THE RELATIONSHIP BETWEEN THE CONSTITUTIONAL COURTS AND THE SUPREME COURTS. IN PARTICULAR, THE ITALIAN EXPERIENCE*

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I. Introduction

The Italian Constitution provides for the creation of the Constitutional Court (Articles from 134 to 137) and asserts that "the Judiciary is a body independent of any other power" (Article 104, first Paragraph).

The Italian Court of Cassation – which was already governed by the Rules on the Judiciary [*Ordinamento giudiziario*] – has been explicitly made by the new Constitution the Court competent to deal with points of law, positioned at the apex of the so-called ordinary jurisdiction. The Court is also competent to rule on questions concerning the definition of the jurisdiction limits between ordinary judges, administrative judges and accounting judges; when it exercises this competence the Court of Cassation is properly the "Supreme Court" in the national system.

The Court's "mission" is to ensure the fair application of the Italian legislation in the judicial decisions. Its task is to carry out a general review of the questions of law relevant to the decisions rendered by lower courts. This function progressively develops the so-called "*nomofilacy*" – *νομος* (rule) and *φυλαξ* (guardian) – and turns the general and abstract rules into legal principles provided by its rulings (the "precedents") which, being repeatedly stated, gradually contribute to what is called "living law".[1] By fulfilling this task, the Court of Cassation takes a second, informal, "Supreme Court" role.

This function is qualified as a constitutional safeguard by Article 111 of the Italian Constitution, whereby judgments and decisions on personal liberty handed down by ordinary or special jurisdictional bodies can always be challenged before the Italian Supreme Court for violations of the law.

II. Constitution and constitutionalism in the social-historic evolution of Europe

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[1]The expression "living law" indicates the established interpretation of a legislative text given in constant and consistent judicial decisions.

The Italian legal system, as the other European democratic systems, is based on the fundamental principles of the Constitutional rule of law: human dignity, personal rights, political participation, the division of powers, the rule of law, welfare, and judicial independence.

After the Second World War, the gradual democratisation of politics, the focus on participation, the complex social fabric have all contributed to implementing constitutionalism in the relevant Constitutions.

Europe has undergone a period of significant development where the adoption of new constitutional texts has had a marked influence on social evolution.

The Constitution is no longer a limit on the power of the sovereign/legislator nor is it an organisational criterion ensuring citizens' rights vis-à-vis the Government and affirming a separation between the Legislature, the Executive and the Judiciary (as contemplated in Article 16 of the "*Déclaration des droits de l'homme et du citoyen*" of 1789: «*Toute Société dans laquelle la garantie des Droits n'est pas assurée, ni la séparation des Pouvoirs déterminée, n'a point de Constitution*»). Instead, the Constitution contains the whole set of the values on which society is founded and is the fundamental text empowering the State and, in Italy, the Republic.

Therefore, social complexity has transformed both the role of the Constitution, which can no longer be traced back to formal legality, and the concept of primacy, which no longer refers to an exclusively hierarchical vision of sources.

This is due to the fact that the democratic Constitutions operate through choices in principle (though this does not exclude their preceptive character, as affirmed by the Italian Constitutional Court in judgment No. 1 of 1956) that lead positive law back to the correctness of its source of production, and also to its consistency, adequacy, proportionality and reasonableness.

The Italian Constitution, like the other democratic and contemporary pluralist Constitutions, require the jurist to balance principles and fundamental rights, without claiming absoluteness for any of them.[2] The balance, being dynamic and not pre-determined, has to be assessed by the legislator when prescribing the provisions of law and by the Law-supervising Court through its review, by applying the criteria of proportionality and reasonableness in order to avoid destroying their essence.

To this regard it is worth mentioning the gradual broadening of the proportionality review,[3] which is frequently carried out today in the decisions of the EU Court of Justice and of the European Court of Human Rights[4] and falls within the competence of the Constitutional Courts.

The origins of the proportionality principle date back to the German law concerning police law, but only through the decisions of the EU Court of Justice this principle later on spread into other national legal systems.[5]

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[2] Italian Constitutional Court, decision No. 85 of 2013.

[3] The notion of proportionality was originally defined in *Allgemeine Landrecht für die Preußischen Staaten* of 1794, as a general criterion for the application of punishments and police measures.

[4] In a recent decision rendered on 26 April 2018 by the ECtHR, *Čakarević v. Croatia*, the Court ruled that, in a case concerning social rights, it was necessary to ascertain the substistence of the necessary balance between the general interest of the public and the protection of the applicant, whether a disproportionate and eccessive burden had been imposed on him/her (Paragraph 77: "The Court must examine whether the interference struck the requisite fair balance between the demands for the general interest of the public and the requirements of the protection of the applicant's right to the peaceful enjoyment of her possessions, and whether it imposed a disproportionate and excessive burden on the applicant").

[5] See the first judgments given by the ECJ: 16.7.1956, in C-8/55, *Fédération Charbonnière*; 14.12.1962, in joined cases C-5-11, 13-15/62, *Società acciaierie San Michele*; ECJ, 19.3.1964, in C-18/63, *Schmitz*.

In German law the proportionality principle derives from the unification of three elements: suitability (*Geeignetheit*), necessity (*Erforderlichkeit*) and proportionality strictly meant (*Verhältnismäßigkeit im engeren Sinne*).

In the decisions of the EU Court, the proportionality review is applied both to legislative measures and to administrative measures adopted by EU institutions, bodies and organisms and notably by the Commission.

Besides, the proportionality principle also operates for the legislative and administrative measures adopted by the Member States when performing the obligations set forth by the EU law.

In this case, the CJEU's case law - in addition to examining the appropriateness of a measure adopted by a Member State in pursuing the declared public interest - also verifies the necessity of the measure, in the sense that there are no equivalent instruments in terms of their result, which are less restrictive of the freedom or fundamental right in question.[6]

The Italian Constitutional Court has recognised this significant development in the case law, pointing out[7] that the test of proportionality – which is used by many of the European constitutional courts often in conjunction with the test of reasonableness - requires to assess whether the provision under review, in consideration of the measure and the manner in which it is applied, is expedient and appropriate for achieving lawfully pursued objectives. The test shall consider whether, among several appropriate measures, that provision prescribes the measure that is the least restrictive of the rights in question and imposes burdens that are not disproportionate to the achievement of those objectives.

Furthermore it can be stressed that the Charter of Fundamental Rights of the European Union considers the principle of proportionality as expression of a shared value.

In addition to the relationship between “penalties” and “criminal offence” («The severity of penalties must not be disproportionate to the criminal offence», Article 49 CFREU), the proportionality principle constitutes a general guarantee clause with respect to the limitation on the exercise of the rights and freedoms recognised by this Charter, that can be decided only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others (Artciole 52 CFREU).

The notion of proportionality is also present, although with a different significance, in the case law of ordinary courts and, therefore, of Supreme Courts.

In the Italian private law, the principle of proportionality is taken into account as a criterion for interpreting the so-called general clauses (such as the *bona fides* "good faith and fairness", or the diligence of the *bonus pater familias*) that need to be made real by the interpreter of the law, in connection with a specific historical-social background. This is done through the appraisal of external factors pertaining to overall public awareness, as well as principles tacitly referred to in the relevant clause.

A distinctive application of this principle characterizes the Italian labour law, concerning the general clause of the "fair cause" in the case of disciplinary dismissal: the lawfulness of the termination of the contract by the employer, in fact, must be examined in terms of the proportionality between the disciplinary misconduct committed by the worker and the sanction imposed.

In relation to the Italian public law, a test of proportionality is performed by the reasonableness assessment carried out, in practice, by the administrative judge over the exercise of discretion by the Public Administration.

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[6] The legal literature has pointed out that, while the principle of proportionality that operates in the German legal system is based on a subjectively oriented judicial protection - which therefore takes into account primarily the extent to which the measure adopted has affected the applicant's legal sphere - the EU principle, on the other hand, is essentially based on an objective model of judicial protection, which chiefly takes into account the interests actually at stake, without giving a decisive weight to the extent of the sacrifice endured by a single person.

[7] Italian Constitutional Court, judgment No. 1 of 2014.

According to Hans Kelsen's doctrine, the Law is a hierarchical structure of norms, which has its unity in the fundamental norm - *Grundnorm*. Any political unit has a Constitution as the very structure of its own organised political community, regardless of any reference to its actual content.

Nowadays, however, the Constitution is no longer neutral and, as mentioned above, can be traced back to Constitutionalism, as the technique of freedom. The citizens are guaranteed the exercise of their individual rights and the State is able not to violate them.

The Italian Constitution contains, moreover, some supreme principles that cannot be subverted or modified in their essential content, not even by laws of constitutional amendment or by other constitutional laws. According to the supreme principles the Republican form of the state cannot be subject to constitutional amendment (Article 139) and such principles pertain to the essence of the supreme values on which the Italian Constitution is based.[8]

The constitutional dimension of each European State must then measure itself against the pluralism of supranational regulatory systems, such as generally recognised norms of international law, international treaties and the law of the European Union.

The matter of the adaptation of the internal legal systems to a set of multi-level safeguards is in fact a highly complex issue when the judge is unable to follow the course of adaptive interpretation.

III. Supreme Courts and Constitutional Courts

Constitutional Courts, being bodies vested with the power to verify - after their promulgation - the conformity of laws with the Constitution, and to annul the laws contrasting with it with effect *erga omnes,* are undoubtedly Supreme Courts. This is because Constitutional matters are "supreme", the Constitutional Courts' techniques of interpretation are specific and their pronouncements are not subject to any review.

However, the expression Supreme Courts is typical of the Courts found at the apex of the judicial organisation, which ensure the observance of the law and uniformity of interpretation by the courts and as such are not subject to review on appeal.

In the exercise of their function to ensure the observance of the law (*nomofilacy*), the Supreme Courts must guarantee the equal treatment of the citizens involved in a lawsuit, as well as - also in the *civil law* system - the predictability of the court decisions on the basis of the case law formed over the enforcement of a given legal provisions.

The central importance of this function, even in the absence of the *stare decisis* principle, meets the need for predictability in the resolution of disputes and, in economic terms, for the "calculability of the law". However, it must be pointed out that this cannot be done without taking into account the system of principles and values that underlie the legal system.

Therefore, the "supreme" character of the Courts refers to their respective Orders, and to the scope of their powers, given that the jurisdictional function is exercised by the judges and that judges are subject only to the law.

IV. The Supreme Courts and the multi-level legal system

The relationship between the European Supreme Courts and Constitutional Courts - due to its extensive aspects - requires to be demarcated so as to take into account the present complexity of the "globalised" legal world. A world characterized, *inter alia*, by multi-level regulatory systems.

[8] Judgment of the Italian Constitutional Court No. 1146 of 1988.

In the debate on the European constitutional identity, the impact of the globalisation processes has been highlighted for quite some time, resulting in a tendency to accept both the principles of the constitutional state on a large scale and to compare national cultures.

In Europe, the constitutional area of each individual State that is dedicated to fundamental rights in some ways dialogues, and in other ways integrates, with the fundamental principles of the European legal system, as enshrined in the founding treaties, the European Convention on Human Rights, the European Social Charter and the Nice Charter.

National legislation has been being complemented for a long time by secondary European legislation based on Article 288 TFEU (former Article 249 TEC).

It is noteworthy that the Treaty of Lisbon of 13 December 2007[9] gave binding legal effect to the Charter of Fundamental Rights of the European Union - proclaimed at Nice on 7 December 2000 and adapted at Strasbourg on 12 December 2007 - and gave it the same legal value as the Treaties (Article 6(1) of the Treaty on European Union).

The Charter of Fundamental Rights forms part of Union law and has a typically constitutional content.[10]

It is the very Charter of Nice in its Preamble which recognises, *inter alia*, the rights upheld by the case law of the Court of Justice of the European Communities and that of the European Court of Human Rights, on the premise that the European Union contributes to the preservation and development of common values, while respecting the diversity of the cultures and traditions of the European peoples.

In this context, in addition to the traditional sources (which have become very diversified), jurisprudential law - which constitutes and coordinates the various levels of the law - is becoming more important in the national legal systems, as a living law that is concretely applied whenever the intervention of the judge is requested for the protection of an individual's rights.

In the presence of a plurality of sources of legislation having differing levels and effectiveness, there is a strong need for legal certainty, for the safeguarding of legitimate confidence, as well as for equal treatment under the law, all of which are fundamental values of legal civilisation that are typical of constitutional States.

In this context, it is clear that the jurisdiction of the Supreme Courts is of paramount importance, as they are called upon to give further impetus to the mission of ensuring the uniform application of national law and the widespread application of the European law.

V. The dialogue among the Courts

The Supreme Courts, which are at the apex of jurisdiction, when interpreting the law must take into account the Constitution, international law and supranational law, and enunciate a "living law" that puts them into relation, thus contributing to the implementation of the constitutional guarantee of rights.

In some States[11](Italy, France, Germany, Spain), the Constitutional Court is beginning to dialogue directly with the Court of Justice of the European Union, thus taking on the role of the ordinary court.

[9] Ratified and enforced in Italy by Law No. 130 of 2 August 2008.

[10] As highlighted by the Italian Constitutional Court in judgment No. 269 of 2017.

[11] Belgium: reference for a preliminary ruling to the CJEU, in accordance with Article 234 of the EC Treaty, made by decision of 19 April 2006 of the *Cour d'arbitrage*, subsequently *Cour constitutionnelle*, in a dispute between different federal entities of the Kingdom of Belgium, which was decided by the CJEU in Case C-212/06;

France: reference for a preliminary ruling from the *Conseil constitutionnel*, decision No. 2013-314P QPC, 4 April, 2013, M. Jérémy F.;

The relations among Supreme Courts and Constitutional Courts in each State must, therefore, be seen in the light of the relations between the National Courts (Supreme and/or Constitutional) and the European Courts, and vice versa.

In the overall interaction of the procedural mechanisms, the national Supreme Courts, in the exercise of the nomophylactic *iuris-dictio,* contribute to define the structure of the legal system as a regulatory framework - not only national - but enhanced by supranational sources and the case law of the European Courts.

VI. Constitutional Courts and European Courts: the driving role of the Supreme Courts

It is well known that, in line with the principles established by the judgment of the Court of Justice of 9 March 1978 in Case C-106/77 (Simmenthal), when national law conflicts with a provision of the European Union, it is for the ordinary court, and thus also for the Supreme Courts, to apply directly the provision of the European Union having direct effects; this complies at the same time with the principle of the primacy of the European Union law and also with the very principle of the submission of the judge only to the law.

In addition, there is the control of conformity with the ECHR Convention, to which the Supreme Courts contribute in a significant way, given that the protection of fundamental rights is a principle that underpins the judicial process and the culture of the judiciary.

In Italy, the Constitutional Court has reaffirmed[12] that when a provision of domestic law diverges from provisions of the European Union that have no direct effect – as also happens with the provisions of the European Convention on Human Rights - it is necessary for the ordinary court to raise the issue of unconstitutionality, which is reserved to the exclusive competence of the Constitutional Court. The latter carries out a "systemic interpretation" that allows to balance it with other constitutionally protected interests.

A similar arrangement has been affirmed by the Italian Constitutional Court with respect to the Charter of Fundamental Rights of the European Union, since the principles and rights set out in it largely intersect the principles and rights enshrined in the Italian Constitution, as well as in the other national constitutions of the Member States.[13]

It is this very contribution of the Supreme Courts to the implementation of the European Union law that has prompted the Constitutional Courts to pay greater attention to the protection of fundamental rights as reflected not only in the national Constitutions, but also in the European Convention on Human Rights.

VII. The Constitution as a written rule?

In Italy, as in most European countries, the Constitution is a written, normative document.

Spain: Reference for a preliminary ruling from the Spanish *Tribunal constitucional* (TC) by order (auto) No 86/2011 and continued with the judgment of the Court of Justice of the European Union of 26 February 2013 in case C-399/11, Melloni v Ministerio Fiscal.

Italy: Reference for a preliminary ruling from the Corte costituzionale (Italian Constitutional Court) by order No 103 of 2008, in a main action, and by orders Nos 207 of 2013 and 24 of 2017, in interlocutory cases;

Germany: Reference for a preliminary ruling made by the *Bundesverfassungsgericht* by decision of 14 January 2014 on a number of technical features regarding the Eurosystem's outright monetary transactions in secondary sovereign bond markets.

[12] Previously, the judgments of the Italian Constitutional Court Nos. 348 and 349 of 2007.

[13] Judgment of the Italian Constitutional Court No. 269 of 2017.

A written Constitution may not cover the whole of "constitutional matters", and "materially constitutional" norms and principles may be customary, or even unwritten, as in the experience of the United Kingdom where constitutional law is largely customary and in any case uncodified.

Over the centuries, principles of a customary or normative nature have taken on a substantial role as the supreme norms of the legal system and are considered essential for the good functioning of the system. These principles are not static and immutable but evolve slowly to adapt to new social and political needs.

The Italian Constitution, like the other written and rigid constitutions, holds a "supreme" position in the legal system. The law cannot modify it, and the law must not conflict with it in order to be lawful.

The constitutional norms stand at the apex of the hierarchy of sources, in the same way as any other provisions of constitutional rank, and they express the standards of legitimacy and interpretation of the national legal system.

Any amendment of any constitutional provision, whether or not that provision is of principle, can only take place in the form and within the limits of the constitutional revision process.

The rigidity of the Constitution is ensured by providing for a check on the constitutional lawfulness of legislation.

The advent of the rigid Constitutions and of the review of the constitutionality of legislation have not only involved the setting-up of a new and specific form of jurisdiction (the constitutional one), but have also had clear repercussions on the system of the sources of law and their interpretation by Judges, who increasingly play a central role in ensuring the effectiveness of constitutional rights, in a European dimension.

VIII. The Systems of constitutional Justice

The origin of constitutional justice is generally associated with the American model in relation to the famous *Marbury v. Madison* case in 1803 (which was preceded by the *Bonham* case in 1610 in the United Kingdom) and the Kelsenian model endorsed by the Austrian Constitution in 1920.

The Judicial Courts have held, since the beginning of the nineteenth century, that they could conduct the Constitutional Review.

In the *Marbury v. Madison* case, which I mentioned, the Supreme Court of the United States held that the Constitution is also a law, superior to all other laws. As long as it is not modified by special and complex procedures, the other ("ordinary") laws must abide by the Constitution; and that, if they do not abide by it, they are null and void; and any judge has the power and duty not to abide by them.

Instead, the establishment of a specific constitutional court characterises the so-called Kelsenian model, that found application in Austria**.**

The Austrian Constitutional Court was founded in 1919, and has been the model for all other European Constitutional Courts established after 1945.

The difference between these two models is the result of the traditional classification of constitutional justice systems into a diffused system, entrusted to Judges, and a centralised system, entrusted to a special constitutional court.

However, these systems do not allow for rigid classifications, since it is the circulation of those models that has favoured many contaminations that have originated different categories.

In Europe, also thanks to the work of the European Commission for Democracy through Law established in the 90's, the so-called "Venice Commission", there has been increasing awareness that the protection of the fundamental rights promulgated by the Constitutions also

requires a review of the laws. And, in general, it has been deemed that this review should be carried out by a specific Court.

Some European states, despite having a written Constitution, or fundamental Laws having a Constitutional status, as Sweden, do not have a specific Constitutional Court, but have a diffused form of constitutional review, exercised in different ways and with different effects either in an exclusive way or through other forms of control.

IX. The Italian Constitutional Court

The Italian Constitution was promulgated on 27 December 1947 and entered into force on 1 January 1948.

Constitutional Law No. 3 of 18 October 2001 (Amendments to Title V of Part Two of the Constitution) made significant amendments to the Constitution, reshaping the distribution of legislative powers between the State and the Regions.

The Italian Constitutional Court is composed of 15 justices, who have a nine-year term of office.

The justices are appointed for one-third by Parliament in joint session, one-third by the President of the Republic and one-third by the Superior Jurisdictions (three justices are appointed by the Court of Cassation, one by the Council of State and one by the Court of Auditors). The President of the Constitutional Court is appointed by the justices of the Court. The variety of the justices' provenances and designation bodies contributes to a diversification of their experience and expertise, as well as of their approaches and perceptions.

The Italian Constitutional Court also judges disputes relating to the constitutional compliance of the laws, and legal instruments having the force of law, adopted by the State and the Regions, which the judges refer to it for review.

In fact, the Italian constitutional justice system is characterized by the interlocutory access to the Constitutional Court. This model provides for a centralised control, but access to the Court is through the judges examining a case at any stage of the relevant proceedings.

In order to be raised as an interlocutory question, pursuant to Article 1 of Constitutional Law No. 1 of 9 February 1948, the constitutional legality issue must be "not considered to be manifestly unfounded by the judge".

The assessment of the relevance of the case and enforcement of the decision that the case is not manifestly unfounded are the competence of the Judicial Authority. However, when the order of referral institutes the Constitutional review, it is subject to an assessment of validity that the Constitutional Court carries out respecting the autonomy and independence of the referring judge.

In Italy, the rulings declaring the unconstitutionality of a legal provision are effective *erga omnes* and *ex tunc*, save as for the effects of the *res iudicata*.

Over time, the Italian Constitutional Court has developed a variety of decision, both of procedural and substantive nature.

The first ones are decisions declaring the issue inadmissible, or ordering that the case-file be remitted to the referring court for reformulation; the second ones include interpretative rulings and additive rulings.

The additive rulings are those that uphold the unconstitutionality of the issue and add to the censored legislative provision a legal rule that the Legislator had omitted and which could not be inferred through an extensive interpretation or by analogical application of the law.

In some cases, the Court has deferred the enforcement of the rulings on unconstitutionality, in order to prevent that the Court's decision, while aiming at restoring the constitutional legality infringed, would in reality create a state of further regulatory uncertainty, due to the legislative vacuum resulting from the declaration of unlawfulness.

X. The systems of constitutional justice in Europe: centralised review and interlocutory access. The role of the Supreme Courts.

In Italy, both the Constitutional Court and the Court of Cassation are involved in the review of the constitutionality of the law.

As already mentioned, in the so-called interlocutory procedure, in general, the question of the constitutionality of a law or of a legal instrument having the force of law can be raised by the Judge in the course of the proceedings, raising the issue of a violation of "constitutional standards".[14]

Therefore, the interlocutory system, as interpreted in the various European legal systems, gives the ordinary Judge a considerable responsibility and requires the cooperation between the ordinary Judge and the Constitutional Court both in the phase of the submission of the question and in that of the implementation of the constitutional rulings.

XI. The systems of constitutional justice in Europe

It is worth highlighting some important examples in Europe of direct access to constitutional justice. This possibility is not envisaged by the Italian Constitution.

The German legal system provides for the direct appeal of individuals "*Verfassungheschwerde*" to the Federal Constitutional Court (BVE) that was introduced in 1951 with the entry into force of the law on the Federal Constitutional Court.

In Spain, the *Tribunal constitucional* has issued many rulings on the *recurso de amparo*, which can be brought by natural or legal persons within strict time limits, provided they have exhausted the ordinary appeals. The *Defensor del Pueblo* and the Public Prosecutor are also entitled to institute the procedure.

Some European countries such as Norway, Denmark, Finland, the Netherlands and Sweden do not have a Constitutional Court, and usually, the Supreme Courts or any Court may declare a rule to be unconstitutional and decide not to apply it.

XII. The interpretation of the law as the meeting point of the constitutional and ordinary jurisdictions?

The considerations made so far show that the mission of the Court of Cassation, which is at the apex of ordinary jurisdiction, differs from that of the Constitutional Court.

The Court of Cassation verifies the correctness of the jurisprudential interpretation of the law in relation to a specific case, and in interpreting the law it affirms principles of law which guide the judiciary (the so-called "*nomofilacy*").

The Constitutional Court is the guarantor of the Constitution and its decisions are severable from the specific case and are binding *erga omnes*.

In reality, the interpretation activity that the two courts are required to perform highlights some areas where their respective competences intersect.

The hermeneutical activity of the ordinary judge and, therefore, of the Supreme Courts, contributes to:

- identifying consolidated case law principles having the character of a "living law" which may be the subject of a constitutionality review;

[14] Constitutional standard" indicates the term of reference used to establish the constitutionality of legal provisions.

- solving in the ordinary courts any doubts of constitutionality on the basis of the interpretation of constitutionally appropriate law;

- enhancing the role played by the ordinary judge allowing access to constitutional review and raising the constitutionality issue indicating the constitutional parameters that the national law allegedly infringes.

It is a complex hermeneutical activity, since some constitutional provisions[15] must be complemented by data, national legal sources having the force of law, or supranational sources, as well as the case law of the ECHR and the CJEU, which have to be determined by the judge who raises the issue.

The Constitutional Court, in turn, interprets the law in accordance with the Constitution. In this respect, I would like to recall:

- the interpretative rulings[16] in which the Constitutional Court, instead of feeling bound by the interpretation of the law proposed by the Judges raising the issue, indicates a different interpretation of the provision that is suitable to avoid the claimed conflict with the constitutional parameters indicated;

- the additive rulings to which I have already referred.

These progressive "contaminations" highlight the objective difficulty of regulating, and therefore governing, a complex society such as the one we are living in. The mediation of conflicts often tends to move from the moment of the creation of the legal rule to that of its application, in an ordinary or constitutional forum.

XIII. Conclusions.

Constitutions, even those that are rigid and guaranteed, and in general the constitutional issue, have a dynamic perspective, in the sense that they must take up the challenge of history and of change.

And this is the challenge that also the Supreme Courts must take up. Indeed, since they have to exercise their jurisdiction with methodical coherence but also with consideration for the new problems raised by the multi-level legal system and the evolution of the values that underpin the constitutional principles.

The Supreme Courts are today the cornerstone of two autonomous and complementary legal systems.

The European Union system and the national systems, as modelled by the Constitutions, are distinct from one another, yet also coordinated.

The Supreme Courts, addressing the Constitutional Courts or acting as bodies of diffused constitutional guarantee and protection of the fundamental rights, in order to ensure an effective guarantee of the rights recognized by the legal systems, exercise the "*nomofilacy*" and carry out a dialogue with the European Courts for a correct balance between the constitutional identity and the law of the Union.

[15] In particular, in Italy, Articles 3, 11 and 117 of the Constitution provide for the principles of equality, of the subdivision of the legislative power between the State and the Regions, and of the respect of the obligations derived from Community law and international ties.

[16] Judgment No. 8 of 1956 of the Italian Constitutional Court.