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# The Protection of Fundamental Rights by the Constitutional Court in the Republic of Latvia. Perspectives, Opportunities and Limits of an Introduction of the Model in Italy

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The contribution aims to analyse the constitutional complaint in the Republic of Latvia, a particular type of appeal to the Constitutional Court that can be filed by an individual directly, without any intermediation, if a legal norm that conflicts with a hierarchically superordinate source has caused a violation of one of his or her fundamental rights provided for in the Constitution of the Republic of Latvia of 15 February 1992 (*Satversme*). The objective will be to explore, also through the examination of constitutional jurisprudence, the adequacy of this technique of protecting fundamental rights in the Republic of Latvia, the possible development of the legal system through the referral to the Latvian Constitutional Court of issues that should have been dealt with by the legislature, and its exportability in the Italian legal system. With regard to this last profile, we will proceed to examine the obstacles to the introduction of some form of direct access to the Constitutional Court, represented not already by Article 134 of the Constitution (which, notoriously, provides for the jurisdiction of the constitutional court “over disputes relating to the constitutional legitimacy of laws and acts, having the force of law, of the State and the Regions”), but by Constitutional Law no. 1 of 1948 and Law No. 87 of 1953, which structure the control of constitutionality exclusively on incidental access (“in the course of a judgment”) and by the model of protection of fundamental rights outlined by the Constitution, in which the function of protection is attributed to the ordinary judge and, in cases of exclusive jurisdiction, to the administrative judge. Finally, special attention will be paid to the constitutional jurisprudence on election laws, which, according to some, would have legitimized the introduction in the national system of a direct appeal “disguised” as an incidental appeal.

**Keywords:** fundamental rights, constitutional court, direct access, constitutional justice in the Republic of Latvia and in Italy.

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## Introduction

The guarantee of human rights is a fundamental principle of a democratic state and one of the indispensable elements of a rule of law. The primary responsibility for guaranteeing human rights and preventing, where possible, or eliminating any violations lies with the State.

The Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), adopted by the freely elected Constituent Assembly (*Satversmes sapulce*) on 15 February 1922 and entered into force on 7 November 1922, contains a catalogue of human rights and, at the same time, provides for a mechanism for guaranteeing and protecting human rights, prescribing concrete obligations and functions for constitutional institutions.<sup>1</sup>

*Satversme* dedicates Chapter VIII to Fundamental Human Rights and gives the State the task of recognizing and protecting them “in accordance with this Constitution, laws and international agreements binding upon Latvia.”<sup>2</sup> Some of the most important fundamental rights expressly recognized and guaranteed by *Satversme* are: the equality of all human beings before the law and the tribunals; the right of defense; the right to life; the right to liberty and personal security; the right to the inviolability of privacy, home and correspondence; the right to freedom of movement; the right to freedom of thought, conscience and religion, etc.

The protection of fundamental human rights lies with the court of general jurisdiction and is based on the obligation of the State by the Constitution to ensure the guarantee of human rights. The judiciary has the task of ensuring that, in the administration of justice, the Constitution, laws and other normative acts of

<sup>1</sup> The contribution is inspired by the report on “Fundamental rights in the presence of the constitutional judge. Direct access to the Constitutional Court in the Republic of Latvia”, held as part of the IV Edition of the annual International Seminar of Comparative Law “Paolo Carrozza” dedicated to “Constitutional jurisdictions in the XXI century: current issues and future perspectives”, which took place on 16 March 2023, at the University “La Statale” of Milan. The study is the result of research conducted under the supervision of Prof. Anita Rodiņa, Judge of the Constitutional Court of the Republic of Latvia and guest of the Department of Political Science of the University of Naples Federico II, by virtue of the Erasmus Agreement signed in 2013.

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Latvijas Republikas Satversme [The Constitution of the Republic of Latvia] (15.02.1922). Available: <http://saeima.lv/en/about-saeima/work-of-the-saeima/constitution/> [last viewed 25.08.2023].

<sup>2</sup> See Article 89 of the *Satversme*.

the State are implemented, that the principle of legality is respected and that human rights and freedoms are protected.<sup>3</sup>

*Satversme* does not expressly provide for the obligation of the Constitutional Court to ensure respect for the rule of law and the protection of fundamental human rights, limiting itself to establishing that the Constitutional Court, as an institution that guarantees the supremacy of *Satversme* and constitutional justice, must supervise the constitutional order existing in the State and control the mechanism of guaranteeing human fundamental rights.<sup>4</sup>

In the legal system of the Republic of Latvia, the Constitutional Court Law introduced a type of instrument, known as a constitutional complaint, which allows individuals to apply directly to the Constitutional Court, when a legal norm, that does not conform to a hierarchically superior norm (for example, the *Satversme*, the Charter of Fundamental Rights of the European Union, international sources, etc.), violates a fundamental right which are established in the Constitution.

The contribution analyses the fundamental characteristics of this protection technique, to verify its adequacy and the possible advantages that can derive from the development of the legal system through the referral to the Constitutional Court of issues that should have been dealt with by the legislator. In doing so, some cases decided by the Constitutional Court on constitutional complaints submitted by individuals who have complained about the violation of their fundamental rights will be examined. These cases are considered very significant in demonstrating the potential of the remedy on the development of the legal system.

The final part of the contribution will focus on the opportunity and limits of its exportability in Italy, where the debate on the introduction of the constitutional complaint has never died down and, even, landed, a few years ago in the Constituent Assembly.

## 1. Citizens' complaint to the Constitutional Court for the protection of fundamental rights

In the Republic of Latvia, the function of ensuring that the legal system complies with *Satversme* and of ruling on constitutionally important questions lies exclusively with the Constitutional Court.<sup>5</sup>

<sup>3</sup> See Judgement of the Constitutional Court of the Republic of Latvia of 23 October 2007 in case No. 2007-03-01, para. 26. Available: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2007/01/2007-03-01\\_Spriedums\\_ENG.pdf#search=](https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2007/01/2007-03-01_Spriedums_ENG.pdf#search=) [last viewed 14.07.2023].

<sup>4</sup> See Article 85 of the *Satversme*.

<sup>5</sup> On the role of the Constitutional Court as “guardian of the Constitution”, see *Prochazka, R.* Mission Accomplished. On Founding Constitutional Adjudication in Central Europe. Budapest-New York: Central European University Press, 2002, p. 33; *Schwartz, H.* The Struggle for Constitutional Justice in Post-Communist Europe. Chicago-London: The University of Chicago Press, 2000, p. 5. See also Judgement of the Constitutional Court of the Republic of Latvia of 18 January 2010, in case No. 2009-11-01. Available: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/05/2009-11-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/05/2009-11-01_Spriedums_ENG.pdf) [last viewed 14.07.2023]; Judgement of the Constitutional Court of the Republic of Latvia of 7 April 2009, in case No. 2008-35-01. Available: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2008/09/2008-35-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2008/09/2008-35-01_Spriedums_ENG.pdf) [last viewed 14.07.2023].

The relatively recent institution, formally dating back to 1996,<sup>6</sup> explains why the Latvian Constitutional Court is included in doctrine among the “third generation” constitutional courts.<sup>7</sup>

Its activities were started on 9 December 1996, and the first sentence handed down only on 7 May 1997.<sup>8</sup>

The constitutional discipline is rather small, since the *Satversme* limits itself to listing the competences of the Constitutional Court, delegating ordinary law to further specification, to regulate the legal *status* of its members and the power to declare laws, other acts or parts thereof null and void (Article 85). The relevant proceedings are therefore governed by the Constitutional Court Law and the Rules of Procedure of the Constitutional Court. In particular, the Constitutional Court reviews: 1) the conformity of laws with the *Satversme*; 2) the conformity of international agreements signed or entered into by Latvia (also until the confirmation of the relevant agreements in the *Saeima*) with the *Satversme*; 3) the conformity of other laws and regulations or parts thereof with the norms (acts) of higher legal force; 4) the conformity with the law of such an order with which a minister authorized by the cabinet, the president, the speaker of the *Saeima* and the prime minister, except for administrative acts with law; 5) the conformity with the law of such an order with a minister authorized by the cabinet has suspended a decision taken by a local government council; 6) the conformity of the Latvian national legal norms with those international agreements entered into by Latvia that are not in conflict with the *Satversme*.

The jurisdiction of the Constitutional Court of Latvia is very narrow, as it essentially rules on the conformity of legal acts with hierarchically superior rules.

The Latvian constitutional justice system regulates a particular form of direct appeal to the Constitutional Court that individuals can bring in cases where a legal rule that does not conform to a hierarchically superior norm violates the fundamental rights recognized by the *Satversme*.

In introducing this type of remedy, the *Satversme* was inspired by the Austrian Constitution of 1920, considered the first among the constitutional orders of the Germanic area to have adopted a system of direct access to the constitutional

<sup>6</sup> The first constitutional legal act providing for the establishment of a Constitutional Court in the Republic of Latvia was the Declaration of the Supreme Council of the Soviet Socialist Republic of Latvia (LSSR), adopted on 4 May 1990, under the title “On the restoration of the independence of the Republic of Latvia”. In para. 6, it was provided that in cases of “disputes concerning questions relating to the application of a legal act shall be resolved by the Constitutional Court of the Republic of Latvia”. Later, the law of 15 December 1992 “On Judicial Power” stipulated that a Constitutional Supervision Chamber within the body of the Supreme Court of the Republic of Latvia, not a special institution. The law was never implemented. In 1993, after the 5<sup>th</sup> *Saeima* commenced work, the government began drafting the draft law on the Constitutional Court and submitted it to the *Saeima* in the spring of 1994. In June 1994, the *Saeima* approved amendments to the law “On Judicial Power”, providing for the establishment of an independent Constitutional Court, whose activities would be regulated by the law “On the Constitutional Court”. On 5 June 1994, the above law was adopted, together with amendments to Article 85 of the *Satversme*. In accordance with it, the Constitutional Court is an independent institution of the judiciary, operating within the jurisdiction established by the Constitution of the Republic of Latvia and the Constitutional Court Law.

<sup>7</sup> *Solyom, L.* The Rise and Decline of Constitutional Culture in Hungary. In: *Constitutional Crisis in the European Constitutional Area: Theory, Law and Politics in Hungary and Romania*, *Von Bogdandy, A., Sonnevend, P.* (eds). Oxford-Portland: Hart Publishing, 2015, p. 6.

<sup>8</sup> Judgement of the Constitutional Court of the Republic of Latvia of 8 May 1997 in case No. 04-01(97). Available: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/1997/03/04-0197\\_Spridiums\\_ENG.pdf#search=](https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/1997/03/04-0197_Spridiums_ENG.pdf#search=) [last viewed 14.07.2023].

court. The Austrian Constitution provides for two forms of direct appeal. The first is governed by Article 144 and allows a direct appeal to the High Constitutional Court against an administrative measure that violates an individual right through the application of an unlawful rule. The second form of appeal, introduced in 1975 through a constitutional amendment and provided for in Articles 139 and 140, is permitted if the plaintiff complains of a direct injury to his or her right resulting from the unconstitutionality or illegality of a law or regulation, without these having been applied by a court. This is the institution of the constitutional complaint, which is based on Article 92 of the *Satversme*, according to which everyone has the right to defend his or her legitimate rights and interests before an impartial tribunal. In fact, if a rule of law, in addition to not conforming to a hierarchically superior norm, violates the fundamental rights guaranteed by the *Satversme*, the person suffering the injury can lodge a complaint with the Constitutional Court, as an organ of the judiciary before which each person can defend his rights and legitimate interests.<sup>9</sup>

The function and subject matter of the complaint are contained in Section 19.2 of the Constitutional Court Law, according to which: “[a] constitutional complaint (application) may be submitted to the Constitutional Court by any person who considers that their fundamental rights as defined in the Constitution are infringed upon by legal norms that do not comply with the norms of a higher legal force”.

Through this instrument, any person can refer directly to the Constitutional Court, without recourse to any mediator, even if special conditions are present.<sup>10</sup>

First, there must have been a violation of fundamental rights. As there is no provision for popular action in the Republic of Latvia,<sup>11</sup> a person may lodge a complaint with the Constitutional Court only to protect a fundamental right that has been violated and upon proof of its injury.<sup>12</sup> The use of this tool is precluded to protect public interests or widespread interests.<sup>13</sup> The violation of fundamental rights

<sup>9</sup> See *Gamper, A.* The Constitutional Court of Austria. Modern Profiles of an Archetype of Constitutional Review. In: *Constitutional Courts. A Comparative Study*, *Harding, A., Leyland, P.* (eds). London: Wildy, 2009, 44 ss. Direct constitutional appeal for the protection of fundamental rights is also an instrument in use in other jurisdictions. For an analysis of the direct constitutional appeal in Germany (*Verfassungsbeschwerde*), that is provided for in Article 93 of the *Grundgesetz* and Article 90 of the Federal Constitutional Court Act of 1951, see *Haberle, P.* La *Verfassungsbeschwerde* nel sistema della giustizia costituzionale tedesca [The *Verfassungsbeschwerde* in the German constitutional justice system]. Milano: Giuffrè, 2000; *Hartwig, M.* Il ricorso costituzionale individuale alla Corte Costituzionale tedesca [Individual constitutional appeal to the German Constitutional Court]. In: *Patrimonio costituzionale europeo e tutela dei diritti fondamentali. Il ricorso diretto di costituzionalità [European constitutional heritage and protection of fundamental rights. The direct appeal of constitutionality]*, *Tarchi, R.* (ed.). Torino: Giappichelli, 2012. For a description of the direct constitutional appeal (*recursos de amparo constitucional*), that finds its constitutional basis in Articles 53.2, 161 and 162.1 of the 1978 Constitución Española, see *Groppi, T.* Il ricorso di amparo costituzionale in Spagna: caratteri, problemi e prospettive [The appeal of constitutional amparo in Spain: characters, problems and perspectives]. *Giurisprudenza costituzionale*, Vol. 6, 1997, p. 4345; *Romboli, R., Tarchi, R.* La giustizia costituzionale in Spagna [Constitutional justice in Spain]. In: *Esperienze di giustizia costituzionale [Experiences of constitutional justice]*, *Luther, J., Romboli, R., Tarchi, R.* (eds). Vol. II, Torino: Giappichelli, 2000, p. 356.

<sup>10</sup> *Lautenbach, G.* The Concept of the Rule of Law and the European Court of Human Rights. Oxford: Oxford University Press, 2013, p. 137.

<sup>11</sup> Judgement of the Constitutional Court of the Republic of Latvia of 22 February 2002 in case No. 2001-06-03, para 2.4. Available: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/07/2001-06-03\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/07/2001-06-03_Spriedums_ENG.pdf) [last viewed 14.07.2023].

<sup>12</sup> *Rodiņa, A.* Constitutional Court as a guardian of the Latvian legal system. *Strani pravni život*, Vol. 4, 2021, p. 586; *Rodiņa, A.* Konstitucionālās sūdzības teorija un prakse Latvijā. Rīga: Latvijas Vēstnesis, 2009, p. 154.

<sup>13</sup> *Osipova, S.* Tiesiska valsts vai “tiesnešu valsts”. *Jurista Vārds*, Vol. 27, 2016, p. 12.

constitutes, according to legal literature, the “cornerstone”<sup>14</sup> of the constitutional complaint: an individual cannot resort to this tool if he cannot prove that his fundamental right has been infringed.<sup>15</sup>

Secondly, an individual can lodge a complaint with the Constitutional Court only if he has exhausted all other legal measures. The constitutional complaint is, in fact, a subsidiary legal measure. Subsidiarity is one of the admissibility criteria prescribed by Section 19.2 of the Constitutional Court Law, which gives every person the right to lodge a constitutional complaint only after making use of all other options.

Finally, it can only be experienced in a predetermined time frame. The setting of a time limit ensures that the case is resolved within a reasonable time and protects the confidence of the opposing party on the stability of the effects of a judicial decision.<sup>16</sup> The identification of the period within which the complaint can be lodged depends on the possibility of having recourse to the other remedies provided by law for the protection of fundamental rights. If the person has already used other legal remedies, then the constitutional complaint can be filed within six months of the issuance of the judgment of the last court seized. Otherwise, if there are no other legal remedies, then the deadline for lodging a complaint is six months from the moment the violation of fundamental rights occurred (Section 19.2, paragraph 4, of the Constitutional Court Law).

## 2. The effects of the Constitutional Court's judgments and the possible outcomes of complaint proceedings

Proceedings before the Constitutional Court may end in a decision or judgment. The latter is a final judgment on the merits of the case or dispute; any other judgments adopted during the proceedings are decisions.

The judgments have legal effect *erga omnes*, i.e., they are mandatory for all state and local government authorities (including courts) and officials, as well as for natural and legal persons; they are final, being precluded any appeal or review by state institutions, international institutions and the Constitutional Court itself;<sup>17</sup> finally, they enter into force at the time they are delivered.

Article 85 of the *Satversme* merely establishes the jurisdiction of the Constitutional Court to declare the law and other acts equivalent to it unlawful, without, however, specifying when the provision declared unconstitutional ceases to produce legal effects. This profile is governed by Section 32 of the Constitutional Court Law, according to which a legal rule declared not to comply with the hierarchically superordinate rule is considered no longer in force from the day of publication of the judgment of the Constitutional Court (*ex nunc*), unless the latter has established otherwise.

<sup>14</sup> Rodiņa, A. Konstitucionālās sūdzības teorija, p. 154.

<sup>15</sup> Judgement of the Constitutional Court of the Republic of Latvia of 22 February 2002 in case No. 2001-06-03. Available: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/07/2001-06-03\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/07/2001-06-03_Spriedums_ENG.pdf) [last viewed 14.07.2023].

<sup>16</sup> Rodiņa, A. Konstitucionālās sūdzības teorija, p. 199.

<sup>17</sup> In fact, the constitutionality judgment is concerned with a specific case at a specific historical moment and cannot take into consideration any future changes. This implies that the constitutionality of a legal norm that has already been scrutinized by the Constitutional Court can be reviewed only if the social reality and context of legal relations have changed. See Judgement of the Constitutional Court of the Republic of Latvia of 10 February 2017 in case No. 2016-06-01. Available: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/04/2016-06-01\\_Judgment\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/04/2016-06-01_Judgment_ENG.pdf) [last viewed 14.07.2023].

The provision, on the one hand, lays down the general rule that the cessation of the effects of the rule declared constitutionally unlawful coincides with the publication of the judgment deciding the appeal,<sup>18</sup> on the other hand, it provides for an exception constituted by the wide discretion granted to the Constitutional Court in modulating the temporal effects of the judgment, providing for the possibility of establishing a different starting date when particular circumstances arise. For example, judges may, with adequate reasons, declare a rule of law constitutionally unlawful from the day of adoption (*ex tunc*) or another day or by setting the date in the future (*pro futuro*). In determining the date of termination of the effects of the rule declared unconstitutional, the Constitutional Court considers several principles: the principle of justice, the principle of legality, the principle of separation of powers, legal expectations and the principle of certainty<sup>19</sup>. In this way, the Constitutional Court, “at the sub-constitutional level”, “directly influences legal regulation, as it is authorized to decide on the existence of the legal norm in the Latvian legal system”.<sup>20</sup> That implies that the Court “will decide on the ‘destiny’ of a norm”<sup>21</sup> which has been challenged for constitutional illegality.

Retroactive judgments (*ex tunc*) are an exception.<sup>22</sup> Since a declaration of unconstitutionality of a law or of an act treated as such may adversely affect the rights of third parties and public interests, the decision to apply retroactive effect should be limited to exceptional cases.

Retroactive judgments are of particular importance in judgments arising from the lodging of a constitutional complaint, since the application of retroactive effect may be the only, and most effective, possibility of ensuring protection of the fundamental rights alleged to have been infringed. Through the adoption of retroactive judgments, the Constitutional Court has therefore emphasized the main purpose of the constitutional appeal, which is to provide protection (not only theoretical but also) practical to fundamental rights in cases of violation, having as its main function to ensure that those rights are effectively protected and fully restored<sup>23</sup>

In other cases, the Constitutional Court has modulated the temporal effects of the judgment for the future, requiring that the rule declared constitutionally illegitimate continues to be applied for a certain period. It usually uses this type of

<sup>18</sup> *Rodiņa, A.* Constitutional Court as a guardian, p. 589, according to which it is the tool most frequently used in practice by the Constitutional Court and “it provides an opportunity to reach a fair balance between two values: legal certainty and legality”.

<sup>19</sup> See Judgement of the Constitutional Court of the Republic of Latvia of 11 March 1998 in case No. 04-05(97). Available: [http://www.satv.tiesa.gov.lv/wp-content/uploads/1997/12/04-0597\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/1997/12/04-0597_Spriedums_ENG.pdf) [last viewed 14.07.2023].

<sup>20</sup> *Rodiņa, A., Spale, A.* The Constitutional Court of the Republic of Latvia as a law-maker. Current practice. In: *Judicial Law-Making in European Constitutional Courts, Florczak-Wątor, M.* (ed.). London and New York: Routledge, 2020, p. 154.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Heringa, A. W.* Constitutions Compared. An Introduction to Comparative Constitutional Law, Cambridge: Intersentia, 2016, p. 223.

<sup>23</sup> Judgement of the Constitutional Court of the Republic of Latvia of 21 December 2009 in case No. 2009-43-01, para. 35.3. Available: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/07/2009-43-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/07/2009-43-01_Spriedums_ENG.pdf) [last viewed 14.07.2023]. In the case at hand, the Constitutional Court declared Article 2, para. 1 and Article 3, para. 1 of the Law on the Disbursement of State Pensions and Allowances in the period from 2009 to 2012 to be unconstitutional due to conflict with Articles 1 and 109 of the *Satversme*, ordered that the withholding of pensions in the period in question be stopped by 1 March 2010, and finally ordered *Saiema* to establish a procedure for the reimbursement of withholdings always in the period in question and no later than 1 March 2010.

instrument when the legislator needs a certain period to regulate the case or to amend an unconstitutional rule of law to avoid a legal vacuum.<sup>24</sup>

### 3. The driving force of constitutional complaint to the process of evolution of the legal system

The protection of fundamental rights through constitutional complaint has contributed to considerably increasing the role of the Constitutional Court in the delicate balance between the powers of the State. This instrument makes it possible to delegate to the constitutional judge the decision of political issues that should have been addressed by other political institutions (i.e., *Saiema*, Government, etc.) and thus contribute to the overall development of the legal system<sup>25</sup> and the implementation of the principles of the rule of law.

The examination of some cases decided by the Constitutional Court at the end of a complaint procedure shows how much this instrument has contributed to improving the regulatory regulation of certain sectors.

In case No. 2005-12-0103, of 20 December 2005, the Constitutional Court declared unconstitutionality and nullity from the moment of the enactment of a series of regulatory acts that had made substantial and procedural changes to the law ‘On Coercive Expropriation of Real Estate for State or Public Needs’ of 15 September 1992,<sup>26</sup> which thus regained effectiveness from the moment of publication of the constitutional judgment.<sup>27</sup> The constitutional complaint had arisen from the infringement of the right to property, a fundamental right enshrined in Article 105 of the *Satversme*, by certain legislative acts that had introduced a more restrictive discipline on compensation, issued during an expropriation procedure for public utility initiated against the applicants. Compared with the original law, which did not expressly provide for the time when the right of ownership of immovable property passed from the previous owner to the new purchaser (the State or the local authority), the subsequent regulation, on the other hand, established that the public authority became the owner of the right of ownership of immovable property already after the entry into force of the “specific law” and that it could register them in the land register, even if the owner had not yet received fair compensation. The procedure for the payment of fair compensation to the expropriated owner “future and in an indeterminable period of time”,<sup>28</sup> it did not respect the guarantees provided for the protection of the right to property by Article 105 of the *Satversme*, which “charges the State with the duty of creating a fair balance (proportionality) between the public interests and those of the particular owner with the help of fair compensation,

<sup>24</sup> Judgement of the Constitutional Court of the Republic of Latvia of 8 April 2021 in case No. 2020-34-03. Available: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wpcontent/uploads/2020/07/2020-34-03\\_spriedums.pdf#search=2020-34-03](https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wpcontent/uploads/2020/07/2020-34-03_spriedums.pdf#search=2020-34-03) [last viewed 14.07.2023].

<sup>25</sup> Sweet, A. S. *Governing with Judges. Constitutional Politics in Europe*. Oxford: Oxford University Press, 2000, pp. 140–141.

<sup>26</sup> Likums “Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām” [Law “On Coercive Expropriation of Real Estate for State or Public Needs”] (15.09.1992). Available: <https://likumi.lv/ta/id/66329-par-nekustama-ipasuma-piespiedu-atsavinasanunbspvalsts-vai-sabiedriskajam-vajadzibam> [last viewed: 25.08.2023].

<sup>27</sup> Judgement of the Constitutional Court of the Republic of Latvia of 20 December 2005 in case No. 2005-12-0103. Available: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2005/05/2005-12-0103\\_Spriedums\\_ENG.pdf#search=expropriation](https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2005/05/2005-12-0103_Spriedums_ENG.pdf#search=expropriation) [last viewed 14.07.2023].

<sup>28</sup> *Ibid.*, para. 2.



determined by a clear and prospective process”.<sup>29</sup> Added to this was the infringement of the principles of legitimate expectations and legal certainty, enshrined in Article 1 of the *Satversme*, since the State had not provided for any “considerate transition to the new legal regulation”, but it had even strengthened the applicants’ conviction that the procedure would be conducted based on the previous rules.<sup>30</sup> The driving force of the complaint to the development of the legal system and to the improvement of the quality of regulatory regulation of a sector emerges, in this case, from the part of the judgment in which the Constitutional Court goes so far as to indicate to the legislator the principles and criteria to be followed in the preparation of a reform law. In fact, “taking into consideration the principle of good administration, following from Article 1 of the *Satversme* and Article 10 of the State Administration Law [...], the Law ‘On Coercive Expropriation of Real Estate for State or Public Needs’ or the Cabinet of Ministers Regulations, issued on the basis of this Law, shall incorporate prospective, clear and general criteria for determination of ‘fair compensation’, by which respective institutions might be guided when offering concrete sums of money or an equivalent property to the owner at the time of talks about coercive expropriation of real estate”.<sup>31</sup>

In case No. 2010-38-01, of 30 December 2010, the Constitutional Court recognized the provisions of the Civil Code, which provided that a person had to be recognized as lacking capacity to act if he was mentally ill or lacked all or most of his mental capacity, as not complying with Article 96 of the *Satversme*<sup>32</sup>. The complaint had been lodged by a person who had been denied the opportunity to take substantive decisions independently, since the rules in force at that time provided for the recognition of a penalty of lack of capacity to act. The Constitutional Court held that this restriction, which provided only for full incapacity, was disproportionate, and therefore, unconstitutional. The Court stated in its judgment that it was possible to regulate and limit legal capacity differently and provided a possible solution to this situation based on the experience of other countries. After the ruling of the Constitutional Court entered into force, changes were made to the Civil Code.

Ultimately, “although the CC cannot directly act as a legislator, it has directly influenced, firstly, the adoption of specific legal norms and, secondly, the contents of norms”.<sup>33</sup> In this second case, the legislator “transfers the ideas and interpretation of a legal norm provided in judgements to the actual text of law”<sup>34</sup>.

In other cases, indeed infrequent, the Constitutional Court has intervened to assess the constitutionality of a legal gap, which, according to legal literature, is a power that

<sup>29</sup> Judgement of the Constitutional Court of the Republic of Latvia of 20 December 2005 in case No. 2005-12-0103. Available: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2005/05/2005-12-0103\\_Spriedums\\_ENG.pdf#search=expropriation](https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2005/05/2005-12-0103_Spriedums_ENG.pdf#search=expropriation), para. 22.3. [last viewed 14.07.2023].

<sup>30</sup> “Which shall be regarded as one of the cornerstones of the Republic of Latvia as a democratic and law-governed state”. *Ibid.*, para. 24.

<sup>31</sup> *Ibid.*, para. 23.3.3.

<sup>32</sup> Judgement of the Constitutional Court of the Republic of Latvia of 30 December 2010 in case No. 2010-38-01. Available: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2010/04/2010-38-01\\_Spriedums\\_ENG.pdf#search=](https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2010/04/2010-38-01_Spriedums_ENG.pdf#search=) [last viewed 14.07.2023].

<sup>33</sup> *Rodiņa, A., Spāle, A.* The Constitutional Court of the Republic of Latvia as a law-maker, p. 154.

<sup>34</sup> *Ibid.*, pp. 154–155.

derives “from the very essence of the implementation of constitutional justice”<sup>35</sup>. In these circumstances, the Constitutional Court formally establishes the absence of a legal rule, the appropriateness or necessity of which to introduce it into the legal order falls within the competence of the legislature. However, if there is no legal rule governing a given case and this situation can lead to a violation of *Satversme*, then the Constitutional Court must be involved in resolving the particular issue. For example, in the case 2010-50-03 of 18 March 2011, a person challenged before the Constitutional Court a provision of the Cabinet Regulation No. 423 ‘Regulations of Internal Procedure of the Deprivation of Liberty Institution’ (the Annex to Regulation), to the extent that this rule did not allow the preservation of religious objects. In other words, the legal regulation provided a list of objects that could be kept by prisoners, but the rule did not provide for the right to store religious objects (for example, icons, crosses or rosaries). Interpreting Article 99 of the *Satversme*, which guarantees the right to freedom of thought, conscience and religion, together with international human rights documents and the practice of their application, the Constitutional Court noted that regulatory regulations should allow a detention institution to decide to allow or prohibit prisoners from holding religious objects, taking into account the circumstances of each individual case, and should also ensure that this practice is based on common principles. In this case, the Constitutional Court has, first, verified the existence of a legal loophole, secondly, established that, after the entry into force of the sentence, the legislature (executive branch) should prepare amendments to the regulation that guaranteed the prisoner to store religious objects in a cell, after receiving the permission of the head of the custody institution.<sup>36</sup>

The possibility that the constitutional complaint contributes to the process of evolution of the legal system depends, however, for the most part on the high level of trust that society places in the Constitutional Court.<sup>37</sup> It can perform its functions properly only if there is effective recognition of both public authority and citizens.<sup>38</sup>

In the Republic of Latvia, thanks to the support of the society,<sup>39</sup> the Constitutional Court can perform its functions to ensure the full implementation of constitutional values and the effective guarantee of human fundamental rights.

<sup>35</sup> *Mesonis, G.* Judicial Activism in the Context of Jurisprudence of the Constitutional Court. In: *Judicial Activism of a Constitutional Court in a Democratic State*, Constitutional Court of the Republic of Latvia, 2016, p. 352. Available: [https://www.satv.tiesa.gov.lv/en/wp-content/uploads/sites/2/2017/06/Book\\_Judicial-activism-of-the-Constitutional-Court-in-a-Democratic-State\\_part\\_2\\_ENG.pdf](https://www.satv.tiesa.gov.lv/en/wp-content/uploads/sites/2/2017/06/Book_Judicial-activism-of-the-Constitutional-Court-in-a-Democratic-State_part_2_ENG.pdf) [last viewed 14.07.2023].

<sup>36</sup> Ministru kabineta noteikumi Nr. 847, gada 1. novembrī – Grozījumi Ministru kabineta 2006. gada 30. maija noteikumos Nr. 423 “Brīvības atņemšanas iestādes iekšējās kārtības noteikumi” [Regulations of the Cabinet of Ministers No. 847, of 1 November 2011 – “Amendments to the Cabinet of Ministers Regulation No. 423 of 30 May 2006 “Internal Regulation of the Imprisonment Institution”].

<sup>37</sup> Judgement of the Constitutional Court of the Republic of Latvia of 12 November 2015 in case No. 2015-06-01, para. 16.2. Available: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/01/2015-06-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/01/2015-06-01_Spriedums_ENG.pdf) [last viewed 14.07.2023].

<sup>38</sup> *Glick, H. R.* Courts, Politics and Justice. New York: McGraw-Hill Book Company, 1988, p. 326.

<sup>39</sup> The results of the first-ever survey on the Republic of Latvia residents’ assessment of the Constitutional Court and various aspects of its work showed that it represents the constitutional judicial body that enjoys the greatest trust among citizens: in fact, 51% of respondents said they had “full trust” or “sufficient trust” in the Constitutional Court (see Constitutional Court of the Republic of Latvia. Research: Half of Latvia Inhabitants Trusts to the Constitutional Court, 2020. Available: <https://www.satv.tiesa.gov.lv/press-release/petijums-satversmes-tiesai-uzticas-puse-latvijas-iedzivotaju/> [last viewed 14.07.2023]).

#### 4. The constitutional model of fundamental rights protection in Italy

In Italy, the constitutional model of protection of rights is based on three fundamental pillars:

The first pillar is represented by Articles 24 and 113 of the Constitution, which guarantee, respectively, the right to take legal action for the protection of one's rights and legitimate interests and to enforce the judicial protection of the same both against private subjects and against the State and other public bodies.

The second pillar is Article 28 of the Constitution, which enshrines the principle of criminal, civil and administrative liability of officials and civil servants for acts committed in violation of rights.

The third pillar consists of Article 134 of the Constitution, which limits the review of the Constitutional Court to disputes concerning the constitutional legitimacy of laws and acts, having the force of law, of the State and the Regions, and the consequent rules on the cross-appeal of laws (Article 1 of Constitutional Law 9 February 1948, No. 1<sup>40</sup>; Articles 23 and 30 of Law 11 March 1953, No. 87<sup>41</sup>).

This model has some salient features: the judge of rights is the ordinary judge, flanked, exceptionally and in cases of exclusive jurisdiction, by the administrative judge; they can all turn to their offices to claim the protection of their rights and interests and to assert the responsibility of the agents who have violated them; the judge is required to apply the law correctly, because ordinary law is the instrument by which rights are recognized and the conditions for their claim are defined.<sup>42</sup>

You can only go to court to obtain the assertion of a right already recognized by the legislator or the extension or strengthening of its protection. The judicial remedy must be supported by a claim to affirm or expand an individual right, which can only be satisfied through the process. The applicant must, in other words, demonstrate that he has an interest in bringing proceedings,<sup>43</sup> that is, that the measure requested from the court appears appropriate and necessary to remove the infringement of his right. The judge, for his part, is required to rule on the application even in the absence of an express rule governing the case, since non *liquet* is not allowed and, on the contrary, the denial of justice is sanctioned.<sup>44</sup> The cases – indeed not uncommon – in which there is no legislative discipline of the case are the most problematic: usually, the rule to be applied to the dispute is elaborated by the judge using constitutional principles and ordinary law.

Sometimes, however, it can happen that the judge is asked for something more than the simple application of the law that protects a right, something that simply

<sup>40</sup> Constitutional Law No. 1, of 9 February 1948 – “Rules on judgments of constitutional legitimacy and guarantees of independence of the Constitutional Court”. Available: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge.costituzionale:1948;1> [last viewed: 14.07.2023].

<sup>41</sup> Law No. 87, of 11 March 1953 – “Rules on the constitution and operation of the Constitutional Court”. Available: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1953-03-11;87> [last viewed: 14.07.2023].

<sup>42</sup> For a broad and timely analysis of the constitutional model of fundamental rights protection, see *Bin, R. Chi è il giudice dei diritti? Il modello costituzionale e alcune deviazioni* [Who is the judge of rights? The constitutional model and some deviations]. *Rivista AIC*, Vol. 4, 2018, p. 633.

<sup>43</sup> See Code of Civil Procedure (28.10.1948), Art. 100: “To make a claim or to contradict it, it is necessary to have an interest in it”. Available: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1940-10-28;1443> [last viewed: 14.07.2023].

<sup>44</sup> See the Article 3 of the Law No. 117, of 13 April 1988 – “Compensation for damages caused in the exercise of judicial functions and civil liability of magistrates”. Available: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1988-04-13;117> [last viewed: 14.07.2023].

goes beyond what can be recognized to the applicant through an interpretation of the legislative provisions, something that, however, is based on constitutional principles. The path to follow is easily deduced from the constitutional model of protection of rights outlined above: if the judge considers that he cannot ‘force’ the letter of the law with a ‘constitutionally oriented’ interpretation, he may, even at the request of the party, refer the question to the Constitutional Court, whose judgment, if favourable to the applicant, will terminate the law ‘in the part in which’ the protection of the right is not sufficiently ensured. This operation, in addition to being perfectly compatible with the principles on which the model of protection of rights guaranteed by the Constitution rests, does not transform the Constitutional Court into the ‘judge of rights’. The ordinary judge continues, in fact, to be invested with the task of protecting rights, while the Constitutional Court intervenes only to ‘help’ the judge to apply ordinary law without, however, disapplying the Constitution and only if it is demonstrated that the protection of the right obtained through the interpretation of current legislation would not be sufficient with respect to constitutional guarantees.

Ultimately, in the model of protection outlined by the Constitution, rights are governed by state legislation, within the perimeter and in the manner outlined by it, and are applied by ordinary and administrative judges, limited to cases of exclusive jurisdiction, with the help of the Constitutional Court.

## 5. The introduction of direct recourse to the Constitutional Court in Italy: what further opportunity to protect fundamental rights?

The possibility of providing for citizens to act directly before the Constitutional Court to react to an infringement of a fundamental right guaranteed by the Constitution, is a theme that has animated the debate on the Italian model of constitutional justice since the work of the Constituent Assembly.<sup>45</sup> The issue has reappeared, on several occasions, to the attention of legal literature, Parliament and the Constitutional Court itself, fuelled, on the one hand, by the need to offer a (more) effective instrument of differentiated protection of the fundamental rights of the individual, on the other, the need to fill the gaps present in the incidental model of constitutional review of laws and acts having the force of law developed in the national legal system.<sup>46</sup>

<sup>45</sup> For a general framing of the issue and related debate, see *Mezzanotte*, C. Il giudizio sulle leggi. I. Le ideologie del Costituente [The judgment on the laws. I. The ideologies of the Constituent Assembly]. Milano: Giuffrè, 1979; *Romboli*, R. Il giudizio costituzionale incidentale come processo senza parti [Incidental constitutional judgment as a trial without parties]. Napoli: Editoriale Scientifica, 1985; *Carlassare*, L. I diritti davanti alla Corte costituzionale: ricorso individuale o rilettura dell’art. 27 L. No. 87/1953? [Rights before the Constitutional Court: individual appeal or re-reading of art. 27 L. n. 87/1953?]. Diritto e società, 1997, p. 443; *Nicotra Guerrero*, I. Giudizio sulle leggi e accesso del privato di fronte all’art. 24 Cost. [Judgment on the laws and access of the private before art. 24 of the Constitution] In: Il contraddittorio nel giudizio sulle leggi (Atti del seminario di Milano svoltosi il 16 e 17 maggio 1997) [The contradictory in the judgment on the laws (Proceeding of the Milan seminar held on 16–17 May 1997)], *Angiolini*, V. (ed.). Torino: Giappichelli, 1998, p. 491.

<sup>46</sup> For a diachronic summary of this development, see *AA.VV.*, I controlli sul potere [Power controls]. Firenze: Vallecchi, 1967; nonché a *Bottari*, C. Prime osservazioni sul ricorso diretto di costituzionalità [First observations on the direct appeal of constitutionality]. Rivista trimestrale di diritto e procedura civile. 1977, p. 755 ss.; *Scavone*, A. Appunti sulle proposte di introduzione del ricorso costituzionale diretto in Italia [Notes on the proposals for the introduction of direct constitutional redress in Italy]. Rivista trimestrale di diritto e procedura civile, 1981, p. 1252 ss.; *Tirio*, F. «Maschera» e «volto» del ricorso individuale di costituzionalità [“Mask” and “face” of individual appeal of constitutionality]. In: Il

The proposals for the introduction of the institute have often been presented not as an alternative to the incidental judgment, but in addition to and to complete it, noting the inconsistencies and inadequacies. In the most advanced phase, the debate led to the Parliamentary Committee for Constitutional Reforms, established by Constitutional Law No. 1 of 1997, and resulted in the proposal to amend Article 134 of the draft reform of Part Two of the Constitution through the extension of the competences of the Constitutional Court to “appeals for the protection, against the public authorities, of the fundamental rights guaranteed by the Constitution, according to conditions, forms and terms within which it may be proposed established by constitutional law”.<sup>47</sup>

Beyond the proposals, and the consequent solutions, there would seem to be two obstacles to the introduction of a direct appeal by the individual to the Constitutional Court.

The first obstacle is constituted not so much by Article 134 of the Constitution which, as we have seen, merely establishes the jurisdiction of the constitutional judge over disputes relating to the constitutionality of laws and acts, having the force of law, of the State and the Regions, but rather by Constitutional Law No. 1 of 1948 and Law No. 87 of 1953, which constitute the judgment of constitutionality exclusively on access in an incidental way (“in the course of a trial”). A direct appeal to the Constitutional Court could, therefore, be introduced through a revision of those laws.

The second obstacle stems, however, from the characteristics of the constitutional model for the protection of fundamental rights, which was examined above.

Some relatively recent judgments of the Constitutional Court have, however, shown that precisely the protection of certain fundamental rights would legitimize a form of direct constitutional appeal ‘disguised’ as a cross-appeal. The reference is, finally, to the judgment of the Constitutional Court 9 February 2017, No. 35,<sup>48</sup> which declared the partial constitutional illegitimacy of the electoral law 6 May 2015, No. 52 ‘Provisions on elections to the Chamber of Deputies’ (so-called *Italicum*) in the part relating to the runoff, due to the lack of a minimum threshold of votes to be admitted to the second round, and the multiple candidacies of the list leaders.<sup>49</sup> It is not so

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diritto costituzionale a duecento anni dall’istituzione della prima cattedra in Europa (Atti del Convegno di Ferrara, 2–3 maggio 1997) [Constitutional law of two hundred years after the establishment of the first chair in Europe (Proceedings of the Ferrara Conference, 2–3 May 1997)], *Carlassare, P.* (ed.). Padova: Cedam, 1998.

<sup>47</sup> On this point, see *Romboli, R.* La giustizia costituzionale nel progetto della Bicamerale. Diritto pubblico, 1997, p. 833, which defines direct appeal in the constitutional reform project as “an institution that is still faceless”.

<sup>48</sup> Judgment of the Italian Constitutional Court of 9 February 2017 in case No. 35. Available: <https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2017&numero=35> [last viewed 14.07.2023].

<sup>49</sup> For an in-depth analysis of the content and critical issues of Act No. 52 of 2015, see *Manfrellotti, R.* Il rapporto di fiducia tra sistema elettorale e disciplina costituzionale [The relationship of trust between the electoral system and constitutional discipline]. Napoli: A. De Frede Editore, 2021, p. 99. The A. explains that Law No. 52 of 2015 regulated the electoral system of the Chamber of Deputies, as in the meantime the draft constitutional reform that had provided for a non-elective legitimacy of the Senate was under discussion in Parliament. Among the doctrine’s comments on Constitutional Court ruling No. 35 of 2017, see *Dickmann, R.* Le questioni all’attenzione del legislatore dopo la sentenza n. 35 del 2017 della Corte costituzionale [The issues to the attention of the legislator after the judgment No. 35 of 2017 of the Constitutional Court]. *Dirittifondamentali.it*, Vol. 1, 2017, p. 1; *Luciani, M.* *Bis in idem*: La nuova sentenza della Corte costituzionale sulla legge elettorale politica [Bis in idem: The new ruling of the Constitutional Court on the political electoral law]. *Rivista AIC*, Vol. 1, 2017, p. 1; *Romboli, R.* L’incostituzionalità dell’«Italicum»: la Consulta conferma il superamento della storica «zona franca» delle leggi elettorali, ma anche la creazione di una nuova per le leggi costituzionalmente necessarie

much the reasons put forward by the Constitutional Court that are relevant here, but rather the fact that the question of constitutionality has reached the constitutional courts through an action for a declaration brought before the ordinary court concerning the denial of the right to vote in employment, guaranteed by Article 48 of the Constitution. In this case, the judgment of acceptance comes to “concretize in itself the protection requested from the remittent and to exhaust it, while the character of incidentally necessarily presupposes that the *petitum* of the judgment in the course of which the question is raised does not coincide with the submission of the question itself”,<sup>50</sup> undermining the very characteristics of constitutional judgment.

## Summary

In the Republic of Latvia, the constitutional complaint has proved to be an effective tool not only for the protection of fundamental human rights, but also for the impetus given to the process of evolution of the legal system. The examination of some cases decided by the Constitutional Court has shown how this instrument has contributed to improving the regulatory regulation of certain sectors. The role of the Constitutional Court in the delicate balance between the powers of the State has been considerably strengthened, since through the constitutional complaint the decision of political issues that should have been addressed by the other political institutions has been delegated to the Constitutional Court and thus contributes to the overall development of the legal system and to the implementation of the principles of the rule of law.

In Italy, the opportunity to provide for direct appeals by citizens to the Constitutional Court for the protection of fundamental human rights has been, for many years, at the centre of a lively scientific and political debate. The legal obstacles to the introduction of this remedy are, as we have seen, on the one hand, by the configuration of the judgment on constitutionality, based exclusively on access on an incidental basis according to Constitutional Law No. 1 of 1948 and Law No. 87 of 1953, and, on the other, by the characteristics of the model for the protection of fundamental human rights.

In fact, some judgments of the Constitutional Court declaring the constitutional illegitimacy of certain electoral laws in so far as they violated the right to vote have shown that the protection of certain fundamental rights would legitimize a form of direct appeal ‘disguised’ as a cross-appeal. Beyond the formal correctness of this solution, a direct appeal to the Constitutional Court could be introduced in Italy only through a revision of those laws and only through a careful political assessment weighing advantages and disadvantages, together with the need to provide admissibility filters against the risk of dangerous traffic jams in constitutional justice.

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[The unconstitutionality of the «*Italicum*»: the Consulta confirms the overcoming of the historic “free zone” of electoral laws, but also the creation of a new one for constitutionally necessary laws]. *Foro Italiano*, Parte I, 2017, p. 782; *Ruggeri, A.* La Corte alla sofferta ricerca di un equilibrio tra le ragioni della rappresentanza e quelle della governabilità: un'autentica quadratura del cerchio, riuscita però solo a metà nella pronuncia sull'*Italicum* [The Court in the painful search for a balance between the reasons of representation and those governability: an authentic squaring of the circle, but only half successful in the pronouncement on *Italicum*]. [www.forumcostituzionale.it](http://www.forumcostituzionale.it), 25 febbraio 2017.

<sup>50</sup> See Order of Constitutional Court of 5 February 1999 in case No. 17. Available: <https://giurcost.org/decisioni/1999/0017o-99.html> [last viewed 14.07.2023].

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