

ARTICLES

GROUNDBREAKERS: FEMALE JUSTICES AND PRESIDENTS IN THE ITALIAN CONSTITUTIONAL COURT

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Abstract

The history of the Italian Constitutional Court (ItCC) reflects a significant gender disparity, with the absence of women justices until 1996, forty years after its establishment. Despite subsequent appointments, women remain a minority on the Court: only eight out of 121 justices are women, with just two being elected as presidents. This underrepresentation poses challenges for research, compounded by the Court's secrecy regarding deliberations and the scarcity of historical and political studies on female justices at ItCC.

To address this gap, we propose an empirical methodology based on interviews with the female justices. In fact, due to the Court's collegial nature, relying solely on case-law analysis provides only a partial picture, as individual opinions are not discernible.

The initial section of the article presents data on the eight women justices in the ItCC, contextualizing their presence within

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In beloved memory of Filomena Perrone see note 38.

the broader struggle for gender equality in Italy, particularly in legal and judicial professions. Following this, an overview of the legal framework governing the ItCC, including appointment procedures and internal decision-making processes, is provided. Subsequent sections analyze the Court's role in the Italian constitutional and political landscape over time, focusing on its impact on gender equality. Specific attention is paid to the individual contributions of the eight women justices, starting from the first appointee. Additionally, the two female presidents, Marta Cartabia and Silvana Sciarra, are examined separately to assess their leadership within the Court.

The paper concludes with reflections and insights aimed at guiding further research in this area. By shedding light on the experiences of women justices and the dynamics of gender representation within the ItCC, it is hoped that this study will contribute to a more nuanced understanding of constitutional justice in Italy and pave the way for future inquiries into gender equality in legal institutions.

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1. Introduction and Methodology

In 1996, forty years after the establishment of the Italian Constitutional Court (hereinafter ItCC), the first comprehensive study on the history of the Court was published by a well-known Italian scholar¹. It included some tables on the justices appointed until that date, one of which bore a striking title: “The Men of the

¹ F. Bonini, *Storia della Corte costituzionale italiana* (1996), 353.

Constitutional Court.” Although the title seems affected by a gendered bias, it was not. It only depicted the harsh reality: no women had been appointed as justices of the ItCC at that time. The first female justice was appointed soon after the publication of the book, on November 4, 1996. Since then, a total of eight women have been appointed to the Court: eight out of 121 justices. Only very recently have two of them become presidents of the Court (two out of forty-eight presidents).

This data makes any research on the women justices in the ItCC quite challenging – even more challenging if we consider that the Italian Constitutional Court is one of the few constitutional jurisdictions worldwide that still protects the secrecy of its deliberations, therefore not allowing its members to express separate opinions. This feature prevents the possibility of attributing judgments to specific justice². In addition, historical and/or political studies on the Court can be counted on one hand, despite the overwhelming abundance of theoretical analyses of its case law. Because of this, there are many studies in Italian literature that describe and discuss how women’s equality or women’s rights have been recognized by constitutional jurisprudence, but none on the women of the Court³. The lack of these fundamental studies, as well as the scarcity of female biographies and oral histories that is available,⁴ represent a reminder that there is a compelling need to give further analytical and developed reconstructions of the phenomena.

The time has come to start exploring this issue, not only to investigate the contribution of the female justices and presidents, but also to examine the reasons behind this data and the

² As it has been also emphasized by R. Abeyratne, I. Porat (eds.), *Towering judges. A comparative study of Constitutional Judges* (2021), 12.

³ Neither the Constitutional Court has done any. However, the first task assigned to the newly created historical archive of the Court by the President in charge (elected on December 12, 2023), Augusto Barbera, is to “recreate” the journey of the 8 women in the Court. A special reference to the “Women of the Court” was introduced in the 2023 edition of the *Annuario*: <https://www.cortecostituzionale.it/annuario2023/le-donne-e-la-corte.html>.

As for scholarship, see the passing reference in P. Pederzoli, *I giudici della Corte costituzionale*, in C. Guarnieri, G. Insolera, L. Zilletti (eds.), *Anatomia del potere giudiziario* (2019), 23.

⁴ The point is raised in E. Delaney, R. Dixon, *Judicial Heroines? Comparative and Conceptual Reflections*, in E. Delaney, R. Dixon (eds.), *Constitutional Heroines and Feminist Judicial Leadership*, Edward Elgar Publishing, forthcoming.

consequences of the overwhelming masculine environment on the few women that have been appointed. Meaningful research on this subject within the Italian legal order requires a description of all the female justices, not just the female presidents: very few women sat on the bench, and only two as presidents; moreover, usually presidents' tenure is short, as he (or she) is usually elected among the most senior justices and therefore comes just before the end of the mandate.

To achieve this purpose, we need to apply an empirical methodology based on interviews with the female justices⁵. Indeed, a research based solely on an analysis of the case law is useless, as the collegiality of the Court's work prevents any research based on individual opinions.

This article will develop as follows. In the next section, we will present the data on the eight women justices in the ItCC. In doing so, we will consider more broadly the difficult path towards gender equality in Italy, with a special emphasis on women's late access to the legal professions and to the judiciary. In Section III, we introduce a few aspects of the legal framework that regulates the ItCC, especially in relation to the appointment procedure and the internal decision-making process. Sections IV and V will assess the role that the ItCC played over time within the Italian constitutional and political system, with a special focus on gender equality. Section VI will examine the eight women justices, including the first appointee, whereas Section VII will be devoted to the two female presidents. Finally, some conclusions will be presented, with the hope of paving the way for further research.

2. The *Infirmis* sexus and the Long Walk of Women in the Judiciary – The Context Matters

It was not until 1996 that the first female justice was appointed in the ItCC: Fernanda Contri. And it was not until the end of 2014 that three female justices sat simultaneously on the Court's bench (made up of fifteen justices), when Marta Cartabia – appointed in 2011, following the death of Maria Rita Saulle (who herself had been appointed after Contri's term had expired) – was joined by Daria de Pretis and Silvana Sciarra.

⁵ We decided to use the term “judge” to indicate an ordinary judge and “justice” to indicate a constitutional judge.

The highest number of female justices in charge at the same time came in late 2020, when four female justices sat in the Court: Daria de Pretis; Silvana Sciarra, the first woman elected by the Parliament; Emanuela Navarretta; and Maria Rosaria San Giorgio, the first woman elected by the judiciary. At the time this work is completed, there are three female justices in the ItCC: Emanuela Navarretta, Maria Rosaria San Giorgio, and Antonella Sciarrone Alibrandi, since no successor to Silvana Sciarra has been elected by Parliament so far.

It was only at the end of 2019 that the first female president of the Court, Marta Cartabia, was elected. She was followed in 2022 by the second, and so far, last, female president: Silvana Sciarra.

Presently, no incumbent justices belong to the generation of the 1970s, the youngest having been born in 1966. More generally, until about fifteen years ago, the constitutional justices were predominantly Caucasian, male, old, and often from southern Italy⁶. Over the years, although the composition has generally changed, the current president still fits this description perfectly⁷.

Looking more broadly at the judiciary—which nowadays counts more female judges than male ones—data does not appear to be any better: only in 2019 was a woman (Gabriella Palmieri Sandulli)⁸ appointed as General Attorney of the State⁹, and only in 2023 was a woman (Margherita Cassano)¹⁰ appointed First President of the Supreme Court of Cassation.

How can such small numbers, and very recent appointments of “the first woman that...”, be explained? To understand this, it is necessary to retrace the obstacles—a reflection of the status of women in the society of the time—women have encountered in accessing legal professions and the judiciary in Italy.

⁶ L. Rullo, *The Road to Palazzo della Consulta: Profiles and Careers of Italian Constitutional Judges*, 17 *Italian Political Science* 226 (2022). N. Pazienza, *Faciant Meliora Sequentes* (2016).

⁷ The two last Presidents have been: Professor Augusto Barbera, a Constitutional Law professor born in Aidone (Sicily) in 1938 and Giovanni Amoroso, a judge elected by the Court of Cassation born in Mercato San Severino (Campania) in 1949.

⁸ Appointed by the President of the Council of ministers, Giuseppe Conte.

⁹ The official Italian denomination is *Avvocato generale dello Stato*, head of the *Avvocatura generale dello Stato*, established in 1933 as the service for legal counseling and judicial defense of the State and all its administrative offices.

¹⁰ Appointed by the High Council of the Judiciary.

For instance, it was not until the passage of Law No. 1176/1919¹¹ that it became possible for a woman – Elisa Comani – to join a bar association¹². Before that, some bar associations had indeed accepted registration by women, but judges had always intervened to annul them. For example, the first woman to be inscribed to the bar, on August 9, 1883, was Lidia Poët – but her registration was annulled on November 11, 1883. She was allowed to join a bar association only after the enactment of the Law of 1919¹³. The female lawyers – who consisted of, in 1921, eighty-five women – mostly worked in the field of family law, due to their supposed “natural” predisposition for care- and family-related roles.

The number of female lawyers doubled in ten years (180 in 1931) and grew very slowly in the following decades. In 1940, female lawyers represented just 1% of the members of the bar¹⁴; in 1971, 3.4%; and 9.7% in 1981¹⁵.

As for the judiciary, until Law No. 66/1963, women were not even allowed to become judges¹⁶. Law No. 66/1963 was propitiated by the ItCC Judgment No. 33/1960¹⁷, which stated that diversity of

¹¹ Law No. 1176/1919 was rather innovative considering the time it was adopted. It allowed women, on an equal footing with men, to exercise all professions (including becoming barrister) and hold many, but not all, jobs in public administrations. It also eliminated the archaic marital authorization (imposed on wives for some major legal acts).

¹² F. Tacchi, *Eva togata. Donne e professioni giuridiche in Italia dall'unità a oggi* (2009), 54.

¹³ See N. Sbano (ed.), *Women and Rights* (2004). The entry of women into the armed forces only occurred with Law No. 380/1999.

¹⁴ F. Tacchi, *Donne e avvocatura in Italia. Questioni di genere (e di lungo periodo)*, in R. Bianchi Riva, C. Spaccapelo (eds.), *Parità di genere e professioni legali, una lunga storia...* (2023), 35.

¹⁵ According to the statistical data from ISTAT. Nowadays, women represent the 47.2 % of all the barristers (CENSIS Report 2023 on the Bar Association).

¹⁶ See B. Pezzini, *La rappresentanza di genere in magistratura*, *Questione giustizia* (2024), available at <www.questionegiustizia.it>; M. D'Amico, C. M. Lendaro, C. Siccardi (eds.), *Eguaglianza di genere in magistratura* (2017).

¹⁷ The exclusion of women was challenged before the Court by Costantino Mortati (former member of the Constituent Assembly, future member of the ItCC, and arguably the most eminent father of contemporary Italian constitutionalism) as legal counsel for a female graduate in Political Science, Rosa Oliva, who wanted to take part in the competition for the selection of Prefects (senior State official representing the national administration in the territory of a single Province, in charge of an office currently named Prefettura, a Territorial office of the Government, which depends on the Ministry of the Interior).

sex, in and of itself considered, can never be a reason for legislative discrimination¹⁸. Thus, the Court articulated the correct interpretation of Article 51 of the Constitution, whose first paragraph provides that “All citizens of either sex shall be eligible for public office and for elective positions on equal terms, according to the conditions set forth by law”¹⁹. Consequently, the ItCC annulled Article 7 of Law No. 1176/1919, inasmuch it excluded women from all the public offices requiring the exercise of political rights and powers.

It took fifteen years after the Constitution came into force, and no less than sixteen public selections of male-only judges (with the appointment of a total of 3,127 judges), for the principle of gender equality in access to the judiciary to be implemented. In 1965, eight women won the first competition open to candidates of both sexes²⁰.

The deeper reason for women’s arduous progress in the judiciary was represented by cultural prejudice and the stereotype of women as immature beings in need of male protection. This prejudice came into light during the work of the Constituent Assembly²¹ when the Constituents dealt with the judicial system directly and the possible participation of women in it²². Some recalled Jean Martin Charcot and his theory on female hysteria. Others emphasized that women could not be judges because they

¹⁸ However, only a few years earlier, the ItCC (Judgment No. 56/1958) had written to the contrary, sharing the then widespread prejudice that considered women too fragile and emotional for an activity like adjudication, which requires the exercise of pure rationality. In its infamous decision, the Court pointed out that ‘the constitutionality of a rule declaring female citizens to be exclusively suited or more particularly suited to certain public offices or services could not be denied *a priori*’. English translations of the ItCC’s decisions are available at <www.cortecostituzionale.it>, but only to a limited extent for older judgments.

¹⁹ In 2003 a constitutional amendment was passed, adding a further sentence to the paragraph (see also Section V): ‘To this end, the Republic shall adopt specific measures to promote equal opportunities between women and men’.

²⁰ Graziana Calcagno, Emilia Capelli, Raffaella d’Antonio, Giulia De Marco, Letizia De Martino, Annunziata Izzo, Ada Lepore, Maria Gabriella Luccioli.

²¹ Out of the 556 members of the Constituent Assembly, only 21 were women.

²² Especially in the debate sitting on 31 January 1947 in the Second Subcommittee of the Commission for the Constitution. See Carlotta Latini, ‘Quaeta non movere. The entry of women into the judiciary and Article 51 of the Constitution. An occasion for reflection on women’s access to public office in *Republican Italy*’, 27 *Journal of Constitutional History* 143 (2014).

“lacked temperament, strength of mind, firmness of character, and physical resistance.” Still, others considered it appropriate to circumscribe the possible presence of women only to judgments concerning family law and minors²³. In short, the weakness of women—*infirmitas sexus*—was used as an excuse for depriving females of the ability to judge, despite the fundamental role they had played even a short time before during the war of resistance against fascism, which had earned them the right to vote and be elected. This right was exercised for the first time only a few months earlier, on June 2 and 3, 1946 (in the referendum that determined the abandonment of the monarchy in favor of the republican form of state, and in the simultaneous election of the Constituent Assembly).

Coming back to those first eight trailblazing female judges selected in 1965, one of them, Giulia De Marco²⁴, in a recent interview recalled the legal condition of women in Italy at that time. Family law was still governed by the Civil Code of 1942, according to which the unity of the family was understood as unity of command entrusted to the husband/father. The man was the head of the family, holder of marital authority and legal power over the children. The wife's infidelity was always a criminal offense, while that of the husband only acquired criminal relevance if it resulted in public concubinage. The offense of rape was extinguished if the so-called “reparatory marriage” followed, and, in any case, the accused were almost always acquitted because the prejudice of *vis*

²³ Notwithstanding all the prejudices, the principle that ‘women may also be admitted to the judiciary’ seemed to be accepted. However, this statement disappeared later in the proceedings, to make way for a much vaguer perspective – on which a heated debate would subsequently ensue – stating that the appointment of women to the judiciary could take place ‘within the limits and for the matters provided for by the judicial system’. The Constituents finally decided to leave the matter to subsequent legislation, on the basis of what would become the aforementioned Article 51 of the Constitution. See M. Cartabia, *Il principio di pari opportunità nella giurisprudenza costituzionale*, 162 Quaderni del Consiglio Superiore della Magistratura 53 (2014). See A. Meniconi, *Storia della magistratura di italiana* (2012); F. Tacchi, *Eva Togata. Donne e professioni giuridiche in Italia dall'Unità ad oggi* (2009); S. Cocchi, M. Guglielmi, *Gender Equality in the Judiciary: Experiences and Perspectives from Italy*, 2 *The Italian Law Journal* (2020). In general, the activity of the twenty-one female Constituents was crucial in preventing explicit limitations to women’s rights and was also supported by many of their male colleagues.

²⁴ Recently interviewed by E. di Caro, *Magistrate finalmente. Le prime giudici d'Italia* (2023), 81.

grata puellis (girls like violence) prevailed even among judges. A special provision existed for murder for the sake of honor, e.g., for those who killed a spouse, daughter, or sister caught in the act of “illegitimate carnal relations”: the culprit received only a lenient sentence of three to seven years’ imprisonment, indicating how little a woman’s life was considered in the face of a man’s offended honor. There were no laws on divorce, nor on the termination of pregnancy²⁵. There was no equality within the ambit of employment, meaning that a woman could be dismissed for marriage and pregnancy.

It is no surprise, then, that the implementation of the principles of equality and free access to public offices for women proved very laborious and slow. In particular, the ItCC was not established until 1956 (although the Constitution had come into force in January 1948), and this allowed for interpretations of the constitutional text that were actually harbingers of gender-based discrimination.

Since that first judicial selection became open to women, much has changed. Figures for 2023²⁶ confirm a trend that has been ongoing since 2015: there are more women in the judiciary than men. In 2023, 56% of ordinary judges were women (4,213 male and 5,321 female judges). However, directive positions still saw a higher percentage of men (out of 379, there were 268 men, 70.71%), partly due to the delay in women’s access to the judiciary. The situation is more balanced in semi-directive functions (out of 690, 371 were men, 53.77%).

3. The basic features of the ItCC: Composition and the Principle of Collegiality

In order to better understand the role female justices and presidents played in the ItCC, we must introduce some aspects of the legal framework that regulate the Court. We will focus especially on the appointment procedure and the internal decision-making process, based on the collegiality principle.

The Constitutional Court of Italy is one of the oldest

²⁵ They were enacted, respectively, in 1970 and in 1978.

²⁶ Data available on the website of the Statistical Office of the High Council of the Judiciary: <<https://www.csm.it/web/csm-internet/statistiche>>.

specialized constitutional courts in the world²⁷. Its composition reflects the effort to balance the need for legal expertise and the characteristic of a judicial body against the acknowledgment of the inescapably political nature of constitutional review: fifteen justices, chosen from among legal experts (judges from the higher courts, law professors, and attorneys with more than twenty years of experience), one-third of whom are named by the President of the Republic, one-third by Parliament in joint session by secret ballot and qualified majority, and one-third by the upper echelons of the judiciary (Court of Cassation three justices, Council of State one justice, Court of Auditors one justice). Their term of office, not renewable, is nine years²⁸.

Although, according to the legal sources, the three appointing bodies are free to choose among the three qualified categories, it is crystal clear that some tendencies have developed. Since the establishment of the Court, in 1956 (the first appointments taking place in 1955), it is common for the President of the Republic to appoint law professors, whereas the parliament elects mostly attorneys or professors with a previous political record, and the higher courts always elect the justices from among their members²⁹.

It has been said – and we agree with this evaluation – that by and large, constitutional justices have always fulfilled the expectations, and that only on a few occasions have certain appointments been deeply criticized³⁰. Usually, justices do not resign from office before the end of their nine-year terms. Early retirement or resignation is extremely rare.

To better understand the data on female justices presented above, we would first like to contextualize the institutional

²⁷ See V. Barsotti, P. G. Carozza, M. Cartabia, A. Simoncini, *Italian Constitutional Justice in Global Context* (2016); T. Groppi, *The Constitutional Court of Italy: Towards a Multilevel System of Constitutional Review?*, 3 *Journal of Comparative Law* 100-118 (2008).

²⁸ A good example of the lack of attention for the opacity of the appointment procedure is represented by a recent study of the composition of the Constitutional Court: Ugo Adamo, *La composizione ordinaria della Corte costituzionale* (2024).

²⁹ On the composition see Diletta Tega, *Articolo 135*, in F. Clementi et al (eds), *La Costituzione italiana. Commento articolo per articolo* (2018) 450. See L. Rullo, *The Road to Palazzo della Consulta: Profiles and Careers of Italian Constitutional Judges*, 17 *Italian Political Science* 234 (2022).

³⁰ V. Barsotti, P. G. Carozza, M. Cartabia, A. Simoncini, *Italian Constitutional Justice in Global Context* (2016), 44.

framework within its historical context. Back in 1955, there were only a few women holding the necessary qualifications to become judges. None were judge of the highest courts, as the first woman was admitted in the judiciary in 1965, as said above. As for lawyers, only 180 women were lawyers in the early 1930s, as stated previously; therefore, we can suppose that in 1955, this was the class of qualified female lawyers with twenty years of experience. We must add that there were only two female full professors of law in 1955, as we will discuss in Section VI.

If we consider the eight women appointed since then, we should add that six of them are academics appointed by the President of the Republic. The Presidency is a highly respected institution within the Italian parliamentary form of government, which always provides great attention to social changes. Only one female justice, an academic, has been elected by the Parliament. And in parliamentary appointments, political affiliations play a key role – all the other aspects (including gender) are overshadowed by the need to reach the qualified majorities and the related political agreements. As for the higher courts, they elect their senior members, very often their presidents. Taking into account the long journey of women towards top positions in those Courts, it is easy to understand why, until now, there has been only one female justice elected by the higher courts³¹.

Table 1: Justices by Gender and Appointing Body³²

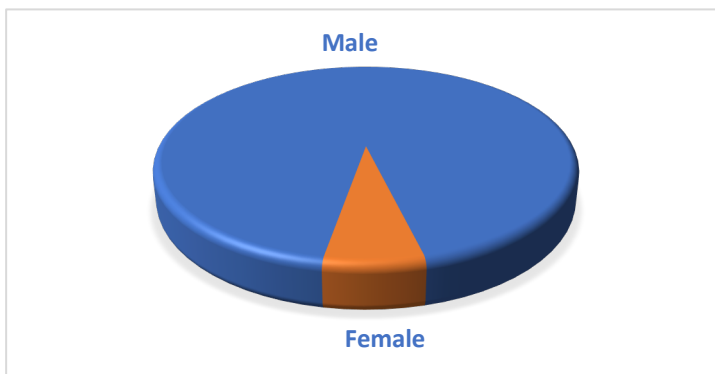
Appointing body	Justices (male and female, 1956-2023)	Female Justices
President of the Republic	43	6
Parliament	37	1

³¹ For a similar remark, V. R. Scotti, *The Italian Constitutional Court on Women's Rights: Patriarchal Remnants Versus Transformative interpretations*, 18 ICL Journal 165-168, 170 (2024). More details on these appointments will be presented in Section VI.

³² Source: own elaboration from Constitutional Court's website.

Higher Courts	41	1
Total	121	8

Chart 1: Justices According to Gender³³



As for the President of the Court, he (or she) is elected by the Court from among its members for a renewable term of three years. However, the President tends to be elected on the basis of his (or her) seniority as a justice, very often when his (or her) mandate is about to end³⁴. As a consequence of this practice, the presidencies tend to be rather short, most often less than one year (the average being nineteen months, a figure that is affected by the fact that during the early decades the presidencies used to be longer). This practice curbs the possibility for the President to develop long-term strategies, especially in the institutional relations with domestic institutions and foreign courts. Once a justice is elected as a President, usually he (or she) stops acting as a rapporteur and authoring opinions for the Court.

The President is vested with several power, including both a “public” role and a “chairing” role.

As for the “public role,” he (or she) represents the Court in

³³ Source: own elaboration based on the Constitutional Court’s website.

³⁴ Of the 117 constitutional justices in office from 1956 to 2021, 38% achieved the role of President, i.e. 44. Almost half were in office for a year or less, see L. Rullo, *The Road to Palazzo della Consulta: Profiles and Careers of Italian Constitutional Judges*, 17 Italian Political Science 237-238 (2022).

the extrajudicial activities, including the networking with other constitutional courts or international courts and the communication activities: among them, the annual address on the state of the Court vests an important role.

As for the “chairing role,” he (or she) chooses the reporting justice, who is in charge also of writing the final judgment for the Court. In addition, the President establishes the calendar of the Court. In that activity, he (or she) enjoys wide leeway for the timing of the decisions: he (or she) can prioritize or postpone cases and opinions, although in doing so, he (or she) has always had to consult the other justices. The President also plays a role in structuring the deliberations of the Court in oral argument and in internal discussions among the justices.

One of the main features in the functioning of the Italian Constitutional Court, deeply influencing our study on female justices, are the principles of collegiality and secrecy of deliberation: separate opinions are not envisaged in the procedural rules of the ICC.

Collegiality is one of the essential features of the ItCC³⁵. This characteristic has been linked by scholars to the same necessity of finding a balance between politics and the law. In this view, the principle of collegiality is a way to protect the Court from the pressures and interferences of politics, giving justices the opportunity to express their opinion freely, without having to justify their position outside the Court³⁶. On the other hand, the prohibition on disclosing the justices’ individual opinions has been criticized because it may result in an opaque process in which the justices’ contrasting views are not publicized and therefore cannot contribute to public debate. Over the years, some attempts to introduce dissenting opinions have been made by the Court itself, but all failed due to lack of consensus.

How does achieving this collegiality work? First, the President of the Court distributes pending cases among the justices.

³⁵ D. Tega, *Collegiality over personality: The rejection of separate opinions in Italy*, in V. Barsotti, P. G. Carozza, M. Cartabia, A. Simoncini (eds.) *Dialogues on Italian Constitutional Justice: A Comparative Perspective* (2021) 107-122.

³⁶ The centrality of the principle of collegiality has been recently emphasized by the President of the Court, Augusto Barbera, in his 2023 Annual report, available at <[Relazione annuale 2023 ENG.pdf \(cortecostituzionale.it\)](#)>. He expressed his opinion against separate opinions and in favour of the secrecy of the deliberations.

The justice that is appointed as rapporteur (reporting justice) has the duty to study the case, in order to open public discussion about it in the event of a public hearing, and, more importantly, to bring it before the Court for deliberation. The deliberations take place in the Court's private chamber and are covered by a duty of secrecy. Only the members of the Court attend the meeting. Very often, the decisions are the result of a deliberative process, although there may be a formal vote. The result is that the decision is unitary and always represents the Court as a whole.

Thus, decisions tend to incorporate the Court's prevailing line of reasoning, while *obiter dicta* are often inserted to take into account minority views. Therefore, the individual contribution of the reporting justice is very difficult to detect, as he (or she) has to incorporate the reasoning the arguments suggested by other justices, in order to try to reach the broadest possible consensus.

The content of a decision remains secret until the written text has been approved, deposited, and published. All the judgments are signed by the President and by the reporting justice, with the only exceptions being the rare cases in which the reporting justice refuses to write the judgment, in which case another justice is appointed to write it³⁷.

Actually, only in highly polarized cases can the reporting justice refuse to write the decision and must be substituted. Usually, the reporting justice writes the judgment, notwithstanding his (or her) dissent. Therefore, although the appointment of a drafter other than the rapporteur can be a clue of the latter's dissent and, conversely, we can suppose that the drafter agrees with the majority, we cannot rely on it to try to explore the individual attitude of the justices.

These types of attempts to glean individual justices' specific attitudes have especially targeted women. In 2020, the Court itself highlighted in a tweet by its Press Office the signature of a decision

³⁷ This practice was firstly mentioned in the annual relation on the case-law of 2003. Since the Judgment No. 393/2006 it is highlighted in the part in fact of the judgment. The Court's Additional Rules in 2008 recognized the President's power to appoint a substitute rapporteur (previously it was up to the Court): see art. 17.4 of Additional Rules. 36 cases in total have been counted until 2019: S. Panizza, *Composizione, organizzazione e funzionamento della Corte costituzionale*, in R. Romboli (ed.), *Aggiornamenti in tema di processo costituzionale (2027-2019)* (2020), 23.

by a female president and a female rapporteur³⁸. Another formal change has been the use of the Italian female reference to *redattrice* or *relatrice* (instead of the sole male reference to *redattore* or *relatore*) for the signing female justice, beginning in 2021, when justices Navarretta and de Pretis started using the female wording³⁹. Finally, the expression *I signori giudici* (which exclusively refers to male justices) was eliminated from the heading of the judgments, starting officially with Judgment No. 223/2023⁴⁰.

4. The “Eras” of the ItCC

In addition to the functions of the ItCC and appointment system of justices, to try to assess the role of the female justices in the ItCC, we must present a general overview of its case law. As a standpoint, we should consider the usually highly positive evaluation of the Constitutional Court’s role in the evolution of Italian constitutional democracy: the Court is meant to have provided an important contribution to the implementation of the Constitution and to the guarantee of the constitutional rights and freedoms.

The case-law is usually grouped into four main periods⁴¹:

The first period, defined as “implementation of the

³⁸ Judgment No. 150/2020, signed by the President Marta Cartabia and by the rapporteur Silvana Sciarra. In that case, also the registrar (who signed the decision as well) was a woman: Filomena Perrone, a brilliant civil servant coming from the offices of the Court of Cassation: M. Iossa, *Una sentenza “fermata” da tre donne*, *il Corriere*, (16 Luglio 2020) <https://www.corriere.it/cronache/20_luglio_16/corte-costituzionale-prima-volta-una-sentenza-firmata-tre-donne-ff83661e-c767-11ea-a0f9-db06e95bcc12.shtml#:~:text=Per%20la%20prima%20volta%20nella,Perrone%20nella%20funzione%20di%20cancelliere>. More precisely, the very first decision signed by a female President and a female rapporteur was the Order No. 9/2020, signed by President Cartabia and rapporteur de Pretis. Between that Order and the Judgment No. 150/2020, there have been other 18 decisions signed by President Cartabia and de Pretis or Sciarra as rapporteurs.

³⁹ The first case was Order No. 19/2021, signed by Emanuela Navarretta, *redattrice*.

⁴⁰ E. Santoro, *I giudici della Corte non son più “signori”* (6 January 2024), available at <<https://www.lacostituzione.info/index.php/2024/01/06/i-giudici-della-corte-costituzionale-non-sono-piu-signori/>>. To be precise also in Judgment No. 27/2023 the expression ‘*I signori giudici*’ did not appear.

⁴¹ V. Barsotti, P. G. Carozza, M. Cartabia, A. Simoncini, *Italian Constitutional Justice in Global Context* (2016), 37; D. Tega, *La Corte nel contesto* (2020); T. Groppi, A. Simoncini, *Foundations of Italian Public Law* (2023), 49.

Constitution” or “promotion of reforms,” begins with the establishment of the Court in 1956 and ends in the beginning of the 1970s: in this phase, the Constitutional Court dealt with the elimination, through the declaration of unconstitutionality, of the laws adopted during the fascist regime⁴². In fulfilling its role, the Court replaced some fragments of the contested rules, acting as a vehicle for the modernization and democratization of the Italian legal system. During this period, it took some time until the Court started implementing the provision on gender equality contained in the Italian Constitution, especially in Articles 3 and 51. For example, the law that made adultery by a wife punishable as a criminal offense was judged not unconstitutional in 1961 (Judgment No. 64/61). Only some years later, in 1968, was it declared unconstitutional in that it violated the principle of the moral and legal equality between spouses established by Articles 3 and 29 of the Constitution (Judgment No. 126/68)⁴³.

A second phase followed from the mid-1970s to the mid-1980s, which could be defined as “mediation of social and political conflicts,” during which the Court was called upon to judge the constitutionality of more recent laws, approved by ruling political majorities. The Court’s work was channeled principally through the application of the criteria of reasonableness and proportionality. In these years, social changes altered the patriarchal understanding of the family: the Court adopted well-balanced decisions on abortion, declaring unconstitutional the provision of the Penal Code “that does not provide for the termination of pregnancy when prolonged gestation might cause harm, medically ascertainable and inevitable, to the health of the woman” (Judgment No. 27/1975). By doing so, the Court gave an answer – and a voice – to women’s claims, anticipating the legislature’s later move to decriminalize abortion only some years later (Law No. 194/1978).

The third phase took place from the mid-1980s to the mid-

⁴² M. Cartabia, N. Lupo, *The Constitution of Italy. A Contextual Analysis* (2022); D. Tega, *Rights and Duties in the Italian Constitution*, in D. Tega, G. Repetto, G. Piccirilli, S. Ninatti (eds.), *Italian Constitutional Law in the European Context* (2023), 270.

⁴³ V. R. Scotti, *The Protection of Women’s Rights in Italy: A Constant Dialogue Between the Legislator and Constitutional Judges*, in I. Spigno, V. R. Scotti, J. Lima Penalva da Silva (eds.), *The Rights of Women in Comparative Constitutional Law* (2023), 67-84.

1990s: in this period, the Court mainly committed itself to clearing up the backlog of cases that had arisen in previous years. In fact, we speak of this as the “operational efficiency” phase. Today, the accumulated backlog has been eliminated and the Court is able to decide disputes in less than a year, guaranteeing, also in this way, the effectiveness of its decisions. During this period, the Court was quite reluctant to develop case law aimed at enforcing gender equality. We must also mention the dismissal, in the name of legislative discretion, of the case on the family surname in 1988 (Order No. 176/1988, see Section VI). A similar attitude can be detected in Judgment No. 422/1995 on gender quota in electoral lists (see Section VI).

As a final era, in the last two decades, the Court has often found itself in the midst of political debate. The judgments concerning electoral law, for example, beginning with No. 1/2014, represent this new trend very well. Precisely to try to defend itself from getting involved in current political affairs, the Court has tried to engage in dialogue more—not only with other judges, both national and supranational, but also with legislators and even with the public directly.

On the one hand, the Court has continued the practice (introduced since the first years of its activity) of “decentralizing” the control of constitutionality, involving ordinary judges more and more and increasingly asking them to provide an interpretation of the law in accordance with the Constitution before raising the question of constitutional legitimacy. On the other hand, the Court frequently refers to supranational sources and judgments, both using the case law of the European Court of Human Rights and intensifying the dialogue with the Court of Justice of the European Union, in cases in which the law of the European Union is invoked as a consideration.

Furthermore, the Court is particularly attentive to creating a dialogue with the legislature: while not renouncing the guarantee of constitutional rights and principles for fear of invading the sphere of the legislator, it seeks continuous collaboration through innovative techniques that are aimed at giving Parliament a period to modify unconstitutional legislation. Faced with Parliament’s lack of collaboration the Court can decide to replace the unconstitutional provisions with new provisions consistent with the Constitution, intended to be effective until the legislator intervenes. Gender equality has been one of the preferred fields for this new attitude,

often coining this practice as “re-centralization” of judicial review⁴⁴.

Finally, the Court is increasingly interested in a direct dialogue with public opinion. This operates on two fronts, one outside the constitutional judgement and one inside.

On the external side, the most dynamic communication strategies introduced in recent years (such as the use of social media; the creation of podcasts; and the Journey to Italy, which saw constitutional justices engaged in meetings and conferences in schools and prisons), are steps in this direction.

On the internal side, the modification of the rules on the constitutional process have the same purpose. In fact, at the beginning of 2020, the Court introduced the figure of the *amicus curiae* (well-known in common law), allowing subjects with widespread or collective interests, such as NGOs and trade associations, through a very simple procedure, to present brief written opinions that offer the Court useful elements of knowledge. In addition, the possibility of summoning into the council chamber well-known experts, when the Court deems it necessary to acquire information on specific disciplines, has been foreseen.

Ultimately, the Constitutional Court does not rest on its laurels, but shows that it is aware of the need to continuously re-legitimize itself: that is, to evolve and to self-reform, in the pursuit of a renewed dialogue with the subjects and needs that animate pluralist society.

Against this background, what role do female justices play? We will try to answer this question in the next sections by listening to their voices. However, we should point out that their presence has had an impact only starting from the fourth era of the ItCC. During the first three periods of the ItCC, women voices were, in fact, entirely absent. Finally, in the mid-nineties, the first female justice was appointed. As such, the groundbreakers have arrived.

5. Gender Diversity in the ItCC

In the interviews conducted the preparation of this paper, the justices expressed almost uniform views, which we summarize below⁴⁵.

⁴⁴ D. Tega, *The Italian Constitutional Court in its context. A narrative*, 17 *European Constitutional Law Review* 369 (2021).

⁴⁵ We interviewed all the justices who were sitting on the bench when the article was written, plus Marta Cartabia, Daria de Pretis, Silvana Sciarra. We spoke with

Before their appointment to the ItCC, they were practically always the first women to occupy important academic, judicial, or institutional roles (see Section VI). In these roles, they sometimes felt alone: an understandable circumstance when one considers that, often, those functions were not subsequently assigned to other women. In retrospect, in their previous experience, some perceived differences in treatment, particularly when they found themselves in roles where “real power” was administered; others perceived no real obstacles, but still some difficulty in asserting themselves. All felt that they always were required to be hard-working and perform better than their male colleagues. Almost all of them reported that their greatest disadvantage was being the center of all family care activities⁴⁶. They ran the same race as their male colleagues, but with less available time, given these familial responsibilities. At the same time, however, they all recognized that a lot of progress has been made, even if the cultural problem still persisted. They also recognized progress in evolved and refined circles, such as academic ones (where even today some do not feel that it is improper to organize so-called “manels,” or to invite female guests only as chairpersons)⁴⁷.

They credited the diversity of the work at the Constitutional Court to its greater exposure, as well as the more recent efforts to change and push a rather traditionalist institution towards more contemporary registers. Some felt it was an anachronism not to have been able to use feminine terms in official legal language, e.g., *relatrice* instead of *relatore* (rapporteur) or *la Presidente* instead of *il Presidente* (the President). For a long time, the question of gender in official titles did not raise much interest within the Court. Only

one clerk of Maria Rita Saulle, Judge Silvia Coppari. We reconstructed the experience of Contri mainly through the interviews she gave. We chose not to transcribe the justice’ individual answers in order to allow them more freedom in their responses. Again, this is the first time they have been systematically interviewed on this topic and we considered this decision the most fruitful one.

⁴⁶ All the justices but one had children: Contri one, Saulle two, Cartabia three, de Pretis two, Sciarra two, Navarretta two, Sciarrone Alibrandi three. We do not have any information, except for Saulle, on their other activities as caregivers (i.e. for fragile persons within the family).

⁴⁷ Editorial Team, *The unequal impact of the pandemic on scholars with care responsibilities: What can journals (and others) do?*, 37 *European Journal of International Law* (2021); G. de Búrca, R. Dixon, M. Prieto Rudolph, *Gender and the legal academy*, 22 *International Journal of Constitutional Law* (2024).

recently, as mentioned above, has the situation changed: a symbolic but important change, desired by the sensitivity of the justices.

They all appreciated the richness of reasoning and exchanges linked to the collegiality of judicial work. None of them has ever suffered discriminatory behavior within the Court, although one of them felt patronized at least at the beginning of her term. In general, they consider that, in the Court, good skills in arguing count more than gender.

They all confirmed the importance of sitting on the bench with other women. Being, at last, more than one at the same time allows female justices to innovate the “traditional” model of discussion, to develop greater persuasive force, and to bring their specific experience into the discussion. For some, women are bearers of a different wisdom and sensitivity that also comes from their own lived experiences⁴⁸. For all of them, it is crucial that the bench is made up of different personalities and professional backgrounds, as it is indeed a place where charismatic strength and credibility count. However, there are also those who link this diversity not necessarily to gender, but rather to cultural sensitivity at large. They all are well aware of the historical sources of gender injustice in Italy and ready to promote women’s equal dignity.

In a constitutional justice system such as the one in Italy, which we have already described, it is difficult to say whether and to what extent female experience and sensitivity influence the legal solutions adopted by female justices and, through their work, by the whole Court. One cannot attribute a precise jurisprudential decision, or strand, to one or more female justices, because there are no separate opinions. However, a few of the interviewees observed that some degree of influence may be presumed: courts are made up of human beings, each with their own histories that also condition their views. In this regard, and with the caveats already mentioned, some examples from constitutional case law may be useful, particularly with regards to questions more directly connected to gender equality and rights, and considering how they were decided when women joined the Court’s bench.

1. Since the 1990s, the Constitutional Court has often been called upon to deal with the issue of gender

⁴⁸ See also G. Luccioli, *Diario di una giudice. I miei cinquant’anni in magistratura* (2016).

balance in political representation. In 1993, the first attempt was made to remedy the huge historical gap between the number of men and women holding public offices: it was provided that, in municipal councils, neither gender could hold more than two-thirds of list candidates. This provision was condemned unanimously by ordinary courts, many scholars, and the ItCC (Judgment No. 422/1995). After some constitutional amendments⁴⁹, in 2003 (Judgment No. 49), the Court—still male-only—rejected the challenge, brought forth by the national government against a regional law merely establishing, in a completely neutral fashion, that lists for the election of the regional assembly must include candidates of both genders, under penalty of invalidation by the competent electoral offices. This new approach was subsequently confirmed and expanded in later years: Judgment No. 4/2010 saved another regional electoral law, challenged again by the national government (once again standing out in its cultural backwardness), which for the first time introduced in the legal system gender preferences;⁵⁰ Judgment No. 81/2012 recognized that appointments to regional executives may be legally challenged if they infringe legally-mandated gender balance⁵¹; recently, Judgment No. 62/2022 affirmed the need to ensure gender balance in elections to small municipality councils.

2. Judgment No. 233/2005—and later Nos. 158/2007, 19/2009, 203/2013—progressively enlarged the list and number of family members who may take paid

⁴⁹ In 2001, Article 117 of the Constitution was amended, its new para. 7, provided that regional laws should remove hindrances to the full equality of men and women in social, cultural, and economic life and promote equal access to elected offices for men and women. In 2003, Article 51, para. 1, was also amended, as already recalled above; the Judgment no. 49/2003 was ruled before the entry into force of the constitutional amendment but was probably affected by it.

⁵⁰ 'Gender preference' means that, when a voter is entitled and wishes to express two preference votes, one must be for a male candidate and the other for a female one.

⁵¹ In this case, the relevant regional statute explicitly required that the regional executive be formed in compliance with the principle of balance between men and women. The question was whether the violation of said principle might be challenged before courts, or the appointments remained entirely political, legally unquestionable acts.

special leave from work to care for disabled relatives, in order to protect their physical and psychological health and promote their integration within the family.

3. Starting with judgment No. 61/2006, the ItCC affirmed that the attribution of only the father’s surname to the child “is the legacy of a patriarchal conception of the family, which has its roots in Roman family law, and of an outdated marital power, no longer consistent with the principles of the legal system and the constitutional value of equality between men and women”⁵². After years of legislative inaction, through Judgments Nos. 286/2016 and 131/2022⁵³, the Court positively rewrote the relevant legal rules (raising itself a question of constitutional legitimacy, Order No. 18/2021, as it does only rarely), holding that the simplest and most immediate enforcement of constitutional principles requires the attribution to children of both the parents’ surnames, without prejudice to the possibility for the parents to decide to attribute only one surname⁵⁴.

4. Judgment No. 193/2017 recognized that women, and not just men, are entitled to inherit the so called “closed farmstead”⁵⁵: a minor and local issue, but still a symbol of patriarchy in its clearest form.

⁵² Previously, in Orders Nos. 176 and 586/1988, the ItCC had limited itself to stating that this was a matter of legislative policy and technique, within the exclusive competence of the Parliament. At that time, the ItCC was made up exclusively by men.

⁵³ G. Giorgini Pignatiello, *The Italian Surname Saga: The Italian Constitutional Court Latest Judgment Signifies a Turning Point Within the Constitutional Order*, VerfBlog, 2022/7/05, <<https://verfassungsblog.de/the-italian-surname-saga/>>.

⁵⁴ It must be noted that Giuliano Amato - justice of the ItCC since 2013 and President in 2022, as well as rapporteur of Judgment No. 286/2016 - publicly stated his personal favor for these decisions. Although the Court urged the Parliament to take action and regulate the aspects of the discipline left uncovered by the judgments (e.g., the potential multiplication of surnames in future generations), this call has not been answered to date. At the time of writing, a parliamentary bill is under discussion: <<https://www.senato.it/leg/19/BGT/Schede/Ddliter/55197.htm>>.

⁵⁵ ‘Closed farmstead’ (maso chiuso) is an ancient form of ownership, traditional in the Eastern Alps, including the Italian province of South Tyrol (and the neighboring Austrian region of Carinthia). Under its specific inheritance

5. Judgment No. 178/2019 confirmed the possibility that two spouses could work at the same time in the same university faculty (or in the university where one has management roles). This possibility is excluded among relatives and relatives-in-law. If one considers the career delays women still experience—even in universities (especially in senior positions)—one can understand how denying this possibility would have represented an additional obstacle, one that is more clearly and immediately realized by female professors and judges.

Of course, female justices at the ItCC had an impact on an uncountable number of issues beyond women's rights and gender equality: to state or presume the contrary would entail the same ghettoization that even some Constituents, as we have said, had attempted. On the other hand, even at the time when the Court consisted of all men, fundamental decisions for women's emancipation were adopted⁵⁶: e.g., the above mentioned Judgment No. 27/1975, which outlined the constitutional protection of abortion (not explicitly provided for in the Constitution); or Judgments Nos. 404/1988 and 559/1989, which extended the right to rent the family home, after the tenant's death, to the tenant's unmarried partner; or Judgment No. 28/1995, which stated that the work carried out within the family, because of its social and economic value, can be included—albeit with the peculiar characteristics that distinguish it—within the sphere of protection that Article 35 of the Constitution ensures to work “in all its forms.”

Still, we cannot ignore that in years long gone by, when no woman sat on its bench, the ItCC also made some major blunders: e.g., Judgment No. 56/1958, upholding the limits to female participation in courts of assizes (overruled by Judgment No. 33/1960, mentioned above); the already mentioned Judgment No. 64/1961, upholding the criminal indictment of marital infidelity only for women (reversed by Judgment No. 126/1968); or the

discipline, the closed farm is considered indivisible and may only be assigned to a single heir: traditionally, only a male heir.

⁵⁶ ‘You do not have to be a woman to be feminist and the reverse is also true’ wrote Lady Brenda Hale, discussing the fact that she does not deny that many developments of anti-discrimination laws were made by courts composed of men, see ‘Equality in the Judiciary’ (2013), Kuttan Menon Memorial Lecture, available at <www.supremecourt.uk>.

mentioned Judgment No. 422/1995, on gender quota in electoral law.

6. Fernanda and the Others: The Rise of Female Constitutional Justices

If the 20th century has been the century of judicial review in Italy, then the 21st century is the age of women in the ItCC. The first two justices to arrive at the Court, Fernanda Contri and later, once her term expired, her successor, Maria Rita Saulle, certainly felt the loneliness of being on a bench composed, for the rest, exclusively of men.

On February 11, 2005, Contri presided, as the first female justice in Italian history, for two-month public hearings of the Constitutional Court⁵⁷. Appointed on November 6, 1996 by the President of the Republic, Oscar Luigi Scalfaro⁵⁸, she became Vice-President on March 10, 2005, and left office the following November⁵⁹. As we repeatedly underscored, until her appointment, the bench had always been made up entirely of men: there had been seventy-five justices: twenty-five of whom had been appointed by the President of the Republic, twenty-four elected by the Parliament and twenty-six elected by the higher Courts.

Fernanda Contri was born in Ivrea (province of Turin) on August 21, 1935. Previously, she had been a practicing lawyer in the field of family law⁶⁰. In 1986, she was elected by the Parliament to the High Council of the Judiciary as the first woman who had not

⁵⁷ She served as President from the January 31 till March 9, 2005.

⁵⁸ In his seven-year term President Scalfaro appointed three male and one female justice. For all justices, the date of appointment is indicated as the date of their swearing in before the President of the Republic, from which the nine-year term of office begins.

⁵⁹ It was argued at the time that Contri had not reached the requirement of a 20-year service as a lawyer that is necessary to be appointed to sit in the Court; the latter, however, confirmed her lawful appointment.

⁶⁰ In an interview of 2018, she stated that she would have preferred other topics, but family law and juvenile law were considered more suitable for a woman at her times. In the same occasion she recalled that when she started practicing law a senior lawyer suggested her that women would be better off to knit than to argue in court. The interview is available at <http://www.giudicedonna.it/2017/quattro/articoli/Fernanda%20Contri%20e%20il%20suo%20lungo%20cammino%20nelle%20istituzioni.pdf>.

already belonged to the judiciary prior⁶¹. Her candidacy was supported by the Socialist Party to whom she belonged. At the High Council, she chaired the important disciplinary section. Then she served—again, as the first woman to do so—in the office of Secretary General of the Presidency of the Council of Ministers, with Giuliano Amato as Prime Minister (1992–1993). She was then nominated Minister for Social Affairs during the Ciampi government (1993–1994)⁶². She encouraged women to develop inner strength, to ensure that their voices are heard in male-dominant spaces to practice persistence, and to outline clear goals for themselves. Regarding her experience at the bench, she stated that she did not encounter any hostility, but sometimes a subtle form of discrimination in ignoring her hand raised to ask for the floor. As she retrospectively considered her path within different institutions, she numbered herself among the supporters of gender quotas—she used the expression “results quotas”—a concept that before experiencing the institutions, she had refused.

Fernanda Contri was succeeded by Maria Rita Saulle, and for the second time the President of the Republic acted as “queen maker.”

Maria Rita Saulle was born in Caserta on December 3, 1935, and died in Rome on July 7, 2011. She joined the Court on November 9, 2005, appointed by the President Carlo Azeglio Ciampi⁶³. She was professor of international law and the first female academic on the bench. Therefore, due to her advocacy for human rights, her humanity, and her role as a pioneer for female emancipation, she holds a special place in our hearts. We

⁶¹ The first female judge elected to the High Council of the Judiciary was Elena Paciotti in the same year, 1986. She entered in the Judiciary winning the second public selection that was open to women as well.

⁶² In an interview with the newspaper *Il Messaggero* in 2019, she stated that she had always favored women’s careers, always remembering the suggestion of a woman friend to ‘send the lift back to another woman’. And again, still in that interview, she stated that ‘the obstacles are always men, who see us as competitors in the positions of power to which they aspire. Yet women are invaluable in places of leadership, they are more capable of finding mediated solutions and calibrating distances’. M. Lombardi, *Fui la prima donna alla Consulta: mi accolsero con le rose ma erano sospettosi*, *il Messaggero*, (12 Dicembre 2019) <https://www.ilmessaggero.it/mind_the_gap/intervista_fernanda_contri_la_prima_donna_giudice_costituzionale-4660446.html, 02/29/2024>.

⁶³ In his seven-year term, President Ciampi appointed four male and one female justice.

reconstructed her time at the Court mainly through one of her clerks, Judge Silvia Coppari.

The appointment of Saulle gives us the opportunity to denounce the difficulty of Italian women not only in reaching the apex of their judicial careers but also in becoming full professors in legal topics. Saulle became full professor in 1980: she was the first woman, together with Maria Laura Picchio Forlati, to become a professor in international law in Italy. Before them, Lea Meriggi had also taught international law and became full professor in 1940: she got the full professorship only because of her fascist militancy and the ignominious Racial Laws of 1938 that obliged Jewish professors to leave Academia⁶⁴.

Following the invaluable research by professor Fulco Lanchester—who conducted a census over more than 41,000 positions of academics in legal topics between 1860 and 1971 within the faculties of legal studies, political science and economics—we can say that in 1953 only two women were eligible to the Court: Luisa Sanseverino (labor law) and Francesca Bozza (history of Roman law) (out of 421 full professors); ten years later, in 1963, the figures had not changed: again the only women were Luisa Gilardi Riva Sanseverino and Francesca Bozza (out of 376 full professors); in 1971, the number of eligible women became three: Luisa Sanseverino, Anna Lina Ravà (ecclesiastical law), and Cecilia Assanti (labor law) (out of a total of 518 full professors). The gendered barrier to entry, as he wrote, broke down at the end of the seventies⁶⁵.

Saulle can be described as an academic who managed to balance family life and caregiving⁶⁶ with a high-level career. She openly stated the centrality of family in her life. She gave special attention to women's empowerment without being ideological about it. She herself was an example of emancipation achieved in the face of sacrifices that certainly scared her, even if they never

⁶⁴ S. Forlati, *Lea Meriggi. A fighter - For the wrong cause*, in I. Talgren, (ed.), *Portraits of women in International Law. New names and forgotten faces?* (2023), 339.

⁶⁵ F. Lanchester, *La lunga marcia per l'uguaglianza di genere nei SSD dell'area giuridica*, 2 *Nomos* 1 (2021). For a recent overview of the current gender composition in Italian universities see: F. Roberto, A. Rey, R. Maglio, F. Agliata, *The academic "glass-ceiling": investigating the increase of female academicians in Italy*, 28.5 *International Journal of Organizational Analysis* 1031 (2020).

⁶⁶ She personally cared for disabled relatives, in a time when society was not as welcoming as, perhaps, it is today, towards people with disabilities.

really nicked her⁶⁷. She liked to use the metaphor of the little blue dress – which she always wanted as a child but never owned because the social and cultural conventions of the time imposed her to wear pink – to indicate the many clichés imposed on all women since childhood.

She always nourished a strong scholarly interest for the protection of fundamental rights at both the national and international level. This interest also strongly marked her institutional experience, as she was a member of the National Commission for Gender Equality of the Presidency of the Council of Ministers from 1984 to 1992, as well as a member of the Ministry of Defense's Advisory Committee for the inclusion of women in the Armed Forces⁶⁸.

She was the Italian negotiator for the United Nations Convention on the Rights of the Child (1986-1989), and she was part of the Italian delegation to the UN World Conference on Women (Nairobi 1985). In 1987, she proposed, as Italy's delegate to the United Nations, to work on a Convention on equal opportunities for persons with disabilities. The Convention on the Rights of Persons with Disabilities. The Convention on the Rights of Persons with Disabilities was ratified by Italy in 2009 and by the European Union in 2010. Thanks to her foresight, at the beginning of the 1990s, a multidisciplinary course on migration and asylum, a PhD offering in international order and human rights, and a masters in international protection of human rights, nowadays named after her, were instituted. And in 1996, she was appointed President of the Commission for Real Property Claims of Displaced Persons and Réfugiées. She certainly left a mark on constitutional jurisprudence concerning paid leave for family members caring for the disabled and informed consent⁶⁹.

⁶⁷ Even if an incurable illness affected her experience at the Court (which, indeed, ended prematurely), she managed to work until the very last possible moment.

⁶⁸ See note 13.

⁶⁹ The Court, delivering her eulogy, recognized openly her contribution to the recognition of the right to informed consent (breaking the secrecy of deliberations, Judgment No. 438/2008). It is very telling that in the text of the eulogy we can read that all justices 'got acquainted with her'. It went on to state that she had 'that seemingly hasty way of greeting us, her jokes, sometimes even salacious, always tinged with polite irony'. We are not surprised by this way of doing of Saulle that was a clear reaction to the fact that she did not feel to be a part of the bench in the same way as her colleagues did.

Maria Rita Saulle was followed by Marta Cartabia, who was once again appointed by the President of the Republic, then Giorgio Napolitano⁷⁰, and whom we will discuss in the following section, as she was the first woman president of the Court. Cartabia's solitude in the Court was interrupted by the appointments of Daria de Pretis and Silvana Sciarra, the latter being the first woman to be elected to the Court by Parliament⁷¹ and, subsequently, its second president.

Daria de Pretis was born in Cles (province of Trento) on October 31, 1956. She joined the Court in 2014 and was appointed vice-President on January 29, 2022. Before her, only Contri and Cartabia had held this position (first time for a professor of administrative law). Daria de Pretis is full professor of administrative law (since 2000). The first full female professor in administrative law in Italy was Francesca Trimarchi Banfi in 1980. In February 2013, Daria de Pretis became the first woman elected as Rector of the University of Trento. At that time, there were only five female Rectors in all the Universities of Italy.

She has been the rapporteur of important decisions on environment, competition, cooperative and credit union banks, tender, city planning, social rights for migrants, and gender balance in politics (among the many decisions we can recall: Judgments Nos. 107/2018, 254/2019, 44/2020, 276/2020, 218/2021, 62 and 112/2022). This clearly exemplifies that once the glass ceiling is broken, women's activity is not circumscribed or limited to gender-specific cases. Rather, competence becomes the sole pivotal criterion that emerges from the inner workings of the ItCC.

As we already noted, by the end of 2020, for the first time, there were four female justices in the ItCC: de Pretis and Sciarra were joined by Emanuela Navarretta, appointed by the President of the Republic; Sergio Mattarella; and by Maria Rosaria San Giorgio, elected by the Court of Cassation. The era of the so-called tokenism

⁷⁰ Giorgio Napolitano was the first President to appoint two women. During his two terms as President (2006-2015) he appointed in total five justices.

⁷¹ In January 2025 the Parliament must elect four justices (only 11 justices are currently in office, the bare legal minimum; just a single occasional absence, e.g. due to illness, would paralyze the Court). The vote has been postponed several times in lack of a political agreement. The public debate has been inadequate and superficial. No serious commitment to gender (or generational) balance has been shown by political parties. The foreseeable outcome is that no more than one woman is going to be elected.

had ended⁷². And it ended in particular thanks to the commitment shown by the Presidents of the Republic to the principle of a gender-diverse bench. Indeed, they have appointed a total of six women out of the eight that have been nominated so far⁷³.

Emanuela Navarretta was born in Campobasso on January 3, 1966. She joined the Court on September 15, 2020. She is full professor of civil law (since 2001). To note, the first female full professors of civil law were Lina Bigliazzi Geri, Giovanna Visintini and Annamaria Galoppini in 1980. Navarretta served as Dean of the Department of legal studies at the University of Pisa (the first female dean out of twenty male deans), and she was also appointed by the High Council of the Judiciary to the board of the School of the Judiciary (first female professor in this role). It is interesting to notice that Navarretta started her career at the Sant'Anna School of Advanced Studies, which, just like the Scuola Normale di Pisa, selects students on the exclusive basis of a public competition. This kind of admission allowed women to enter into the academic contest more easily. Navarretta has been the rapporteur of Judgment No. 131/2022, which recognized the attribution of both parents' surnames to children, as we recalled in Section V.

Finally, in 2020, one of the higher Courts—the Court of Cassation—elected a woman to the Constitutional Court for the very first time⁷⁴: Maria Rosaria San Giorgio⁷⁵. She was born in Naples on July 16, 1952, and joined the Court on December 17, 2020. Before entering the judiciary, she started her career in the

⁷² For the use of this expression to indicate an isolated appointment of one or a very small percentage of women with the sole aim of showing that the position is formally open to women see S. J. Kenney, *Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go*, Michigan State Law Review 1508 (2012).

⁷³ To this date, also Sergio Mattarella (President of the Republic since January 31, 2015, currently in his second term), like Giorgio Napolitano, has appointed two women (out of five justices appointed).

⁷⁴ At the time of writing, no women have been elected to the ItCC by the other two supreme jurisdictions, namely the Council of State (administrative jurisdiction) and the Court of Auditors, which also elect one justice each.

⁷⁵ Female judges of Cassation only started standing for election as constitutional justices from the appointment round before the one in which San Giorgio was elected. It is customary that no Cassation judges may stand for this election, but only those already holding the senior position of section presidents, such as San Giorgio. San Giorgio recorded the podcast on Judgment No. 33/1960, available at the Court's website.

Prefettura⁷⁶ of Bologna, in a particularly heated historical period characterized by student protests and acts of terrorism. Then, she passed the selection to become a judge and chose the career of public prosecutor⁷⁷. The last position she held before being elected at the Constitutional Court was judge at the Court of Cassation where she collaborated with Maria Gabriella Luccioli, one of the first eight judges that were selected in 1965. She also worked as assistant (clerk) at the ItCC for a very long period, from 1988 to 2014. At the beginning, in 1988, she was the only female assistant together with another colleague, Lucia Tria⁷⁸. She was the first female judge to be elected to the High Council of the Judiciary and just like Contri she chaired the disciplinary section.

Antonella Sciarrone Alibrandi was born in Milan on May 2, 1965. She joined the Court on November 14, 2023. She is a full professor of Law and Economics (Diritto dell'economia) (since 2001). To note, the first female full professor of Law and Economics was Carla Rabitti Bedogni in 2000. In 2013, Antonella Sciarrone Alibrandi became the first woman appointed vice-rector with vicarious functions at the Università Cattolica del Sacro Cuore (her term was of nine years). Then, in 2022, she has been also the first and only woman to be appointed as Undersecretary of the Holy See's Dicastery for Culture and Education. In 2010, she founded the National Association of Law and Economics Professors and has been its president for 12 years. It is quite remarkable to note that this woman has been able – for the first time – to bring together professors of a scientific academic sector which is, notoriously, quite heterogeneous and fragmented.

⁷⁶ Territorial office of the Government, which depends on the Ministry of the Interior.

⁷⁷ In Italy judge and prosecutor belong to the same judicial body, although from time to time – even very recently – a debate arises about the opportunity to distinguish between the two careers in order to avoid interferences and influences between judges and prosecutors, see M. Cartabia, N. Lupo, *The Constitution of Italy. A Contextual Analysis* (2022), 180.

⁷⁸ Assistants come either from the judiciary or from academia and are appointed on a discretionary basis by the justices of the ItCC: three for each justice, four for the President. See E. Lamarque, *Who are the Study Assistants of Constitutional Judges*, available at https://www.mpil.de/files/pdf4/Elisabetta_Lamarque.pdf, 02/29/2024. At the time of writing, there are 19 women assistants – 13 judges and six academics – and 23 men.

Table 2: Female Justices in the ItCC

Name	Place of Birth	Date of Birth	Qualification	Appointing (or electing) body	Date of appointment or election	Date of sworn in	End of term	Election as Vice-president	End of term as Vice-president	Election as President	End of term as President
Contri Fernanda	Ivrea (TO)	21/08/1935	Lawyer	President of Republic	04/11/1996	06/11/1996	06/11/2005	10/03/2005	06/11/2005		
Saulle Maria Rita	Caserta	03/12/1935	Professor Emeritus of International Law	President of Republic	04/11/2005	09/11/2005	07/07/2011				
Cartabia Marta	San Giorgio sul Legnano (MI)	14/05/1963	Full Professor of Constitutional Law	President of Republic	02/09/2011	13/09/2011	13/09/2020	12/11/2014	11/12/2019	11/12/2019	13/09/2020
Sciarrà Silvana	Trani	24/07/1948	Full Professor of Labour Law	Parliament	06/11/2014	11/11/2014	11/11/2023	29/01/2022	20/09/2022	20/09/2022	11/11/2023
de Petris Daria	Cles (TN)	31/10/1956	Full Professor of Administrative Law	President of Republic	18/10/2014	11/11/2014	11/11/2023	29/01/2022	11/11/2023		
Navarretta Emanuela	Campobasso	03/01/1966	Full Professor of Private Law	President of Republic	09/09/2020	15/09/2020					
San Giorgio Maria Rosaria	Napoli	16/07/1952	President of a chamber of Court of Cassation	Court of Cassation	16/12/2020	17/12/2020					
Sciarrone Alibrandi Antonella	Milano	02/05/1965	Full Professor of Economic Law	President of Republic	06/11/2023	14/11/2023					

Source: own elaboration from Constitutional Court's website.

7. The Two Female Presidents

A crystal ceiling has been broken: I hope to lead the way. I feel the honor to be here as an inspiration for others. I hope to be able to say in the future, as the new Finnish prime minister did, that age and gender don't count in our country either. Because in Italy they still count a little... The fact that I am the first woman elected President is not a

secondary element within the history of the Court. It is a step ahead for our institutions and democracy⁷⁹.

These are Marta Cartabia's words immediately after being unanimously elected as President of the Court in December 2019. Before her, there had been no less than forty-one male presidents.

As already mentioned, Marta Cartabia joined the Court on September 13, 2011, succeeding Maria Rita Sautelle⁸⁰. She became vice-President in 2014. Her term of office ended on December 13, 2020. She was the youngest female justice, born in San Giorgio sul Legnano (province of Milan) on May 14, 1963. Like Maria Rosaria San Giorgio, she had previously worked as assistant to a constitutional justice (to Antonio Baldassarre, from 1993 to 1995). A few months after the end of her term, she was appointed as Minister of Justice in the Draghi government (2021–2022). In December 2023, she was appointed as one of the four vice-presidents of the European Commission for Democracy through Law (Venice Commission; she has been a member of the Commission since 2017). She is co-editor of the most important journal of constitutional law in Italy, *Quaderni Costituzionali*, as well as co-founder and co-editor of the first Italian journal of public law in English, *Italian Journal of Public Law*. She is co-president of ICON-S, the International Society of Public Law.

Her intense research activity in the field of constitutionalism has always been characterized by a strong European and international outlook, starting from when she obtained her PhD at the European University Institute of Fiesole (1993). She has held visiting scholarships in many European and U.S. universities: for example, the Inaugural Fellowship at the Straus Institute for Advanced Study in Law and Justice, New York University (2009–2010). She regularly attends the seminar on Global Constitutionalism, part of the Gruber Program for Global Justice and Women's Rights organized by Yale Law School.

Her academic mentors have been men: among others, Valerio Onida (1936–2022, constitutional judge from 1996 and then President of the Constitutional Court until the end of his term in 2005) and Joseph H.H. Weiler (1951, a prominent American

⁷⁹< <https://www.radioradicale.it/scheda/592763/la-presidente-della-corte-costituzionale-marta-cartabia-incontra-la-stampa?i=4074138>>

⁸⁰ In the eulogy for Sautelle see note 69, Cartabia was welcomed as a very young scholar compared to the average age of the 2011's Court.

academic, who contributed to the legal theory of European integration, who is currently Director of the Jean Monnet Centre for International and Regional Economic Law & Justice at NYU).

Her career as a professor spanned various universities, which is still relatively rare in Italy, and recently led her to the chair of Constitutional Law at the Università Commerciale Luigi Bocconi. She was the first and, so far, only female constitutionalist at the Constitutional Court (she has been full professor since 2000): far more numerous are her male colleagues, of whom twelve (including, as mentioned, her mentor Onida) have also been presidents. Then again, the path for women towards professorships in constitutional law has been a slow process, just as the one towards the judiciary has been: the first woman to become a full professor of constitutional law in Italy was Lorenza Carlassare in 1978⁸¹. Until then, therefore, no woman was eligible to be elected to the Court as a professor of constitutional law. The comparison with male colleagues is extremely telling: the first professor of constitutional law to be elected President – for the long period from 1962 to 1967 – had been Gaspare Ambrosini, full professor since 1911!

The style chosen by Cartabia to lead the Court was one of moderation and collegiality enhancement. She certainly benefited from the authority and trust that her profile and experience guaranteed in the eyes of her colleagues. Likewise, her approach to judging is commonly described as moderate, gentle, reliable, and particularly competent, able to give value to the different options raised by the bench.

Cartabia led the Court in the first year of the pandemic, managing within a few days of the lockdown to ensure that the Court's work proceeded without delay online: not a trivial experience when one considers that, still in 2011, at the beginning of Cartabia's term of office, the seat of the Constitutional Court (Palazzo della Consulta) did not have a wi-fi network.

The pandemic prevented Cartabia, like most of the other justices, from pursuing activities she had previously engaged in, namely visits to both schools and prisons. It is worth observing that these initiatives, especially the last one, gave rise to considerable debates⁸². In fact, these are two very different experiences, but they

⁸¹ While in 1987 Maria Alessandra Sandulli got the first full professorship in Institutions of Public law.

⁸² A. Sperti, *Constitutional Courts, Media and Public Opinion* (2023), 102-106.

have in common both the fact that they are absolute novelties in the Court's history and the need to which they respond: to open up the Court to society and to encourage the encounter between one another in order to make the Constitution and the rights and guarantees it provides better known to the public, while also remedying some of the historical shortcomings of civic education in the Italian education system⁸³.

Shortly after the beginning of Cartabia's presidency, but on the basis of an earlier elaboration, new rules of procedure were approved that expressly contemplated an Italian version of the *amici curiae* and the possibility of courts hearing from experts in non-legal disciplines. On the one hand, provision has been made for any non-profit organization and institutional bodies to submit brief written opinions to the Court, in order to offer useful elements for its knowledge and assessment of the case submitted to it based on their experience in the field. On the other hand, the Court may convene and hear renowned experts from other disciplines to receive input on specific problems that come to the forefront in dealing with the issues at stake.

Under Cartabia's presidency, the Court's website has continued to develop increasingly: a major advancement in a traditionalist environment such as that of the Palazzo della Consulta. In less than ten years, which included Cartabia's tenure, the site underwent a communication revolution in several respects. Firstly, the number of decisions and documents translated into English has increased, as has the speed of translations, now almost simultaneous with the official publication of the pronouncement. In a scholarly forum such as this, it is not necessary to dwell on the importance of such a choice in bringing Italian constitutional jurisprudence into the international discussion. Secondly, the Court's communication services consolidated the practice of issuing/delivering press releases on the decisions that are most awaited by the public or that have a particularly high degree of complexity. Now, on the release day of the Court's decision and while waiting for the official grounds (which are also often

⁸³ On the contribution of the Constitutional courts (including the ItCC) at improving constitutional literacy see T. Groppi, *Constitutional Jurisdictions in the ICT Revolution. Looking for legitimacy through communication*, VIII Comparative Constitutional Law and Administrative Law Journal 1-63 (2023); M. De Visser, *Promoting Constitutional Literacy: What Role for Courts?*, 23 German Law Journal 1121 (2022).

accompanied by specific press releases), journalists are better positioned to understand and disseminate the news.

The pandemic emergency prompted the introduction of the telematic process. The lockdown was also the occasion for the emergence of new initiatives, such as the Constitutional Court Podcasts, which made it possible to recount a moment in the Court's history or the changes in the lives of people and institutions as a result of constitutional case law.

Although it is impossible to univocally link individual decisions individual justices, Cartabia has been the rapporteur of very important judgments on gender balance in politics, protection of disabled persons, prisoners' rights, compulsory vaccinations, EU law, proportionality of criminal norms, and the effects of the judgments of the ItCC (among many of them, one can recall Judgments Nos. 81/2012, 203/2013, 10/2015, 269/2017, 99/2019, 18/2020, 5/2018)⁸⁴.

All presidents issue a report to illustrate the Court's activity in the previous year. What has been mentioned above also applies to these reports: the activity is attributable to the Court as a whole; the contributions of individual justices, including women, are not detectable in the absence of separate opinions – neither is that of the individual presidents, who, as a rule, speak about the months during which they had not yet been elected to that office. Nonetheless, some nuances occasionally emerge in these reports, which can be traced back to the individual ideas of the president, especially when—as is usually the case with those of academic extraction—they echo writings and scientific publications of the same person in their capacity as a scholar. If we take into account the above, as well as Cartabia's overall scholarly activity, and particularly the contents of the two English volumes on Italian constitutional justice on which she worked together with other authors⁸⁵, it is possible to highlight, in the report on the activity of

⁸⁴ Many of them are discussed in D. Tega, *Rights and Duties in the Italian Constitution*, in D. Tega G. Repetto, G. Piccirilli, S. Ninatti, (eds.), *Italian Constitutional Law in the European Context* (2023).

⁸⁵ V. Barsotti, P. G. Carozza, M. Cartabia, A. Simoncini, *Italian Constitutional Justice in Global Context* (2017); V. Barsotti, P. G. Carozza, M. Cartabia, A. Simoncini (eds.) *Dialogues on Italian Constitutional Justice. A Comparative Perspective* (2020).

the Constitutional Court in 2019⁸⁶, at least some aspects that are typical of the *style* of the first female president: the emphasis on the openness of constitutional justice, both in the sense of institutional communication and in the sense of the procedural innovations referred to; the importance assigned to loyal cooperation between all constitutional powers, as well as to dialogue with supranational institutions, including judicial ones; and a particular attention to criminal matters and to the rights of persons subject to restrictions on personal freedom.

Silvana Sciarra joined the Constitutional Court on November 11, 2014, she was appointed Vice-President in January 2022, and was elected President on September 20, 2022, thus becoming the 46th President since the Court's inception, and the second female. She completed her term on November 11, 2023⁸⁷. We recall that Sciarra was the first (and until now the only) female justice to be elected by Parliament: with 630 votes, sixty more than the prescribed quorum (3/5 of the components). Such a vote indicates a transversal appreciation by different parliamentary forces. After she left the Constitutional Court, she was elected by the High Council of the Judiciary as a member of the board of the Superior School of the Judiciary. The board, unanimously, nominated her as President of the School (first woman in that role), for the term 2024–2028.

She was born in Trani on July 24, 1948, and thereafter lived in Bari, where she received her education. She is Professor Emeritus of labor law and European social law at the University of Florence (she became full professor in 1985). In this academic field, she was the first woman to become a constitutional justice, and the first to be elected President. Since March 2024, she has been President of the Superior School of the Judiciary.

Her scholarly profile is very high; her academic career took place in various university venues; her training and scholarly activity were intense and characterized by a strong European and international outlook; and her mentor was Gino Giugni (1927–2009), a historical figure in Italian labor law and a reformist known among other reasons for having drafted the so-called Workers'

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https://www.cortecostituzionale.it/documenti/relazione_cartabia/2_sintesi.pdf

⁸⁷ Her presidency coincided, among other things, with the appointment of Giorgia Meloni as the first female Prime Minister in Italian history.

Statute (Law No. 300 of 1970). The list of fellowships and professorships she held in U.S. and European universities is extensive. From 1994 to 2003, she was the chair of labor law and European social law at the European University Institute in Fiesole, where she was also Director of the Department of Law (1995–1996) and coordinated the gender studies program (2002–2003). She collaborated with the European Commission in many research projects and was for several years co-editor of the renowned legal journal *Giornale di Diritto del Lavoro e di Relazioni Industriali*, as well as member of several editorial boards.

Sciarra's judicial style was energetic and passionate. At the beginning of her presidency, she was able to give new impulse to a tradition—which first started with President Paolo Grossi—whereby constitutional justices visit schools and engage in discussions with students on relevant issues related to the Court's activities. The end of the pandemic also meant that the presence of the Court's President in institutional and international occasions was again feasible. To give at least a couple of examples of her intensive activity, it is important to mention her intervention during the celebration of the seventy years of the Court of Justice of the European Union in 2022⁸⁸, and her 2023 intervention at the yearly solen hearing of the European Court of Human Rights, where for the first time, two female presidents (herself and the president of the ECtHR, Siofra O'Leary) sat together⁸⁹.

To enhance collegiality, she reintroduced the rule that, in chambers, each case is discussed by all justices in ascending order of seniority. In her view, this guaranteed full opportunities to take the floor, with less hesitation by the ones who had most recently joined the Court.

Despite the impossibility of univocally linking this or individual decisions to individual justices, it can be suggested that Sciarra has been the rapporteur of very important judgments on social rights, labor law, social security law, EU law, and family law

⁸⁸ European Court of Justice, *Une justice proche des citoyens* (Luxembourg 2022), 31 https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-05/actes_colloque_70ans.pdf

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https://www.echr.coe.int/documents/d/echr/Speech_20230127_Sciarra_JY_ENG

(among many of them one can recall Judgments Nos. 70 and 178/2015, 32/2021, 54 and 67/2022)⁹⁰.

The two female presidents shared a particular “era” of the Court, made up of judgments that have been very significant for several reasons: their impact on the public budget, the functioning of the institutions, individual rights, and equality; the new-found protagonism of the Court in transnational legal discourse; the dialogue with international and supranational courts; and the issues that Parliament had failed to find the political synthesis necessary to correct the legislation in force⁹¹. In this situation, both have found themselves vested with, and have felt, a particularly great responsibility, and have sometimes even contributed, for example, to postponement decisions, in order to increase the time for dialogue, listening, and reflection, inside and outside the Court. Both have relied to the maximum extent on the collegiality of the Court’s work, despite the fatigue and self-denial that this entails, to leave maximum room for everyone’s contributions of wisdom and sensitivity, including those that come from women’s experience, sensitivity, and perseverance. We agree with Erin Delaney and Rosalind Dixon when they recall in this book’s Introduction that female chief justice send a powerful signal of inclusion; they serve as a broader role model for women and help promote more gender inclusive practices within a courtroom or judicial deliberation process⁹².

⁹⁰ See also S. Sciarra, *Social Rights Before the Italian Constitutional Court – A Voice from the Bench*, 9 *Soziales Recht* 285 (2019). Many of the judgments recalled are discussed in D. Tega, *Rights and Duties in the Italian Constitution*, in D. Tega, G. Repetto, G. Piccirilli, S. Ninatti (eds.), *Italian Constitutional Law in the European Context* (2023); D. Tega, *The Italian Court of Cassation and dual preliminary*, 15 *Italian Journal of Public Law* 1 (2023); G. Repetto, *Judgment no. 269/2017 and dual preliminary in the evolution of the jurisprudence of the Italian Constitutional Court*, 15 *Italian Journal of Public Law* 1 (2023).

⁹¹ D. Tega, G. Repetto, G. Piccirilli, S. Ninatti (eds.), *Italian Constitutional Law in the European Context* (2023).

⁹² See Erin Delaney and Rosalind Dixon, ‘Constitutional Heroines and Feminist Judicial Leadership’, in Erin Delaney and Rosalind Dixon (eds), this book. See also, in the same vein, R. Hunter and E. Rackley, *Lady Hale: A Feminist Towering Judge*, in R. Abeyratne, I. Porat (eds.), *Towering judges. A comparative study of Constitutional Judges* (2021), 94; R. Dixon, *Towering versus Collegial Judges: A Comparative Reflection*, *ivi*, 326.

8. Conclusion

No doubt, much progress has been made since the constituents with a refined legal culture declared themselves convinced of women's inability to judge. In particular, as Maria Rosaria San Giorgio recalls when speaking of Judgment No. 33/1960⁹³, one of them, Giuseppe Cappi, who would later become the third president of the Constitutional Court, argued that "in women[,] sentiment prevails over reasoning, while in the function of the judge, reasoning must prevail over sentiment."

The wall built on those words and beliefs has been crumbling very slowly yet inexorably. Women's delay in accessing the judiciary gave men a strong advantage—so much so that, even today, although among ordinary judges there are more women than men, top positions are still mostly held by men⁹⁴. And the same can be said within national academia.

A truly execrable exemplification of the above is the delay with which women came to the Constitutional Court—in many cases, also breaking other glass ceilings during their previous careers—and the smallness of their presence. We could synthesize the delay and the recovery with these words: "from tokenism to minority while the move towards parity is still to achieve"⁹⁵.

In order to fulfill constitutional adjudication in a pluralist constitutional environment such as the Italian one—which guarantees even deeply conflicting values—women's presence on the bench has long represented the main breaking point in a monocultural society as not deemed necessary or a priority.

Of course, increasing the presence of female judges is first and foremost an end in itself: women should have access to the judicial branch of government regardless of what they do with this tool of influence. This is crucial because it sends a message of inclusion⁹⁶. It is also important because the judiciary needs to be reflective of the diversity of the society it serves⁹⁷. Different voices add variety and depth to all decision-making⁹⁸. But how do female

⁹³ See note 75.

⁹⁴ See data at the end of Section II.

⁹⁵ M. Caielli uses these exact words in *Why do women in the judiciary matter? The struggle for gender diversity in European courts*, 5 *Federalismi* 172 (2018).

⁹⁶ See E. Delaney, R. Dixon, *Constitutional Heroines and Feminist Judicial Leadership*, in E. Delaney, R. Dixon (eds.), this book.

⁹⁷ See M. Cappelletti, *Giudici legislatori?* (1984), 94.

⁹⁸ See Lady Brenda Hale *Equality in the Judiciary*, Kuttan Menon Memorial Lecture, 21 February 2013, 20, available at <www.supremecourt.uk>. She argues

judges affect discussions in chambers and enrich the content of decisions?

In contrast with the long exclusion of women from the constitutional bench, the first woman who “intruded” upon the ItCC, Contri, openly stated that the arrival of women justices permitted the Court to reach a closer representation of the different underlying interests of legal norms. In her opinion, the cultural and legal debate that animates the moment of the collegial decision benefitted evidently from the knowledge, experience, and perspective of female justices⁹⁹.

Bertha Wilson, the first woman named to the Supreme Court of Canada and one of the most memorable female justices globally, once said, “If women lawyers and women judges through their differing perspectives on life can bring a new humanity to bear on the decision-making process, perhaps they will make a difference. Perhaps they will succeed in infusing the law with an understanding of what it means to be fully human”¹⁰⁰.

As far as Italian constitutional justice is concerned, it is almost impossible to disguise a gendered orientation. The secrecy of deliberation and the nonexistence of separate opinions makes it impossible to understand the role that a justice plays in deciding a certain issue¹⁰¹. More could be understood if the same justice, during her tenure, was constantly appointed to write pronouncements concerning the same topic; this would probably mean that the Court recognizes her special expertise and gives her the opportunity to imprint more of her own style on that strand of rulings. This was the case with Maria Rita Saulle on the issue of disability. But this does not happen very often, because Court’s presidents, while valuing the expertise of each justice, must also avoid leaving the same topic in the same hands over and over again, as it risks impoverishing the richness of the value of collegiality.

that ‘So I agree with Professor Paterson, that what a person can ‘bring to the mix’ is an important component of his or her merit, at least in a collegiate court where decisions are made in panels. Everyone brings their own “inarticulate premises” to the business of making the choices inevitably involved in judging’.

⁹⁹ See note 61.

¹⁰⁰ Madame B. Wilson, *Will Women Judges Really Make a Difference?*, 28 Osgoode Hall Law Journal 507-522 (1990).

¹⁰¹ It is something pointed out also regarding the EU Court of Justice, see M. Caielli, *Why do women in the judiciary matter? The struggle for gender diversity in European courts*, 5 Federalismi (2018).

Furthermore, we cannot ignore the cultural evolution of society (and of the justices themselves, regardless of gender diversity)—let’s think of the Court’s two decisions on female adultery—as well as the evolution that legislation played and still plays a significant role in the evolution of the Court’s jurisprudence.

Yet, all the female justices who have been interviewed have testified that they feel they have brought something new to the bench. At present, however, we cannot give a definition of what this “something new” is. We suspect that one element of it may be that female constitutional justices are less fearful and more open to propose innovative and even breakthrough solutions. But even this claim would need to be substantiated, at the very least, by further research and specific examples.

We can only give the floor to the female justices that were interviewed. They unanimously expressed the feeling that they brought something new to the understanding of facts and to the resolution of issues, as they were filtered through their experience that, we would add, differs in many ways from that of their male colleagues. It differs in cultural and legal background, in age, and in the life experience which they bear¹⁰². They pointed out that the female approach sheds a different light on issues discussed in chamber, as it highlights the human dimension of the interests: the suffering, the expectations. It brings a more empathic, concrete, experiential dimension of reasonableness. This contribution—which goes far beyond family issues, thus impacts many fields, such as criminal matters, public finance, tax burden, and economics¹⁰³—also encouraged male justices to embrace a new perspective by revealing to them that there was a flaw in male reasoning.

¹⁰² See S. Cecchi, *Il principio femminile*, 4 giudicedonna.it 7 (2017), referring to the Italian context: women are required to play many roles, switching with flexibility between one another, as they ensure different kinds (i.e., within the family, the society, the work environment) of interpersonal relationships.

¹⁰³ For example, consider that de Pretis was the rapporteur of the decisions concerning the structure of cooperative banks and credit union banks (Judgment Nos. 99/2018 and 287/2016); the judgment on the limitation period on the lira-euro exchange rate (No. 216/2015); the judgment on the consequences arising from the Bank of Italy’s capital increase (No. 198/ 2023). Cartabia was the rapporteur of Judgment No. 10/2015 which provided for the illegitimacy of a tax law, but postponed the temporal effects of the decision starting from the date of its publication, and not *ex tunc* as is usually the case to avoid a potentially massive adverse effect on the Italian State budget.

We would like to close this first Italian attempt to assess the role of female justices in the ItCC by quoting the words of Gabriella Luccioli, one of the eight women who won the 1965 first competition for the judiciary open to women, with which she tried to define the female contribution to the work of adjudication:

[P]rofessional experience has long shown me that each judge, in the moment of judging, brings with her own culture, sensitivity and history, and that in the history of women, marked by a long exclusion from the places of power, but recently enriched by the widespread awareness of their gender specificity, finds cause and root in the value of difference: the difference that women can express in the exercise of jurisdiction lies in bringing to it the resource of a specific sensitivity, attention and perspective in the matters to be judged¹⁰⁴.

¹⁰⁴ G. Luccioli, *Diario di una giudice. I miei cinquant'anni in magistratura* (2016). Among other things, Luccioli recounts that the President of the section of the Supreme Court where a woman – she herself – first arrived, in 1990, notified her that she would be assigned mainly family appeals. Luccioli soon developed an interest for the subject. It strikes us, however, that the President of the Court of Cassation – Renato Granata – would later become, in 1996, the 22nd president of the Constitutional Court. If, for Cappi, women were unfit to judge, for Granata they performed better on family issues: a clear example of the persistence of prejudice.