

JUDGMENT NO. 40 YEAR 2014

In this case the Court heard an application by the President of the Council of Ministers challenging legislation enacted by the self-governing province of Trento purporting to transfer to a provincial assessment body control powers vested in the Court of Accounts (a national body). The Court struck down the legislation as unconstitutional, holding *inter alia* that a situation in which checks were carried out by the provincial body alone “would be unable to ensure compliance with national requirements, neutrality, impartiality and independence vis-à-vis the general public finance interests at issue”.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 1(1), (2), (3), (4), (5) and (6), 2(1), 12 and 23(2) and (10) of Law of the autonomous province of Bolzano no. 22 of 20 December 2012 (Provisions on the formation of the budget for financial year 2013 and for the 2013-2015 three-year period – Finance Law 2013), initiated by the President of the Council of Ministers by the application served on 1-6 March 2013, filed in the Court Registry on 7 March 2013 and registered as no. 38 in the Register of Applications 2013.

Considering the entry of appearance by the autonomous province of Bolzano;
having heard the judge rapporteur Aldo Carosi at the public hearing of 14 January 2014;

having heard the State Counsel [*Avvocato dello Stato*] Massimo Massella Ducci Teri for the President of the Council of Ministers and Counsel Stephan Beikircher for the autonomous province of Bolzano.

[omitted]

Conclusions on points of law

1.– By the application referred to in the headnote, the President of the Council of Ministers raised a question concerning the constitutionality of Articles 1(1), (2), (3), (4), (5) and (6), 2(1), 12 and 23(2) and (10) of Law of the autonomous province of Bolzano no. 22 of 20 December 2012 (Provisions on the formation of the budget for financial year 2013 and for the 2013-2015 three-year period – Finance Law 2013), with reference to Articles 81(4), 97, 117(3) of the Constitution and Articles 8, 9 and 79 of Presidential Decree no. 670 of 31 August 1972 (Approval of the consolidated text of constitutional laws concerning the special status of Trentino-Alto Adige).

1.1.– Article 2(1) of Law of the autonomous province of Bolzano no. 22 of 20 December 2012 – which had provided for the grant of tax relief from the “single municipal tax” (*Imposta Municipale Unica* – IMU) for properties classed in land registry category D, which was not provided for under state legislation – was repealed by Article 5 of Law of the autonomous province of Bolzano no. 3 of 8 March 2013 (Amendment of provincial Law no. 5 of 19 February 2001 on the “Regulation of the profession of ski instructors and of skiing schools” and other provincial laws). As a result, the President of the Council of Ministers withdrew the relative challenge, which was subsequently accepted by the Province.

1.2.– By Law of the autonomous province of Bolzano no. 16 of 17 September 2013 (Amendment of provincial Law no. 22 of 20 December 2012 and provincial Law no. 3 of 8 March 2013, no. 3), paragraphs 2-bis, 3-bis, 4-bis, 5-bis and 5-ter, 6-bis and paragraph 2-bis – all of which made provision to cover the spending provided for thereunder – were introduced into Article 1 of Bolzano provincial Law no. 22 of 2012, whilst paragraph 2-bis was introduced into Article 23 of the provincial Law.

In view of these new developments, the President of the Council of Ministers withdrew the challenge also against Article 1(1) to (6) and Article 23(2). The autonomous province of Bolzano accepted that withdrawal.

1.3.– By the written statement filed on 24 December 2013, the applicant confirmed the withdrawal of all questions, except that relating to Article 12, in relation to which it submitted further arguments.

In addition, the President of the Council of Ministers did not mention Article 23(10) as one of the provisions covered by the withdrawal, with the result that the question concerning that provision still remained.

1.4.– Article 12 of Law of the autonomous province of Bolzano no. 22 of 2012 amended Law of the autonomous province of Bolzano no. 10 of 23 April 1992 (Reorganisation of the directorial structure of the autonomous province of Bolzano), replacing Article 3 and introducing the following sentence into Article 24(1) before the last sentence: “It shall also exercise the control functions provided for under Articles 148 and 148-bis of Legislative Decree no. 267 of 18 August 2000, as amended, vested in other bodies in other parts of the country”. This meant that the controls provided for under Articles 148 and 148-bis of Legislative Decree no. 267 of 18 August 2000 (Consolidated text of laws on the organisation of the local authorities) – known as the consolidated text on local authorities (TUEL) – were vested in the “Body for Assessing the Efficacy of Controls” established at the General Directorate of the Province.

The President of the Council of Ministers observes that Article 148 TUEL provides that the regional control divisions of the Court of Auditors must verify the legitimacy and propriety of management and the proper functioning of internal controls for the purposes of compliance with accounting and budgetary equilibrium rules within each local authority. He also recalls that Article 148-bis in turn provides that the regional divisions of the Court of Auditors shall also examine the budgets and closing accounts of the local authorities in order to verify compliance with the annual targets set by the internal stability pact, compliance with the requirement applicable to deficit levels under Article 119(6) of the Constitution, the sustainability of the deficit and to establish that there are no irregularities liable to upset, even potentially, the economic and financial equilibria of the authorities.

According to the applicant, in vesting such controls in its own “Body for Assessing the Efficacy of Controls”, the autonomous province of Bolzano removed the aforementioned powers from the Court of Auditors in breach of Articles 81(4), 97 and 117(3) of the Constitution and Articles 8, 9 and 79 of the Statute of the autonomous region of Trentino-Alto Adige. The provincial legislator is claimed to have acted in excess of its shared legislative competence over the “coordination of the public finances” – which was put in place for ordinary regions by Article 117(3) of the Constitution and extended pursuant to Article 10 of Constitutional Law no. 3 of 18 October 2001 (Amendments to Title V of Part II of the Constitution) – which lies with the autonomous province of Bolzano as a broader form of autonomy. In the written

statement filed on 24 December 2013, the President of the Council of Ministers also refers to the findings contained in the recent Judgment of the Constitutional Court, no. 60 of 2013.

1.5.– Article 23(10) of Law of the autonomous province of Bolzano no. 22 of 2012 amends Law of the autonomous province of Bolzano no. 16 of 2 December 1985 (Provisions governing public transport services), introducing the following paragraph after Article 16(1): “2. The allowance for kilometres travelled shall be paid at the same level as the standard cost falling under Article 17. The kilometre allowance for which public transport companies operating predominantly rural services are eligible may not exceed 12 percent of the actual kilometres travelled in service, whilst the allowance for public transport companies operating predominantly urban services may not exceed 6 percent. The provincial executive may adopt a resolution setting the arrangements and conditions governing exceptions from the percentages cited above”.

In the application, the President of the Council of Ministers complains, referring both to paragraph 2 and to paragraph 10 of Article 23, that the provincial provisions mentioned do not impose any limit on the cost of the service, which means that they are liable to result in higher costs, which have not been quantified and for which no financial coverage has been provided.

2. – As a preliminary matter, the proceedings must be ruled to have been terminated in relation to Articles 1(1), (2), (3), (4), (5) and (6), 2(1) and 23(2) of Law of the autonomous province of Bolzano no. 22 of 2012, pursuant to Article 23 of the supplementary rules on proceedings before the Constitutional Court.

3.– The question concerning Article 23(10), raised with reference to Article 81(4) of the Constitution, is inadmissible.

In fact, the applicant does not provide any reasons in support of the unconstitutionality averred.

4.– With regard to Article 12 of Law of the autonomous province of Bolzano no. 22 of 2012, it should be pointed out that, according to the report by the Minister for Regional Affairs, Tourism and Sport, to which the contested resolution refers, arguments have been provided in support of the challenges only in relation to paragraph 2. Since, given the political nature of the application (see Judgment no. 278 of 2010), the resolution approving the challenge delineates the subject matter of the proceedings

and determines with mandatory effect the scope within which the State Council may provide the relative professional representation (see *inter alia* Judgment no. 149 of 2012), it must be concluded that the scope of the constitutional review must be limited to paragraph 2.

This provision stipulates that the assessment body provided for under Article 24 of Law of the autonomous province of Bolzano no. 10 of 1992, as amended, “shall also exercise the control functions provided for under Articles 148 and 148-bis of Legislative Decree no. 267 of 18 August 2000, as amended, vested in other bodies in other parts of the country”.

4.1.– In view of the above, the questions raised against Article 12(2) of Law of the autonomous province of Bolzano no. 22 of 2012 with reference to Articles 81(4) and 117(3) of the Constitution in relation to the “coordination of public finances” and Articles 8, 9 and 79 of the Special Statute are well founded.

Article 148(1) of Legislative Decree no. 267 of 2000 expressly defines the review of local authority budgets as a financial control of legitimacy and propriety, whilst Article 148-bis of Legislative Decree no. 267 of 2000 provides that “1. The regional divisions of the Court of Auditors shall examine the budgets and closing accounts of the local authorities pursuant to Article 1(166) et seq of Law no. 266 of 23 December 2005 in order to verify compliance with the annual targets set by the stability pact, compliance with the requirement applicable to deficit levels under Article 119(6) of the Constitution, the sustainability of the deficit [and] establishing that there are no irregularities liable to upset, even potentially, the economic and financial equilibria of the bodies. 2. For the purposes of the control provided for under paragraph 1, the regional control divisions of the Court of Auditors shall also ensure that these closing accounts take account also of interests held in companies controlled by the public sector, which are charged with the management of public services for the local public and essential services for the authority. 3. As part of the control falling under paragraphs 1 and 2, if a finding is made by the competent regional control divisions of the Court of Auditors establishing economic or financial imbalances, a lack of coverage for expenditure, the violation of rules intended to guarantee proper financial management or the failure to comply with the objectives laid down in the internal stability pact, the authorities concerned shall be obliged to adopt measures suitable for resolving the

irregularities and restoring the budgetary equilibria within sixty days of notice of the issue of such a ruling. These measures shall be forwarded to the regional control divisions of the Court of Auditors, which must review them within thirty days of receipt. If the authority does not arrange for the aforementioned measures to be transmitted or the review by the regional control division results in a negative finding, it shall not be possible to implement expenditure programmes that have been certified to lack financial coverage or certified as not financially sustainable”.

According to the combined provisions of Article 12(2) of Law of the autonomous province of Bolzano no. 22 of 2012 and the provisions of the TUEL referred to – insofar as it applies to local authorities from the province – the contested provision transfers the powers vested by the TUEL in the Court of Auditors to a provincial assessment body, thereby altering *ratione loci* a control function vested under State legislation in the Court of Auditors. In this way, the Province considers that it has exercised a power vested in it under Articles 79, 80 and 81 of its Special Statute.

4.2.– This Court has already held that the power of the regions governed by special statute and the autonomous provinces to establish arrangements for the review of the acts of local authorities situated within their territory does not call into question the purpose of an instrument, such as the power of control vested in the Court of Auditors, “as an independent body (see Judgment no. 64 of 2005) working in the service of the ‘state community’ (see Judgments no. 29 of 1995 and no. 470 of 1997), [as guarantor of compliance with] the unitary equilibrium of the overall public finances. Moreover, the need to coordinate public finances [...] applies also to the regions and provinces with special autonomous powers, as it cannot be doubted that their finances also form part of the ‘public finances in a broad sense’, as already asserted by this Court (see in particular Judgment no. 425 of 2004)” (see Judgment no. 267 of 2006).

The coexistence of parallel powers of the Court of Auditors and local government bodies with special powers of autonomy by no means implies – as will be clarified in greater detail below – that the controls vested in each will coincide and overlap, nor that the autonomous province has the requisite legislative power to bring all of those controls within its sphere of competence.

First and foremost, the two types of review attributed to the Court of Auditors and the autonomous province of Bolzano are inspired by different reasons and governed by

different operational arrangements, including with regard to the interests actually protected, which for the former relate to the state finances overall and for the latter to the provincial finances.

4.3.– On account of the different goals and morphology of the financial controls that may be vested in the regions governed by special statute and the autonomous provinces of Trento and Bolzano and those vested in the Court of Auditors, it is appropriate to mention the current relationship between the provisions governing the external and internal stability pact and – more generally – between the financial limits agreed to by Italy with the Community authorities and the criteria according to which the state allocates those restrictions between the bodies comprising the public sector *lato sensu*, including first and foremost local government bodies. In fact, the provisions contained in Article 148(1) and Article 148-bis of Legislative Decree no. 267 of 2000, as respectively amended and introduced by Article 3(1)(e) of Decree-Law no. 174 of 2012, are intended to give effect precisely to the complex financial relations resulting from those obligations.

Under the external stability pact and, more generally, the public finance limits, Italy is under an obligation towards the European Union to adopt policies to control public spending, compliance with which is verified in the consolidated budget of the public administrations (see Judgments no. 138 of 2013, no. 425 and no. 36 of 2004). In order to ensure compliance with the said Community obligations, it is necessary to put in place controls over the budgets and closing accounts of the administrations included in the consolidated budget, which is indispensable in order to verify compliance with the public finance objectives underlying those restrictions. Since these restrictions result from the Treaty on European Union and other agreements concluded in this area, they are directly related not only to the “coordination of the public finances” invoked by the applicant but also the parameters laid down in Articles 11 and 117(1) of the Constitution, which are inseparably linked to these, since in this specific case, coordination furthers principally the goals of putting in place effective instruments to review compliance with the restriction applicable to public finances as a whole, the sum total of which is decisive for establishing results amenable to comparison in order to verify compliance with the objectives programmed.

These obligations arose – as has already been stressed by this Court (see Judgment no. 36 of 2004) – at the time the stability pact became binding also on the public administrations included in the consolidated national accounts. The consolidated national accounts must comply with the parameters laid down by the European Union whilst their aggregate components, comprised of the accounts of the bodies comprising the public sector *lato sensu*, are subject to state legislation which coordinates their contribution to fulfilling the objective specified under Community law.

The controls by the regional divisions of the Court of Auditors – which have been in place following the enactment of Article 1(166) et seq of Law no. 266 of 23 December 2005 (Provisions on the formation of the annual and multi-year budget of the state – Finance Law 2006) and were later enacted within Article 148-bis TUEL – have become increasingly mandatory in nature for the addressees (see Judgment no. 60 of 2013), precisely in order to prevent or combat the improper management of accounts, which is liable to alter the budgetary equilibrium (Article 81 of the Constitution) and to pass on those failures to the consolidated accounts of the public administrations, thus thwarting the function of coordination of the state in order to ensure compliance with Community obligations.

Therefore, this type of review, which the contested provision seeks to focus on the powers of the autonomous province of Bolzano, is exercised in the interest of the state for purposes related to the public finances as a whole and cannot be confused or overlapped with the controls carried out by a local government body vested with special powers of autonomy.

Due to its inherent goal, this type of check cannot be left to one single self-governing territorial body, even if it is governed by special statute, which would be incapable of ensuring compliance with national requirements, neutrality, impartiality and independence vis-à-vis the general public finance interests at issue. These interests transcend the territory of the province and may potentially be dialectically opposed to the interests of the autonomous province in terms of the actual manner in which the individual provincial bodies comply with the public spending limits.

4.4.– In this regard, the objection made by the autonomous province that the area of law is governed – as far as local government bodies with special autonomous powers are concerned – by the principle of agreement, which in this case was claimed to have

been entirely disregarded, is unfounded. On the other hand, state legislation - duly supplemented by specific agreements with local government bodies vested with special autonomous powers - provides the legislative parameter for the new types of control of the local authorities, which have been vested in the Court of Auditors from financial year 2006 onwards under national legislation.

The autonomous province confuses the legislation regulating the arrangements for reconciling the financial relations between the state and local government bodies with special autonomous powers – for which agreement is required, notwithstanding the requirement that they contribute to the achievement of objectives in this area (see *inter alia* Judgment no. 425 of 2004) – with the legislation governing the uniform and general review of the accounts of the local authorities for the purposes of ensuring compliance with overall public finance limits, also in relation to restrictions imposed by Community law, which power the state legislator has vested in the Court of Auditors by virtue of its nature as a body working in the service of the state as a whole (see Judgments no. 60 of 2013, no. 198 of 2012 and no. 267 of 2006).

Having established that the content and effects of the rulings of the Court of Auditors cannot be regulated by regional legislation (see Judgment no. 39 of 2014), it is consequently beyond doubt that the autonomous province cannot appropriate that power of control by incorporating it into its sphere of powers.

Therefore, since the agreements concluded with the regions governed by special statute concern the specific arrangements for implementing Community and national requirements within the territory of the province or the region, they amount to a primary normative parameter in this area for regulating the management of sub-regional bodies, which include the local authorities from the territory concerned. Moreover, such agreements cannot concern the arrangements governing the financial review of the local authorities, which must be uniform, neutral and impartial throughout the entire country and which – in view of that requirement – have been vested in the Court of Auditors.

4.5.– This does not mean that, despite their different aims, the controls by the Court of Auditors and the regions cannot be functionally related to each other. Within that perspective, the framework laid down by Article 79(3) of the Statute for Trentino-Alto Adige, which was invoked by the respondent in support of its arguments, is perfectly consistent.

That provision stipulates that: “In order to ensure that they contribute to public finance objectives, the region and the provinces shall reach agreement with the Ministry for the Economy and Finance concerning the obligations relating to the internal stability pact with reference to the budgetary balances to be achieved in each period. Without prejudice to the overall public finance objectives, it shall be for the provinces to lay down obligations relating to the internal stability pact and to arrange for coordination between the local authorities, their own bodies and institutions performing provincial functions, health authorities, non-state universities falling under Article 17(120) of Law no. 127 of 15 May 1997, the chambers of commerce, industry, crafts and agriculture and the other bodies or institutions governed by regional or provincial law that are ordinarily financed by them. The measures adopted for the regions and other bodies in other parts of the national territory shall not apply. With effect from 2010, the objectives of the internal stability pact shall be determined taking account also of the positive effects on the net deficit resulting from the application of the provisions laid down in this Article and the respective implementing legislation. The provinces shall oversee compliance with public finance objectives by the bodies falling under this paragraph and shall exercise *ex post* management control over them, and shall give notice of the results to the competent division of the Court of Auditors”.

There is an evident functional link between that provision and the power of control vested under state legislation in the Court of Auditors: it provides that the results of the control carried out by the region and the autonomous provinces with the aim of ensuring territorial coordination shall be communicated to the competent divisions of the Court of Auditors so that they may be incorporated appropriately into the checks carried out by the latter, which are necessary in order to conduct the review of the legitimacy and propriety of the accounts of the individual local authorities, which is in turn essential in order to verify compliance with restrictions imposed under Community and national law on the accounts of public sector bodies operating throughout the country.

Therefore, the statute does not vest the autonomous province of Bolzano with any direct competence to review the legitimacy and propriety of the accounts of the local authorities, but associates its powers in relation to the review of local finance and management with those attributed to the Court of Auditors, thereby indirectly acknowledging their separate status.

4.6.– Within this perspective, the further objection brought by the autonomous province of Bolzano that the vesting in the Court of Auditors of a power of review such as that provided for under Articles 148(1) and 148-bis of Legislative Decree no. 267 of 2000 is not compatible with the special form of autonomy recognised under constitutional law and the statute and with the cooperative nature of the control carried out by the Court of Auditors is also unfounded.

The considerations set out above in relation to the aim of the review of legitimacy and propriety provided for under Articles 148(1) and 148-bis TUEL and the close relationship between that activity and Articles 81(4) and 117(3) of the Constitution also justify the conferral upon the Court of Auditors of powers capable of preventing - with direct effect - any practices liable to undermine the principle of prior coverage and dynamic equilibrium of local authority budgets (see Judgments no. 266, no. 250 and no. 60 of 2013).

These preclusions are not indicative of any supremacy on the part of the state or of a power to sanction the local authorities, nor are they attributable to control based on cooperation *stricto sensu*; by contrast, they are intended to ensure compliance with the “obligations taken on by the state towards the European Union in the area of budgetary policy. Within this perspective, which is conducive to furthering the principles of the coordination and harmonisation of the public finances, [such controls] [...] may also be associated with measures capable of preventing practices that run contrary to the principles of advance coverage and balanced budgets (see Judgments no. 266 and no. 60 of 2013), which are fully justified in view of the neutral and independent nature of the control of the lawfulness of spending carried out by the Court of Auditors (see Judgment no. 226 of 1976” (see Judgment no. 39 of 2014).

In particular, the review of legitimacy and propriety with reference to accounting requirements vested in the Court of Auditors in relation to these particular objectives may result in one of two outcomes (see Judgments no. 179 of 2007 and no. 60 of 2013), in the sense that it must assess whether or not the budgets and closing accounts comply with the stability pact, whether they are balanced or not and whether they violate the rules expressly put in place for those purposes. Although this Court has already ruled on this issue - holding unfounded the jurisdictional dispute raised by the autonomous province of Bolzano itself against the exercise of this type of control over the local

authorities by the local division of the Court of Auditors (see Judgment no. 60 of 2013) - the review of the legitimacy and propriety of accounts limits the function of the Court of Auditors to the *ex ante* and concomitant protection of budgetary equilibria and sound financial management in accordance with the rules on the coordination of the public finances, which apply uniformly throughout the country, and does not interfere with the particular political and administrative autonomy of the administrations to which it applies (see Judgment no. 39 of 2014)

4.7.– Therefore, Article 12(2) of Law of the autonomous province of Bolzano no. 22 of 2012 violates Articles 81(4) and 117(3) of the Constitution and Articles 8, 9 and 79 of the Special Statute and must be declared unconstitutional on the grounds that it removes the review of the legitimacy and propriety of the accounts of the local authorities within the autonomous province, which is intended to ensure compliance – on provincial level – with the limits and equilibria pertaining to the public finances as a whole, to the implementation of which those bodies contribute, from the Court of Auditors – a body charged with such a task under state legislation – in order to bring it within the powers of the province, notwithstanding the absence of any provision to that effect in the Statute.

The further challenges brought against Article 12 of Law of the autonomous province of Bolzano no. 22 of 2012 with reference to Article 97 of the Constitution are moot.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) rules that Article 12(2) of Law of the autonomous province of Bolzano no. 22 of 20 December 2012 (Provisions on the formation of the budget for financial year 2013 and for the 2013-2015 three-year period – Finance Law 2013) is unconstitutional;

2) rules that the question concerning the constitutionality of Article 23(10) of Law of the autonomous province of Bolzano no. 22 of 2012, raised with reference to Article 81(4) of the Constitution by the President of the Council of Ministers by the application referred to in the headnote, is inadmissible;

3) terminates the proceedings in relation to the questions concerning the constitutionality of Article 1(1), (2), (3), (4), (5) and (6) and Article 23(2) of Law of the autonomous province of Bolzano no. 22 of 2012, raised with reference to Article 81(4)

of the Constitution by the President of the Council of Ministers by the application referred to in the headnote;

4) terminates the proceedings in relation to the question concerning the constitutionality of Article 2(1) of Law of the autonomous province of Bolzano no. 22 of 2012, raised with reference to Articles 117(3) and 119 of the Constitution and Articles 8 and 9 of Presidential Decree no. 670 of 31 August 1972 (Approval of the consolidated text of constitutional laws concerning the special status of Trentino-Alto Adige) by the President of the Council of Ministers by the application referred to in the headnote.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 26 February 2014.