



Ministero dell'Interno

Concorso pubblico, per titoli ed esami, a 250 posti per l'assunzione a tempo indeterminato di personale altamente qualificato per l'esercizio di funzioni di carattere specialistico, appartenente al profilo professionale di funzionario amministrativo, area funzionale terza, posizione economica F1, del ruolo del personale dell'Amministrazione civile dell'interno, da destinare esclusivamente alle Commissioni territoriali per il riconoscimento della protezione internazionale ed alla Commissione nazionale per il diritto di asilo, indetto con decreto ministeriale del 26 aprile 2017, pubblicato nella Gazzetta Ufficiale della Repubblica Italiana 4^a Serie Speciale "Concorsi ed Esami" numero 33 del 2 maggio 2017

Art. 10, comma 3, lett. a) del Bando di Concorso - *READING AND USE OF ENGLISH*

READING AND USE OF ENGLISH III

THE SYSTEM OF JUDICIAL REVIEW OF LEGISLATION BY THE CONSTITUTIONAL COURT

The Constitutional Court exercises its power of judicial review of legislation through the direct method and the incidental method. The former has essentially an abstract character because the law is challenged by public bodies *per se* and not as applied. In the latter method, when an ordinary judge has doubts about the constitutional legitimacy of a law that must be applied to a real case or controversy, he must suspend the proceeding and refer the question to the Constitutional Court. Broadly speaking, the direct method is a means of guaranteeing the allocation of power between the State and the Regions, while the incidental method acts as a means of guaranteeing individual rights and freedoms. In both cases, the ultimate scope of judicial review is the protection of the constitutional order.

In Italy, access to the Constitutional Court is more limited than in other countries. For example, the Italian system does not allow - as is the case in Germany or Spain - that any person may bring a constitutional complaint before the Court alleging the State's direct infringement upon one of their basic rights. Nor does the Court grant a parliamentary minority the right to raise a constitutional question, a power typical of the French system, but also known in Spain, Austria, Germany and Portugal. Indeed, it has been proposed several times in Italy, most recently by the *Commissione Bicamerale* in 1997, that the jurisdiction of the Constitutional Court be widened by introducing these other avenues of access: individual direct complaints for the protection of fundamental rights, and direct access by a parliamentary minority. Although viewed positively insofar as they would have enlarged the scope of constitutional protection, these proposals were criticized and in the end were rejected, following the failure of the *Bicamerale* as a whole. This was due, first, to the fact that discretionary power of case selection is unknown in the Italian tradition; thus, a serious consequence of the enlargement of the Court's Jurisdiction would be a potential flood of cases before the Court. Second, there was a widespread concern that these changes would increase the Court's involvement in the political process.

THE INCIDENTAL METHOD OF JUDICIAL REVIEW

Until the constitutional reform of 2001, which reassessed the allocation of legislative power between the State and the Regions, the incidental method of judicial review was the most important and frequent way of raising questions of constitutionality of legislation before the Court. After the reform, the incidental method has lost part of its quantitative importance. Moreover, the evolving use of the incidental method has also in some respects changed the nature of the Italian Constitutional system of judicial review more generally. This is particularly evident when we examine the relationship between the Constitutional Court and ordinary judges. In fact, the Italian system is becoming more “diffuse”, in the light of the new role of ordinary judges who to some extent apply the Constitution directly in their own adjudication.

The incidental method of judicial review is expressly provided for by Article 1 of Constitutional Law 1/1948, which establishes: “*A question concerning the constitutional legitimacy of a statute or of an act with the same force, raised by the judge on his own motion or upon request of one of the parties in the course of a judicial proceeding, and considered by the judge to be not manifestly unfounded, must be referred to the Constitutional Court for its consideration*”.

The incidental method of access to the Constitutional Court, regulated in detail by Law 87/1953, establishes a procedure that can be considered concrete because the laws whose constitutionality is in doubt are considered in their concrete application to an actual controversy and not *per se*. In the incidental method of judicial review, the ordinary judge has the power - and to some extent the duty - to raise issues of constitutionality before the Constitutional Court so as to obtain a binding decision from that body. Thus, the judge has the right to invoke the jurisdiction of the Court, provided that the law whose constitutionality is in doubt is relevant to the decision of the concrete case. The proceeding is then suspended until the Court decides on the preliminary issue of constitutionality. Considering the various models of constitutional justice operating in the world, the Italian system’s hybrid nature lies precisely in this method: the decision about the constitutional validity of a law is made exclusively by the Constitutional Court, but the initiative is spread throughout the entire Judiciary.

According to the various sources regulating the incidental method of judicial review, the constitutional question must be referred to the Court “in the course of a judicial proceeding” by a judge (Art. 1, Constitutional Law 1/1948); “in the course of a judgment before a judicial authority” (Art. 23, Law 87/1953); or by the “judge in front of whom the case is pending” (Art. 1, *Norme integrative per i giudizi davanti alla Corte Costituzionale*).

In this context, a special position has always been given to the Court of Audit (*Corte dei Conti*), which is called upon to refer questions when ruling on Government acts (Judgements 226/1976 and 348/1991). In fact, it is only through this method of referral that the Constitutional Court may review budgetary laws. Another task assigned to the Court of Audit (*Corte dei Conti*) is to audit the administration of the State budget according to Art. 100 of the Constitution (Judgement 244/1995).



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READING AND USE OF ENGLISH III

After reading the text, answer the following questions:

- 1) How does the Constitutional Court exercise its power of judicial review of legislation?
- 2) What is the difference between the direct method and the incidental method?
- 3) Is it true that in Italy access to the Constitutional Court is more limited than in other European countries? Why?
- 4) Why was the *Commissione Bicamerale*'s proposal to introduce other avenues of access to the Constitutional Court criticized and, in the end, rejected?
- 5) Until the constitutional reform of 2001, what was the role played by the incidental method of judicial review of legislation? And after the reform?
- 6) What does Art. 1 of the Constitutional Law 1/1948 provide for?
- 7) What is the power of the ordinary judge in the incidental method of judicial review of legislation?
- 8) Is the proceeding before the ordinary judge suspended until the Court decides on the preliminary issue of constitutionality?
- 9) Why can the Italian system of constitutional justice be considered hybrid?
- 10) What is the special position given to the Court of Audit (*Corte dei Conti*) in the context of the judicial review of legislation?