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Bali, 4 – 7 October 2022

Constitutional Justice and Peace

Questionnaire for Participating Courts

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Part I "Constitutional justice and peace"

A. Sources and Jurisdiction

1. Does your Constitution make a specific reference to peace or reconciliation?

The notion of peace appears in Article 11 of the Italian Constitution in the form of a public international law concept having to do with interstate relations. The article expressly states that Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes, that it agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations, and that it shall promote and encourage international organizations furthering such ends.
There is no specific reference, on the other hand, to peace and reconciliation, understood to mean peaceful coexistence and orderly regulation of disputes within the State itself. However, numerous provisions – found in the fundamental principles (Articles 1-12), in Part I (Articles 13-54) dedicated to the rights and duties of citizens, and in Part II (Articles 55-139) dedicated to the organization of the Republic –establish principles the observance and implementation of which naturally result in the construction of a peaceful system and society, or at any rate one that is furnished with the tools for overcoming potential controversies peacefully and in accordance with law. Relevant provisions include the recognition of the inviolable rights of the person (Article 2), the principle of equality (Article 3), and the one and indivisible nature of the Republic despite its division into many autonomous, local territories (Article 5).

How has your Court interpreted such provisions?

In interpreting constitutional provisions, the Court has worked consistently to develop the founding Charter's potential, interpreting its own role as guarantor of the Constitution as coinciding with a value as promoter of constitutional values, which aim to strengthen and preserve a democratic, peaceful, and integrated society.

The balance between constitutional rights and principles
"The institutional task vested in this Court requires the Constitution to be guaranteed as a unitary whole in such a manner as to ensure 'systematic and un fragmented protection' (see Judgment No. 264 of 2012)" (Judgment No. 10 of 2015). "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" (Judgment No. 85 of 2013).
The balancing technique is consistent with a constitutional design that does not institute any form of hierarchy among guaranteed values, instead remitting their composition to the judicious assessment of the legislator and, where applicable, to the judicious rulings of the Court. It serves to preserve the pluralist structure of a society in which principles and interests that could conflict if interpreted in absolute terms coexist, with equal dignity and tendentious balance.

The objective and subjective extension of constitutional guarantees
- The progressive enrichment of the catalogue of inviolable rights
The Court's early approach to interpreting Article 2 of the Constitution, which recognizes and guarantees the inviolable rights of the person, can be found in Judgments No. 29 of 1962 and 11 of 1956. There, the Court adopted a restrictive interpretation of the Article as a mere, "closed" statement of principles or scenarios that refers to subsequent provisions, where individual rights are

given explicit consideration. Later on, the Court moved beyond this framework, to the point of protecting legal positions that have constitutional status even though they are not explicitly mentioned, including through an evolutive interpretation of rights provisions (the right to privacy: Judgment No. 38 of 1973; the right to sexual freedom: Judgment No. 561 of 1987; the right to housing: Judgment No. 404 of 1988; the right to self-determination in the private sphere: Judgment No. 332 of 2000; the right of homosexual persons to live freely as couples: Judgment No. 138 of 2010; the right to one's gender identity: Judgment No. 118 of 2015; the principle of informed consent: Order No. 207 of 2018). Even without explicitly adopting an interpretation of Article 2 as "open", that is, having contents that may be enriched through interpretation, the Court has engaged in the protection of rights that are not codified in the text of the Constitution, but can be deduced from it through interpretation. Thus, the cited provision has ended up working like an expansive principle and as a necessary valve for the dynamic adjustment of the heritage of rights to the constant evolution of society.

- *Application of the equality principle to foreigners*

Starting with Judgment No. 120 of 1967, the Court has maintained that, "the principle of equality, although it appears in reference to citizens in Article 3 of the Constitution, must be considered to extend to foreigners since it has to do with the protection of the inviolable rights of the person, which are guaranteed to foreigners, including in conformity with the international legal order". In more recent times, in which the free circulation of people and the phenomena of migration from war-torn or impoverished areas have taken on a structural character, the personalist principle and the principle of human dignity have directed the Court's case law toward the elimination of any and all forms of discrimination between citizens and foreigners where rights or services related to the inviolable sphere of the human person are concerned. Judgment No. 252 of 2001required that an inalienable core of the right to health exists even in the case of foreign nationals, "regardless of their position vis-à-vis the provisions regulating entry and residency" within the national territory. This is because "foreigners who are present in the State, even illegally, have the right to enjoyment of all the services" that are urgent and non-deferrable "since these go to a fundamental right of the person". Judgment No. 249 of 2010 reiterated that inviolable rights "are vested 'in individuals not insofar as they are members of a particular political community but as human beings as such'". More recently (in Judgment No. 50 of 2019), the Court explained that, "the Constitution requires equality of access to social assistance between Italian and European citizens, on the one hand, and non-European citizens on the other, to be preserved only when it comes to services and assistance" that, because they meet a primary need of the individual, "reflect the exercise of the inviolable rights of the person". Indeed, for this aspect, "the service is not a component of social assistance (reserved to citizens under Article 38(1) of the Constitution), so much as a necessary tool for guaranteeing one of the inviolable rights of the person." Only when it comes to additional benefits that are not directly geared toward ensuring the survival of the person may the legislator reserve access to citizens only, in consideration of the limited resources available.

The use of implied constitutional principles: loyal cooperation between institutions

Loyal cooperation between institutions is an essential criterion for the resolution of issues that come up in the context of conflicts between branches of the State.

In cases addressing when a legitimate impediment prevents the President of the Council of Ministers from appearing as a defendant in criminal hearings, Judgments No. 168 of 2013 and 23 of 2011 laid out the two-directional effect of the principle of loyal cooperation. There, the Court explained that, on the one hand, a "court must schedule the hearings taking account of the commitments of the President of the Council of Ministers associated with powers co-essential to governmental functions and which are in actual fact absolutely non-deferrable", while, on the other hand, the President of the Council of Ministers "must schedule his commitments taking account, out

of respect for the judicial branch, of the interest in expedited proceedings against him and reserving adequate space in his diary for that purpose".
Loyal cooperation serves, likewise, as a precious standard of judgment in disputes between the State and the Regions.
Although mentioned only by Article 120(2) of the Constitution, as a principle that the law must follow in governing the substitutive power of the Government in exceptional circumstances, loyal cooperation must always, in and of itself, permeate the relations between the State and the system of autonomous territories (Judgment No. 44 of 2014), operating to delineate the "dialectical reconciliation of the needs requiring unitary interventions with the needs related to guaranteeing the autonomy and political responsibility of the Regions, with a view to institutional functionality" (Judgment No. 74 of 2018). Judgment No. 31 of 2006 importantly held that, "the principle of loyal cooperation must preside over all the relationships that run between the State and the Regions: its elasticity and adaptability render it particularly suitable to govern the relationships in question in a dynamic way, attenuating any dualism and avoiding excessive inflexibility. The generalness of this standard […] nevertheless calls for constant clarification and concretization", "of a legislative, administrative, or judicial nature […]. Currently, one of the best-qualified sources of clarification of rules intended to integrate the standard of loyal cooperation is the system of State-Regions and Local Entities Conferences. Within this system, the interaction between the two major legal systems of the Republic develops and, as a result, agreed-upon solutions can be reached for controversial issues". In any case, this principle "may be expressed at different levels and with different tools in relation to the type of interests involved and the nature and intensity of the unitary needs that must be met" (Judgment No. 182 of 2017).

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2. Has your Court been seized of draft constitutional amendments containing provisions related to peace and reconciliation?

The Court has never been invested with examining draft laws amending the Constitution that have contained provisions relating to internal peace and reconciliation. Moreover, the procedure for amending the Constitution centers around the Parliament and the electorate. Article 138 of the Constitution provides: "Laws amending the Constitution and other constitutional laws shall be adopted by each House after two successive debates at intervals of not less than three months, and shall be approved by an absolute majority of the members of each House in the second voting. Said laws are submitted to a popular referendum when, within three months of their publication, such request is made by one-fifth of the members of a House or five hundred thousand voters or five Regional Councils. The law submitted to referendum shall not be promulgated if not approved by a majority of valid votes. A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of two-thirds of the members".

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3. Has your Court a specific mandate to maintain social peace? Has your Court interpreted its jurisdiction in a way as to include such a mandate?

The Court does not have a specific mandate to maintain social peace. Its competences are defined by Article 134 of the Constitution and Article 2(1) of Constitutional Law no. 1 of 1953.
The former provides that: "The Constitutional Court shall pass judgement on: controversies on the constitutionality of laws and enactments having the force of law issued by the State and the Regions; conflicts arising from allocation of powers of the State and those powers allocated to State and Regions, and between Regions; accusations made against the President of the Republic,

according to the provisions of the Constitution". And, under the latter, "[i]t falls to the Constitutional Court to adjudicate whether requests for an abrogative referendum, presented in accordance with Article 75 of the Constitution, are admissible".
Maintaining social peace is a natural consequence of the Court's timely fulfillment of the essential guarantor function through which it affirms and renders operative, in the concrete, the supreme function of conformity to the Constitution. By virtue of this principle, both ordinary legislation and the relations between the branches of State and the other entities that make up the Republic must develop in accordance with the principles of the Constitution and in keeping with the shared set of values enshrined in the founding Charter of the national community.

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4. Has your Court encountered constitutional or legal provisions that made maintaining social peace difficult? How has your Court interpreted these provisions? Has it repealed them for being unconstitutional/interpreted them in a specific way?

The Constitution, approved immediately after the Second World War, with a broad consensus among all the democratic groups that had opposed the Fascist dictatorship, is the founding agreement of the Italian Republic. It marks a clear break with the earlier monarchy and with Fascism. Clear signs of this break may be found in its transitional and final provisions.

The prohibition on reorganization of the Fascist Party
Transitional provision XII forbids the reorganization of the dissolved Fascist Party and required the establishment by law of temporary limitations on the right to vote and to run for office for the leaders of the Fascist regime, derogating from Article 48, and for no longer than five years after the Constitution's entry into force. It contains a permanent principle of the Italian system, underscoring its democratic essence and anti-fascist foundations. Law No. 645 of 1952 defined the reorganization of the Fascist Party as the activity of associations, movements or groups pursuing anti-democratic purposes proper to fascism, extolling, threatening, or using violence as a method of political competition, working for the suppression of constitutional freedoms or denigrating democracy, its institutions, and the values of the Resistance, spreading racist propaganda, promoting representatives, principles, facts, and methods proper to fascism or bringing about outward manifestations of a fascist character. The law also criminalized the defense of fascism and fascist demonstrations illegal, providing as a penalty the dissolution of any responsible organizations. Law No. 1453 of 1947 introduced transitional limitations on the political rights of persons who had held important positions in the Fascist regime.
The Constitutional Court has sometimes been asked to scrutinize the laws implementing transitional provision XII provision, but these requests have always ended in the rejection of the questions raised.
In particular, **Judgment No. 1 of 1957** held that making it a crime to indirectly instigate the reorganization of the dissolved Fascist Party did not infringe upon the freedom of expression of thought because the law did not criminalize any and all laudatory defenses of fascism, but only the kind of glorification capable of and specifically geared toward said reorganization. Similarly, **Judgments No. 74 of 1958 and 15 of 1973** confirmed that making it a crime to hold fascist demonstrations was constitutional, insofar as it aimed to stifle only public demonstrations suitable to arouse subscription and consent and to bring about the dangerous situation of the re-constitution of the Fascist Party.

More generally, in its review of the constitutionality of ordinary legislation, the Court has dealt with provisions capable of threatening social peace because of their divisive content.

The flag of the Italian Republic and the symbols of the regions

Judgment No. 183 of 2018 struck down a provision of the Veneto Region making it mandatory to display the regional flag outside buildings where State bodies and offices, or national public bodies were headquartered, as well as on any watercraft belonging to the latter. This requirement was found to conflict with the principle of unity and indivisibility of the Republic enshrined in Article 5 of the Constitution, under which "the State may not be forced under regional legislation to use publicly any symbols – such as, in this case, the regional flags – which the Constitution does not allow to be considered as symbolic of the entire national community". The unity and indivisibility of the Republic, "which are required under the Constitution as characteristic features of the State as a body that constitutes an expression of the national community – require the Regions to refrain from seeking to require that the flag of the Republic, which is classified by the Constitution as a 'typifying' symbol [of the Nation], be displayed alongside the standards of local government bodies in all situations in which the symbol itself performs the role of manifesting the 'national' character of the activity carried out by particular bodies, entities or offices".

Places of worship

The legal system of the Republic is characterized by the supreme principle of secularism [*laicità*], to be understood not as indifference toward religion, but as protection of the freedom of religion in a regime marked by cultural and religious pluralism. It falls to the Republic to ensure that conditions favor the expansion of religious freedom, which is one aspect of the dignity of the human person, recognized and declared inviolable by Article 2 of the Constitution. The freedom to worship is one essential aspect of this freedom, and it is granted equally to everyone and to all denominations, regardless of whether or not they have a formal agreement with the State. Formal agreements are merely a tool for achieving agreement-based regulation of specific aspects of the relationship between religious denominations and the State. Freedom of worship also translates into the right to utilize suitable spaces for its concrete exercise, and it places a twofold duty on the public authorities (the Regions and Municipalities), whose task it is to regulate and manage land use: a positive duty for the competent administrative bodies to provide for and make available public spaces for religious activities, and a negative duty not to create unjustified obstacles to the exercise of worship in private spaces or to discriminate against religious denominations in granting access to public spaces.

Based on these principles, three rulings have struck down some regional laws concerning places of worship which unduly limited religious freedom by overstepping the legitimate pursuit of land use-related ends. More specifically, **Judgment No. 254 of 2019** held that certain Lombardy regional provisions making construction of any and all new religious facilities contingent upon the existence of a corresponding plan, and forbidding the approval of plans for religious facilities apart from a new urban planning instrument, were unconstitutional. The unconstitutional scheme, which exclusively targeted all new religious facilities without distinction (regardless of their public or private character, their dimensions, their specific function, or their capacity to host a greater or smaller number of worshipers, and regardless, therefore, of their relative impact for city planning purposes), ended up blocking the opening of new places of worship. **Judgment No. 67 of 2017** held that a Veneto regional provision was unconstitutional insofar as it established that an urban planning agreement between an applicant and the municipality could include a provision requiring the use of the Italian language for all activities carried out at public interest facilities for religious services that were not strictly connected with rites of worship. Given the importance of language as an "element of individual and collective identity", and as a "vehicle for transmitting culture and the expression of the relational dimension of the human personality", the provision was inclined to "effect severe limitations on the fundamental rights of the person". Finally, **Judgment No. 63 of 2016** struck down other Lombardy regional provisions that, first, imposed different and more stringent requirements for building places of worship and facilities intended for religious services only on religious denominations that had not signed agreements with the State, and, second,

provided for acquiring the opinions of organizations, citizen committees, and agents and representatives of the police as part of the preparation process for planning religious facilities, as well as the installation of an external video surveillance system for all newly constructed places of worship.

Regional referendums for independence and fiscal autonomy

Judgment No. 118 of 2015 declared unconstitutional a Veneto regional law calling for a consultative referendum on the independence of the Veneto Region. Such a referendum not only concerned "fundamental choices on [the] constitutional level, which are as such precluded from the scope of regional referendums", but also sought to "subvert the institutions in a manner that is inherently incompatible with the founding principles of the unity and indivisibility of the Republic laid down in Article 5 of the Constitution. The unity of the Republic is an aspect of constitutional law that is so essential as to be protected even against the power of constitutional amendment". The Republic "is also based on principles including social and institutional pluralism and territorial autonomy, in addition to an openness to supranational integration and international law; however, these principles must be developed within the framework of the [one] Republic". Pluralism and autonomy "do not permit the regions to classify themselves as sovereign bodies and do not permit their governmental organs to be treated as equivalent to the representative bodies of a nation". These principles "cannot be taken to extremes so as to result in the fragmentation of the legal order and cannot be invoked as justification for initiatives involving the consultation of the electorate – albeit only for consultative purposes – concerning prospective secession with a view to the creation of a new sovereign body. Such a referendum initiative […that is] at odds with the unity of the Republic could never involve the legitimate exercise of power by the regional institutions and would thus lie *extra ordinem*". The same decision struck down other regional provisions, which aimed to put referendum questions to the local population which concerned the use of tax revenue and envisaged a substantial detraction from general public funds for the sole advantage of the Region and its inhabitants. Referendum questions of this kind amounted to "lasting and deep-seated changes to the equilibria of the public finances, thereby impinging upon the bonds of solidarity between the regional population and the rest of the Republic" and directly implicated "certain structural elements of the national system of financial planning, which are indispensable in order to guarantee cohesion and solidarity within the Republic", along with its legal and economic unity.

Criminal punishment of foreign nationals without title to stay in Italy

Judgment No. 250 of 2010 held that it was constitutional to criminalize illegal entry and residency in the Italian State by foreign nationals. It held that the object of the offense was not a "'manner of being' of the person", this being their "'personal and social condition' – namely that of the 'illegal immigrant' (or, more properly, the 'irregular' foreign national)", on the basis of which they were arbitrarily presumed to be a danger to society, but rather "specific conduct in breach of applicable legislation", described alternatively by means of the phrases "enter into" and "remain" within the country, in violation of the provisions of the Consolidated Text on immigration or of the legislation governing short-term stays. These actions "correspond, respectively, to a synchronic act (the illegal crossing of the national borders) and conduct of an ongoing nature, the illegal core of which is an omission (the failure to leave the national territory, notwithstanding the failure to hold a permit legitimising one's presence). Status as a so-called 'illegal immigrant' is not a pre-existing given that is extraneous to the offence, but on the contrary is the consequence of the very same conduct that is criminalised, encapsulating its unlawful nature". The crime was not an offense of mere disobedience, "that does not infringe any legal interest which deserves protection – even solely by jeopardising it [such that punishing it would amount to] 'criminal law guilt due to personal characteristics', underpinned by the intention to criminalise situations of poverty and marginalization *per se*". The protected legal interest can "in reality easily be identified as the State's interest in the control and management of migratory flows in accordance with a specific legislative

framework: the adoption of this interest as the object of criminal law protection cannot be regarded as irrational or arbitrary […]. The orderly management of migratory flows is presented in this case as an 'instrumental' legal interest, by safeguarding which Parliament has provided an advance form of protection for the entire body of 'final' public interests – of certain constitutional significance – that are liable to be negatively affected by uncontrolled immigration" (for example public safety, public health, public order, and compliance with international obligations). "The legal regulation of immigration – [to which the State is entitled in the exercise of its sovereignty, as an expression of its control of its territory] – necessarily entails [classifying violations of the rules that express this control as offenses]. The determination of the most appropriate response to that offence in terms of punishment, and specifically to determine whether it is to be regulated under the criminal law rather than merely under administrative law […], falls to the discretionary choice of the legislature, which may indeed modify the quality and level of the criminal law provision in this area differently over time – depending upon changes in circumstances and the size of the migratory phenomenon along with the differing significance of the requirements associated with it". Thus, the provision did not create an absolute presumption that illegal immigrants pose a danger to society, but stopped at punishing "the commission of an objectively unlawful act which infringes an interest deemed to deserve protection". Moreover, "'the requirements of human solidarity cannot be asserted unless a correct balance of the values in play is struck' [by the legislator acting in its discretion]". Nor are these requirements "*per se* at odds with the rules on immigration put in place in order to ensure an orderly migratory flow and an adequate welcome and integration of foreign nationals".
The contemporaneous **Judgment No. 249 of 2010**, on the other hand, struck down a provision of the Criminal Code provision that made it an ordinary aggravating circumstance for the perpetrator of a crime to be present in the country illegally. The Court held that breaking the laws intended to control migratory flows may be subjected to criminal punishment, through a legislative political choice not subject to censure under constitutional review, but it cannot automatically and presumptively generate a determination that the person responsible is dangerous. The provision infringed, first of all, upon the principle of equality, which does not tolerate unjustified disparities of treatment on the basis of differing personal or social conditions, since the punishment scheme it established for foreign nationals in a condition of illegal residency was unreasonably harsher. Indeed, such individuals were not only subject to harsher punishments than Italian or European Union citizens, but also remained exposed to more severe criminal punishments throughout their later stay in the country and for all offenses provided for under Italian law. An aggravating circumstance of this kind was clearly discriminatory, in that it linked a personal characteristic of illegal immigrants, acquired as the result of a single immigration law infraction, with an increase in the severity of punishments provided for ordinary crimes, which breach interests and values that have nothing to do with the issue of migratory flows. Moreover, the principle of offensiveness of crime, which places conduct at the basis of criminal liability, requires that individuals be punished for acts committed and not for personal characteristics. The provision, based upon an absolute presumption that illegal immigrants are more dangerous, failed to cast the prohibited conduct as more gravely offensive towards the good it protected, but rather served to attach a general and presumptive negative characteristic to its perpetrator. The condition of being an illegal immigrant thus became a "stigma", and a prerequisite for an impermissible, differentiated punishment scheme, based on the idea, which is inconsistent with the Constitution, that criminal law must punish the individual's way of being rather than the material act itself.

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5. Is traditional justice a source of law and has it helped resolve conflict situations?

Traditional justice is not a source of Italian law. Conflicts are resolved through the remedies provided by the various segments of the legal system and according to the rules of law.

B. Application

1. Has your Court interpreted constitutional provisions relating to peace and reconciliation?

For information on this, please see the reply to question no. 1 of the previous section.

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2. Does your state have a law on peace and reconciliation? If so, has it been referred to this Court for the purpose of assessing its constitutionality?

The Italian legal system does not provide a law specifically dedicated to peace and reconciliation.

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3. Did your Court adjudicate cases in which the social peace in your country was in danger? Did the judgment of your Court pacify the situation / settle the conflict?

The advent of democracy, following the founding of the Republic, has granted Italy a long period of peace and relative social stability.
It has, however, faced threats to its internal stability, first coming from political terrorism, which, in the 1970s (the so-called "years of lead"), threatened its democratic institutions and the very bedrock of civil coexistence, and then coming from organized crime, which caused an upsurge in acts of violence with militaristic results in the 1980s and early 1990s. Both phenomena – very different from one another in terms of their objectives – called for action in the form of extraordinary legislative measures.

Domestic terrorism
One of the most important measures against terrorism was Law No. 152 of 1975, which laid down provisions to protect the public order and came under the scrutiny of the Constitutional Court (Judgments No. 88 of 1976 and 1 and 177 of 1980).
While rejecting questions referred to it that challenged the constitutionality of restrictions on granting parole and the use of preventive measures, the Court took note of the "grave" and "universally well-known" reasons that had driven the legislator to "confront the alarming rise of the phenomenon of criminality". The law's declared purpose was to bolster the protection of the safety and security of citizens, and it came on the heels of "recent, extremely serious episodes of ordinary and political crime, characterized, moreover, by the use of violence, by the link to criminal organizations, and, ultimately, by their impact on the safety conditions of the civil or political life of the nation".
Judgment No. 15 of 1982 was particularly important for its clearly reconstructive stamp. It held that questions as to the constitutionality of a one-third extension of the maximum-length preemptive detention term, provided by Articles 10 and 11 of Decree-Law No. 625 of 1979 for the crimes listed therein, were not well founded. Here, again, the Court took note of the existence and substance, uniqueness and seriousness, of the terrorism phenomenon, "characterized not so much – or not only – by the plan to destroy democratic institutions as an idea, as by the concrete practice of violence as a method of political struggle, the high level of technical precision of the operations it has carried out, and by its capacity to recruit members from the most disparate social contexts". Faced with an emergency of this kind, "the Parliament and the Government not only have the right and the power,

but also the precise and inescapable duty to act, by adopting specific emergency legislation". As a result, the new maximum preventive detention limits were not held to be unreasonable, "since they were laid down due to the objective difficulties that exist for investigatory and deliberative phases of proceedings on crimes committed for purposes related to terrorism and subversion of the democratic order". More generally, the Court stated that, "a system, in which terrorism sows death and destruction (including through the ruthless assassination of innocent hostages),generating a lack of security and, therefore, the need to entrust the protection of one's life and one's assets to armed escorts and private police, triggers a state of emergency". But it specified that an "emergency, in its most proper sense, is certainly an anomalous and serious condition, but it is also, by essence, temporary", such that "it does allow for unusual measures" that will, however, "lose their legality if extended over time without justification" or else lead to a "substantial frustration" of constitutional guarantees.

The struggle against the mafia

When it comes to the struggle against the mafia, Decree-Law No. 306 of 1992 was particularly important. It was passed after a series of violent crimes and mass murders that targeted institutional authorities and judges who were on the frontlines of the war on organized crime. The law made new, powerful tools available to police and judges. In its judgments, the Court sought to effect a delicate balancing geared to satisfy, on the one hand, the demands of public order and opposition to the mafia and, on the other, indispensable constitutional principles.

One of the most important measures was the introduction of Article 41-*bis* of Law No. 354 of 1975 on the prison system, which permitted the suspension of the ordinary rules of prison treatment in the case of prisoners incarcerated for extremely serious crimes, including mafia-related ones, in order to prevent and inhibit contact between prisoners belonging to criminal organizations as well as between such prisoners and their associates on the outside. The second paragraph of the provision granted suspensory power to the Minister of Justice in the presence of serious reasons relating to public order and safety.

The special prison regime envisaged by Article 41-*bis* for prisoners who maintain current links with their respective organizations was not called into question by **Judgment No. 253 of 2019**. The judgment struck down Article 4-*bis*(1) of the Criminal Code, insofar as it failed to provide that prisoners incarcerated for particularly serious crimes (like membership in a mafia-type association and so-called "mafia context" offenses) could be awarded bonus periods of short release even without having cooperated with judicial authorities, provided that evidence was acquired showing that they had no current links nor any risk of reestablishing future links with the organizations to which they belonged. The Court – without denying the basis of the assumption that a refusal to cooperate with the authorities by a person convicted of membership in the mafia and/or for mafia-related crimes indicates that ties with their organization of membership have not been severed – underscored that the rehabilitative purpose of punishment takes a central role in the execution phase of sentences, and that the passage of time may entail important transformations both in the prisoner's personality and in the context outside a prison. Making temporary release contingent upon the prerequisite of cooperating with the authorities imbues the convicted person's prison stay with elements that have nothing to do with the typical features of serving a criminal sentence, envisaging a sort of exchange between useful information for investigative purposes and a prisoner's possibility to have access to the normal course of treatment. A lack of cooperation with the authorities after one's conviction cannot be translated into an aggravating circumstance for the way the sentence imposed at the close of trial is executed. Nor can it give rise to further negative consequences, which have no direct connection to the crime committed, but derive only from the prisoner's refusal to cooperate. Thus, the ruling transformed the challenged presumption of dangerousness underlying the ban on granting bonus periods from absolute to relative, eliminating the prohibition that prevented the supervisory court from carrying out a concrete evaluation of the prisoner's condition. Even so, given the particular seriousness of mafia-related crimes *lato sensu*,

the Court held that the supervisory court's decision to grant the bonus must meet rigorous criteria: it cannot be based solely on good conduct in prison, on mere participation in rehabilitation, or on a bare declaration of disassociation, but must rely on the finding of further, suitable, and specific elements which allow the judge to rule out the existence of any current links with organized, terroristic, or subversion-related crime, and even the risk that such links will be re-established.

Judgment No. 349 of 1993 had previously analyzed the constitutionality of the special prison rules in place for the most serious offenses. The protection of the fundamental rights of the person and the guarantee of the inviolability of personal freedom are also at play during the phase of executing a criminal sentence. In line with a basic principle of civility, "criminal detention cannot entail the total and absolute deprivation of a person's freedom. It severely curtails it, to be sure, but it does not eliminate it. Prisoners, despite being deprived of the majority of their freedom, remain in possession of a remnant thereof, which is all the more precious since it provides the last arena in which their individual personality may grow. It follows that the adoption of any provisions that may introduce further restrictions in this sphere, or that, in any case, entail a substantive modification to the degree to which one is deprived of personal freedom, may only take place in accordance with the guarantees" of the reservations to the legislator and to the judiciary provided by Article 13(2) of the Constitution. Prison authorities may adopt measures related to the way a sentence is carried out which do not go beyond the sacrifice of freedom already imposed on the prisoner, and provided that they remain subject to the limitations and guarantees provided by the Constitution. These include the prohibition of any form of physical or emotional violence, and of treatment that goes against the sense of humanity and the right of defense. Nevertheless, substantive measures that have a bearing on the quality and quantity of a punishment and on the possibility to obtain a temporary leave from prison, or which alter the level of deprivation of freedom, cannot be adopted outside of the principles of the reservations to the legislator and the judiciary, as well as those of the proportionality and individualized nature of punishment. Thus, a proper reading of the rule limited the Minister's power to that of "suspending those same rules and institutions that already belong to the power of each prison's authorities in the prison system, and which refer to the prison regime in the strict sense". On the contrary, the provision does not concern measures alternative to incarceration, or outside work placement and permits and licenses.

Again, the fight against the mafia has brought about the introduction of a distinct set of preventive measures, characterized by an absolute presumption of adequacy that applies only to incarceration. **Judgment No. 265 of 2010** recalled that the derogating exceptional scheme prescribed by Article 275 of the Code of Criminal Procedure was not present in the original text of the Code, but was added "under pressure from a situation deemed to be urgent, and specifically tied to a documented resurgence in mafia-related crime". Previously, **Order No. 450 of 1995** had held the same presumption to be constitutional for crimes related to the mafia in the strict sense, since "the very structure of the offense and its criminological features – in light of the fact that membership in mafia-type associations implies permanent subscription to a criminal group that is generally deeply rooted in the territory, characterized by a tight network of personal relationships, and endowed with particular powers of intimidation – gives rise, in the majority of concrete cases linked to it, and according to sufficiently widespread experience, to preventive needs which can only be met by incarceration (lesser measures not being enough to cut off the relationships between suspects and the criminal circles to which they belong, neutralizing the threat there from)".

Nonetheless, the need to comply with the supreme and inviolable good of freedom led the Court in later cases to delineate the scope of application of the absolute presumption. It rejected "border" figures, holding that they could not trigger the special preventive regime, which presupposes that a suspect is a member of the association. **Judgment No. 57 of 2013** held that Article 275(3) of the Code of Criminal Procedure was unconstitutional, insofar as it provided an absolute (rather than relative) presumption (rebuttable with evidence to the contrary) of the adequacy of preventive detention in jail for suspects or persons convicted of crimes committed using "mafia methodology" or for the purpose of facilitating the activities of mafia associations. Indeed, the possibility that the

perpetrator of the crimes had no connection to a mafia association deprived the absolute presumption of any constitutionally valid justification. Moreover, the challenged rules linked the special preventive rules not to individual criminal conduct, but to aggravating factors referring to a wide variety of crimes and situations. Later, **Judgment No. 48 of 2015** reached the same conclusion of unconstitutionality for the application of the absolute – rather than relative – presumption of the adequacy of preventive custody for suspects and people convicted of outside collaboration with a mafia organization. It was a criminal offense elaborated by case law, which intended to punish assistance, even on an intermittent basis, furnished by persons neither affiliated with nor formally members in criminal organizations. For outside collaborators, the Court held, in no event was there a bond of permanent membership with the criminal group that could justify resorting exclusively to the measure of incarceration.

All the examples above combine to show that the Court has made a positive contribution to maintaining peace in the country, to the extent to which its case law has endorsed legislative choices, including emergency measures, ensuring the functioning of useful tools for opposing the phenomena of terrorism and the mafia. This, all the while, without diminishing its essential function of guaranteeing constitutional principles.

Criminal punishments related to strikes and lockouts

Judgment No. 29 of 1960 ruled that Article 502(1) and (2) of the Criminal Code were unconstitutional for infringing the principle of freedom of association in trade unions. The provisions criminalized lockouts and striking for contractual purposes. Under the Fascist regime, lockouts and strikes were considered forms of rebellion against the corporatist policy. By contrast, Article 39 of the Constitution took a democratic position, and all rules conceived of and established in order to protect a system that denied freedom of association in trade unions were, necessarily, incompatible with it.

Judgment No. 290 of 1974 struck down Article 503 of the Criminal Code insofar as it criminalized political strikes that did not aim to subvert the constitutional order, or to hinder or prevent the free exercise of the lawful powers that express the will of the people. Strikes took on importance both as a tool protecting the rights of workers and as the manifestation of a freedom that is not criminally punishable except in order to protect interests with constitutional value and inherent to the defense of the structure established by the Constitution. The only basic reason for the general and absolute ban on strikes in the criminal code adopted under the dictatorship, backed up by criminal punishments, was to defend the political system, following a logic intent on repressing all freedom and an idea of one's relationship with work that was not reconcilable with that found in the Constitution. The system under the Republic, which did away with the principles of the previous regime, provided broad room for the freedom of individuals and groups, recognizing and protecting it within only those limits that were strictly necessary to safeguard other interests that participate in defining a democratic society. Similarly, **Judgment No. 165 of 1983** struck down Article 504 of the Criminal Code insofar as it attached punishment to strikes the intention of which was to force the authorities to adopt or omit certain measures, or to influence its decision-making, unless it aimed to subvert the constitutional order, or to hinder or prevent the free exercise of the lawful powers that express the will of the people.

The cited judgments fully affirmed the constitutionally protected right to strike, cleansing the Criminal Code of criminal offenses tied to the earlier legal system and ensuring greater participation by citizens in the social, economic and political life of the nation.

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4. Did your Court have to address post-(armed) conflict situations in its case-law? How did it approach these questions? Was your Court confronted with the need to contribute to the implementation of political conflict settlement agreements that potentially contradicted the Constitution?

The Constitutional Court began to operate in 1956, eleven years after the end of the Second World War, in a largely peaceful context. Therefore, it has never been involved in situations that coincided with or immediately followed armed conflict.
Nor has the Court ever faced the need to participate in the implementation of agreements regulating political conflicts in potential conflict with the Constitution. Such agreements could never be endorsed by the Court, but the Court could pass judgment on them if they were formally brought before it for review.

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5. Did your Court have a role in adjudicating cases relating to peace and reconciliation as required by the Constitution?

As mentioned above in the answer to question no. 3 of the previous section, the Constitution does not give the Court any explicit role involving peacemaking and reconciliation. However, implementing the essential function of constitutional guarantees allows the Court to contribute to the maintenance and advancement of a democratic and integrated society. The role of the Court is, in any case, contingent upon cases being formally brought before it.

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6. What is the role of 'intermediary bodies', such as civil society organisations, trade unions, employers or consumers associations, etc., for maintaining social peace as applicants to your Court, as* amicus curiae *or for shaping the context in which the Court operates?

Intermediary bodies, like civil society organizations, trade unions, or consumer associations are, in general, constitutionally protected under Article 2, as social groups within which human personality is developed (as well as by specific constitutional provisions). The presence of intermediary bodies is one of the basic characteristics of the pluralistic, democratic State model outlined by the Constitution. By rejecting an exclusively direct relationship between the State and the citizenry, the Constitution guarantees and encourages the formation and action of organizations that intermediate between the State and the individual, both because they are a direct expression of personal freedom, and because they are designated places for absorbing and ordering individual interests, raising them to the level of collective interests, with which the public authorities may more effectively and properly interact. In this sense, the intermediary bodies participate in defining the context in which the Court works and contribute to maintaining social peace.
With regard to their contribution to social peace as applicants or intervening parties in cases before the Constitutional Court, it bears noting as a preliminary matter that, as a rule, intermediary bodies are private law entities, with passive and active rights. They are not generally classifiable as branches of the State, nor can they be numbered among the regional or local bodies. In consequence, they cannot initiate proceedings before the Court of their own accord.
When it comes to their ability to intervene in constitutional proceedings, it is necessary to distinguish between the different types of cases.
In cases brought by the incidental procedure of review of the constitutionality of laws, which are initiated by a referral order filed by a referring court, intermediary bodies that were original or

intervening parties to the pending proceedings may appear before the Constitutional Court. An intermediary body that is neither of these two things may only intervene in a case of incidental review if it is endowed with a qualifying interest, which is directly pertinent to the substantive relationship at issue in the case, and not merely regulated, like any other, by the law being challenged in the case (see the deliberation order attached to Judgment No. 194 of 2018, as well as Judgment No. 180 of 2018). In any case, participants in constitutional proceedings may only provide reasoning in favor of or against a ruling of unconstitutionality, and may not broaden the *thema decidendum*, which is fixed by the filing that initiates proceedings.

The line taken by cases in which the Court is seized directly is even more stringent. Since these involve settling conflicts between the State, Regions, and Autonomous Provinces on the proper exercise of legislative power and adherence to their respective spheres of authority, participation is strictly forbidden for any entity not endowed with said powers (Judgment No. 140 of 2018).

Intermediary bodies are also barred from participating in proceedings on jurisdictional disputes between public bodies, since this remedy is reserved to the State, Regions, and Autonomous Provinces for the resolution of constitutionally relevant conflicts arising from non-legislative measures (Judgment No. 305 of 2011).

Finally, this issue comes up in a slightly more open context when it comes to proceedings related to jurisdictional disputes between branches of State. The Court's case law has adopted, for purposes of having standing to initiate a dispute, a broad notion of branches of State, which expands to coincide, as far as the object is concerned, with every allocated power outlined in the Constitution and, as such, worthy of protection under the constitutional jurisdiction. In short, every holder of an allocated power provided for and guaranteed by the Constitution is a State power that may lawfully seize the Court. The case remains that "individual citizens are not permitted to raise jurisdictional conflicts, since no constitutionally relevant allocation has been conferred upon them, as individuals" (Order No. 39 of 2019). The notion of power presupposes a certain degree of pertinence to the organization of the State apparatus. However, the Court has, on exceptional occasions, granted active standing in a dispute to a specific expression of the State-community, i.e. a committee proposing an abrogative referendum (Order No. 17 of 1978). On the contrary, the standing of a parliamentary group representing a particular political party has so far been denied, but always for defects in the initial filings (Orders No. 17 of 2019 and 280 of 2017).

It bears noting that, on 8 January 2020, the Court made a change to its procedural rules concerning the submission of *amicus curiae* briefs, thereby opening its doors to hear from qualified voices coming from civil society. Not-for-profit groups and institutional subjects, if they represent collective or widespread interests related to the issues before the Court, may submit brief, written opinions in order to offer the Court information useful for its understanding and assessment of the case[*].

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7. Has your Court been asked by a Court of another country about a conflict situation?

The Constitutional Court has never been consulted by one of its counterparts in another country about a conflict situation.

[*] For a more thorough description of recent modifications to the procedural rules for proceedings before the Constitutional Court, concerning the codification of the institutions of *amicus curiae* briefs and calling experts, please see the press release of 11 January 2020, available on the Court's official website at https://www.cortecostituzionale.it/documenti/download/pdf/Press_release_Amicus_curiae.pdf.

C. Limitations of the role of constitutional courts in maintaining peace

1. What are the limitations of your Court in contributing to peace? (e.g. acting only upon request; limitation by the scope of the request)

The Italian system does not provide for direct access to the Constitutional Court by individuals or groups of persons, such as associations or committees. The ways of accessing the Court vary according to the different kinds of proceedings indicated by Article 134 of the Constitution.
Concerning proceedings on the constitutionality of laws and enactments having the force of law issued by the State and the Regions, access to the Constitutional Court may occur by the incidental method of review or the principal one. Incidental review consists in a lower court submitting a question, by means of a referral order, during the course of proceedings in which that court must apply the rule it suspects of being unconstitutional. In proceedings before the Court (called "incidental") the parties to the case in which the question arises (called the "principal", "pending", or "*a quo*" proceedings) may appear. Subjects with a qualified interest that is directly pertinent to the substantive relationship at issue in the proceedings may intervene in the case. Direct access, or the principal method of review, is reserved for proceedings concerning constitutionality initiated by the State against regional laws or laws of the Autonomous Provinces or, vice versa, by the Regions or Autonomous Provinces against laws of the State in the form of an application. Subjects not endowed with legislative power may not intervene in such cases.
Proceedings for jurisdictional disputes between bodies and between branches of the State are initiated, in the form of an application, by public subjects (respectively the State, Regions, Autonomous Provinces, and branches of State) which allege that their constitutionally guaranteed sphere of competence has been invaded by other public actors. In both types of proceedings, intervention by subjects other than those authorized to bring or defend against the dispute is not permitted. There is, however, an exception to the rule in the event that the constitutional ruling may jeopardize judicial protection of the legal entitlements enjoyed by the intervening partyunless that party is denied the possibility to present its arguments.
Under Article 27 of Law No. 87 of 1953, furthermore, the Court, "when it accepts an application or an appeal entailing questions as to the constitutionality of a law or an enactment having the force of law, shall declare, within the limits of the challenge brought before it, which legislative provisions are unconstitutional". This rule contains the well-established principle that the ruling must correspond to the request, for which there is a partial exception in the case of unconstitutionality by way of consequence, since the Court may state "which other legislative provisions are unconstitutional as a consequence of the adopted ruling".
Finally, according to well-established case law, the judgments of the Court may not be challenged, due to the absolute ban on any request intended to oppose, cancel, or alter one of its decisions.

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2. Have issues that were supposedly finally settled by a judgment of Court remained in a state of conflict?

The typical effect of a judgment by the Court declaring a legislative provision unconstitutional is laid out by Article 136 of the Constitution, under which "the law ceases to have effect from the day following the publication of the decision". This effect is similar to deletion, which amounts to expunging the law declared unconstitutional from the legal system. If, on the other hand, the Court rejects a question as to constitutionality, holding that the question is not well founded, its decision is

binding only upon the referring court, and does not acquire *erga omnes* effect. This means that the same law could be challenged again at a later date by another court. As its case law has evolved, the Court has recognized the possibility to make use of other decision-making techniques that are increasingly sophisticated and geared to respond more appropriately to the demands of constitutional justice. In any event, this is a matter of jurisdictional provisions which, while they may not be challenged (at the risk of undermining judgments that have acquired the force of *res judicata*), may present margins of interpretation on the part of the subjects they address. Therefore, it may also occur that some of the Court's decisions, which appear to ultimately resolve issues raised, may be implemented by means of legislative measures, which could, in turn, give rise to further constitutional litigation.

Old-age pensions

Judgment No. 70 of 2015 declared Article 24(25) of Decree-Law No. 201 of 2011 unconstitutional, insofar as it provided, in light of the economic situation at the time, a full block on annual increases for old-age pensions with a net value superior to 1,217 Euros for the years 2012 and 2013. This block, which failed to differentiate between income brackets, was held to infringe upon the principles of the proportionality and adequacy of pension provisions, as well as the principle of reasonableness, as these have been defined by constitutional case law. The law, which represented a significant break from previous rules, suspended the automatic adjustment mechanism for a two-year period and impacted even lower-income pensions. An analysis of the evolution of laws in this area revealed that "the provision for automatic pension increases is a technical instrument intended to guarantee compliance over time with the criterion of adequacy laid down by Article 38(2) of the Constitution", and is "intended to complement the principle of adequate remuneration under Article 36 of the Constitution which […] applie[s] to pensions, which are regarded as deferred remuneration". The pension increase method, considering "its characteristics of neutrality and objectivity and its purpose of implementing the aforementioned constitutional principles, […] conditions the discretionary choices of the legislator, without however stipulating how the discretion is to be exercised, its task being to set the specific quantum of protection required from time to time". In light of these premises, the challenged legal scheme, which ignored a warning addressed to the Legislator in Judgment No. 316 of 2010, crossed the bounds of reasonableness and proportionality as concerned pension plans, "resulting in detriment to the purchasing power of pensions themselves and the irremediable thwarting of the legitimate expectations held by the worker with regard to the period falling after his or her retirement" [internal quotation marks have been removed]. Indeed, the legislator, in its attempt to cut costs, did not carry out a correct balancing of the interests at stake. "The interest of pensioners, including in particular those in receipt of modest pensions, is focused on the conservation of the purchasing power of the amounts received, which in consequence gives rise to the right to an adequate pension. This right, which is rooted in constitutional law, has been unreasonably sacrificed in the name of financial requirements which are not illustrated in detail". In conclusion, then, the system of blocking the so-called "indexing" (automatic increasing) of all old-age pensions with an overall value superior to three times the minimum INPS pension (that is, 1,217 Euros, net) was declared unconstitutional, for reasons including the general nature of the reasons underlying Article 24(25) of Decree-Law No. 201 of 2011. Finally, the ruling left it to the legislator "to intervene, to repair these defects and operate a new balancing of the values and constitutional interests involved, in compliance with the principles of reasonableness and proportionality, in such a way that none of them was unreasonably sacrificed".

The Government, when it implemented the Court's decision, in compliance, too, with the budgetary limits imposed at the European level, adopted Decree-Law No. 65 of 2015, which granted automatic adjustment of old age-pensions, in decreasing percentages, only for certain categories of pensioners, up to a maximum threshold of six times the minimum INPS pension. The decree also provided for consolidating any damages sustained by entitled persons, in that the reduced restitution

of the amount received in the years 2012 and 2013 only partly played a role in forming the basis for calculating later adjustments (a sort of "negative capitalization").
These provisions became the subject of constitutional scrutiny when questions were raised in reference to Articles 3, 36(1), and 38(2) of the Constitution. Those questions as to constitutionality were declared unfounded by **Judgment No. 250 of 2017**, which explained that legislative discretion "in its choice of mechanisms intended to ensure the sufficiency of pension amounts over time is always limited by the principle of reasonableness. This principle […] limits the legislator's discretion and binds its choices to the adoption of solutions that are consistent with constitutional requirements". Discretion "does not preclude the need to verify, on the merits, the choices made at various times by the legislator with regard to the mechanisms for adjusting pensions, whatever their legal and factual context". "[T]he limits on measures of cutting costs, which, in changing economic contexts, have had a bearing on pensions, must be identified" in the constant interaction between constitutional principles. "The legislator must, in its discretion, act upon this firm basis, effecting a balancing of the values and constitutional interests involved with reference to not unreasonable criteria. On the one side are the pensioners' interests in preserving the purchasing power of their pensions, while on the other are the financial requirements and requirements related to balancing the budget of the State". To ensure that the pivotal principle of the reasonableness of legislative action related to spending cuts is consistently applied, such action must correspond to detailed reasons, that is, it must be supported by assessments of the economic situation that are based upon objective data. The challenged provisions introduced "a new and not unreasonable adjustment to the mechanism underlying the automatic increase, the extent of which was redefined in a way compatible with the available resources", and balanced the interests of pensioners with the financial requirements of the State in a not unreasonable way. The intervention intended to implement the holdings of the Court's 2015 judgment "in compliance with the principle of a balanced budget and with public finance goals, assuring the protection of the basic level of the social services concerning civil and social rights, including for the purpose of safeguarding intergenerational solidarity". The legislator designated the limited financial resources available, giving priority to the categories of pensioners receiving smaller pensions, complying with a principle of acting not unreasonably, as confirmed by the fact that larger pensions have greater margins of resistance against the effects of inflation. In particular, the decreasing percentages of the adjustment granted, in 2012 and 2013, for mid-level pensions (including from three to six times the minimum) were not held to be unreasonable, because "it cannot be said that [the challenged regime] jeopardizes the adequacy of the pensions [considered on the whole] to meet life needs".

Electoral law

The Italian Constitution does not lay down a predefined electoral system, but leaves it up to legislative discretion, taking into account the relevant historical context. Like other laws, election laws may be subjected to constitutional review and may be declared unconstitutional in the event they are manifestly unreasonable.
Judgment No. 1 of 2014 reviewed Law No. 270 of 2005, which governed the election of the Chamber of Deputies and the Senate of the Republic in 2006, 2008, and 2013. At issue was an electoral law providing for a majority bonus and fixed lists of candidates, which the Court declared partly unconstitutional, striking down the majority bonus and introducing the possibility for voters to express a preference. In particular, the Court held the provisions that granted a majority bonus in the Chamber of Deputies unconstitutional. They attributed the number of seats necessary to reach 340 Deputies (out of a total of 630) to the majority-winning list or coalition of lists, and granted a majority bonus in the Senate that assigned 55% of the seats allocated to each region to the list or coalition of lists that had received the largest number of votes in that region. The Court, noting the failure to provide for a minimum threshold of votes, held that the system entailed excessive over-representation of the list that attained a relative majority, and ran the risk of creating a clear distortion between the votes cast and the attribution of seats. Moreover, by compromising the

representative quality of the Parliament and altering the democratic dynamic, it conflicted with the principle of equality of the vote (Article 48 of the Constitution). This principle requires that each vote contribute potentially and with equal effectiveness to the formation of elected bodies, even if the concrete result depends upon the system adopted by the legislator. The unlimited compression of the representative quality of the Houses of Parliament was found, moreover, to be incompatible with the central role they have in the Italian system, due to the essential functions they carry out (adopting legislation, orienting and overseeing the Government, and revising the Constitution). In conclusion, the legislator did not carry out a correct balancing of the constitutional interests and values at stake, but attributed excessively predominant weight to the values of Government stability and the efficiency of decision-making procedures within the Parliament. The decision also declared that the provisions that only permitted voters to vote for lists, without being able to express any preference for a certain candidate, were partially unconstitutional. The mechanism outlined by the law made it so that the people's representatives were entirely chosen by the parties that put together the lists of candidates. In particular, since citizens were only permitted to select a list, this resulted in their choosing, as a block, all the numerous other candidates included in the list. These candidates, according to their position within the list, then automatically became deputies or senators, without the voter having had any way to know and evaluate them individually. The Court, while acknowledging the important role assigned to political parties by the Constitution (Article 49), as they facilitate citizen participation in political life and the electoral process, nevertheless underscored that the role of the parties may not, in any way, undermine citizens' freedom to vote, both in choosing the group that runs in elections, and in voting for one of the candidates included in the pre-established list, through a preferential vote. Since the mechanism envisaged that all elected members of Parliament, without exception, should lack the support of the personal indication of citizens, this altered the representative relationship between the electorate and those elected, going against the democratic principle and impacting the freedom of the vote enshrined in Article 48 of the Constitution.

The proportional electoral law that resulted from the Court's ruling was superseded by Law No. 52 of 2015 (which took effect on 1 July 2016). The legislator, taking into account the indications provided in Judgment No. 1 of 2014, among other things, adopted new electoral rules only for the Chamber of Deputies (in light of the prospect, which did not come to pass, of ending perfect bicameralism between the Houses). They provided, among other things, for subdividing the country into 20 electoral districts and 100 multi-member constituencies; a majority bonus of 340 seats (55% of the total) for the list with 40% of the votes after the first round and the proportionate assignment of the remaining seats to the other lists that had topped the minimum threshold; a single minimum threshold set at 3% nationally for all the lists to have access to the distribution of seats; the designation by each party of a "fixed" head of list in each constituency, and the ability of heads of lists to run in no more than 10 constituencies; and the possibility for voters to express two preferences on the ballot for candidates of different genders within the pre-established list.

The new law was also subject to scrutiny, in **Judgment No. 35 of 2017**. One question raised as to the constitutionality of the provision awarding a majority bonus after the first round of voting for the list that had obtained 40% of votes was declared unfounded. In particular, the Court, after noting that, in a proportional electoral system, it is necessary to provide for a minimum threshold of votes and/or seats for the assignment of the bonus in order to avoid excessive overrepresentation of the majority list, underscored that, in that case, the threshold required for obtaining the bonus succeeded in balancing the constitutional principles of the necessary representativeness of the Chamber of Deputies and the equality of the vote, on the one hand, with the constitutionally relevant goals of the stable governance of the nation and efficiency of decision-making procedures, on the other, in a not disproportionate way. As for the fact that the calculation for obtaining the majority bonus was carried out on the basis of validly cast votes, rather than on the overall number of eligible voters, the Court held that this was a matter internal to a delicate political choice left up to legislative discretion, and did not constitute a constitutionally mandatory solution. Furthermore,

the simultaneous presence of the bonus and of the minimum threshold were also held to be typical manifestations of legislative discretion, which aimed to avoid fragmentation of political representativeness and to contribute to governability. On the contrary, the Court declared that the provisions establishing (in the event the majority bonus were not assigned after the first round) a run-off vote between the first two lists, at the conclusion of which the list that earned a threshold of at least 50% plus one of the votes would be considered the winner, with that percentage calculated on validly cast votes and not on the total number of eligible voters, were unconstitutional. This mechanism excessively undermined the representative character of the electoral body and the equality of the vote in the name of governability. Indeed, the second round of ballots was not designed to be a new vote with respect to the prior one, but rather as its continuation (not allowing joining or coalition among lists), and it served to identify the winning list that would receive the majority bonus. In other words, the bonus awarded at the outcome of voting was able to artificially transform even a scantly supported list into an absolute majority. The Court held this to be incompatible with the prevailing logic underlying the law, which was proportional, and to contradict the principle of equality of the vote, which is the primary tool for manifesting the sovereignty of the people.

After the Court handed down Judgment No. 35 of 2017, the legislator passed Law No. 165 of 2017. The new law aimed to govern how both the Chamber of Deputies and the Senate of the Republic would be elected. It replaced Law No. 52 of 2015, which only applied to the Chamber, as well as Law No. 270 of 2005, which applied to the Senate and had not been repealed by the 2015 law, both of which had been subject to rulings of partial unconstitutionality. The new law, which was applied for the first time during the political elections of 4 March 2018, establishes the same framework for both the Chamber and the Senate, outlining a mixed electoral system that is primarily proportional, corrected by a mechanism assigning a significant portion of seats with a majoritarian method, and by the provision of a minimum threshold.

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3. Has the role of your Court in settling disputes and thus contributing to peace been challenged by other state powers, the media, etc.?

4. Is your Court confronted with a positive or rather critical attitude in society and in the media as far as the trust in reconciliation by your Court and/or the judiciary in general is concerned?

The Court, both when it adjudicates on the constitutionality of laws and enactments having the force of law, and when it resolves jurisdictional disputes between branches of State, does not participate in political debate. The Court expresses itself exclusively through its own rulings, and remains external to political dynamics.

D. Fundamental principles: the protection of human rights, democracy and the rule of law as a precondition to peace

1. Do you have case-law showing that the protection of human rights contributed to peace?

Foreign nationals

One particularly relevant area is the Court's case law on the status of foreign nationals with regard to a wide variety of aspects, including their enjoyment of civil rights and fundamental freedoms,

participation in economic and social life, and, because of the increase in migration, entry into Italian territory and policies to regulate migratory flows, security, and the relevant criminal law. The Court, starting with Judgment No. 120 of 1967, has held that the principle of equality applies to foreigners. This principle, which appears in Article 3 of the Constitution in specific reference to citizens, "must be considered to extend to foreigners since it has to do with the protection of the inviolable rights of the person, which are guaranteed to foreigners, including in conformity with the international legal order". In other words, it is now a well-established principle in the Italian legal system and in the collective awareness that the enjoyment of the inviolable rights of the person does not permit any differentiation between the position of citizens and that of foreign nationals.

More recently, in light of historical events and societal changes, the Court has heard cases dealing specifically with social welfare benefits and whether these should also be granted to foreign nationals. The vast majority of cases relied on the concept of dignity as a presumption underlying the personalist principle. Healthcare is the primary area in which protecting the individuals bolstered by referring back to human dignity. In **Judgment No. 218 of 1994**, the Court held that the dignity of the person must be safeguarded in every situation, and this includes the right to privacy about their state of health and the rights to maintain their work life and to have relationships in keeping with that status. Later case law underscored that the protection of this fundamental right cannot take place unconditionally; rather, it must be balanced appropriately with other, potentially conflicting values, except for a guaranteed, inalienable core. This "irreducible core" of protection of health, as a fundamental right of the person, must be recognized even in the case of foreign nationals, regardless of their status vis-à-vis the laws that govern entry and residency in the State, despite the fact that the legislator may provide for a variety of ways for exercising the right. When the legislator carries out the balancing of the various constitutional interests at stake in implementing the right to healthcare, it must give due consideration to requirements including those related to balancing the public budget. In this sense, **Judgment No. 309 of 1999** highlighted that the protection of the right to health cannot be exempted from the same limitations that the legislator encounters when it distributes the financial resources at its disposal. However, these requirements cannot take on so great a weight that they undermine the irreducible core of the right to health protected by the Constitution as an inviolable element of human dignity. Certainly, the right of citizens in impoverished financial circumstances, or indigents according to the wording of Article 32 of the Constitution, to receive free healthcare falls under this element. Later, **Judgment No. 252 of 2001** acknowledged that "the right to necessary healthcare for the protection of health is constitutionally impacted by the balancing with budgetary needs and other constitutionally protected interests, except for, in all cases, the guarantee of an irreducible core of the right to health protected by the Constitution as an inviolable element of human dignity, which prohibits any situation lacking in protection". This irreducible core "must be recognized even in the case of foreign nationals, regardless of their position vis-à-vis the provisions regulating entry and residency", since "foreigners who are present in the State, even illegally, have the right to benefit from all services that are urgent and non-deferrable […] since this is a fundamental right of the person".

Likewise, social assistance services too – established by law and intended to address people's subsistence needs – cannot tolerate discrimination between citizens and foreign nationals who are legal residents of the State, on the basis of any requirements other than meeting the subjective conditions necessary to qualify for the benefit. **Judgment No. 230 of 2015** declared Article 80(19) of Law No. 388 of 2000 to be unconstitutional *in parte qua* for violating Articles 2, 3, 32, and 38 of the Constitution. The provision made disability benefits for foreign-national deaf persons, and the corresponding communication allowance, contingent upon the requirement that they hold a *carta di soggiorno* (residency card), a status granted, moreover, after at least five years of holding a valid *permesso di soggiorno* (residency permit). The Court held that making the provision to foreign nationals of "particular financial services, based on the need to ensure […] assistance for disadvantaged persons, who are affected by medical conditions or disabilities causing serious

difficulties for ordinary interactions and, as a result, for their ability to work and support themselves" contingent upon a requirement like extended residency in the country would undermine the non-derogable duties of social solidarity, the protection of the right to health, "including in the sense of access to the most suitable means to ensure it", and "greater and more sustainable social protection", as well as, above all, the principle of substantive equality. Indeed, the provision would have undermined "needs for protection which, precisely because they meet the primary needs of persons with disabilities, are, *per se*, non-differentiable and non-deferrable on the basis of merely extrinsic or formal criteria". On the contrary, the Court held that the decision to make payment of disability benefits contingent upon a situation of "limited income, so as, therefore, to make the [benefit] the full measure of support for meeting the indispensable needs of a dignified life", as well as proof that the foreign national's residency "is, in addition to being legal, neither sporadic nor occasional".

Persons with disabilities

The principles affirmed by the Court in relation to persons with disabilities are just as significant. **Judgment No. 213 of 2016** was particularly important. "The mental and physical health of persons with disabilities, as a fundamental right of the individual enshrined in Article 32 of the Constitution, is one of the inviolable rights that the Republic recognizes and guarantees for the person, both as an individual, and in the social groups in which his or her personality is developed (Article 2 of the Constitution). Assistance for persons with disabilities and, in particular, meeting the need for socialization, in all its expressions, constitute fundamental elements of the development of one's personality and are appropriate tools for protecting the health of a person with a disability, understood according to the broadest meaning of mental and physical health […]. The right to mental and physical health, including assistance and socialization, thus must be guaranteed and protected in the case of persons with serious disabilities, both as individuals and as part of a social group, which […] must be taken to mean every form of community, simple or complex, which permits and fosters the free development of the person in their relational life, in the context of validating pluralism".

Prison law

Another area where, historically, the need to protect the person and human dignity has come to the fore is in prison law. As **Judgment No. 26 of 1999** pointed out, Article 27(3) of the Constitution establishes that punishments may not consist in inhuman treatment and must aim at the rehabilitation of the convicted person. These principles, when they enter into concrete operation within the legal system, translate not only into mandatory rules and directives that apply to the organization and actions of penitentiary institutions, but also into rights for detainees and prisoners. Therefore, the execution of punishments and the rehabilitation that is the purpose thereof – in conformity with the unavoidable demands of order and discipline – can never consist in treatments that entail conditions incompatible with recognizing the personhood of individuals living in circumstances of restricted freedom. Even (or, rather, above all) in this situation (in light of the precariousness for individuals living in an environment that, by nature, separates them from civil society, due to their lack of freedom), human dignity is protected by the Constitution through the bundle of inviolable rights of the person, which prisoners continue to carry with them throughout the course of their criminal sentences, in conformity, moreover, with the general framework that Article 1(1) of Law No. 354 of 1975 intended to give to all the rules governing the prison system. The Court has also stated that for prisoners to perform work activities helps bring the way they serve their sentences in line with the principle of the rehabilitative purpose of punishment. The work of prisoners, far from being a factor that makes punishment harsher, "is one of the means of the person's recovery, a central value for our prison system not only under the perspective of individual dignity, but also under that of assigning value to each individual's specific attitude

toward and capacity for work" (**Judgment No. 158 of 2001**, as well as **Judgment No. 341 of 2006**).
As has been the case for the protection of health, the principles that define the condition of prisoners and anyone subject to measures that restrict their freedom have also undergone an evolution over the years in terms of their application to foreign nationals. **Judgment No. 105 of 2001** is particularly noteworthy (it was picked up again, in large part, by Judgment No. 222 of 2004). That judgment held that holding foreign nationals in temporary detainment and assistance centers, even when their detention is linked to assistance purposes, undermines human dignity just like every other situation of physical subjugation to the power of others, and it is a sure indication that the measure touches on the area of personal freedom. Then, **Judgment No. 78 of 2007**, still in reference to the scenario of non-EU national detainees who had entered Italy illegally or remained without a residency permit, underscored that a potential absolute, general ban on access to alternative measures conflicted with the rules underlying the entire prison system, in light of the constitutional principles of the dignity of persons and the rehabilitative purpose of punishment.

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2. Do you have case-law showing that the protection of democracy contributed to peace?

In carrying out its functions, particularly in the resolution of disputes between branches of the State, the Court has resolved controversies that could potentially have posed a threat to democracy.

Necessary compliance with constitutional rules of legislative procedure
Order No. 17 of 2019 rejected as inadmissible a jurisdictional dispute between branches of the State, brought by 37 senators in their capacity as individual members of Parliament from an opposition party group comprising a qualified minority equal to one tenth of the members of the Senate, against the Government, the Chairperson of the Budget Committee, the Conference of Chairs of Parliamentary Groups, and the Speaker and the Chamber of the Senate of the Republic, concerning the ways in which the Senate had approved the draft law for the 2019 budget and the multi-year budget for the three-year period from 2019-2021. According to the Court, the presentation of a Government amendment that entirely replaced the original bill did not severely restrict the deliberation period and did not frustrate its examination in the Committee stage, making it impossible for them to familiarize themselves with the text and preventing senators from participating in an informed manner in discussion and voting. The Court found no "abuse of the legislative procedure was committed that was such as to give rise to the manifest violations of the constitutional prerogatives of the members of Parliament, which constitute prerequisites for admissibility", nor any violation of the constitutional principles on procedures for forming laws or for loyal cooperation among branches. The Court did, however, point to "the problematic effects of the approval of bills where associated with a confidence motion under a block amendment tabled by the government", in that, due to the non-amendable nature of the vote due to its association with a confidence vote under current parliamentary procedure, specific discussion and appropriate consideration of the individual aspects of the legislation, as well as any changes to the text as tabled by the Government, were excluded. These problematic elements were evaluated together with the practice of presenting confidence motions that has become consolidated over time, and which has been frequently used since the mid-1990s. Indeed, "An enduring practice is a factor that is not without significance within parliamentary law, which is characterised by a high degree of flexibility and consensual action". In other words, while this cannot justify every practice occurring within the Houses of Parliament, which may very well be unconstitutional, the practice concerning approval of bills by a confidence motion could not be disregarded in terms of the overall admissibility of the dispute, "where it is necessary to assess whether the violations objected to by the applicants reach that threshold of significance that justifies the involvement of the Court in order to stem the abuse

by the majority and to protect the constitutional powers of individual members of Parliament". In its decision on the case, the Court, while pointing to the increase in problematic elements in the practice of associating block amendments with confidence motions, explained that the way in which parliamentary working sessions had been conducted was heavily influenced by the extended engagement with European Union institutions, applying provisions laid down by the regulations of the Senate, and that these did not entirely rule out effective discussion of the texts that would contribute, at least in part, to the final version of the bill, in previous stages of the procedure.

The legitimate impediment of the President of the Council of Ministers to participate in a criminal trial

It often falls to the Court to settle disputes in which the judicial branch is in conflict with other branches of the State. In this area, its holdings on legitimate impediments to participation in criminal proceedings are particularly important.

Judgment No. 23 of 2011 held that questions raised as to the constitutionality of Article 1(1) of Law No. 51 of 2010, in reference to Articles 3 and 138 of the Constitution, were unfounded. The legal provision, which governed the legitimate impediment of a President of the Council of Ministers to appear as a defendant in a criminal trial, established that the court, upon a party's request, could delay the date of trial under the scenarios impeding an appearance listed therein. The provision, far from envisaging an absolute presumption of a legitimate impediment, in connection with a set of broad and non-specific functions overlapping with the entire role of the government position, was interpreted within the context of ordinary rules, in compliance with the general procedural guidelines under Article 420-*ter* of the Code of Criminal Procedure, in order to attribute a meaning to it that was compatible with the Constitution. The rule introduces a standard intended to guide courts in applying the provision of the Code, by identifying categories of governing obligations that are, in the abstract, relevant for its purposes. Taking this as the criterion, the categories of activities that qualified, in the abstract, as legitimate impediments for the President of the Council were only those coessential to governmental functions, provided for by law or regulation, as well as those necessary to prepare for or in consequence of those functions. The defendant was required always to specify the nature of the impediment, advancing a precise and timely obligation connected with the indicated commitment. The Court held that the standard was neither unreasonable nor disproportionate, insofar as it was bound by judicial examination and not intended to cover all the activities of the position, but only the responsibilities categorized as co-essential with governmental functions. By contrast, the same judgment struck down Article 1(3) and (4) of the same law, for breaches of Articles 3 and 138 of the Constitution. Paragraph (3) failed to authorize courts to perform a concrete evaluation of the claimed impediment for purposes of delaying the hearing. The rule did make the delay contingent upon the court's basic verification that the commitment claimed by the defendant to be an impediment actually existed, as well as its connection with duties co-essential with governmental functions (or to the preparation or consequences thereof). However, it failed to provide courts with the authority, granted them by the general legal framework, to perform a concrete assessment not only of the factual existence of the impediment, but also of whether it was truly absolute and current, for purposes of delaying the hearing. The rule, therefore, as a derogation from ordinary procedural rules, used ordinary legislation to introduce prerogative the governance of which is reserved to the Constitution. Article 1(4)provided that the defendant could deduce an ongoing impediment, rather than a timely one impacting a specific hearing, certified by the President of the Council of Minister's Office and relating to all the hearings scheduled or schedulable in a set time period, which could not exceed six months. This provision freed the defendant from the duty to identify the impediment specifically, and the certification that an impediment was ongoing by the President of the Council of Ministers ended up automatically postponing of hearings, eliminating the filter provided by an independent and impartial evaluation by a court.

Judgment No. 168 of 2013 settled a dispute between branches of State brought by the President of the Council of Ministers against the Ordinary Court of Milan, in reference to the principle of loyal cooperation and concerning an order in which the Court of Milan refused a request to postpone oral arguments from the defendant, who was, at the time, President of the Council of Ministers. The request had been made on the basis of legitimate impediment, since he was committed to head a meeting of the Council on the same date. The Constitutional Court held that the Court of Milan was entitled to establish that the defendant's commitment to preside over a meeting of the Council, scheduled for the same day the Ordinary Court of Milan had already indicated for oral proceedings, did not amount to an absolute impediment. Indeed, the defendant had not provided any evidence that the institutional commitment could not be postponed, and that it was necessary to hold it on the same day as the hearing he wished to postpone, nor had he suggested an alternative date. The lack of evidence prevented the Court of Milan from concluding that the defendant's inability to appear, due to the proffered commitment, was absolute. In theory, participation in a meeting of the Council of Ministers may amount to an impediment under Article 420-*ter* of the Code of Criminal Procedure, since it is included among the institutional activities that fall under the sphere of powers provided under Articles 92 to 96 of the Constitution and "co-essential with the functions typical of governance". However, the Court held that the situation of the President of the Council of Ministers is clearly distinguishable from cases in which the option to postpone their appearance in proceedings is not in the defendant's control (as happens for elected members of Parliament, in the case of an impediment due to a simultaneous exercise of parliamentary functions), because the Council is convened by the President him/herself, and because scenarios of absence or temporary impediments are regulated by Decree of the President of the Council of Ministers of 10 November 1993, which grants these functions to the Vice President of the Council or, in the case of multiple Vice Presidents, to the most senior thereof or, in the absence of a Vice President, to the most senior Minister.

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3. Do you have case-law showing that safeguarding the rule of law contributed to peace?

Personal freedom

The Constitution, after having raised "the recognition of those rights that make up the non-negotiable heritage of the human personality to the level of a fundamental rule of the State, for all purposes pertaining to relations between the collective and individuals: rights that belong to the person, understood as a free being […], then specifically indicates the individual inviolable rights, among which it provides, first, the right of personal freedom" (Judgment No. 11 of 1956).

Our founding Charter establishes certain institutions to safeguard personal freedom against potentially unlawful interference by the public authorities. In particular, the absolute reservation to the legislator and the reservation to the judiciary. Indeed, restrictions on personal freedom are permitted only "by a reasoned measure issued by a judicial authority, and only in the cases and the manner provided for by law", save in "exceptional cases of necessity and urgency, strictly defined by the law" in which "law enforcement authorities may adopt temporary measures that must be communicated to the judicial authorities within forty-eight hours" for mandatory confirmation within the following 48 hours, which, if not granted, will cause the measures to be revoked and deemed null and void.

Article 13 of the Constitution, which protects personal freedom, states that it is inviolable without giving it an explicit and complete definition. Seen in one of its dimensions, it can be understood as the freedom that is sacrificed by measures that allow for forms of physical coercion, whether by a court or the police, or by a private citizen. In multiple judgments, the Court has excluded from the scope of Article 13 (among other things): the mere imposition of a duty, even if it is criminally

punishable (Judgment No. 49 of 1959); deportation orders (Judgments No. 45 of 1960, 68 of 1964, and 210 of 1995); and the revocation of a driving license (Judgment No. 6 of 1962). Then there is another dimension of freedom, which may be infringed in the event of acts of coercion degrading of a person's dignity: such as, for example, the adoption of certain police measures that involve a series of duties or prohibitions, particularly in reference to preventive measures that apply to particularly dangerous subjects (Judgments No. 11 of 1956 and 27 of 1959). Finally, according to well-established case law, coercive powers of minimum substance, in consideration of a quantitative assessment of their invasiveness, do not infringe upon personal freedom. Here, Judgment No. 30 of 1962 explained that, "Article 13 does not refer to any limitation of personal freedom, but rather to those limitations which violate the traditional principle of *habeas corpus*". However, "the guarantee of *habeas corpus* should not be understood only in connection with the physical coercion of the person, but also with the impairment of moral freedom when such impairment implies the total subjugation of a person to the power of another". As a result, the area protected by Article 13 of the Constitution is not breached in cases of coercive powers of minimal substance.

Concerning the reservation to the judiciary, this consists in the ancient guarantee of *habeas corpus*, that is, the order that a court gives to the police to bring a detainee before it within a set time period, together with the reasons for their arrest. Relevant here are the rulings found in Judgment No. 105 of 2001, which held that the question challenging the constitutionality of Article 14 of Legislative Decree No. 286 of 1998 was unfounded. That article provided, in the event it was impossible to immediately carry out an administrative deportation order by means of accompanying the person to the border or denying them entry (due to a need to provide medical assistance to the foreign national, to obtain additional information about their identity or nationality, or to acquire travel documents, or due to the unavailability of a carrier or another suitable means of transportation), a foreign national could be held, for a strictly necessary period of time, in the nearest temporary detainment and assistance center by order of the police commissioner. The article also required that the measure be communicated to the court without delay and, in any case, within 48 hours of its adoption, for approval within the following 48 hours, or else lose all effect. The Court, disregarding the interpretation furnished by the referring court, and adopting a solution that more fully guaranteed and complied with Article 13, which cannot be in any way diluted when it comes to foreigners in light of the protection of other constitutionally relevant goods, held that, "review by the court applies not only to detention, but also to administrative deportation, in its specific method of execution, consisting in accompanying [the person] to the border by means of police force".

More recently, the Court, ruling on questions concerning the personal preventive measure of special supervision, reconstructed the relevant guarantees coming from both the Constitution and the European Convention on Human Rights as follows. Classifying the measures in question within the scope of Article 13 of the Constitution "means that the guarantees (which are also required under the ECHR framework) a) of a suitable basis in law for the measures in question and b) that the measure must be proportionate with legitimate crime prevention aims (a requirement of proportionality applies systematically within Italian constitutional law in relation to any act by the authorities that is liable to impinge upon the fundamental rights of the individual) must be supplemented by the further guarantee c) of the reservation of jurisdiction to the courts, which is not required at European level for restrictive measures that are considered by the ECtHR to merely restrict freedom of movement, which as such falls within the scope of the guarantees under Article 2 of Protocol No. 4 to the ECHR" (Judgment No. 24 of 2019).

As for the other form of guarantee, the reservation to the legislator, it is worth noting that, although Article 13 of the Constitution says nothing about the prerequisites, interests and purposes that authorize the legislator to restrict personal freedom, these must be found within the constitutional system as a whole, firstly in the principles found in Articles 25 and 27 of the Constitution, which deal with crimes and punishments. The scenarios under which personal freedom may be restricted, then, are primarily those connected with the commission of criminal offenses designed so as to

comply with the principle of personal responsibility (Article 27 of the Constitution) and the principle of legality (Article 25 of the Constitution), in its three corollaries – the reservation to the legislator, and the specificity/determinateness and non-retroactivity of sentencing provisions.

Criminal law

One specific area in which the Court, in its judgments, has always been careful to reiterate compliance with the principles that ensure the rule of law is that of criminal law. In this area, the principle of legality applies, with its three corollaries of the reservation to the legislator, non-retroactivity, and specificity/determinateness. The principle is enshrined in the Constitution in Article 25, according to which: "No one may be punished except on the basis of a law in force at the time the offense was committed".

The principle of the reservation to the legislator operates at the level of sources, and it means that the State-level legislator (Judgment No. 487 of 1989) has a monopoly when it comes to choosing what conduct to criminalize. The principle of specificity pertains to the formulation of the criminal offense under the law and requires that it be described with a sufficient level of specificity, such as would allow one to understand what conduct is relevant for criminal purposes and what conduct is not. The principle of non-retroactivity pertains to the applicability of a criminal law over time, and mandates that a given subject may only be punished pursuant to a law that entered into force prior to the commission of the conduct amounting to a crime.

One particular area in which the issue of compliance with these principles has come up is that of the admissibility of interventions by the Constitutional Court that impact criminal law.

Rulings that have favorable effects for a culprit have not raised particular problems, as they are consistent with the principle of *favor libertatis* (they eliminate a criminal offense or reduce the punishment associated with it, or else broaden the scenarios in which grounds for non-punishability or justifying factors apply). What has been a subject of debate, however, is the possibility to request rulings from the Court that could cause negative effects for culprits. These would, in theory, be difficult to reconcile with the principle of the reservation to the legislator and the principle of non-retroactivity.

The Constitutional Court's case law on this topic has been subject to evolution. Early on, it tended to hold that *in malam partem* rulings were not admissible for purely procedural reasons, by determining that related questions referred for review were lacking in relevance, due to the principle of non-retroactivity. In reality, in view of the aforementioned provision that, "no one may be punished for an act that did not amount to a crime under the law in force at the time it was committed" (Article 2 of the Criminal Code), potential rulings finding the questions raised well founded would not have been capable, in any case, of producing effects detrimental to defendants in pending criminal trials before a referring court (Judgment No. 85 of 1976). Later on, distinguishing the sphere of guarantees put in place for defendants by the constitutional principles of criminal law from the sphere of the review to which even criminal provisions are subject, for purposes of avoiding areas without oversight that were absolutely not intended under the Constitution, the Court held that nothing precluded on-the-merits examination of the challenged laws (Judgment No. 148 of 1983). The changed approach did not, however, mean that questions as to the constitutionality of lighter criminal laws were automatically admissible. The Court explained that the impediment to handing down rulings of unconstitutionality that went against culprits was not a merely procedural matter (related to irrelevance), but rather a substantive one, closely connected to the principle of reservation to the legislator under Article 25(2) of the Constitution.

The Court would infringe upon the reservation to the legislator in scenarios where its decisions, by extending punishments to apply to conduct not envisaged by law, or by making a punishment harsher, amounted to true criminal law policy choices – something that falls within the exclusive competence of the legislator. On the contrary, as Judgment No. 394 of 2006 explained, in the case of rulings striking down favorable criminal provisions (provisions, that is, that, by repealing or amending earlier criminal provisions, create more positive treatment for culprits) as

unconstitutional, the resulting *malam partem* effect does not violate the reservation to the legislator to choose what conduct to criminalize, in that "it does not derive from the introduction of new rules or from the manipulation of existing ones", but "is, rather, a consequence of the automatic re-expansion of the general or ordinary rule laid down by the legislator itself". This re-expansion "is a natural reaction of the legal system – resulting from its unitary character – to the elimination of the unconstitutional provision: a reaction that would take place in just the same way if the eliminated provision were harsher [than the remaining ones]. In that case, the lighter general criminal provision would be the one to re-expand, without any trace of a creative or additive intervention by the Court".
These principles have been reiterated by recent rulings (Judgments No. 40 of 2019, 236 and 143 of 2018, and 46, 32, and 5 of 2014), which highlighted the need to respect the central role of Parliament – the highest expression of political representation in that it is elected through the universal vote of the entire national community – as the subject granted the authority to establish the rules in this area, as it has a direct bearing on the fundamental rights of individuals.
For judgments *in malam partem* that comply with the principle of the reservation to the legislator, a review of their compatibility with the other principles that govern the succession of criminal laws over time is also necessary. It is important to distinguish between two different scenarios. If an act was committed while the more favorable rule was in force, judgments by the Court that are detrimental for the culprit are not admissible, in that these would entail the application of a harsher law, infringing upon the principle by which no one may be punished for acts that, at the time they were committed, did not amount to a crime, or amounted to a lesser crime. The situation is different when the act was committed while the harsher ordinary provision was in force, and the ruling of unconstitutionality concerns a later, lighter law, preventing it from having retroactive effect. In cases like these, there are no obstacles to the admissibility of a Court ruling, as the individual concerned becomes subject to the punishment that was in force at the time he or she freely decided to break the law.

Substantive legality
The principle of substantive legality entails the requirement that legislation define the circumstances and conditions under which the rights of citizens may be impacted by the public authorities. Confirming a well-established trend, **Judgment No. 115 of 2011** reiterated "the essential necessity that every grant of administrative power comply with the principle of substantive legality, which forms the foundation of the rule of law. The principle does not allow for the power conferred by law upon an administrative authority to be absolutely non-specific, with the result that, in practice, it would attribute total freedom to the subject or body charged with the function […]. It is not enough for the law to provide that a power's purpose is to protect a good or a value; it is indispensable that it also determine the contents and ways in which it can be exercised. In this way, a constant (albeit flexible) legislative cover for administrative actions is always maintained".

E. Doctrine

1. Does your Court interpret constitutional provisions in a way that contributes to social peace?

Please see the reply to question no. 1 of part A.

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2. Has your Court developed case-law that balances between legitimate interests of parties and thus contributes to social peace?

The Court is frequently tasked with settling institutional disputes that have potential to jeopardize the orderly workings of the democracy.

Individual no-confidence motions against single Ministers

With **Judgment No. 7 of 1996**, the Court allowed for the possibility of individual no-confidence motions concerning a single minister. The ruling settled a jurisdictional dispute among branches of State brought by the then-Justice Minister in reference to an individual no-confidence motion approved against him by the Senate on 19 October 1995. The situation was unusual, both because the individual no-confidence motion had been supported and approved not by the opposition, but by the majority parliamentary groups, for the purpose of targeting the Minister without involving the Government in the no-confidence vote, and also because the President of the Council of Ministers, despite agreeing with the majority's findings, had not moved to revoke the Minister's appointment. The Court underscored that a "no-confidence motion – in any of its variants, whether focused on the Government or on an individual minister – involves a purely political judgment. And, in any case, the complaint in which the plaintiff infers that the no-confidence motion was used with a view to achieve an improper outcome […] creates a complaint that is, *per se*, inadmissible, because it presupposes that the reasons and purposes of the Senate's initiative are subject to review. The measure at object in the appeal contains evaluations by the Senate, which, precisely because they express the political nature of the determinations to which the Senate is entitled, do not fall under […] any purposive review. The no-confidence motion is a measure that can be classified among those through which the Parliament has a say in the political priorities of the Government". Without prejudice to the fact that the dispute could have been solved within the Council of Ministers, the role of the Constitutional Court is to ascertain whether the parliamentary oversight power has been lawfully exercised. The judgment explained that, "having the confidence of the Parliament is the indispensable prerequisite for the Government or the ministers to retain their posts. Thus, when this confidence is lacking, resignation becomes an obligatory measure on the basis of a fundamental rule of the parliamentary regime. In this sense, the mandatory resignation of the Government in the case of no-confidence, even if not expressly provided for, may be deduced from (in addition to the principle enshrined in the first paragraph of Article 94) the argument *a contrario* implied by the fourth paragraph of that provision, which says that a negative vote by one or both of the Chambers on a Government proposal does not entail mandatory resignation. If confidence generates the political connection between the Parliament and the Government, the voluntary nature of resignation, after a no-confidence vote, does not mean […] freedom to determine the *if* and the *when*. Since the effects of a revocation of confidence are spent in the context of the relationship between the Parliament and the Government, but do not render the appointment invalid, the submission of a resignation is the normal way to allow the President of the Republic to proceed with the nomination of the new Government or new minister. The President of the Republic, at that stage, is charged with an active role that, without a resignation, requires the exercise of powers that touch on the constitutional guarantee, with an eye to reinstating the institutions to their proper working state. In the present case, on the basis of an acknowledgment of the will of the Senate, which expressed no confidence in the Justice Minister, a complex procedure was initiated, in which the President of the Council of Ministers took action with an initial motion intended to take into account of the will of the Parliament, that is, with a proposed substitute, as well as the President of the Republic, who, having received the request, carried out his role as guarantor of the Constitution, removing the Minister from his position, and providing for his substitution".

Intercepting the conversations of the President of the Republic

Judgment No. 1 of 2013 settled a jurisdictional dispute between branches of State brought by the President of the Republic against a Public Prosecutor's Office, having to do with wiretapping activity used on a non-Parliamentary subject, during the course of which certain conversations with the Head of State were also recorded. The Court held that the public prosecutor was not entitled to evaluate the relevance of tapped telephone conversations of the President of the Republic and could not fail to ask the court to immediately destroy documentation related to the taped conversations, without subjecting into examination between the parties, and in such a way as to ensure the secrecy of the contents of the conversations. The Court explained that, in order to effectively carry out his role as guarantor of constitutional equilibrium and of a "body of influence", the President must constantly weave a network of connections, for the purpose of harmonizing any conflicts. To this end, he must be able, in addition to his formal powers, which take the form of emanating specific and timely measures, to make judicious use of the "power of persuasion", made up essentially of informal activities, including meetings, conversations, and discussions, the efficacy and practicability of which depend upon discretion and privacy, including with regard to his communications. The silence of the Constitution on the topic of tools for removing the prohibition on using invasive research methods to collect evidence concerning the President, and the absence of explicit limitations for categories of crimes established by constitutional provisions, far from amounting to a gap, express the non-derogability, as a matter of principle (with an exception for crimes of high treason or attempt against the Constitution), of the privacy of the sphere of communications engaged in by the supreme guarantor of the equilibrium between the branches of the State. The merely accidental nature of the wiretapping was irrelevant, given that the level of protection cannot be lowered due to entirely chance and unforeseeable circumstances. Therefore, the ban on interception requires judicial authorities to avoid compounding the breach of privacy already caused by recording the communications, and to adopt all necessary and useful measures to prevent dissemination of the contents of the conversations, and to destroy the recordings inadvertently made as quickly as possible.

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3. Has your Court developed any doctrine contributing to the peaceful settlement of conflicts?

Please see the reply to question no. 1 of part A.

Part II "<u>Stocktaking on the independence of the Member Courts</u>"

1. Has pressure been exercised on your Court by other state powers during the consideration (examination) of cases?

In performing its essential function as guarantor of the Constitution, the Court has never been subjected to pressure or urging by another branch of the State during the course of deliberation or examination of a case. It is not a representative body, but rather a technical and professional one, with an independent and impartial role. As such, it remains outside political dynamics and debates. Moreover, the Judges, both those appointed by the President and those elected by the Parliament, do not answer for their work to the institutions that selected them.

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2. Has excessive pressure been exercised on your Court by the media during the consideration (examination) of cases?

The role of the Court as the adjudicator of laws and arbiter of institutional conflicts means that its activities frequently attract the attention not only of the legal community, but also of the public. This happens when it falls to the Court to adjudicate on laws with exceptional importance for the social or economic life of the country, or on matters that are significant for the orderly progress of institutional activity. Decisions on the admissibility of abrogative referendums are emblematic – these concern choices that represent a certain political preference and are perceived, as such, to be of direct interest to citizens (as in the cases of abortion, divorce, nuclear energy and electoral laws). The same is true of judgments on the constitutionality of particularly important laws (for example, in the areas concerning security, end-of-life issues, foreign nationals, health, and medically assisted reproduction). In scenarios such as these, public debate can become extremely heated. However, there have not been instances in which pressure was applied directly to the Court to force it to adopt any particular decision.

The Court's most important rulings, the ones that are most highly anticipated by the public, are preceded during the judges' deliberations in chambers, and then accompanied at the time of their filing with the Court's Registry, by the circulation of press releases addressed not only to lawyers, but to a general citizen audience. The recent practice of issuing press releases, drafted in view of assisting in the dissemination and better understanding of the Court's rulings, testifies to the increased sensitivity of the Court and its ongoing dedication to meet the need for information. These have also resulted in the creation of a designated professional position to oversee communications, separate and distinct from the Press Office.

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3. Has your Court encountered resistance from other state powers following the adoption of decisions they disliked?

The decisions of the Constitutional Court are not subject to appeal, and they provide the last word on the related cases (Article 137(3) of the Constitution).

There have been no specific episodes of resistance from other State powers following the adoption of decisions they did not welcome. The independence assured to the Court by the legal system, and the authoritativeness it has gained over more than sixty years of activity, together with the accuracy and persuasiveness of the reasoning of its decisions, combine to create a high level of compliance with its decisions settling disputes between branches of the State. These decisions declare which of the opposing powers is entitled to exercise a certain contested, constitutionally relevant responsibility and, if necessary, they also strike down acts that infringe upon the constitutional system of powers. These decisions, therefore, in the majority of cases, are able to ensure the proper functioning of public institutions and the orderly coexistence of the branches of the State.

Legislative activity, which constitutes a specific object of constitutional review, is a slightly different matter. As laid out in greater detail below, in the reply to question no. 6, a finding that the Constitution has been violated, or even that a given situation raises questions as to constitutionality, may require necessary intervention by the legislator, particularly due to the many viable and appropriate solutions that may be used to remedy a verified breach and/or because of the involvement of multiple constitutional values in potential conflict with one another. In such cases, the related choices fall primarily to the political-representative institutions endowed with legislative power. It may also happen that the Parliament or a Regional Council approve a new law that reproduces the defects found in earlier laws. In this case, if the new law is duly brought before the Court, a violation of *res judicata* may be found, which amounts to an all-absorbing reason for the

unconstitutionality of the rule that substantially reproduces one that was previously declared unconstitutional.

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4. Have the decisions of your Court been duly published?

All decisions of the Constitutional Court are subject to dual publication, in the Official Journal of the Italian Republic, and on the official website of the Court itself.
Article 21 of Decree of the President of the Republic No. 1092 of 1985 provides for publication of the full text of all the Court's judgments in the first part of the Official Journal, and Article 12(1) of Decree of the President of the Republic No. 217 of 1986 specified that the duty of publication also applies to orders of manifest unfoundedness and the other orders that define the judgment. These provisions thus expanded the duty of publication, which originally applied to judgments declaring the unconstitutionality of a law or an enactment having the force of law, under Article 30(1) of Law No. 87 of 1953. Publication takes place immediately, after transmission of a judgment to the Minister of Justice and, in any case, no later than ten days after the decision is filed with the Court's Registry (normally in the Official Journal released on the Wednesday after the decision is filed). When a decision is filed with the Registry, it is also published in its entirety on the Court's official website.

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5. Are the decisions of your Court being executed? Are there special mechanisms for the execution of the decisions of your Court?

The Italian system does not envisage special mechanisms for executing the decisions of the Constitutional Court. The legal rules governing the effectiveness and execution of constitutional decisions are somewhat scant, and primarily refer to judgments concerning the constitutionality of laws.
Article 136 of the Constitution provides, in its first paragraph, that when the Court declares a law or an enactment having the force of law to be unconstitutional, the law ceases to have effect from the day following the publication of the decision, and, in its second paragraph, that the decision of the Court shall be published and communicated to the Houses and to the Regional Councils concerned, so that, wherever they deem it necessary, they shall act in conformity with constitutional procedures[*]. Article 30 of Implementation Law No. 87 of 1953 provides, at paragraph 2, that judgments of unconstitutionality shall be communicated, within two days of the date of filing, to the

[*] Also important in this regard is the framework contained in parliamentary regulations. In particular, under Article 108 of the Rules of the Chamber of Deputies, the judgments of the Court shall be printed, distributed, and contemporaneously sent to the competent Committee for the subject matter as well as to the Committee for Constitutional Affairs. The first Committee examines the issue, with a contribution from a Government representative and one or more rapporteurs designated by the Committee for Constitutional Affairs, and then expresses its view on the need for legislative action in a final document, indicating its informational criteria. The document is transmitted by the President of the Chamber to the President of the Senate, the President of the Council of Ministers, and the President of the Constitutional Court. Article 139 of the Rules of the Senate of the Republic provides that, in the event that a legislative provision has been declared unconstitutional, the President of the Senate shall communicate the Court's decision to the Assembly, and it shall be printed and transmitted to the competent Committee. If the President of the Senate deems it opportune that any other decisions of the Court be submitted to their examination, these, too, shall be transmitted to the Committee. The Committee adopts a resolution in which it urges the Government to take action, in the event it concludes that the stricken provisions must be replaced by new provisions and the legislator has not yet taken the initiative to fill the gap, or it perceives the need to take particular government action, following decisions by the Court.

Chambers and the Regional Councils concerned, so that, wherever they deem necessary, they may adopt the provisions that pertain to their competences. It also provides, at paragraph three, that laws declared unconstitutional may not be applied starting from the day after the decision is published. Paragraph four states that, when a final conviction has been issued applying the law declared unconstitutional, the execution of the sentence and all criminal effects shall cease.
These rules contains both mandatory and discretionary elements.
The declaration of unconstitutionality contained in a judgment agreeing with the allegations of unconstitutionality, in verifying the presence of a defect in a challenged law, takes the form of a prohibition to apply the law, binding upon all the subjects of the legal system and, in particular, upon those actors responsible for applying the law: courts and the administration. The prohibition effects the removal of the unconstitutional law from the legal system, and reflects the hierarchical superiority of the Constitution vis-à-vis ordinary legislation. A ruling of unconstitutionality, therefore, has general ("*erga omnes*") effect, not limited to the parties to the case in which the question was raised, as well as a constitutive character (as only the verification of the defect effects the substantive striking down of the law in breach of the Constitution, which remained effective up until that point), and potentially retroactive effect. With regard to this last element, the prohibition on applying the unconstitutional law concerns all the legal relationships that derive from it, whether they are pending at the time of the judgment, future, or even pre-existing, provided that they are not crystallized by the passage of time (as in the cases of time-barred rights and *res judicata*). Rulings of unconstitutionality amend the objective law and must be observed by all courts, the administration, and all citizens: this is the primary source of the obligatory nature of constitutional judgments, which is bolstered further by the fact that the decisions of the Court are not subject to appeal.
Nonetheless, exercising the function of guaranteeing the Constitution does not undermine the legislative power of the State and the Regions, which, while bound by rulings of unconstitutionality (on pain of violating constitutional case law), remain free to pass different rules concerning the same area or institutions that were subject to review, or else to adapt the rules in force to conform to the supervening ruling. Indeed, both the Constitution itself and the ordinary laws that implement it expressly allude to provisions that the Chambers and the Regional Councils may deem appropriate to adopt following a ruling of unconstitutionality. In certain cases, moreover, as will be noted below in reply to the next question, the Court's judgments, while declaring unconstitutionality, require timely legislative action to flesh outmatters of application or details.
For judgments rejecting the questions as to constitutionality, or holding them to be inadmissible, on the other hand, there is no analogous set of rules of effectiveness. Accordingly, such judgments only have effect for the parties to the proceedings in which the question was raised, and have limited preclusive scope in the sense that Article 137(3) of the Constitution prohibits the referral of the same question during the same proceedings, unless referred by a different court.
In relation to conflicts of powers, Article 38 of Law No. 87 of 1953 states that the Court shall settle the dispute declaring which branch or body is entitled to exercise the power at issue and, in the event a measure has been issued (usually not a legislative one) by an actor lacking the competence to do so, it shall annul it.

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6. Are there problems in the execution of specific types of decisions?

The topic of issues connected with the execution of the Constitutional Court's judgments is affected by both the scanty legislative rules and the significant differences between the various types of rulings.
When it comes to judgments on the constitutionality of laws, it is necessary to distinguish between rulings of rejection (or inadmissibility) and decisions of well-foundedness. When it comes to the

latter type, only the Constitution and ordinary laws expressly govern their effectiveness, forbidding the application of provisions held to be unconstitutional, with general and potentially retroactive scope. In the absence of a rule like Article 136 of the Constitution, rulings rejecting the questions or finding them inadmissible have a limited preclusive effect, prohibiting the re-referral of the same question from the same-level court of the specific proceedings in which it was initially raised. The general canon that judges are subject only to the law (Article 101 of the Constitution) means that even a ruling of rejection, in a scenario in which the Court lays down an interpretation of the challenged rule that complies with the Constitution, may be disregarded by ordinary courts in their application of the law. To prevent conflicting case law and ensure that the law is concretely applied in a way consistent with constitutional principles, the Court has developed the doctrines of "living law" and of "constitutionally conforming interpretation", the shared goal of which is to achieve broader affirmation of the prevalence of the Constitution, in a spirit of cooperation with judicial bodies. According to the living law theory, the Court declines to place its own interpretations in opposition to the prevailing interpretations of other courts, but accepts, as the object of its review, rules as they are concretely applied in practice. The result of this is that, when the Court issues a ruling finding the questions raised by the referring court well founded (a so-called "interpretive ruling"), the rule in question is expunged from the legal system – the typical effect of rulings of unconstitutionality. According to the other doctrine, examining a question on the merits requires that the referring judge has already carried out a due, preliminary attempt to find a constitutionally appropriate interpretation of the legislative text it suspects of unconstitutionality. The Court may only carry out its review, therefore, in the event that such efforts were fruitless.

In rulings finding the questions raised by the referring court well founded the degree of effectiveness outlined by Article 136 of the Constitution, which substantively assigns force equivalent to law to rulings of unconstitutionality, thoroughly eradicates any doubts courts may have deriving from the canon of being subject only to law. Nevertheless, some issues remain for the execution of some rulings in agreement with the referring court where they remand to and/or do not place constraints on later action by the ordinary legislator, which is chiefly responsible for striking a reasonable balance between constitutional values of equal weight involved in individual areas.

Two specific types of rulings are worth noting here, as they can raise particular issues of execution for the legislator: additive rulings of principle and warnings.

Additive rulings of principle are rulings finding the referring court's questions well founded that declare provisions to be unconstitutional insofar as they fail to provide for a constitutionally required principle, the detailed definition and application of which they remand to the legislator, which must take necessary action. Such rulings work to repair breaches of the Constitution that have been effectively verified, and have the result of avoiding unconstitutional applications of the challenged law. However, the choice of which of the various options capable of ensuring that the constitutional principle is fully operational is left to the representative institutions, first among which is the Parliament (see Judgments No. 120 of 2018 on the right of members of the military to organize into trade unions, and No. 278 of 2013 on the right of adopted persons to access information about their origins). In anticipation of such legislative action, the Court sometimes decides to provide courts with operational instructions, taken from the legal system and valid on a temporary basis, which are suitable to ensure immediate protection for the rights and constitutional values the ruling was adopted to protect (Judgment No. 113 of 2011, on the revision of final criminal judgments due to the duty to conform to the judgments of the European Court of Human Rights). Warning-judgments, like additive rulings of principle, call for unavoidable action by the legislator, but they differ significantly in terms of effectiveness (as long as they do not include a ruling of well-foundedness of the questions raised by the referring court). These decisions generally include rulings that the referred questions are unfounded or inadmissible, reinforced by a call for the legislator to take action in order to rectify circumstances of detected unconstitutionality or even just dubious constitutionality. Rulings of rejection may derive from the way a question is framed, or from a failure to refer to the relevant constitutional provisions (see Judgment No. 129 of 2008,

followed by aforementioned Judgment No. 113 of 2011). Rulings of inadmissibility may arise from a variety of solutions, all of which are compatible with the Constitution but none of which is required, capable of repairing an existing breach (Judgment No. 23 of 2013 on the suspension of the statute of limitations in the event that a trial is suspended due to the certified irreversible nature of a defendant's incapacity to knowingly participate, followed by Judgment No. 45 of 2015 finding the questions well founded). In these scenarios, the Court does not find the question referred to it well founded due to certain pivotal principles of Italian constitutional justice: the necessary correspondence between the referring court's request and the Constitutional Court's ruling, and the fact that discretionary choices of the Parliament are not subject to review (Articles 27 and 28 of Law No. 87 of 1953). However, its role as guarantor of the Constitution may lead the Court to issue a forceful call for the legislator to bring the legislation into line with the Constitution, with the threat that it will reach a ruling of unconstitutionality in the event that the legislator has unduly delayed acting, when the question is again brought before it for scrutiny.

Issuing an urgent call for the legislator to remedy an unconstitutional circumstance, which is noted, but not declared, unconstitutional, played a role in a recent, unprecedented decision-making technique used by the Court. The Court, asked to pronounce on the constitutionality of a law criminalizing assisted suicide (Order No. 207 of 2018), noted a breach of the Constitution with regard to certain factual scenarios (involving persons suffering from irreversible conditions causing absolutely intolerable physical or psychological suffering, kept alive by means of life-sustaining care, but able to make free and informed decisions). Nevertheless, the Court, holding that, on principle, the rule complied with the Constitution because it was intended to protect the lives of particularly vulnerable persons, rather than declare it unconstitutional (thereby causing an unacceptable gap in protection), instead opted to postpone its decision on the issue until a later hearing, considering it proper, in a spirit of loyal institutional cooperation, to provide the Parliament with an adequate timeframe to grant it every opportunity to deliberate and take action. This technique, unlike warnings more typically issued in rulings of inadmissibility or rejection, allowed for avoiding unconstitutional *medio tempore* applications of the challenged provision while safeguarding the autonomy of the legislator. Then, in the absence of the called-for action on the part of the legislator, Judgment No. 242 of 2019 declared Article 580 of the Criminal Code unconstitutional *in parte qua*, stressing that more developed legislation in the area was opportune.

With regard to conflicts of powers, execution of judgments affirming the contested competence and, if appropriate, striking down the challenged measure, is left to the powers and bodies in conflict. These judgments, too, are not subject to appeal, and compliance with constitutional *res judicata* is mandatory.

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7. Have there been attacks on the Court following the adoption of decisions?

The sensitivity of the questions that come before the Court frequently means that the political and institutional spheres, as well as the public in general, tend to pay close attention to the Court and the decisions it hands down. Public debate may precede and, at times, follow decisions, particularly those that have an impact on divisive topics or delicate balances. But such debate, however heated, has never turned into true attacks on the Court and its independence.

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8. Have there been any legislative initiatives or actions leading to creating obstacles to the activity of your Court?

There have never been any legislative initiatives or actions leading to creating obstacles to the activity of the Constitutional Court.

Rather, constitutional legislation passed after the entry into force of the Constitution aimed to define or expand the competences of the Court. Here we may mention Constitutional Laws No. 1 of 1948, which established rules on rulings of constitutionality, and No. 1 of 1953, which enlarged the Court's catalogue of functions, adding the authority to rule on the admissibility of requests for an abrogative referendum to the tasks provided by Article 134 of the Constitution.
On the contrary, Constitutional Law No. 1 of 1989 limited the Court's competence in the area of criminal law to charges of high treason and attack on the Constitution, brought by a joint session of Parliament against the President of the Republic, and excluding ministerial crimes, which were assigned to the jurisdiction of the ordinary courts. This legislation was motivated not by the desire to limit the Court's activities, but rather to facilitate them, after they were essentially paralyzed between 1977 and 1979 by the demands of a single criminal case held before it concerning two former ministers.
Due to lack of the required consensus, other initiatives intended to increase the Court's competences in the past have been fruitless (one, for example, sought to introduce a preliminary ruling on the constitutionality of electoral laws), along with others intended to more broadly govern the powers of managing constitutional procedure (for example providing the power – already exercised under the case law – to regulate the timing of the effectiveness of rulings finding questions of constitutionality well founded).

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9. How did your Court deal with cases of pressure from other state powers, media, etc.?

Please see the replies to earlier questions no. 1 and 2.

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10. Has your Court received assistance from other bodies at the national or international level? Please specify the provide assistance.

The Constitutional Court, as a totally unique judicial body, has from time to time been in a position to request and receive assistance from other institutions. The purpose of these requests has been to obtain material that it deemed necessary to resolve questions before it.
The Court has broad powers of investigation, granted by Article 13 of Law No. 87 of 1953, which mentions hearing from witnesses and, even when otherwise forbidden under law, ordering the production of records and documents. To date, the Court has formally deployed its investigative powers sporadically (by issuing a related order), in about one hundred cases (less than 0.5% of the total of more than 20,000 decisions it has handed down since beginning its operations in 1956). Investigation requests have been made primarily to the office of the President of the Council of Ministers and to the Ministries responsible at the time for the sought-after material, as well as to the branches or bodies involved in a conflict of powers dispute. More rarely, they have been issued to the Chamber of Deputies, the National Institute of Statistics, and other judicial bodies. Investigation provisions are intended to increase the Court's investigative ability through the acquisition of data, documents and information. Naturally, the absence of formal activation of discovery powers does not mean that the Judge Rapporteur assigned to the case cannot always and unfailingly see to keeping the Court informed by gathering(even on an informal basis), organizing, and evaluating the factual and theoretical elements of the case that will become the basis of the Court's judgment.
When it comes to relationships with supranational and international institutions, it bears underscoring that the Constitutional Court belongs to the networks of the Court of Justice of the European Union and the European Court of Human Rights.

On 26 May 2017, the Constitutional Court entered into an agreement protocol to cooperate with the Court of Justice of the European Union, accepting an invitation to participate in the European Judicial Network. Cooperation has taken the form of a platform for exchanging information and supporting dialogue, run by the Court of Justice of the European Union with an eye to ensuring the high quality of European justice and the creation of a European legal space resulting from the convergence of national legal systems.
On 11 April 2019, the Constitutional Court signed a protocol of mutual understanding for dialogue and collaboration with the European Court of Human Rights, the purpose of which was to allow for a better reciprocal understanding of the functional mechanisms and legal reasoning of the two jurisdictions through the exchange of information and regular meetings. The protocol was followed by similar tools of collaboration, through which the Italian high courts joined the Superior Courts Network created by the European Court.

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11. Does your Court consider that it is prevented by judicial restraint from defending itself in the media or from seeking assistance?

In its over 60 years of activity, the Court has consistently allowed its operations and its *modus operandi* to be shaped by judicial restraint, fully aware that the authoritativeness of the institution and of the rulings by which it exercises its essential function as guarantor is preserved to the extent that its impartiality and independence remain intact, requiring that the Court maintain both actual and apparent detachment from the disputes it adjudicates. Nonetheless, judicial restraint is not tantamount to indifference to the mass media, since the Court has always deemed it necessary to corroborate its legitimacy and credibility by maintaining consistent contacts with the public by means of avenues of information. Tangible evidence of this is the well-established practice of holding an annual press conference, alongside the extraordinary meeting with the highest offices of the State, in which the President of the Court first lays out the chief trends from the case law of the previous year and then replies to questions from journalists, albeit without delving into the merits of questions subject to examination by the Court.
Judicial restraint, understood as reticence about pending matters or matters under deliberation, and refraining from making any statements about them, does not prevent the Court from asking for, in the way prescribed by the rules, and receiving, assistance from other bodies.

Chronological list of the judgments mentioned or discussed, labeled with their CODICES identification number and/or available in English translation on the website of the Constitutional Court*

Judgment No. 254 of 2019
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_254_2019_EN.pdf

Judgment No. 253 of 2019
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_253_2019_EN.pdf

Judgment No. 242 of 2019
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_242_2019_EN.pdf

Judgment No. 40 of 2019
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_40_2019_EN.pdf

Judgment No. 24 of 2019
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_24_2019_EN.pdf

Order No. 17 of 2019
ITA-2019-1-005 10.01.2019 17/2019
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/O_17_2019_EN.pdf

Order No. 207 of 2018
ITA-2019-1-003 24.10.2018 207/2018
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_207_2018_EN.pdf

Judgment No. 194 of 2018
ITA-2018-3-018 26.09.2018 194/2018
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/2018_194_EN.pdf

Judgment No. 183 of 2018
ITA-2018-3-014 05.06.2018 183/2018
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_2018_183_EN.pdf

Judgment No. 180 of 2018
ITA-2018-3-017 10.07.2018 180/2018
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_180_2018_EN.pdf

Judgment No. 120 of 2018
ITA-2018-2-012 11.04.2018 120/2018
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_2018_120_EN.pdf

Judgment No. 250 of 2017
ITA-2018-1-002 24.10.2017 250/2017
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_250_2017_EN.pdf

* Starting in 2019, the English translations of the Court's judgments are printed in volumes published by the *Istituto Poligrafico e Zecca dello Stato Italiano*, which contain a selection of the most significant decisions handed down over the course of the year. Currently, there are volumes available with decisions from the years 2016, 2017, 2018, 2019 and 2020.

Judgment No. 35 of 2017
ITA-2017-1-004 25.01.2017 35/2017
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/2017_35_en.pdf

Judgment No. 63 of 2016
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S63_2016_en.pdf

Judgment No. 230 of 2015
ITA-2015-3-003 07.10.2015 230/2015

Judgment No. 221 of 2015
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S221_2015_en.pdf

Judgment No. 118 of 2015
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S118_2015_en.pdf

Judgment No. 70 of 2015
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S70_2015_en.pdf

Judgment No. 10 of 2015
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S10_2015_en.pdf

Judgment No. 32 of 2014
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/32-2014_en.pdf

Judgment No. 5 of 2014
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/5-2014_en.pdf

Judgment No. 1 of 2014
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/1-2014_en.pdf

Judgment No. 278 of 2013
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/278-2013.pdf

Judgment No. 85 of 2013
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/85-2013.pdf

Judgment No. 23 of 2013
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/23-2013.pdf

Judgment No. 1 of 2013
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S001_2013_en.pdf

Judgment No. 264 of 2012
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S2012264_en.pdf

Judgment No. 113 of 2011
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S2011113_en.pdf

Judgment No. 23 of 2011
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S2010023_en.pdf

Judgment No. 250 of 2010
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S2010250_en.pdf

Judgment No. 249 of 2010
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S2010249_en.pdf

Judgment No. 138 of 2010
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S2010138_en.pdf

Judgment No. 341 of 2006
https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S2006341_en.pdf

Judgment No. 252 of 2001
ITA-2001-2-006 05.07.2001 252/2001

Judgment No. 105 of 2001
ITA-2001-1-004 10.04.2001 105/2001

Judgment No. 309 of 1999
ITA-1999-2-007 16.07.1999 309/1999

Judgment No. 7 of 1996
ITA-1996-1-001 06.12.1995 7/1996