court ruled that it was unconstitutional to impose an absolute prohibition on unsupervised visits to inmates by spouses, civil partners or permanently cohabiting persons unless security reasons required so.

Palazzo della Consulta

The Constitutional Court is located in Palazzo della Consulta, Piazza del Quirinale, Rome. The palace was built between 1732 and 1737 by architect Ferdinando Fuga, commissioned by Pope Clement XII.

From its construction until 1870, the palace housed the Sacra Consulta, an ecclesiastical body with judicial functions in both civil and criminal matters. For a brief period, between 1848 and 1849, it served as the seat of the government of the so-called Roman Republic.

When Rome was annexed to the Kingdom of Italy in 1870, and the Quirinal Palace became the official residence of the King, Palazzo della Consulta was converted into the residence of the heir to the throne, Prince Umberto of Savoy (later King Umberto I) and his wife Margherita. Many of the palace's interior decorations date back to that period. Later the palace became the seat of the Ministry of Foreign Affairs. After the Ministry moved to Palazzo Chigi (before relocating to the "Farnesina"), it housed the Ministry of the Colonies, subsequently renamed Ministry of Italian Africa. Some colonial themed wall paintings in the palace recall that period.

After World War II, the Ministry of Italian Africa was dissolved, but its offices remained in the palace for several years. In 1955, the building became the seat of the Constitutional Court. Article 1 of Law No 265/1958 formally established Palazzo della Consulta as the Court's permanent seat.



Palazzo della Consulta



Grand staircase



Detail of the ceiling decorations in the Red Parlour



Detail of the decorations in the Pompeian Room

Ascending the grand staircase, designed by Fuga to emphasise the palace's magnificence, visitors reach the *piano nobile* on the second floor, which features luxurious rooms that have preserved much of their original wall paintings and decorations:



***Sala delle Udienze* – The Courtroom**

A ballroom during the Savoy period, this room was originally assigned to the Secretary of the Consulta.



***Sala pompeiana* – The Pompeian Room**

The room is now used for the Court's deliberations. Its walls feature elaborate Pompeian-style decorations attributed to the painter Bernardino Nocchi.



***Salotto rosso e Salotto verde* – The Red Parlour and the Green Parlour**

These rooms are named for their respective upholstery colours. The Red Parlour, where the President welcomes delegations and guests, boasts a ceiling fresco by Domenico Bruschi and two gilded 19th-century mirrors.



The President's Office

The ceiling features decorative themes celebrating the Savoy royal house, while the office houses valuable furnishings, artefacts and works of art.



The Antechamber to the President's Office

The ceiling's decorations celebrate the coronation of Margherita of Savoy. The walls are adorned with large 17th-century Flemish tapestries.



The Lawyers' Room

This is where counsels wait before entering a public hearing. The walls display photographs of all the Court's Presidents in chronological order.

The *piano nobile* also hosts the judges' offices and the relevant antechambers, adorned with paintings, frescoes and artworks that testify to the rich history of this palace.

The symmetrical stairs of the grand staircase, which opens toward the courtyard with large windows, extend in their final section to the Belvedere Hall on the fifth and top floor of the palace. The terrace offers a breathtaking view of the city.



The Courtroom



The Pompeian Room



The Green Parlour



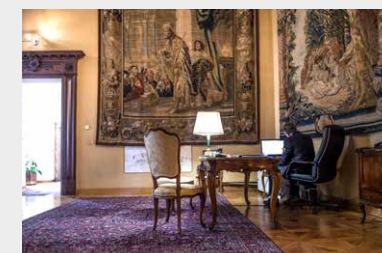
The Red Parlour



The President's Office



The Lawyers' Room



The Antechamber



The Court opens its doors to the general public

Find out more about the Constitutional Court and Palazzo della Consulta

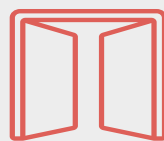
The Court opens its doors to schools and universities wishing to take a guided tour and anyone interested in attending a public hearing



Visit **Palazzo della Consulta**

Guided tours are organised for Italian and foreign schools and universities. Please use this e-mail address to book a tour:

visite.guidate@cortecostituzionale.it



Attend a **public hearing**

To access the courtroom or the room where hearings are broadcast live you must pass through security. Please use this e-mail address to book a seat:

ufficio.cerimoniale@cortecostituzionale.it

Get to know the Court and follow its activities online

You can follow the Court's judicial activities through its official website, where you can find the calendar of the hearings, the referral orders and applications by which cases are initiated, the Court's rulings and press releases. You can also learn about the current Court's composition and find the list of former Presidents, Vice-Presidents and judges. You can also watch the recordings of public hearings, read the research studies published by the Studies Department, scroll the pictures taken at various events, listen to podcasts and watch the video interviews about the Court.

Find out more about the Court



[Press releases]

hearing dates, rulings, events

[The Yearbook]

contains the main rulings and activities of the Court



[The Podcast Library]

promotes, through short audio recordings, constitutional culture and disseminates information on the Constitution and the Court

[The Court's interviews]

constitutional judges dialogue with personalities from the world of culture

[Three-minute judgments]

video clips to make the Court's decisions accessible and more understandable



[Video interviews]

to judges, former judges and Presidents of foreign Courts



[Touring across Italy]

constitutional judges visit Italian high schools

[Docufilm]

devoted to the judges' visits to Italian prisons

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Third cover: the Constitutional Court Library, on the ground floor of Palazzo della Consulta, owns prestigious book collections and preserves around 145,000 volumes

