CORTE COSTITUZIONALE

Report on the activities of the Constitutional Court in 2021

Giuliano Amato - President of the Constitutional Court

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1. Introduction

In 2021 the Constitutional Court once again found itself operating against the backdrop of the widespread SARS-CoV-2 pandemic. However, this did not interrupt the Court's work – we were a constant in the life of the institutions – and if anything served as an impetus for the reform of constitutional proceedings.

The electronic legal proceedings system has been fully operational since 3 December 2021. The e-Cost platform has been created, through which lawyers and State Counsel, judges, court clerks and parties to constitutional cases can electronically file and exchange pleadings and documents.

The impact of the Covid-19 pandemic on the work of the Court in 2021 is also relevant from another point of view. Indeed, if 2020 can be considered as the year in which the Court had to adapt its *modus operandi* to the necessity for social distancing that the measures to contain the pandemic required and still require, 2021 was the year in which precisely those measures became the very subject matter of the Court's adjudicatory functions: after the very first decisions at the end of 2020 the Court was called upon several times to rule on the legislation, both national and regional, adopted to deal with the problems posed by the spread of the SARS-CoV-2 virus.

Again in 2021, the Court continued its path of *opening up* to society, in particular, through the Podcast library, to which further episodes were added and which on 12 February 2021 witnessed the launch of a new series called "meetings". This has brought together constitutional judges and the worlds of culture, science and the arts, discussing the secularity of the State, the culture of punishment, memory, electoral law, universities, the right to love, human nature, language reparation and many other topics. A dialogue between different realms, which rediscover a unity and a sense of community even more precious in difficult and divisive times such as the present.

Collaboration between schools and the Court also continued, through a programme of organised lessons and, between 3 May and 2 June 2021, the series of

virtual meetings between constitutional judges and schools titled “Together towards 2 June”. The lessons were streamed live and the recordings are available online.

For some time now the need to shine a light on the Constitutional Court and also the places where it performs its duties has brought the Court itself into the media. This was also the case in 2021, through interviews and a presence on various platforms, in order to convey to the general television audience the role that the Court plays and its impact on the life of each citizen and the institutions.

Finally, this year the President’s Report is again accompanied by the publication of a Yearbook – in printed, online and English versions – as a further communication tool to inform as wide an audience as possible about the Court’s work during the past year.

2. The constitutional case law of 2021 in numbers

As is customary, an examination of the constitutional case law cannot but start from a brief but valuable survey of quantitative data, which are analysed in depth in the special volume prepared by the Court’s Studies Department.

The first figure worthy of mention is the total number of decisions, 263 in 2021 (of which 206 judgments and 57 orders), slightly down from 281 in 2020. This figure is also lower than the average for the last five years of 273 rulings, which confirms a downward trend in the total number of decisions.

The decrease in decisions is obviously a consequence of the fall in the number of actions brought before the Court, in particular direct applications, which, compared to 2020, dropped from 115 to 68, while referrals rose from 207 to 227. Overall, this figure is even lower than in 2019, on which however the pandemic may also have had an impact (although, as noted, orders are on the rise after a drop in 2020).

The majority of the decisions in 2021 came in incidental proceedings concerning the constitutionality of laws (141 rulings, of which 115 judgments and 26 orders), once again higher than those of direct proceedings (108 rulings, of which 91 judgments and 17 orders). Only 2 judgments were issued in proceedings between the State, Regions

and Autonomous Provinces concerning their respective powers while 12 rulings were issued in proceedings between branches of the State concerning the separation of powers (9 of which are orders of inadmissibility). Finally, there were three orders for the correction of clerical errors.

Therefore, incidental proceedings continue to account for the bulk of constitutional litigation (approximately 53% of rulings). In any case, the figure for direct proceedings involving disputes between central and local government is rather high (about 40% of the rulings), especially considering the trend of the last 15 years (generally around 30-35%).

2021 witnessed a slight reduction in pending cases. As of 1 January 2021, a total of 304 proceedings were pending, compared to 302 at the end of the year. This is mainly the result of an increase in the resolution of direct proceedings, with 83 outstanding as at 31 December 2021 compared to 124 at the beginning of the year. As against that, the number of pending cases for incidental proceedings rose from 172 to 205.

The time taken by the Court to reach a decision – calculated on the basis of the interval between the publication of the application in the Official Journal and the hearing of the case – also remains reasonably short. That said, there has been a slight increase in the time for incidental proceedings (an average of 245 days compared with 226 in 2020), offset by a slight reduction for direct proceedings (351 days compared with 372 in 2020). However, taking the filing of the decision as the completion date, the number of days goes from 261 to 285 in incidental proceedings and from 407 to 390 in direct proceedings.

In terms of the type of decisions, there has been a reduction in the number of orders, which generally are rulings of inadmissibility, and a gradual increase in judgments, which account for 78.3% of the total (over 80% as regards proceedings concerning the constitutionality of laws), the highest figure since 2007. This is an extremely significant figure, showing that the Court is increasingly addressing the merits of the issues.

With particular attention to direct proceedings, it should be noted that the majority of rulings concerned regional and autonomous provincial laws (97, as opposed to 11 national laws). It should also be pointed out that of the 64 judgments containing at least one ruling finding the question to be well founded, only one concerned national legislation.

In addition, worthy of note is the first case in which a directly challenged law was stayed on an interlocutory basis (order no. **4**), namely, Valle d'Aosta Regional Law No. 11 of 2020 derogating from national measures to combat the Covid-19 epidemic and contested by the State. The Court held that the pandemic required and requires uniform measures that fall within the field of international prophylaxis, a matter that is the sole prerogative of the State, so as to avoid a risk of serious and irreparable harm to the public interest and the rights of citizens in the case of conflicting regional measures.

3. Constitutional case law themes

As is the case every year there are many rulings of the Court that could be specifically mentioned. Reference should be made to volume prepared by the Studies Department for a more complete picture, but there are three fields that most characterise the decisions adopted in 2021, namely, social rights, the family and minors, and the criminal and prison system. One can also add the transversal theme of decisions concerning measures to contain the Covid-19 pandemic.

Another two issues of particular interest should also be noted.

The first concerns the prohibition on binding mandates (judgment no. **207**), where the Court made it clear that private agreements, instructions or constrictions between parties, parliamentary groups and parliamentarians are not afforded any legal protection since the ban on binding mandates means that any parliamentarian is free to vote in accordance with his or her party's guidelines but at the same time also free to disregard them. Accordingly, no rule could lawfully provide for consequences for the parliamentarian simply because he or she voted against party guidelines.

The second concerns the putting of a regional health authority into administration (judgment no. **168**), with particular reference to Calabria. The Court censured the way in which the central government's power to take over the reins from the regional health authority had been exercised, in particular the failure to provide the acting commissioner with an adequate support structure while entrusting that task to the regional authority whose inefficiency had been the very reason for putting it into administration in the first place.

3.1. The Constitutional Court and Covid-19

Judgments no. **37** (preceded by the above mentioned interlocutory order no. **4**) and no. **198** addressed the issue of the constitutional framework of the measures adopted to combat the pandemic as regards two aspect thereof: the separation of powers between the Government and the Parliament and the division of competences between the State and the Regions.

As for the first aspect, the Court assessed the emergency management model adopted by Decree-Law No. 19 of 2020, which empowered the President of the Council of Ministers to issue ad hoc decrees adopting specific measures for the containment of the pandemic, typified in the law and limited to temporary steps that could not repeated after the expiry of the state of emergency. In this way, the Government was not allowed to adopt *extra ordinem* measures, nor was there a conferral of legislative power on the President of the Council of Ministers, who was authorised to implement the archetypal measures within the limits of the exercise of administrative discretion, in accordance with the principles of adequacy and proportionality, and as regards technical-scientific aspects after consulting, as a rule, the relevant technical-scientific committee (judgment no. **198**).

As for the second aspect, the Court stated that in the management of the pandemic, logic more so than law entailed the need for uniform regulation at national level. That regulation, rooted in the exclusive competence of the State in the field of "international prophylaxis", encompasses all measures designed to counteract or prevent a health

pandemic in progress. Consequently, regional rules on the pandemic at odds with the national rules, even if more stringent, are not permissible except in the case of supervening developments after the adoption of a decree of the President of the Council of Ministers and before the State intervenes with a new measure (judgment no. **37**).

Recognition of the lawfulness of the pandemic emergency management model adopted does not of course rule out the need to assess the legality of the specific measures adopted in practice. In this respect, the Court's examination focused mainly on legislative measures extending or postponing deadlines, which, although justified by the necessary restrictions aimed at containing the contagion, did not always observe constitutional principles and the need to strike a balance between the various interests at stake.

This was the case with regard to trials and enforcement proceedings, for example, through the postponement of civil and criminal hearings with the ensuing suspension of the running of the statute of limitations. The Court held that the principle of legality was infringed when the suspension of the running of time was left to the discretion of the heads of the courts and not to criteria predetermined by law (judgment no. **140**). As for the extension of the suspension of enforcement proceedings involving the debtor's primary residence in the absence of any indication of the criteria to be fulfilled (judgement no. **128**) as well as the suspension of enforcement proceedings and the ineffectiveness of attachment orders against NHS bodies (judgement no. **236**), it was held that the extensions could be considered reasonable and proportionate during the acute phase of the pandemic but not so for any subsequent extension insofar as they excessively prejudiced creditors.

The Court also examined time extensions of the validity of certain administrative actions, holding that regional regulations aimed at altering the duration of the effectiveness of the measures at issue were unconstitutional. This was so as regards the extension of building permits (judgement no. **245**) and contracts for local public transport services (judgements no. **16** and no. **38**) as well as measures regulating the

deadlines for the installation of outdoor structures by public establishments as an exception to the existing landscape regulations (judgement no. **262**).

Restrictive measures adopted to contain the pandemic, in particular, the very recent ones distinguishing between the vaccinated and the unvaccinated against Covid-19 as regards their ability to engage in certain activities (dependent on holding a so-called *green pass*), came to be scrutinised by the Constitutional Court in disputes concerning the separation of powers. In that respect, proceedings were brought by members of parliament requesting the Court to declare that they be exempted from the application of the measures at issue. Applications that were declared inadmissible inasmuch as clearly aimed at improperly raising questions of constitutionality of the measures to combat the pandemic (orders no. **255**, no. **256**, no. **66** and no. **67**).

Lastly, the Court declared inadmissible an application filed by the subscribers of a petition concerning the conversion into statute law of Decree-Law No. 111 of 2021 on the green pass obligation in schools, complaining that the Parliament had failed to examine their petition. The right to petition pursuant to Article 50 of the Constitution is an individual right and not a constitutional right, and does not entail an obligation on the part of the Parliament to deliberate on it let alone adopt its contents, but merely a duty to receive the text and assign it to the relevant commissions, which was the case here (order no. **254**).

3.2. Social rights

In 2021 legislative measures curbing the enjoyment of social rights were repeatedly brought to the Court's attention.

In this area the legislator may legitimately restrict the number of recipients of social security benefits, including on grounds of limited resources available for financing them (judgments no. **9** and no. **52**), but the restrictions must be linked to the purpose of the benefits themselves (judgments no. **7** and no. **9**) and must strictly comply with the principle of reasonableness and not lead to discrimination (judgment no. **137**).

Therefore, measures aimed exclusively at responding to situations of serious economic need, such as income support and the disability pension, cannot be denied even to those convicted of very grave crimes (mafia and terrorism) when the State allows them to serve their sentences other than by a term of imprisonment. One cannot deem a person eligible for alternatives to incarceration only to then deprive them of the means to support themselves (not necessary for a custodial sentence) (judgment no. **137**).

Similarly, it is unconstitutional to deny housing and economic support benefits to parents convicted in the past of crimes against the person, such as acts of persecution, breach of family care obligations and ill-treatment in the family, who nonetheless have the right, and even before that the duty, to continue to look after their children, including where they might not have been assigned the family home (judgment no. **118** on Abruzzo legislation).

Greater limitations are possible for certain economic benefits that are not merely welfare in nature but are aimed at reintegration into the world of work, through a path that the recipient must actually be able to pursue. This is the case for citizen's income, for which specific moral requirements for eligibility can legitimately be set, including not being subject to personal preventative measures. Failure to maintain that status can be a ground for suspension of the benefit itself (judgment no. **126**).

The Court has paid particular attention to legislation that sets out criteria for eligibility for social security benefits based on a long-term connection with a locality.

With specific reference to the right to housing, for example, which is one of the social rights that most characterise the democratic order laid down by the Constitution (judgment no. **128**), the allocation of public housing cannot be based on rankings tied to length of residence, which has nothing to do with the state of need and penalises in particular, amongst others, legally resident foreigners (judgment no. **9** on Abruzzo legislation). Similarly, the granting of economic benefits to combat poverty cannot be tied to a requirement of residence for at least five years in the region (judgment no. **7** on Friuli Venezia Giulia legislation).

The laying down of especially burdensome documentary requirements solely for non-EU residents may also lead to unreasonable discrimination. For example, the obligation incumbent on resident non-EU nationals to submit, instead of a declaration on oath, documentation proving the income earned abroad for the purposes of eligibility for legal aid, which penalises foreigners where the inability to procure the documentation is due to the inertia or inadequate cooperation on the part of the authorities abroad (judgment no. **157**).

Lastly, in the field of employment law, judgment no. **59** once again intervened on the subject of dismissals on business grounds, declaring that the merely optional rather than compulsory reinstatement of a worker dismissed on the basis of circumstances that are manifestly non-existent was unconstitutional.

3.3. Criminal law and the prison system

In criminal matters it is for the Parliament to decide on criminal policy, with its delicate balancing act between rights and competing interests. The Court may not create new criminal offences, extend existing ones to unforeseen cases, impose a harsher punishment than that established by law or decide in a manner that worsens the offender's situation as regards other aspects of punishability (judgments no. **17**, no. **117** and no. **259**).

That said, the choices made by the legislator cannot be manifestly unreasonable or arbitrary, altering the constitutionally imposed balance of criminal responsibility.

Of particular relevance is judgement no. **150** on press offences, in respect of which incarceration should be limited to cases of exceptional gravity. An aggravating circumstance for the crime of defamation through the press that always entails the imposition of a prison sentence is thus unconstitutional as it would discourage the majority of journalists from exercising their crucial function of checking the actions of public authorities. This is not the case, however, for the aggravating circumstance referred to in Article 595(3) of the Criminal Code, which only envisages a custodial sentence as an alternative, giving the courts a discretionary power that must be

exercised taking into account the commensurate criteria laid down in Article 133 of the Criminal Code.

Also worthy of note is the declaration of unconstitutionality of the provision that barred an application for fair reparations submitted by the defendant or another party to the criminal proceedings who had not filed a motion to speed up the trial. Filing such a motion does not offer any assurance of a reduction of the time required to complete the trial and hence does not have any real accelerating effect on the proceedings. At most the failure to file the motion may be taken into account for the purposes of determining the amount of the reparations (judgment no. **175**).

The prison system is also one in which the Constitutional Court is faced with the greatest margin of appreciation enjoyed by the legislator, which consequently leads to the adoption of numerous rulings containing warnings and invitations to act to law makers.

An example is order no. **97**, to which we shall return, regarding provisions that rule out the conditional release of those sentenced to life imprisonment for organised crime offences who have not cooperated with the judicial authorities. Envisaging that such cooperation is the only possible way to be eligible for conditional release is unconstitutional. It is necessary that any such lack of cooperation be evaluated by the supervisory court on the basis of how the convicted person sentenced to life imprisonment has conducted himself or herself throughout their time in detention. Nevertheless, a ruling demolishing the entire architecture of the system could risk upsetting the overall balance of the rules at issue, above all the need for deterrence and collective security that they pursue in order to counteract the pervasive and deep-rooted menace of organised crime. It was decided therefore to adjourn the question for one year, so as to grant the legislator time to detail the specific reasons for non-cooperation and the particular rules that govern the period of probation of the offenders in question.

With regard to eligibility for prison benefits and alternatives to incarceration, the Court held that it was unconstitutional to prohibit home detention for prisoners aged over seventy convicted with the aggravating circumstance of recidivism. This is an

unreasonable preclusion, based on an assessment of greater social dangerousness made by the trial court when passing sentence, and therefore not current and not specific with respect to the existence of grounds that might militate in favour of home detention, to be evaluated in concrete terms at the time of ruling on the prisoner's application submitted in that regard (judgment no. **56**).

3.4. Children and families

The regulation of family relationships is a very delicate area in which numerous constitutional values are at stake, the balancing of which is primarily a matter for the legislator while respecting mandatory constitutional principles, chief among which the protection of the interests of children. This is all the more so in the light of the changes in the concept of family – which have led to the equal treatment of children once defined as legitimate and natural – as well as by virtue of scientific and technological advances in the field of filiation.

With two judgments, no. **32** and no. **33**, the Court declared inadmissible questions concerning the issues of children born on foot of a surrogacy arrangement and the recognition of children born by virtue of a heterologous fertilisation process undertaken by a same-sex couple. But in both cases the need to protect the interests of the children was held to be paramount. The gap that now exists cannot be filled by specific intervention of the Court, which would risk creating imbalances in the system as a whole. It requires – as has been said – action by the legislator to comprehensively regulate the condition of children born in the various circumstances in which that protection is most lacking (judgment no. **32**).

Judgment no. **133**, on the other hand, declared Article 263(3) of the Civil Code to be unconstitutional, a provision governing challenges to recognition of paternity when the father discovers that he is not in fact the biological parent. In cases other than impotence it is unreasonable that the time limit of one year for making the challenge should run from the moment of the recording of paternity on the birth certificate rather than the date of discovery of non-paternity, thereby barring the person recognised as

the father from bringing proceedings in which the interest in the biological truth is in any event always effectively balanced by the court as against the interests of the child.

Lastly, it is worth mentioning order no. **18**, in which the Court of its own motion raised the question of constitutionality of Article 262(1) of the Civil Code, insofar as it lays down an obligation to attribute children their father's surname in the absence of an agreement to the contrary between the parents. An obligation that appears incompatible with the need, constitutionally enshrined in Articles 2 and 3 of the Constitution (and European and international instruments), to guarantee effective equality as between parents, to assure the fullness of the child's personal identity and to safeguard family unity.

4. The Constitutional Court and the legislator

Dialogue between the Court and the legislator is an aspect of constitutional case law that has long been a staple of the Annual Report, with the number of warnings growing steadily, as many as 29 in 2021, compared to 25 in 2020, 20 in 2019 and 10 in 2018.

(1) In some cases the Court finds that the legislation under scrutiny exhibits some problematic aspects but not such as to render the challenged provisions unconstitutional and it calls on the legislator to review the law (the questions raised are thus well founded).

These aspects can range from some excessively strict features of the rules on eligibility for alternatives to incarceration (judgement no. **173**), especially as regards juvenile offenders (judgement no. **231**), the grounds for denying a driving licence (judgement no. **152**), the rigid incompatibility between the payment of unemployment benefit for employees and incentives for self-employment (judgment no. **194**) and "the serious dysfunctional aspects of the legislator's practice of constantly and repeatedly postponing tenders" for bingo halls (judgment no. **49**).

(2) In other cases, on the contrary, the Court finds that the legislation under scrutiny is unconstitutional but nevertheless considers that it cannot itself provide the solution by virtue of the legislator's wide margin of appreciation.

In those cases in the past the Court often adopted a so-called *additive ruling* setting out the applicable principles and leaving it to the discretion of the legislator to implement those principles. However, a failure to take immediate legislative action tended to create difficulties for courts in that they could no longer apply the old rule but at the same time could not apply the not-easily deducible new one.

Hence the Court's current preference for a ruling that the questions are inadmissible, especially when the possible striking down of legislation produces effects on the system that will require an appropriate legislative balancing act.

There comes to mind the aforementioned rulings concerning children born through surrogacy (judgment no. **33**) or through recourse to heterologous medically assisted procreation techniques (judgment no. **32**), the safeguarding of the individual right to stand for election and in particular protection of candidates in the pre-election process (judgment no. **48**) or the system for appointing a metropolitan mayor (in respect of which there is a need for legislation to ensure that the metropolitan body does not function in a manner contrary to the constitutional canons for the exercise of political-administrative power, judgment no. **240**). Also worth mentioning is judgment no. **120** on the commission payable to tax collection agencies, in which the Court emphasised the urgency of a reform of the law entailing an assessment of the continuing rationale of the charge, since it risked imposing disproportionately on certain taxpayers the overall costs associated with an activity now carried out almost entirely in-house by the tax authorities themselves (a warning that was acted on by the legislator with the 2022 Budget Law).

3) Then there are the cases in which the Court, drawing on either a sole or an array of potential solutions already present in the system, adopts an additive ruling while at the same time inviting the legislator to assess other options.

This was the case for the training courses for the killing of wildlife, in relation to the involvement of ISPRA - National Institute for Environmental Protection and Research (judgment no. **116**), the single regional authorisation procedure in relation to environmental impact assessments (judgment no. **53**) and the regulation of retention dams and reservoirs falling within the competence of the Regions (judgment no. **201**).

4) At other times, however, the Court has chosen to create a regulatory vacuum, leaving it to the legislator to fill it and providing some guidance on the choices to be made.

This was the case with the declaration of unconstitutionality of the obligation to impose a sanction on anyone who refused to answer the questions of the Bank of Italy and the stock exchange regulator CONSOB in the exercise of one's right to remain silent, in respect of which the Court referred the matter to the legislator for a more precise detailing of the further procedures for protecting that right (judgment no. **84**).

The same applies to the unconstitutionality of the administrative fine laid down by the law to tackle compulsive gambling, insofar as excessively severe and incapable of being adjusted to take account of the specific circumstances of the case (judgment no. **185**).

In judgment no. **150** the declaration of unconstitutionality of the aggravating circumstance of defamation committed through the press was accompanied by an indication of the need for a comprehensive reform of the current rules, in order to avoid any undue intimidation of journalists and to ensure adequate protection of the individual's reputation against unlawful attacks carried out in the name of journalism.

5) Finally, some cases in which the warning was particularly strong and with specific features should be noted.

The above-mentioned order no. **97** on whole-life sentences resorted to the mechanism already used for the so-called "Cappato case" (order no. 207 of 2018), postponing the proceedings by about a year to give the Parliament adequate time to address the matter.

Also of interest is judgment no. **41**, which declared that the rules providing for the permanent appointment of auxiliary judges to court of appeal panels were unconstitutional. The overall impact of the decision on the judicial system and the administration of justice requires that the legislator be given sufficient time to ensure the "necessary gradualness in the complete implementation of the constitutional legislation". To this end Legislative Decree No. 51 of 1998 had already established that the provisions on honorary judges would apply "until the overall reorganisation of the role and functions of the honorary judiciary in accordance with Article 106(2) of the Constitution is implemented". The legislator had set 31 October 2025 as the date for the reorganisation to come into force. Therefore, the Court adopted precisely that deadline, as one already present in the legal system, for the purposes of when the declaration of unconstitutionality takes effect.

In a certain sense a form of warning can also be found in the very fact of a referral order raising a question of constitutionality. The legislator is able to take action while the proceedings are still pending on the basis of the question raised in the referral order (an example is order no. **18** on adopting the father's surname).

5. The Constitutional Court and European Courts

The interaction between domestic law, EU law and the ECHR system has long been a reality that is deeply reflected in constitutional case law, with the obvious special features that characterise the two supranational systems.

5.1. The Constitutional Court and the Court of Justice of the European Union

The dialogue with the CJEU impacts our case law in various ways.

There are frequent cases in which the referring court cites EU law (judgment no. **182**), including the Charter of Fundamental Rights of the European Union (judgments no. **213**, no. **185**, no. **33** and no. **30**), as so-called *interposed provisions*.

In those instances our Court interprets the provisions by referring to CJEU case law, as was the case for the right of children to maintain on a regular basis relations and direct contact with both parents if such is in their best interests (judgment no. **32)** or for the unconstitutionality of a provision stipulating the use of GMO-free products to be a preferential criterion for the award of service and supply contracts for collective catering activities (judgment no. **23**).

If a court has already sought a preliminary ruling from the CJEU and has obtained a ruling that the Italian legislation does not comply with EU law, it is the referring court itself that must disapply the provisions of Italian law without turning to our Court. On the other hand, if the court, although able to seek a preliminary ruling from the CJEU, opts to turn to our Court on the basis of EU and domestic provisions, it may well be that this Court decides to make a reference to the CJEU as regards the provisions within its sphere of jurisdiction.

This occurred in two cases in 2021, both referring to the European Arrest Warrant and the obligation of the executing State to surrender the individual in particular situations, such as that of persons suffering from serious chronic and potentially irreversible diseases (order no. **216**) and of persons living or residing in its territory with deep-rooted ties there (order no. **217**). It should be noted at this point that in both cases the reason for the referral was the transparent aim of this Court to achieve interpretations that avoid a conflict between Italian and EU law.

5.2. The Constitutional Court and the European Court of Human Rights

Unlike the decisions of the CJEU in Luxembourg, those of the ECtHR in Strasbourg entail a finding of liability on the part of the respondent State allied to an obligation for that State to correct the law held to violate the ECHR. However, in situations where ECtHR case law is unequivocal in holding that a certain provision of Italian law violates the ECHR, if that same provision is challenged before our Court the latter declares it to be unconstitutional on grounds of infringement of Article 117(1) of the Constitution (as per the so-called *twin judgments* no. 349 and no. 348 of 2007 of

the Constitutional Court). In several cases that leads to concurrent protection with the domestic parameters (judgments no. **182** and no. **213**).

2021 witnessed a number of declarations of unconstitutionality adopted also with reference to provisions of the ECHR as interpreted by the ECtHR, often in connection with provisions of the Constitution itself. This occurred in the above-mentioned rulings on the unconstitutionality of: the documentary burden imposed solely on non-EU citizens concerning lack of adequate housing (judgment no. **9**); both imprisonment and a fine in cases of defamation through the press (judgment no. **150**); the fixed administrative fine for failure to comply with the obligation to provide information on the risks of compulsive gambling (judgment no. **185**); the obligation to impose a penalty for refusing to answer the questions of the Bank of Italy and CONSOB in the exercise of one's right to silence (judgment no. **84**); the obligation to file a motion to speed up trial as a condition for being able to accept an offer for fair reparations made by the defendant or another party to the criminal proceedings (judgment no. **175**).

Moreover, without entailing the unconstitutionality of the challenged provisions, the ECHR as interpreted by the ECtHR can find its way into decisions of the Constitutional Court, even forming the basis of warnings to the legislator.

This was so for the previously mentioned issue of life imprisonment without parole, regarding which our Court could not but cite *Viola v. Italy*, in which the ECtHR held that a provision equating solely cooperation with the judicial authorities as proof of dissociation from the mafia world was contrary to Article 3 of the ECHR (order no. **97**).

This is also the case with the previously mentioned issue of filiation through recourse to surrogacy. The balance struck by the ECtHR corresponds to a set of constitutional principles that, on the one hand, do not entail an obligation to give effect to a foreign court order recognising dual parenthood for couples (heterosexual or homosexual) who have resorted abroad to surrogacy and, on the other hand, require that in such cases the child's interest in the legal recognition of the link with those who exercise de facto parental responsibility be protected (judgment no. **33**).

6. Taking stock of 2021: between encouraging hopes and realistic fears

2021 ends with some encouraging signs in a general context that does however give rise to reasons for concern.

The picture of relations with the Parliament is certainly promising in a year that witnessed many warnings and invitations to law makers, some of which the latter nevertheless acted on during the year.

An example is the reform of tax collection under the 2022 Budget Law (Law No. 234 of 2021). In the wake of the above-mentioned judgment no. **120**, the commission has been replaced by a charge that serves predominantly as a form of public remuneration. Also worth mentioning is the bill designed to afford judicial relief in the event of disputes regarding pre-election procedures for elections to the Chamber of Deputies and the Senate of the Republic (AS No. 2390), presented on 17 September 2021 and recently approved at its first reading by the Senate on 23 February 2022. An issue which, as mentioned before, the Court ruled on in judgment no. **48**.

At the same time, the legislator is working in areas where the Court has called for action to be taken. In particular, the aforementioned issues of whole-life sentences (order no. **97**) regarding which the Justice Commission of the Chamber of Deputies seems to have speeded up its examination of proposed amendments to the relevant legislation and is moving towards a unified text. Not to mention the double surname of the child (order no. **18**) regarding which the Senate has resumed its examination and is moving towards a unified text. And, finally, assisted suicide regarding which a text has already obtained the approval of one chamber.

All signs of a dialogue that is bearing fruit.

Less encouraging, however, is the general situation around us, which has many tragic consequences and raises a number of concerns about the future, including the stability of European constitutional systems.

The repercussions of the war in Ukraine also affect the various forums for and forms of cooperation between courts. One need only think of the Russian Federation's

withdrawal from the Council of Europe, with all the consequences that this could have on the participation of the Russian Constitutional Court in courts' representative bodies.

In such a situation it is of great importance that the mutual cooperation of the courts in the European Union remain strong. I would like to stress in this respect that our Court has always done its utmost to ensure that potential conflicts with the CJEU are resolved not by erecting so-called *national counter-limits* to EU law but by promoting convergent interpretations of EU law ourselves. I have pointed out instances of this in the Court's case law.

This very delicate passage is one of the fundamental pillars on which the fabric of our Union is built. Not all constitutional courts have followed this path, and we strongly and urgently hope that they will do so too. Of course, we all have a duty to safeguard our national identities, as Article 4 of the Treaty on European Union itself provides. But Article 4 comes after Article 2, which sets out our common principles and values: respect for dignity, freedom, democracy, equality, the rule of law, respect for human rights and for minorities (values common to a "society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail").

It is on this article, in the first place, that we should forge the interpretative solutions that we devise for Article 4 itself. It is on the balance between the two that the unity in diversity of our legal system and of the Union itself rests.

On the other hand, the civilisation that our Constitution, together with others, has helped to build in Europe on the basis of the force of law is founded on trust in dialogue, debate and values. Maestro Nicola Piovani's concert, to be held in July in Piazza del Quirinale, is dedicated to these values: a work that links our Constitution to the first law of the Athenians that marked the birth of law, 2,500 years ago, and that Aeschylus celebrated in the Eumenides. That work reminds us of the reasons for justice and a world no longer entrusted to revenge but to speech, dialogue and exchange. Values that, today more than ever, need to be reaffirmed and that will be all the more

perceptible in a place like Piazza del Quirinale, where the two institutions that under our Constitution are guarantors of its very principles face each other.