Press Office of the Constitutional Court

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GENERAL ELECTIONS AND PRE-ELECTION LITIGATION: THE CONSTITUTION DOES NOT EXCLUDE THE JURISDICTION OF THE ORDINARY COURTS OVER DISPUTES CONCERNING THE ADMISSION OF LISTS OR CANDIDATES

The Constitution does not exclude the jurisdiction of the ordinary courts – as the "natural" courts for disputes concerning rights – over disputes arising in relation to preparatory procedures for national general elections. This includes disputes concerning the admission of lists or candidates, which thus concern the right to stand as a candidate guaranteed under Article 51 of the Constitution. The Court first acknowledged that Article 66 of the Constitution guarantees the independence of the Houses of Parliament, reserving to the parliamentary procedure committees [*giunte parlamentari*] competence to rule on the eligibility for admission of those persons declared to have been duly elected. It then went on to to rule that the same Article 66 of the Constitution "in no sense deprives the ordinary courts, as the natural courts for disputes concerning rights, of competence to rule on any violation of the right to stand as a candidate during the period falling prior to an election, at a time when disputes do not concern elected members of a House of Parliament or their eligibility for admission". This is the case both by virtue of its wording and also in the light of the preparatory works of the Constituent Assembly.

These are some of the most significant findings contained in Judgment no. 48 (author Nicolò Zanon), filed today, in which the Constitutional Court ruled on certain questions referred by the Court of Rome concerning the

Consolidated Act on Elections to the Chamber of Deputies (Article 18-bis of Decree of the President of the Republic no. 361 of 1957).
Within proceedings concerning an action launched by the political association + *Europa* and one of its list candidates, the referring court questioned the constitutionality of Article 18-bis insofar as it stipulates, first of all, a minimum number of signatures that each list must obtain in order to participate in elections for the Chamber of Deputies and, secondly, the classes of political entity that are exempt from that requirement. In particular, the court argued that the number of signatures to be collected in each multi-member constituency (at least 1500) should be regarded as excessive, and that the class of political entity exempt from the requirement to collect signatures was framed in excessively narrow terms (being limited only to entities established as parliamentary groups in both Houses).

The Court first acknowledged that no procedural legislation had been enacted to afford timely judicial relief for the right to stand as a candidate in elections in relation to national general elections. It then went on to hold that the ordinary courts nonetheless had jurisdiction, above all in order to avoid the emergence of an area of the law immune to constitutional review.
In fact, the Judgment held that: "Within a context in which the Constitution itself lays down strict time limits (according to Article 61 of the Constitution, elections to the new Houses of Parliament must be held within 70 days of the end of the previous legislature), it is necessary for ad hoc procedural rules to be put in place, also for general elections, in order to ensure timely pre-election justice.
Pending the enactment of the necessary legislation by the legislator, according to the current state of the law and its prevailing interpretations, a declaratory action before the ordinary courts – provided that the claimant has an interest to sue (Article 100 of the Civil Procedure Code) – is the only remedy available in order to enable full respect for the right to stand as a candidate and its compliance with the Constitution to be verified".

However, the first objection, concerning the minimum number of signatures necessary for admission as a list within multi-member constituencies, was considered to be unfounded. In fact, in the light of the broad discretion vested in the legislator in the area of law under consideration, in addition to the constitutionally significant interest in ensuring that candidates are adequately supported, the number of signatures required was not deemed to be manifestly unreasonable.
The second objection, which sought to expand the class of entities that are exempt from the requirement to collect signatures, was on the other hand ruled inadmissible due to the lack of sufficient reasons in support of it, both in terms of the interest to sue of the claimants in the proceedings before the referring court and also, by extension, in terms of its relevance.

Rome, 26 March 2021