



Press Office of the Constitutional Court

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LOCAL AUTHORITIES; UNLAWFUL USE OF LIQUIDITY ADVANCES IN ORDER TO ALTER AN ADMINISTRATION'S RESULT AND TO COVER NEW EXPENDITURE

As a matter of constitutional law, liquidity advances may only be used by local authorities in order to pay liabilities that have already been registered in their accounts as such advances constitute loans provided on an exceptional basis solely for the purpose of improving the body's cash position where it is unable to pay liabilities that have accumulated during previous years.

This position was asserted by the Constitutional Court in [Judgment no. 4 of 2020](#) (rapporteur Aldo Carosi), which ruled unconstitutional Article 25 of Decree-Law no. 78 of 2015 and Article 1(814) of Law no. 205 of 2017 due to a violation of Articles 81, 97(1) and 119(6) of the Constitution. The Court thus reiterated the prohibition on using liquidity advances in order to alter an administration's result and to secure new forms of legal coverage for spending.

The Judgment explains that it is unlawful to use advances in order to rectify structural deficits not only due to the fact that to do so would violate Article 119(6) of the Constitution, but also according to a basic tenet of experience whereby only an investment that is effective, thanks to its positive effects on the overall wealth of the relevant community, is able to offset the debts taken on in order to pay for it.

The question had been referred on an incidental basis by a special sitting of the Joint Divisions of the Court of Auditors following a challenge brought by the Municipality of Naples against a ruling by the Regional Control Division for Campania that certain expenditure items lacked coverage, followed by the issue of an injunction.

After suspending the effects of the Control Division's ruling, the referring court had however raised questions of constitutionality – which were accepted by the Constitutional Court – concerning the provisions that allowed for liquidity advances to be used, which is prohibited under constitutional law.

The Court also reasserted the distinction between the functions performed by the Self-Government Division and those performed by a special sitting of the Joint Divisions of the Court of Auditors: whereas the function of the former is to harmonise consultative rulings in the event of any discrepancy between the regional control divisions as regards the manner of applying accounting techniques, the latter is charged with the function of judicial review of the rulings concerning lawfulness-regularity that the regional divisions of the Court of Auditors issue in relation to local authorities. It exercises an exclusive merits jurisdiction at one single instance as provided for under the new Code of Public Accounting Justice.

The Court went on to clarify the effects of the Judgment on the auditing management of local authorities that have previously applied the unconstitutional provisions in relation to their own deficits: each must now correctly recalculate its own deficit and ensure that provision is set aside in accordance with the provisions applicable in relation to each previous financial year.

Finally, the Court issued a warning to the state legislator concerning the need to give specific effect to the constitutional requirement laid down in Article 119 of the Constitution concerning the transfer of resources to local communities that have a reduced fiscal capacity per inhabitant in order to enable the effective provision of services and benefits required under constitutional law.

Rome, 28 January 2020