

CUMULATIVE RESEARCH REPORT

Legislative Intent in Italian Apex Courts

An Empirical Study Across Four Court Systems · 2014–2023

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PRIN Project — Five-University Consortium

Universities	Courts Covered
Bocconi (lead) · Brescia · Milano Statale · Siena · Venezia	Civil and Criminal Court of Cassation · Council of State · Constitutional Court

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Executive Summary

This cumulative report presents the empirical findings of the PRIN project "Looking for Legislative Intent in Judicial Reasoning: An Empirical Account." For the first time in Italian legal scholarship, the use of the Legislative Intent argument (IdL — *Intenzione del Legislatore*) has been mapped systematically across the country's four apex court systems over a ten-year period (2014–2023): the Civil Court of Cassation, the Criminal Court of Cassation, the Council of State and the Constitutional Court.

The research team applied 23 targeted search keys to the OneLegale judicial database, retrieving a combined starting population of roughly 665,000 rulings. Each retrieved ruling was hand-coded on a standardised analytical grid tracking who invokes the argument, what kind of legislator is imagined, what type of intention is attributed, which sources are cited and what weight the argument carries in the court's reasoning.

<p>28,000+ Rulings retrieved <i>across 7 court formations</i></p>	<p>4 Courts Apex systems studied <i>Civil · Criminal · CoS · Const.</i></p>	<p>94–97% Historical Legislator <i>dominant in all formations</i></p>	<p>10 years Empirical window <i>2014 – 2023</i></p>
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Five Cross-Court Findings

- The Argument from Legislative Intent is used only very rarely by the Italian higher courts compared with other interpretative arguments.
- The Historical Legislator dominates in every court (94–97%); no court routinely imagines a current or ideal legislator.
- Communicative intention (clarifying text) consistently outweighs teleological intention (pursuing goals) — except in the Council of State, where they split evenly.
- The IdL argument is almost always concurrent rather than decisive: it reinforces, rather than drives, the court's reasoning in the vast majority of cases.
- Explicit justification for invoking the IdL argument is nearly absent across all courts — Art. 12 Preleggi cited in fewer than 6% of cases.
- Each court shows a distinctive argumentative profile: the Constitutional Court leads in volume (746 interpretive arguments); the Criminal Court relies most heavily on other provisions and preparatory works; the Council of State (Plenaria) shows a near-balanced split between concurrent and decisive uses.

1. Introduction

The PRIN project "Looking for Legislative Intent in Judicial Reasoning: An Empirical Account" brings together five Italian universities — Università Bocconi (Principal Investigator: Damiano Canale), Università degli Studi di Brescia, Università degli Studi di Milano (Statale), Università di Siena and Università Ca' Foscari di Venezia — in a coordinated empirical investigation of how Italy's highest courts invoke the concept of legislative intent when interpreting the law.

The term "Legislative Intent" (IdL) designates the interpretive and argumentative move by which a court attributes a specific intention to the legislature in order to determine the content of a legal provision. Despite its ubiquity in judicial language, systematic empirical data on its actual patterns of use across different court systems has been scarce. This report addresses that gap by presenting findings from four distinct court systems, authored respectively by Francesca Asta (Criminal Court of Cassation), Leonardo Marchettoni (Civil Court of Cassation), Maria Francesca Tropea (Council of State) and Brando Mazzolai (Constitutional Court), with Sections 1–3 being a joint contribution.

Court System	Formation	Period	Population
Civil Court of Cassation	Joint Sections (SU)	2014–2023	6,500 total rulings
	Other Sections	2014–2023	305,538 total rulings
Criminal Court of Cassation	Joint Sections (SU)	2014–2023	270 total rulings
	Other Sections	2014–2023	1,012 rulings sampled
Council of State	Adunanza Plenaria	2014–2023	186 total rulings
	Other Sections	2014–2023	391 rulings sampled
Constitutional Court	—	2014–2023	2,772 total decisions

2. Research Design & Methodology

Empirical legal research proceeds through four stages: Research Design, Data Collection, Data Analysis, and Dissemination of Results. This section outlines the first three as they apply to the present project.

2.1 Research Design

Every empirical study originates from theoretical convictions that the researcher seeks to test against evidence. In this project, the team's theoretical understanding of "legislative intent" was operationalised into observable phenomena — the variables recorded in the Excel analytical grid — so that abstract legal concepts could be mapped onto concrete textual evidence and compared across court systems.

2.2 Data Collection

Search strategy: The OneLegale database was queried using 23 search keys in NEAR/5 proximity format, combining synonyms and related expressions for legislative intent in Italian legal language (e.g., <volontà legislatore>, <intenzione legislatore>, <finalità riforma>). This produced seven aggregated files, one per court formation, containing a combined total of over 28,000 rulings.

Sampling: For the four most authoritative formations (Constitutional Court, Council of State — Adunanza Plenaria, Civil and Criminal Court of Cassation — Joint Sections), all retrieved rulings were analysed in full. For the three larger formations (ordinary sections), a statistically representative random sample was drawn and hand-coded.

Limitation: The search-key approach sets a lower bound on the true frequency of IdL arguments. Arguments expressed in vocabulary not captured by the 23 keys will have been missed. All frequencies reported in this report should therefore be read as conservative estimates.

2.3 Analytical Grid

Each instance of an IdL argument was assigned a single row in the Excel grid. The main coding variables were:

- **Use of argument:** Interpretive Argument · Only Mentioned · False Positive.
- **Type of Legislator:** Historical · Current (Actual) · Ideal.
- **Type of Intention:** Communicative (text-clarifying) · Teleological (goal-pursuing) · Counterfactual.
- **Source:** Preparatory works · Jurisprudence · Meaning of other provisions · Legislative history · Occasio legis · Consequences of application · None.
- **Justification:** Art. 12 Preleggi · Principles/values of the legal order · Interpretive directives · None.
- **Weight:** Decisive · Concurrent · Rejected.

3. Research Procedure & Questions

The study was designed to answer three interconnected questions:

- **Frequency:** How often do Italy's apex courts invoke the Legislative Intent argument?
- **Incidence:** What role does the IdL argument play in the courts' actual decisions?
- **Normative acceptability:** When is the use of the IdL argument theoretically justified from the standpoint of legal argumentation theory?

The first two are empirically answerable through the collected data. The third is normative in nature and requires theoretical rather than purely statistical analysis. This report focuses on the first two.

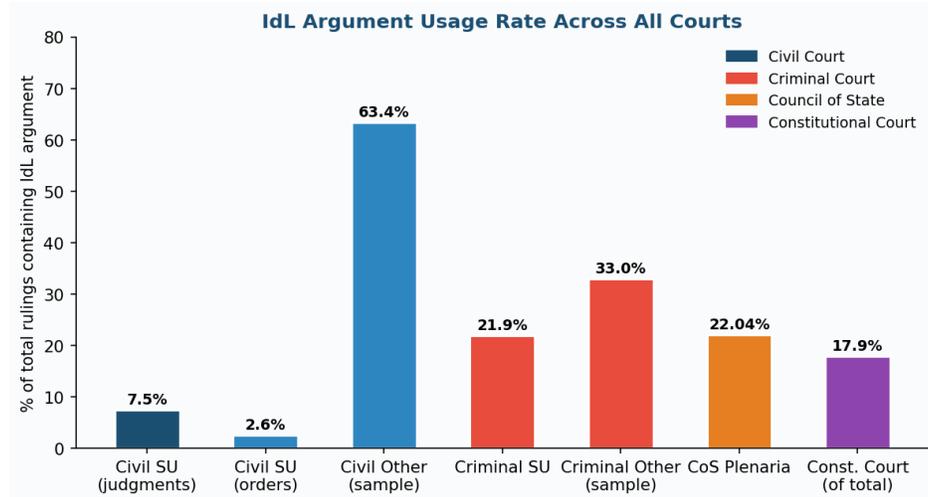


Figure 1 · IdL argument usage rate across all court formations

4. Findings Across All Courts

4.0 Cross-Court Overview

Before examining each court individually, the following two charts provide a bird's-eye view of the data — argument weight distribution and type of legislative intention — across all seven formations. The consistency of certain patterns (Historical Legislator dominance, Communicative Intention plurality, near-universal concurrent weighting) is one of the most striking findings of the study.

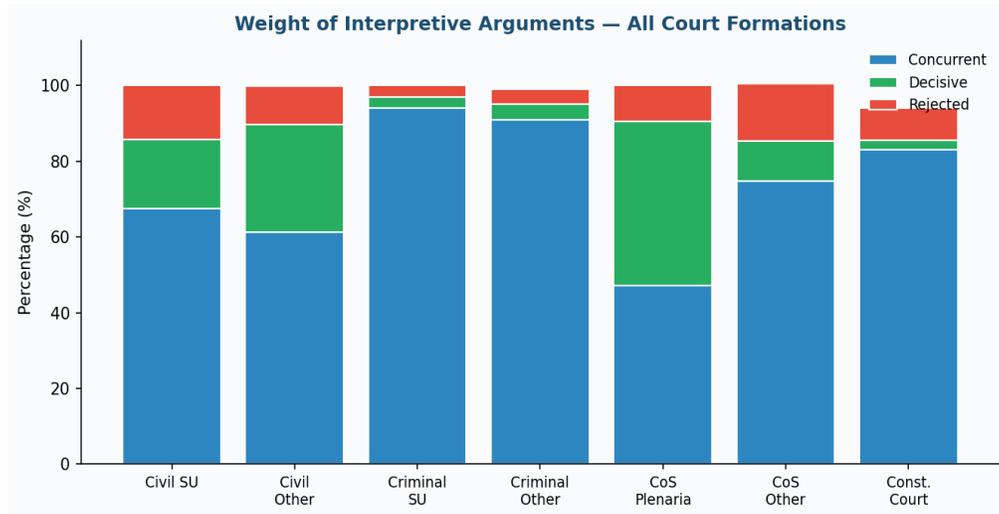


Figure 2 · Weight of interpretive arguments — all court formations (%)

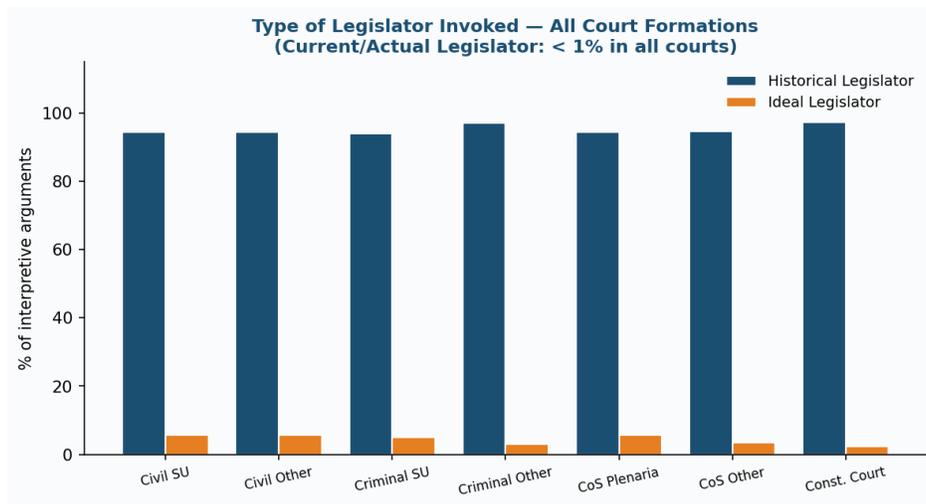


Figure 3 · Type of legislator invoked — all formations

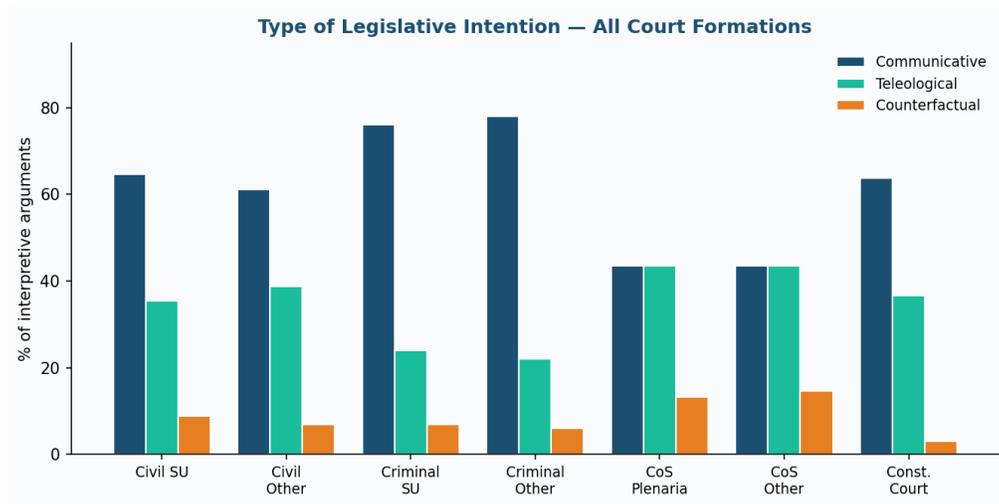


Figure 4 · Type of legislative intention — all formations

4.1 Civil Court of Cassation — Joint Sections & Other Sections

The Civil Court of Cassation is Italy's highest court for civil, commercial and labour matters. Its Joint Sections (Sezioni Unite) resolve conflicts between ordinary sections and decide the most complex legal questions; its other ten sections handle the regular caseload. Author: Leonardo Marchettoni.

Joint Sections — Population & Arguments

Over 2014–2023, the Joint Sections issued 6,500 rulings (3,372 judgments, 3,125 orders, 3 referral orders). The search keys captured 565 rulings; after removing false positives and mentions, 337 rulings (254 judgments, 82 orders, 1 referral order) contain at least one genuine IdL argument — representing 7.5% of judgments and 2.6% of orders.

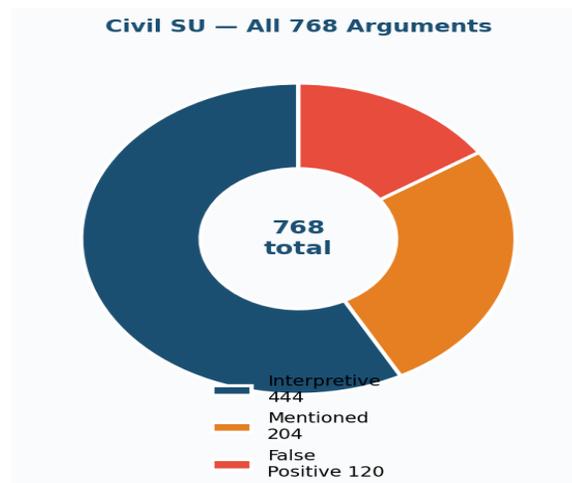


Figure 5 · Civil SU — distribution of all 768 argument instances

Because one ruling can contain multiple IdL arguments, the total argument count (768) exceeds the ruling count (565). Of these: 444 are genuine interpretive arguments, 204 are only mentioned, and 120 are false positives. Among the 444 interpretive arguments, 300 are concurrent (67.6%), 81 decisive (18.2%) and 63 rejected (14.2%).

Civil SU — Key Data Points

- Historical Legislator: 94.4% of all interpretive arguments (419/444). Current Legislator: never observed.
- Communicative Intention: 64.6%; Teleological: 35.4%; Counterfactual: 8.8% — always a contrario (arguing from what the legislator did NOT do).
- Top source: Jurisprudence (28%), followed by Meaning of other provisions (17.1%) and Preparatory works (8.3%).
- Justification deficit: Art. 12 Preleggi cited in only 17 cases (3.8%); no justification in 425 of 444 arguments.
- Civil Procedural Law dominates subject matter with 98 arguments (22.1% of total).

Other Sections — Population & Arguments

The ten ordinary sections issued a combined 305,538 rulings over the decade. From 12,946 rulings captured by the search keys, a random sample of 341 was hand-coded. This yielded 377 total arguments: 232 interpretive, 108 mentioned, 37 false positives. Among the 232 interpretive arguments: 142 concurrent (61.2%), 66 decisive (28.4%), 24 rejected (10.3%).

Notable contrast: The decisive-argument share is notably higher in other sections (28.4%) than in the Joint Sections (18.2%), suggesting that when ordinary sections invoke the IdL argument they tend to make it the centrepiece of their reasoning. The leading subject-matter areas are Labour Law (50), Tax Law (48) and Civil Procedural Law (46).

Indicator	Joint Sections	Other Sections
Total rulings in pool	6,500	305,538
Captured by search keys	565	12,946
Rulings with IdL argument	337	216 (sample)
Total interpretive arguments	444	232
Concurrent (%)	67.6%	61.2%
Decisive (%)	18.2%	28.4%
Historical Legislator (%)	94.4%	94.4%
Communicative Intention (%)	64.6%	61.2%
No justification provided	425 / 444	218 / 232

4.2 Criminal Court of Cassation — Joint Sections & Other Sections

The Criminal Court of Cassation is Italy's highest court for criminal matters. Author: Francesca Asta.

Joint Sections — Population & Arguments

The Criminal Joint Sections issued 270 decisions in the decade. The search keys captured 154 (57% of the total); of these, 59 actually contain an interpretive IdL argument (21.9% of all 270 decisions; 38% of the 154 captured).

Criminal SU — All 301 Argument Instances

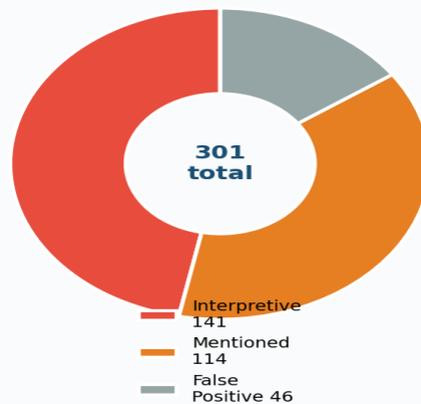


Figure 6 · Criminal SU — 301 argument citations by category

Across all 301 keyword citations in the Joint Sections sample: 47% are interpretive arguments, 38% are only mentioned and 15% are false positives. The IdL argument is therefore genuinely less prominent in criminal apex jurisprudence than in civil jurisprudence — consistent with the Criminal Court's different interpretive culture.

Criminal SU — Key Data Points

- Historical Legislator: 94% of cases; Ideal-rational Legislator: 5%; Current Legislator: 1 case only.
- Communicative Intention dominates more strongly than in civil courts: 76% vs 24% teleological; counterfactual 7%.
- Top source: Meaning of other provisions (51%), especially same-code articles (35%) and other primary sources (16%). Preparatory works: 27% — far higher than in civil courts.
- Argument weight: concurrent in 94% of cases — the highest concurrent share of any formation in the study.
- No justification provided in the majority of cases; Art. 12 Preleggi cited in about 13% of SU cases (higher than civil courts).
- Leading subject matter: Criminal Procedural Law (55% SU; 60% other sections), especially precautionary measures (SU) and appeals (other sections).

Other Sections — Key Differences

In the sample of 1,012 other-section decisions (1,084 keyword citations), the IdL argument is mentioned without being adopted in 54% of cases, while it functions as a genuine interpretive argument in 33%. This lower interpretive rate — compared to 47% for the Joint Sections — suggests that ordinary criminal sections engage more superficially with intentionalist arguments, often noting but not adopting the views of parties or lower courts.

Source shift: Other sections rely less on preparatory works (8%) and more on jurisprudence (18%) and legislative history (12%), reflecting a less doctrinally elaborate argumentation style.

Indicator	Joint Sections	Other Sections
Total decisions	270	Large sample (1,012)
Captured / Sampled	154 (57%)	1,012
Interpretive IdL (% of captured)	38%	33%
Top Intention type	Communicative 76%	Communicative 78%
Historical Legislator (%)	94%	97%
Concurrent weight (%)	94%	91%
Top source	Other provisions 51%	Other provisions 37%
Second source	Preparatory works 27%	Jurisprudence 18%
No justification	Majority	97%

4.3 Council of State — Adunanza Plenaria & Other Sections

The Council of State (Consiglio di Stato) is Italy's supreme administrative court. Its Adunanza Plenaria is the most authoritative formation, responsible for resolving jurisprudential conflicts and setting binding precedents — functions exercised through a particularly systematic argumentative style. Author: Maria Francesca Tropea.

Adunanza Plenaria — Population & Arguments

In the decade studied, the Adunanza Plenaria issued 186 rulings (154 judgments + 32 orders). The search keys captured 53, of which 41 contain an interpretive IdL argument — 77.4% of the captured sample but only 22% of all rulings. Only 12 of the 23 search keys were ever matched by the Plenaria, reflecting a more restrained and formalised vocabulary.

Objectivist tendency: The Plenaria systematically favours objective interpretive criteria — the meaning of legal text, jurisprudential precedent, systematic analysis of the legal order — over subjective intentionalism. This is consistent with its nomofilactic mandate to maximise legal predictability.

Other Sections — Population & Arguments

The sample of 391 other-section decisions shows a strikingly high interpretive uptake: 344 rulings (88%) contain an interpretive IdL argument, 34 (8.7%) only mention it, and just 13 (3.3%) are false positives. This is the highest interpretive rate of any formation in the study.

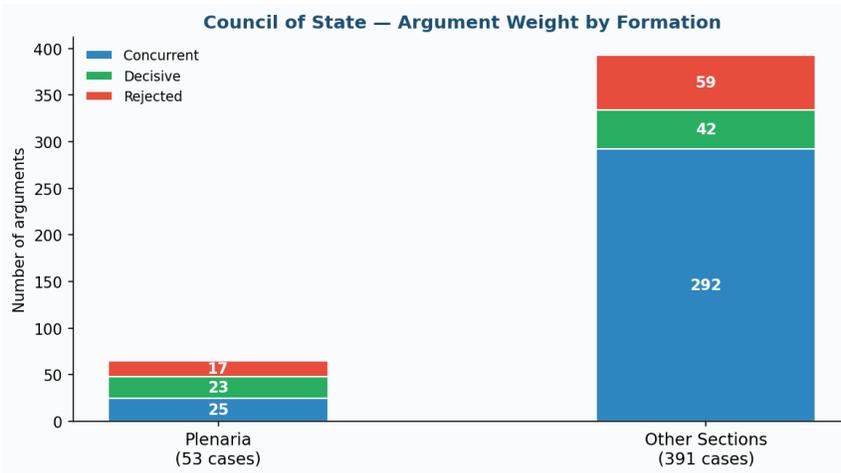


Figure 7 · Council of State — argument weight by formation

Council of State — Key Data Points

- Adunanza Plenaria uses only 12 of 23 search keys — a more controlled and technical IdL vocabulary than other courts.
- Other sections show the highest interpretive rate (88%) of any formation studied.
- Historical Legislator: 94% (Plenaria) and 95% (other sections); Current Legislator: only 2 cases in other sections.
- Counterfactual Intention: 13–15% — notably higher than in civil and criminal courts.
- Plenaria sources: Meaning of other provisions (most frequent), followed by jurisprudence (9 cases) and principles (7). Preparatory works cited in only 2 cases.
- Justification: Plenaria invokes principles/values in 28 cases (most common), with only 6 citing Art. 12 Preleggi. Other sections: 305 cases with no justification; 72 cite principles/values.

- Decisive weight in Plenaria: 43% — uniquely high, reflecting the Plenaria's mandate to settle legal questions definitively.

Indicator	Adunanza Plenaria	Other Sections
Total rulings	186	Large sample (391)
Captured by keys	53 (28.5%)	391
Interpretive IdL	41 / 53 (77.4%)	344 / 391 (88%)
Concurrent weight	25 cases (47.2%)	292 cases (74.7%)
Decisive weight	23 cases (43.4%)	42 cases (10.7%)
Rejected	17 cases (9.4%)	59 cases (15.1%)
Historical Legislator (%)	94.3%	94.6%
Counterfactual Intention (%)	13.2%	14.6%
Search keys matched	12 / 23	All 23

4.4 Constitutional Court (Corte Costituzionale)

The Constitutional Court reviews the constitutional legitimacy of legislation and resolves conflicts among state powers and between central and regional government. It is the only court in the study whose function is directly and necessarily focused on the meaning of legislative texts — making the IdL argument especially relevant to its work. Author: Brando Mazzolai.

Population & Arguments

The Court issued 2,772 decisions in the decade. Applying the 23 search keys yielded 1,523 instances across 1,011 decisions; after coding, 746 interpretive arguments were identified distributed across 497 decisions (17.9% of all decisions). This makes the Constitutional Court the single highest-volume source of IdL arguments in the study.

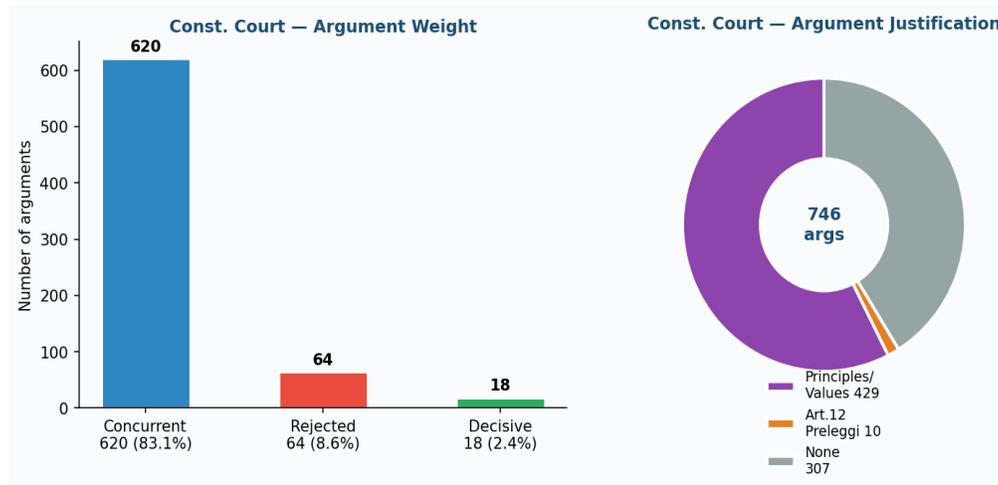


Figure 8 · Constitutional Court — argument weight (left) and justification (right)

Weight: The IdL argument is concurrent with other criteria in 620 cases (83.1%) — most commonly combined with literal, systematic and principled arguments. Decisive in only 18 cases; rejected in 64. This extremely high concurrent rate signals that the Court treats intentionalism as one input among many rather than a self-sufficient interpretive method.

Justification: Unusually for the courts studied, the Constitutional Court frequently grounds its IdL argument in constitutional principles and values (429 cases). This is consistent with the Court's function: constitutional review inherently requires balancing competing constitutional values, making principled justification structurally necessary. Art. 12 Preleggi is cited in only 10 cases.

Constitutional Court — Key Data Points

- Highest absolute volume: 746 interpretive arguments across 497 decisions (17.9% of all rulings).
- Historical Legislator: 97.2% (725/746); includes references to the Constituent Assembly (Assemblea Costituente) in constitutional-originalist reasoning.
- Communicative Intention: 63.7% (476 cases); Teleological: 36.6% (273 cases); Counterfactual: ~3% — lowest of all courts.
- Source: Meaning of other provisions dominates at 76.5% (571 cases), far above all other courts. Preparatory works at 6.4% — consistent with Alf Ross's observation that preparatory works lose relevance as laws age.

- Justification via principles/values: 429 cases — by far the highest principled-justification rate of any court in the study.
- Top concurrent combinations: IdL + literal argument; IdL + systematic argument; IdL + principled argument.

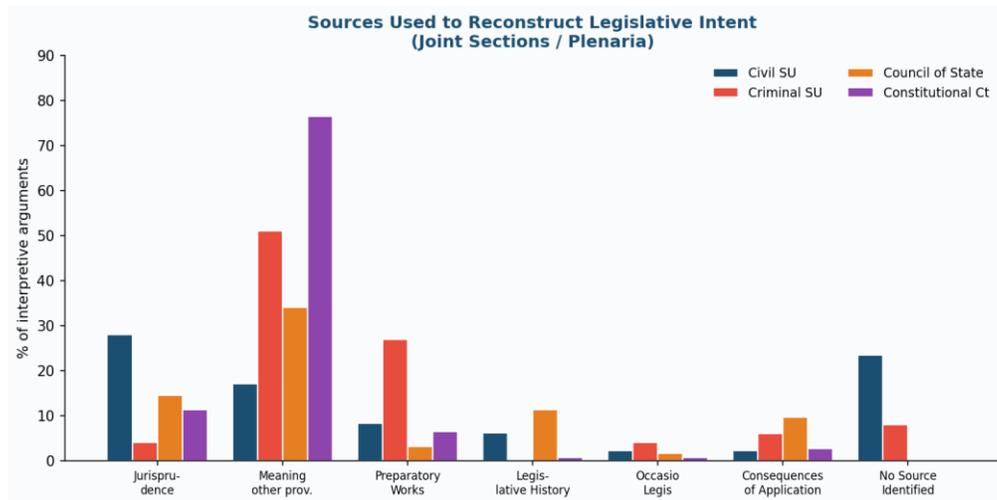


Figure 9 · Sources used to reconstruct legislative intent — Joint Sections / Plenaria comparison

5. Cross-Court Synthesis & Conclusions

5.1 The Dominance of the Historical Legislator

Across all seven court formations, the Historical Legislator is invoked in 94–97% of all interpretive arguments. The Current Legislator (what a present-day parliament would have decided) is essentially absent — never observed in the Civil Joint Sections, found in a single Criminal SU case, and marginal everywhere else. The Ideal Legislator (what a perfectly rational lawmaker would have done) accounts for 2–6% across formations.

This convergence is one of the most robust findings of the study. Italian apex courts are historically oriented intentionalists: they look backwards to the original drafter, not forwards to a hypothetical rational lawmaker.

5.2 Communicative Over Teleological Intent

In most courts, Communicative Intention (what did the legislature mean to say?) outweighs Teleological Intention (what goal did it want to achieve?). The Criminal Court shows the strongest communicative dominance (76–78%), suggesting a literal-intentionalist culture that privileges textual clarity over purposivism. The Council of State is the exception, with an approximately equal split between communicative and teleological — consistent with administrative law's tradition of purposive interpretation.

5.3 The Concurrent Default

In every court formation, the IdL argument is most often concurrent — used alongside, rather than instead of, literal and systematic arguments. The Criminal Joint Sections show the highest concurrent rate (94%), the Council of State Plenaria the lowest (47%, offset by a high decisive rate of 43%). The high concurrent rate reflects a polyargumentative judicial culture in which no single criterion is allowed to carry the full interpretive load.

5.4 The Justification Deficit

The most practically significant finding: across virtually every court and formation, judges invoke the IdL argument without explicitly justifying why intentionalism is the right approach for the case at hand. Art. 12 Preleggi — the statutory provision that organises interpretive criteria — is cited in fewer than 6% of cases in civil courts, about 13% in Criminal Joint Sections, and marginally in the Council of State. The Constitutional Court stands apart by frequently grounding its arguments in constitutional principles and values, but this too is a domain-specific justification rather than a general theory of intentionalist interpretation.

This deficit raises important questions for legal scholarship and judicial training: if intentionalism is deployed without explanation, how can its use be critiqued, refined or limited? Future research should explore whether greater transparency in justification would improve the quality and predictability of judicial reasoning.

5.5 Court-Specific Profiles

Court / Feature	Distinctive Characteristic
Civil Court of Cassation	Jurisprudence as top source (28% SU); high share of arguments with no source at all (23%).
Criminal Court of Cassation	Heaviest reliance on preparatory works (SU: 27%); highest concurrent rate (94%); communicative intent at 76–78%.
Council of State Plenaria	Uniquely high decisive rate (43%); objectivist tendency; only 12/23 keys matched.
CoS Other Sections	Highest interpretive uptake rate (88%); EU law sources appear (11 cases).
Constitutional Court	Highest volume (746 arguments); principled justification (429 cases); meaning of other provisions (76.5%).

Questions for Future Research

- Do IdL argument patterns shift over the decade? Is there a trend towards or away from intentionalism in any court?
- Can NLP/AI tools automate or scale up the coding process for the full 28,000+ ruling corpus?
- How do these Italian patterns compare to apex courts in other civil-law jurisdictions (France, Germany, Spain)?
- What normative standard should govern when judges must justify their use of the IdL argument?
- Does the justification deficit correlate with lower predictability of judicial outcomes?

Appendix: 23 Search Keys & Glossary

A1. Search Keys Used (OneLegale Database)

All keys were applied in NEAR/5 proximity format (word order irrelevant):

#	Key (Italian)	#	Key (Italian)
1	volontà legislatore	13	intenzione novella
2	intenzione legislatore	14	intento novella
3	intenzioni legislatore	15	legislatore voluto
4	scopo legislatore	16	legislatore inteso
5	obiettivo legislatore	17	scelta legislatore
6	proposito legislatore	18	assemblea costituente
7	intento legislatore	19	revisione costituzionale
8	finalità legislatore	20	legislatore intende
9	finalità riforma	21	scelta politica
10	intenzione riforma	22	volontà novella
11	scopo riforma	23	scopo politica
12	obiettivo riforma	—	—

A2. Glossary of Key Terms

Term	Definition
Legislative Intent (IdL)	The interpretive argument by which a court attributes a specific intention to the legislature to resolve an ambiguous legal provision.
Historical Legislator	The actual drafter of the provision as it existed at the time of enactment.
Current Legislator	A hypothetical present-day legislature, imagined to be deciding the same question.
Ideal Legislator	A perfectly rational or just lawmaker, invoked as a normative standard.
Communicative Intention	The legislator's intention regarding the meaning of the text (text-clarifying).
Teleological Intention	The legislator's intention regarding the goal or purpose the norm should achieve.
Counterfactual Intention	Reasoning from what the legislator did NOT do (always a <i>contrario</i> in this dataset).
Decisive argument	The IdL argument is sufficient on its own to support the court's interpretive conclusion.
Concurrent argument	The IdL argument is used alongside other arguments (literal, systematic, etc.).
Rejected argument	The IdL argument is considered but ultimately dismissed by the court.
False Positive	A hit on a search key that does not actually involve attributing intent to the legislator.
Art. 12 Preleggi	The Italian statutory provision that hierarchically organises interpretive criteria.