

EUNITED IN DIVERSITY III

The Role of Constitutional Justice in the EU Common Legal Order

Panel 2: *The identity of the EU and EU constitutionalism in times of crisis.*
Constitutional courts and the Court of Justice

European and national identity; public powers in situations of urgency and necessity; and constitutional jurisprudence in times of crisis.

[abridged version]

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SUMMARY: 1. *Being united in diversity. Respect for national identities.* – 2. *Emergency powers: the COVID-19 emergency.* – 3. *Constitutional jurisprudence in times of crisis.* – 3.1. *Economic and financial crisis.* – 3.2. *Migration crisis* – 3.3. *Security crisis.* – 3.4. *Climate and energy crisis; the favour for renewable energy.*

1. Being united in diversity. Respect for national identities.

“United in diversity” is the central theme of this conference.

This is also the core topic for our discussion today in this second panel: “*Identity of the EU and EU constitutionalism in times of crisis: Constitutional Courts and the Court of Justice*”.

This identity of the European Union has long united us and has been a strong value that has given us a long period of peace both in the second half of the last century and in the current one.

Unity is a fundamental key for the European legal system to function properly.

The value of unity is fundamental to the proper functioning of the European legal system, which, although the EU is not yet a confederation of states, it is a shared common space governed by the principles of the rule of law and representative democracy.

In this ongoing process, European rules must be the same for all States, as well as their interpretation.

The unity of the European legal system is guaranteed by the Court of Justice, which has this specific mission and has the final say in the interpretation of European legislation.

However, in the current stage of the integration process, the diversity of national legal systems, even within this unified context, is itself recognised as a value of the Union: we are indeed united in diversity.

This creates a necessary and balanced equilibrium between the primacy of European law and national identity, typical of the current stage of European integration: the supremacy of European law has a narrow and exceptional limit in the supreme principles of national constitutional systems.

2. Emergency powers: the COVID-19 emergency.

Let's now talk about how the Constitutional Court handled emergency situations, starting with the COVID-19 pandemic. This health crisis was a big test for the government's power to make urgent rules through both primary and secondary legislation.

On January 30, 2020, the World Health Organization (WHO) declared the outbreak a "public health emergency of international concern," and on March 11, 2020, it was reclassified as a "pandemic"—a highly contagious disease spreading rapidly across continents.

Initially, Italy treated the outbreak as a civil protection emergency. The government used the Civil Protection Code, which allows the Council of Ministers to declare a state of emergency for a set time and to issue executive orders.

The progressive spread of the Covid-19 pandemic led the Government to resort to emergency powers to adopt more restrictive measures.

Numerous decree-laws were issued by the Government and then converted into law by Parliament,

This led to the application of uniform restrictive measures throughout the country, the so-called “lockdown”, with the closure of all non-essential services and even more radical restrictions on movement within the country.

Special rules were made for businesses and social activities, requiring them to follow specific safety guidelines to prevent the spread of the virus.

Travel between different regions of the country was banned, and a "zone" system was created (white, yellow, orange, and red) based on how widespread the infection was in each area.

Special measures were also implemented to ensure the safety of schools, universities, social activities, and transportation was safe.

Eventually, vaccination was made mandatory for health workers, then for school staff, military, police, and finally, for all residents of Italy aged 50 and over.

The state of emergency lasted until March 31, 2022.

The government's use of these emergency powers raised several legal questions, especially about: a) The government's right to create a single set of rules for the whole country, preventing regions from making their own laws. b) The rules' impact on personal freedom (also known as *habeas corpus*). c) The legitimacy of mandatory vaccination even though there was a small risk of side effects.

The Constitutional Court delivered its rulings on all these issues.

- On the first point, the Court said in 2021 that the national government had the right to make a single set of rules to fight the pandemic because it fell under the government's exclusive power over public health (judgement no. 37 del 2021).

- On the second point, the Court decided in 2022 that forcing people to quarantine did not take away their personal freedom in a serious way. Instead, it was a reasonable health measure that limited movement, and this was legally acceptable (judgement no. 127 del 2022).

- On the third point, the Court said in 2023 that mandatory vaccinations were constitutional. It explained that while there is a small risk of side effects, this doesn't make the law illegal. However, if a person is harmed by a required vaccine, they have the right to get money for their injuries (judgement no. 14 del 2023).

3. Constitutional case law in times of crisis.

There have been numerous rulings by the Constitutional Court concerning laws passed to deal with the different crises – economic, financial, migration and security problems – that have affected Italy and the European Union in recent years.

3.1. Economic and financial crisis

The Court reviewed various laws meant to cut public spending during adverse economic times.

The Court generally said these laws were legal when they were a reasonable and temporary way to deal with an emergency situation (judgments no. 310 of 2013, no. 154 and no. 219 of 2014).

However, the Court said some laws were illegal when they started as emergency measures but became permanent. This happened with a tax on energy companies (the so-called "Robin tax") (judgment no. 10 of 2015), a freeze on public sector salaries (no. 178 of 2015), and limits on how much public employees could earn (no. 135 of 2025).

In a recent case this year (order no. 21 of 2025), the Italian Court referred a preliminary question to the Court of Justice of the European Union on special finance measures. Our court asked if a special tax on the extra profits of energy companies complied with the EU law, especially because it applied to more companies than the original EU rule suggested.

3.2. Migration crisis

The Court had also to review laws aimed at controlling illegal immigration.

This year, there were two important decisions:

- The Court criticized the absence of a clear and detailed law about how to hold people in repatriation centers (judgment n. 96 of 2025). The Constitution requires a specific law to control how people's freedom can be limited. The Court pointed out that, by leaving almost all regulation of the matter to regulatory provisions and discretionary administrative measures, the legislator had failed to fulfil its positive obligation to

regulate by law the “means” of restricting personal freedom, thereby bypassing the constitutional protection that the "absolute reserve of law" is meant to provide.

- In the case of the ship *Ocean Viking*, the Court upheld the constitutionality of the provision applying administrative sanctions to the captain of the ship or the shipowner who neither complies with the instructions, nor provides the information requested by the competent national authority for search and rescue at sea (judgement no. 101 of 2025).

3.3. The security crisis

With regard to constitutional case law on measures to protect security and public order, a recent ruling is worth noting (judgement no. 47 of 2024).

The Court ruled that the questions of constitutional legitimacy relating to the so-called urban DASPO – an administrative access ban that prohibits a person from accessing certain public places or a specific area of the city, such as stations, schools or tourist areas, for a certain period of time – highlighting that in order to legally adopt the measure, it is not sufficient that the presence of the individual may appear inappropriate to the decorum of the area in question, but it is necessary that the conduct be associated with a concrete danger of committing crimes: the measure must be intended to remove dangerous individuals. The Court specified that the law expressly requires that the danger to safety must emerge from the conduct of the individual (and not, therefore, solely from their personality, as inferred, for example, from their criminal record). In order for the access ban to be triggered, the individual's behaviour must be a concrete indication of the danger that their presence may pose to others.

3.4. Climate and energy crisis; the promotion of renewable energy

With regard to the climate crisis, a recent Constitutional Law amended Article 9 of the Italian Constitution, adding the protection of the environment, biodiversity and ecosystems “also in the interest of future generations”.

The same law supplemented Article 41 of the Constitution, stipulating that economic activity must not cause damage – not only to health, safety, freedom and human

dignity – but also to “the environment”, and that economic activity must be directed towards “environmental” as well as social goals.

The Court has made many decisions that support renewable energy. For example, in 2025, the Court said that a regional law that stopped the building of new renewable energy plants for 18 months was illegal. The Court explained that this law went against national laws and European rules for promoting renewable energy (judgment no. 28 of 2025).