JUDGMENT NO. 120 YEAR 2014

In this case the Court heard a reference from the Court of Cassation in an appeal against a decision taken by the Senate concerning an employment matter, objecting that the relevant provision of the Senate Regulations was unconstitutional on the grounds that it excluded the jurisdiction of the courts over such matters. The Court held that, whilst Parliament was vested with a privilege in that its regulations cannot be amended by legislation, and as such are not eligible to interlocutory constitutional review in the ordinary manner, in the event that it acted in excess of its constitutional powers another branch of state could raise a jurisdictional dispute against it if it considered its own powers to have been encroached upon. The Court therefore ruled the question inadmissible.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 12 of the Regulations of the Senate of the Republic adopted on 17 February 1971, initiated by the Joint Divisions of the Court of Cassation in the proceedings pending between P.L. and the Senate of the Republic by the referral order filed on 6 May 2013, registered as no. 136 in the Register of Orders 2013 and published in the Official Journal of the Republic no. 24, first special series 2013.

Considering the entries of appearance by P.L. and the Senate of the Republic, as well as the interventions by the Chamber of Deputies and the President of the Council of Ministers;

having heard the judge rapporteur Giuliano Amato at the public hearing of 25 March 2014;

having heard Counsel Aldo Sandulli for P.L., Counsel Gaetano Pelella for the Chamber of Deputies and the State Counsel [*Avvocato dello Stato*] Federico Basilica for the Senate of the Republic and for the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.− The Joint Divisions of the Court of Cassation have raised *ex officio*, with reference to Articles 3, 24, 102(2), 111(1), (2) and (7) and 113(1) of the Constitution, a question concerning the constitutionality of Article 12 of the Regulations of the Senate of the Republic approved on 17 February 1971, as amended, insofar as they vest the Senate with the exclusive power to rule with definitive effect on appeals against the acts and measures adopted by the administration of that house of Parliament in respect of its own employees.

In the proceedings pending before the referring court, the Court of Cassation has been called upon to rule on the appeal filed pursuant to Article 111(7) of the Constitution by an employee of the Senate against a decision given − on appeal − by the Senate Guarantee Committee [*Consiglio di Garanzia*] within compliance proceedings relating to an employment matter.

2.− As a preliminary matter, it is necessary to confirm the order read out at the public hearing of 25 March 2014, which is annexed to this Judgment, ruling admissible the intervention by the Chamber of Deputies in the proceedings initiated pursuant to referral order 136 of 2013; indeed, in the case under examination it must be held that, whilst it was not involved in the main proceedings, the Chamber of Deputies is vested with a qualified interest liable to be affected directly by the Court's ruling in that it relates directly to the specific substantive relationship averred in the proceedings (see Judgment no. 38 of 2009; Orders no. 346 of 2001 and no. 67 of 1998).

3.− The contested provision is contained in Article 12 of the regulations of the Senate of the Republic entitled "Competences of the Presiding Committee − extension in time of powers"; this provision stipulates that "The Presidential Committee, chaired by the President of the Senate, shall resolve on the draft budget of the Senate, the changes to appropriations and the closing accounts; shall approve the Library Regulations and the Regulations of the Historical Archive of the Senate; shall impose sanctions on senators in the cases provided for under Article 67(3) and (4); shall appoint the Secretary General of the Senate, acting on a proposal by the President; shall approve the Internal Regulations of the Senate Administration and adopt the necessary measures

in relation to personnel in the cases provided for thereunder; shall examine all other questions referred to it by the President".

3.1.− The question of constitutionality thus relates to the provision under examination insofar as – according to a long-standing traditional interpretation – it vests the Senate with *autodichia* [i.e. self-adjudicating powers vested in a non-judicial body] over its own employees, specifically the exclusive power to rule with definitive effect on appeals against the acts and measures adopted by the administration of that house of Parliament, consequently precluding the power of any external court to review disputes relating to the status and legal and economic career of employees.

4.− The question raised by the Court of Cassation must be ruled inadmissible.

4.1.− Once again, the power to review parliamentary regulations adopted pursuant to Article 64(1) of the Constitution is the premise for the assessment of the admissibility of the question.

4.2.− Parliamentary regulations do not fall expressly under the sources of law specified under Article 134(1) of the Constitution − that is "laws" and "acts with the force of law" − which may be subject to constitutional review before this Court.

Within the system of sources laid down by the Constitution, parliamentary regulations are expressly designated under Article 64 as a source of law vested with a reserved sphere of competence distinct from that of ordinary legislation, in which therefore ordinary legislation is not empowered to intervene.

By establishing as amenable to constitutional review laws and acts having force of law, and which may as such regulate matters falling within the competence of the law itself, Article 134 of the Constitution does not allow for parliamentary regulations to be included within this category. Therefore, the current rationale for and principle of positive law establishing the ineligibility for review of these regulations before the Constitutional Court lies in Article 134, and not in historical motivations or long-standing interpretative traditions. It is consequently necessary to confirm the consolidated case law of this Court which has held − specifically in Judgment no. 154 of 1985 and in the subsequent Orders no. 444 and no. 445 of 1993 − that they may not be classified as acts having the force of law.

However, whilst now, as then, the rationale for the ineligibility for review of parliamentary regulations lies − in systematic terms − in the guarantee of the

independence of the Houses of Parliament from any other branch of state, this does not mean that they are purely internal sources, as was the case in a distant past. They are sources of the general law of the Republic, generating rules which are subject to the ordinary canons of interpretation in the light of constitutional principles and provisions, which delineate their sphere of competence.

4.3.− It is on these foundations that the issue of the extension of *autodichia*, and consequently of its constitutionality, is based. Articles 64 and 72 of the Constitution perform the function of defining, and at the same time delineating, "the guaranteed status of the Houses of Parliament" (see Judgment no. 379 of 1996). It is therefore within this guaranteed status that the scope of the competence reserved to parliamentary regulations is established, which apply to the internal organisation and the regulation of legislative procedures insofar as not regulated directly by the Constitution, respectively.

Within this context, situations and relations pertaining to the primary functions of the Houses certainly fall within the competence of the regulations, and the interpretation of the relative provisions of the regulations and sub-regulations must inevitably be a matter exclusively for the Houses themselves (see Judgment no. 78 of 1984). Moreover, protection of the area of parliamentary independence and freedom does not relate solely to lawmaking autonomy, but extends to the moment of application of those parliamentary rules "and necessarily entails the exemption from any judicial authority of the instruments intended to guarantee respect for parliamentary law" (see Judgments no. 379 of 1996 and no. 129 of 1981).

4.4.− It is a disputed issue whether the same applies to the employment relations of employees and relations with third parties which, as a matter of principle, may give rise to a conflict between branches of state; in fact, even provisions not eligible for review may be the source of acts that encroach upon inviolable rights under constitutional law, and moreover the constitutional basis for a decision making power which limits that vested by the Constitution in other authorities must nonetheless be deemed to be amenable to control. In fact, the independence of the Houses cannot impair fundamental rights or prejudice the implementation of mandatory principles.

As has been asserted by this Court, when confronted with that which "[…] reaches beyond the classificatory capacity of parliamentary regulations and cannot be entirely subsumed under the provisions of these regulations (as it affects the personal interests of

other members of the Houses or interests otherwise vested in third parties), the "guiding principle" of the rule of law and the resulting judicial regime to which all legal interests and all rights are normally subject under our constitutional system must prevail (Articles 24, 112 and 113 of the Constitution)" (see Judgment no. 379 of 1996).

Moreover, within systems of constitutional law similar to our own, such as France, Germany, the United Kingdom and Spain, provision is no longer made for *autodichia* over employment relations with employees and relations with third parties.

Under our legal system it is likewise significant that a large number of the decisions of this Court, and of the Strasbourg Court, have interpreted narrowly the parliamentary immunity provided for under Article 68(1) of the Constitution, which is only recognised when a functional nexus between the opinion expressed and parliamentary activity is demonstrated according to rigorous criteria, precisely in order to limit impediments on access to the courts by persons who consider that they have suffered harm (see *inter alia*, Judgments no. 313 of 2013, no. 98 of 2011, no. 137 of 2001, no. 11 and no. 10 of 2000).

The respect for fundamental rights, including access to justice (Article 24 of the Constitution), along with the implementation of mandatory principles (Article 108 of the Constitution), are secured by the guarantee function vested in the Constitutional Court. The natural locus in which solutions to questions concerning the delineation between the spheres of reserved competence may be found is that of the jurisdictional dispute between branches of state: "The boundary between two distinct values (the autonomy of the Houses on the one hand and legality-adjudication on the other hand) is placed under the protection of this Court, which may be seized of a jurisdictional dispute by the branch of state which considers its prerogatives to have been harmed or impaired by the activity of another branch of state" (see Judgment no. 379 of 1996).

In such proceedings the Court may re-establish the boundary – if it has been violated − between the powers lawfully exercised by the Houses of Parliament with regard to matters falling within their sphere of competence and those vested in other bodies, thereby ensuring respect for the limits of the various prerogatives and the principle of legality, which underlies the rule of law.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

rules that the question concerning the constitutionality of Article 12 of the Regulations of the Senate of the Republic approved on 17 February 1971, as amended, raised with reference to Articles 3, 24, 102(2), 111(1), (2) and (7) and 113(1) of the Constitution by the Joint Divisions of the Court of Cassation by the referral order mentioned in the headnote is inadmissible.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 5 May 2014.