

Italie
Conseil d'Etat

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Hierarchy of norms in Italian law

General overview

The Italian Constitution of 22 December 1947, which entered into force on 1 January 1948, is defined as a rigid Constitution. That is to say, that in the hierarchy of norms it is at the top of the national legal system and that all other sources of law, such as Parliamentary laws, must be in compliance with the Constitutional norms. The Constitution can be amended only by Constitutional laws which are adopted in accordance with the proceeding provided under Article 138 of the Constitution.

Article 138: Laws amending the Constitution and other constitutional laws shall be adopted by each House after two successive debates at intervals of not less than three months, and shall be approved by an absolute majority of the members of each House in the second voting.

The said laws are submitted to a popular referendum when, within three months of their publication, such request is made by one fifth of the members of a House or five hundred thousand electors or five region councils. The law submitted to referendum shall not be promulgated if not approved by a majority of valid votes.

A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of two-thirds of the members.

The compliance of all other sources of laws with the Constitutional norms is guaranteed by the control of the constitutional legitimacy assigned to the Constitutional Court.

Article 134: The Constitutional Court shall pass judgment on:

Controversies on the constitutional legitimacy of laws and enactments having the force of law issued by the State and the regions;

Conflicts arising from allocation of powers of the State and those allocated to State and regions, and between regions;

Accusations made against the President of the Republic, according to the provisions of the Constitution.

Article 136: When the Court declares the constitutional illegitimacy of a law or enactment having the force of law, the law ceases to have effect from the day following the publication of the decision.

The decision of the Court shall be published and communicated to the Houses and to the regional councils concerned, to that, wherever they deem it necessary, they shall act in conformity with constitutional procedures.

The hierarchy of norms has evolved mainly with the changes deriving from Italian membership in the European Union and in the Council of Europe in accordance with Articles 11 and 117 (first paragraph) and with the case-law of the Constitutional Court.

Article 11: Italy rejects war as an instrument of aggression against the freedoms of others peoples and as a means for settling international controversies; it agrees, on conditions of equality with other states , to the limitations of sovereignty necessary for an order that ensures peace and justice among Nations; it promotes and encourages international organizations having such ends in view.

Article 117: Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU-legislation and international obligations.

It is important to note that the Italian Constitutional Court has limited the primacy of the European Union norms as well as the Parliamentary power to amend the Constitution in accordance with Article 138 mentioned above. The Constitutional Court has identified a core of Constitutional norms related to the supreme principles of the Constitution (i.e. fundamental principles and inviolable rights of the person) which prevails over the European norms (theory of counter-limits) and cannot be amended; not even by the proceeding established in Article 138.

A national law which violates a European norm cannot be applied by the Italian judges according to Article 11. If the Italian judge doubts the compliance of national laws (and enactments having the force of law) issued by the State or the Regions, with the norms of the European Convention on Human Rights (ECHR), the question of constitutional legitimacy of those national laws must be referred to the Constitutional Court according to the first paragraph of Article 117. Even if the current case-law refers only to ECHR norms, this process should be applied to all international norms.

I. Norms comprising the Italian legal system (by decreasing order of authority)

1. Supreme principles of the Italian Constitution and inviolable rights of the person

Case-law:

Constitutional Court (CC) 1146/1988 - The Italian Constitution contains some supreme principles which cannot be subverted or modified in their essential content not even by Constitutional revision laws or other Constitutional laws. The Constitution explicitly provides absolute limits to the power of Constitutional review on some principles, such as the form of the Republic (Article 139), but also limits the power of revision to principles that, while not expressly mentioned among those not subject to the procedure for constitutional amendment, belong to the essence of supreme values which underpin the Italian Constitution.

CC 183/1973

CC 170/1984

2. European norms

Case-law:

CC 170/1984 – If a European norm is not in compliance with a pre-existing national norm (including ordinary norms and constitutional norms outside of the supreme principles), the national norm must be considered abrogated; if a national norm is not in compliance with a pre-existing European norm, the national norm cannot be applied by the national judge.

Council of State (CoS) 4207/2005 – The Council of State decided that if the Constitutional Court modified a provisional law to make it respectful of the fundamental rights of the person, the question of the compliance of the internal provision with European law, cannot be referred (preliminary question) to the Court of Justice in accordance with Article 267 of the Treaty on the Functioning of the European Union (TFEU), as it falls within the protected sphere of the supreme principles of the Constitution.

3. Constitutional norms

Constitutional norms comprising the Constitution as amended by following Constitutional laws and Constitutional laws on jurisdictional Constitutional proceedings.

4. International norms (specifically ECHR)

Case-law:

CC 348/2007 and CC 349/2007 – If an internal norm cannot be interpreted as in compliance with an ECHR norm, the question of constitutionality of the internal norm, must be referred to the Constitutional Court according to the first paragraph of Article 117 (noted above). As also mentioned above, this process should be followed for all international norms.

5. Norms with force of law

There are several types of sources of law which fall under this category and which share equal standing in the hierarchy.

- Ordinary Parliamentary laws (Articles 70-75 of the Constitution)
- Delegated laws (Article 76 of the Constitution)
- Governmental Decrees adopted in accordance with Article 77 of the Constitution (“...*Government adopts provisional measures having the force of law, it must on the same day present said measures for confirmation to the Houses, which, even if dissolved, shall be summoned especially for this purpose and shall convene within five days. The decrees lose effect from their inception if they are not confirmed within sixty days from their publication. [...]*”)
- Regional norms with exclusive Regional competence

6. Regional norms with concurring competence

In the subject matter covered by concurring legislation legislative powers are vested in the Regions except for the determination of the fundamental principles, which are laid down in the State legislation.

7. Extraordinary ordinances of urgent necessity

Extraordinary ordinances of urgent necessity are atypical administrative acts which are used to confront exceptional and unforeseeable situations which occur on the basis of specific legislative provisions. This power is provided for by a primary source of law, and even if the extraordinary ordinance is not in compliance with a specific law, it must always be in conformity with the Constitution.

8. General principles of law

An example of a general principle of law is that an administrative act cannot be applied retroactively if it negatively affects someone.

9. Administrative Regulatory norms

There is a hierarchy among Administrative Regulatory norms according to the enacting authority. The regulation adopted by decree of the President of the Republic must be respected by other regulations emanating from the Prime Minister, the Ministers, and other de-centralized authorities, in that order.

- Regulations issued by decree of the President of the Republic (Article 17 of Law 23 August 1988, number 400)
- Regulations issued by the Prime Minister (Article 17 of Law 23 August 1988, number 400)
- Regulations issued by Ministers (Article 17 of Law 23 August 1988, number 400)
- Regulations issued by de-centralized authorities (such as the Municipalities or Public Bodies)

II. Hierarchy of norms in Italy

All legal norms must comply with all norms in force which are at a higher level in the hierarchy of norms.