Synthèse / Summary / Kurzfassung / резюме

RÉPUBLIQUE ITALIENNE / REPUBLIC OF ITALY / ITALIENISCHE RE-PUBLIK / ИТАЛЬЯНСКАЯ РЕСПУБЛИКА

The Constitutional Court of the Republic of Italy
La Corte costituzionale della Repubblica italiana

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The role of constitutional courts in upholding and applying constitutional principles

Questionnaire

For national reports

I. The role of the Constitutional Court in defining and applying explicit/implicit constitutional principles

1. (a) Within constitutional review proceedings, does the Constitutional Court or any other equivalent body vested with the power to conduct constitutional review (hereafter referred to as the Constitutional Court) have recourse to any constitutional principles (including for example the separation of powers, checks and balances, the rule of law, equality and non-discrimination, etc.)? To what extent does the Constitutional Court base its action on those principles?

Also Italian law, in line with other democratic European legal orders, is based on a number of necessary foundations, which constitute the essential features of the rule of law. These include first and foremost the political-constitutional role of the state as the supreme guardian of the rights and freedoms of individuals, as an instrument through which peaceful cohabitation between citizens is achieved. With that principal aim in mind, the constitutional organisation is structured around the principle of the separation of powers, with political power being divided between different institutional bodies, the powers of which are defined and protected on constitutional level. The guarantor role is also achieved through the principle of legality, namely the rule that public authorities may only act on the basis of prior legislative authority, thereby excluding forms of arbitrary action and any limitation to the scope of the freedoms guaranteed to each individual must occur according to law. The law legitimises and delineates the action of public authorities; the law is a guarantee of the freedom of all. The principle of legality embraces the idea of the superiority of the law as enacted by the representatives chosen by the public at large. This representative principle is also a constituent element of the rule of law. A further distinctive feature, which completes and closes the system, is the guarantee of access to justice, which in turn is the manifestation of a complex body of principles, including primarily the independence and impartiality of the judiciary and the right to a fair trial.

The rule of law

The Constitutional Court has frequently referred to the concept since the outset of its activities, in order to stress the common substrate which includes the principles that guarantee the essential freedoms of citizens and which must be considered to be fundamental and essential for current democratic systems.

The Court has held that, within a state governed by the rule of law, a legal interest can only be afforded protection in accordance with the objective rules laid down within constitutional law (see Judgment no. 155 of 1990). This concept is perfectly exemplified by the assertion that any rule that has the effect of endorsing situations brought about by the violation of the principle of *neminem laedere* will be inconsistent with the framework of values upon which the rule of law is founded (see Judgment no. 16 of 1992). According to this, see Judgments nos. 2 of 1956, 37 of 1957, 46 of

1957, 121 of 1957, 100 of 1987, 118 of 1957, 88 of 1962, 44 of 1968, 100 of 1981, 349 of 1985, 1007 of 1988 and 41 of 1990.

The separation of powers

The power exercised by the Constitutional Court to review jurisdictional disputes between branches of state or between bodies from the same branch of state is necessarily rooted in the principle of the separation of powers. Similarly, the principle of the separation of powers is engaged when the Constitutional Court, acknowledging the limits placed upon its authority, recognises that the question brought before it for examination falls under the political discretion reserved to the legislature (see Judgment no. 23 of 2016), or when it reminds itself of its duty "of strict compliance with the limits placed on the powers of the Constitutional Court" (see Judgment no. 233 of 2015). It may thus be asserted that this general principle, which has not been expressly provided for within constitutional law, is a constituent element of the Italian legal order. For the broad case law, see Judgments nos. 171 of 2007, 230 of 2012, 85 of 2013, 457 of 2005, 23 of 2011, 168 of 2013 and 379 of 1996.

The principle of equality and the prohibition on discrimination

The principle of equality and non-discrimination is laid down by Article 3(1) of the Constitution, which provides that: "All citizens have equal social dignity and are equal before the law, without distinction as to sex, race, language, religion, political opinion or personal and social circumstances".

The Court has brought a range of principles and criteria under this provision: equality in all of its various manifestations as the uniform treatment of identical or equivalent situations and the suitably different treatment of different situations, the fact that absolute presumptions will violate the principle of equality, the rationality or logical principle of non-contradiction, reasonableness or practical reason, the legitimacy of the end pursued by the legislature, the suitability and necessity of the means with regard to the end, the consistency of the legal order, the topical relevance of the *ratio legis*, the assessment of the legislative context and the factual conditions characterising the area of law within which the legislation is adopted, proportionality, adequacy, suitability, etc.

The principle of formal equality has since the very outset of the activity of the Constitutional Court taken on a pre-eminent role within constitutionality proceedings as it "is a general principle which conditions the entire legal order in terms of its objective structure" (see Judgment no. 25 of 1966), and is a "canon of consistency within the field of legal norms" (see Judgment no. 204 of 1982).

Starting from the principle of equality, the case law of the Court has also developed a general principle of "reasonableness", according to which the law must regulate identical situations in the same manner and different situations in a rationally different manner (see also Judgments no. 3 of 1957, no. 15 of 1960, no. 111 of 1981, no. 171 of 1982, no. 100 of 1976 and no. 163 of 1993).

According to the settled case law of the Court, the "passage of time" has been recognised as a significant element for the purposes of equality proceedings. In fact, "the events upon which the passage of time impinges are characterised by peculiar features, which render them different from similar situations under comparison" (see Judgment no. 6 of 1988; see also Judgment no. 276 of 2005).

The Court has repeatedly held that the principle is of general application, irrespective of the nature and classification of the subjects to which it is imputed. It thus applies not only in relation to natural persons but also to legal persons, associations and the state.

But above all it is beyond doubt that Article 3 of the Constitution also applies to foreign nationals. The Court has repeatedly asserted since Judgment no. 120 of 1967 that "although it appears in Article 3 of the Constitution in relation to citizens, the principle of equality must be considered to extend to foreign nationals where it impinges upon the protection of inviolable human rights, which are guaranteed to foreign nationals also under international law" (see *inter alia*: Judgments no. 252 of 2001, no. 306 of 2008, no. 187 of 2010, no. 61 of 2011 and no. 299 of 2010).

As regards the prohibition on discrimination, Article 3(1) of the Constitution expressly lays down a prohibition on discrimination on the grounds of sex, race, language, religion, political opinion or personal and social circumstances.

The principle of substantive or material equality is laid down by Article 3(2) of the Constitution, which provides that: "It is the duty of the Republic to remove those obstacles of an economic or social nature that constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country".
This is a directive or policy provision, which seeks to direct the action of the public authorities with a view to achieving the material transformation of the reality underlying the legal order.
However, precisely due to its inclusion amongst the "fundamental principles" of the Constitution, this amounts to a substantive provision as it endows the entire system with meaning.
In the first place, it plays a decisive role in the interpretation of the entire legal order, including the Constitution.
Furthermore, it precludes any further legislation or activity that is at odds with the aim of achieving "*de facto*" equality, and at the same time legitimises acts that are indispensable in order to achieve that aim, even where these depart from the principle of formal equality (see Judgment no. 109 of 1993).
The principle of substantive equality is reciprocally related and closely linked to social rights (protection of health, education, work, social security, assistance in the event of need, etc.) recognised in Part One of the Constitution. It may be stated that the principle of formal equality is an expression of the rule of law, whilst the principle of substantive equality is an expression of the welfare state.

1.(b) Does the Constitution or any other legal act direct constitutional review by referring to specific sources that are identifiable in the basic law, which the Constitutional Court may use as a basis for its argumentation?

All of the Court's decisions are based on the provisions of the Constitution as a parameter for judgment. However, not infrequently the provisions of the Constitution lay down rules concerning the production of law and the system of sources or refer to the provisions of non-state law. In cases of this type, any contrast between the law under review and the source referred to by a specific parameter of constitutional law, whereby the Constitution is supplemented by that source, will result in an indirect violation of that parameter of constitutional law. According to the terminology used in the case law of the Constitutional Court, sources referred to by constitutional provisions are defined as "interposed parameters".
Some of these are produced within the legal order. The most important include: the parent statute for a legislative decree; the fundamental principles of state legislation in relation to the legislative competence of the regions over areas falling under shared competence; the principles applicable to state legislation adopted pursuant to an exclusive power in relation to the legislative competence of the regions over residual areas; the regional statutes; the laws to which Article 137 of the Constitution refers in relation to the exercise of judicial powers, as well as the function and establishment of the Constitutional Court; the fundamental state principles governing the system of local self-government as identified by the Constitution and within the case law of the Constitutional Court.
Other sources originate from different legal systems or have the status of treaties, including in particular the Lateran Treaty (Article 7 of the Constitution); concordats with religious denominations (Article 8 of the Constitution); generally recognised rules of international law (Article 10 of the Constitution), European Union law (Articles 11 and 117(1) of the Constitution); international treaties and more particularly the ECHR (Article 117(1) of the Constitution).

2.(a) Which constitutional principles are considered to be systematic within your jurisdiction? Are there any explicit provisions within the Constitution that lay down fundamental principles?

The text of the Italian Constitution starts with what it refers to as "Fundamental Principles". These are comprised of 12 Articles which lay down the founding values of the republican order: the principle of democracy and popular sovereignty (Article 1); the "personalist" principle, which is manifested in the recognition of inviolable human rights (Article 2), equal social dignity (Article 3(1)), the full development of the individual (Article 3(2)), the foundation of the democratic Republic on work (Articles 1(1) and 4(1)); the value of the common good to which all persons are obliged to contribute (Article 4(2)); the principle of solidarity uniting the general public (Article 2); the unitary principle and the principle of political institutional pluralism (Article 5); the protection of linguistic minorities (Article 6); the reciprocal independence of the State and the Catholic Church (Article 7); freedom of religion (Article 8); the promotion of culture and research (Article 9(1)); the protection of the landscape and of social and artistic heritage, as values impinging upon the identity of the Italian Nation (Article 9); the principle of openness towards the international community (Articles 10 and 11); the principle of the protection of foreign nationals who are persecuted in their own country (Article 10(3) and (4)); and the principle of non-aggression (Article 11).

Part I of the Constitution lays down further values, principles and rights (Articles 13-54) which constitute the democratic "rules of the game": political rights, civil rights, social rights and economic rights. These amount to the substantive prerequisites for enabling all persons to participate in democracy.

The social rights laid down in Part One of the Constitution are legitimised by Article 3(2) of the Constitution, which charges the Republic with a duty "to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country".

Within the constitutional system, social rights do not differ from traditional freedom rights, understood as individual rights. Having from the outset resolved the issue of the merely policy status of the reference constitutional provisions (see Judgment no. 1 of 1956), the case law of the Constitutional Court – in parallel with that of the ordinary courts – has chosen to render constitutional provisions directly applicable, even though they are asserted as principles. However, as rights to benefits, the protection they receive may vary in scale, because they must be balanced against other protected constitutional interests, including the availability of resources in the context of a necessary equilibrium within public finances, without prejudice to those interests that, following the constitutional reform of 2001, represent essential levels of benefit, or a kind of hard core.

Moving beyond the albeit rich catalogue of social rights offered by the Constitution, the Court has significantly enriched it. In this regard the case law of the Constitutional Court has often referred to Article 2 of the Constitution which, through the principle of "equal social dignity" has been construed as a "pressure valve" for the system.

Part II of the Constitution sets out the principles regulating the operation of public authorities. These include *inter alia* the principles regulating the exercise of the judicial function, such as the principle of the independence of the judiciary (Articles 101-110), the principle of a fair trial and the right to make representations in the hearing of criminal evidence (Article 111), or the principle of the mandatory nature of criminal prosecution (Article 112). They also include the principles of the proper operation and impartiality of the public administration, the principle of budgetary equilibrium and the sustainability of the public debt and the principle of access to public sector employment through public competition (Article 97), which govern the operation of the public administration, along with the principles of subsidiarity, differentiation and adequacy (Article 118(1)) which regulate the administrative functions of the bodies comprising the Republic.

The case law of the Constitutional Court has introduced the concept of "supreme principles". This arises in situations in which the possibility of subjecting to constitutional review also constitutional laws that are considered to conflict with the "supreme principles" of the constitutional order is recognised (see Judgment no. 1146 of 1988).
Furthermore, the case law of the Constitutional Court has used what it has defined as the "supreme principles of the Constitution", namely "fundamental principles of the constitutional system" in order to limit the incorporation into national law of provisions of European Union law and the terms of concordats as referred to in Article 7 of the Constitution.
These are values which the republican order cannot disregard even in relation to contact with other legal orders (see Judgments nos. 30 and 31 of 1971; 12 and 195 of 1972; 175 of 1973; 16 of 1978; 16 and 18 of 1982, 73 of 2001).
By Judgment no. 238 of 2014 the Court for the first time actioned the so-called "counterlimits" against a provision of international law. On that occasion, the Court ruled unconstitutional, with reference to Articles 2 and 24 of the Constitution, a provision of international law on the immunity of states from the civil jurisdiction of other states.

2.(b) Is there any case law on the application of fundamental principles? With what frequency does the Court refer to such principles?

One of the most prominent techniques elaborated within the case law of the Constitutional Court in order to rationalise the application of the fundamental principles is the theory of the balancing between the values with constitutional status that protect all of the rights and principles at issue in the decision. This fundamental theory results from the constitutional law meta-principle (which is not expressly stated but is implicit) of pluralism, which embraces all other principles: tolerance between principles, a kind of *Grundnorm* of the pluralist constitutional state. It manifests itself through two propositions: no constitutional principle can stake a claim to apply to the extent that it negates others; a formula for reconciliation between principles must be found, or if this is not possible at least of coexistence. In order to achieve this result it is necessary to relativise against one another the constitutional principles specifically involved in order to create a space of recognition for all. This relativisation is referred to as balancing.
Balancing may be considered as the decision making technique *par excellence* within constitutional proceedings (see Judgments nos. 13 of 2004, 264 of 2012, 85 of 2013, 121 of 2010, 10 of 2015).
A further development within the case law formulated in order to ensure the application of fundamental principles is the interpretative canon of "interpretation in a manner consistent with constitutional law" [*interpretazione conforme*]: "no statutory provision may be ruled unconstitutional solely on the grounds that it is open to interpretation in a manner that contrasts with the principles of constitutional law; rather, it must only be ruled unconstitutional when it is not possible to attribute it a meaning that would render it compatible with the Constitution" (see *inter alia*: Judgments no. 276 of 2009, no. 165 of 2008 and no. 379 of 2007; Orders nos. 341, 268 and 165 of 2008; no. 115 of 2005).
Another principle is that of the progressive implementation of constitutional values, which imposes significant burdens on the state budget, according to which budgetary choices: "being the result of non-justiciable political discretion, demand particular and substantive respect also by the Constitutional Court " (see Judgments no. 188 of 2015).
The principle that so-called free zones immune from constitutional review cannot be tolerated dictates that there cannot be any constitutional value the implementation of which may be considered to be exempt from the inviolable guarantee of constitutional review proceedings (see inter alia Judgments no. 1 of 2014, no. 46 and 5 of 2014, no. 273 and no. 28 of 2010, no. 57 of 2009, no. 325 of 2008 and no. 394 of 2006).
The principle of loyal cooperation between institutional bodies was recently used as a basis for Judgments no. 87 and no. 88 of 2012 in order to resolve two jurisdictional disputes between

branches of state that had arisen between Parliament and the judiciary in relation to ministerial offences. In that case, the Court clarified that the prerequisite for the imposition by the principle of loyal cooperation of rules of action is the convergence of the branches of state - each acting within its own sphere of competence - on the resolution of a situation of significance under constitutional law where such branches do not operate separately but are rather coordinated by the Constitution, in order to enable the situation to be resolved through joint contributions from the various bodies between which the exercise of sovereign power is divided. See Judgments nos. 168 of 2013, 23 of 2011, 262 of 2009, 451 of 2005, 284 of 2004, 263 of 2003 and 225 of 2001.
The principle of supplementary protection applies in relation to the international and Community legal order and the ECHR. There are many explanations of this within the case law of the Constitutional Court (these include: Order no. 223 of 2014, Judgments nos. 317 of 2009 and 127 of 2015.

3. Are there any implicit principles which are considered to be an integral part of the Constitution? If so, how can their existence be rationally explained? How have they formed over time? Do they originate from legal sources (e.g. national constitutional law or constitutional principles, principles derived from international or European law; new principles adopted recently or principles derived from previous constitutions)? Have university researchers or other social groups contributed to the development of the principles enshrined in the Constitution?

The Constitutional Court draws heavily on constitutional principles that are not directly rooted in any constitutional provision: these are implicit principles. The systematic nature of the Constitution, which translates into the requirement that it must never be interpreted in a piecemeal fashion, rule by rule, but at all times interpreted as a "whole", enables implicit principles to be inferred from the system.
Amongst the unwritten principles, significance must be attributed to the prohibition on arbitrary legislation, which may be considered to be fundamental and foundational from the "constitutive" point of view. The case law of the Constitutional Court has developed the criteria for defining arbitrary legislation (see Judgment no. 107 of 1981). Non-arbitrariness includes the category of rationality and reasonableness. The principle of rationality, construed as logical consistency, is a structural characteristic of the law as conceived within the culture of our times (see Judgments no. 204 of 1982, and no. 156 of 1988). The principle of reasonableness points to the consistency of the law with overriding values.
Similarly, the following unwritten principles must be regarded as fundamental: the democratic principle, the secular principle, the principle of the continuity of the state, the principle of loyal cooperation between the state and the local government bodies.
The principles of legal certainty and legitimate expectations occupy a primary position amongst the implicit principles. Within this context, the case law on the admissibility of laws laying down authentic interpretations is significant (see Judgment nos. 78 of 2012 and 308 of 2013).
Certain implicit principles are an expression of the more developed European culture. These include the humanitarian principle. See *inter alia*, Judgment no. 5 of 2004.
There are innumerable instances of implicit principles that have been formulated through the case law: the right to confidentiality, the right to a healthy environment, the right to information, the right to access the internet, the right to culture, the right to essential goods, the right to a home as an expression of human dignity and the minimum conditions of civil cohabitation, the right and protection of the dignity of the embryo, the right to gender identity, status as a parent as an expression of the fundamental and general freedom of self-determination, the right to live freely as a homosexual couple, etc.
Recently the concept of "new rights" has been used with specific reference to social rights; however, "novelty" has always been construed in the sense of not being expressly stated by the

Constitution yet inferable from it through interpretation by reading the Constitution in a manner that is adapted to social developments. In this regard the case law of the Constitutional Court has often referred to Article 2 of the Constitution which, through the principle of "equal social dignity" has been construed as a "pressure valve" for the system.
New rights may also emerge by virtue of the multi-level framework which the protection of rights has taken on. This means that there are new social rights, in the sense of rights not codified within the text of the Constitution, which have entered into national law by virtue of Article 117(1) of the Constitution (and Article 11 of the Constitution in relation to EU law only), thereby enabling further new dimensions to the full development of the individual and of equal dignity to be inferred through these supranational provisions.
As regards the contribution by the literature to the case law of the Court, the examples may be innumerable; to cite a view, it is sufficient to recall concepts that have entered into the case law of the Constitutional Court such as the "mandatory solution" ["*rime obbligate*"], "interposed parameters" and the "requirement of interpretation compatible with the Constitution", which have been developed precisely by pre-eminent scholars. Above all however, it is evident that the judges on the Constitutional Court, and in particular those originating from academia, bring to the body their own experience, training and studies. As far as the performance of its activities is concerned, the contribution provided to constitutional justices by "study assistants" is significant. These are particularly qualified lawyers chosen by the judge at the start of his or her mandate from either academia or the judiciary. An important aspect in more recent times has also been the contribution by foreign literature and the precedents to which such publications refer. In addition, the literature that analyses and comments the decisions of the Court also makes a contribution. Nowadays, thanks to the dissemination of online legal sites, a form of dialogue has been established between lawyers commenting on a decision *ex post* 'whilst the issue is still live', or even publishing short commentaries on questions that are still pending before the Court.

4. What role does the Constitutional Court play in the definition of constitutional principles? How has the Constitutional Court been able to identify fundamental principles over time? What type of interpretation (grammatical, literal, logical, historical, systematic, teleological, etc.) or which combination is used by the Constitutional Court when defining and applying these principles? What role is performed by the preparatory works to the Constitution or the preamble to the basic law when identifying and defining constitutional principles? Do universally recognised legal principles have any significance in this process?

The Constitutional Court is called upon to interpret and apply the Constitution. As is the case for all judicial bodies, the Court too performs its regulatory function by determining the normative scope of the provisions it is required to apply. Principles may also be contained in ordinary legislation, although those contained in the Constitution give meaning and direction to the legal order. This is why constitutional interpretation calls for recourse to further canons of interpretation in addition to those required in order to interpret the law, since constitutional principles prevail over the entire legal order, including Article 12 of the Provisions on the Law in General [*preleggi*, enacted at the same time as the Civil Code], since constitutional rules are predominantly principles. A basic rule of interpretation provides assistance in this regard, according to which "any residual uncertainties within interpretation are destined to be resolved once the principle of constitutional supremacy has been adopted as pre-eminent canon of interpretation, which requires the interpreting body to choose, out of the various possible solutions, that which renders the provision compatible with the Constitution" (see Judgments no. 206 of 2015, no. 198 of 2003, no. 316 of 2001, no. 113 of 2000).
In addition, the hierarchical superiority of constitutional principles gives priority status to the systematic approach to interpretation, which dictates that coherence for the legal order on constitutional level must be sought. The Court asserts that all fundamental rights protected by the

Constitution mutually supplement one another and that it is not therefore possible to identify whether any of them predominates absolutely over the others (see Judgment no. 85 of 2013); protection must always be systematic and must not be dissipated over a series of uncoordinated provisions that are in potential conflict with one another (see Judgment no. 264 of 2012).
A further special feature of constitutional interpretation consists in the fact that it involves interpretation of the various texts over time that contain the principles comprising the constitutional framework (canon of evolutive interpretation), endorsing one specific conception (see Judgments no. 138 of 2010, no. 126 of 1968).
The fact that constitutional rules are predominantly principles also demands a particular manner of interpretation, the principal expression of which is the technique of balancing which involves weighing up and settling the conflicting principles comprising the constitutional framework of a pluralist state. The Italian Constitution, as is the case for other contemporary democratic and pluralist constitutions, requires continuous reciprocal balancing between principles and fundamental rights, without claiming absolute status for any of them (see Judgment no. 85 of 2013).
The Court's interpretative activity has also been defined as creative or even normative when it has the result of changing the law through decisions which are referred to as "modificatory", provided that this occurs within the limits of the "mandatory solution". At a later stage, the "creative" attitude manifested itself in the identification of fundamental rights not expressly recognised in the text of the Constitution (see Judgment no. 162 of 2014).
Within the case law of the Constitutional Court, recourse for interpretative purposes to the preparatory works of the Constitution has turned out to be quite limited and tends to be limited to the initial years of the Court's existence when the problem of identifying and defining constitutional principles was a new one (see Judgments nos. 2 of 1956; 29 of 1958; 22 of 1959; 15 of 1962; 126 of 1962; 94 of 1965; 12 of 1966; 271 of 1986; 77 of 1987; 274 of 1993; 280 of 1995). Nowadays the Italian Constitutional Court, which has a history dating back sixty years, draws amply on its own precedents.
As regards universally recognised principles of law, these have significance as one of the characteristic elements of the legal order rooted in the Constitution is the strong openness towards international law and more generally towards external sources. This status has been further clarified by the new wording of Article 117(1) of the Constitution introduced by Constitutional Law no. 3 of 2001 which, in line with the constitutions in other European countries, expressly applies a specific restriction to the framework of principles which already provided a primary guarantee of compliance with the international obligations taken on by the state. However, within internal law the Constitutional remains the *master* of fundamental principles, and fundamental rights may not be regarded as an area in relation to which a transfer of sovereignty is conceivable (see Judgments nos. 49 of 2015 and 238 of 2014).

5. What is the legal status of constitutional principles? Are they to be considered as foundational for the existing constitutional framework? What importance does the Constitutional Court ascribe to fundamental principles within the framework of substantive constitutional law? Are fundamental principles interpreted differently from the rights listed in the Constitution or does the Constitutional Court interpret fundamental principles in relation to the specific constitutional right as a supplementary means for its interpretation? Within your legal system, can fundamental principles constitute a self-standing basis for unconstitutionality, even if there is no link to the specific constitutional rule? Is there any legal action that specifically relates to judicial acts in order to ensure the application of constitutional principles?

With the historic Judgment no. 1 of 1956, the Court held that the renowned distinction between substantive norms and policy norms "is not decisive within constitutionality proceedings" because even a so-called "policy" of the legislature may have its own coercive force. With this Judgment it

can be said that the Constitution became an "actionable norm" and was thus potentially applicable to all relations - not only political but also civil, social and economic.
As a result of this strong statement of position against attempts to render inoperative the extraordinary novelty of the entry into force of the democratic and republican Constitution, the Constitution actually became the basis not only for legal change within the country, but prior to that also cultural and social change.
Principles have been decisive in achieving the revolution which the country required, prior to and even more so than rules and rights. This is the great historical merit which all people recognise in the Constitutional Court.
The importance of principles and the irreplaceable role which they have performed within the system later enabled it to be asserted that the Constitution is a norm that lives within the legal order and that it is implemented through the actions of all persons responsible for public functions. In particular, the ordinary courts have asserted this responsibility directly through interpretation in a manner compatible with the Constitution, which the Constitutional Court itself imposed as an obligation on referring courts, and the failure to comply with which is sanctioned by a ruling that the question of constitutionality is inadmissible (see Order nos. 174 of 1999 and 167 of 1998, Judgment no. 356 of 1996).
However, leaving aside the sanction of inadmissibility for a referring court that has not attempted to identify an interpretation that is compatible with the Constitution, all ordinary courts, acting within their ordinary adjudicatory function, are required to apply the law in the light of the Constitution, for which the Court of Cassation acts as guarantor, both in its capacity as the supreme court but above all in its capacity as the court guaranteeing the uniform interpretation of the law.

6. Which fundamental principles are most often applied by the Constitutional Court? Please describe one or more constitutional principles which has/have been broadly influenced within your jurisdiction by constitutional review. What contribution has the Constitutional Court made to the formation and development of these principles? Please cite some examples from the case law of the Constitutional Court.

The principle of equality and the prohibition on discrimination are certainly the principles that have been most broadly applied over the course of sixty years of constitutional history.
The case law dealing with the issue of discrimination on the grounds of sex has been undoubtedly important. There has been a gradual yet significant development in this area in the rulings of the Court. In Judgment no. 33 of 1960 the Court ruled partially unconstitutional Article 7 of Law no. 1176 of 1919 insofar as it excluded women from all public appointments involving the exercise of rights and political powers, thereby paving the way for the adoption of Law no. 66 of 1963, which provided for the eligibility of women for all appointments, professions and public sector employment, including the judiciary.
Again in the area of equality of access to work, and in particular to public sector employment, in Judgment no. 163 of 1993, the Court noted that "to render participation [in a] public competition […] conditional upon compliance with the physical prerequisite of a particular minimum height, which is the same for men and women, […] without any distinction between women and men within that category [...] gives rise to 'indirect discrimination' against women as they are disproportionately disadvantaged compared to men in consideration of a statistically significant physical difference that is objectively dependent upon sex".
However, it is above all with regard to the relationship between men and women within the family that the principle of equality has been increasingly broadly applied: thus, whilst in Judgment no. 64 of 1961 the Court justified the different treatment of men and women under the criminal law for the offence of adultery by reference to the different objective circumstances of men and women, making repeated references to concepts such as "social life", "public opinion" and "common experience", when it returned to the issue in Judgment no. 126 of 1968 it by contrast held that "the

principle that the husband may violate the obligation of marital faithfulness with impunity, whilst the wife must be punished […] dates back to distant times in which the woman, who was even considered to be legally incapable and deprived of many rights, was in a position of subjection to the power of her husband (see also Judgments nos. 127 of 1968, 147 of 1969 and 99 of 1974).
Another issue that has been repeatedly addressed by the Court is that of equality between man and women in the area of citizenship (see Judgments nos. 87 of 1975 and 30 of 1983).
However, the principle of equality without distinction as to sex has not been used solely to combat discrimination against women, as the Court has intervened on numerous occasions in order to strike down provisions that discriminate against men (see Judgments nos. 1 of 1987, 341 of 1991, 179 of 1993 and 385 of 2005).
Another area with particular social significance in which the Court has been called upon to rule is that concerning equality between races. The prohibition on distinctions based on race was referred to in Judgment no. 239 of 1984 in which the Court held that a provision requiring membership of the Jewish Community for all Israelis resident within the country clearly violated "the fundamental principle enshrined in Article 3 of the Constitution, which establishes the equality of all citizens before the law "without distinction", *inter alia*, on the grounds of "race" or "religion". By contrast, the contested Article 4 gives essential significance specifically to religious and ethnic characteristics that flow into the classification of "Jewish".
As regards the issue of discrimination on the grounds of language, in Judgment no. 312 of 1983 the Court held that the imposition of a requirement of bilingualism for certain classes of public sector employee within a bilingual province "not only represents a form of protection for a linguistic minority, (...) but expresses the recognition (...) of a *de facto* situation and of the duty of every citizen, irrespective of his or her native language, to be able to communicate with other citizens when charged with public functions or required to provide a service in the public interest".
As far as differences on the grounds of religion are concerned, the case law of the Court has registered a progressive evolution, in relation to the offence of blasphemy. In a 1958 judgment, the Court justified the special protection afforded to it by reference to the significance which that religion has had "in view of the long-standing and uninterrupted tradition of the Italian people, almost all of whom have always belonged to it" (see Judgments no. 79 of 1958; see also no. 14 of 1973). Finally, Judgment no. 440 of 1995 provided that "the setting aside of the juxtaposition between the Catholic denomination, as the sole state religion, and the other 'recognised' faiths […] would now render unacceptable any type of discrimination based solely on the greater or lesser number of members of the various religious faiths"; thus, "the abandonment of the quantitative criterion […] means that, in the area of religion, since the number is not relevant, equal protection is required for the conscience of any person who professes a faith, irrespective of the religious denomination of origin". More recently, with regard to the offence of contempt against any person who professes a faith or a minister of a faith, by Judgment no. 168 of 2005 the Court ruled unconstitutional a provision stipulating an increased penalty if the offence was committed against the Catholic denomination, asserting that: "the constitutional requirements of equal protection for religious sentiment underlying the provision for equal penalties for the offences committed both against the Catholic faith and against other religious faiths […] result on the one hand from the principle of equality before the law without distinction as to religion laid down by Article 3 of the Constitution and on the other hand from the principle of the secular or non-confessional nature of the state".
Finally, it is important to note several decisions concerning the distinction between political opinions and personal and social circumstances. Judgment no. 311 of 1996 is of particular interest: here the Court ruled unconstitutional a provision permitting the assessment, for the purposes of compliance with the prerequisites for approval of appointment as a qualified private security guard,

of the 'political' conduct of a candidate for appointment and conduct falling under the generically defined category of 'moral', which related exclusively to the area of private life and individual freedom, which are thus by their nature, infrequency and separation over time, not capable of reasonably impinging upon the reliability of the individual with regard to the correct performance of the specific function or activity under consideration.
Judgment no. 131 of 1979 is significant with regard to the consequences of the particular personal and social circumstances of each individual, which held that the automatic and non-deferrable conversion - on account of the established insolvency of the convicted person - of a fine into a custodial sentence violated the principle of equality before the criminal law.

II. Constitutional principles as higher norms? Is it possible to determine a hierarchy within the Constitution? Unamendable (eternal) provisions in Constitutions and judicial review of constitutional amendments.

1. Do constitutional principles have any kind of superiority over other provisions of the basic law? What type of relationship is there between principles and other constitutional provisions on the one hand and international and/or European Union law on the other? Are any provisions of international law or European Union law regarded as superior to national constitutional principles? If so, how are these superior international provisions applied in relation to national constitutional principles? What is the prevailing legal opinion amongst university researchers and practitioners in your legal system in relation to the superiority of certain constitutional principles over other provisions of the basic law?

In general, except as will be specified below in relation to the supreme principles of the constitutional order and those that may be classified under the concept of the "republican form" of the state,constitutional principles do not as such benefit from any specific superiority over and above provisions of the basic law. In fact, both the constitutional provisions laying down principles and those asserting rules are situated at the summit of the hierarchy of the sources of Italian law, are capable of operating for parameters of constitutionality and canons for the interpretation of laws and acts with the force of law and, since they are contained in a rigid Constitution, may only be amended in accordance with the special procedure for constitutional amendment (Article 138).

The Constitution is characterised by a marked openness to supranational and international legal orders, within a spirit of peace and cooperation with other countries and inter-state organisations. This is apparent: in Article 10, which provides for a permanent and automatic mechanism for adapting Italian law in line with the provisions of customary international law; in Article 11 which permits limitations on sovereignty, under conditions of equality with other states, that are necessary in order to establish a system to ensure peace and justice between nations and requires the promotion and facilitation of international organisations pursuing that purpose; and in Article 117(1) which requires the state and the regions, when exercising their respective legislative powers, to comply with the restrictions resulting from Community law and international obligations.
This internationalist vocation does not however imply that any provision whatsoever of European or international law can enter into the national legal system. In fact, the Constitution has a strong sense of its identity and requires that the constituent elements of the Italian legal order, which no international commitment may prejudice, must be safeguarded unconditionally. Judgment no. 183 of 1973 specified that the restrictions on sovereignty permitted under Article 11 cannot under any circumstances vest the European institutions with an "inadmissible power to violate the fundamental principles of our constitutional order or inalienable human rights" and that, "should

such an aberrant interpretation ever emerge (…) in such an eventuality the guarantee of constitutional review by this Court of the continuing compatibility of the Treaty with the said fundamental principles would always be guaranteed". The incorporation of any European provision at odds with indispensable constitutional values would thus result in a declaration that the provision implementing the treaty was unconstitutional insofar as it permitted the operation of the former provision within the legal system, obviously according to the time-scales and ordinary procedures applicable to the conduct of constitutional proceedings. This is the heart of the "doctrine of counterlimits", by which the Court has sought to impose limits (to date only theoretically) on the increasing dissemination of Community legislation in order to protect the identity of the republican legal order.
Counterlimits operate with the same intensity also in relation to the customary rules of international law referred to by Article 10 of the Constitution (Judgment no. 48 of 1979) and the provisions derived from the Concordat (Article 7) governing relations between the state and the Catholic Church (Judgment no. 18 of 1982) which upheld the fundamental right to a defence guaranteed by Article 24 of the Constitution). More recently, Judgment no. 238 of 2014 represented a historic case involving the actioning of the doctrine of counterlimits in relation to state immunity from civil jurisdiction for war crimes.
The position is different on the other hand as regards the relationship between the Constitution and other international law provisions, such as those derived from treaty law, that the recent amendment of Article 117 has raised to the status of interposed parameters for establishing the constitutionality of ordinary legislation, and hence any discrepancies that cannot be resolved through interpretation may give rise to the referral of questions of constitutionality. The question has been considered in greater depth within the detailed case law concerning the issue of relations between the internal legal order and the European Convention on Human Rights (see the twin judgments no. 348 and no. 349 of 2007). Since adherence to the ECHR did not entail any transfer of sovereignty, contrary to the position for participation in the process of European integration, constitutional principles apply with more cogent force, and are fully supreme over the provisions of the Convention, their applicability not being restricted to the more limited field of supreme principles. Moreover, "because the provisions in question supplement a constitutional principle, whilst always retaining a lower status", it is necessary that the provisions of the ECHR "respect the Constitution" and that "constitutional review cannot be limited to the possible violation of fundamental principles and rights (…) or of supreme principles (…), but must extend to any contrast between interposed rules and the Constitution. The requirement that the provisions which supplement the constitutional principle must themselves respect the Constitution is absolute and inderogable in order to avoid the paradoxical situation whereby a legislative provision is declared unconstitutional on the basis of another sub-constitutional provision, which in turn breaches the Constitution".

The only provisions of international and European law that may be considered to be superior to national constitutional principles are the provisions of customary international law (Article 10), the provisions of concordats (Article 7) and the provisions of European Union law (Articles 11 and 117) which however cannot under any circumstances violate the supreme principles of the constitutional order and inalienable human rights, failing which they will be barred from incorporation into the internal legal order by a declaration of unconstitutionality in relation to this aspect of the law implementing the treaty that contains them or a ruling that the mechanism of dynamic reference ["*rinvio mobile*"] pursuant to Article 10 does not apply. All other non-state norms, which may at most operate as interposed parameters, must to that effect comply with the principles and rules laid down in the Constitution.

The (small number of) international provisions with superior status to the principles of national constitutional law are applied within national law largely following an assessment by the Constitutional Court, which alone has ultimate power of review of the constitutionality of non-state

legislation. At levels below that of constitutional review, the bodies charged with applying the law, both within the judiciary and within the administration, decide on specific cases in accordance with the indications provided by the Constitutional Court. In the absence of a ruling by the Court, such international provisions will be applied in accordance with the relevant principles of interpretation and in accordance with any statements of position by the competent institutions, including the courts (for example the Strasbourg or Luxembourg courts or the International Court of Justice).

The prevalent opinion regarding the asserted superiority of certain constitutional principles over fundamental legislative provisions largely supports this view because the elaboration of the doctrine of counterlimits has provided the Court with an instrument that is potentially able to stem phenomena (which are however unlikely) involving the regression of the European architecture and the weakening of fundamental constitutional guarantees. In this way, the international openness of the legal order is offset by a non-negotiable defence of the fundamental values of the Constitution.

2. What type of relationship is there between constitutional principles within national law? Is there any hierarchy between these principles? What is the approach of the Constitutional Court towards the structuring of a hierarchy within the Constitution? Can it be concluded that the case law of the Constitutional Court grants a higher status to some constitutional principles compared to other provisions of the basic law?

Constitutional principles sit at the apex of the hierarchy of the sources of Italian law on an equal footing with all provisions with constitutional status, laying down parameters of constitutionality and canons of interpretation for internal legislation. Any constitutional provision, irrespective of whether or not it asserts a principle, may only be amended according to the arrangements and subject to the limits laid down for the constitutional amendment procedure.

The Constitution does not expressly provide for any hierarchy between constitutional principles. Besides, as provisions that are highly generic and not substantiated, constitutional principles are asserted in absolute terms. The lack of a pre-determined hierarchy is confirmed by the requirement that, in the event of conflict between principles, the Court systematically engages in delicate balancing operations with the aim of identifying a constitutionally acceptable balance between opposing rights or values. Judgment no. 85 of 2013 clearly asserted in this regard that "all fundamental rights protected by the Constitution mutually supplement one another and that it is not therefore possible to identify whether any of them predominates absolutely over the others. Protection must always be systematic and must not be dissipated over a series of uncoordinated provisions that are in potential conflict with one another (…). If this were not the case, one of the rights would end up expanding without limitation and would thereby become dominant over the other legal interests recognised and protected under the Constitution, which as a body constitute an expression of the dignity of the individual". In particular, the "fundamental" or primary status of a right or a value asserted by a constitutional provision laying down a principle can never give rise to a rigid hierarchy between fundamental rights because the Italian Constitution, as is the case for other contemporary democratic and pluralist constitutions, "requires continuous reciprocal balancing between principles and fundamental rights, without claiming absolute status for any of them". The classification of certain values as "primary" means that they may not be sacrificed entirely to other interests, even if these are protected under constitutional law, but not that they are placed at the summit of an absolute constitutional hierarchy. "Precisely because it is dynamic and not set in advance, the point of equilibrium must be assessed – by Parliament when enacting legislation and by the Constitutional Court upon review – according to the criteria of proportionality and reasonableness in such a manner as to ensure that their essential core is not sacrificed".

Whilst it is based on the need to arrive at solutions to the questions raised over time, case law of the Constitutional Court has complemented the requirement of coexistence with principles of equal standing, which is regulated in accordance with the principles of reasonableness, balancing and proportionality, with a different approach which aims to elevate certain principles, which are specifically supreme, to the status of constituent and characteristic features of the constitutional order. As indicated above, the 'theoreticisation' of the supreme principles of the constitutional order and the inalienable rights of the individual has found its chosen field in the definition of relations between national law and extra-state law. However, those very same principles - which have been identified as being capable of resisting any, albeit rare, encroachments originating from international or supranational law - have been recognised consistently as having a passive force that is stronger than constitutional principles that cannot be said to be supreme, with the result that they are immune to constitutional review. In this way, the Court has ended up tracing out a substantive hierarchy within constitutional rules that have the same formal characteristics, with at its pinnacle the supreme principles of the constitutional order and the inalienable rights of the individual, which cannot be amended or revoked either by external rules or by constitutional amendment. Judgment no. 1146 of 1988 held in this regard that "The Italian Constitution contains certain supreme principles that cannot be subverted or amended in terms of their essential content even by legislation amending the Constitution or by other constitutional laws. These include both the principles expressly asserted by the Constitution itself to constitute absolute limits on the power of constitutional amendment, such as the republican form of government (Article 139 of the Constitution), as well as the principles which, whilst not being expressly mentioned under those that are not amenable to constitutional amendment, belong to the essence of the supreme values on which the Italian Constitution is based".
The case law of the Constitutional Court has identified several overarching constitutional principles: for example, the right to judicial relief (Judgment no. 18 of 1982), the right to free and secret communication (Judgment no. 366 of 1991), the right to life (Judgment no. 35 of 1997) and the principle of secularism (Judgment no. 508 of 2000).
The catalogue of overarching supreme principles has been variously enriched by the literature which normally includes amongst them not only the republican form of the state (the only limit on amendment that is expressly stated in the Constitution in Article 139) but also all of the principles that appear to be indispensable in order to able to consider a given particular system as democratic: popular sovereignty, the elective and representative nature of the institutions, free and equal voting, freedom of information, the whole body of inviolable human rights which give concrete overall form to the very concept of human dignity and the unitary and indivisible nature of the Republic.

In conclusion, whilst the case law of the Constitutional Court has constantly applied the technique of balancing between constitutional principles considered to be of equal standing, it has ended up attributing a superior status to certain constitutional principles that are "supreme" with regard to other fundamental legal provisions with the aim in particular of recognising their greater resilience against provisions originating from outside the legal system and their tendency to be immune to the process of constitutional amendment.

3. How is the Constitution amended within your legal system? What procedure is provided for under the fundamental law for constitutional amendments? How was the Constitution approved? Does it explicitly provide for any clauses that cannot be amended (eternal)? Is there any difference between the way in which the Constitution was initially adopted and the current procedure for amending the basic law? Have there been any occasions on which constitutional principles have been subject to change within your legal system? If so, for what reason?

Under the constitutional order, amendments are subject to the procedure laid down by Article 138. In order to amend the Constitution two separate resolutions must be obtained from each House of Parliament at a distance of at least three months, and the second vote in each House must be approved by an absolute majority of the members of that House. Laws to amend the Constitution are then subject to a confirmatory referendum if so requested within three months of their publication by one fifth of the members of a House or 500,000 voters or five regional councils; they are not promulgated unless they are approved by a majority of the votes validly cast. However, no such referendum - the validity of which is not subject to any quorum - will be held if the law is approved during the second vote by each House by a majority of two thirds of the members.
Article 138, which lays down a reinforced procedure compared to that governing the enactment of ordinary legislation, pursues the twofold aim of favouring the due consideration of initiatives to amend the Constitution and of ensuring the greatest possible convergence of the political forces present within Parliament around any changes, such that the constitutional amendment is not dependent upon the governing majority of the day.
Article 138 lays down the ordinary provisions governing constitutional review. However, it may be set aside by a Constitutional Law, as occurred with Constitutional Law no. 1 of 1993 and no. 1 of 1997 concerning the establishment of bi-cameral committees on institutional reforms, which were charged with drawing up systematic proposals to amend large parts of the Constitution. However, these attempts were unsuccessful and, to date, all constitutional amendments that have been successfully approved have followed the procedure laid down by Article 138.

The approval of the Constitution represented the conclusion of a complex journey starting with the plebiscite held on 2 June 1946, the first to be held in Italy after the extension of universal suffrage also to women. On that occasion an institutional referendum was held in which the electorate stated its preference for a republic, and also elected the Constituent Assembly. The Assembly approved the final text of the Constitution on 22 December 1947 by a wide majority of its members (almost 90%), and the new republican Constitution entered into force on 1 January 1948.

The Constitution explicitly provides that only one (so-called eternal) clause may not be amended, with Article 139 stipulating that the republican form of the state may not be subject to constitutional amendment. The case law of the Constitutional Court and the literature have dedicated a great deal of commentary to that clause, concluding that the supreme principles of the constitutional order and the inalienable rights of the individual are elements of the constituent and characteristic features of the Italian framework, and are as such immune to the power of constitutional amendment.

The procedure followed for the original approval of the Constitution and that laid down by Article 138 for constitutional amendment differ profoundly in two fundamental respects. First and foremost in terms of the decision making body: an *ad hoc* Constituent Assembly elected for that specific purpose in the former instance and the ordinary Parliament in the latter; secondly in terms of the procedure followed: one single vote of approval without a subsequent plebiscite in 1948 and a dual parliamentary vote, subject to special functional quora and followed if appropriate by a referendum for constitutional amendments.

To date, fundamental principles (Articles 1-12) and Part I on the rights and duties of citizens (Articles 13-54) have been subject to limited amendments regarding: the exclusion of the applicability to the offence of genocide of the rules which prohibit the extradition of foreign nationals and Italian nationals for political offences (Articles 10, last paragraph, and 26, last paragraph); the absolute prohibition on the death penalty (Article 27, last paragraph); the right to vote of citizens resident abroad (Article 48, third paragraph); and the equal opportunities between men and women in access to public and elected office (Article 51, first paragraph).

The provisions of Part II of the Constitution (Articles 55-139) governing the governmental structure of the Republic have been subject to more significant amendments concerning: the composition and distribution of seats in the Chamber of Deputies and in the Senate of the Republic (Articles 56 and 57); the duration of the legislature (Article 60); the guarantees vested in Members of Parliament (Article 68); the procedure applicable to the grant of amnesties and sentence-reduction measures (Article 79); the dissolution of the Houses by the President of the Republic (Article 88); and the ministerial offences (Article 96). Constitutional Laws no. 1 of 1999 and no. 3 of 2001 radically amended the entire Title V dedicated to autonomous local government, reinforcing the regional structure of the republican system. In terms of principles however, specific mention should be made of Constitutional Laws no. 1 of 2012 and no. 2 of 1999, which placed on constitutional footing respectively the principle of a balanced budget (Articles 81, 97, 117 e 119) and the principle of a fair trial (Article 111).

4. Must the procedure for amending the Constitution be subject to judicial review by the Court or is this an exclusive prerogative of political actors? Regarding this issue, what is the dominant legal opinion amongst university researchers and other social groups in your legal system?

The procedure currently governing constitutional review does not contemplate preventive judicial review by the Court prior to definitive approval by the Houses of Parliament; it therefore remains an exclusive prerogative of political operators, subject to the verdict of the electorate in the event that a confirmatory referendum is triggered and subject to subsequent constitutional review by the Court.

To date there does not appear to have been any debate concerning the lack of any provision for judicial review by the Court as part of the process of constitutional amendment.

5. In your legal system, does the Constitution provide for the possibility of the constitutional review of constitutional amendments? If so, which legal body may apply to the Constitutional Court to dispute the constitutionality of an amendment of the basic law? In this case, what review procedure is provided for?

Constitutional review of constitutional amendments is only permitted under Italian law on an *ex post* basis. In fact, the Article 134(1) ("The Constitutional Court shall pass judgement on disputes concerning the constitutional legitimacy of laws and enactments having force of law") has been consistently interpreted as being applicable to laws amending the Constitution. In fact, if this were not the case, the issue of compliance with Article 139 and the other implicit limits on the power of amendment would be inadmissibly detached from the judicial control which is coessential to the rigid nature of the Constitution, and would be left to the free discretion of the parliamentary majority, or at most to the electorate.

The constitutionality of a law amending the Constitution may be questioned by the same parties and according to the same procedures laid down in general terms for the constitutional review of legislation. The Court may thus be seized on an interlocutory basis by a "judge"; or directly by application by bodies vested with legislative power (state, regions and autonomous provinces).

No provision is made, not even within the internal rules of the Court, for specific rules in the event that constitutional proceedings relate to laws concerning the amendment of the Constitution.

6. Is the Court entitled to review the constitutionality of an amendment of the basic law with regard to substantive aspects or can it only express itself in relation to procedural aspects? If such competence has not been explicitly recognised, has the Court ever ruled on or has it ever interpreted a constitutional amendment? What did the Constitutional Court base its position on? Is there any precedent in which the Constitutional Court defined its power to review constitutional amendments from a substantive or procedural viewpoint? What is the legal effect of decisions of the Constitutional Court establishing the incompatibility of a constitutional amendment with the Constitution? Please cite some examples from the case law of the Constitutional Court.

The Court is empowered to review the constitutionality of any amendment to the Constitution both in terms of formal defects resulting from the violation of the procedural rules laid down by Article 138 and in relation to substantive defects resulting from the violation of explicit (Article 139) and implicit limits to the power of amendment. Judgment no. 1146 of 1988 expressly acknowledged that the Court has competence "to rule on the compatibility of laws amending the Constitution and other constitutional laws also with the supreme principles of the constitutional system" because, otherwise, "it would lead to the absurd result of considering the system of judicial guarantees for the Constitution to be defective or not effective precisely in relation to its supreme value".

Leaving aside the above statement of the theoretical position, the Court has never had the opportunity to rule on the constitutionality of a law amending the Constitution. Conversely, the Court may and must interpret the constitutional amendment, which must be used as a parameter for assessing the constitutionality of primary legislation. One extremely significant example was offered by the 2001 reform which, amending Title V of Part II of the Constitution with the aim of enhancing the regional structure of the Republic, engaged the Court in a delicate task of interpretation in order to delineate the respective competences of the state and the regions and to define the necessary mechanisms for engagement.

The positions expressed by the Court were based, with regard to the amenability to constitutional review of laws amending the Constitution, on the need to guarantee the efficacy of the system of constitutional justice and the rigidity of the Constitution. As regards the business of interpreting constitutional amendments which are taken as a parameter of proceedings, this is the inherent feature of judicial activity, in accordance with the principle *iura novit curia*.

The judicial effect of a decision of the Court ruling that a constitutional amendment is unconstitutional can only, under current arrangements, be that laid down by Article 136(1) of the Constitution and Article 30(3) of Law no. 87 of 1953, which provide respectively for the termination of the effects and the prohibition on the application of any provision declared unconstitutional from the day after publication of the decision. With regard to laws amending the Constitution, any finding concerning a breach of the procedural rules laid down in Article 138, the supreme principles of the constitutional order or the inalienable rights of the individual must lead to a ruling that the constitutional provisions previously in force were never validly repealed. Any other solution would appear to be precluded by the need to guarantee the primacy of the Constitution and in particular its intangible core.

7. Is there any tendency within your legal system to reinforce the authority of the Constitution by extending the Constitutional Court's power in relation to the review of laws amending the basic law? Do university researchers or other social groups support this view? How is constitutional review carried out in this case? Would the extension or recognition of the authority of the Constitutional Court encourage the fulfilment of constitutional objectives or would it by contrast

constitute a threat to their fulfilment? What is the debate among legal practitioners and jurists in your legal system?

Within the current legal order, it is not at present possible to discern any sure and certain tendency to reinforce the authority of the Constitution by extending the Court's power in relation to the review of laws amending the basic law; and to date there does not appear to have been any debate on this issue.