

50th Anniversary London-Leiden Conference on European Law

The Rule of Law in the European Union

The Application of Preliminary Rulings by National Courts

Andrea Biondi

ITALY

A. The endless varieties of the Italian Judiciary...

B - Some stats.

Ever so enthusiastic ...

From 1953 to 2009: 1007 out of 6620 preliminary references are from Italian Courts: 103 Corte di Cassazione; 1 Corte Costituzionale; 63 Consiglio di Stato; 840 – other courts and tribunals.

...perhaps too enthusiastic..

From 1953 to 2009: 44 out 132 inadmissible references are from Italian courts (judgment and orders).

C- Definition of “Court and Tribunal”- ‘Court of Last resort’

The Italian Constitutional Court changes its mind: *‘This Court, despite its peculiar function of constitutionality review, is to be considered as a court for the purposes of Article 267 TFEU; in particular as a court of last resort’* Judgment no.102 /08 and order no.103/08.

- a) Constitutional review and application of EU law;
- b) The requirements of ‘manifestly ill founded’ and ‘immateriality’;
- c) ‘Institutional balance’ proceedings only? See Order No. 100/09
- d) The Reference that never was.: the ‘same sex’ marriage judgment 138 of 2010.

D- “when it considers necessary”

- a) some reflections on inadmissibility- The ‘Manfredi’ litigation- Order of 11 of February 2004 and Cases C-295/04 to C-298/04 *Manfredi and Others* [2006] ECI-6619.
- b) as to avoid consolidation of ‘messy’ case law :
 - b.1) ‘messy CJEU case law’ - Corte di Cassazione Order. 2994/2010 and n. 2993/2010 on gambling.
 - b.2) ‘messy’ national case law – the El Dridi litigation:
Case C-61/11 PPU, *Hassen El Dridi, alias Karim Soufi*- 28 April 2011
Consiglio di Stato – judgments nn. 7-8 of 2011

E Good or Bad EU Courts?

Lucchini again! Tribunale di Roma Judgment 7168/2008 of the 21 of March 2011