

**Study Meeting
between the
Italian Constitutional Court
and the
Supreme Court of the United Kingdom**

Friday, 10 July 2026

Palazzo della Consulta – Conference Room

**Mechanisms of Constitutional Review and Cases of Particular
Importance**

**The jurisdiction of the Italian Constitutional Court and that of the UK
Supreme Court: a comparison**

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1. The Italian Constitution *versus* the constitution of the United Kingdom

The first session concerns the general features of the jurisdiction of, respectively, the UK Supreme Court and the Italian Constitutional Court, ~~with a view to~~ offering some comparative perspectives on the two systems of adjudication.

It is generally emphasised, first of all, that the main distinction lies in the existence, or non-existence, of a codified constitution.

In our legal system, the constitution is contained in a clearly identifiable legislative act produced by the Constituent Assembly elected on 2-3 June 1946 for this specific purpose. That election also included the institutional referendum that founded a new form of State, turning Italy from a monarchy into a republic; this choice was therefore made directly by the electorate in a system that had only recently introduced universal suffrage, extending the right to vote to women. At the same time, the people elected the “constituent fathers” (*“padri costituenti”*), that is, the members of a very special legislative body charged with drafting and approving the Constitution. It did so quite rapidly, as the

Constitution was approved on 22 December 1946 and entered into force on 1 January 1948.

The Constitution is at the top of the hierarchy of sources of law and has greater force than ordinary legislation, as it determines its constitutionality.

Moreover, the Constitution also has greater stability than ordinary legislation, and, in this perspective, the Italian Constitution is said to be characterised by “rigidity”, as opposed to the “flexibility” of other constitutions. This is so because any amendment requires a special legislative procedure entailing a double approval by each of the two houses of Parliament, a higher qualified majority, and the possibility of a confirmatory popular referendum.

The Italian Constitution is thus contained in a clearly distinct document, endowed with greater force than ordinary legislation, and is marked by “rigidity” in the sense just described.

It is well known that, by contrast, in the United Kingdom there is no Constitution identifiable in a single, precise document; rather, it is contained in various legislative instruments and in constitutional practice itself. In any event, a rule of a constitutional nature is not superior to ordinary legislation; consequently, the constitution as a whole is “flexible”, in the sense that there is no reinforced and special procedure for amending provisions regarded as having constitutional rank.

This is certainly an important difference between the Italian and the British legal systems, but it is not the only one, and I do not believe it is the most important one.

The United Kingdom does have a constitution, even though it is not contained in a single, precise document. It is universally recognised that Magna Carta and the Bill of Rights have constitutional status. The Parliament Act 1911 is also constitutional in nature, since it regulates the relationship between the two legislative chambers, the House of Commons and the House of Lords. The legislation on devolution also concerns the form of the federal State and the distribution of powers between the central Parliament at Westminster and the regional Parliaments of Scotland, Wales and Northern Ireland. More recently, the Human Rights Act 1998 incorporated the European Convention on Human Rights, thereby including in the British legal system the catalogue of fundamental rights contained in the Convention.

Then there is European legislation. The United Kingdom held two referendums: one in 1975 to confirm entry into the European Community, and another in 2016 to leave the European Union (Brexit). In this period, the principle of the primacy of European law applied and, in particular, following the Treaty of Lisbon of 2009, so did the European constitutional corpus[KP1] , which is composed of the Charter of Fundamental Rights of the European Union (CFREU), the Treaty on European Union (TEU), and the Treaty on the Functioning of the European Union (TFEU).

The existence of constitutional practices further enriches the overall picture.

The complex structure of the British legal system means that there may be some difficulty in identifying individual constitutional rules, be they written rules or – a fortiori – customary ones.

Yet it must also be observed that, ultimately, even in our own system, which is based on a written Constitution contained in one clearly defined document placed at the top of the hierarchy of sources of law, not every problem can be said to have been solved merely by this very fact. Questions often arise as to the interpretation and scope of constitutional provisions.

2. *Constitutional review as compared to judicial review*

In ~~actual~~ fact, the greatest difference between the two systems is more radical and lies upstream of the jurisdiction of the two Courts.

The Italian Court carries out a typical form of *constitutional review*, whereas the British Court performs *judicial review*.

Our system is inspired by the principle of the rule of law, which requires – as most recently stated by the Venice Commission, which is an advisory body of the Council of Europe[KP2] , in its latest report of December 2025 – a system of constitutional review, that is, a system for reviewing the conformity of ordinary legislation with constitutional provisions. Accordingly, the Court's jurisdiction consists essentially in reviewing such conformity, with the power to declare legislation that fails that review unconstitutional and to strike down or amend it in order to bring it into line with the violated provisions.

The British system, by contrast, is inspired by the principle of parliamentary sovereignty. Constitutional review is therefore performed by Parliament itself, which,

when approving a law, also establishes its conformity with both substantive and procedural constitutional rules. This is the doctrine of parliamentary sovereignty, according to which no body within the legal system may repeal or disapply an Act of Parliament. It follows that no court may declare an Act of Parliament invalid or “unconstitutional”; nor can the manner in which the legislative procedure that led to its approval was conducted be reviewed. Once a bill has obtained the approval of both Houses of Parliament and Royal Assent, thereby becoming an Act of Parliament, it must be applied by the courts without any inquiry into the preceding or internal stages of the legislative process.

In theory, this is a very clear and more radical difference, extending far beyond the distinction between the Italian system, founded on a written Constitution as a separate legislative document approved by the Constituent Assembly, and the British system, founded on a constitution contained in various legislative instruments and in constitutional practice itself.

Nevertheless, for the reasons that will be discussed below – albeit in very summary form –, the distinction between the rule of law and the doctrine of parliamentary sovereignty also ultimately becomes less clear-cut when the jurisdictions of the two Courts are compared.

3. The constitutional jurisdiction of the Italian Court as a form of constitutional review

The main task of our Court consists in adjudicating on the constitutionality of ordinary legislation. As to its competence, Article 134 of the Constitution provides that “The Constitutional Court shall decide on: disputes concerning the constitutionality of laws and acts having the force of law issued by the State and the Regions [...]”.

As to the Court’s powers, Article 136 of the Constitution sets forth that “When the Court declares a law or an act having the force of law to be unconstitutional, the law ceases to have effect from the day following the publication of the decision”.

There are two forms of constitutional review: “incidental proceedings” (*giudizio in via incidentale*) and “proceedings by direct application” (*giudizio in via principale*).

The more general form is the “incidental” one. Proceedings are initiated by a referral order issued by a court – any court, be it ordinary or special, at first instance or at a higher instance – which, having to apply in the proceedings before it a provision of a law or of an act having the force of law, raises doubts as to its conformity with one or more provisions of the Constitution and therefore seizes the Constitutional Court. The court may not disapply the statutory provision that it considers contrary to the Constitution; it must refer the question to the Constitutional Court. It is the Constitutional Court – and the Constitutional Court only – that may declare such a provision unconstitutional because, hypothetically, it violates a constitutional provision. These proceedings are called “incidental” because they represent an interlude in any civil or administrative dispute or in criminal proceedings.

The other form of constitutional review is initiated by a direct application submitted by the Government or a Region, and its subject matter is a State or a regional law. The matter in dispute is usually a question of competence. The Government challenges a regional law, claiming that it has exceeded the limits of competence laid down in the Constitution for the regional legislature. A Region may do the same by challenging a State law for violating the rules on competence.

In both cases, if the Court upholds the application, it declares that the law is unconstitutional; that law, as in “incidental proceedings”, ceases to have effect from the day after the publication of the decision.

These, then, are the two ways to access the Constitutional Court: “incidental proceedings” are instituted by a referral order issued by any ordinary court, while “proceedings by direct application” are launched by the Government or by a Region. By contrast, and unlike the German system (*Verfassungsbeschwerde*) and the Spanish system (*recurso de amparo*), no direct application to the Constitutional Court can be submitted by individuals who consider that a law has infringed one of their fundamental rights.

These two types of proceedings, incidental and by direct application, have been conducted since 1956, and, in seventy years of activity, the Court has delivered more than 4,000 declarations of unconstitutionality. In other words, more than 4,000 statutory provisions have been struck down or amended by the Constitutional Court. Even more

numerous are the rulings declaring questions inadmissible or unfounded. Overall, throughout its activity, the Court has issued more than 23,000 decisions.

Recently, these decisions have been catalogued and collected in fifteen volumes, available on the Court's website and accessible to all: judges, lawyers, and scholars.

Every year, the Court also convenes a so-called extraordinary meeting, held in the presence of the President of the Republic and the highest State authorities, in order to report on its activity in the previous year. The annual reports drafted by the President of the Court are available on the Court's website. Those for 2025 and 2026, translated into English, are available respectively at the following addresses:

https://www.cortecostituzionale.it/annuario2024/pdf/Relazione_annuale_2024_ENG.pdf

https://www.cortecostituzionale.it/annuario2025/pdf/Relazione_annuale_2025_ENG.pdf

4. Judicial review in the Italian legal system

In the Italian legal system, in addition to constitutional review – understood as review of the constitutionality of legislation – there is certainly also judicial review, which instead consists in reviewing the correct application of legislation. Judicial review is generally entrusted to ordinary and special courts, which are organised in a pyramidal, though not hierarchical, structure: first instance, second instance and sometimes third instance. These courts determine whether the law has been violated in individual cases and adopt the consequent measures; however, they may not determine whether the law violates the Constitution, because – as has already been said – that is constitutional review, which falls solely within the jurisdiction of the Constitutional Court. If the courts consider that the statutory provisions that should be applied are unconstitutional, they may bring the matter before the Constitutional Court and submit the question to it.

The proper exercise of public powers – that is, compliance with the law in the exercise of any public power – also belongs to judicial review and falls within the jurisdiction of the ordinary courts and, in particular, the administrative courts.

Therefore, the judicial review performed by the UK Supreme Court, supplemented by the principle of binding precedent, may essentially be compared with the judicial review carried out by ordinary and administrative courts [KP3] in the Italian system. In Italy, moreover, for some years a procedural mechanism has been introduced that seeks to establish a form, albeit a less strict one, of binding precedent when the decision is delivered by the higher ordinary or special courts: the Court of Cassation, sitting in joined chambers; the Council of State, sitting in plenary session; and the Court of Auditors, sitting in joined chambers.

5. Disputes between branches of state and political acts

In ~~actual~~ fact, even with regard to judicial review, a comparison can be made between the two Courts since the jurisdiction of the Italian Constitutional Court does not end with the constitutional review of every law or act having the force of law.

Article 134 of the Constitution also provides that “The Constitutional Court shall decide on: [...] disputes arising over the allocation of state powers [...]”.

This further jurisdiction is comparable to the judicial review of the UK Supreme Court because it no longer concerns the constitutionality of a law, with the possibility of striking it down, but rather the observance of the law by one branch of state when that branch interferes with the competences of another branch. This very particular situation concerns only the branches of state, essentially the Government, Parliament and the Judiciary, according to the well-known tripartition deriving from the principle of the separation of powers, while it does not concern any other public authority. ~~And it concerns~~ disputes between branches of state only, not disputes with private parties or public authorities that cannot be classified as branches of state. The Constitutional Court is called upon to decide on these disputes by “applying” the law: it is therefore judicial review, albeit at the highest level.

A similar type of proceedings, which likewise falls within the jurisdiction of the Constitutional Court, concerns disputes arising over the allocation of powers between the State and the Regions, and between Regions.

Beyond the acts of the branches of state that may be brought before the Constitutional Court through disputes over the allocation of powers, there is a very limited

and exceptional area of acts that may not be decided upon by the Court because they are fully discretionary, namely “political acts” (*atti politici*).

In the judicial review of the UK Supreme Court as well, while all acts relating to the exercise of public powers are, in the abstract, justiciable, some disputes nonetheless escape judicial review by reason of the purely political nature of the challenged act; these are cases of non-justiciability.

The notion of non-justiciability has nevertheless evolved significantly in the case law of the UK Supreme Court.[1] Whereas in the past broad areas of governmental action, particularly in the fields of national security, defence and international relations, were regarded as substantially immune from judicial control, more recent case law has progressively narrowed those areas of immunity, bringing at least questions relating to legality, rationality and respect for procedural safeguards under review. The fact that a decision has political implications is therefore not, by itself, sufficient to remove it from judicial scrutiny.

6. Constitutional review and judicial review with reference to European law

Another possible comparison concerns the impact of European law.

As long as the United Kingdom remained a member of the European Union, British courts – English, Welsh, Scottish and Northern Irish – were bound by the principle of the primacy of European law under the European Communities Act (ECA) 1972.

It was precisely the ECA 1972, particularly sections 2 and 3, that required British courts to give precedence to Community law and follow the case law of the Court of Justice. In this way, the British Parliament had in substance limited its own sovereignty by accepting the primacy of EU law.

A basis for comparison was provided by the well-known *Factortame* case.[KP4]

A British statute on fishing, the Merchant Shipping Act 1988, conflicted with Community law because of discrimination based on nationality. The House of Lords had to resolve the question whether to apply the British statute or to disapply it in the name of the primacy of European law.

In line with the *Simmenthal* judgment of the Court of Justice, the House of Lords held that British courts could and indeed had to **disapply** national legislation where it was

found to conflict with Union law. This did not mean, however, that the British statute was “struck down”, because the judiciary could not strike down statutes in the United Kingdom; it was rather suspended and not applied to the case in question, precisely by reason of the ECA 1972.

However, since Parliament is sovereign, just as it had introduced the primacy of EU law in 1972, it could revoke it at any time by repealing the ECA. And this is actually what happened with Brexit, following the approval of the European Union (Withdrawal) Act 2018, which marked the United Kingdom’s exit from the European Union and ended the primacy of EU law in the UK legal system.

In the Italian legal system, on the contrary, the principle of the primacy of European law remains in force; a violation of that principle by national legislation makes that legislation unconstitutional, and the Constitutional Court may declare it so.

National legislation, whether State or regional, that is declared to be unconstitutional for violating European law is struck down and ceases to have effect.

As regards the application of European law, however, the Constitutional Court is not the only one playing a central role. Constitutional review exercised by the Constitutional Court coexists with judicial review by ordinary and administrative courts[KP5] , which may directly apply European rules that are self-executing and sufficiently detailed and disapply national rules that conflict with them. But disapplication by ordinary[KP6] and administrative courts is effective only in the individual proceedings in which it is ordered, whereas a declaration of unconstitutionality by our Court has *erga omnes* effect.

7. Constitutional review and judicial review with reference to the European Convention on Human Rights (ECHR)

~~Again~~ by way of comparison, the two jurisdictions – that of the Italian Constitutional Court and that of the UK Supreme Court – can be compared with reference to the European Convention on Human Rights (ECHR).

British courts apply the ECHR through a very distinctive mechanism, following the provisions of the Human Rights Act (HRA) 1998, which “incorporated” the ECHR into the domestic legal system of the United Kingdom.

Section 3 of the Human Rights Act provides that British courts must interpret and apply both primary acts of parliament and secondary legislation in a manner compatible with ECHR rights. There is, however, a prohibition on disapplication; what is possible instead is only a Declaration of Incompatibility under Section 4 HRA.

British courts have no power to disapply or strike down an act of parliament because it is contrary to the ECHR. The sovereignty of Parliament prevents courts from overriding the legislature.

In this case, the higher courts, such as the Supreme Court, may issue a Declaration of Incompatibility. The national law remains in force, and the court must still apply it in the specific case. But there is a strong political call for Parliament to amend the national provision and remedy the incompatibility.

Section 2 of the Human Rights Act provides that British courts must “take into account” the judgments and decisions of the European Court of Human Rights.

This system is still in force because the United Kingdom’s exit from the EU (Brexit) did not alter the status of the ECHR and of the Human Rights Act within the British legal system, given that the United Kingdom is still a member of the Council of Europe.

Turning to the Italian side, it may be said that a violation of the ECHR by national legislation, whether State or regional, entails its unconstitutionality; our Court, when the question is raised before it, strikes down or amends it so as to make it compatible with the ECHR provisions.

The interpretation of ECHR provisions by the European Court of Human Rights is binding on our Court.

Ordinary [KP7] courts, by contrast, have no power to disapply national legislation, whether State or regional, that conflicts with ECHR provisions; they may, however, raise a question of constitutionality and ask our Court to deliver a ruling of unconstitutionality.

National legislation that is declared unconstitutional for violating ECHR provisions is struck down and ceases to have effect.