JUDGMENT NO. 87 YEAR 2012

In this case the Court heard a jurisdictional dispute initiated by the Chamber of Deputies objecting to the initiation of a criminal prosecution of the President of the Council of Ministers by the ordinary courts without having previously informed the House of Parliament of which he was a member and without having forwarded the case file to the Ministerial Court in order to enable it to determine whether the alleged offence was a ministerial offence. The Court rejected the application, holding that "absent any explicit constitutional derogations, the other branches of state ... are not vested with any powers in this respect, with the consequence that the claim of entitlement to dialogue with the judicial authorities through an institutional channel offered unfailingly by the Ministerial Court is groundless where the judiciary has concluded, pursuant to an exercise of its prerogatives, that the offence does not have ministerial status and, again following an exercise of its prerogatives, has considered that issue in greater depth, explaining the reasons in support of such a classification (as was done in the present case by the GIP)." In essence the Court held that, once the judiciary has classified an offence as non-ministerial, it is not obliged to seek confirmation of this conclusion from Parliament and is obliged to conduct an ordinary prosecution. The courts are also not under any obligation to give notice to Parliament unless and until the latter raises the possibility that the offence may have ministerial status.

(omitted)

THE CONSTITUTIONAL COURT

(omitted)

gives the following

JUDGMENT

in proceedings concerning a jurisdictional dispute between branches of state arising following the initiation of investigations and the subsequent request for direct committal for trial of 9 February 2011 by the public prosecutor at the *Tribunale di Milano* and the decree ordering direct committal for trial of 15 February 2011 issued by the judge for preliminary investigations at the *Tribunale di Milano* against the President of the Council of Ministers, initiated by the Chamber of Deputies by the application served on 1 August 2011, filed in the Court Registry on 2 August 2011 and registered as no. 7 in the Register of Jurisdictional Disputes between Branches of State 2011, merits stage.

Considering the entry of appearance by the Office of the Public Prosecutor at the *Tribunale di Milano*, and the intervention by the Senate of the Republic;

having heard the judge rapporteur Giuseppe Tesauro at the public hearing of 14 February 2012;

having heard Counsel Roberto Nania for the Chamber of Deputies, Counsel Giuseppe De Vergottini for the Senate of the Republic and Counsel Federico Sorrentino for the Office of the Public Prosecutor at the *Tribunale di Milano*.

(omitted)

Conclusions on points of law

1.— The Chamber of Deputies raised a jurisdictional dispute against the public prosecutor at the *Tribunale di Milano* (hereafter, the PM [*Pubblico Ministero*]) and the judge for preliminary investigations at the same court (hereafter, the GIP [*Giudice per le indagini preliminari*]) in relation to the inquiries conducted by the PM (as part of criminal proceedings in case no. R.G.N.R. 55781/2010) against the Honourable Silvio Berlusconi, member of

the Chamber of Deputies, President of the Council of Ministers in office, and the request for direct committal for trial of 9 February 2011 (as part of criminal proceedings in case no. R.G.N.R. 5657/11) relating to the alleged offence of malfeasance in office and – again with reference to the same offence – to the decree ordering direct committal for trial issued by the GIP on 15 February 2011 (as part of criminal proceedings in case no. R.G.G.I.P. 297/11).

The applicant requests that this Court: a) declare that it was not for the PM "to initiate and conduct investigations against the President of the Council of Ministers in office and request direct committal for trial (…) for the alleged offence of malfeasance in office without forwarding the case file to the Panel for Ministerial Offences provided for under Article 6 of Constitutional Law" no. 1 of 16 January 1989 (Amendments to Articles 96, 134 and 135 of the Constitution and to Constitutional Law no. 1 of 11 March 1953 and the provisions on proceedings for the offences falling under Article 96 of the Constitution), "thereby preventing the Chamber of Deputies, which was competent, from exercising its constitutional powers in that area pursuant to Article 96 of the Constitution" and Constitutional Law no. 1 "and in any case without providing the requisite notice" to the Chamber of Deputies; b) declare that it was not for the GIP "to proceed according to the ordinary procedure and issue the decree ordering direct committal for trial against the President of the Council of Ministers in office (…) or to assert, in relation to the alleged offence of malfeasance in office that it was non-ministerial in nature, failing to forward the case file as required to the Panel for Ministerial Offences in order to enable it to adopt the necessary measures, thereby preventing" the applicant body from exercising the aforementioned constitutional powers and "in any case without arranging for the requisite notice to be given" to the Chamber of Deputies; and c) "annul the activities carried out and the acts adopted in relation to the proceeding" referred to above.

2.— According to the applicant Chamber of Deputies and the intervener Senate of the Republic, the legislation enacted on proceedings for the offences provided for under Article 96 of the Constitution (hereafter, also ministerial offences) reserves to the Panel for Ministerial Offences (hereafter, also the Ministerial Court) competence to rule on the status of such offences (i.e. ministerial or non-ministerial) by making provision such as to ensure the necessary and timeous involvement of the competent House of Parliament, in order to enable it to adopt the decisions falling to it, thereby guaranteeing the exercise of the constitutional powers vested in it. By contrast, the PM and the GIP are claimed to have mistakenly concluded that they "could proceed in the ordinary manner as the bodies with the exclusive power to classify the offence" in breach of the procedure laid down under Constitutional Law no. 1 of 1989 and Law no. 219 of 5 June 1989 (New provisions on ministerial offences and the offences provided for under Article 90 of the Constitution), the requirement for certainty in the allocation of constitutional powers, the reasonable equilibrium in the exercise of the same and the principle of loyal cooperation, thereby breaching the constitutional prerogatives vested in the Chamber of Deputies.

In the opinion of the applicant, the said prerogatives relating to the assessment as to the nature of the offence and the existence of any defences provided for under the said Constitutional Law cannot be left to the full discretion of the judiciary without by contrast the parallel inference that the competent House of Parliament "in any case be granted the remedy of a jurisdictional dispute where it considers that it cannot endorse the arguments of the ordinary courts in relation to the non-ministerial nature of the offence". Moreover, the doubts raised in the resolution to return the case file adopted pursuant to the request by the PM to carry out a search in certain premises within the power of the President of the Council of Ministers at that time concerning the nature of the offence of malfeasance in office (i.e. whether

ministerial or ordinary) and the requirement itself of the GIP to address "various problematic aspects concerning the overall institutional position of the President of the Council of Ministers" should have led those bodies to request the Ministerial Court to classify the offence.

Ultimately, in making this request, the Chamber of Deputies is not asking this Court to ascertain whether the alleged offence of malfeasance in office is a ministerial offence but rather to establish whether, after it had been found to be an ordinary offence (and limited strictly to that offence), the judiciary was entitled to continue according to ordinary procedures, or should by contrast in any case have initiated the procedure leading to the Ministerial Court (at least with regard to the existence, in its view, of a doubt relating to the status of the offence), in consideration of the fact that this body is vested with the power to classify the offence, as an essential element of the protection of its own constitutional powers.

2.1.— "In the alternative", the Chamber of Deputies avers that "the conduct of the judicial bodies referred to" in any case violates its own constitutional powers in that body failed to "inform [it] in due time and in the requisite manner" of the fact that the procedure was being conducted according to ordinary arrangements, as the information provided in relation to the aforementioned request to search certain premises was not capable of fulfilling that purpose. The said omission entailed an encroachment on the power "to make the appropriate decisions falling to it regarding the nature of the offence and, as the case may be, regarding the existence of defences" pursuant to Article 9(3) of Constitutional Law no. 1 of 1989, whereby it must be excluded that the provision of such notice may be left "to the initiative of the individual holder of governmental office, who may moreover not necessarily be interested in invoking the ministerial nature of the offence", as it is the task of the Houses of Parliament to ensure, as a whole, the correct

operation of the parliamentary system and the integrity of governmental functions.

3.— It must be observed as a preliminary matter that the public prosecutor at the *Tribunale di Milano* has averred "with reference to Article 25 of Law no. 87 of 11 March 1953" (Provisions on the Constitution and the operation of the Constitutional Court), which is "applicable to jurisdictional disputes by virtue of the reference contained in the last paragraph of Article 27 of that Law", "and to Article 3 of the supplementary rules on proceedings before the Constitutional Court, referred to by Article 24(4) of the same" that the intervention by the Senate of the Republic is inadmissible insofar as it is limited to requesting that the application be accepted, "reserving its substantive arguments to its subsequent written statements" in a manner that contrasts with the said provisions and violates the principle of the right to make representations.

3.1.— The objection is groundless.

Article 37(5) of Law no. 87 of 1953 provides that jurisdictional disputes between branches of state shall be governed by Article 25 of that Law, which regulates the entry of appearance in court proceedings of the parties; moreover, Article 24 of the supplementary rules, which regulates such proceedings, provides in paragraph 4 that, *inter alia*, Article 3 of those rules shall apply to these proceedings. This provision stipulates that the parties may enter an appearance "by filing a special power of attorney with the court registry, electing an address for service, and stating their arguments including the relief sought", the final clause of which substantially coincides with the wording of Article 19(3) of the rules (laying down the provisions on the entry of an appearance in constitutional proceedings in which the Court is seized directly), according to which the entry of appearance shall contain "the relief sought and the illustration of the same". This phrase is of particular significance as it appears to postulate, perhaps with greater emphasis, the

inseparable status within the entry of appearance of the clarification of the arguments in support of the relief sought, *inter alia* because the corresponding provision applicable prior to the 2008 amendment – Article 23(3) of the supplementary rules – laid down a broader provision, contemplating the entry of appearance through the filing of "arguments". However, this Court has recently assessed an analogous objection, finding it to be groundless (judgment no. 168 of 2010), and asserting a principle which is applicable here, in consideration of the substantially identical wording and rationale of the said provisions.

Therefore, it must be reiterated that the wording of the provision does not support the interpretation asserted in the objection, since the establishment of oral proceedings within the proceedings under examination is determined by mandatory time limits intended to satisfy requirements of certainty as to the procedural dynamics, failure to abide by which will result in the inadmissibility of the application, and likewise invalidate the entry of appearance in the proceedings by the defendant. The rationale of the provision (in a manner analogous to that underlying Article 19(3) of the supplementary rules) is not by contrast to subject the admissibility or validity of the entry of appearance in the proceedings to the requirement provided for thereunder since, at this Court has clarified, "in the name of a general principle of procedural law, the oral stage may only be initiated subject to compliance with the mandatory time limits stipulated, whilst the provision according to which the entry of an appearance by the respondent must also contain an illustration of the relief sought seeks to solicit an adequate presentation of the parties' respective positions from the outset of their participation in the proceedings, with the goal of enhancing debate within the trial " (judgment no. 168 of 2010). The *thema decidendum* is moreover circumscribed by the appeal and the arguments set forth in the entry of appearance "are intended to provide a basis capable of influencing - in the form of facts and logical

deductions - the court's conclusions regarding specific questions" debated, whilst the failure by the respondent to enter an appearance in the proceedings or the averral of insufficient assertions will not necessarily result in the acceptance of the question raised in the application, and hence the party's interest lies in asserting its arguments in the proceedings, in accordance with the requirement to submit arguments to defend its position.

The provision thus aims to stimulate the contribution of arguments by the parties, without imposing penalties in the event that the defendant or the intervener fails to illustrate the relief sought as stated in the entry of appearance. Therefore the objection is groundless.

4.— Again as a preliminary matter, the dispute must be definitely ruled admissible, as previously held in order no. 241 of 2011, given that the objective and subjective prerequisites are met.

In particular, there are no doubts as to the standing of the Chamber of Deputies to raise a jurisdictional dispute in order to defend the prerogatives vested in the same under Article 96 of the Constitution (judgments no. 241 of 2009 and no. 403 of 1994; orders no. 313 of 2011, no. 211 of 2010, no. 8 of 2008 and no. 217 of 1994).

Moreover, it must be deemed to be equally evident that the public prosecutor at the *Tribunale di Milano* and the judge for preliminary investigations at the same court have standing to participate as respondents in that, with reference to the matter at issue in the dispute, the former is vested with the share of constitutional power pertaining to the exercise of criminal prosecutions and the conduct of investigations aimed at prosecution (orders no. 276 of 2008, no. 73 of 2006 and no. 404 of 2005), whilst the latter is vested with judicial functions that are exercised in full independence (on all points, see judgment no. 82 of 2011).

Finally, the fact that the application relates to acts typical of the judiciary does not undermine its admissibility in the present case.

It is the settled position of this Court in this respect that jurisdictional disputes cannot degenerate into an atypical instrument of appeal against judicial decisions (judgments no. 222 and no. 2 of 2007; order no. 334 of 2008), failing which such actions will be inadmissible, and that it is not the task of the Constitutional Court "to establish the correct criteria for the interpretation and application of procedural rules" (judgment no. 225 of 2001). This principle, which must be reasserted here in full, cannot however be invoked in situations in which it is not the faithful application of the law by the judiciary that is called into question, but the adoption by it of a decision falling outwith the objective scope of the jurisdiction vested in the courts, which is in any case liable to encroach upon the constitutional powers of other bodies.

In pursuing the criminal action according to the ordinary procedures, according to the account presented by the Chamber of Deputies, the PM and the GIP exercised a function - respectively an investigative and a judicial function - that was not vested in them.

It cannot be objected in this respect that the Ministerial Court is the ordinary judicial body since, even if it were to be deemed to be the recipient of any report relating to a criminal offence allegedly committed by the President of the Council of Ministers or by a minister, it would in any case be untenable to argue that in such cases the judiciary lacks judicial powers, given that such powers would simply have transited from one judicial body to another, in accordance with the criteria applicable to jurisdiction *ratione materiae* and geographical jurisdiction. A corollary of this position would thus be the conclusion that the Chamber of Deputies had inadmissibly submitted to this Court not a jurisdictional dispute between branches of state but a mere conflict relating to competence between ordinary judicial bodies, which falls outwith the scope of constitutional jurisdiction (judgment no. 385 of 1996; order no. 117 of 2006, both with reference to jurisdictional disputes, although

undoubtedly according to arguments which may be extended directly to issues relating to competence).

This perspective fails to consider the fact that in actual fact, in initiating this dispute the Chamber of Deputies did not raise a mere problem regarding the delineation of the boundaries between the jurisdiction of the ordinary courts and that of the Ministerial Court, to which it in fact bears no relation. On the contrary, according to the applicant, the vesting of powers in the Ministerial Court is a precursor to the involvement of the competent House of Parliament in the assessment of ministerial status of the offence. The formality provided for under Article 6 of Constitutional Law no. 1 of 1989 is thus presented as being aimed not solely at activating the competent judicial body, but also at satisfying a constitutional prerogative vested directly in the Chamber of Deputies pursuant to Article 96 of the Constitution. Therefore, the relevant issue is not the question of jurisdiction in itself, but the fact that, in failing to forward the case file to the Ministerial Court, the judiciary is alleged to have encroached upon the constitutional powers of the Chamber of Deputies, for the exercise of which reference to the said court is a mandatory intermediary stage.

Furthermore, there can be no doubt as to the admissibility of the application in that, given the failure to activate the Ministerial Court, it is objected that the judiciary has not informed the Chamber of Deputies of the fact that criminal proceedings were pending against the President of the Council of Ministers: this account, provided again with reference to the power provided for under Article 96 of the Constitution and Constitutional Law no. 1 of 1989, as regards compliance with the principle of reasonableness and the (implicit yet clear) invocation of the principle of loyal cooperation, does not in fact impinge upon the actions carried out by the judiciary, other than by virtue of the fact that such actions were not complemented, on a parallel but distinct level, by conduct required by the principle of loyal cooperation. The question

regarding the existence of such a duty to provide information is also legally and logically prior to the further issue as to whether it may be deemed to have been fulfilled by the provision of information through the request - referred to on various occasions - by the PM for authorisation to conduct searches.

In conclusion, the jurisdictional dispute is admissible in that it is aimed first and foremost at preserving a constitutional power vested in the Chamber of Deputies in the face of actions taken by prosecutors in circumstances in which the applicant considers the judiciary to lack powers; and any case, in the alternative, it is admissible in that it challenges the failure to comply with a duty to provide information imposed by the principle of loyal cooperation between branches of state, in order to enable the House to defend that power.

The object of these proceedings has thus been correctly delineated, whereby the applicant does not assert or request this Court to rule, in relation solely to the offence of malfeasance in office (with which the President of the Council of Ministers in office is charged) that it is a ministerial offence, but rather, on the basis of the premise that "the power to assess the status of the offence alleged against the member of the Government" is vested in it, expressly specified that "by this jurisdictional dispute it is requested that the ability to exercise that constitutional power be maintained" and thus identified solely the procedural arrangements which, in its view, the Constitution requires be complied with at all times where criminal investigations relate to a member of the Government.

5.— According to the applicant's argument, Article 6 of Constitutional Law no. 1 of 1989 obliges a public prosecutor who has received a report of a criminal offence against the President of the Council of Ministers, or against a minister, to take steps in order to enable the procedure to be allocated to the panel provided for under Article 7 of that Law in such a manner that, acting through that panel, the competent House of Parliament may participate in the proceedings, defending its prerogatives.

Were that account be deemed to be valid, ultimately the mere subjective status of the author of the offence would be sufficient in order to activate the competence reserved to the Ministerial Court, without prejudice to the possibility that, following the conclusion of investigations, that body may order "asystemic" discontinuation.

This Court notes that such a view evidently contrasts with the wording of the provision, since it is precisely Article 6 of Constitutional Law no. 1 of 1989 which provides that, specifically in this case, the statements, reports and complaints concerning "the offences referred to under Article 96 of the Constitution", i.e. those committed in the performance of their duties, be forwarded to the Ministerial Court. It is only by assuming, in clear contrast with Article 96 of the Constitution, that a criminal offence will acquire ministerial status by virtue solely of the status of its author that it could be argued that the wording of Constitutional Law no. 1 enables the conclusions suggested by the applicant to be drawn.

It should be added that, since judgment no. 125 of 1977, this Court has not only precluded such an effect, but has also held that "the objective element prevails over the subjective element" in classifying an offence as ministerial.

This assertion mirrors the evolution which the principles of immunity, and more generally of exceptions from the ordinary rules on the exercise of judicial functions, have followed with regard to persons holding public office with the entry into force of the Constitution.

In fact, the state governed by the constitutional order bases its institutional dynamics solely on legal powers, the legitimacy of which is defined from their compliance with superior norms within the constitutional order, and conforms the guarantee status with reference to the requirement to preserve the integrity of the constitutional order through the unfettered and balanced implementation of the functions of those legal powers: there is no space within the constitutional order for powers created with reference to

legitimating criteria that do not form part of the system of constitutional sources.

Rather than a protection guaranteed to individuals, the prerogative is a constitutive element of the function performed by such persons, which at the same time limits its scope.

For those reasons, which lie at the heart of the state governed by the constitutional order, this Court has consistently held that constitutional immunities cannot mutate into privileges, which would occur were an exception from the principle of equality before the law to be inferred directly from the office held, rather than the functions relating to that office.

This principle has been asserted in all cases in which the Constitution provides for forms of immunity, whether these concern guarantees for members of Parliament (judgments no. 10 and no. 11 of 2000), or of the regional executives (judgment no. 289 of 1997), whether the criminal responsibility of the Head of State is at issue (judgment no. 154 of 2004) or the constitutional basis for the substantive immunity of the members of the Supreme Council of the Judiciary in relation to the opinions expressed in the performance of their duties (judgment no. 148 of 1983), and finally whether responsibility for ministerial offences is at issue (judgment no. 6 of 1970).

More recently, it has in fact been clarified that it applies in all cases in which, due to a constitutional prerogative, exceptions are introduced into primary legislation from the ordinary procedural arrangements, since "at the origin of the formation of the state governed by the rule of law lies the principle of equal treatment before the courts" (judgment no. 24 of 2004). Deviations from the ordinary procedural rules are tolerated on the basis of the position of a constitutional office holder "only insofar as strictly necessary" (judgment no. 262 of 2009) and, beyond the confines of this functional limit, will degenerate into an unlawful prerogative if shorn of express coverage under constitutional law (judgment no. 23 of 2011).

"The general procedural rules, backed up by the relative sanctions and subject to the ordinary procedural remedies during application" thus prove to be inderogable as soon as the bounds of immunity have been crossed (judgment no. 225 of 2001; subsequently, judgments no. 451 of 2005, no. 284 of 2004 and no. 263 of 2003).

5.1.— There is no doubt that the Constitution intended to recognise the President of the Council of Ministers and the ministers a form of immunity in a broad sense, enabling the competent House of Parliament to block the exercise of judicial powers in situations involving the interests specified under Article 9(3) of Constitutional Law no. 1 of 1989, thus giving rise to a special procedure grafted onto the otherwise persistent powers of the judiciary. However, the only reading of this guarantee that is compatible with the premises made above entails its limitation to the scope solely of offences committed in the performance of duties.

Therefore, even though the constitutional law enacted in order to implement Article 96 of the Constitution is silent on the matter, no conclusions could be reached that differ from those which are, in any case, clearly expressed by the wording of Article 6 of Constitutional Law no. 1 of 1989. Nor could the position be reversed by constitutional practice, through ordinary legislation or even by this Court.

In fact, by introducing an exceptional derogation from the general principle of equality, immunities granted to public powers can only be rooted in the Constitution (judgment no. 262 of 2009) and, once such an exception has been established, it must in any case be interpreted narrowly. In fact, within the process of the formation of the state governed by the rule of law, the progressive subjection of the action of the branches of state to the principle of legality, and hence their full subjection to the law, has been too significant in order for it to be diminished today, even if only in part, as a

result of expansive interpretations which seek to enlarge the scope of constitutional immunities beyond that provided for under the Constitution.

In the present case moreover, such an interpretation is precluded by further specific considerations relating to responsibility for ministerial offences.

As is known, in its original version, Article 96 of the Constitution provided that the President of the Council of Ministers and the ministers were to be prosecuted (before this Court: see Article 134 of the Constitution, in its past version) by Parliament in joint session for offences committed in the performance of their duties. For this purpose, Article 12 of Constitutional Law no. 1 of 11 March 1953 (Provisions supplementing the Constitution concerning the Constitutional Court) had established a parliamentary committee, which Law no. 20 of 25 January 1962 (Provisions on criminal procedures and prosecutions) then vested with the power to assess the actual status of the offence along with investigative powers. Within this legislative context, the ordinary courts were precluded any competence over the procedure, which they were in fact required to relinquish definitively as soon as the ministerial status of the offence was ascertained (Article 10 of Law no. 20 of 1962). It could thus be concluded that the Constitution had intended to establish a guarantee within the judicial order, the fulcrum of which was based on the complete removal of ministerial offences from the ordinary courts.

On the other hand, the constitutional law enacted in 1989 adopted the opposite approach, opting for the full re-expansion of ordinary jurisdiction, subject solely to the exceptional limits suggested by the justification of the institutions of political justice. In fact, when confronted with a ministerial offence, today it is still a matter for the ordinary courts - namely the Ministerial Court - to cumulate investigative and adjudicatory functions with the goal of subsequently initiating - if appropriate and subject to prior parliamentary authorisation - proceedings before the ordinary courts according to the ordinary procedural rules.

Therefore, the constitutional review was rooted in the premise that the ordinary courts are adequate to exercise jurisdiction over ministerial offences, dispelling any doubt that the exception from ordinary rules could be justified - even partially - by the goal of excluding persecution by the judiciary of a member of the government.

In fact, it is not for this purpose that provision is made within procedures intended to follow the ordinary arrangements for the involvement of the competent House, the review of which may and must be limited to the decision - which will be unquestionable if suitably motivated - on the existence of a qualified interest in the face of which the legal order considers that the requirements of justice in the specific case must recede.

Thus, leaving aside the stage involving authorisation to prosecute, which is entirely self-standing from the goal of ascertaining criminal responsibility (which is a matter for the judiciary), the only other exception through which the prerogative manifests itself is the action - according to entirely peculiar rules - of the Ministerial Court rather than the public prosecutor or the judge for preliminary investigations.

The constitutional legislation considered it appropriate to refrain from depriving the judiciary of its institutional tasks, but to create within it a procedural mechanism, deemed to be particularly incisive, bringing together within the same body both investigative and adjudicatory functions, by virtue of the republican tradition focused - in an analogous manner - on the investigative parliamentary committee, in order to establish a privileged channel of communication with Parliament, and in order to allocate "exceptionally broad" powers to an exceptional body (judgment no. 403 of 1994), which would be difficult to incorporate into the body of the ordinary law of criminal procedure. The creation of the Panel provided for under the Constitutional Law is thus based not on the lack of impartiality of the judiciary, of which it is a structural part, but the objective accumulation of

functions, which must otherwise be divided according to the principle of separation between judge and public prosecutor.

Thus, whilst the most prominent feature of the constitutional amendment - insofar as is of interest here - is the special nature of the procedure adopted in relation solely to ministerial offences, it is not clear how its extension to cases involving ordinary offences could be legitimately favoured given that, were this to be done, precisely the feature which the constitutional legislation sought to maintain as an exception would take on general status.

On the contrary, the existence of a general power of the ordinary courts over ministerial offences contributes to vesting with residual status the spaces removed from it by the express constitutional provision.

Besides, it is only if the prerogative in question were intended to counter persecution by judges of the President of the Council of Ministers, or of a minister, that the creation of a filter on judicial action could be justified in purely logical terms, which would be activated whenever a member of the Government were subject to a criminal investigation.

Once such a premise has been rejected - as it must be rejected - it can only be concluded that the involvement of the Ministerial Court can only be consistent with the regulations governing the system in cases in which a criminal offence is committed in the performance of duties.

Therefore, there would be no benefit in invoking Article 12 of Law no. 20 of 1962, which was moreover repealed by Article 9 of Law no. 170 of 10 May 1978 (New provisions on prosecutions pursuant to Law no. 20 of 25 January 1962), according to which “a public prosecutor who initiates a criminal prosecution against any of the persons referred to under Article 90 and 96 of the Constitution must give notice thereof to the President of the Chamber of Deputies”. It cannot be concluded that this provision, which links up seamlessly with the current provisions laid down by Article 8(4) of Constitutional Law no. 1 of 1989 in relation situations in which proceedings

are discontinued by the Ministerial Court, points to a constitutional requirement that Parliament be involved in the classification of an offence alleged against a member of the Government, which is made possible thanks to the action of the Panel provided for under Article 7 of Constitutional Law no. 1 of 1989, and no longer to the corresponding action of the investigative committee.

The flaw within this argumentation already lies within the logical premises, according to which the 1989 constitutional amendment did not impinge in this regard on parliamentary powers, whilst they were by contrast profoundly altered (judgments no. 134 of 2002 and no. 403 of 1994). Prior to the amendment of Article 96 of the Constitution, the investigative committee was charged with carrying out all activities necessary in order to prosecute a ministerial offence, whilst the judiciary retained powers over ordinary criminal offences. Each of these prerogatives was not residual compared to the other, but rather alternative. Thus, when confronted with the same actions that could establish the criminal responsibility of the President of the Council of Ministers, or of a minister, it was necessary for them to be considered both by the investigative committee and the judiciary in order to enable these bodies to carry out the related investigative activities with the primary goal of establishing whether the actions fell within their purview: this Court had in fact held that "the investigative committee may carry out inquiries on the basis of reports of possible offences falling within its competence, even if they are not typical or qualified" (judgment no. 13 of 1975). Consequently, there was a parallel allocation of powers based on the classification of the offence, which was aimed in both cases - albeit according to entirely different procedures - at the prosecution of the President of the Council of Ministers, or of a minister, without prejudice to the remedy of a jurisdictional dispute in the event that Parliament and the judiciary authorities disagreed regarding the status of the offence, and by extension on the bounds of their constitutional powers.

5.2.— In a certain sense, the initial situation of parity under which two branches of state are able to cognise the same facts recalls the current structure of relations between the Houses of Parliament and the judiciary in relation to the applicability of the prerogative of the privilege of members of Parliament provided for under Article 68(1) of the Constitution not to be held accountable for the opinions expressed or votes cast in the performance of their function.

Such cases, which are now very distant from the constitutional law applicable to the prosecution of ministerial offences, also involve the vesting of the power both in the judiciary, as part of the exercise of judicial powers (judgments no. 120 of 2004 and no. 265 of 1997), and also in the Houses of Parliament in relation to the conduct of parliamentary business under conditions of absolute freedom and autonomy (judgment no. 1150 of 1988) to rule on the existence of the prerogative in that ordinary legislation has recently established a procedural mechanism, which is not unreasonable (see judgment no. 149 of 2007), enabling coordination between the various competences under Law no. 140 of 20 June 2003 (Provisions implementing Article 68 of the Constitution as well as in the area of criminal proceedings against the high offices of state).

On the other hand, the change from the model characterised by the broad formula used in Article 68(1) of the Constitution, introduced by the amendment to Article 96 of the Constitution, which limited the power of Parliament solely to the assessment as to whether the prerequisites are met for granting or withholding authorisation to prosecute will be clear to all.

In fact, as noted above, following that amendment and the implementation of that reform by Constitutional Law no. 1 of 1989, and on a subordinate level by Law no. 163 of 20 May 1988 (Transitory provisions on investigative activity for proceedings falling under Articles 90 and 96 of the Constitution), the only power now vested in the Houses consists in the assessment of the

interest provided for under Article 9 of Constitutional Law no. 1 of 1989 which manifests itself - along with the preliminary ruling on the ministerial status of the offence, upon which it is conditional - solely in cases in which such authorisation is requested from the Ministerial Court by the public prosecutor.

The situation is therefore entirely different from that upon which this Court had premised the exception from the principles of the autonomy and independence of the judiciary "with the purpose of guaranteeing on the other hand the independence of the political branch against any undue interference that is liable to upset the reciprocal parity and necessary distinction between branches of state" (see judgment no. 13 of 1975).

Under the current constitutional order, the general principle that the judiciary is vested with the power to exercise criminal jurisdiction, subject to the exceptional derogations expressly stipulated under constitutional law, is not subject to any additional limit, and thus regulates in an entirely natural and automatic manner situations involving the criminal responsibility of the President of the Council of Ministers, or of a minister, in accordance with the principles of equality, legality and the justiciability of rights, which is reiterated in relation to public officials by Article 28 of the Constitution (see judgment no. 154 of 2004).

This Court has already asserted in this respect that under Italian law the "judiciary has a general power to investigate whether the prerequisites for criminal responsibility are met" (see judgment no. 154 of 2004), which is indicated as the last word, which is as a rule definitive, of the legal system on national level (leaving aside abnormal situations involving jurisdictional disputes which this Court is competent to hear), thereby establishing a qualitative separation from any other preliminary assessments that other bodies may carry out in accordance with their own powers in relation to the same facts.

It goes without saying that the competence in question necessarily implies the preliminary classification of the offence, or better put the assessment by which a set of facts is brought within the purview of one or more statutory provisions that remove it from the class of legally undifferentiated facts and vest it with a normative identity, which results in the typical procedural and substantive effects provided for by law. In the present case, a constituent part of that judgment is the very nature of the offence as a ministerial offence or an ordinary offence, which results in the former instance in the seizing of the Ministerial Court, and subsequently the competent House of Parliament, or in the latter case in compliance with the ordinary rules on the determination of criminal responsibility. Absent any explicit constitutional derogations, the other branches of state (including the competent House pursuant to Article 96 of the Constitution) are not vested with any powers in this respect, with the consequence that the claim of entitlement to dialogue with the judicial authorities through an institutional channel offered unfailingly by the Ministerial Court is groundless where the judiciary has concluded, pursuant to an exercise of its prerogatives, that the offence does not have ministerial status and, again following an exercise of its prerogatives, has considered that issue in greater depth, explaining the reasons in support of such a classification (as was done in the present case by the GIP).

This court must however clarify that this assertion is not tantamount to depriving Parliament of a margin of appreciation also in relation to the status of the offence alleged against the President of the Council of Ministers, or against a minister, which Article 96 of the Constitution reserves to it, because it is beyond discussion that the competent House must under all circumstances have the power to grant or refuse authorisation to prosecute whenever the offence has been committed by the President of the Council of Ministers or by a minister in the performance of their duties.

5.3.— As highlighted above, the exclusive power of the judiciary relating to the assessment of the constituent elements of a criminal offence as a rule operates in parallel with the power of other public bodies to reach decisions, which may in turn be based on a legal assessment as to the existence and status of an offence. However, at the same time the power is distinct from such decisions due to its definitive nature.

The competent House is in turn vested with the power to grant or refuse authorisation to prosecute, which is necessarily premised on an interlocutory review of the actual status of the offence. To assert that such an assessment occurs during a preliminary stage for the purpose solely of exercising the power granted under Article 96 of the Constitution in relation to the authorisation to prosecute is not tantamount to stating that it may replace the judgment reached by the judiciary in accordance with an exclusive constitutional prerogative, or that it may even prevail over the latter.

On the contrary, due to the - entirely peculiar - fact that Parliament may raise its own sphere of competence provided for under constitutional law in opposition to this prerogative of the judiciary (which action by Parliament is in part dependent upon the correct exercise of the judiciary's powers), the instruments of constitutional justice establish the possibility for avoiding the conduct of judicial functions which, according to the interlocutory assessment of the Houses of Parliament, have proved to be such as to encroach on its powers under Article 96 of the Constitution.

In other words, the assessment by Parliament as to the nature of the offence alleged against the President of the Council of Ministers, or against a minister, is located precisely along the boundary that this Court has constantly drawn between jurisdictional disputes between branches of state in which a claim to authority is invoked, or where there is a discussion as to which branch is vested with a particular disputed constitutional competence, and jurisdictional disputes resulting from the encroachment by one branch (acting

in accordance with a prerogative that is certainly vested in it) of the sphere of competence of another branch with which the former has interfered.

Within these limits, it must be acknowledged that Parliament, which is competent pursuant to Article 96 of the Constitution, may express its assessment as to the nature of the actions alleged against the President of the Council of Ministers, or against a minister, provided that this occurs within proceedings relating to a ministerial offence initiated by the judiciary or that it is a necessary precursor to the claim that such a procedure be followed, and provided finally that such an assessment result in the sole response permitted by the law to a classification by the judiciary of the offence as an ordinary offence rather than a ministerial offence, that is by an application to this Court by way of a jurisdictional dispute.

This is therefore the sense of the assertion by this Court that "Parliament (…) may not be shorn of its own independent power to assess the ministerial or non-ministerial status of offences subject to judicial investigation" (see judgment no. 241 of 2009): there is no doubt that this is a necessary precursor to the ability to initiate a jurisdictional dispute before the Constitutional Court alleging an encroachment upon its powers.

If the judiciary initially classifies the offence as a ministerial offence, but the Ministerial Court subsequently finds that it is an ordinary offence, subsequently ordering "asystemic" discontinuation, Parliament is informed of the facts in accordance with the express provision of Article 8(4) of Constitutional Law no. 1 of 1989. The official and institutional notice to which the Houses are entitled, notwithstanding that the offence was not deemed to have been committed in the performance of duties, thus provides an opportunity for the Houses to cognise the facts with a view to raising a jurisdictional dispute, even though it cannot be excluded (and indeed on the facts it is this which customarily occurs) that the information necessary for such a decision has been previously acquired, often at the initiative of the

President of the Council of Ministers himself, or of a minister, who considers that he has been unduly subject to an investigation according to the ordinary procedures. In such an eventuality, it is obvious that a jurisdictional dispute may be raised, even where no notice has been given by the judiciary, notwithstanding that such notice is required under constitutional law (see judgment no. 241 of 2009). For the same reason, within the limits specified above, the option of a jurisdictional dispute is available in the eventuality - which is distinct from the above - that the offence alleged against a member of the government has been deemed to lack ministerial status from the outset. In such cases, it has not been considered appropriate to enact legislation corresponding to Article 8(4) of Constitutional Law no. 1 of 1989, which is justified by the goal of definitively concluding a procedural stage that nonetheless turns on the potential ministerial status of the criminal offence; however, even leaving aside this peculiar and mandatory provision of constitutional law, Parliament must be granted access to this Court for the purposes of ascertaining, in accordance with the arrangements permitted under the Constitution, whether an incorrect exercise of its powers by the judiciary has encroached upon the powers of the competent House pursuant to Article 96 of the Constitution, preventing it from granting or withholding authorisation to prosecute, which is required whenever the offence has been committed in the performance of duties.

6.— The principles set forth above are expressed under current constitutional law regulating criminal investigations into ministerial offences.

Article 6(1) of Constitutional Law no. 1 of 1989 clearly provides that only reports relating to the offences referred to under Article 96 of the Constitution, i.e. offences committed by members of the government in the performance of their duties, must be addressed to the Office of the Public Prosecutor at the court of the district capital of the court of appeal with territorial jurisdiction.

Pursuant to Article 6(2), the public prosecutor shall refrain from conducting any investigation and forward the case file to the Ministerial Court within fifteen days.

The territorial competence of the public prosecutor is thereby established by virtue of the corresponding competence of the judicial body (Article 11 of Constitutional Law no. 1 of 1989), and hence from the outset the procedure is characterised by a vocation of finality with regard to the exercise of criminal prosecutions in the manner permitted under Article 96 of the Constitution.

It cannot be objected, as the applicant seeks, that the prohibition imposed on the public prosecutor on the conduct of investigations is testament to the fact that - at least in situations involving a doubt as to the classification of the offence - the decision must necessarily be taken by the Panel referred to under Article 7 of Constitutional Law no. 1 of 1989. It is in fact conceivable that there may be cases in which the fact is described in the report of a criminal offence as being unequivocally ministerial in nature, with the result that the Ministerial Court is seized immediately and there are no further investigations by the judiciary according to ordinary procedures; similarly, there may be cases in which the fact that the conduct falls outwith the functions of the President of the Council of Ministers or of a minister is immediately apparent, with the result that, absent the exceptional derogation provided for solely in relation to ministerial criminal offences, the procedure is initiated in accordance with the ordinary procedural rules. Finally, it cannot be excluded that the sole description of the alleged offence, along with the information provided in support of it in the report of a criminal offence, is not such as to enable it to be classified as a ministerial offence, but that such a classification only emerges at a later stage following the acquisition, including through investigations, of information useful to that effect. However, the exceptional nature of the derogation referred to above implies that it may only apply where all prerequisites are met; until that time however, or until it is possible

to establish the ministerial aspect of the conduct, those general rules must continue to apply, since the special prerequisites for their setting aside in accordance with special constitutional law have not yet been met.

It is therefore only from that time that the report of a criminal offence falls within the ambit of Article 6(1) of Constitutional Law no. 1 of 1989 and that, consequently, the competent public prosecutor is precluded from carrying out any further activities, whilst the Office of the Public Prosecutor of the district capital, which is now required to act as a point of contact with the Ministerial Court, is in turn prohibited from instructing investigations. Naturally, the legal system provides adequate remedies, including access to this Court, in order to prevent the judicial authorities from carrying out investigations against the President of the Council of Ministers, or against a minister, as soon as, on the basis of the factual information obtained *inter alia* through investigations carried out by these parties and the legal assessments resulting from this, it is concluded that the offence has ministerial status; indeed, whenever such status becomes a theoretical possibility, though has not yet been established, the focus of investigators must in the first instance be directed at this factual issue without delay, in order to avoid an undue encroachment, even on a temporary basis, on the constitutional powers of the Ministerial Court and consequently of the competent House pursuant to Article 96 of the Constitution.

Once the ministerial status of the offence has been established, according to the initial assessment that falls to the ordinary criminal courts, the investigative activity of the public prosecutor and the functions of the judge for preliminary investigations are immediately transferred to the Ministerial Court (see Article 8 of Constitutional Law no. 1 of 1989; Article 1 of Law no. 219 of 1989), which is not bound by any previous classification of the offence and may indeed conclude that the offence has the status of an ordinary offence, thus ordering “asystemic” discontinuation and transmitting the case file to the competent judicial authorities which will become apprised of the

matter (see Article 8 of Constitutional Law no. 1 of 1989; Article 2(1) of Law no. 219 of 1989).

In the event that a discontinuation order is issued, Article 8(4) requires the public prosecutor to give notice of this fact to the President of the competent House: thus, as specified above, Parliament is provided with the opportunity to assess whether the offence is indeed an ordinary offence as concluded by the judicial authorities, or whether it must be deemed to have been committed in the performance of duties, for the sole purpose in this latter situation of raising a jurisdictional dispute.

On the other hand, where proceedings for a ministerial offence have never been initiated, notwithstanding that the information acquired required that a prosecution be initiated, in the light also of the investigations carried out by the President of the Council of Ministers, or by a minister, the competent House may also seize the Constitutional Court in order to uphold its power to grant or withhold authorisation to prosecute. In such cases, this Court will be called upon to rule, inevitably in relation to the status of the offence, on the basis of the results of all investigations made available by the parties to the dispute.

Therefore, the concern that, if no action is taken by the Ministerial Court, then neither Parliament nor this Court would have the opportunity to ascertain the status of the offence with a full knowledge of the facts, is baseless.

Ultimately, subject to the limits set forth above, the House will assess whether the offence is an ordinary or a ministerial offence, on the basis of the information provided by the judicial authorities and the further observations submitted by the interested parties pursuant to Article 9(2) of Constitutional Law no. 1 of 1989: for the purpose of the exercise of the power granted by Article 96 of the Constitution, this will occur both in the event that it is requested to grant authorisation to prosecute and decides to return the case file to the judicial authorities (Article 18-ter of the Regulations of the Chamber of

Deputies and Article 135-bis of the Regulations of the Senate of the Republic), or by raising a jurisdictional dispute if the judicial authorities decide to proceed according to the ordinary arrangements, notwithstanding the ministerial status of the offence, or in the event of "asystemic" discontinuation.

Having thus presented the complex mechanism of political justice in the light of the legislative framework and in accordance with the principles governing the constitutional order of the state, nothing further falls to the Court other than to take note of the fact that it has no role to play in the particular case that gave rise to this constitutional dispute.

In fact, the matter at issue in the application concerns an offence (the offence of malfeasance in office - the only in relation to which the jurisdictional dispute was raised) which, as concluded immediately by the judicial authorities, lacked any functional nature and moreover the ministerial status of which was not used as a basis for the dispute in the sense that – taking account of the content of the application filed by the Chamber of Deputies, as detailed above – this Court was not apprised with an assessment of that nature. Under those circumstances, having held the offence to be an ordinary offence, the judicial authority was not only entitled refrain from apprising the Ministerial Court with a report of a criminal offence, but was also obliged to refrain from so doing as a matter of constitutional law, pursuant to the combined provisions of Article 96 of the Constitution and Article 6 of Constitutional Law no. 1 of 1989, as it is not open to it to decide not to ascertain criminal responsibility according to standard procedures of ordinary criminal jurisdiction (Article 112 of the Constitution) unless any of the mandatory derogations applies, which may only be laid down by constitutional law, and cannot be expanded by Parliament even through ordinary legislation (see judgments no. 23 of 2011 and no. 262 of 2009).

This Court must therefore conclude that the public prosecutor at the *Tribunale di Milano* was entitled to initiate and conduct investigations and to submit a request for direct committal for trial in relation to the alleged offence of malfeasance in office against the President of the Council of Ministers in office at the time the alleged offence was committed, and that the judge for preliminary investigations at this Court was also in turn entitled to follow ordinary procedures and to issue the decree of direct committal for trial once it had been concluded that the said offence had not been committed in the performance of duties, and to refrain from forwarding the case file to the Panel provided for under Article 7 of Constitutional Law no. 1 of 1989.

7.— It is still necessary to decide whether, in proceeding against the President of the Council of Ministers in office, the judicial authorities were under an obligation to inform the Chamber of Deputies of the fact that proceedings were pending.

This Court has already held that such a duty cannot be inferred from the constitutional provisions applicable to the offences provided for under Article 96 of the Constitution, including in particular Article 8(4) of Constitutional Law no. 1 of 1989 which, for the reasons stated above, applies exclusively to situations in which a discontinuation order is issued.

The constitutional basis for the power claimed by the applicant should thus, it is claimed, be sought in the principle of loyal cooperation between branches of state, from which it is sought to infer a requirement to provide information, which does not alter the nature and full availability of the powers of assessment of the ordinary courts, but operates in addition to and in parallel to these, in obliging them to give notice to the competent House of the alleged offence, in order to enable the House to assess its status and, if appropriate, to raise a jurisdictional dispute immediately.

This Court has already held that "the principle of loyal cooperation (…) must always characterise the relationship between different branches of state"

(see judgment no. 26 of 2008) and that not even the judiciary is exempt from this duty during the exercise of judicial powers, when such exercise impinges upon the constitutional powers of other bodies (see judgments no. 149 of 2007, no. 110 of 1998 and no. 403 of 1994).

A prerequisite for the imposition by the principle of loyal cooperation of rules of action that are sufficiently elastic to take account of "the special nature of individual situations" (see judgment no. 50 of 2005) is the convergence of powers - each acting within its own sphere of competence - on the resolution of a situation of significance under constitutional law where such powers do not operate separately but are rather coordinated by the Constitution, in order to enable the situation to be resolved through joint contributions from the various bodies between which the exercise of sovereign powers is divided.

The point of contact between the various branches of state cannot - as much as these powers may be conceptually distinct - under the current constitutional system be used as an opportunity for a dispute relating to the scope of powers enabling the democratic life of the Republic to be operated, but must enable the dispute to be resolved according to flexible criteria governing the exercise of prerogatives, which enable these branches of state to adapt their actions, as far as possible, in line with the operations of the tasks vested in other branches of state.

If this is the premise on which the principle of loyal cooperation is based, it is evident that it need not operate unless there is a confluence of powers and their separation lies at the core of the choices made in the Constitution, with the goal of dividing and organising the spheres of constitutional competence.

This is an issue that arises above all in relation to the judiciary, on which the current constitutional system imposes strict limits as regards the prospects of interaction with other branches of state.

The rules applicable to judicial action, which are must more detailed and stringent than those applicable to the actions of constitutional bodies charged with setting policy, cannot therefore be altered by the judiciary itself, and may be supplemented by further requirements inferred from the general principle of loyal cooperation, subject only to the exercise of prudence necessary in order to avoid the "creation *ex novo* of a body of rules that may only be posited in the competent forum" within the legislature (see judgment no. 309 of 2000).

Nonetheless, it is possible to disregard the fact that, if a duty to provide information imposed other than through legislation overrides the ordinary procedures for the exercise of judicial powers, this fact itself raises technical problems relating to coordination and must in any case be balanced against other interests of constitutional standing that require detailed legislative provision, with particular reference to the protection of investigative secrecy in the interest of justice and of the President of the Council of Ministers himself, to whom the investigation relates. In fact, were the Constitution to require such conduct, it would in any case require compliance by the judiciary.

However, precisely due to the special situation of the judiciary within the legal system as a whole, it is not possible to introduce such an obligation through interpretation, unless this appears to be absolutely necessary in order to maintain the constitutional powers of another branch of state, within the context of the principle of loyal cooperation between branches of state.

It is precisely this premise that is lacking in the scenario objected to by the applicant House: in fact, for the reasons set out above, this Court considers that a requirement to coordinate action with the competent House is deemed to exist, as a matter of constitutional law, solely in situations in which the offence being prosecuted is a ministerial offence, as it involves distinct yet convergent powers of the judiciary and the Houses of Parliament. This

situation is in fact regulated by the special rules laid down by the Constitutional Law implementing Article 96 of the Constitution.

By contrast, in situations involving ordinary offences, absent any express provision, Parliament has no grounds to claim that the actions of the judiciary should be encumbered by a further requirement, as the judiciary's actions fall entirely within its own sphere of powers and do not encroach on the prerogatives of other branches of state unless and until the possibility that the offence may have ministerial status is specifically raised by the competent House.

In other words, given the general rule providing for the competence of the judiciary discussed above, the sole - entirely abstract - hypothesis that the offence may have been committed by the President of the Council of Ministers, or by a minister, in the performance of duties is not sufficient to establish, even on a merely potential basis, a common area of interference between parliamentary powers and those of the judiciary, as it is necessary for this purpose that the powers of the judiciary have been linked with the powers of Parliament on the initiative of the competent House.

It cannot be objected against this conclusion that it is precisely due to the lack of a channel for information between the Houses and the judiciary that the latter may be able to proceed according to ordinary procedures even when the offence has ministerial status, thereby preventing Parliament from taking action.

Insofar as such an assertion is aimed at establishing a structural duty to provide information as a remedy for an abnormal case, it could only be successfully invoked were the Constitution to provide as a general matter that any branch of state that considers its powers to be exercised appropriately be required at the same time to give notice thereof to every other branch of state for which that exercise could result in the infringement of an entirely different

power in the hypothetical event that the powers of the former were exercised improperly.

It goes without saying that such a principle has never been recognised as applicable within the legal order, and has not been applied in any manner whatsoever within the case law of the Constitutional Court: for example, prior to Law no. 140 of 2003, absent any resolution by the House exercising parliamentary privilege, the ordinary courts could apply Article 68(1) of the Constitution directly, if appropriate rejecting the existence of such a privilege, without any requirement whatsoever to give notice to Parliament in order to enable it to react (see judgment no. 149 of 2007).

It is in fact normal that each branch of state should act on the presumption that its conduct complies with the principle of constitutional legality, and hence it is not clear on what basis it should at the same time be obliged under the Constitution to propose to other branches of state the potential scenario (which was previously excluded) that such conduct may be unconstitutional on the grounds that it breaches the separation of powers.

By contrast, where the Constitution effectively establishes a requirement of coordination and cooperation between the exercise of judicial powers and the area falling within the remit of another sovereign body, this Court had held that ad hoc primary legislation is not unconstitutional since "it is possible and natural that ordinary legislation may enact dedicated procedural rules in this area precisely with a goal of ensuring the best institutional coordination and loyal cooperation between the branches of state involved", whilst specifying at the same time - and very significantly - that such legislation is "of ordinary status which is non-binding on the level of constitutional law" (see judgment no. 149 of 2007). It is thus clear that, where the manner of such coordination cannot be ascertained directly in the Constitution, it is left to reasonable discretion exercised through ordinary legislation, the failure to exercise which

will entail "the mere application of general procedural provisions" (see judgment no. 149 of 2007).

Once it has been found that normative, constitutional and primary sources have not introduced any obligation on the courts to inform the competent House of the fact that ordinary criminal proceedings are pending in relation to an offence alleged against the President of the Council of Ministers, or against a minister, and that it is impossible to infer such a rule from the principle of loyal cooperation, this removes any legal foundation on which the applicant's claim that it should be given notice of the facts could be based, given that – as was by contrast asserted by the Chamber of Deputies – it cannot even be discerned in the "basic principles of reasonableness and suitableness for the relevant purpose applicable to statutory interpretation pursuant to Article 3 of the Constitution". Leaving aside the generic nature of the claim, it must in fact be recalled that the case law of this Court has inferred from Article 3 of the Constitution a principle of "rationality" of the law that is detached from any comparative legislation and may be discerned in the "requirement that the legal order adhere to the values of justice and equity" (see judgment no. 421 of 1991) and principles of logical, teleological and historical coherence, which operates as a safeguard against manifest irrationality or inequity in its consequences (see judgments no. 46 of 1993 and no. 81 of 1992). This principle is not however breached by an interpretation that, as specified above, provides - within the context of a legal order within which immunities can only be established under the Constitution and must be interpreted narrowly - for the intervention of the Ministerial Court only in situations involving offences committed in the performance of duties, and establishes a place for that court that is in harmony with the system as a whole, whereby that interpretation is characterised by a correct balancing of the principle that criminal jurisdiction should generally be vested in the ordinary courts and the principle that the constitutional powers of Parliament under Article 96 of the

Constitution should be protected, given that Parliament is entitled to apply to this Court in order to question a potentially mistaken exercise of the powers of the judiciary where it may have prevented the competent House under Article 96 of the Constitution from deciding whether to grant or refuse authorisation to prosecute, raising a jurisdictional dispute with content different from that proposed in these proceedings.

It is therefore during the conduct of parliamentary business and subject to the regulations governing the fiduciary relationship between Parliament and the Government that the Houses may officially state an interest in the particular case and the interested parties may indeed – *inter alia* in order to enable them to exercise their right to a defence – turn to the Houses directly in order to inform them of the events and to put them in a position to raise a jurisdictional dispute before this Court.

The Court must in fact specify that, conversely, in order to enable the competent House to reach an opinion based on the results of the investigation, the acting judiciary body is required to abide by the principle of loyal cooperation in its conduct when, after becoming aware of the facts, Parliament addresses it if it is unable to preclude the ministerial status of the offence with certainty. This must occur, as is customary, according to a proportionate balancing of the respective powers, a more detailed exposition of which is, as things stand, not only not required owing to the subject matter of the dispute but also - more generally - is not in keeping with the flexible nature that is one of the principal virtues of the principle of loyal cooperation, given its focus on an assessment of the particular circumstances of each individual case.

The rejection of a duty to inform the competent House renders moot the further question, which is logically and legally subordinate, concerning the capacity to comply with that duty of the information provided in the public prosecutor’s request (referred to on various occasions) for authorisation to

carry out searches of certain premises within the power of the President of the Council of Ministers in office.

In conclusion, for those reasons, this Court finds that the Office of the Public Prosecutor at the *Tribunale di Milano* and the judge for preliminary investigations at that court were entitled to initiate proceedings in relation to an ordinary offence against the President of the Council of Ministers in office and to refrain from informing the Chamber of Deputies of that fact.

ON THOSE GROUNDS

THE CONSTITUTIONAL COURT

declares:

1) that the Office of the Public Prosecutor at the *Tribunale di Milano* was entitled to initiate and conduct investigations against and to request the direct committal for trial of the President of the Council of Ministers in office for a suspected offence deemed not to have been committed in the performance of duties, failing to forward the case file pursuant to Article 6 of Constitutional Law no. 1 of 16 January 1989 (Amendments to Articles 96, 134 and 135 of the Constitution and to Constitutional Law no. 1 of 11 March 1953 and the provisions on proceedings for the offences falling under Article 96 of the Constitution) in order to apprise the Panel provided for under Article 7 of that Law;

2) that the judge for preliminary investigations at the *Tribunale di Milano* was entitled to follow ordinary procedures and to issue the decree of direct committal for trial against the President of the Council of Ministers in office for a suspected offence deemed not to have been committed in the

performance of duties, failing to forward the case file pursuant to Article 6 of Constitutional Law no. 1 of 16 January 1989 in order to apprise the Panel provided for under Article 7 of that Law;

3) that the Office of the Public Prosecutor at the *Tribunale di Milano* and the judge for preliminary investigations at the same court were entitled to exercise their powers, and were not required to inform the Chamber of Deputies of the fact that criminal proceedings were pending against the President of the Council of Ministers in office.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 14 February 2012.

(omitted)