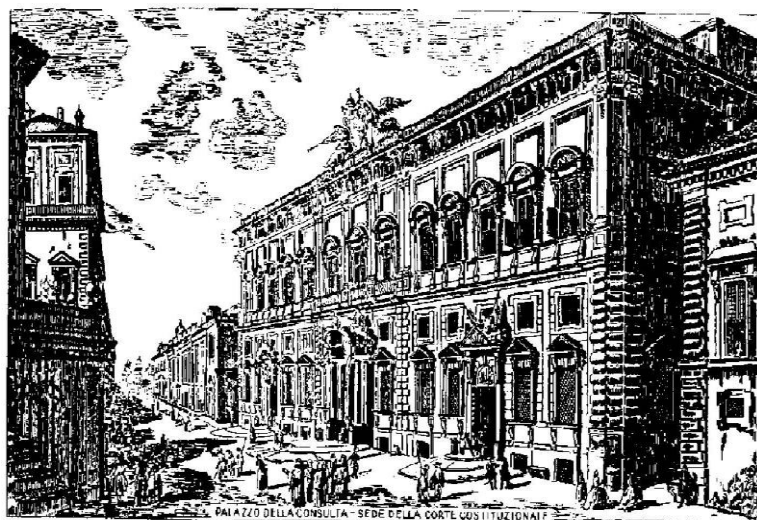


CORTE COSTITUZIONALE



EXECUTIVE SUMMARY OF THE REPORT ON THE WORK OF THE CONSTITUTIONAL COURT IN 2019

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Palazzo della Consulta

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A Court “in relation”

In the context of the Covid-19 emergency, when all activities have slowed down, reporting on the work performed by the Court in 2019 is somewhat paradoxical. The year 2019 was one characterized by tremendous dynamism, both in terms of the positions the Court took in its decisions, and of its non-judicial activity.

“Openness” was the keyword of the year. The Court opened its doors. It dedicated a good deal of energy toward developing forms of communication capable of reaching not only legal practitioners and specialists, but the general public as well, in Italy and abroad. It incremented its international activity. And what is more: the Court not only “opened its doors,” it also went out, to reach out to people throughout the country, introducing itself to everyone and bringing with it the values of the Constitution. It visited a number of high schools. It paid visits of historic significance to prisons.

At the beginning of 2020, the Court made some important changes to its rules of procedure, to foster broader participation in the constitutional process. In particular, the Court instituted the use of *amicus curiae* briefs and the possibility to hear experts in other fields.

According to the numbers, requests for constitutional adjudication increased; rulings of unconstitutionality also rose; and, more generally, the

Court entered more often into the merits of the questions raised. The average duration of a constitutional case fell to ten months.

As for the contents of constitutional case law, three clear lines emerge: 1) the need to reinforce the principle of loyal cooperation, in dialogue with the Legislator; 2) the growth of interjurisdictional collaboration to protect fundamental rights; and 3) more stringent review in the area of criminal law and punishment.

Loyal cooperation as a constitutional principle

The full implementation of constitutional principles can only be collective in nature, and requires the active, loyal cooperation of all Institutions of the Italian Republic. The fruitful and active cooperative relationships that exist between the Constitutional Court and the other Italian courts are, by now, a fixture of Italian constitutional adjudication, and one that is fairly unique from a comparative law perspective. Equally important is the cooperation between the central State and the Regions, and the collaborative relationship between the Constitutional Court and the Legislator.

Separation of powers and cooperation among the powers are principles that do not contradict each other; on the contrary, they are the two co-essential pillars that support the constitutional architecture of the Republic. The fact that state powers are independent one from the other does not contradict their necessary interdependence, particularly in highly complex societies, as are ours today.

In line with the experience of other constitutional courts, and notably the German one, in 2019 the Italian Constitutional Court developed new methods of decision-making. This, in order to encourage constructive synergies between the Constitutional Court and the Legislator and to

reinforce, at one and the same time, the autonomy of the political sphere and its own role as guardian of the Constitution. In particular, this occurred in the cases leading to Judgment No. 17, concerning the parliamentary procedure for the annual budget law, and Judgment No. 242, on assisted suicide.

Cooperation among jurisdictions for the protection of fundamental rights

The year 2019 marked the consolidation of the Court's case law dealing with the relationship between domestic courts, the Constitutional Court, and the European Courts, with a view toward attaining closer cooperation among various jurisdictions in the area of fundamental rights protection (Judgments No. 20, 63 and 117). The Italian Constitutional Court considers that its contribution to the construction of common constitutional traditions in Europe is all the more necessary, as the EU legal order increasingly acquires a constitutional character.

The Court's cooperation with the European Court of Human Rights is equally intense, especially in the field of criminal law, albeit falling under a different institutional framework.

Criminal law and the execution of criminal sentences

In 2019, the Court devoted special attention to criminal justice, continuing along a trajectory that has characterized the past few years.

Now, we turn to some fundamental principles that have permitted the Court to carry out stricter constitutional evaluations. One is the *principle of proportionality* of punishment, implied by the principle of reasonableness (Article 3 of the Constitution) and the rehabilitative purpose of punishment (Article 27 of the Constitution), and stated explicitly in the case law of the European Courts. The Court applied this principle, with opposite outcomes, in Judgment No. 40, a drug trafficking case, and

Judgment No. 284, on insult to public officers. Also, the principle that criminal punishments be *flexible and based on individual circumstances* – in order to meet the rehabilitative purposes of punishment as required under Article 27 of the Constitution – led the Court to several high-impact rulings in 2019. The most important in this respect are Judgments No. 253 and 263, on special prison regimes for inmates connected to criminal organizations.

The Court's case law in these areas removes the automatic prohibitions on access to permits and other benefits, and gives supervisory courts (*magistrati di sorveglianza*) the power to decide on a case-by-case basis, calibrating each decision to the offender's progress and taking into account the full range of concrete circumstances, in order to favour the rehabilitation of detainees, at the same time without disregarding the demands of public safety.

Beyond 2019

The new year opened with a state of emergency and the urgent need to prioritize the protection of people's lives, health, and physical integrity, even at the cost of a necessary and temporary sacrifice of other rights.

The Italian Constitution does not contain clauses on the “state of emergency” that permit suspending fundamental rights, nor provisions that allow for changes to power structures in times of crisis, as for example Article 48 of the Weimar Constitution, Article 116 of the Spanish Constitution or Article 16 of the French Constitution.

This means that even today, it is the Constitution – with its balanced complex of principles, powers, limits and guarantees, rights, duties, and responsibilities – that offers Institutions and citizens a much-needed compass to navigate “the high seas” of the current emergency and post-emergency period that awaits us.

In times like these, if there is one constitutional principle that deserves particular emphasis and attention, it is precisely that of “loyal cooperation,” which is the institutional side of solidarity. The Constitutional Court, for its part, will not tire of returning to this principle in its case law, so that the work and the energy of the entire national community will coherently converge and move toward a single, shared goal.