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Of bridges and walls: the "Italian Style" of constitutional adjudication

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1. A challenging and successful story

A fortunate coincidence brings us to Bled to celebrate the 25th anniversary of the Slovenian Constitutional Court, while the Constitutional Court of Italy – which I am honoured to represent – has just turned 60. Indeed, its first decision was issued in April 1956.

The Italian Court is one of the earliest examples of the "European model of constitutional review of legislation" to develop in the aftermath of World War II together with the German *Bundesverfassungsgericht*. Both of these courts followed the pioneer of all European constitutional courts – the Austrian one – as revisited under the influence of the United States' experience[1].

Anniversaries are invitations to learn from history. The question thus arises: what we can learn – if anything – from the Italian history of constitutional adjudication? In other words, what does the balance of these 60 years of history look like?

I would say that – all things considered – the story of the Italian Court is one of success, although it has met its fair share of challenges.

When the Italian Court was established, the legal and political environment was not at all favourable to the judicial review of legislation. For different reasons, the major political parties in Parliament were hostile; the judiciary was suspicious; and the majority of legal scholars were wary. All things considered, the new institution was set up in an inhospitable environment.

Nothing in the legal and political culture was ready to welcome the new special constitutional body, and yet the Italian legal system very much needed it. As most European countries recovering from the totalitarian era, Italy was under pressure to introduce a judicial review of legislation. During the twenty years of the Fascist regime, a huge number of shameful and atrocious crimes were committed *through* the law, rather than *despite* the law. Generally, the rule of law was formally respected, at least from the procedural point of view;

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[1] On this point, M. Cappelletti, *Il controllo giudiziario di costituzionalità delle leggi nel diritto comparato* 1–25 (1968); M. Cappelletti & W. Cohen, *Comparative Constitutional Law: Cases and Materials* (1979)

however, from a substantive point of view, the legal provisions issued by the national Parliaments in those years were at odds with the most basic sense of justice. Suffice it to recall one example: the racial legislation issued by the Italian Parliament in the late 1930s, which openly and severely discriminated against and persecuted Jews and other groups on the ground of race. Having this background in mind, the national constitutions approved after the end of the war, starting with the German and the Italian ones, unsurprisingly introduced the judicial review of legislation, together with special procedures for constitutional amendments; furthermore, they were enriched with a generous catalogue of fundamental rights, for the protection of which a new special judge was established. For similar reasons, other European countries followed the same route once they were released from the bondage of dictatorship: this was the case with Spain and Portugal in the 1970s and 1980s, and, some years later, with all Central and Eastern European countries after the fall of Communism[2].

In Europe, all post-totalitarian constitutions gave space to constitutional adjudication and established special tribunals for the purpose. Constitutional courts were, and still are, regarded in Europe as watchdogs against all forms of "legal injustice", as Gustav Radbruch stated in a famous book of 1946. And rightly so.

Nonetheless, at the time, the Italian legal and political culture was still imbued with the key concepts and structures of nineteenth-century modern constitutionalism, which was based on the centrality of parliaments and of the principles of *légalité*, the *volonté générale,* the rule of law and the separation of powers. To reconstruct a democratic order after the shameful experience of the Fascist period, the founders of the new Republic naturally relied upon the existing traditional institutional architecture: however, the presence of a powerful judge vested with the competence of reviewing parliamentary legislation was somewhat inconsistent with that framework.

The Italian constitutional mindset of the post-World War II period was a strange mix of British and French nineteenth-century legal tradition. On the one hand, according to the British legal tradition, the principle of the "sovereignty of Parliament" was undisputable: the legislature was the sole institution vested not only with law-making power but also with a "permanent constitution-making" power. On the other, unlike the British, but very close to the French tradition, the Italian judiciary was meant to be *la bouche de la loi*, and was composed of judges "subject to the law" (Article 101 of the Italian Constitution).

[2] An excellent overview of the diffusion of constitutional adjudication in Europe and around the world is provided by T. Groppi, *Introduzione: alla ricerca di un modello europeo di giustizia costituzionale*, in *La giustizia costituzionale in Europa* 1, 5 et seq. (Tania Groppi & Marco Olivetti eds., 2003).

The judiciary consisted of bureaucratic staff, and the judicial function was conceived as rather mechanical.

Consider that one of the most popular and influential books was *Le gouvernement des juges* ("The government of judges"), written by E. Lambert. The book was published in 1921 and based on an account of the power held by the judiciary in the United States during the Lochner Era. The description of such an activist Supreme Court became a veritable spectre for the European statesmen of the time.

In those years, the fundamental pillars of modern continental European constitutionalism were averse to the idea of judicial review of legislation. In Europe, distrust towards the judiciary, together with a great emphasis on "the law" and "parliaments", was part and parcel of the major legal myths of the time[3].

The clearest sign of this distrust towards the new Constitutional Court was the delayed implementation of the institution. Indeed, it was envisaged in the Constitution of 1948, but implemented only in 1956 – eight years later.

Moreover, even after its implementation, the Supreme Court of Cassation, adopted a conservative approach in its case law[4] that was likely to tame the role of the new Constitutional Court. I refer, in particular, to the "programmatic vs. preceptive norms" doctrine.

The idea was that the Constitution consisted largely in principles and not in preceptive rules, and those principles – defined as *programmatic norms* – were not suitable to be applied by the courts, but rather required prior implementation by Parliament. As long as such parliamentary legislation was not adopted, the Constitution remained essentially ineffective. This doctrine would have placed the implementation of the Constitution by and large in the hands of the political bodies, removing it from those of the judiciary. Certainly, had this doctrine taken root, constitutional review would have been much less effective.

However, despite the early distrust, the Italian Constitutional Court soon became one of the most influential authorities in the Italian institutional architecture, quickly gaining the utmost respect from all other branches of government.

How did the new Constitutional Court respond to such an unfavourable context? How did the Constitutional Court interact with its opponents? What "strategy" did the Court adopt to overcome the pervasive resistance against it at the dawn of the Republic?

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[3] P. Grossi, *Mitologie giuridiche della modernità*, Giuffrè, Milan, 2007.

[4] E. Lamarque, *Corte costituzionale e giudici nell'Italia repubblicana,* Laterza, Bari, 2012.

Since its very origins, the Italian Court has adopted a twofold attitude. On the one hand, it has shown solid self-awareness and high consideration for its own mission; on the other, it has maintained a very open and relational approach to other actors, both political and judicial. Later, the Court began to interact with its European counterparts following a similar approach. In the search for its own role in the national and European institutional order, the Italian court has proved to be a resolute guardian of the national constitutional identity and yet open to and cooperative with other counterparts.

In the following pages, I would like to insist on this second feature: recalling John Merryman, it can be said that the "Italian style" of constitutional adjudication lies in its "relational character"[5]. This "relational style" may become of some interest for all European courts in the current context, one in which they are called upon to operate in a space of constitutional interdependence and interaction.

2. Relational capabilities as a relevant indicator for comparative studies

It is somewhat unconventional to describe an institution according to its approach to other actors and its counterparts. Generally, institutions are qualified by their composition, their organization, the procedures they follow, their competences and the effects of their actions. Their relational approach to other bodies tends to escape the interest of traditional scholarship.

As for constitutional courts, comparative legal scholars propose a classification[6] that contrasts, for example, centralized and diffuse systems of judicial review of legislation, referring to the judicial body that is given the power of judicial review; abstract or concrete procedures, as regards access to the court; *ad hoc* or *erga omnes* effects, in relation to the effects of their decisions; or fundamental rights adjudicators or institutional dispute resolvers, in terms of the court's "core business".

In accordance with these benchmarks, they have elaborated a "continental European model of constitutional adjudication"[7], arising out of the convergence between the Kelsenian model and the concrete US system. The Italian court fits into this model perfectly.

As any other constitutional court of the European family, the Italian Court is a *special judge*: it performs its function following judicial procedures, but the

[5] This idea is developed in V. Barsotti, P.G. Carozza, M. Cartabia and A. Simoncini, *Italian Constitutional Justice in Global Context*, OUP, 2015.

[6] M. De Visser, *Constitutional Review in Europe. A Comparative Analysis*, Bloomsbury Publishing, 2013.

[7] V. Ferreres Comella, *Constitutional Courts and Democratic Values; A European Perspective*, 2009.

procedure to appoint its members is different from that adopted for other judges, and involves other political bodies. Moreover, it is also a *specialized body*, which deals only with constitutional adjudication. Unlike supreme courts, European constitutional courts are not part of the ordinary judicial branch and their jurisdiction is one of pure constitutional adjudication. Finally, constitutional courts are *centralized bodies*: judicial review of legislation falls within the exclusive province of the Constitutional Court. Had a US-style judicial review of legislation been introduced in Europe, where the principle of *stare decisis* does not endow judgments with the same binding force as it does in common law countries, then values such as legal certainty, the uniform application of the law, and even the equality of citizens would be threatened. For these reasons, ordinary judges were prevented from scrutinizing legislation – especially, to preserve the uniform application of the law – whenever a legislative provision conflicted with the Constitution.

Although the traditional approach to comparative constitutional adjudication remains meaningful and undisputed, new indicators are becoming relevant and should be taken into consideration, to fully understand each individual constitutional experience.

The current European context has undergone an important transformation, and new features have become relevant in assessing the true identity of national constitutional courts. Today, European constitutional adjudication occurs in complex and composite legal systems populated by multiple systems of protection of fundamental rights, in which various courts – with overlapping jurisdictions – compete with each other; and in which an increasing number of charters, constitutions and conventions have entered into force, each of which envisages new bodies for the protection of rights, such that quasi-judicial bodies and independent agencies operate alongside traditional courts and tribunals. The European constitutional landscape is densely populated indeed.

Many cases and controversies are brought before different courts, and many of them require the concurrent implementation of national and transnational legal standards.

If we consider the complexity of this context, a new taxonomy of constitutional courts may be elaborated on the basis of their general attitude towards other actors. Today, the courts' relational qualities matter. Similar courts may behave in a solipsistic or a cooperative manner, or may take a confrontational or a dialogical stance.

In this respect, if there is a single phrase that can describe the Italian Constitutional Court, this is its "relational approach to constitutional adjudication". Italian constitutional law is intensely relational – it speaks of

cooperation, connection, interdependence, interactions, links, networks, and the like.

Indeed, no single idea is capable of capturing the essence of an institution as rich in history, complexity, and even contradiction as the Italian Constitutional Court. However, many of the interesting aspects of the Court and its case law that stand out when viewed in comparison with other experiences may be summed up with the term "relationality". At its best, the Court operates with notable attentiveness to the relations between persons, institutions, powers, associations and nations.

This is not to imply that the Italian Court is always consistent and successful in maintaining this distinctive identity, nor that its relational approach is always an unambiguous asset. As has been remarked[8], some aspects of the process and style of the Court's opinions are not an outstanding example of openness and transparency.

Nor it can be suggested that the Italian Court is absolutely singular in this effort at relationality: any successful constitutional tribunal must attend, to some degree, to the political realities of its position within the constitutional order, and the Italian court undoubtedly still has much to learn from other systems in this regard.

Nevertheless, when reviewing the history of the institution, it is helpful to adopt a hermeneutic of positivity – to tease out, from a complex jumble of data, that which is of particular value, and to offer it as a narrative that calls forth the best version of the Court. Viewed in this perspective, the relational qualities of the Italian Court are valuable assets, worth articulating and sharing.

3. Institutional and interpretative relationality

What are the origins of the relational mindset of the Italian Constitutional Court?

To a significant degree, this pervasive feature of the Italian Constitutional Court emerges from the very particular intra-institutional relation-building capacity within the Court itself.

Indeed, relationality is imprinted into the very structure of the Court. Let us consider the composition and fabric of the Court. Of its 15 judges, five are elected by the Parliament, five are appointed by the President of the Republic and five are elected by the other branches of the judiciary: both ordinary and administrative bodies. Therefore, all the other branches of the State have a say in the appointment of the Constitutional Court's 15 members. Although the

[8] T. Groppi, *Giustizia costituzionale "Italian Style"? Sì, grazie (ma con qualche correttivo)*, in *Diritto pubblico comparato ed europeo*, n. 2 of 2016.

members of the Court are fully independent and do not answer to their "constituencies", they proceed from different bodies. This fact matters.

Moreover, although all judges are jurists, some of them come from the academy, as legal scholars; others from the bar; and yet others from the judiciary.

The constitutional judges are diverse due to their different sources of appointment – some selected by the highest courts of the ordinary judiciary, others by Parliament, and others by the President – and due to their different backgrounds, with career judges working alongside university professors and practicing lawyers. They are united by a common legal education, but differ in terms of their previous professional trajectories and personal cultural formation. This pluralism has always been a great asset of the Court.

This pluralistic composition matters if it is considered that the Court's rules of procedure are dominated by a paramount principle: that of *collegiality*. Justices are prompted towards dialogue and agreement because of the principle of collegiality that governs the Court's work. The Court's internal organization and working procedures are designed to encourage the judges to work intensely with one another; they are obliged to dialogue with one another. This fosters reciprocal cross-fertilization among the Court's members and their respective ideas, political and social backgrounds, cultures and mentalities; it also serves as the principal growth factor in the Court's capacity for building relations.

Every single step in the decision-making process requires the participation of all 15 members. Some features of the decisional process are worth noting, to fully appreciate the strict collegiality that governs the Italian Constitutional Court.

For example, unlike many other constitutional courts, the Italian Court never splits into chambers: every single case is discussed and decided by a plenary panel, even cases that may be minor or repetitive. No filter is applied to scrutinize the admissibility of an application, and every controversy enjoys the same procedural dignity.

Another expression of the principle of strict collegiality is that the individual voices of the judges cannot be recognized. The Court always speaks with one voice, and separate opinions are not allowed. Although the issue has been discussed from time to time, to date the Court has rejected all proposals aiming to introduce the plurality of opinions. Every decision is the result of the deliberation of all 15 members of the Court; even those who do not agree have a say and can contribute to the drafting of the Court's judgment. Without the possibility to publish a dissenting opinion, even those judges who were not part of the majority of the Court participate in writing the official judgment. The

absence of separate opinions, and the requirement that the draft judgments be read together in chambers and collectively approved, fosters compromise and encourages the Justices to broadly incorporate the particular views of their individual colleagues into the final text. These methods favour efforts to reconcile and unify divergent views into a composite that cannot be reduced to the perspective of a single judge, politician or scholar.

A third characteristic of the Italian Court is that the President of the Court does not play a predominant role over the entire body; rather, his position is commonly defined as one of *primus inter pares* – first among peers. Indeed, an unwritten rule has been followed to date, with only a few exceptions: the President is chosen by seniority. Consequently, almost all of the constitutional judges have had the chance to chair the Court, albeit for a very short term (even of a few weeks or a few months). Even the most significant powers of the President of the Court – that of nominating the *juge rapporteur* for each controversy and that of casting a double vote in case of parity – are subdued, in a sense, by the brevity of his mandate. The opinion expressed by the President of the Court does not control the opinion of the overall court at all: in this respect, his voice is no more relevant than that of the other members.

3. Institutional and interpretative relationality

The Court's internal structural and procedural pluralism, and the principle of strict collegiality governing its operation, are reflected in its external activities. First, at least two dimensions of its relational approach to constitutional adjudication may be singled out: the institutional dimension and the interpretative dimension.

3.1. Institutional relationality

In the performance of its duties, the Italian Court – as any other constitutional court – must cooperate with other branches of government: the Parliament, the Government, the President of the Republic, the Regions, and other components of the Judiciary, at national and European levels. All the functions of the Italian Constitutional Court imply interaction with other bodies. These interactions may be adversarial or synergic. The distinctive trait of the Italian experience, however, is the latter. Occasional conflicts do not contradict the general trend, consisting of dialogue, collaboration, cooperation, accommodation, compromise, and the like.

As a paradigmatic example, the relations of the Constitutional Court with other branches of the national and European judiciary are worth examining in further detail. Such branches are, on the one hand, in

"competition" with the Constitutional Court; on the other, however, they are necessary partners.

3.1.1. The Constitutional Court and ordinary courts

Cooperative relations with other national judicial bodies have been crucial for the proper operation of constitutional adjudication in Italy. The incidental method of review, which remains the main pathway of access to the Constitutional Court, entrusts ordinary judges with the role of gatekeepers of the Constitutional Court, as defined by Piero Calamandrei[9], as it is precisely ordinary judges who decide which cases will be admitted for constitutional review and which will not. This mechanism is based on the cooperation of ordinary judges. If ordinary courts do not activate the procedure, the Constitutional Court cannot play its part.

The incidental procedure is structured as follows[10]: when a judge, in the course of a judicial proceeding concerning any kind of case – criminal, property, tort, administrative – is called upon to apply a legal provision the constitutionality of which is questionable or suspect, he is required to suspend the procedure and refer the case to the Constitutional Court, so that the legislation may be reviewed. Once the Court has issued a binding decision on the point, the ordinary judge can resume the case and decide it in accordance with the Constitutional Court's judgment.

Ordinary judges cannot review legislation themselves; however, they are involved in the constitutional review of legislation because they are the gatekeepers to the Constitutional Court. It is up to them to send a question of constitutionality to the Court. Loyal and active cooperation is thus necessary between ordinary judges and the Constitutional Court in its position as special judge for the judicial review of legislation.

As seen above, when discussing the early history of the Constitutional Court, smooth relations with the ordinary judiciary were not to be taken for granted: the case of the "programmatic vs. preceptive norms" doctrine is self-explanatory.

An important contribution to fostering respectful and synergic relations with national ordinary courts was given by the *"living law doctrine*" and by the method of *interpretation "in conformity with the Constitution"*.

According to the former, the Constitutional Court tends to review the challenged legislation as it is interpreted by ordinary courts, without imposing

[9] P. Calamandrei, *Il procedimento per la dichiarazione di illegittimità costituzionale*, in *Opere giuridiche*, Vol. III, Naples, Morano, 1965, p. 372.
[10] See Article 23 of Law n. 87 of 1953.

its own interpretation. When the case law of ordinary courts, and especially that of the Supreme Court of Cassation, uniformly adopts a given interpretation of a legal provision, the Constitutional Court accepts that interpretation as "living law"(*diritto vivente*). Consequently, the Constitutional Court decides the issue upon the assumption that the interpretation at issue is the correct one. Thus, when the Court finds the provision unconstitutional, it declares it null and void on its face, rather than adjusting the problem at the interpretative level.

On the other hand, since the mid-1990s, the Constitutional Court has invited ordinary courts to read statutory texts in such a way that they concord with the principles enshrined in the Constitution. Ordinary judges, following the case law of the Constitutional Court, have adopted the so-called *interpretazione conforme a Costituzione* ("interpretation in accordance with the Constitution"): that is, they themselves construct meanings of statutes that are compatible with the Constitution and that do not violate it. Judges may sometimes even force the literal meaning of the text, to "save" the statute and therefore avoid referring the case to the Constitutional Court.

Through these doctrines, the Constitutional Court has displayed a great deal of trust in the ordinary judiciary, preserving the primary competence of the latter as the interpreter of legislation. As for the interpretative powers, these doctrines distinguish the domain of the ordinary judiciary – vested with the power to interpret parliamentary legislation – from the domain of the Constitutional Court – which is vested with the power of interpreting the Constitution and reviewing legislation according to it.

This distinction demonstrates respect for ordinary judges, and contributed a great deal to build good relations with them. Most of the Constitutional Court's decisions presuppose a healthy cooperation with the ordinary judiciary, including both lower courts and the highest courts (the Supreme Court of Cassation and the State Council). Without this inter-judicial relationality, the doors of the Constitutional Court would have remained closed, and the pronouncements of the Constitutional Court ineffective.

3.1.2. The Constitutional Court and European Courts

A similarly active and loyal cooperation is required for smooth relations with what shall hereinafter be referred to as the European Courts: the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR).

As a matter of principle, in a centralized system as is the Italian one, the Constitutional Court is endowed with the exclusive and final power to review legislation. As a matter of fact, however, the Italian Constitutional Court is

networked with other judicial bodies: the ordinary judiciary – as seen above – and the two European Courts, the role of which is growing in significance.

Certainly, the missions of the national constitutional courts and those of the European Courts do not overlap, and neither of them has jurisdiction over constitutional judicial review of national legislation, which falls within the exclusive domain of the national constitutional courts. Nevertheless, the three legal orders – EU, ECHR, and national legal orders – have developed into a "composite" constitutional system and a number of interactions occur among their respective judicial bodies, especially when they act as human rights adjudicators. Each of them cannot do without the others.

Within the European context, the Italian Constitutional Court has dramatically changed its attitude over time, moving from a strict "constitutional patriotism" towards an incremental openness to the European environment. While, at the beginning of the European adventure, the Italian Court considered its supranational and foreign counterparts as aliens, a period of informal reciprocal influence then followed, during which the Italian Constitutional Court – while avoiding all formal reference to the case law of the two European Courts – was actually well aware of the case law developed in Luxembourg and in Strasbourg. Today, the European case law is an ordinary constituent of the legal authorities on the basis of which constitutional adjudication is conducted and justified.

The current framework of the relationship with the CJEU was established in 1984 [11] , although direct dialogue by means of preliminary ruling was inaugurated only in 2008 and confirmed in 2013[12]; as for the relationship with the ECtHR, the turning point is represented by the "twin" judgments issued in 2007[13]. However, long before opening up to direct dialogue with the European Courts, the Italian Constitutional Court maintained an implicit and silent, although influential, attention to their decisions. A similarly implicit and silent, but influential, consideration is paid by the Constitutional Court to foreign law and comparative sources: whereas, in recent years, the Italian Constitutional Court has occasionally openly referred to the case law of other constitutional courts, the influence of the latter is actually much deeper than may be apparent on the surface.

In conclusion, Italian constitutional justice has incrementally entered into an active relationship with European, international, and comparative law, and especially with the judge-made law of the two European supranational Courts,

[11] Constitutional Court, Judgment n. 170 of 1984

[12] Constitutional Court, Judgment n. 103 of 2008 and n. 207 of 2013. On this point, see the rich debate published by the Special Issue of the *German Law Journal*, n. 6 of 2015.

[13] Constitutional Court, Judgments nn. 348 and 349 of 2007

in particular in human rights cases. While, in some areas, the impact of these external sources has induced the Constitutional Court to revise its previous case law and to develop new principles and standards, in other cases the Italian Constitutional Court intentionally takes a different position from European or foreign courts, especially when the core values of constitutional identity are at stake. In short, now the Court does engage in open and direct relations with external judicial bodies. However, those relations are not oriented towards an unreasoned importation of judicial solutions from the outside; rather, it is a two-way relation between peers, a dialogue that triggers constructive convergence but also leaves room for difference and distinctiveness[14].

As a result, from the institutional point of view, the Italian Court is now a protagonist of a composite system of judicial review, which envisages the Constitutional Court at its centre, and includes other actors too – ordinary judges and European courts. The Italian Court is well aware of this fact and does its utmost to maintain good "neighbourly" relations with all of them.

3.2. Interpretative relationality

The relational institutional context within which the Constitutional Court operates resonates in its doctrines. The ability of the Italian Constitutional Court to establish sound and vital two-way relations with other institutional actors – both political and judicial, national and supranational – is in significant ways mirrored in the methods of constitutional interpretation that distinguish the Italian Constitutional Court, which could be defined as methods of "interpretative relationality".

3.2.1. An integrated legal reasoning

In its legal reasoning, the Constitutional Court follows a comprehensive methodology, one that does not shy away from complexity. Indeed, a simultaneous multiplicity of approaches to constitutional interpretation can often be found in the decisions of the Italian Constitutional Court. Moreover, and even more significantly, the Court interprets the Constitution as a whole, as a system, avoiding the fragmented interpretation of a single provision removed from its contextual relationship with the other principles, rules and rights enshrined in the Constitution. The Court's methods of interpretation and of legal reasoning are broadly inclusive, go beyond the single textual provision at stake, and draw inspiration from the spirit of the Constitution.

[14] Constitutional Court, Judgments n. 264 of 2012 and n. 49 of 2015.

From the methodological point of view, the Italian Court uses a holistic, syncretic, inclusive and integrated form of legal reasoning, one based on a composite combination of different approaches to constitutional interpretation.

Textual, teleological, historical, and systemic constructions of the Constitution are often jointly used in the Court's reasoning. To be clearer:

- the text does matter, but the Court is not trapped in a narrow form of textualism; it does not stick strictly to the written word of the Constitution or to literal interpretation of its provisions;
- the original intent may also be important, but has never been used as a conclusive argument;
- foreign law is taken into account, but does not control the Court's decision;
- changes in public opinion and in the legal and social context are taken into account – as "the living constitution" – although the Court does not hand over its interpretative power to popular sentiment;
- the Court does not disdain teleological interpretation, but also attaches great importance to its own precedents and to the coherence of its case law.

In other words: the Constitution is considered as a whole, as an integrated system, avoiding fragmented interpretation or the isolation of a single provision from other parts of the text.

3.2.1. Balancing human rights

This final remark brings us to another distinctive feature of Italian constitutional doctrine in the field of human rights.

The Constitution and the Constitutional Court endorse a relational understanding of individual rights, one that corresponds to the peculiar understanding of fundamental rights endorsed by the Italian Constitutional itself. Indeed, Article 2 of the Constitution establishes that rights belong to each person, considered as an individual and as a member of the social groups within which his or her life develops and flourishes:

"The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in the social groups where his personality is expressed, and requires fulfilment of the inderogable duties of political, economic and social solidarity".

Moreover, the individual rights listed in the Constitution are divided into four groups, which are titled as follows[15]:

a. civil *relations*
b. ethical and social *relations*
c. economic *relations*
d. political *relations*

Although fundamental rights are recognized to each individual, they concern the relational aspects of social life.

When brought to the bar, indeed, most cases involve a number of competing fundamental rights; this requires the Court to properly balance them all.

The Court insists on the fact that no individual right is absolute; all rights protected by the Constitution are to be balanced with other rights and relevant public interests. Therefore, a holistic, rather than piecemeal, interpretation of the Constitution is most appropriate in the field of fundamental rights. That is, rather than regarding the Constitution as an assemblage of fragmented and unconnected propositions, all the rights and values proclaimed within it are considered to be components of a unified mosaic, such that each element reveals its full meaning only in the context of a broader design.

The three doctrines that provide structure to the Court's constitutional reasoning are balancing, reasonableness and proportionality.

A clear example of this approach to the protection of inviolable rights may be seen in Judgment n. 85 of 2013, which dealt with a complex case concerning the ILVA steel mills. The case involved the right to health and to a safe environment on the one hand, and the right to work (of a great number of people) and the right to free economic activity on the other. In its judgment, the Court clearly stated that:

"All fundamental rights protected by the Constitution are mutually related to one another and it is thus not possible to identify any one of them in isolation as prevailing absolutely over the others. Protection must at all times be "systematic and not fragmented into a series of rules that are uncoordinated and potentially conflict with one another" (Judgment 264/2012). If this were not the case, the result would be an unlimited expansion of one of the rights, which would "tyrannise" other legal interests recognised and protected under constitutional law, which constitute as a whole an expression of human dignity."

A careful reading of this passage shows that the Italian Court considers balancing rights to mean that: (a) no constitutional right has an absolute value,

[15] Emphasis added.

nor does it enjoy absolute predominance over the others – if it were otherwise, it would become a "tyrant" right; (b) the Constitution does not establish an abstract ranking of rights; (c) the balancing exercise requires flexible and unfixed relations between different rights, depending on the concrete case at hand; (d) balancing rights requires engaging in reasonableness and proportionality tests, and never allows the complete sacrifice of one of the values at stake.

Conclusion

Institutional relationality, interpretative relationality: a 60-year history of the Italian Constitutional Court has shown how fruitful this approach to constitutional adjudication can be.

This is not a minor legacy to constitutional adjudication in the new millennium.

European integration and globalization have affected constitutional law and constitutional adjudication to such an extent that national constitutional courts are now inevitably linked in a "network". They interact with other bodies – whether they wish to do so or not – within the national legal system as well as outside of it, with their foreign or supranational counterparts.

In such a context, where the diversity of interrelated cultures can easily turn into conflict and distrust, good mutual relationships are vital for the flourishing of constitutional adjudication and to better serve the legal protection of human dignity.

It helps to build bridges, rather than walls.