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INTRODUCTION

Nine Years and Counting for the Global Review

WELCOME TO THE NINTH YEAR OF THE GLOBAL REVIEW OF CONSTITUTIONAL LAW!

When we created the Global Review, we could not have expected how quickly it would become regarded as an essential resource for the field of comparative constitutionalism. Scholars and judges rely on it, students draw inspiration from it, and our contributors find great value in introducing their home jurisdictions to the world.

The principal purpose of the Global Review is to offer readers systematic knowledge about jurisdiction-specific constitutional law that has previously been limited mainly to local networks rather than a broader readership. We have fulfilled this purpose since we published the first edition of the Global Review nearly a decade ago.

We aspire to make the world ever smaller and more familiar, by making the high court case law of the jurisdictions of the world available in English. We hope to continue to increase the number of jurisdictions represented in this annual publication. If you wish to join us as a contributor for a presently uncovered jurisdiction—or if you would like to nominate someone to write about an uncovered jurisdiction—please contact any one of us. We will be delighted to hear from you.

We thank our outstanding contributors to this edition of the Global Review. This book is possible only because of them. We celebrate their commitment to this global effort.

We are grateful also to Paula Schier and Pruthvi Zala for devoting their time, effort, and intellect to the editorial production of this book. We thank them most warmly.

And to you, our readers: thank you for reading this 2024 edition of the Global Review of Constitutional Law. We welcome your feedback, input, and observations on this edition. We invite you to contact us should you have any comments to share with us. We would be thrilled to hear from you.

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I. INTRODUCTION

In 2024, the Italian Constitutional Court (ICC) continued its intense engagement with European law. With regard to European Union (EU) law, the ICC reviewed national legislation in instances where a conflict with EU norms was alleged — for instance, in cases involving gender-based discrimination within the Prison Police Corps and the unreasonable extensions of beach concessions in Sicily, which violated the Bolkenstein Directive. However, this type of review did not substitute for references for preliminary rulings altogether.

The same directive was at issue when the European Court of Justice (CJEU) was called upon to decide on a case regarding small hydroelectric plants. Additionally, the CJEU was entrusted with ascertaining whether the exclusion from social allowances of foreigners holding a single permit rather than a long-term EU residence permit, breached the principle of equal treatment. The ICC also referred to the case law of the European Court of Human Rights (ECtHR) in several judgments. For example, it invoked the ECtHR’s margin of appreciation doctrine when recognising the right of inmates to conjugal visits and cited the ECtHR’s interpretation of the protection of the right to private and family life when extending the notion of “family” to include cohabiting partners. The ICC also referred to the ECtHR when deciding on the harmful environmental impact of industrial plants deemed to be of strategic economic interest. Cases concerning environmental protection and medically assisted suicide show the ICC’s responsiveness to evolving societal sensibilities. This responsiveness is further evident in rulings urging the legislature to act in areas requiring legislative rather than judicial intervention, such as the recognition of non-binary gender and protection against unlawful dismissals.

The aim of this report is to illustrate the ICC’s evolving dialogue with European courts (Section II) and to take a closer look at seven judgments of potentially broader international relevance (Section III). A final section offers reflections on foreseeable trends in constitutional adjudication.

II. MAJOR CONSTITUTIONAL DEVELOPMENTS

Forty years after the landmark case *Granital* (Judgment No 170/1984), in 2024, the ICC fine-tuned the relationship between the Italian and the EU legal systems. In a nutshell, the ICC highlighted that a centralised constitutional adjudication strengthens the principle of EU law primacy, empowers ordinary courts to disapply national provisions that conflict with EU law, and endorses preliminary references to the CJEU.

The ICC held that when a national provision conflicts with directly applicable EU law — provided that the latter is, according to CJEU case law, clear, precise, and unconditional — ordinary courts are required to disapply the national provision, if necessary after referring

a preliminary question to the CJEU under Article 267 of the Treaty on the Functioning of the European Union (TFEU).

Moreover, in *Granital*, the ICC held that ordinary courts are not permitted to refer a question to the ICC if the relevant national provision can be disapplied. This position is based on the interpretation of the requirements for accessing centralised constitutional adjudication, which presuppose the necessity of applying the contested provision within a common controversy. Where disapplication is possible, this requirement is not met, and the ICC has traditionally dismissed such cases as inadmissible.

Judgment No 269/2017 (see our 2018 Report in the *Global Review*) gave rise to a gradual procedural shift, which is still ongoing. On that occasion, the ICC stated that ordinary courts may either raise a question of constitutionality or disapply a national provision in conflict with directly effective EU law. Initially, the ICC only opened its gates to cases involving national law that infringed a fundamental right protected by both the Italian Constitution (IC) and the EU Charter of Fundamental Rights (EUCFR). Since then, however, the ICC has extended this approach beyond fundamental-rights cases, and the 2024 case law has further advanced this development.

In 2024, this dynamics marked significant steps forward in constitutional adjudication. In Judgment No 15/2024, a Region brought proceedings before the ICC against the central State, alleging that its competences had been interfered with by an order issued by an ordinary court (which, under Italian law, forms a branch of the central State apparatus). It is worth noting that ordinary courts in Italy are empowered to order public authorities to take action, such as amending regulations to eradicate causes of discrimination. At the same time, another judge of the same ordinary court raised a corresponding question of constitutionality to the ICC, challenging the constitutional legitimacy of the regional law that the above-mentioned

order sought to amend. In particular, the referring court found that Regional Law No 1/2016, which established a rental support contribution scheme and its implementing regulation, violated Article 11 of Directive 2003/109/EC, which sets forth the principle of equality in favour of third-country nationals who are long-term residents. The regional law in question imposed more onerous documentation requirements on third-country nationals — requiring proof that they did not own any residential property in Italy or abroad — than those required of EU and Italian citizens. For this reason, the ordinary court ordered the Region to amend the implementing regulation which had replicated the discriminatory condition established directly in the primary law, effectively compelling the Region to act against its own legislation.

The ICC acknowledged the importance of the principle of equality in both the Constitution and EU law. However, it stated that ordinary courts cannot force a public authority to adopt a regulation that contradicts a law — even when a violation of EU law is at stake. In such cases, ordinary courts must follow a two-stage procedure. Firstly, they may disapply national legislation that infringes directly applicable EU law, guaranteeing the individual the right not to be discriminated against. Secondly, since ordinary courts cannot order the authority to amend a regulation that merely repeats what the law states, the root cause of discrimination — i.e. the law — must be declared unconstitutional by the ICC.

Judgment No 15/2024 emphasises the value of constitutional review. The declaration of unconstitutionality with binding, *erga omnes* effects can remove, once and for all, national provisions violating EU law, thus offering a further guarantee of the primacy of EU laws' certainty and uniform application.

Along this line, the ICC further developed its “European” case law with another landmark judgment (No 181/2024). The case

originated from a referral by the Council of State, Italy's supreme administrative court, and involved female applicants who claimed direct discrimination based on sex. The contested national legislation reserved an overwhelming majority of supervisor positions in the Prisons Police Corps for men. The Council of State questioned the compatibility of this provision with both the national constitutional principle of equality and the EU principle of non-discrimination, as enshrined in Directive 2006/54/EC.

Against this backdrop, the ICC clarified that it is immaterial whether the EU rule allegedly violated by national law is from EU primary law (such as the Treaties and EUCFR) or from secondary law (including regulations, directives, or decisions), and whether the provision in question has direct effect. Ordinary courts retain the discretion to refer a question of constitutionality to the ICC concerning a national provision that conflicts with directly effective EU law, rather than merely disapplying the provision or referring the question to the CJEU. The ICC must perform constitutional review if the question has a “constitutional dimension” (“*tono costituzionale*”), which means that it is closely tied with other constitutional principles or interests.

The ICC's reference to such a “constitutional dimension” could be particularly useful in cases where the law to be applied is uncertain, where public administration acts in defiance of established judicial precedents, where the question has a systemic impact, or when a balance among constitutional principles must be struck. Furthermore, this threshold may be met in situations where there is uncertainty as to whether the relevant EU law has direct effect and whether the disapplication of the national provision is disputable.

This stance was reaffirmed in Judgment No 210/2024. Although the ICC declared the case inadmissible, it confirmed that the centralised system of constitutional review is on equal footing with disapplication and

that it is for ordinary courts to decide on the most appropriate measure to guarantee legal certainty and the primacy of EU law on a case-by-case basis.

The ICC's commitment to protecting fundamental rights within the European legal space and to engaging in dialogue with the CJEU was further demonstrated in its 2024 case law through two references for preliminary rulings submitted to the CJEU under Article 267 TFEU. In the first case (Order No 29/2024), the ICC asked the CJEU to interpret Article 12 of Directive 2011/98/EU, which establishes the principle of equality for third-country nationals residing and working in the EU. The case involved cash assistance schemes for financially disadvantaged individuals, from which unemployed third-country nationals were effectively excluded under Italian law. The ICC's decision to make a preliminary reference reflects its willingness to engage in dialogue with the CJEU, especially in sensitive areas such as social security, where a balance must be struck between the principle of equality and other prominent constitutional interests — such as the stability of public finances, the sustainability of the social security system, and the integration of third-country nationals.

The second case (Order No 161/2024) arose from an application by the central State challenging a regional law, Regional Law No 17/2023 on State concessions for hydroelectric power plants, on several grounds, including its alleged violation of Article 12 of Directive 2006/123/EC (Bolkenstein Directive).

To sum up, the ICC's 2024 "European" case law highlights the benefits of the declaration of unconstitutionality in reinforcing the primacy of EU law. Unlike disapplication, which only sets aside a national provision in the context of a specific judicial case, such a declaration issued by the ICC removes a national provision in conflict with EU law from the domestic legal order. In other words, a binding declaration of unconsti-

tutionality with *erga omnes* effects may offer a structurally stronger safeguard for the principle of EU law primacy within the Italian constitutional framework.

III. CONSTITUTIONAL COURT CASES

1. Judgment No 203/2024: Constitutionality of orders to leave a municipality issued by the police

In this case, the ICC rejected a constitutional challenge to the statutory measure empowering the chief of police (*questore*) to issue an order to leave a municipality (*folgio di via*) on grounds of public security. The Court found that, on the one hand, this power does not contravene Article 13 IC, which mandates judicial authorization (or subsequent validation) of restrictions on personal liberty, and, on the other, it does not lead to arbitrary discrimination contrary to Article 3 IC.

The Court acknowledged that orders to leave a municipality limit freedom of movement and may interfere with the enjoyment of other fundamental rights by banning access to a specific place. However, since they impose no positive obligations (e.g., to stay in a certain municipality), they restrict the freedom of movement without entailing limitations of personal liberty, which, by contrast, require judicial authorization or validation under Article 13 IC.

Additionally, the Court highlighted that other public security measures — such as police surveillance or bans on attending sporting events accompanied by an obligation to report to the police — need judicial authorization or validation because they impose more severe limitations of fundamental rights compared to orders to leave a municipality. As a result, the rationale for requiring judicial authorization or validation does not apply to orders to leave a municipality.

2. Judgment No 143/2024: Non-binary gender

The ICC declared inadmissible the question concerning the constitutionality of the binary nature of gender records in the civil status registry. However, it ruled that the requirement of prior court authorization for gender reassignment surgery is unconstitutional, as it violates the principle of medical self-determination under Articles 2, 3 and 32 IC.

The ICC acknowledged that the binary structure of the civil status registry may infringe upon the fundamental rights of non-binary people, who currently have no legal means to amend their records to reflect their gender identity. Nevertheless, it held that the introduction of a third gender marker would require comprehensive legislative reforms across multiple areas of the legal system, an intervention that falls within the exclusive competence of the legislature. Thus, the constitutional challenge on this point was deemed inadmissible.

In contrast, the ICC held that the blanket requirement to obtain court authorization for gender reassignment surgery was unreasonable. This requirement unjustifiably hampered an individual's right to affirm their gender identity and access necessary medical treatment. Once a court has confirmed an individual's transition and granted the rectification of gender records, any subsequent medical treatment should only require authorization from medical professionals.

3. Judgment No 140/2024: Payback scheme on medical devices for public healthcare

The ICC rejected a constitutional challenge to a statutory measure requiring manufacturers supplying medical devices to regions to contribute to healthcare costs if purchase orders exceed a certain cap — a scheme known as "payback". This ICC held that the provision is neither discriminatory nor unreasonable under Article 3 IC. The provision also complies with the requirement set forth in Article 23 IC, which mandates that financial obligations must be established by

acts of Parliament, and does not infringe on the freedom of economic enterprise under Article 41 IC. Furthermore, the measure adheres to the duty under Article 117 IC to respect international obligations, specifically Article 1 of Protocol 1 ECHR.

While the payback system limits suppliers' contractual autonomy, the ICC found that the temporary limitation covering the 2015–2018 period was proportionate to its legitimate objectives, including ensuring the sustainability of public healthcare financing and protecting public health. Therefore, there was no violation of Article 41 IC. This conclusion was reinforced by the fact that suppliers obtained a 52% discount in their required contributions for that period, as established in Judgment No 139/2024. Regarding Article 23 IC, the Court found no breach, holding that statutory law may delegate to subsequent administrative regulations the task of calculating the amounts owed by manufacturers, provided that the statute specifies the technical guidelines and parameters for such calculation.

Additionally, the Court ruled that, as applied during the 2015–2018 period, the payback scheme was not unreasonable, as the legislature had struck a fair balance among competing interests: manufacturers' economic concerns, the rationalization of public spending, and the promotion of healthcare. The scheme was not retroactive, as its essential features were clearly outlined and communicated before manufacturers participated in the procurement process; only the implementing details were finalized at a later stage. For these reasons, the Court found no violation of Article 117 IC in conjunction with Article 1 of Protocol 1 ECHR, which protects property rights from unjustified infringements.

4. Judgment No 135/2024: Assisted dying

In this Judgment, the ICC once again addressed the issue of assisted suicide for patients who are fully capable of making

responsible decisions and suffer from serious and irreversible illnesses that cause intolerable suffering. The Court reiterated the principles established in Judgment No 242/2019, which held that assisting such a patient in ending their life is not punishable under criminal law, but only if the patient is kept alive by life-sustaining treatment.

According to the ICC, such requirement is neither discriminatory nor unreasonable, because it is grounded in the individual's constitutional right, under Article 32 IC, to refuse medical treatment, including life-sustaining interventions. Patients whose survival depends on life-sustaining treatments may legally decide to refuse them and let themselves die; therefore, it would be unreasonable to prevent them from seeking help from others to actively terminate their life. The scenario is different for other patients whose survival does not depend on life-sustaining treatments, since there is no stand-alone right to commit suicide. Limiting the exclusion of criminal liability to individuals assisting the first group of patients does not constitute discrimination in violation of Article 3 IC.

The ICC also rejected the claim that the current legal framework infringed upon the patient's right to medical self-determination under Articles 2, 13 and 32 IC. While acknowledging that such right must be respected, the Court underscored that authorizing assisted suicide at large would impinge on the constitutional value of protecting human life. It stressed that it is a task for the legislature to balance these competing principles and values. The legal exception to criminal liability articulated in Judgment No 242/2019, which applies to assisting patients dependent on life-sustaining treatment, is intended to safeguard vulnerable persons from the consequences of making irreversible decisions that may not be fully deliberated or may result from undue external pressure.

As regards the alleged violation of Articles 8 and 14 ECHR, the ICC referred to the

ECtHR judgment of 13 June 2024, *Dániel Karsai v Hungary*, which recognized that States enjoy a wide margin of appreciation in regulating end-of-life procedures. The ICC concluded that Italy's legal framework falls within that permissible margin.

In relation to uncertainties arising in administrative and judicial practice after Judgment No 242/2019, the Court finally clarified that “life-sustaining treatment” must be understood to include all procedures typically performed by medical personnel, but capable of being carried out by non-medical caregivers or family members, the discontinuance or withholding of which would foreseeably result in the patient's death within a short period of time.

5. Judgment No 105/2024: Judicial seizure of industrial plants of strategic national interest and authorization of continued operation

The ICC assessed whether a newly introduced rule on judicial seizure of industrial plants of strategic national interest complied with Articles 9, 32 and 41(2) IC, which protect the environment and public health and prohibit private businesses from causing environmental harm. Under the challenged provision, once the Government has designated a facility as strategically important and has identified safeguard measures, criminal courts are bound to authorize its continued operation, even where the plant has been judicially seized in connection with alleged environmental crimes and courts deem such measures insufficient to protect the environment and public health.

The ICC found that the relevant provision neither outlined clear administrative proceedings for establishing such Governmental measures nor did it impose any maximum duration of validity. Adopting a “constitutionally oriented interpretation” of the challenged provision, the ICC referred to Directive (EU) 2010/75 on industrial emissions, the 1998 Århus Convention on access to information, public participation

and access to justice in environmental matters, and the ECtHR judgment of 9 April 2024 in *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*. It held that governmental safeguard measures must be aimed at reconducting the industrial activity within legally prescribed environmental sustainability limits. They must be adopted following transparent and participatory administrative proceedings and supported by adequate reasoning. Such measures are also subject to judicial review, like any other administrative acts.

The ICC further held that, since such governmental measures derogate from ordinary environmental legislation based on EU law, they must necessarily be temporary. In failing to provide a time limit for such measures, the challenged provision violated Articles 9, 32 and 41(2) IC. In order to redress the violation, the Court imposed a non-renewable 36-month time limit, consistent with earlier legislative measures enacted in the context of the seizure of the Ilva steelworks in Taranto.

6. Judgment No 41/2024: Termination of proceedings at the pre-trial investigation stage due to a time-bar

In this judgment, the ICC ruled that suspects have no right to be informed of the termination of pre-trial proceedings due to a time-bar, even if such termination prevents them from waiving the time-bar in order to seek full acquittal at trial. The absence of such right does not violate the suspect's rights to defense and adversarial proceedings, guaranteed under Articles 24 and 111 IC.

The Court clarified that the right to waive a time-bar must be ensured in specific situations: a) to defendants who have been formally charged with having committed a crime; b) at the pre-trial investigation stage, to suspects whose proceedings are discontinued due to the triviality of the offense, where the termination order implicitly finds that a crime has been committed; c) to sus-

pects who, during the pre-trial stage, were subjected to court-ordered preventive measures (e.g., pre-trial detention) based on a preliminary assessment of the charges. In each of these instances, individuals have the right to obtain full acquittal through a formal judgment.

By contrast, termination of proceedings at the pre-trial investigation stage due solely to a time-bar, before the suspect has been notified of any formal charge, is deemed a neutral act. According to the Court, such termination does not affect their reputation, as it does not carry any implicit finding of guilt and discontinues the proceedings before the trial begins.

However, the Court cautioned that when a prosecutor or a judge, in requesting or granting a discontinuation of proceedings at the investigation stage on time-bar grounds, makes unwarranted remarks on the merits of the case suggesting the suspect's guilt, the termination request or the order ceases to be a neutral act and violates the presumption of innocence. In such cases, the suspects must be granted an effective remedy, as required by EU Directive 2016/343 on strengthening certain aspects of the presumption of innocence in criminal proceedings.

7. Judgment No 10/2024: Conjugal visits

In this case, the Court declared Article 18 of the 1975 Prison Administration Act unconstitutional insofar as it prevented detainees not subject to a special regime or particular surveillance from having unsupervised visits from their spouse, civil union partner, or a person with whom they share stable cohabitation or an emotional bond. Access to conjugal visits remains subject to certain conditions related to security concerns. The Court affirmed that the legal system safeguards individuals' relationships within the social contexts in which they are expressed, acknowledging the freedom of those involved to fully experience the affection that defines their personal essence. Thus, al-

though imprisonment may affect the terms and conditions under which this freedom is exercised, it cannot entirely eliminate it through an absolute and generalized ban that is insensitive to the individual circumstances of the detainee and their specific prospects for reintegration into society.

IV. LOOKING AHEAD

In 2025, the Court is expected to rule on several cases involving family settings and assisted reproductive technology. Next year's report will very likely address cases such as the constitutionality of bans on adoption and access to assisted procreation for single persons; the recognition of children born in Italy to a couple of two mothers who resorted to medically assisted procreation abroad; and a case involving medically assisted procreation followed by the sex change of one of the partners after fertilization. The Court will also be called upon to consider issues related to the recognition of citizenship for Italians born abroad, as well as new questions concerning end-of-life decisions.

V. FURTHER READING

A. Kompatscher and S. Roßbach, 'Non-Binary GenderMarkers in Italy?: On the Decision No. 143/2024 of the Italian Constitutional Court' (VerfBlog, 9 August 2024) <<https://verfassungsblog.de/non-binary-gender-markers-italy/>>

T. Groppi, 'The Cautious Attitude of the Italian Constitutional Court on Assisted Suicide: An Example of "Passive Activism"?' (Int'l J. Const. L. Blog, 24 July 2024) <www.iconnectblog.com/the-cautious-attitude-of-the-italian-constitutional-court-on-assisted-suicide-an-example-of-passive-activism/>

F. Viganò, 'Protection of Fundamental Rights Between Constitutional Courts and Court of Justice: The Italian Case' (2024) 3 Review of European Litigation – Rivista del Contenzioso Europeo 93