ORDER NO. 17 YEAR 2019

In this case, a group of senators objected to the usage of a procedural mechanism in the Senate whereby the government amended draft budgetary legislation by a block amendment, and also associated its approval with a confidence vote, thereby preventing amendments from being tabled. The Court noted that members of Parliament could theoretically have standing to initiate a jurisdictional dispute, although this matter turned upon the specific circumstances of each case. This is because standing lies only with bodies with the power "to state the definitive position of the respective branch of state", and members of Parliament have a right under Constitutional law to state "an intention that is in itself definitive and conclusive". However, due to the broad margin of appreciation in the application of parliamentary rules, the Court's power of review must be limited to cases in which violations are evidently identifiable already within a summary consideration. The Court held that, on the facts, this exacting test was not met in this case, although reserved the right to review particularly manifest violations of the rights of parliamentarians in future.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

ORDER

within proceedings concerning a jurisdictional dispute between branches of state arising in relation to the procedure followed in order to approve the bill "State budget for financial year 2019 and multi-year budget for the three-year period 2019-2021" (A.S. 981) approved on 23 December 2018, initiated by Senator Andrea Marcucci in his own right and as the group leader and current legal representative of the "'Democratic Party' Parliamentary Group" within the Senate of the Republic, along with other senators, by the application filed with the Court Registry on 28 December 2018 and registered as no. 8 in the Register of Jurisdictional Disputes between Branches of State 2018, admissibility stage.

Having heard the Judge Rapporteur Marta Cartabia in chambers on 9 January 2019.

[omitted]

Conclusions on points of law

1.– By the application under examination, thirty-seven senators have raised a jurisdictional dispute between branches of state in relation to the manner in which the Senate of the Republic approved the bill "State budget for financial year 2019 and multi-year budget for the three-year period 2019-2021" (A.S. 981), asking this Court to re-establish the proper exercise of its powers guaranteed under the Constitution, which have allegedly been violated by the Government, by the Chairperson of the Budget Committee, by the Conference of Chairs of Parliamentary Groups (hereafter, also the Conference of Group Leaders), and by the Speaker and the chamber of the Senate of the Republic.

The application was filed by thirty-seven senators in their capacity as individual members of Parliament from the "'Democratic Party' Parliamentary Group", comprising a qualified minority equal to one tenth of the members of the Senate. The applicants object to the serious reduction of the time available for discussion resulting specifically from the tabling by the Government of amendment 1.9000, which entirely replaced the original bill (known as a "block amendment"), which is alleged to have

frustrated the examination during committee stage and made it impossible for them to familiarise themselves with the text, thereby preventing the senators from participating in an informed manner in discussion and voting, in breach of the constitutional principles laid down in relation to the procedure applicable to the enactment of laws and loyal cooperation between branches of state.

The Court has not been requested to annul any of the acts considered to be unconstitutional.

2.– At this stage of the proceedings, the Constitutional Court is called upon exclusively to verify, pursuant to Article 37(3) and (4) of Law no. 87 of 11 March 1953 (Provisions on the Constitution and on the operation of the Constitutional Court), sitting in chambers and without hearing oral representations from the parties, whether the subjective and objective prerequisites are met for a jurisdictional dispute between branches of state and to assess whether the case involves a dispute, the resolution of which falls within its remit.

3.– The applicant senators have raised the dispute individually, as the "'Democratic Party' Parliamentary Group", and as a qualified minority equal to one tenth of the members of the Senate.

In this case, a minority of one tenth of the members of the Senate cannot be considered to have standing to raise a jurisdictional dispute (pursuant to Article 37 of Law no. 87 of 1953) because the powers that the Constitution vests in such a fraction of one of the houses of Parliament relate to matters different from that to which this dispute pertains. Specifically, the Constitution ultimately grants such a qualified minority of members of Parliament only the power to trigger a confidence vote in the Government in office by tabling a no-confidence motion (Article 94(5) of the Constitution) or to refer to the House the approval of a bill previously referred to the competent committee (Article 72(3) of the Constitution). It is entirely clear that these powers have not been impaired in this case, and indeed have nothing to do with the matter in dispute.

It must also be concluded that the "'Democratic Party' Parliamentary Group" does not have standing to initiate these proceedings for the fundamental reason that the application fails to contain the requisite information as to the manner in which the parliamentary group resolved to initiate a jurisdictional dispute before the Constitutional Court (on the indispensability of such an indication, see Order no. 280 of 2017).

It is therefore necessary to examine whether, in a case such as that which has now been brought before the Court for review, an individual member of Parliament has standing to act.

3.1.– It is indeed the case that the case law of the Constitutional Court has, also in recent times, in some cases expressly held that members of Parliament do not have standing to initiate jurisdictional disputes as individuals. Thus, for instance, it has been held that an individual member of Parliament does not have standing to initiate a jurisdictional dispute against the Government in order to uphold the prerogatives vested by the Constitution in the House as a whole of which he or she is a member (Order no. 163 of 2018, referred to by Order no. 181 of 2018). It is also a settled position (and has been since Judgment no. 1150 of 1988) that, in matters relating to parliamentary privilege, only the House to which the member belongs has standing to initiate a jurisdictional dispute against the judiciary and not the individual member of Parliament, given that the rationale for immunity is to protect the functioning of the constitutional body (as this Court has consistently asserted since the long-standing Judgment no. 9 of 1970). Moreover, also the individual members of a House cannot object to the violation of

legislative procedures conducted before the other house of Parliament, as any such violations are not liable to impinge upon their own powers and prerogatives (Orders no. 181 of 2018 and no. 277 of 2017).

However, it is also the case that within the above-mentioned proceedings, the Court has consistently reiterated that its rulings were "without prejudice to the question as to whether, under other circumstances, there could be [other forms of] constitutional powers vested in an individual, in order to protect which the individual member of Parliament may be entitled to initiate a jurisdictional dispute between branches of state" (Orders no. 181 and no. 163 of 2018, and, in the past, Order no. 177 of 1998; see also Judgment no. 225 of 2001).

Therefore, the case law examined above has not excluded outright the standing of an individual member of Parliament to initiate a jurisdictional dispute, but has rather precluded the existence of such standing in the specific cases that have come before it.

3.2.– The case currently before the Court does not fall under any of the scenarios for which this Court has excluded standing. It thus involves new circumstances, which must be examined on their individual merits in the light of the general principles developed within the case law of the Constitutional Court on jurisdictional disputes between branches of state. According to these principles, it is necessary to assess whether the senators are applying to this Court "in order to delineate the extent of the powers established for the various branches of state under constitutional law", and may consequently be classified "as bodies competent to state the definitive position of the branch of state to which they belong" pursuant to Article 37(1) of Law no. 87 of 1953.

Within the case law of the Constitutional Court, the concept of "branch of state" for the purposes of standing to initiate a jurisdictional dispute (pursuant to Article 37 of Law no. 87 of 1953) embraces all bodies for which a share of constitutional powers is recognised and guaranteed under the Constitution (*inter alia*, Judgments no. 87 and no. 88 of 2012) or that are charged with a public function that is relevant and guaranteed under the Constitution (Order no. 17 of 1978). As a result, the review of the standing of the applicants must be based on the recognition of the extent of the powers vested in individual members of Parliament under the Constitution, and it is necessary to verify whether, having regard to such powers, the individual senator may be regarded as being entitled to state the definitive position of the respective branch of state.

3.3.– The applicants are acting in order to uphold the power to participate in the legislative procedure which the Constitution supposedly guarantees to them as representatives of the Nation (Article 67 of the Constitution). That power is purportedly exercised through the tabling of bills and amendments (Article 71 of the Constitution) and through participation in the scrutiny of bills, both at committee stage and in the chamber (Article 72 of the Constitution). It is also stated to entail the "possibility for each member of Parliament to familiarise himself or herself with the text, to form his or her own opinion and position regarding it and to state that position publicly".

In effect, as has been established for some time, the Constitution identifies a range of prerogatives vested in the individual members of Parliament, which are different and distinct from those vested in them as members of the House, which – by contrast – it falls to each House to uphold (Judgment no. 379 of 1996). These include in general the right, which is necessary in order to exercise the free parliamentary mandate (Article 67 of the Constitution), to participate in discussions and resolutions, stating "opinions" and casting "votes" (to which Article 68 of the Constitution refers, albeit for the different purpose of identifying the extent of privilege); as regards specifically the scope of the

legislative function at issue in this dispute, the prerogatives of the individual representative also manifest themselves in the power of initiative, which is vested "in each member of the House" under Article 71(1) of the Constitution, including the power to table amendments, which may be exercised both during the committee stage and also within the chamber (Article 72 of the Constitution). Besides, the constitutional power of the Houses to enact legislation (Article 70 of the Constitution) manifests itself precisely through the tabling of draft legislation and amendments by members of Parliament on the basis of procedural rules set out in parliamentary regulations: were this not the case, that power would be reduced to the mere endorsement of choices made elsewhere.

The constitutional status of a member of Parliament thus embraces a complex body of powers including the right to speak, the right of initiative and the right to vote, which are vested in him or her individually as a representative of the Nation, considered individually, may be exercised autonomously and independently, and cannot be revoked or amended on the initiative of another parliamentary body. As a result, when exercising those powers, he or she states an intention that is in itself definitive and conclusive, which complies with the requirements laid down by Article 37(1) of Law no. 87 of 1953.

3.4.– Within the ambit of complex, articulate and multi-functional institutions such as Parliament and the individual Houses, various bodies may be conceptualised as self-standing branches capable of acting as parties within proceedings involving jurisdictional disputes. Any members of Parliament who, as mentioned above, by virtue of their institutional role are vested with distinct quotas or fractions of powers guaranteed under the Constitution must be able to apply to the Constitutional Court whenever their powers are infringed or usurped by other parliamentary bodies.

This Court has moreover already recognised, for example, that the Parliamentary Investigative Committee on Criminal Convictions (abolished following the 1987 referendum by Article 3 of Constitutional Law no. 1 of 16 January 1989, laying down "Amendments to Articles 96, 134 and 135 of the Constitution and Constitutional Law no. 1 of 11 March 1953, and provisions concerning the prosecution of criminal offences pursuant to Article 96 of the Constitution"; see in any case Judgment no. 13 of 1975), the Parliamentary Committee on General Direction and Oversight of Radio and Television Services (see, *inter alia*, Judgments no. 69 of 2009 and no. 502 of 2000, back to the long-standing Order no. 171 of 1997) and the Investigatory Committees established pursuant to Article 82 of the Constitution have standing to initiate a jurisdictional dispute (since Orders no. 229 and no. 228 of 1975).

3.5.– However, the standing to act of an individual member of Parliament must be strictly limited in objective terms, specifically to the violations that may be objected to within a jurisdictional dispute. It must be reiterated that jurisdictional disputes between branches of state cannot concern disputes relating exclusively to violations or the incorrect application of parliamentary regulations and the practices of each House (*inter alia*, Judgment no. 9 of 1959 and, more recently, Order no. 149 of 2016). Where they may be exhaustively classified in accordance with parliamentary law, the prerogatives asserted by the members of the Houses are protected within those Houses: for example, the Court has ruled that voting arrangements within the Houses may not be subject to review by external bodies (specifically, criminal justice authorities) as they are governed only by parliamentary rules (Judgment no. 379 of 1996).

This Court's involvement is also subject to a limit imposed by the principle of the autonomy of the Houses, which is guaranteed under the Constitution, in particular by Articles 64 and 72 of the Constitution.
The case law of the Constitutional Court has already acknowledged that the autonomy of constitutional bodies "is not entirely spent in the creation of rules, but also includes (as is logical) the application of those rules, including making choices concerning the concrete adoption of measures suitable for ensuring compliance with them" (see most recently Judgment no. 262 of 2017). That moment of application comprises "remedies against any acts and practices that impair the functions of individual members of Parliament and interfere with the proper conduct of business" (Judgment no. 379 of 1996).
Therefore, in an analogous manner to the position in other areas in which the Constitution leaves broad scope for political assessments, the Houses must be recognised as having a broad margin of appreciation in the application of parliamentary rules. Due respect for the autonomy of Parliament requires that the review by this Court must be strictly limited to breaches that result in manifest violations of the constitutional prerogatives of members of Parliament, and any such violations must be evidently identifiable already within a summary consideration.
Ultimately, in accordance with the principle of the autonomy of the Houses and in line with the case law referred to above, it must be concluded that, in order for a dispute to be admissible, it is not sufficient for the individual member of Parliament to complain simply that a breach has occurred during the legislative procedure; on the contrary, it is necessary for him or her to allege and prove a substantial denial or an evident impairment of the function vested in the applicant under the Constitution, in order to protect which judicial relief before this Court is available pursuant to Article 37(1) of Law no. 87 of 1953.
4.– In this case, the violations objected to by the applicants do not fulfil the criteria set out above.
4.1.– It must be stated at the outset that the procedural contrivances objected to by the applicants lead this Court to draw attention to the need that the role of Parliament under the Constitution within the lawmaking procedure be respected not only nominally, but also in substantive terms. Article 70 vests legislative powers in the two Houses whilst Article 72 of the Constitution provides specifically that each bill must be examined both during committee stage and before the chamber of the house, requiring that votes be held first article by article and then on the final text. These principles are intended to enable all political forces, from both the majority and the opposition, as well as the individual members of Parliament, to cooperate in an informed manner in the formulation of the text, in particular during the committee stage, through discussions and the proposal of alternative texts and amendments. The procedural stages set out by Article 72 of the Constitution concern some of the essential parts to the legislative procedure which the Constitution requires must always be respected in order to guarantee the role of Parliament as a forum for debate and discussion between the various political forces as well as for approving individual legislative acts, and in order to guarantee the legal order as a whole, which is premised on the prerequisite that all representatives be afforded broad scope to contribute to the formation of the will of Parliament.
This applies in particular in relation to the approval of the annual budgetary law, which encapsulates fundamental policy choices and decides on the contribution made by the

public at large to state revenues, along with the allocation of public resources: these decisions have constituted the historical core of the functions vested in political representatives since the establishment of the first parliaments, and must be upheld to the utmost. This Court has already had the opportunity to stress (albeit in relation to the regions) that "the budget is a 'public good' in the sense that it is necessary in order to summarise and establish certainty concerning choices […], both in relation to the acquisition of revenues and regarding the identification of the initiatives required in order to implement public policies" (Judgment no. 184 of 2016; followed by Judgments no. 247 and no. 80 of 2017). This is in particular the case following the implementation of the 2012 constitutional reform by 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), which stressed its central importance: the "budget – in its new substantive manifestation – is intended to constitute the principal instrument for decision making concerning the allocation of resources, as well as the main point of reference for verifying the results of public policies" (Judgment no. 61 of 2018).

Besides, the procedure followed in order to adopt budgetary laws has always been subjected to particular guarantees, as it falls within the class of laws which, pursuant to Article 72(4) of the Constitution, must follow the ordinary procedure in order to ensure that all political subjects can participate fully in their elaboration.

4.2.– There is no doubt that the shortcomings objected to in the application resulted in an impairment of parliamentary scrutiny; however, the application overlooks certain procedural and contextual aspects which, had due consideration been given to them, would have offered a more complex and nuanced framework compared to that represented by the applicant senators, within which the violations objected to evidently do not appear to be capable of passing muster for the purposes of the admissibility of the dispute.

4.3.– The procedural contrivances objected to result essentially, in the view of the applicants, from the "extreme application" of the block amendment mechanism under which approval is associated with a confidence motion, which purportedly limited the time available in order to discuss the matter, so much so as to thwart the examination during committee state and to impair the very possibility for members of Parliament to familiarise themselves with the text and to cast an informed vote.

This Court has already had the opportunity to point out the problematic effects of the approval of bills where associated with a confidence motion under a block amendment tabled by the government, observing that, as a result of the non-amendable nature of the vote under parliamentary procedures, resulting from its association with a confidence motion, this thereby excludes the possibility of a specific discussion and an appropriate consideration of the individual aspects of the legislation and precludes any possibility of amending the text tabled by the Government (Judgment no. 32 of 2014). However, it must also be considered that this practice has become consolidated over time and has been used frequently since the mid-1990s by governments of every political colour, also in order to approve budgetary bills, in search of answers to requirements of governability.

In relation to financial legislation, this practice was to some extent offset by the involvement of the Budgetary Committee in establishing the text with which the Government associated a confidence motion, taking account of proposed amendments that were discussed and approved by the Committee.

An enduring practice is a factor that is not without significance within parliamentary law, which is characterised by a high degree of flexibility and consensual action. However, this cannot justify any practice whatsoever occurring within the houses of Parliament, which may also be unconstitutional. On the contrary, it is necessary to counteract any practices that result in a gradual departure from constitutional principles, resulting in a gradual yet inexorable violation of the manner in which legislative powers are exercised, which must be respected in order to ensure that legislation enacted by Parliament does not lose sight of its role as a moment for the public and democratic conciliation of the different principles and interests in play.

Nevertheless, the practice that has become established to date cannot be disregarded within a consideration of the admissibility of this dispute, where it is necessary to assess whether the violations objected to by the applicants reach that threshold of significance that justifies the involvement of the Court in order to stem the abuse by the majority and to protect the constitutional powers of individual members of Parliament.

4.4.– The peculiar feature compared to the past (including the recent past) of the conduct of the business of the Senate in relation to the approval of the Law on the state budget for 2019 consists in the fact that the final text laid down by block amendment 1.9000 considerably modified the bill on which the Houses had been working until that point in time, with the result that the Budgetary Committee had been unable to carry out any examination of its content during the committee stage. In fact, the examination carried out by that Committee at its meeting on 22 December 2018 involved exclusively the expression of an opinion regarding only the financial aspects of that amendment, in accordance with the new Article 161(3-*ter*) of the Senate Regulations.

The application does not mention these specific circumstances, and does not take account of the fact that they result from the confluence of two concomitant factors with the practice (noted above) of associating block amendments with a confidence motion.

In the first place, the lengthy engagement with European Union institutions resulted in the alteration of the overall figures included in the budget at an advanced stage of the parliamentary procedure and entailed broad amendments to the initial bill, which were incorporated into block amendment 1.9000. The application limits itself to asserting that the block amendment replaced the entire text of the budgetary law, without considering that the original bill had already been examined by the Chamber of Deputies and voted upon there both in committee and in the chamber, and that its examination was pending before the Senate: the new text took account, at least in part, of the parliamentary business conducted until that point in time, including several amendments tabled during the course of the discussion (see the comparison table contained in the file of the Senate of the Republic dedicated to the government's block amendment, provisional edition of 23 December 2018, pages 15 et seq).

Secondly, the reforms made to the regulations of the Senate of the Republic in December 2017 – which were applied to the procedure for approving the state budget for the first time in this case – can shed a different light on some of the procedural stages objected to in the application.

The new text of Article 161(3-*ter*) of the Senate Regulations requires that texts with which the Government intends to associate a confidence motion must be submitted to the Office of the Speaker for an assessment of their admissibility, including an assessment of financial coverage, for which the Budgetary Committee is required to state an opinion pursuant to Article 102-*bis* (which was also amended on 20 December 2017). Article 161(3-*quater*) allows the Government to specify the content of an

amendment associated with a confidence motion prior to its discussion exclusively due to considerations of financial coverage or the formal coordination of the text and to make further clarifications in order to adapt the text in line with the requirements stated in the opinion of the Budgetary Committee.
In accordance with these provisions, the Budgetary Committee was convened solely in order to state an opinion concerning financial aspects and the Government provided further clarifications during the review before the committee. The brief duration of the examination and the amendment of the texts at an advanced stage, which have been objected to by the applicants, could have been favoured by the new procedural rules, which were most likely adopted with the purpose of enhancing the guarantees of financial coverage for legislation, but have given rise to problematic effects in cases such as the present one, which should be considered by the competent parliamentary bodies, and removed or corrected as appropriate.
4.5.– In conclusion, this Court cannot fail to point out that the manner in which parliamentary business was conducted in relation to the bill on the state budget for 2019 aggravated the problematic aspects of the practice of associating block amendments with a confidence motion; nevertheless, it is important not to disregard the fact that the business was conducted under time pressure due to the lengthy engagement with European Union institutions, in accordance with rules provided for under the Senate Regulations and without entirely excluding effective discussion during the previous stages concerning texts that were incorporated, at least in part, into the final version.
Under these circumstances, it is not apparent that any abuse of the legislative procedure was committed that was such as to give rise to the manifest violations of the constitutional prerogatives of the members of Parliament, which constitute prerequisites for admissibility in these circumstances. This means that this jurisdictional dispute is inadmissible. Nevertheless, the outcome could be different in other circumstances involving a similar impairment of the constitutional function of members of Parliament.
5.– Since the application is inadmissible due to the nature of the violations objected to, as a result, the entire application is inadmissible and it is not necessary to examine the other aspects of the dispute.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

rules inadmissible the application seeking to launch a jurisdictional dispute between branches of state mentioned in the headnote.
Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 10 January 2019.