

Italian Constitutional Court

Legal summary

Judgment No 9/2024

ECLI:IT:COST:2024:9

THE PROVISIONS ON DEFICIT REPAYMENT GRANTING SICILY ADDITIONAL TIME AND MORE LENIENT TERMS CONTRAVENE THE PRINCIPLE OF BUDGET PARITY AND THE UNITY OF THE STATE'S FINANCES

In Judgment No 9/2024, the Constitutional Court declared that several provisions regarding the procedure that the Sicily Region must follow to repay its financial deficit are unconstitutional for breach of **Articles 81, 97 and 119 of the Italian Constitution**.

Various State and Regional provisions allowed the Sicily Region to plan its deficit repayment on terms more favourable than those available to all the other regions. Specifically, the Sicily Region was granted a much longer repayment period and the ability to retroactively modify its closing statements from previous years, including by authorising new expenses without financial coverage.

These exceptional terms contradicted the principle of budgetary balance and could not be justified by the Sicily Region's special status. On the contrary, they undermined the public interest in responsible spending and exacerbated the financial situation of both the Region and, by extension, the State.

Main proceedings

In February 2023, the Court of Auditors (*Corte dei Conti*), Regional Control Division for Sicily (the "**referring court**"), audited the closing statements of the Sicily Region for financial year 2020 in budgetary compliance proceedings.¹

During the proceedings, the referring court took notice of various provisions of State and regional law relied upon by the Sicily Region in its financial statement, raising doubts of compliance with the Italian Constitution (IC).

Article 7 of Legislative Decree No 158/2019 implementing Sicily's special statute (the "**first challenged provision**") granted the Sicily Region a ten-year plan to repay the deficit posted at the end of financial year 2018. Additionally, Article 4(2) of Regional Law No 30/2019 (the "**second challenged provision**") allowed the Sicily Region to repay over 10 to 30 years the part of the deficit relating to financial year 2014 still outstanding at the end of 2018. Finally, Article 110, paragraphs 3, 6 and 9, of Regional Law No 9/2021 (the "**third challenged provision**") retroactively adjusted the financial statements of previous years – which had

¹ Budgetary compliance proceedings are proceedings held annually by the regional divisions of the Court of Auditors. Their purpose is to approve the closing statements of each Region.

been validated by the Court of Auditors in prior proceedings – with the effect of depriving of financial coverage expenditures that had already been approved.

The referring court argued that these provisions contradicted the principle of government budget balance and interfered with the allocation of powers between regions and State. Therefore, it stayed the proceedings and referred the matter to the Court, asserting that the challenged provisions violated the IC.

Complaints

According to the referring court, the challenged measures granted the Sicily Region excessive discretion in managing its accounts and restructuring its historical deficit. Specifically, these provisions undermined the general principle of government budget balance by allowing for excessively long debt repayment plans and enabling the Region to commit to new expenditures or deprive previously approved ones of financial coverage. Additionally, these provisions infringed upon the constitutional allocation of powers between the State and the regions by allowing Sicily to regulate budgetary matters autonomously, in contrast with a harmonised model mandated by the State.

In particular, the referring court alleged a **violation of Article 117(2)(e) IC (State's exclusive legislative powers)**, which assigns the State exclusive legislative power over the accounting system. The first challenged provision introduced an extended repayment plan for the Sicily Region, granting it more favourable terms than those outlined in the harmonised model applicable to all the regions under Article 42(12) of Legislative Decree No 118/2011.² The fact that the Sicily Region has a special statute (*statuto speciale*)³ does not justify such preferential treatment, since the competences granted by its special statute (Articles 14 and 17) do not include powers over accounting and budgetary matters.

Furthermore, the referring court argued that all the challenged measures breached **Articles 81 (Parliament's budget authority), 97(1) (Efficiency and impartiality of the public administration) and 119(1) (Expenditure autonomy of regions) IC**. Sicily's exceptional repayment plans and retroactive adjustments violated the principles of budgetary balance, sound financial management, expenditure coverage, intergenerational equity as well as accountability of elected officials.

According to the referring court, the special treatment of the Sicily Region also violated **Articles 3 (Principles of equality and non-discrimination), 5 (Unity of the Republic) and 120(2) (State-region subsidiarity) IC**. The challenged measures led to an increase in the Region's deficit without corresponding financial coverage, undermining any reasonable prospect of budgetary balance and threatening the financial and economic unity of the State.

² Legislative Decree No 118/2011, harmonising the accounting and budgeting practices of regions and local autonomies.

³ Sicily is one of the five regions (alongside Friuli-Venezia Giulia, Sardinia, Trentino-Alto Adige/Südtirol and Valle d'Aosta/Vallée d'Aoste) enjoying special forms and conditions of autonomy pursuant to special statutes, as stipulated by Article 116 IC. These special statutes are adopted by constitutional law and can therefore serve as review standards in constitutional proceedings or serve as constitutional basis for implementing measures adopted by the State government in the form of legislative decrees.

Finally, the retroactive effects of the third challenged provision breached **Article 81(4) IC** which stipulates that the State's budget and financial statements are annual.

Decision of the Court

The Constitutional Court determined that the challenged provisions **violated Articles 81 (Parliament's budget authority), 97(1) (Efficiency and impartiality of the public administration) and 119(1) (Expenditure autonomy of regions) IC**. The third challenged provision also violated **Article 81(4) IC, with reference to the harmonised system of regional deficit restructuring set by the State in Legislative Decree No 118/2011**. The Court exercised judicial economy and did not review the challenged provisions under the other constitutional standards invoked by the referring court.

Reasons for the decision

The Court examined the three challenged provisions separately, finding that all of them violated the IC, in particular Articles 81, 97 and 119.

The first challenged provision was contained in a legislative decree adopted by the Italian government to implement the special statute of the Sicily Region.⁴ In order to confirm the admissibility of the referring court's question as regards this provision, the Court referred to its Judgments Nos 138/2019 and 196/2018. In budgetary compliance proceedings, the Court of Auditors may review the measures implementing a special statute, since they affect the financial aspects of the regional annual statements and might undermine their compliance with the Constitution.

The first challenged provision, which allowed up to ten years for the repayment of the outstanding deficit from previous financial years, violated Article 81(3) IC. This constitutional clause requires all legislative measures that increase public spending to identify the necessary financial resources. The Court has emphasized that compliance with Article 81(3) is essential for maintaining a balanced budget.⁵ Moreover, the first challenged provision made no reference to, and in fact appeared to exceed, the range of competences granted to the Sicily Region under its special statute. In the absence of a safeguard of the duty to provide coverage for new expenses, the Sicily Region could authorise new expenditures, further exacerbating the State's aggregate deficit and potentially leading to austerity measures that would disproportionately impact the most vulnerable citizens. The extended repayment period, which far exceeded the annual budget cycle, discouraged sound financial management practices. According to the Court, to ensure responsible public finance management, the duration of a repayment plan must align with the financial period in which the deficit arises.⁶

⁴ Legislative decrees implementing special statutes differ from ordinary laws and standard legislative decrees in that they are designed to coordinate the legal system of the State and those of special-statute regions, in line with the principle of the unity of the State. Unlike typical legislative decrees, they do not rely on a delegating act from parliament. As a result, the constitutional standards for reviewing such legislative decrees (like the one containing the first challenged provision) are the Constitution and special statutes themselves.

⁵ Constitutional Court, Judgment No 84/2023.

⁶ Constitutional Court, Judgment No 168/2022.

Rather than requiring the deficit of previous years to be fully accounted for in the subsequent financial statements in the form of annually increased repayment quotas, to accelerate the process of restructuring, the first challenged provision also allowed for the accounting of past deficit through reduced annual quotas. This approach legitimised an undue prolongation of unpaid deficits over time (*“trascinamento nel tempo”*). **The Court found that this repayment method violated Articles 81, 97 and 119(1) IC, particularly with regard to the principles of budgetary balance and compliance with financial obligations under European Union law.** Furthermore, the challenged provision disregarded the statutorily harmonised model established by the legislature for regional deficit repayment, as codified in Article 42 of Legislative Decree No 118/2011.

The second challenged provision concerned the repayment plan for the deficit incurred during financial year 2014, which was recorded in 2015 and remained largely unpaid by late 2018, amounting to over 7 billion euros. This measure extended the repayment period from the standard three years to a range of 10 to 30 years. Consequently, it reduced the annual amounts the Sicily Region was required to allocate for repayment. As a result, the measure incentivised the Region to incur new expenditures without ensuring adequate financial coverage, rather than prioritise the repayment of its deficit of previous years. This approach further exacerbated an already precarious financial situation.

The Court emphasised that the principle of a balanced budget must be adhered to for each financial period, with no exceptions for special-statute regions like Sicily. All the regions contribute to the State’s aggregate budget on equal terms.⁷ By authorising an undue extension of the repayment plan, the second challenged provision deviated from the statutorily harmonised model established for all the regions, delayed the adoption of a more prudent financial management strategy, and ultimately hindered the achievement of the State’s macroeconomic objectives. For these reasons, **the second challenged provision violated Article 42 of Legislative Decree No 118/2011, as well as Articles 81, 97(1) and 119(1) IC.**

Similar considerations apply to the third challenged provision. This provision retroactively altered the statement for financial year 2019, which had already been validated by the Court of Auditors. As a result, several expenses authorised at that time were retroactively stripped of their financial coverage. Consequently, in subsequent financial years – including 2020, which was under review in the budgetary compliance proceedings before the referring court – the Region needed to identify additional resources to compensate for these retroactive shortfalls.

In addition to breaching Articles 81, 97(1) and 119(1) IC for the same reasons as the first and second challenged provisions, the third challenged provision also violated Article 81(4) IC, which establishes that the financial year must be annual and balanced. This principle is codified in Article 51 of Legislative Decree No 118/2021, which outlines the harmonised system for deficit repayment by regions. This provision stipulates that no adjustments to the annual budget can be made after 30 November of the year to which it pertains.

⁷ Constitutional Court, Judgment No 165/2023.

The Court stated that effective public financial management depends on an accurate and reliable assessment of the financial baseline current at any relevant time. This assessment has a significant impact on future financial years, influencing their management and the achievement of balanced budgets.⁸ In contrast, the third challenged provision had a posthumous effect on the economic and financial situation of the Sicily Region, disrupting the multi-year process required for effective management of subsequent financial years.

Type of proceedings	Constitutional review by referral order
President of the Court	Augusto Antonio Barbera
Judge rapporteur	Angelo Buscema
Composition of the Court	Augusto Antonio Barbera (President), Franco Modugno, Giulio Prosperetti, Giovanni Amoroso, Francesco Viganò, Luca Antonini, Stefano Petitti, Angelo Buscema, Emanuela Navarretta, Maria Rosaria San Giorgio, Filippo Patroni Griffi, Marco D'Alberti, Giovanni Pitruzzella, Antonella Sciarrone Alibrandi
Delivery of the judgment	26 January 2024
Challenged provisions	Article 7 of Legislative Decree No 158/2019 Article 4(2) of Sicily's Regional Law No 30/2018 Articles 110(3), 110(6) and 110(9) of Sicily's Regional Law No 9/2021

⁸ Constitutional Court, Judgment No 165/2023.