

COLLOQUIUM BETWEEN THE ITALIAN CONSTITUTIONAL COURT AND THE SUPREME COURT OF THE UNITED KINGDOM

Rome, 10 July 2026

Marco D'Alberti

**Particularly important decisions
within the case law of the Italian Constitutional Court**

I would like to talk to you about some decisions of the Italian Constitutional Court on two issues of major significance – end of life and environmental protection – providing some hints at potential grounds for comparison between Italian and UK case law.

1. End of life

The Italian Criminal Code provides for the offence of assisted suicide, which is punished by a term of imprisonment of between five and twelve years (Article 580).

The Court has examined the constitutionality of this provision in various decisions. It has highlighted in particular that a right to die cannot be inferred from the right to life guaranteed under Article 2 of the Constitution and Article 2 ECHR, but that there are however certain tragic circumstances under which liability to punishment is not justified. In order to qualify for this exception, the person requesting assistance in committing suicide must be: a) affected by an irreversible disease; b) enduring physical or psychological suffering that is experienced as being absolutely intolerable; c) being kept alive by life-sustaining treatment; and d) capable of taking free and informed decisions. These are situations in which the provision of

assistance by a third party in ending the life of a person suffering from illness may be the only way out for such a person.

In an initial decision (Order No. 207 of 2018), the Court clarified that the absolute prohibition on assisted suicide ends up limiting the right to self-determination of the person suffering from illness, resulting in a violation of the principle of human dignity. It therefore held that the legislation was incompatible with the Constitution. However, it went on to add that it was unable to strike down the criminal provision as unconstitutional where it does not preclude liability to punishment for any person providing assistance to another person in the conditions described above to commit suicide. The judgment cited, amongst others, the decision by the UK Supreme Court in the *Nicklinson* case (2014) stressing that, in a situation involving a complex, controversial and ethically sensitive matter, the court must adopt a prudent approach and detailed consideration of the issue by Parliament is required. Lawmakers are able to make full provision in this area, also as regards the arrangements applicable to the medical assessment as to whether the circumstances of the person requesting assistance to commit suicide fulfil the requisite conditions.

Given the failure by Parliament to enact legislation, by a subsequent judgment from 2019 (No. 242), the Court struck down the criminal provision as unconstitutional to the extent that it did not preclude liability to punishment for assisted suicide where the specific circumstances mentioned above obtain. It added that these circumstances and the manner in which assistance is provided must be verified by a public body within the National Health Service, after obtaining an opinion from a competent local ethics committee (composed of doctors, pharmacologists, pharmacists, bioethics experts and a representative responsible for upholding patients' rights). This approach has been confirmed within subsequent judgments through to 2026.

The Court has consistently reiterated its hope that the national legislature will promptly enact comprehensive legislation to govern this area of the law. However, Parliament has still not taken any action.

Tuscany Region has enacted a statute on assisted suicide, which largely follows the approach taken within the judgments of the Constitutional Court. The Court did not declare that regional legislation unconstitutional as a whole, but only in some respects, with regard in particular to the excessively compressed timeframe applicable to the medical assessment procedure for establishing that the grounds precluding liability to punishment obtain (Judgment No. 204 of 2025).

It would be useful to discuss any potential comparison between the case law of the Italian Constitutional Court and the UK Supreme Court. The Italian Court, as said, has struck down the provision of the Criminal Code providing for the punishment of assisted suicide as a general rule, clarifying the circumstances justifying an exemption from liability to punishment. However, the UK Supreme Court does not have the power to invalidate primary legislation. At the same time, the Italian Constitutional Court has always attempted to engage in dialogue with Parliament, having called on it to take action. It has sought to strike a balance between “conflictual constitutionalism” and “collaborative constitutionalism”. The Court has always been mindful of the fact that such delicate matters need to be addressed holistically by state lawmakers. In this respect, there are some analogies with the case law of the UK Supreme Court. Another analogy lies in the fact that the two Parliaments have not yet approved end-of-life legislation.

2. Environmental protection

The Italian Constitutional Court has made numerous rulings on environmental matters.

In recent years, it has decided on cases concerning the difficult balance between industrial interests on the one hand and the protection of health, jobs and the environment on the other. This has occurred within judgments concerning the continuation of operations harmful to the environment and health at industrial facilities of strategic national interest, even following the seizure of the installations.

The Court has emphasised that it falls to the legislator to strike a balance among all of the interests at stake. Although the Court cannot substitute its own assessment for the comparative evaluation carried out by Parliament, it can assess the reasonableness and proportionality of that evaluation.

Accordingly, the Court has upheld as constitutional certain provisions of state legislation permitting the continuation of industrial operations at facilities of strategic national interest upon condition that certain clear and precise conditions were met, such as the existence of an administrative environmental authorisation procedure designed to give sufficient consideration to environmental and health-related requirements (*ILVA 1* case, Judgment No. 85 of 2013: ILVA is a major steelworks in Taranto, Puglia).

On the other hand, provisions of state legislation permitting the continuation of industrial operations without being subject to any specific limits, but rather only to company plans containing undefined measures not capable of resolving the risks to health and the environment, have been declared unconstitutional and annulled (*ILVA 2* case, Judgment No. 58 of 2018). The Court has also annulled provisions of state legislation that

allowed for the continuation of operations by industrial facilities on an open-ended basis (*Priolo* case, Judgment No. 105 of 2024: Priolo is a municipality in Sicily which hosts a major petrochemical plant).

In addition, various state provisions purporting to eliminate landscape protection constraints in relation to the construction of telecommunications facilities on land owned by local communities, which is classified by law as protected land, have also been annulled (Judgment No. 121 of 2026).

In other cases the Court has dealt with the development of renewable energy, which is important for reducing greenhouse gas emissions generated by fossil fuels. The Court has struck down as unconstitutional various regional laws prohibiting or hindering the construction of renewable energy plants in certain areas due to the violation of the principle laid down within EU law that the development of renewable energy must be regarded as an overriding public interest. At the same time, the Court has acknowledged the need to impose limits on the construction of renewable energy plants in protected areas of natural interest, referring to Regulation (EU) 2024/1991 on “nature restoration” (Judgments Nos. 28 and 134 of 2015). Therefore, promoting renewable energy cannot become an absolute imperative, and adequate consideration must also be given to landscape protection. Moreover, in pursuing the objective of reducing harmful emissions, there are also alternatives to the construction of facilities for generating renewable energy (wind turbines and photovoltaic installations), such as the preservation of wetlands or forests, which help to achieve carbon capture in the soil, thereby preventing its release into the atmosphere and hence mitigating climate change.

Finally, the Court has annulled regional legislation that had reduced protection against hydro-geological risks in certain types of land, providing only for *ex post* controls on facilities built on such land (Judgment No. 100

of 2026). The Court has also annulled regional legislation which, in allowing water to be extracted for industrial purposes, had excessively reduced the river flow necessary to ensure effective biodiversity (Judgment No. 57 of 2026).

On the other hand, the Court has upheld as constitutional certain regional legislation reinforcing environmental protection in areas protected under the European Habitats Directive (Directive 92/43/EEC; Judgment No. 116 of 2026 on environmental impact assessments).

References to EU law and the application of the proportionality principle have played a key role in environmental cases. The Constitutional Court applies the proportionality principle broadly, generally following a three-stage test. First of all, it verifies whether the statutory provision the constitutionality of which has been questioned is appropriate having regard to the objective pursued by the provision. It then considers whether the provision is necessary, which involves a review as to whether any less restrictive measures for the right and interests at stake are available. Finally, the Court reviews proportionality in a strict sense, i.e. whether or not the sacrifices imposed by the provision are excessive.

The proportionality principle has not been used as a mechanism enabling the Court to act in place of Parliament when striking a balance between the interests at stake, but rather as a means for preventing certain legislative measures resulting in adverse consequences that are excessively harmful for the environment.

On a comparative level, it can be noted that UK judgments on the environment have also on occasion referred to EU law, for instance in the 2024 judgment concerning a project for extracting oil in Surrey, which referred to Directive 2011/92/EU on environmental impact assessments.

As regards the proportionality principle within the case law of the UK Supreme Court, considered also beyond the scope of environmental law, in a recent lecture held at the University of Oxford on 13 May 2026 Lord Reed stressed that this principle must be used in a manner that does not result in the Court acting in place of Parliament. In this regard, it is possible to draw parallels between the two legal orders.

3. Concluding remarks

As can be seen from this brief examination of the decisions of the Italian Constitutional Court on assisted suicide and environmental protection, there are still significant differences between the case law of this Court and that of the UK Supreme Court.

The fundamental difference, as said, lies in the fact that the Constitutional Court is able to declare state or regional legislation unconstitutional, thereby resulting in their annulment. By virtue of the principle of parliamentary sovereignty, the UK Supreme Court cannot invalidate primary legislation. However, it does have the power to declare legislation incompatible with a right guaranteed under the European Convention on Human Rights. Here there is in some sense an analogy with certain decisions of the Italian Constitutional Court. As occurred in the first decision on assisted suicide from 2018, the Court can make a ruling of incompatibility with the Constitution, by which it does not annul the legislation but rather refers the matter to Parliament. If the legislature fails to take action – and here the differences with the British system are clear – the Court can then decide to strike down the statutory provision.

As regards the points of convergence between the two legal orders, some analogies can be found in the reference to EU law, notwithstanding the complex differences that have arisen in the post-Brexit landscape. There are

also similarities, as has been noted, in the use of the proportionality principle. The courts do not act in place of lawmakers in making choices about how to strike a balance between the different interests and rights at stake. The Parliament may choose to afford priority to some interests over others: it is an evaluation of preference. The courts then verify the just measure of that preference.

Finally, leaving aside the problem of the differing levels of influence of EU law in the two legal systems since 2016, there is certainly a shared endorsement of the fundamental principles of European legal culture and experience. Consider, for example, the principle of the rule of law, which is a value within the EU legal order but also has ancient roots in the history of British constitutionalism.