JUDGMENT NO. 88 YEAR 2014

In this case the Court heard an application by two self-governing territories (an autonomous region and an autonomous province) objecting that state legislation enacted in order to ensure compliance with the EU Fiscal Compact encroached upon their prerogatives as autonomous self-governing bodies and that the new measures violated the requirement that such measures be based on mutual consent. In a mixed judgment, the Court on the one hand ruled unconstitutional the delegation of power to secondary legislation insofar as it provided for anything in excess of merely "technical" implementing rules, also ruling unconstitutional a provision limiting the extent of the local government bodies' ability to participate in the procedures for determining the contribution by local government bodies to a central fund for paying back government debt. However, the Court rejected as unfounded the objections that the state could only enact general principles in this area, and not detailed legislation, as the new constitutional law had established exclusive state jurisdiction over local government deficits in place of the shared jurisdiction previously in place.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 9(2) and (3), 10(3), (4) and (5), 11 and 12 of Law no. 243 of 24 December 2012 (Provisions on the implementation of the principle of a balanced budget pursuant to Article 81(6) of the Constitution), raised by the autonomous region of Friuli-Venezia Giulia and the autonomous province of Trento by the applications served on 16 March 2013, filed in the Court Registry on 20 and 21 March 2013 and registered as nos. 48 and 49 in the Register of Applications 2013.

Considering the entries of appearance by the President of the Council of Ministers;

having heard the judge rapporteur Giancarlo Coraggio at the public hearing of 11 February 2014;

having heard Counsel Giandomenico Falcon for the autonomous region of Friuli-Venezia Giulia, Counsel Giandomenico Falcon and Counsel Luigi Manzi for the autonomous province of Trento and the State Counsel [*Avvocato dello Stato*] Giuseppe Fiengo for the President of the Council of Ministers

[omitted]

Conclusions on points of law

1.– The autonomous region of Friuli-Venezia Giulia and the autonomous province of Trento have challenged Articles 9(2) and (3), 10(3), (4) and (5), 11 and 12 contained in Chapter IV, entitled "Budgetary equilibrium of the regions and local authorities and the contribution by those bodies to the sustainability of the public debt", of Law no. 243 of 24 December 2012 (Provisions on the implementation of the principle of a balanced budget pursuant to Article 81(6) of the Constitution) on the grounds that they violate their prerogatives as laid down in the Constitution and the special statutes.

In particular, according to both applicants, paragraphs 3, 4 and 5 of Article 10, entitled "Recourse to deficit spending by the regions and local authorities", are claimed to enact detailed provisions in the area of deficit spending – which is already regulated in a more favourable manner under their respective statutes – in excess of the limits applicable to state action in the area of the coordination of public finances, to violate their financial autonomy, to encroach upon their legislative jurisdiction over local finance and to disregard the principle of consensus in determining the manner by which local government bodies with autonomous powers contribute to the achievement of public finance objectives. The parameters invoked by the autonomous region of Friuli-Venezia Giulia are Articles 4(1), no. 1 and no. 1-bis, Articles 48 et seq, 52 and 54 of Constitutional Law no. 1 of 31 January 1963 (Special Statute for Friuli-Venezia Giulia Region), Article 9 of Legislative Decree no. 9 of 2 January 1997 (Provisions implementing the Special Statute for Friuli-Venezia Giulia Region on the organisation of the local authorities and the constituent districts) and Articles 42 et seq of Friuli-Venezia Giulia regional Law no. 1 of 9 January 2006 (Fundamental principles and rules of the regional-autonomous local government system in Friuli-Venezia Giulia); those invoked by the autonomous province of Trento are Articles 69 et seq, 74, 79, 80, 81 and 104 of Presidential Decree no. 670 of 31 August 1972 (Approval of the consolidated

text of constitutional laws concerning the Special Statute for Trentino-Alto Adige), Article 17 of Legislative Decree no. 268 of 16 March 1992 (Provisions implementing the Special Statute for Trentino-Alto Adige in the area of regional and provincial finance), Article 31 of autonomous province of Trento Law no. 7 of 14 September 1979 (Provisions on budgetary matters and general accounting for the autonomous province of Trento) and Article 25 of autonomous province of Trento Law no. 3 of 16 June 2006 (Provisions on the government of the autonomous province of Trentino); in addition, both invoke Article 1(132), (136), (152) and (156) of Law no. 220 of 13 December 2010 (Provisions on the formation of the annual and multi-year budget of the state – stability law 2011) and Law no. 42 of 5 May 2009 (Delegation of power to the government in the area of tax federalism, implementing Article 119 of the Constitution).

Moreover, paragraph 5 of the Article is claimed to authorise the state to adopt regulations in an area falling under regional competence, in breach of Article 117(6) of the Constitution, whilst also violating Article 5(2)(b) of Constitutional Law no. 1 of 20 April 2012 (Introduction into the Constitution of the principle of a balanced budget) and the principle of loyal cooperation.

The applicants have also both contested paragraphs 2 and 3 of Article 9, entitled "Budgetary equilibrium of the regions and local authorities", as a derived violation due to the unconstitutionality of Article 10(3) and (5).

Also Article 12, entitled "Contribution by the regions and local authorities to the sustainability of the public debt", is argued to violate their financial autonomy and the principle of consent in determining the manner by which local government bodies with autonomous powers contribute to the achievement of public finance objectives; according to the autonomous region of Friuli-Venezia Giulia, it also violates its own powers over local finance and Article 5(2)(c) of Constitutional Law no. 1 of 2012 (the further parameters invoked by Friuli-Venezia Giulia are Articles 48 and 49 of Constitutional Law no. 1 of 1963, Article 9 of Legislative Decree no. 9 of 1997, Articles 42 et seq of Friuli-Venezia Giulia regional Law no. 1 of 2006 and Article 1(132), (136), (152) and (156) of Law no. 220 of 2010, whilst the autonomous province of Trento invokes Articles 75, 79, 104 and 109 of Presidential Decree no. 670 of 1972).

According to both applicants moreover − insofar as it provides that the decree of the President of the Council of Ministers allocating the contribution is to be adopted after

consultation with the Standing Assembly for the Coordination of the Public Finances, rather than with the agreement of the Joint Assembly − Article 12(3) violates the principle of loyal cooperation.

The autonomous province of Trento only has challenged "on consistency grounds" Article 11, entitled "Contribution by the state to the financing of the essential levels and fundamental functions during adverse stages of the economic cycle or following the occurrence of exceptional events", establishing a fund from the state deficit intended for allocation between all local government bodies.

In the event that these objections relating to Articles 11 and 12 are not accepted, the autonomous province of Trento has finally contested Article 11(3) on the grounds that it violates the principle of loyal cooperation.

The President of the Council of Ministers argues that the application overall is unfounded in that the entire area of law regulated by Law no. 243 of 2012 falls under the exclusive competence of the state by virtue of the inclusion − by Constitutional Law no. 1 of 2012 − of the "harmonisation of budgets" in letter r) of Article 117(2) of the Constitution and in accordance with the principles of budgetary equilibrium and the sustainability of public debt.

2.– In consideration of the fact that the contested provisions and challenges raised are substantially identical, the proceedings may be joined to be decided upon together.

3.– The challenge to Law no. 243 of 2012 is admissible since, notwithstanding its status as an "entrenched" law due to the parliamentary majority required for its approval, its status is nonetheless that of an ordinary law, and as such its legitimacy – and the extent of its limits – is rooted in Constitutional Law no. 1 of 2012, for which it lays down implementing provisions.

4.– The questions raised by the applicants relate to three different groups of provision concerning the rules applicable to deficits (Article 10), the budgetary equilibrium of the regions and local authorities (Article 9) and the contribution by the state and the regions and autonomous provinces respectively to the financing of essential service levels and basic functions relating to civil and social rights and the sustainability of the public debt (Articles 11 and 12).

The argument raised by the President of the Council of Ministers against all challenges is that the constitutional reform established a new exclusive state power, which is such as to justify the full scope of Law no. 243 of 2012.

5.– In order to assess this argument, it is necessary to set out the supranational and national legislative framework within which the contested provisions operate.

By the "Euro Plus" Pact approved by Eurozone heads of state and government on 11 March 2011, and endorsed by the European Council on 24-25 March 2011, the Member States of the European Union undertook to adopt measures to promote the sustainability of the public finances, competitiveness, employment and financial stability, and in particular to implement into national legislation the fiscal rules of the European Union laid down in the Growth and Stability Pact, whilst each Member State is entitled to choose "the specific national legal vehicle to be used", provided that "it has a sufficiently strong binding and durable nature (e.g. constitution or framework law)" and is capable of ensuring "fiscal discipline at both national and sub-national levels".

By the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (better known as the Fiscal Compact), signed in Brussels on 2 March 2012, which came into force on 1 January 2013 and was ratified in Italy by Law no. 114 of 23 July 2012 (Ratification and implementation of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union […]), the Contracting States undertook in Article 3(2) to transpose the "balanced budget rule" "through provisions of binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes".

The Italian state considered that it was possible to comply with these requirements by adopting a specific constitutional law – no. 1 of 2012 – which primarily, and insofar as is of relevance here, amended Articles 81, 97, 117 and 119 of the Constitution.

Article 81(6), as amended, asserts for the "public administrations overall" the principles of budgetary equilibrium between income and expenditure and debt sustainability, and stipulates the power, which may be exercised by a parliamentary law approved by an absolute majority of the members of each House, to establish the contents of the budgetary law, in addition to "fundamental rules and criteria with the aim of ensuring" the implementation of the two principles referred to.

According to the new Article 97(1) of the Constitution, "The public administrations, acting in accordance with EU law, shall ensure that a balanced budget is achieved and that the public debt is sustainable".

Article 117 of the Constitution was amended by uncoupling the "harmonisation of public budgets" from the "coordination of the public finances and the tax system" and including it under the matters specified in paragraph two over which the state has exclusive legislative jurisdiction.

After recognising the financial autonomy of local government bodies in relation to income and expenditure, Article 119 of the Constitution was supplemented by the following provision: "in accordance with the requirement to operate a balanced budget", along with the phrase: "shall contribute to ensuring compliance with the economic and financial obligations imposed by EU law". The second sentence of paragraph six, which provides that local government bodies "May only operate deficits in order to finance investment expenditure", was supplemented by the following phrase: "provided that repayment plans are drawn up at the same time and that the requirement of a balanced budget is complied with by the bodies from each region considered overall".

As regards the provisions of Constitutional Law no. 1 of 2012 that are not incorporated into the Constitution, those relevant in this case stipulate the mandatory content of the entrenched law. It is vested in particular with the task of regulating "the introduction of expenditure rules that enable budgetary equilibria to be safeguarded and the public debt to gross domestic product ratio to be reduced over the long term, in line with public finance objectives" (Article 5(1)(e)); "the arrangements according to which the municipalities, the provinces, the metropolitan cities, the regions and the autonomous provinces of Trento and Bolzano are to contribute to the sustainability of the debt of the public administrations as a whole" (Article 5(2)(c)); and finally "the ability of the municipalities, the provinces, the metropolitan cities, the regions and the autonomous provinces of Trento and Bolzano to operate deficits pursuant to Article 119(6), second sentence, of the Constitution, as amended by Article 4 of this Constitutional Law" (Article 5(2)(b)).

6.− Nonetheless, within this complex reform of the public finances, the only new exclusive competence of the state, which has been invoked by the government representative, is that requiring the harmonisation of public budgets, which until the

amendment introduced by Constitutional Law no. 1 of 2012 was coupled (within a "hendiadys": see Judgment no. 17 of 2004) with the coordination of the public finances.

However, it cannot be interpreted so broadly as to cover all the matters regulated by Law no. 243 of 2012: to this effect, it is sufficient to note that the provisions on the deficits of local government bodies, which are also to be examined here, have been classified by this Court as falling under the coordination of the public finances (see Judgments no. 284 of 2009, no. 285 of 2007, no. 320 of 2004, no. 376 of 2003), whilst stressing that it is "inextricably linked" to "safeguarding budgetary equilibria" (see Judgment no. 70 of 2012).

A different approach must therefore be adopted to defining the nature and sustainability of the public debt, both of which criteria have also been invoked in support of the government representative's arguments. As already held by this Court in the analogous case involving the prohibition on running deficits other than for investment expenditure (Article 119(6) of the Constitution), this type of provision asserts "a requirement […] of a general nature" (see Judgment no. 245 of 2004) to which the public finances must be subjected.

In contrast to the previous case, on this occasion the constitutional legislator did not limit itself to setting out general principles, thereby leaving it to the interpreting body to identify the justifications for state implementing legislation (which were found by the Judgment cited to lie in Article 5 of the Constitution and the shared competence over the coordination of the public finances), but specifically regulated both the source – the entrenched law − and its content.

The new system of public finances staked out by Constitutional Law no. 1 of 2012 is thus internally consistent and complete, and it is therefore only on that basis that the questions of constitutionality raised in relation to the Law may be reviewed.

7.− The applicants challenge first and foremost paragraphs 3, 4 and 5 of Article 10, which govern the deficits of local government bodies: since the contested legislation makes detailed provision, it is claimed to reach beyond the limits applicable to state action in the area of the coordination of public finances, thereby breaching the detailed provisions contained in the respective statutes which already regulate such matters, to violate their financial autonomy, to encroach upon their competence over local finance and to disregard the principle of consent in determining the manner by which local

government bodies with autonomous powers contribute to the achievement of public finance objectives, thereby violating the parameters of constitutional law specified above.

7.1.− In the light of the clarifications provided above, it is necessary to establish whether the contested provisions are covered by the new constitutional provisions.

Of particular significance in this regard is Article 5(2)(b) of Constitutional Law no. 1 of 2012, according to which the entrenched law regulates "the ability of the municipalities, the provinces, the metropolitan cities, the regions and the autonomous provinces of Trento and Bolzano to run deficits pursuant to Article 119(6), second sentence, of the Constitution, as amended by Article 4 of this Constitutional Law". The provision thus envisages the adoption of state implementing legislation which does not appear in any way to be limited to general principles, and which must have identical content for all local self-governing bodies. Therefore, the fact that the contested legislation enacts detailed provisions and the fact that it is more stringent than that contained in the applicants' statutes does not mean that the parameter of constitutional law has been violated.

The guarantee of homogeneous legislation is inherent within the logic of the reform since, more so than in the past, it cannot be "conceded that every body, and thus every region, should make its own choices in relation to the specific implementation" (see Judgment no. 425 of 2004) of the requirements stipulated in relation to deficits. These are in fact general requirements which must apply "in a uniform manner for all bodies, [and thus] only the state may legitimately make such choices" (see Judgment no. 425 of 2004).

7.2.− This need for uniformity is moreover a corollary of the ancillary nature of the legislation on deficits vis-à-vis the principles of budgetary equilibrium and the sustainability of the public debt: as for these two principles, the need for uniformity must be deemed to refer to the "public administrations as a whole" (as under the current Articles 81(6) and 97 of the Constitution and, even more explicitly, the new Article 119 of the Constitution and Article 5(2)(c) of Constitutional Law no. 1 of 2012). In fact, whilst the primary addressee of the requirements imposed on public finances is the state, they must inevitably affect all institutional bodies that contribute to the formation of the "consolidated budget of the public administrations" (see Judgment no. 40 of

2014; see also Judgments no. 39 of 2014, no. 138 of 2013, no. 425 and no. 36 of 2004), in relation to which it is necessary to verify compliance with the commitments made on European and supranational level.

The reform is thus also based on Articles 11 and 117(1) of the Constitution along with – above all − the fundamental principles of the unitary nature of the Republic (Article 5 of the Constitution) and the economic and legal unity of the legal system (Article 120(2) of the Constitution) which unity already underpinned the provisions governing the public finances under the previous constitutional framework and has become more pronounced under the current framework.

It must be added that the implementation of the new principles, including in particular the principle of the sustainability of the public debt, implies a form responsibility under the "foundational" principles (see Judgment no. 264 of 2012) of solidarity and equality not only on the part of the institutions but also of each taxpayer towards every other, including those from future generations.

7.3.− Thus, the applicants' objections that their financial autonomy, their competence over local finance and the provisions of the statutes invoked have been violated are unfounded.

7.4.− For the same reasons, the challenges alleging the violation of the principle of consensus are also unfounded. In fact, whilst they may be more incisive and far-reaching than in the past, the new requirements are also governed by the principle laid down in Judgment no. 425 of 2004, according to which the provisions implementing rules on deficit limits laid down by Article 119(6) of the Constitution "apply in respect of all self-governing bodies, including those governed by special statute, and it is not necessary to activate the consultative mechanisms applicable to the implementation of statutes for this purpose".

8.– The applicants go on to challenge paragraph 5 of Article 10 of Law no. 243 of 2012, which provides that "A decree of the President of the Council of Ministers, adopted in consultation with the Standing Assembly for the Coordination of the Public Finances, shall lay down the criteria and arrangements for implementing this Article" on the grounds that it contemplates a legislative act from a secondary state source in an area falling under regional competence, in breach of Article 117(6) of the Constitution, and because it violates Article 5(2)(b) of Constitutional Law no. 1 of 2012, which

stipulates that provisions governing deficit levels must be contained in primary legislation.

The provision is claimed to be unconstitutional for another reason, specifically on the grounds that it violates the principle of loyal cooperation, in that it provides that the decree is to be adopted not in consultation with the Joint Assembly but rather with the Standing Assembly for the Coordination of the Public Finances, in which local government bodies are only partially involved, and from which the presidents of the region and of the province are excluded.

8.1.– The first two challenges, which may be considered together as they are closely related to each other, are well founded in part.

For the purpose of their review, it is necessary to establish the operational scope of the decree in question and, in particular, whether its content is merely technical. Whilst the applicants' assertion that powers to regulate this matter are vested by Constitutional Law no. 1 of 2012 in the entrenched law is undoubtedly correct, it is also the case that the very nature of the legislative act precludes its having to engage with aspects of the legislation that require merely technical action, as this Court has held this type of legislation to be constitutional with reference to the parameter laid down in Article 117(6) of the Constitution (see Judgments no. 139 of 2012 and no. 278 of 2010).

Besides, since the contested paragraph is limited to stipulating that the decree of the President of the Council of Ministers shall regulate the criteria and arrangements applicable to the implementation of Article 10, the effective normative space within which it is to operate must be established with reference to the other paragraphs of that Article.

The first paragraph provides that the recourse to deficit spending by local self-governing bodies is permitted exclusively in order to finance investment expenditure "in accordance with the arrangements and subject to the limits laid down in this Article and by state legislation". Therefore no tasks are ascribed to a decree of the President of the Council of Ministers.

The second paragraph specifies the rule that deficits may only be operated if repayment plans are put in place at the same time with a duration no longer than the useful life of the investment, which highlight both the impact of the obligations taken on

upon individual future financial years as well as the arrangements for covering the corresponding charges.

The first part of the paragraph thus lays down a "self-executing" rule, which does not require "criteria and arrangements for implementing" [the Article] to be identified.

On the other hand, these come into play in the second part concerning the "highlighting" of the impact of the obligations taken on upon individual future financial years and the techniques for covering the corresponding charges. This activity falls under the harmonisation of budgets, which falls exclusively to the state pursuant to Article 117(2)(e) of the Constitution and evidently requires supplementary legislation which is exclusively technical in nature.

Also the third paragraph contains various rules.

The third part imposes a direct quantitative limit on deficits, with the result that no scope for action is left to the decree of the President of the Council of Ministers.

As regards the first part on the operation of deficits, it only allocates to the decree the task of establishing the arrangements governing the communication of cash balances and investments planned, with the result that it will apply within the area of the coordination of information and statistics, which falls under the exclusive competence of the state (Article 117(2)(r) of the Constitution).

Finally, the fourth paragraph makes provision in the event of the failure to comply with the equilibrium of the regional budget *lato sensu* and the allocation of the negative balance between local government bodies in breach; in this regard, the decree may make provision specifying the allocation criteria. The definition of its task in such broad terms (the identification of "criteria and arrangements for implementing") would entail the exercise in this regard of a power that is not only purely technical, but also discretionary. In order to avoid such an eventuality, and thus to ensure that the contested provision is constitutional, the decree must be deemed to have a merely technical function of implementation.

Paragraph 5 of Article 10 is thus unconstitutional insofar as it does not include the word "technical", before the phrase "criteria and arrangements for implementing this Article".

Naturally, were the decree to extend beyond the limits specified, thereby impinging upon the prerogatives of local government bodies with autonomous powers, it would be

possible "to exercise the remedies permitted by law, including if appropriate the initiation of a jurisdictional dispute before this Court" (see Judgments no. 121 of 2007 and no. 376 of 2003).

8.2.− The challenge alleging a violation of the principle of loyal cooperation is unfounded.

Once the possible content of the decree of the President of the Council of Ministers has been defined and limited in the manner indicated, the requirement for agreement with the Standing Assembly for the Coordination of the Public Finances appears to be "a procedural guarantee in itself sufficient" (see Judgment no. 376 of 2003; to the same effect see Judgment no. 121 of 2007) of the involvement of local self-governing bodies, considering that it is appropriate to choose a body incorporating also technical expertise.

9.– The applicants have also challenged paragraphs 2 and 3 of Article 9 entitled "Budgetary equilibrium of the regions and local authorities", and have limited themselves to asserting that "The unconstitutionality of Article 10(3) and (5) would ultimately render unconstitutional also Article 9(2) and (3) insofar as they refer respectively to paragraph Article 10(4), specifying that those provisions should apply notwithstanding, and the 'arrangements provided for under Article 10' concerning the allocation of active balances to the financing of investment expenditure".

The question is inadmissible.

This Court has repeatedly asserted that "a direct application must first and foremost 'identify precisely the question in legislative terms', indicating 'the provisions of constitutional and ordinary law, the resolution of the compatibility or incompatibility between which is the object of the question of constitutionality', and also 'contain even summary arguments in support of the request for a ruling that a law is unconstitutional' (see *inter alia*, Judgments no. 41 of 2013 and no. 114 of 2011; and Order no. 123 of 2012), as the requirement to provide adequate reasons in support of the challenge is 'even more pressing in proceedings in which the Court is seized directly compared to interlocutory proceedings' (see Order no. 123 of 2012, which refers also to Judgments no. 139 of 2006 and no. 450 of 2005; and Order no. 11 of 2014)" (see Judgment no. 11 of 2014).

No indication has been provided in this case of the constitutional parameters deemed to have been violated. In addition, the arguments proffered by the applicants in

support of the allegation, having regard also to the highly complex nature of both Article 9 and Article 10, "do not reach the minimum threshold of clarity and completeness required in order for challenges directly submitted to the Court to be considered admissible (see *inter alia*, Judgment no. 312 of 2013)" (see Judgment no. 11 of 2014).

10.– As noted above, the third group of challenges brought by both applicants relates to Article 12, entitled "Contribution by the regions and local authorities to the sustainability of the public debt", paragraphs 2 and 3 of which provide that the regions and the local authorities shall contribute to the fund for repaying government bonds "During favourable stages of the economic cycle" on a scale determined by decree of the President of the Council of Ministers on the basis of the financial planning document.

The contested provisions are also claimed to violate the financial autonomy of the applicants as they would end up being deprived of part of the resources provided for under their statutes, and Article 5(2)(c) of Constitutional Law no. 1 of 2012, which it is claimed simply allocates to state law the task of setting the arrangements governing the contribution of the regions to ensuring the sustainability of the debt of the public administrations as a whole, whilst "the existence and quantum of the contribution", as far as local government bodies with autonomous powers are concerned, should be determined according to the standard mechanisms based on consensus.

In providing that the local authorities must contribute to the restructuring of the state finances, the autonomous region of Friuli-Venezia Giulia adds that the contested provisions also violate its competence over local finances.

10.1.– The question may be examined along with the further question brought by the autonomous province of Trento only concerning Article 11, entitled "Contribution by the state to the financing of the essential levels and fundamental functions during adverse stages of the economic cycle or following the occurrence of exceptional events" which, pursuant to Article 5(1)(g) of Constitutional Law no. 1 of 2012, establishes a fund supported "resources obtained from the recourse to deficit spending permitted by the correction, due to the effects of the economic cycle, of the balance of the consolidated account" intended for distribution between all local government bodies.

Although it is "favourable" to it, the applicant objects to it "on consistency grounds" in view of the challenges directed against Article 12, "insofar as it forms part of the same overall legal mechanism".

10.2.− The questions are unfounded.

The autonomous province of Trento has pointed, not incorrectly, to the connection between the two Articles: the simultaneous establishment of the funds compellingly highlights how the need to guarantee financial rigour (Article 12), even at the cost of not insignificant sacrifices, cannot be separated from the no less significant need to protect essential service levels and the exercise of basic functions relating to civil and social rights (Article 11).

Given their complementary nature, the *raison d'etre* for both provisions thus lies in the general body of constitutional principles referred to above, including in particular the principles of solidarity and equality, according to which all local government bodies, and ultimately all citizens, must make the sacrifices necessary in order to guarantee the sustainability of the public debt, also within the perspective noted of intergenerational fairness.

As regards the objection alleging a violation of Article 5(2)(c) of Constitutional Law no. 1 of 2012, the breadth of the formula used in order to identify the content of the entrenched law ("the arrangements according to which […] the regions and the autonomous provinces of Trento and Bolzano are to contribute to the sustainability of the debt of the public administrations as a whole") is such as to encompass also issues relating to the existence and the quantum of the contribution, without being subject to the limit of the principle of consent, for the same reasons as those mentioned above in relation to the provisions on deficits.

10.3.– A further objection that the principle of loyal cooperation has been violated is directed by both applicants against Article 12(3) insofar as it provides that the decree of the President of the Council of Ministers allocating the contribution provided for under that Article is to be adopted after consultation with the Standing Assembly for the Coordination of the Public Finances, rather than with the agreement of the Joint Assembly, in which local government bodies are more closely involved, and which include in particular both the president of the region and the president of the province.

The question is well founded.

Whilst it cannot be denied that the contribution to ensuring the sustainability of the national debt is a fundamental aspect of the reform, it is also true that it has had a significant impact on the financial autonomy of the applicants. It is thus necessary to "strike a balance between the interests favouring the unitary exercise of certain powers and the guarantee of the functions vested under constitutional law" in local self-governing bodies (see Judgments no. 139 of 2012 and no. 165 of 2011; see also Judgment no. 27 of 2010): it is therefore essential that their full involvement be guaranteed.

To that effect, it is necessary first that the procedure be conducted not within the Standing Conference for the Coordination of the Public Finances, but rather the Joint Conference in order to ensure that all local government bodies are able to cooperate in the decision making stage. It is also necessary that this cooperation be based on agreement, considering the scale of the sacrifice imposed and the delicate nature of the task which the Assembly is called upon to perform.

In this last regard it is noted that this will not impair the proper functioning of the system: indeed, this form of participation does not entail a risk of deadlock in decision making, since in the event of disagreement, subject to the requirement to adopt "appropriate procedures to enable repeated negotiations aimed at resolving differences" (see Judgments no. 179 of 2012, no. 121 of 2010, no. 24 of 2007 and no. 339 of 2005), the final decision may only be taken by the state (see Judgments no. 239 of 2013, no. 179 of 2012, no. 165 and no. 33 of 2011).

Paragraph 3 of Article 12 must therefore be declared unconstitutional insofar as it provides that "The contribution referred to under paragraph 2 shall be allocated between the bodies referred to under paragraph 1 by decree of the President of the Council of Ministers, after consultation with the Standing Assembly for the Coordination of the Public Finances", rather than "The contribution referred to under paragraph 2 shall be allocated between the bodies referred to under paragraph 1 by decree of the President of the Council of Ministers, with the agreement of the Joint Assembly pursuant to Article 8 of Legislative Decree no. 281 of 28 August 1997, as amended".

11.− In the eventuality that the questions relating to Articles 11 and 12 examined above were not accepted, the autonomous province of Trento finally challenged Article 11(3) of Law no. 243 of 2012 on the grounds that it violates the principle of loyal

cooperation, insofar as it provides that the decree of the President of the Council of Ministers allocating the fund is to be adopted "after consultation with the Standing Conference for the Coordination of the Public Finances", in which the local government bodies are only partially involved, and which exclude the president of the province, rather than following agreement within the Joint Conference.

The question is unfounded because the contested legislation falls under the exclusive competence of the state (Article 117(2)(m) of the Constitution) over the "determination of the basic level of benefits relating to civil and social entitlements to be guaranteed throughout the national territory", which means that there is no particular requirement for local self-governing bodies to be involved in this case (see Judgments no. 62 of 2013, no. 299, no. 293 and no. 234 of 2012).

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

hereby,

1) declares that Article 10(5) of Law no. 243 of 24 December 2012 (Provisions on the implementation of the principle of a balanced budget pursuant to Article 81(6) of the Constitution) is unconstitutional insofar as it does not include the word "technical", before the phrase "criteria and arrangements for implementing this Article";

2) rules that Article 12(3) of Law no. 243 of 2012 is unconstitutional insofar as it provides that "The contribution referred to under paragraph 2 shall be allocated between the bodies referred to under paragraph 1 by decree of the President of the Council of Ministers, after consultation with the Standing Assembly for the Coordination of the Public Finances", rather than "The contribution referred to under paragraph 2 shall be allocated between the bodies referred to under paragraph 1 by decree of the President of the Council of Ministers, with the agreement of the Joint Assembly pursuant to Article 8 of Legislative Decree no. 281 of 28 August 1997, as amended".

3) rules that the questions concerning the constitutionality of Article 10(3), (4) and (5) of Law no. 243 of 2012, raised with reference to Articles 4(1), no. 1 and no. 1-bis, Articles 48 et seq, 52 and 54 of Constitutional Law no. 1 of 31 January 1963 (Special Statute for Friuli-Venezia Giulia Region), Article 9 of Legislative Decree no. 9 of 2 January 1997 (Provisions implementing the Special Statute for Friuli-Venezia Giulia Region on the organisation of the local authorities and the constituent districts) and

Articles 42 et seq of Friuli-Venezia Giulia regional Law no. 1 of 9 January 2006 (Fundamental principles and rules of the regional-autonomous local government system in Friuli-Venezia Giulia) by the autonomous province of Friuli-Venezia Giulia, and with reference to Articles 69 et seq, 74, 79, 80, 81 and 104 of Presidential Decree no. 670 of 31 August 1972 (Approval of the consolidated text of constitutional laws concerning the Special Statute for Trentino-Alto Adige), Article 17 of Legislative Decree no. 268 of 16 March 1992 (Provisions implementing the Special Statute for Trentino-Alto Adige in the area of regional and provincial finance), Article 31 of autonomous province of Trento Law no. 7 of 14 September 1979 (Provisions on budgetary matters and general accounting for the autonomous province of Trento) and Article 25 of autonomous province of Trento Law no. 3 of 16 June 2006 (Provisions on the government of the autonomous province of Trentino) by the autonomous province of Trento, and with reference to Article 1(132), (136), (152) and (156) of Law no. 220 of 13 December 2010 (Provisions on the formation of the annual and multi-year budget of the state – stability law 2011) and Law no. 42 of 5 May 2009 (Delegation of power to the government in the area of tax federalism, implementing Article 119 of the Constitution) by the autonomous region of Friuli-Venezia Giulia and the autonomous province of Trento by the applications referred to in the headnote, are unfounded.

4) rules that the question concerning the constitutionality of Article 10(5) of Law no. 243 of 2012, raised with reference to the principle of loyal cooperation by the autonomous region of Friuli-Venezia Giulia and the autonomous province of Trento, by the applications referred to in the headnote, is unfounded;

5) rules that the questions concerning the constitutionality of Articles 11 and 12 of Law no. 243 of 2012, raised with reference to Article 5(2)(c) of Constitutional Law no. 1 of 20 April 2012 (Introduction into the Constitution of the principle of a balanced budget) and Articles 75 and 79, 104 and 109 of Presidential Decree no. 670 of 1972 by the autonomous province of Trento by the application referred to in the headnote, are unfounded;

6) rules that the questions concerning the constitutionality of Article 12 of Law no. 243 of 2012, raised with reference to Article 5(2)(c) of Constitutional Law no. 1 of 2012, Articles 48 and 49 of Constitutional Law no. 1 of 1963, Article 9 of Legislative Decree no. 9 of 1997, Articles 42 et seq of Friuli-Venezia Giulia regional Law no. 1 of

2006 and Article 1(132), (136), (152) and (156) of Friuli-Venezia Giulia regional Law no. 220 of 2010 by the application referred to in the headnote, are unfounded;

7) rules that the question concerning the constitutionality of Article 11(3) of Law no. 243 of 2012, raised with reference to the principle of loyal cooperation by the autonomous province of Trento by the application referred to in the headnote, is unfounded;

8) rules that the questions concerning the constitutionality of Article 9(2) and (3) of Law no. 243 of 2012, raised by the autonomous region of Friuli-Venezia Giulia and the autonomous province of Trento by the applications referred to in the headnote, are inadmissible;

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 7 April 2014.