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Reasonableness and Law

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comparationis is repealed and the application of the law originally questioned by the judge *a quo* is extended. It is therefore evident that the principle of equality is not used in this case to put different situations on a par (given that the law is general) but that, on the contrary, it tends to level down protection.

Without including the case of intrinsic lack of reasonableness of the law that is scrutinised without using a *tertium comparationis* (Section 3 below), the unreasonable *tertium comparationis* test works in a very different way with respect to the traditional model of judicial review. Conventionally, the reasonableness test can only be a judgment on equality carried out on the basis of a triadic scheme that brings into comparison a general provision, a derogating rule, and a *tertium comparationis* (which has to be a legal provision, and necessarily a general one). Otherwise, the judgment cannot be considered judicial review. In other words, if the reasonableness test is not based on a triadic scheme as per Article 3(1) of the Italian Constitution, it becomes a test by which to judge whether a law is fair, which is somewhat problematic.[22]

This analysis shows evident limits in light of the developments in the Constitutional Court's caselaw. In fact, reasonableness has taken on the traits of a constitutional principle and also of an autonomous parameter for judicial review. Reasonableness as applied in the conventional judgment on equality only involves one aspect of the content of Article 3 of the Italian Constitution, i.e., equality *of* relationships or legal classifications in the context of the legal system. The reasonableness-equality test, by contrast, also involves equality *in* relationships, an equality related more to the *individual situations* underlying each law than to the law itself. Similarly to the principle of substantive equality (Article 3(2) of the Italian Constitution), equality *in* relationships implies not only equal treatment but also the promotion of equality through reasonable legal discrimination. In a nutshell, reasonableness is a correction of equality and is aimed not only at equal freedom but also at equal rights.[23]

3 Reasonableness as Rationality

3.1 Reasonableness and Coherence of the Legal System

Reasonableness and equality were empirically separated from each other when the Constitutional Court started declaring laws unconstitutional not by comparing them with other provisions, but simply by judging them as inherently unreasonable. The first official signal of this new course came with the annual report issued in 1987 by Saja, who was then serving as president of the Constitutional Court. In this report

128/1983 and Ordinance 95/1980; Constitutional Court, Decision 20/1982 and Ordinance 230/1975; Constitutional Court, Decision 179/1976 and Ordinance 100/1970; Constitutional Court, Decision 190/1970.

[22] On which point, see Paladin (1965), who is influenced by Esposito (1954).

[23] Constitutional Court, Decision 50/2006.

Saja stated that "the court opted for an evaluation of the intrinsic unreasonableness of the law when comparison with other provisions is impossible. Decision 560/1987 found it unreasonable that the solidarity fund for victims of automobile accidents had not been adjusted to the cost of living." This statement is an explicit recognition of what had already emerged *de facto* from the court's caselaw.

Reasonableness, from this new perspective, seems to more clearly require "rationality" on the part of the lawmaker. More specifically, reasonableness overlaps with the general need for coherence in the legal system. Decision 204/1982 frames this concept as follows: the "essential value of a civilized country's legal system" is founded on "the coherence obtaining among the system's components. If this essential value is ignored, the legal system will be like a flock of sheep without a shepherd."

It should be stressed here that, even in this case, there is no exact semantic correspondence between reasonableness and rationality. The legal system's coherence, which is one of the possible variants of the principle of reasonableness, is neither the demonstration of a geometry theorem nor the outcome of deductive logical analysis. The legal system is dynamic and far from being a purely static and formal entity. Reasonableness as rationality, or coherence, has to do with the legal system as influenced by the experience of law, where written provisions form only a small part, albeit an important one, together with all the other legally relevant factors that come to light from context. The rationality/reasonableness test of law consists of three elements: *logical coherence, teleological coherence*, and *historical and chronological coherence*.

These three elements are different but have a *quid commune* (which is part of all reasonableness tests): the law is examined from the standpoint of the *ratio legis* in relation to the legal system (as a whole and with the relevant meaning) as well as from the standpoint of the context the law applies to. When the Constitutional Court uses the rationality test, it traces the provision's origin back to the constitutional principles that are relevant to the context. Even though the rationality test is applied to a single provision, it does only involve a scrutiny of the provision itself but takes into consideration the legal system as a whole.

3.2 Rationality as Logical Coherence

At a minimum, the rationality test scrutinizes a law's logical coherence. It should be underlined that mere nonconformities in a law's wording, content, or structure are not enough to qualify a provision as illogical. In fact, these elements do not constitute a breach of the Constitution but are rather mere inconsistencies. A law is deemed, by contrast, illogical and constitutionally illegitimate when there is a contradiction either within the law itself or between the law and other parts of the legal system: in the former case, there is a contradiction between the provisions contained in the same law (*intra legem* illogicality); in the latter case, the conflict is between the law under review and the part or subpart of the legal system which the law refers to (*intra ius* illogicality).

Intra legem illogicality is inclusive of conflicts among a law's provisions, but also conflicts between the law and its own *ratio legis*.[24]

Intra ius illogicality transcends the limits of the law under the court's consideration and gains a wider relevance. The law contrasts with the relevant part of the legal system, a part identified on the basis of the law's *ratio* or objective function, and with respect to which the law under review represents an inconsistent *quid*.[25] On other occasions, one has *intra ius* illogicality when the law under review is in contrast with the principles or the *rationes decidendi* contained in previous decisions handed down by the Constitutional Court and used as a parameter. The contradiction is not with a particular *dictum* of a previous decision[26] but with the legal reasoning that can be derived from one of the following: caselaw, the court's doctrine, or previous trends in the caselaw.[27]

Referring to the language of logic to define *intra legem* and *intra ius* illogicality is a purely pragmatic choice. In fact, through the principle of reasonableness, conflicts between provisions translate, in both theoretical and practical terms, into mere incompatibilities between rules that "do not match or are not consistent with one another" (see Fuller 1964). In any case, the Constitutional Court is very cautious, especially in controversial cases. For example, the court may avoid declaring a law unconstitutional on the basis of its logical-systematic incoherence, that to provide the lawmaker with an opportunity to rationalize a legal framework that may have become incoherent by way of intervening new statutes or new caselaw.[28]

3.3 Rationality as Teleological Coherence

Issues concerning teleological coherence regard cases of an unreasonable relation between the aims of the law and the means provided through which to achieve such aims. There are three tests that apply to these cases: coherence, adequacy, and proportionality, and there is also a suitability test.

The coherence test merely checks to see whether the law under scrutiny is compatible with its own aim.[29]

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[24] For an example of contradiction between provisions, see Constitutional Court, Decisions 25/1970 and 328/2002.

[25] See Constitutional Court, Decisions 98/1967, 344/1993, 520/2002, and 393/2006.

[26] More specifically, the contrast is with a *res iudicata*, i.e., with a previous decision the Constitutional Court has issued which is considered an *in terminis* precedent.

[27] Constitutional Court, Decision 61/1995. For examples of contradiction with previous decisions, see the caselaw on minimum pensions (Constitutional Court, Decisions 184, 1086, and 1145 of 1988; 81, 142, 179, 373, 488, 502, and 505 of 1989; 69, 70, 182, and 547 of 1990; 114, 164, 165, 257, and 438 of 1992; 495/1993; 15 and 376 of 1994; and 104/1996), and also the caselaw on how different criminal judges use incompatible types of criminal procedure (Constitutional Court, Decisions 496/1990; 401 and 502 of 1991; 124, 186, and 399 of 1992; 439/1993; 453 and 455 of 1994; 432 and 448 of 1995; 131, 155, 177, and 371 of 1996; 66/1997; 290/1998; and 241/1999).

[28] Constitutional Court, Decision 22/2007.

[29] Constitutional Court, Decisions 198/1986 and 361/1993.

When the court uses the adequacy test, it checks to see whether a law is adequate to its aim.[30]

The proportionality test is made up of three criteria: (a) proportionality as progression of rules (especially with regard to inter-temporal laws[31] or to laws concerning social rights, and social-security entitlements in particular)[32]; (b) proportionality as a prohibition against legislative automatisms, as with any law that causes unfavourable consequences because it is disproportionate with respect to a case it applies to, or because it fails to provide for adjustments at the implementation stage[33]; and (c) proportionality as excess of power, meaning that a provision's prescriptive content is excessive with respect to its aim.[34]

The above-mentioned proportionality tests have all the same goal: to moderate the strictness of the law when applied to cases in life. Not so in the case of the derivation of the *regula legis* from the *ratio legis*, also definable as *aberratio legis:* this is a totally different case, and it could in fact be ascribed to what in Italian administrative law is known as the class of *ultra vires* acts.[35]

Finally, the court uses the suitability test to ascertain the rationality of provisions used to calculate, or measure, certain elements. This test is typically used to calculate compensation when private property is expropriated (by eminent domain) for reasons of public interest.[36] It is also used to calculate the deadlines established by law,[37] as well as for criminal provisions, especially ones establishing the *quantum* of a sentence.[38]

3.4 Rationality as Historical and Chronological Coherence

When the Constitutional Court uses rationality in terms of historical and chronological coherence, it uses historical arguments to carry out judicial review. Historical arguments highlight what consequences derive from changes that have occurred over time, on both a strictly legal level and a factual level. Anachronism, heterogeneity of aims, evolution, and tradition are all typical instruments of judicial review based on the time factor.

Anachronism, in particular, applies when a legislative scheme loses its reason to exist because time has passed and the scheme no longer answers the needs (or rather, the aims) with respect to which the lawmaker was originally operating. For

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[30] Constitutional Court, Decision 102/1991.

[31] Constitutional Court, Decisions 43/1963, 209/1076, and 281/1984.

[32] Constitutional Court, Decisions 54/1987, 94/1987, 244/1990, and 426/2006.

[33] Constitutional Court, Decisions 82/1966, 267/1998, 438/1995, 971/1988, 40/1990, 16/1991, 32/1991, and 2/1999.

[34] Constitutional Court, Decision 415/1996.

[35] Constitutional Court, Decision 142/1991.

[36] Constitutional Court, Decision 5/1980.

[37] Constitutional Court, Decisions 139/1967, 156/1988, and 15/1982.

[38] Constitutional Court, Decisions 67/1963, 323/1991, 341/1994, and 519/1995, 354/2002. See Manes (2005).

example, this test was used in the decision on the obligation to maintain in commercial use the old hotels that had survived World War II bombings.[39] This obligation had been established in the wake of the war to guarantee a minimum of hotel rooms for tourists visiting Italy, but the same obligation did not also apply to newer hotels. The court found the aim of the law "out of date" because "the need, surely a pressing one at the time of its introduction, has ceased to be owing to the present number of hotels available in Italy; the discrimination, introduced by the law, between old and newer hotels has lasted too long, and it oversteps the limit of a reasonable exercise of legislative discretion."

The so-called "unreality," or "outdatedness" test was also applied in a decision that declared unconstitutional a prohibition against issuing patents for pharmaceutical products.[40] The court found not only that the prohibition reflected "an outdated view of the function of patents," but also that "the reasons for derogative treatment are obsolete, thus breaching the Constitution in relation to the criterion of correspondence with reality (correctly ascribed to the review of the law based on the principle of equality)." In fact, "there are a number of factors accompanying our increased awareness that all rational foundation was lacking for the derogative treatment [. . .]: the consolidation of the importance of technical and scientific research and of the Republic's duty to promote such research; the increased ability of the Italian pharmaceutical industry to organize its research sectors and compete with those from other countries; and, closer relations with foreign markets." There are many other examples of anachronism of the law, and they regard the most diverse subjects.[41]

Heterogeneity of aims occurs when the *ratio legis* changes over time (it is transformed or replaced with another *ratio legis*). In particular, the test is used to verify the enduring legitimacy of the law. In practice, it is used to uphold laws of dubious constitutional legitimacy. Therefore, it is applied to safeguard an existing law that—however much it may be inspired by aims or goals that are no longer not compatible with the contemporary context—is kept from being struck down thanks to an interpretation in keeping with the Constitution. The court thus sets new aims or functions for the law in order for the provision under review to be in keeping with the Constitution.[42] It is evident that heterogeneity of aims is a mirror image of anachronism, and is particularly problematic when used uncritically and deferentially to review laws that are incoherent with constitutional principles.[43]

Two different attitudes are expressed, on the one hand, by legal tradition (inclusive of practice, historical tradition, legislative tradition, comparative legal tradition, customs, "common sense," etc.) and, on the other hand, by positive law: the former

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[39] Constitutional Court, Decision 4/1981.
[40] Constitutional Court, Decision 20/1978.
[41] Constitutional Court, Decisions 189/1987, 108/94, 254/2002, 318/2002, and 445/2002.
[42] Constitutional Court, Decision 5/1962.
[43] Constitutional Court, Decisions 9/1965, 87/1966, and 925/1988.

is a typical example of conservatism on the part of the court, while the latter is one of the possible grounds of unconstitutionality based on anachronism.[44]

The court's caselaw nonetheless shows that tradition is never used alone: the court rarely uses tradition without making reference to constitutional principles,[45] but there have been important and controversial exceptions to this rule.[46]

4 Reasonableness Understood as the Reasonable Balancing of Constitutional Interests

4.1 Reasonableness and the Balancing of Interests

Controversies over the law's constitutional legitimacy are not just conflicts between provisions on different levels but are instead conflicts between situations with legal implications that have to be worked out and solved in light of constitutional principles. As can be appreciated in other countries too, this premise contributes to qualify constitutional justice as jurisdiction over fundamental rights and freedoms. This is so even in countries where individuals cannot, directly or semi-directly, lodge a complaint with a constitutional court.[47] When reasonableness is applied to conflicts between legal situations, it technically works itself out as a balancing of interests. In the court's own words, the reasonableness test is aimed at determining whether "the peculiar balance established by the lawmaker for the case under review is consistent with the hierarchy of values a law must reflect as this hierarchy can be gathered from the Constitution."[48]

Four preliminary questions will be considered in describing the relationship between reasonableness and balancing: What are the legal situations, or rather the interests, relevant to the review? What are conflicts between interests? How can these conflicts be solved? And, finally, what are the techniques used to balance interests?

4.2 Constitutional Interests and Balancing

Answering the first question requires analysing the Constitutional Court's caselaw and the balancing of both codified and uncodified constitutional rights. Relevant examples are all the rights afforded protection under Article 2 of the Italian

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[44] Constitutional Court, Decisions 128/1981, 763/1988, 335/2002, 429 and 430 of 1993, and 440/2000.

[45] Constitutional Court, Decision 287 /1974.

[46] Constitutional Court, Decisions 125/1957 and 79/1958.

[47] Cappelletti (1955) suggested reforming the Italian system of constitutional adjudication by giving it the form of a human rights court, one bounded by the structural limits characterizing the system provided for by the constituent assembly.

[48] Constitutional Court, Decision 467 /1991.

Constitution. Article 2 is a so-called "open clause" that has been used to protect the right to life,[49] sexual freedom,[50] a child's right to have a family,[51] the right of disabled persons to social assistance,[52] the right to privacy,[53] the right to expatriate,[54] the right to personal identity,[55] the right to housing,[56] the right to social freedom,[57] the right to have a name,[58] and the rights deriving from the *status filiationis*.[59]

The extension of the list of constitutional interests considered to be relevant in judicial review also takes place with regard to the rights and freedoms contained in international charters and declarations. The Constitutional Court seems to have overcome the disputes concerning the efficacy of international catalogues of rights. In fact, after Decision 10/1993, which set out the doctrine of the "passive reinforced efficacy" of laws ratifying international treaties, the court consolidated a material interpretation of charters of rights. In fact, the court considers these documents relevant in judicial review because of the importance of the principles they declare and not because of the formal legal efficacy they have received with domestic ratification laws (see Tega 2006). Decision 388/1999 clearly states that "human rights, such as are also declared in universal or regional conventions signed by Italy, are expressed and equally protected by the Constitution, not only because of a general recognition of the inviolable rights of persons, increasingly perceived as essential to the concept of human dignity contained in Article 2 of the Constitution, but also because, even if the catalogues of rights do not coincide, the different texts integrate and complete one another when interpreted."[60] The combination of these interpretations widens the horizon of the reasonable balancing test. In other words, judicial review is not confined to safeguarding interests outlined in the Constitution but also includes rights and freedoms recognized by the EU and internationally at large.[61]

Moreover, decisions issued by ad hoc bodies established under international and supranational charters have taken on greater importance. In fact, where fundamental rights are the matter, the Constitutional Court increasingly refers to the caselaw of the European Court of Human Rights and to that of the European Court of Justice. Reference to these two courts' caselaw is usually made so as to integrate the

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[49] Constitutional Court, Decision 223/1996.
[50] Constitutional Court, Decision 561 /1987.
[51] Constitutional Court, Decision 183/1988.
[52] Constitutional Court, Decision 346/ 1989.
[53] Constitutional Court, Decision 139/1990.
[54] Constitutional Court, Decision 278/1992.
[55] Constitutional Court, Decision 13/1994.
[56] Constitutional Court, Decision 119/1999.
[57] Constitutional Court, Decision 50/1998.
[58] Constitutional Court, Decisions 13/1994, 297/1996, 120 and 243 of 2001, and 268/2002.
[59] Constitutional Court, Decision 494/2002.
[60] Constitutional Court, Decisions 62/1992, 168/1994, 15/1996, 109/1997, and 270/1999.
[61] Constitutional Court, Decision 445/2002; see also Tega (2002).

constitutional parameter. As a result, the number of constitutionally protected interests has been extended.[62]

Balancing constitutional interests has had an effect on a traditional instrument that defines the "political" sphere: citizenship. The constitutional caselaw on rights does not only concern citizens. As a matter of fact, many scholars have already underlined that citizenship is losing (if it has not already lost) its natural vocation as a means of inclusion in the political community of those entitled to rights. Constitutional caselaw has contributed to developing fundamental rights as a concept that goes beyond the limits of both the nation-state and its corollary, citizenship. Taking into account the increasing integration of citizens and aliens, the Constitutional Court has issued more and more decisions expressly recognizing that the principle of equality does not tolerate discrimination between the two with regard to inviolable human rights.[63] Political rights are excluded because the right to vote still bears a close connection to citizenship as defined in Article 48 of the Italian Constitution.

There are many cases reinforcing this trend. In a paradigmatic example, the Constitutional Court granted to an illegal immigrant the right to a have access to all essential, urgent health services.[64] The right to health care is therefore defined as a fundamental right of the individual as this right is set forth in Article 2 of the Italian Constitution. In particular, the right to have access to medical treatment for the protection of health is "constitutionally conditional on the need to balance this right against the other constitutionally protected interests, with the exception of the core protection of health, which the Constitution protects as an inviolable aspect of human dignity. The defence of core protection is intended to prevent an increase in the number of unprotected situations liable to jeopardize the protection of that right." The core protection of this right will therefore be granted to all aliens, without taking into account their status—legal or illegal—as regulated under Italian immigration law. Another example of balancing is Decision 376/2000, on the familial relationships of aliens. The decision extended the suspension of deportation orders for a husband living with a pregnant woman and for the six months after birth, this in light of "the principles of protection of the family unit, with specific regard to the wellbeing of children as related to the educational responsibility that parents share."[65] The right and duty of parents to support, teach, and educate their children and the child's right to have a family "are fundamental human rights that, in principle, are to be granted to aliens, too." Protecting and assisting children "is, regardless of one's legal status as citizen or alien, a parent's fundamental right, and it can be limited only for specific and motivated reasons protective of the rules of democratic cohabitation itself."

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[62] Decisions making reference to the ECHR caselaw see Constitutional Court, Decision 299/2005, 61/2006, 120/2004, 154/2004. Decisions making reference to the caselaw of the ECJ see Constitutional Court, Decision 393/2006.

[63] Constitutional Court, Decisions 62/1994 and 432/2005.

[64] Constitutional Court, Decision 252/2001.

[65] Constitutional Court, Decisions 376/2000 and 224/2005.

A similar trend can be observed with respect to the binding duties of solidarity. In Decision 172/1999, the Constitutional Court established an obligation of stateless people to serve in the army (Article 52 of the Italian Constitution) in connection with the duty to "defend the country," something that the Constitution expressly qualifies as a "sacred duty of all citizens." The decision distinguishes the legal status of third-country nationals from that of stateless people. In the former case, extending to aliens the duty to serve in the army would raise an issue of "opposing loyalties," whereas a stateless person can, by contrast, be considered part "of a community of rights, and being part of it justifies their being bound to a duty functional to the defence of the community itself." The Constitutional Court introduced, in particular, a very innovative concept. It specifically referred to a "community of rights and duties which is broader than that founded on citizenship, and which brings together everyone (people with dual citizenship, for example) who is recognized as having rights and corresponding duties, as provided for in Article 2 of the Italian Constitution." The court therefore seems to emphasise that the prescriptive effect of fundamental rights goes well beyond the narrow borders of the πόλις.

Interests are relevant when they concern individuals and social groups alike. Conflict between the interests of heterogeneous social groups, especially in more recent Constitutional Court decisions, often regards religious pluralism. Religious pluralism has gained a central role because of the need to equally protect all religious confessions, eliminating from the legal system those provisions, introduced under the previous constitutional order, that favoured the Catholic Church. The Constitutional Court accordingly declared unconstitutional the obligation for religious instruction to be included in school syllabuses.[66] And it also abolished a series of crimes punished by law regarding the Catholic religion, such as blasphemy, i.e., speaking sacrilegiously about "the symbols or the people venerated by the state's religion"[67]; offending things pertaining to the state's religion (Article 401 of the Italian Penal Code)[68]; offending the state's religion (Article 402 of the Penal Code)[69]; disturbing Catholic religious services (Article 405 of the Penal Code)[70]; offending people sacred for the state's religion (Article 403 of the Penal Code).[71] The court found that all these crimes contradicted the principle of the state as a secular entity, a principle that, as the court has put it, "implies an equidistance and impartiality of the state toward all religious confessions," which confessions must coexist under equal conditions of "freedom, belief, culture, and tradition."

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66 Constitutional Court, Decision 203/1989.
67 Constitutional Court, Decision 440/1995.
68 Constitutional Court, Decision 329/1997.
69 Constitutional Court, Decision 508/2000.
70 Constitutional Court, Decision 327/2002.
71 Constitutional Court, Decisions 168/2005, 195 /1993, and 346/2002.

4.3 Balancing of Conflicting Interests (a): "Intra-Value" Conflicts

A reasonable balancing of constitutional interests presupposes a concrete conflict or, in other words, a conflict between rights. Conflicts can be classified as *intra*-value or *inter*-value, referring to the conceptual distinction between values and interests.[72] In fact, values have a polysemic structure because they are a synthesis of different interests. Conflicts can be classified as *intra*- or *inter*-value depending, in general terms, on the homogeneity or heterogeneity of the contrasting interests revolving around the values in question. There are two types of *intra-value* conflicts. The first is when homogeneous interests are the interests of different conflicting subjects (private, public, or collective). Decision 394/1999, for example, addressed a conflict between the rights of next-door neighbours, and in particular between one neighbour's right to have a view from the house and the other neighbour's right to privacy. A homeowner has an interest in receiving air, light, and other amenities, including the possibility of an external view. Neighbours, by contrast, have an interest in limiting the exercise of this right in order to secure their safety and privacy. The court invoked Articles 905, 906, and 907 of the Civil Code, establishing "a priority of the right to a view" and "a correspondent compression of the neighbour's right to privacy." In the court's opinion, these provisions "must be interpreted as part of an entire area of the law regulating the above-mentioned conflicting interests. The limitations on rights are aimed at granting the greatest possible enjoyment of the two properties. To arrive at an objective meaning of the right to privacy, we must therefore consider this right as already part of a balance with an interest in protecting the right to a view. The right to a view has an undeniable social relevance because light and air ensure a building's hygiene, thereby fulfilling an elementary needs of its residents."

The second type of *intra*-value conflict can be observed in cases concerning the right to defence as against the right to engage in a private economic initiative. The Constitutional Court, for example, struck down a provision that precluded the right of the defendant, but not that of the public prosecutor, to appeal against a decision to not prosecute a crime because the fact committed does not constitute a crime.[73] The decision was based on the rule stated in Article 24 of the Italian Constitution, providing equal instruments to the two parties involved in a suit, and the court found that precluding the defendant's right to appeal is a clear breach of this rule.[74] As for private economic initiative, the court looked to Article 41 of the Constitution as grounds for limiting the liability of a shipping company, but at the same time compensation was owed to its clients in case of fraud.[75] In fact, it is the court's view that Article 41 protects *all* the economic interests involved in a business contract.

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[72] For a detailed analysis of this problematic issue, see Morrone (2001a, 277ff).
[73] Constitutional Court, Decision 2000/1986.
[74] For a ruling in the opposite sense, see Constitutional Court, Decision 26/2007.
[75] Constitutional Court, Decision 420/1991.

The second type of *intra*-value conflict is had when the subjective (personal) dimension and the objective (collective or public) dimension of the interests rotating around the same constitutional value are in contrast. Aside from the cases explicitly provided for by the Constitution,[76] one can also refer here to the core content of the principle contained in Article 51 of the Constitution, establishing at once the right to vote and an interest in having a transparent electoral campaign.[77] Another example is a teacher's interest in teaching and the public interest in a good educational system as can be gathered from Articles 97 and 33(2) of the Constitution.[78] Moreover, the subjective interest in a healthy environment may come into conflict with the objective or general interest in safeguarding the environment.[79]

4.4 Balancing of Conflicting Interests (b): "Inter-Value" Conflicts

Inter-value conflicts are when the contrast between interests involves the content of heterogeneous constitutional values. The many examples that can be adduced in this regard can be broken down into three main types.

First, there are conflicts between heterogeneous subjective legal situations (private, public, or collective), as in the case of an adopted child's right to personal identity where the right to know who the parents are comes into conflict with the biological mother's right to anonymity.[80] Another possible conflict may arise when a differently-abled person's right to a social life translates into his or her interest in a right of way resulting in an easement of necessity on the condominium where he or she resides. This right can contrast with the right to undertake business initiatives, a right that admits such easement of necessity exclusively for agricultural and industrial reasons but not for social purposes.[81]

Second, we may have conflicts between a subjective legal situation and an objective interest of the constitutional system. Here too, numerous Constitutional Court decisions can be brought as examples: the conflict between the right to annual holidays of employed prison inmates and the objective need to secure the proper execution of prison sentences[82]; the right to the *status filiationis* for children born of incest, a right that has been found to prevail upon the rules of so-called family public order, and so upon the protection the Constitution affords to legitimate families[83]; the conflict between the right to defence and the judicial system's efficiency in case

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[76] See Article 32 of the Italian Constitution, establishing the right to health care as a subjective right and as a collective interest.
[77] Constitutional Court, Decision 5/1978.
[78] Constitutional Court, Decision 212 /1983.
[79] Constitutional Court, Decisions 641/1987 and 281/2000.
[80] Constitutional Court, Decision 425/2005.
[81] Constitutional Court, Decision 167 /1999.
[82] Constitutional Court, Decision 158/2001, commented in Morrone (2001b).
[83] Constitutional Court, Decision 494/2002, commented in Tega (2003).