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The Court ruled that three provisions of the 2017 Budget Law were unconstitutional. The first ruling, with effect for all territorial authorities, held that the block on the administrative surplus and on the earmarked multi-year fund starting in 2020 was unconstitutional. This touched on a matter of financial resources, which this Court had already held to be available to the proprietary territorial authorities in a previous conforming interpretation in a separate ruling. Striking down the provision as unconstitutional does not entail negative effects on the balance of extended public finance, since the assets inherent in said resources, if they are legitimately verified, constitute a reliable source of funding to cover expenditure already planned or underway. The second ruling, which concerned only the Autonomous Provinces of Trent and Bolzano and the Autonomous Region of Friuli-Venezia Giulia, held that the rule requiring local authorities to pay the amount of penalties for failing to meet the balanced budget requirement to the State Treasury, rather than to the treasuries of their autonomous territories, was unconstitutional. Finally, a rule that went against an earlier judgment of the Court, and attributed the adjustment of IMU revenue to the Autonomous Region of Friuli-Venezia Giulia, was held to be unconstitutional. Other questions concerning meeting the overall objectives of public finance and the system of state funds for financing local authorities were held to be unfounded.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 1, paragraphs 463, 466 sentences one, two, and four , 475 letters *a)* and *b)*, 479 *a)*, 483, 483 sentence one, and 519 of Law no. 232 of 11 December 2016 (Preliminary budget of the State for the 2017 fiscal year and multi-year budget for the three-year period 2017-2019), initiated by the Autonomous Province of Bolzano, the Autonomous Region of Friuli-Venezia Giulia, and by the Autonomous Province of Trent, with applications of which notice was given on 17-22 February 2017 and 20 February 2017, filed with the Court's Registry on 23, 24, and 28 February 2017, and registered respectively as numbers 20, 22, and 24 of the Register of Applications2018.

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

Having heard from Judge Rapporteur Aldo Carosi during the public hearing of 7 March 2018;

Having heard from Counsel Renate von Guggenberg on behalf of the Autonomous Province of Bolzano, Giandomenico Falcon on behalf of the Autonomous Region of Friuli-Venezia Giulia and the Autonomous Province of Trent, and Andrea Manzi on behalf of the Autonomous Province of Trent, and State Counsel Vincenzo Nunziata on behalf of the President of the Council of Ministers.

[omitted]

Conclusions on Points of Law

1.– With the application indicated in the Headnote, the Autonomous Region of Friuli-Venezia Giulia has challenged, among others, paragraphs 463, 466 sentences one, two, and four, 483 and 519 of Article 1 of Law no. 232 of 11 December 2016 (Preliminary budget of the State for the 2017 fiscal year and multi-year budget for the

three-year period 2017-2019), in reference to Articles 3, 25(2), 81(1) and (6), 97, 117(3), 119(1), (2), and (6), and 136 of the Constitution, and Article 10 of Constitutional Law no. 3 of 18 October 2001 (Modifications to Title V of Part Two of the Constitution); to Article 5(2)(*c*) of Constitutional Law no. 1 of 20 April 2012 (Introduction of the balanced budget principle into the Constitution) – in relation to Articles 3 and 9 of Law no. 243 of 24 December 2012 (Provisions for implementing the principle of a balanced budget in accordance with Article 81(6) of the Constitution), as modified by Law no. 164 of 12 August 2016 (Modifications to Law no. 243 of 24 December 2012, on balancing the budgets of the regions and local authorities) – to Articles 48, 49, 51, 63, and 65 of Constitutional Law no. 1 of 31 January 1963 (Special Statute of the Friuli-Venezia Giulia Region); to the principles of reasonableness and loyal cooperation and to the principle of agreement on regional finance (in compliance with Articles 63 and 65 of the Special Statute and Article 27 of Law no. 42 of 5 May 2009, entitled "Mandate to the Government concerning fiscal federalism, in application of Article 119 of the Constitution"); as well as in relation to the rules established by the Decree of the President of the Republic [D.P.R.] no. 114 of 23 January 1965 (Provisions implementing the Special Statute of the Friuli-Venezia Giulia Region on regional finance), to Legislative Decree no. 8 of 2 January 1997 (Provisions implementing the Special Statute for the Friuli-Venezia Giulia Region bringing about modifications and supplementary provisions to D.P.R. no. 114 of 23 January 1965, concerning regional finance); to Legislative Decree no. 137 of 31 July 2007 (Provisions implementing the Special Statute of the Friuli-Venezia Giulia Region on regional finance).

2.– With the application indicated in the Headnote, the Autonomous Province of Bolzano challenges, among other things, Article 1(475)(*a*) and (*b*) of Law no. 232 of 2016, in reference to Articles 79(1), (3), and (4), 80, 81, 103, 104, and 107 of D.P.R. no. 670 of 31 August 1972 (Approval of the unified text of the constitutional laws concerning the Special Statute for Trentino-Alto Adige) – in relation to the corresponding rules of implementation (in particular, Articles 17 and 18 of Legislative Decree no. 268 of 16 March 1992, entitled "Provisions implementing the Special Statute of Trentino-Alto Adige in the area of regional and provincial finance", and Legislative Decree no. 266 of 16 March 1992 establishing "Provisions implementing the Special Statute of Trentino-Alto Adige concerning the relationship between State legislative acts and regional and provincial laws, as well as the State's power of direction and coordination") – to Articles 117(3) and (4), and 119 of the Constitution, in combination with Article 10 of Constitutional Law no. 3 of 2001; to the principle of loyal cooperation under Article 120 of the Constitution, and to the agreement of 15 October 2014, adopted by Law no. 190 of 23 December 2014, entitled "Provisions for the formation of the annual and multi-year budget of the State (2015 Stability Law);" to the principle of reasonableness under Article 3 of the Constitution; and to Articles 81 and 97 of the Constitution, including in their relation to Constitutional Law no. 1 of 2012 and to Law no. 243 of 2012.

3.– With the application indicated in the Headnote, the Autonomous Province of Trent challenges, among others, Article 1(466), fourth sentence, (475)(*a*) and (*b*), 479(*a*), and 483, first sentence (in the part in which it refers to paragraph 479 of Law no. 232 of 2016, in reference to Articles 8, 16, 79, 80, 81, 103, 104, and 107 of the Autonomy Statute – in relation to the corresponding rules of implementation (in particular, Articles 17, 18, and 19 of Decree Law no. 268 of 1992; Article 2 of Decree Law no. 266 of 1992); to Article 2 of the D. P. R. no. 474 of 28 March 1975, entitled

"Provisions implementing the Statute for the Trentino-Alto Adige Region in the area of health and hygiene" – to Articles 117(3) and (4) and 119 of the Constitution, in combination with Article 10 of Constitutional Law no. 3 of 2001; to the principle of loyal cooperation under Article 120 of the Constitution, and to the agreement of 15 October 2014, adopted by Law no. 190 of 2014; to the principle of reasonableness under Articles 3 and 97 of the Constitution, and to Article 81 of the Constitution, including in relation to Constitutional Law no. 1 of 2012 and to Law no. 243 of 2012.

4.– The decision on the additional questions of constitutionality brought by the applications indicated in the Headnote being reserved for separate judgments, the rulings on the questions described above must be joined, due to the partial overlapping of the challenged provisions and the constitutional provisions cited by the applicants.

Following the order of the challenged provisions, for purposes of the present proceedings, the complaints of the applicants may be briefly summarized as follows.

4.1.– Article 1(463) of Law no. 232 of 2016 was challenged by the Autonomous Region of Friuli-Venezia Giulia, in reference to Articles 3, 25(2), and 97 of the Constitution, and to Articles 48 and 49 of the Special Statute.

The reasons for the challenge are expressly preventive in relation to potential interpretations of the overall regulatory scheme.

The applicant expresses concern that the repeal of Article 1(734) of law no. 208 of 28 December 2015, entitled "Provisions for the formation of the annual and multi-year budget of the State (2016 Stability Law)" – which had provided that, for the years 2016 and 2017, the provisions under paragraph 723 did not apply to the Autonomous Regions of Friuli-Venezia Giulia, Valle d'Aosta, Trentino-Alto Adige/Südtirol, the Region of Sicily, and the Autonomous Provinces of Trent and Bolzano, and the regulatory scheme of the internal stability agreement established by Article 1, paragraphs 454 *et seq*. of Law no. 228 of 24 December 2012, entitled "Provisions for the formation of the annual and multi-year budget of the State (2013 Stability Law 2013)" would continue to apply, as implemented by the agreements signed with the State, and "the application of penalties in the event of failure to achieve a balanced 2016 budget, as established by the same paragraph 710, determined according to paragraphs 720 to 727 of Article 1 of Law no. 208 of 28 December 2015" – can lead to an interpretation of paragraph 463 that would (retroactively) submit circumstances and actions that took place in 2016 to review and sanctions – a time period, that is, during which the Friuli Region's internal bodies would have been exempt by reason of the same provision, Article 1(734) of Law no. 208 of 2015.

4.2.– Article 1(466) of Law no. 232 of 2016 has been challenged by the Autonomous Region of Friuli-Venezia Giulia, which challenges only the first, second, and fourth sentences, and by the Autonomous Province of Trent, which challenges only the fourth sentence, in reference to Articles 81, 97, and 119 of the Constitution, to Article 5 of Constitutional Law no. 1 of 2012, and to the principles of reasonableness and equality, as well as to the provisions contained in their respective statutes.

The Autonomous Region of Friuli-Venezia Giulia challenges the rule in the part in which it lists the categories of revenue and expenditure considered for purposes of balancing the budget, excluding any potential administrative surplus from the active part of the budget itself. During the hearing, defense counsel for the Region, which, at the time of the application was unaware of the intervening Judgment no. 247 of 2017 of this Court, stated that it shares the constitutionally conforming interpretation contained in

that Judgment, limiting its challenges to the different regime that would enter into force for the 2020 fiscal year.

This statement was made partly in light of the fact that the administrative surplus would be a source of income owned by the territorial authority, and could not be "expropriated" for purposes pertaining to general obligations of public finance.

According to the Applicant, the concrete, injurious effects of the challenged rule would be particularly intense and unreasonably discriminatory in its own case, since, it alleges, the shift over time time in the collection of the revenue that forms the chief regional resource (sharing in State tax revenue) and the unevenness over time of the maturation of the proceeds coming from the social and inter-group activities of companies of significant size that operate within the territory make regional revenue vary broadly from year to year, in a way "neither foreseeable nor programmable *ex ante* […]."

The administrative surplus from the previous fiscal year, once verified and entered in the financial records, would be the property of the Region, and the challenged provision would make it unavailable to the Region (except under the conditions found in Article 10 of Law no. 243 of 2012, as updated by Law no. 164 of 2016), creating a situation tantamount to the material taking of resources, analogous to designating reserved funds for the State Treasury or withholding funds from the proportion of taxes due to the regions.

The Applicant also alleges that the provision violates the Special Statute underlying its financial autonomy. The Applicant alleges further, considering the substantively "taking" effect, that the provision violates the principle of agreement, in application of the agreement method that governs the financial relationships between the State and the Autonomous Region of Friuli-Venezia Giulia.

In the opinion of the Applicant, the rule is not even justified by the needs of national solidarity or by those relating to the cooperation of the Region in keeping the debt of the overall complex of public administrations sustainable, mentioned by Articles 81(6) and 97(1) of the Constitution, as well as by Article 5(2) of Constitutional Law no. 1 of 2012.

The administrative surplus could be "sterilized" in order to balance the regional budget so as to then transfer it and enter it in the consolidated account of the public administrations for purposes of European financial reporting. According to the Applicant, however, this form of cooperation in sustaining the public debt is incompatible with numerous provisions of constitutional law. First of all, it alleges that the principle according to which overall balance must result from the summation of balanced financial reports, and not from an algebraic summation of financial statements at a deficit with those within budget. The possibility of offsetting is, moreover, only allowed within the limits described in Article 10 of Law no. 243 of 2012, in relation to investment transactions.

The Autonomous Region of Friuli-Venezia Giulia also alleges that Articles 81 and 97 of the Constitution have been violated, two articles which, together, amount to a sort of reciprocal safeguard for all levels of government, when it comes to both the individual and the overall balancing of budgets.

According to the Applicant, the mechanism described above also violates the principle of veracity, budget transparency, and political responsibility, which is implicit in Articles 81 and 97 of the Constitution as well as in the statutory rules which reserve the authority of approval to the Regional Council. The challenged rule allegedly forces the regional representative body, which answers to the electorate, to approve a non-

transparent and non-veridical budget, because the surplus funds from prior fiscal years, although entered in the accounting records of the Region, would not be usable for purposes of balancing the budget, since it would be ascribed to the consolidation of the public administration's accounts and mixed in with it. It would thus become impossible for voters to understand the actual course of regional finances and, concurrently, to evaluate the actions of the administrators and elected representatives.

Finally, the Applicant alleges that the principles of reasonableness and of equality have been violated, in that the rule allegedly produces effects that are totally random and not correlated to any actual real and genuine "contributive capacity" of the Region, because the presence of an administrative surplus does not, per se, indicate a favorable financial situation, nor can it mean that the surplus can be utilized for the consolidated debt of the public administrations.

The Applicant also challenges the provision which states that, starting from the 2020 fiscal year, the earmarked multi-year fund may only be included among the final revenue and expenses to the extent it is financed with final revenues.

The provision is alleged to undermine, first and foremost, the financial autonomy of the Region, and has the substantive effect of taking resources necessary for funding the functions assigned to the Region by statute. The limitations on the computability of the earmarked multi-year fund are allegedly unconstitutional in relation to the potential purpose of sustaining the public debt, including in reference to the principles related to balancing the budget and the sustainability of debt under Articles 81 and 97 of the Constitution.

The principles of reasonableness and equality have also allegedly been violated, on the grounds that this levy, which is imposed indirectly, is generated automatically as a result of the application of an accounting rule imposed on a basis other than the Region's actual "contributive capacity," since a budget surplus could depend on the unique features of the budgetary flows inherent to regional revenue, as in the case of the Autonomous Region of Friuli-Venice Giulia.

The challenges to Articles 1(466), sentence four, of Law no. 232 of 2016, raised by the Autonomous Province of Trent, substantially overlap with the ones brought against the same rule by the Autonomous Region of Friuli-Venezia Giulia.

4.3.– The next section, 475, letters *a*) and *b*), has been challenged by the Autonomous Provinces of Trent and Bolzano, in reference to Articles 79, 80, 81, 103, 104, and 107 of the Special Statute, in relation to the corresponding rules of implementation; to Articles 117(3) and (4), and 119 of the Constitution, in combination with Article 10 of Constitutional Law no. 3 of 2001; to the principle of loyal cooperation under Article 120 of the Constitution and to the agreement of 15 October 2014, adopted by Law no. 190 of 2014, and, therefore, to the agreement principle; and to the principle of reasonableness under Article 3 of the Constitution and to Articles 97 and 81 of the Constitution, including in relation to Constitutional Law no. 1 of 2012 and to Law no. 243 of 2012.

The cited paragraph allegedly introduces measures that punish local authorities in the event of a failure to obtain a non-negative balance, calculated on an accrual basis, between the final revenues and final expenses. The rule in question allegedly regulates the effects of the failure to obtain a "non-negative balance" on the part of the *Comuni* [municipalities], introducing a specific regulatory scheme for the Region of Sicily and the Autonomous Region of Sardinia, as well as for the special autonomous territories

with authority over local finances (the Autonomous Region of Valle d'Aosta, the Autonomous Region of Friuli-Venezia Giulia, and the Autonomous Provinces).

The Applicants claim that this rule interferes with the structure of the financial relations with the State, which includes the financing of the *Comuni* of the respective territories, as provided in the special statute and per the agreement of 15 October 2014 and its later, supervening statutory modifications.

The Applicant further alleges that the challenged section does not comply with the statutory provisions that grant the Autonomous Provinces exclusive power to pass legislation on local finances and the corresponding administrative powers.

The duty to make a payment to the State Treasury in relation to the recorded discrepancy, in an amount equal to one third, allegedly goes against the financial autonomy provided for under Title VI of the Special Statute and governed, in particular, by Article 79(4) of the same (following the agreement of 15 October 2014) as modified in accordance with Article 104 of the Statute.

With regard to Article 117(3) of the Constitution, the Autonomous Provinces stress that they do not burden the State budget in financing the expenses of their *Comuni*. In addition, such Provinces are directly accountable for the macroeconomic goal assigned by the State to the Provinces through the agreements.

Thus, they allege that the sums taken away from local authorities may not, in any event, be merged with tax revenue.

4.4.– The Autonomous Region of Friuli-Venezia Giulia and the Autonomous Province of Trent also challenge the combined provisions of paragraphs 479 and 483 of Article 1 of Law no. 232 of 2016, in reference to Article 81 of the Constitution, Article 5 of Constitutional Law no. 1 of 2012, and Article 9(4) of so-called "Reinforced Law" no. 243 of 2012.

The Applicants claim that these provisions do not include the special autonomous territories in the system of financial relationships connected with the collection of penalties and the distribution of rewards by the State.

Article 1 of Law no. 232 of 2016, alongside the penalty provisions found in paragraph 475, introduces equivalent measures containing incentives in paragraph 479.

The Applicants claim that, while section 475 expressly provides for a reduction of State tax payments from defaulting local authorities within the Autonomous Region of Friuli-Venezia Giulia and the Autonomous Provinces of Trent and Bolzano, subsequent paragraph 479 does not mention the special autonomous entities for the incentive system.

Article 1(483) of Law no. 232 of 2016 – later repealed, starting from 1 January 2018, by Article 1(828) of Law no. 205 of 27 December 2017 (Preliminary Budget of the State for the 2018 fiscal year and multi-year budget for the three-year period from 2018 to 2020) – in the formulation that was in force at the time of the application, established that, "[f]or the Regions of Friuli-Venezia Giulia and Trentino Alto Adige, as well as for the Autonomous Provinces of Trent and Bolzano, the provisions in paragraphs 475 and 479 of the present article do not apply, and the regulatory scheme of the internal stability agreement, found in Article 1, paragraphs 454 *et seq*. of Law no. 228 of 24 December 2012 continue to apply, as implemented by the agreements signed with the State."

According to the Applicants, this system is inconsistent, and is unconstitutional in the event that the references to the Autonomous Region of Friuli-Venezia Giulia, the Autonomous Province of Trent, and to their respective local authorities, contained in

paragraphs 475(*a*) and (*b*) are considered to be applicable and in force. Indeed, they allege that it would be discriminatory and unfair to participate in the system of penalties under paragraph 475, without being able to participate in the incentive system under paragraph 479. In particular, they allege that the principle of reasonableness (Article 3 of the Constitution), has been violated by an unjustified discrimination between the Applicants – which would be exposed to the system of penalties in the event they were unable to meet budget requirements, without being able to benefit from the system of recognition for positive comportment – and all the other Regions, to which such recognition potentially applies.

4.5.– The Autonomous Region of Friuli-Venezia Giulia challenges Article 1(519) of Law no. 232 of 2016, alleging that it violates Article 3 of the Constitution, due to the unreasonableness of the choice to refer to the amount of municipal taxes on real property (*imposta comunale sugli immobili* – ICI) taken from an arbitrarily chosen year, as well as Article 119 of the Constitution and Articles 48, 49, 51, 63 and 65 of the Special Statute, and Article 27 of Law no. 42 of 2009. Finally, it alleges that it violates the principle of agreement, according to the principles established by Judgment no. 188 of 2016 of this Court. Lastly, in relation to grounds for violation already discussed above, the rule allegedly goes against Article 136 of the Constitution, because it violates the constitutional case law coming from the aforementioned judgment.

The provision found in Article 1(519) of Law no. 232 of 2016 was adopted, according to the Applicant, as a result of the aforementioned Judgment no. 188 of 2016, but substantially disregarding its contents.

While, on the one hand, the challenged rule provides that, "[t]he Ministry of Economics and Finance and the Region of Friuli Venezia Giulia proceed, through an understanding to be reached by 30 June 2017, with ascertaining the amount of the funds withheld for the Autonomous Region of Friuli Venezia Giulia, in compliance with Article 1(711), (712), and (729) of Law no. 147 of 27 December 2013, for the years 2012 to 2015" (thus referring to the agreement method described by the cited ruling), it then establishes that the object of the checks are the withheld funds created "by effect of the modifications put in place for the 2010 year concerning local real estate taxes."

Thus, according to the Applicant, the State legislator made a wholly unilateral choice of the time period providing the basis for evaluating the revenue, opting not to choose an annuity relative to individual withheld amounts, but rather a single year, arbitrarily selected as 2010, a fiscal year in which the trend in revenue was, for purposes of making the final adjustment, most advantageous for the State.

The Applicant alleges that this arbitrary choice is detrimental to it, since it allows for an overestimate of revenue, effecting an artificial inflation of the amount due to the State. Moreover, in this way, the State would exclude from the agreement one of the "other budgetary issues" among which "checking the precision of public finance and tax data and information" allegedly falls, thus concealing, or at the least assuming to be predetermined, prior to any possible exchange with the Autonomous Region of Friuli-Venezia Giulia, a piece of information that was considered to be essential in this Court's Judgment no. 188 of 2016, i.e. the year of reference.

5.– Following the order of the challenged provisions, the arguments in defense of the President of the Council of Ministers may, in turn, and for purposes of the present judgment, be summarized in this way.

5.1.– According to State Counsel, paragraph 463 effects "the inapplicability of prior provisions on balancing the budgets of local authorities."

The President of the Council of Ministers, despite admitting that this general provision renders inapplicable, starting from the year 2017, paragraphs 709 to 712, and 719 to 734, of Article 1 of Law no. 208 of 2015, specifies that "paragraph 734 is reproduced by paragraph 483 of Law no. 232 of 2016, which establishes that the regulation of the internal stability agreement in Article 1(454) *et seq*. of Law no. 228 of 24 December 2012 remains in effect, as implemented by the agreements signed with the State." Thus, the defense maintains that the alleged modifications to the previous legislative framework, of which the Applicant complains, do not exist.

5.2.– Concerning the alleged violation of regional financial autonomy due to the failure to include the administrative surplus among the final revenue, allegedly preventing the achievement of a balanced budget, the President of the Council of Ministers notes that the challenged rule responds to the need to coordinate the rules of public finance (to which the territorial authorities are subject) with European rules on accounting, under which administrative surpluses from previous fiscal years should not count toward the consolidated account of the public administrations used to verify compliance with European obligations.

The defense alleges that the challenge to Article 1(466), fourth sentence, of Law no. 232 of 2016 on the earmarked multi-year fund is unfounded, on the grounds that the provision does no more than adopt, word for word, what is expressly provided in the overriding source, paragraph 1-*bis* of updated Article 9 of Law no. 243 of 2012, which identifies the final balances relevant for purposes of balancing the budget.

5.3.– With regard to the challenges brought against Article 1(475)(*a*) and (*b*) of Law no. 232 of 2016, the President of the Council of Ministers claims that it is part of an intricate and complex regulatory system, intended to pursue goals for curbing public spending that are connected with membership in the European Union.

These provisions allegedly amount to principles for coordinating public finances, which must be uniformly applied even to the special autonomous territories and their respective local authorities, and, as such, they do not violate the autonomy granted to the Applicants under the Constitution.

The Region or the Autonomous Province that removed itself from measures intended to work throughout the entire national territory allegedly would not fulfill its duties of solidarity under Articles 2 and 5 of the Constitution, unduly benefiting its own residents with respect to the citizens of the remainder of the country.

5.4.– The challenges brought against Article 1(479) and (483) of Law no. 232 of 2016 are unfounded, according to State Counsel, on the grounds that paragraph 483 expressly provides that the provisions on penalties and incentives connected with the regulation of balancing the budget under paragraphs 475 and 479 do not apply to the Applicants, and that the penalty scheme related to internal stability agreement regulations applies instead.

Beginning with the year 2018, when this earmark is no longer in place, the applicable body of laws allegedly includes only the regulations pertaining to the balanced budget, in implementation of the agreements respectively signed with the State (in particular, Article 8 of the *Protocollo d'intesa* between the State and the Autonomous Region of Friuli-Venezia Giulia of 23 October 2014, adopted by Article 1(517) of Law no. 190 of 2014, and point 10 of the agreement between the State and the Autonomous Region of

Trentino-Alto Adige and the Autonomous Provinces of Trent and of Bolzano of 15 October 2014, adopted by paragraph 4-*quater* of Article 79 of the Special Statute).

5.5– The President of the Council of Ministers claims that the challenges brought against Article 1(519) of Law no. 232 of 2016 are unfounded on the grounds that they are based on an incorrect reading of this Court's Judgment no. 188 of 2016.

With regard to the applicable ICI year of reference, State Counsel for the defense claims that it resulted from a technical process drawn up in the context of the complex fiscal reform brought about by Law no. 42 of 2009. The value of the ICI determined in this way is, it alleges, pertains to matters of public finance, and, therefore, is the prerogative of the State legislator.

Moreover, the State Defense claims that, in a context of solidarity-based federalism, making use of a different parameter, effecting a disparity in treatment vis-à-vis *Comuni* in Regions with ordinary statutes, violates the principle of equality, as well as the principle of reasonableness, given the requirement that the total endowment of the municipal solidarity fund be kept unaltered.

6.– An examination of the questions must follow an order that gives precedence to those touching upon the Constitution, rather than on individual special statutes, since the areas to which they refer are homogeneous, and, as such, call for a joint analysis.

6.1.– As for the questions raised by the Autonomous Region of Friuli-Venezia Giulia with regard to Article 1(463) of Law no. 232 of 2016, in reference to Articles 3, 25(2), and 97 of the Constitution, as well as to Articles 48 and 49 of the Special Statute, it is necessary to premise the analysis by noting that the challenged provision is written with an ambiguous regulatory technique due to the repeated references to other, potentially contradictory provisions, so as to justify, on the one hand, the Applicant's preventive challenge and, on the other hand, also the reassuring reply of the Defense for the State.

The provision provides that, "starting from the year 2017, paragraphs 709 to 712 and 719 to 734 of Article 1 of Law no. 208 of 28 December 2015 shall cease to have effect. The obligations of territorial authorities concerning monitoring and certification of the final balance under Article 1(710) of Law no. 208 of 28 December 2015, as well as the application of penalties in the case of failure to achieve the 2016 balance, under the same paragraph 710, calculated in compliance with paragraphs 720 to 727 of Article 1 of Law no. 208 of 28 December 2015, remain in force. The effects connected with the application of the solidarity agreements under paragraphs 728 to 732 of Article 1 of Law no. 208 of 28 December 2015 remain unaffected."

The questions – as summarized at point 4.1 – are unfounded, as explained hereinafter.

From the wording of challenged paragraph 463 there emerges a common purpose underlying the rules in relation to which references and exceptions are provided. It can be found in two complementary principles which this Court has already affirmed: a) as far as the information system is concerned, the following do not violate the autonomy of the local authorities: "the duties to transmit data and information to the central administration, […] which must necessarily comply with criteria of uniformity for purposes of the comparison and consolidation of data. And, if the Ministry's power to provide for the coordination of information is recognized, it follows that there is no basis for the critique that would attribute to it a power [a regulatory power, in the present case] outside the area of exclusive state competence" (Judgment no. 36 of 2004); b) for that which pertains to the penalty system, "[t]he finances of the Regions with special statutes are […] a part of the 'extended public finances,' and the State had

and continues to have powers in their regard of general discipline and of coordination, in the exercise of which it could and it can surely call upon the special autonomous territories to contribute to the attainment of overall objectives of public fiscal policy" (Judgment no. 425 of 2004). It follows that – even in relation to the penalty system that constitutes a natural deterrent for each individual infraction by the territorial bodies of their public financial duties – we cannot posit that there is "a different treatment for the authorities operating within special autonomous territories in relation to an aspect […] that must necessarily include all the authorities that take part in the extended system of public finance" (Judgment no. 425 of 2004).

This is so true that none of the agreements stipulated by the State with the special autonomous territories concerning public finances – and much less so the individual special statutes – contains an exemption from the national information system or the penalty system put in place for the sub-regional or sub-provincial entities that fail to meet national or European obligations or to pursue the related objectives.

Duties, objectives, and penalties, when it comes to the special autonomous territories, must be fitted to the unique regulations in the individual statutes and the agreements stipulated with the State. Given this, the national penalty system must be calibrated to the specific regulations governing the local entities of the Autonomous Region of Friuli-Venezia Giulia, just as the revenue from any penalties that may be applied must flow into the regional treasuries, rather than the State ones, since it is the Region itself to fund its local bodies and to answer for the failure to meet macroeconomic objectives assigned on a regional basis. This reasoning also applies to the "certification of balances" on the part of the local bodies operating within the territory of the special autonomy.

Although it bears pointing out, concerning the challenged rule, that "the increasing technical complexity of finance legislation may have effects not in line with constitutional law and may create shadowy areas capable of making adjudication of unconstitutional provisions difficult […and] there is a concrete risk that this way of legislating will have negative effects on transparency when it comes to the relationship between budgetary policies, political accountability for financial decisions, and accessibility of information on the part of the population under administration" (Judgment no. 247 of 2017), it is, in any case, reasonable to deduce from the complex fabric of the challenged rule that none of the provisions it cites ever entailed the exemption of the territorial entities of the special autonomous territories from the duties to inform relative to the demands of extended public finance, nor from the penalty system for infractions, without prejudice to the individual characteristics of the financial systems of the autonomous territories mentioned earlier.

In conclusion, tracing all the implicated provisions in the text of challenged paragraph 463 to the same legal purpose, as explained above, leads to the conclusion that the questions raised by the Autonomous Region of Friuli-Venezia Giulia are unfounded.

6.2.– As for the questions raised by the Autonomous Region of Friuli-Venezia Giulia and by the Autonomous Province of Trent concerning the first, second, and fourth sentences of paragraph 466 – as summarized at point 4.2. above – it is necessary to premise the analysis with an element taken from this Court's earlier case law and from the context surrounding the provision.

6.2.1.– Article 1(1)(*b*) and (*e*) of Law no. 164 of 2016 was challenged in the past with Applications no. 68, 69, 70, 71, and 74 of the 2016 Register of Applications, on the

basis of the assumption that this rule prohibited the use of administrative surpluses and the earmarked multi-year fund when their natural term limit expired. With two separate rulings, this Court rejected this interpretation and adopted a different one that was consistent with the Constitution.

Concerning administrative surpluses, this Court held that, "[t]he agreements [concerning the territorial bodies voluntarily making their own administrative surpluses available] constitute […] the tool for guaranteeing a balanced budget not limited to the individual body, but extending to all the Regions. […] [W]hile it is true that the preliminary budget contains a procedural obligation that affects the immediate accessibility of administrative surpluses, it is equally true that the concrete outcome of the financial results remains entrusted to the dialogue between the interested entities which the start of the agreement should trigger. […] In light of these observations […] this is not a matter of expropriation of leftover administrative funds. […] Likewise unfounded is the Region's other challenge, which alleges that the rule imposes the duty to use administrative surpluses exclusively for investments, in violation of its fiscal autonomy. The provision does, indeed, take for granted the existence of such an obligation, but only under the conditions connected with the positive execution of the agreement" (Judgment no. 252 of 2017) and that "the territorial bodies with an administrative surplus simply have the ability – and not the obligation – to make available part or all of the surplus for regional investment policies. Indeed, it is entirely up to the body that has the surplus to decide whether or not to participate in the agreements at the regional level. Only where the body has freely exercised that option may it specify that the surplus is to go toward increasing the regional financial competence" (Judgment no. 247 of 2017).

As far as the earmarked multi-year fund, the same Judgment reiterated that "verifications, duties, and passive and active obligations remain explicit and allocated in the budget in accordance with the plan previously established by the territorial body. Therefore, classification or non-classification of revenue under Titles 1, 2, 3, 4, and 5, and under Titles 1, 2, and 3 of expenses must be interpreted in a purely technical-accounting sense, as a harmonized criterion for the benefit of the national balance sheets. This accounting aggregation has no impact, either quantitatively or temporally, on resources which have been legally set aside to fund programs, commitments, and passive obligations agreed upon during the fiscal years leading up to the deadlines of the earmarked multi-year fund. […T]he regulatory classification of the earmarked multi-year fund constitutes a unique, identifying definition of this legal arrangement, the regulation of which is absolutely limited to the purpose of preserving coverage of multi-year expenses. This implies that no provision – even if included in the reinforced law – may entail its semantic and functional heterogenesis without violating Article 81 of the Constitution" (Judgment no. 247 of 2017).

Lastly, as concerns the contents of the "reinforced law," this Court held that it identifies the ways of achieving "parity" (*recte*: balance) of the budget, as laid out in Article 81 of the Constitution, but it cannot redefine this concept through indirect accounting technicalities, because such an interpretation "is also not in line with the precepts of coverage and balance contained in Article 81 of the Constitution. The budget may not be considered to be balanced in the absence of allocated funds to cover committed expenses and burdens driving from obligations that have already been fulfilled. Such coverage occurs by means of withholding a reserve and setting up subsequent legal protection attached to the appropriated items. The alleged possibility

that legal authorization to execute said expenditure – in this case contained in the earmarked multi-year fund – may be removed *ex lege*, forcing the territorial authority either to find new funds to provide coverage or to be in default, is an interpretive choice that directly clashes with the precepts contained in Article 81 of the Constitution. Nor can the reinforced law introduce a provision of this kind: doing so would clash with the principle of prior and constant coverage of expenses from the moment of authorization up until the moment of payment. In conclusion, the regulation of the economic/financial balancing of the assets accrued and liabilities incurred during the fiscal year cannot fail to take into account the legal elements inherent in managing assets and liabilities, and, as a result, must also take into account the administration outcomes, which must be calculated without the inclusion of accounting entries that are random or indeterminate.
If the Applicants' interpretation were to be adopted, the concept of balance of the individual public budgets would be subjugated to a series of potential regulatory variables that would threaten not only the authorities' financial stability, but also its very image as a subject operating on the market as a contractor" (Judgment no. 247 of 2017).

As a corollary of these judgments, when the rules contained in the reinforced law (or, in any case, coming from the coordination of public finances) prohibit the use of the administrative surplus and funds earmarked for multi-year expenditure in the succeeding fiscal years, the so-called balance should instead be configured as "inert structural assets," that is, unusable for the intended purposes and, as such, non-compliant with Articles 81 and 97 of the Constitution.

Keeping in mind that multi-year expenses almost entirely mirror the funds earmarked for investments, the principle of non-cyclical budgetary policies introduced by the new Article 81(1) of the Constitution is also violated if the above considerations are valid. This is because not even the resources already available for investments could be used to oppose negative phases of the economic cycle.

Finally, as far as the accounting technicalities pertaining to the collection of domestic and European statistical data is concerned, this Court has stated that the legislator is free to elaborate them, provided that, taken together, they do not alter the basic concepts of the budgetary framework, such as "administration outcome" and "earmarked multi-year fund" and, more generally, provided that it does not violate the constitutional principles of covering expenses, balancing the budget (Article 81 of the Constitution), and "calling" upon territorial bodies to ensure the sustainability of the debt (Article 97(1), second sentence, of the Constitution).

This Court has explained that, "[c]lassification or non-classification under Titles 1, 2, 3, 4, or 5 of revenue, or under Titles 1, 2, or 3 of expenses must be understood in the technical/accounting sense, as a harmonized mathematical criterion for purposes of consolidating the national accounts, while the resources legally set aside to cover programs, commitments, and financial liabilities planned during the fiscal years prior to the deadline must be considered unaltered and unusable. It is important to bear in mind that the consolidated statements do not represent the entire amount of the budget of the territorial authorities, and, therefore, the earmarked multi-year fund may be properly used and managed under a different balance sheet, where no specific allocation is mentioned" (Judgment no. 247 of 2017).

6.2.2.– Having said this, the questions raised by the Autonomous Region of Friuli-Venezia Giulia and the Autonomous Province of Trent concerning the first, second, and fourth sentences of Article 1(466) of Law no. 232 of 2016, in reference to Articles 81

and 97 of the Constitution, are, first of all, admissible, since the claim that the alleged violation affects their autonomy is correctly framed.

They are also well-founded in reference to the cited parameters, as well as to Article 119 of the Constitution. The referenced paragraph 466 is unconstitutional in the part in which it establishes that, starting from 2020, for purposes of effecting a balancing of the budget, earmarked expenses from previous fiscal years must be financed exclusively by accrued assets. It is also unconstitutional in the part in which it does not provide that the use of the administrative surplus and of the earmarked multi-year fund may have neutral effects with respect to the balancing of the statement of assets accrued and liabilities incurred in the course of the year.

A logical-systematic reading of the provision leads to the conclusion that, unlike this Court's finding in Judgments no. 247 and 252 of 2017, mentioned above, with regard to Article 1(1) of Law no. 164 of 2016, it is not possible here to devise an interpretation consistent with the Constitution.

The provision establishes that, "[s]tarting from the year 2017, the authorities specified in paragraph 465 of the present Article must attain a non-negative balance, on an accrual basis, between the final revenue and the final expenses, in accordance with Article 9(1) of Law no. 243 of 24 December 2012. In accordance with paragraph 1-*bis* of Article 9, the final revenue entries are those that fall under Titles 1, 2, 3, 4, and 5 of the balance sheet provided for by Legislative Decree no. 118 of 23 June 2011, and the final expenditures are those that fall under Titles 1, 2, and 3 of the same balance sheet. For the years 2017-2019, the earmarked multi-year fund, of revenue and expenditure, shall be considered, net of any portion funded through loans, as a part of final revenue and expenditure calculated on an accrual basis. Starting from the 2020 fiscal year, the earmarked multi-year fund of revenue and expenditure, funded by the final revenues, shall be included among the final revenues and expenditures. The portion of the earmarked multi-year fund of revenue that goes to financial commitments that have been definitively cancelled after the approval of the prior year's financial statement does not have a bearing."

Implementing the contents of the provisions that were previously the object of a conforming interpretation, it establishes that from 2020 on, "among the final revenues and expenses shall be included the earmarked multi-year fund of revenue and expenditure, funded by the final revenues."

This formulation, albeit an ambiguous one, allows us to glean that the earmarked sums from preceding fiscal years, whether they come from the surplus or from other assets subject to multi-year use, must be funded exclusively by accrued revenues.

This semantic and functional specification is incompatible with the line of interpretation consistent with the Constitution which this Court followed in Judgment no. 247 of 2017 of this Court.

This means that, contrary to what will be permitted until 2019, for 2020 (a fiscal year that is already relevant in light of the three-year financial plan for 2018-2020), territorial authorities would be caught between two options, neither of which conforms to the principles contained in the constitutional rules cited by the Applicants: *a*) step back from the commitments and liabilities planned as part of the earmarked multi-year fund starting from 2020; or *b*) find new sources of funding to cover commitments and obligations already completed in the previous years according to a multi-year projection that is inextricably linked with the plan for carrying out investments and transactions which develop over an extended period with respect to any single fiscal year (by

structural design, the earmarked multi-year fund and the administrative surplus that may be merged with it are used to preserve the resources allocated for investments and multi-year transactions according to the time schedule for their execution).

A memo from the Ministry of Economy and Finance, no. 5 of 20 February 2018, further confirms the fact that an interpretation consistent with the Constitution is not possible. The memo, containing "Clarifications on the balanced budget requirement for the three-year period 2018-2020 for the territorial authorities found in Article 1, paragraphs 465 to 508, of Law no. 232 of 11 December 2016 (2017 Budget Law), as modified by Law no. 205 of 27 December 2017 (2018 Budget Law)," reiterates that this Court's interpretation in compliance with the Constitution applies through 2019, while for 2020 the very provision challenged by the Applicants should enter into force: "we believe that the tools provided for by the legislator […] are an effective means for using (and progressively disposing of) the administrative surplus on the part of the territorial authorities, in keeping with the interpretations of the Constitutional Court expressed in previously mentioned Judgment no. 247 of 2017. […] Moreover, cited paragraph 466 explains that, starting in 2020, the earmarked Multi-year Fund of Revenue and Expenses Funded by Final Revenues, shall be included among final revenues and expenses. As underscored above, the Multi-year Fund of Revenue and Expenses Funded by Final Revenues – which counts for purposes of fulfilling public financial duties starting from the 2020 fiscal year – refers to the Fund apart from the portion that is funded by recourse to borrowing and any amounts deriving from loans and credits merged with the administrative surplus."

Aside from the complex and often murky regulatory fabric, which this Court has already held to be lacking in transparency and in need of a speedy and definitive set of overriding provisions, there can be no doubt that the failure to provide for "financial neutrality" for all the entries for revenue and expenses that are multi-year in nature and which derive from plans already completed in terms of coverage in previous fiscal years, amounts to a clear breach for the territorial authorities in light of both the principle of balance found in Article 81 of the Constitution, and that found in Article 97(1), first sentence, of the Constitution (individual balance of the authorities that participate in extended public finance: Judgment no. 247 of 2017). Indeed, when it comes to multi-year spending, and that of investments in particular, the principle of coverage consists in attaining absolute balance between resources and expenditure, in the preliminary phase as well as during the entire arc of carrying out activities.

The statutory removal of a portion of the resources for implementing plans already completed in prior fiscal years also causes harm to the autonomy of territorial authorities that are subjected to it. The reduction of the resources that are necessary for territorial authorities to implement the multi-year plan for activities, the full payment of which is ascribable to previous fiscal years, undermines the autonomy and healthy financial management of those authorities, "coming into contrast with said provisions of constitutional law, to the extent to which it does not permit [them] to adequately fund [their] functions. […In light of this, the] principle of sound administration – all the more so considering the modification brought about with the addition of the new first paragraph to Article 97 of the Constitution by Constitutional Law no. 1 of 20 April 2012 (Introduction of the principle of a balanced budget into the Constitution) – is strictly correlated to the consistency of the budgetary law [or, in the case of local authorities, of the resolution] with the planning of the services and activities that are intended to be financed during the present legislative term" (Judgment no. 10 of 2016).

Concerning the present case, the mid-term reduction of the funds allocated for covering multi-year expenses and the resulting uncertainty concerning their actual amount do not allow them to be used profitably, in that "[o]nly when there is a reasonable plan for their use is it possible to make a correct distribution of the resources [..] and guarantee the sound administration of the services they finance" (Judgment no. 188 of 2015).

6.2.3.– The complexity of the regulatory scheme adopted by the State legislator and the objections of State Counsel call for clarification concerning the effects of this judgment and the prior ones (Judgments no. 247 and no. 252 of 2017) which regard the balancing of extended public finance.

As far as the use of the administrative surplus is concerned, it has already been held that, both in the event that it is voluntarily allocated to increase regional financial competence (Judgment no. 252 of 2017), and in the event that it is used by the proprietary authority, the balance of these options will, in any case, be zero, since both are grounded on a sure and definite quantity, the non-earmarked amount (without prejudice to the fact that the earmarked surplus may be used within the deadline and for the purposes envisaged by the "earmark") and, within that amount, the options expand and contract in an overall delimited way.

Likewise, the earmarked multi-year fund is structured in such a way as to preserve the overall balance between resources and expenditure needs, despite the inevitable long-term evolution of the relative financial transactions during the period of enacting the individual projects (Article 3 of Legislative Decree no. 118 of 23 June 2011, "Provisions on harmonization of the accounting systems and budget methods of the Regions, the local authorities, and their institutions, pursuant to Articles 1 and 2 of Law no. 42 of 5 May 2009").

It is clear, nonetheless, that administrative surpluses of territorial authorities, which may be used to increase financial competence or to permit the proprietary authorities to make new expenditure, as well as the reserves kept in the earmarked multi-year fund, must be subjected to rigorous scrutiny when it comes to reporting.

For this reason, the legislator has provided for regular checks of the legality and correctness of the regional divisions of the Court of Auditors on the final balances of the territorial authorities (auditing procedure for regional financial statements, check pursuant to Article 148-*bis* of Legislative Decree no. 267 of 18 August 2000, entitled "Unified Text of the Laws on the Organization of the Local Authorities," as introduced by Article 3(1)(*e*) of Decree-Law no. 174 of 10 October 2012, entitled "Urgent provisions on finance and the working of the territorial authorities, as well as further provisions to assist the areas affected by earthquake in May 2012," converted, with modifications, into Law no. 213 of 7 December 2012, on the financial statements of the local authorities).

However, financial manipulation of the administration outcomes of territorial authorities have recently been the focus of a ruling by the Supreme Court of Cassation, which placed it among the criminal offenses of ideological falsehood under Articles 479 *et seq*. of the Criminal Code (Supreme Court of Cassation, Fifth Criminal Division, Judgment no. 14617 of 30 March 2018).

In addition, this Court has highlighted (in Judgment no. 274 of 2017) that administration surpluses which are duly verified may not be equated with cash balances, that is, with the temporary liquidity available in the course of the fiscal year which some

Regions have used in the past, as part of a practice that caused serious damage to the balance of the respective budgets due to the failure to verify coverage.

Indeed, active cash balances are not indicative, in and of themselves, of healthy and good administration, since they are connected with a number of negative variables – notably, including the potential existence of hidden debts – that are able to conceal the authority's true fiscal-economic situation.

On the contrary, a duly verified administrative surplus, as the Autonomous Region of Friuli-Venezia Giulia maintains, effects the existence of true and proper assets that may be used directly, as well as in order to increase the financial competence of other authorities, in accordance with mutual solidarity within regions.

Ultimately, the protection of the principle of "financial neutrality" demanded by the Applicants coincides precisely with the mentioned partial modification of the challenged provision and, therefore, in light of the considerations laid out above, the effects of the present ruling that Article 1(466) of Law no. 232 of 2016 is unconstitutional (as explained above) do not entail a burden on the overall outcomes of expanded public finance by the budgets of the territorial authorities.

6.2.4.– The additional challenges to paragraph 466 are absorbed.

6.3.– The questions raised by the Autonomous Provinces of Trent and Bolzano, which concern Article 1(475)(*a*) and (*b*) of Law no. 232 of 2016, and the question raised by the Region of Friuli-Venezia Giulia concerning paragraph 483 in conjunction with that provision (conclusion 4.4) are well founded, in reference to Article 117(3) of the Constitution, in the part in which it provides that the amounts of the potential penalties applied to local authorities are to be added to the balance of the State instead of to the balance of the aforementioned special autonomous regions.

The challenged provision states that, "[i]n accordance with Article 9(4) of Law no. 243 of 24 December 2012, in the event of failure to meet the balance described in paragraph 466 of this article: *a*) the local authority shall be subject to a reduction of the experimental rebalancing fund or the municipal solidarity fund in an amount equal to the total amount of the recorded discrepancy. The provinces of the Sicily and Sardinia Regions shall be subjected to the reduction of State tax transfers in the amount indicated in the first sentence. The local authorities of the Friuli-Venezia Giulia and Valle d'Aosta Regions, and of the Autonomous Provinces of Trent and Bolzano, shall be subject to a reduction in the amount transferred to them by said regions or autonomous provinces in an amount equal to the total recorded discrepancy. The reductions described in the preceding sentences ensure the recovery described in Article 9(2) of Law no. 243 of 24 December 2012, and they apply to the three-year period that follows the one in which the default occurred, on a straight-line basis. In the event of incapacity, for one or more years of the applicable three-year period, the local authorities are obliged to pay to the State Treasury the residual amounts of each annual share, within the applicable year for those shares, payable to the competent division of the Provincial Treasury of the State, at heading X of State Treasury Revenue, Chapter 3509, Article 2. In case of nonpayment of said residual amounts the following year, recovery is made with the procedures laid out in sections 128 and 129 of Article 1 of Law no. 228 of 24 December 2012; *b*) in the following three-year period, the region or autonomous province is obliged to make a payment to the State Treasury, in an amount equal to one third of the recorded discrepancy, which ensures the recovery described in Article 9(2) of Law no. 243 of 24 December 2012. The payment shall be made by 31 May of each year of the three-year period following that of the default. In the event of nonpayment, the

procedure envisages the recovery of the amount of the deviation from the remainder deposited, in any capacity, in the open accounts with the State Treasury […]."

This Court has held, with regard to penalties for local authorities within the territories of the Autonomous Provinces of Trent and Bolzano (and the principle holds true for the Autonomous Region of Friuli-Venezia Giulia as well), that "the subject of the provincial financial policy of Trent and Bolzano takes inspiration from the principle of agreement, and one of the ways in which this manifests in the present case is through a particular law intended to implement and adhere to macroeconomic obligations at both the European and national levels. It is, likewise, indisputable that providing oversight and the concrete implementation of this specific financial framework – without prejudice to the power of the relevant oversight division of the Court of Auditors to perform checks of the legality-correctness of the financial statements of the local authorities (Judgment no. 40 of 2014) – falls to the Autonomous Provinces, in keeping with the objectives established for provincial finances. The provincial provisions – adopted after the specific applicable agreement – thus assume the character of a "primary normative parameter in this area for regulating the management of sub-regional bodies, which include the local authorities from the territory concerned" (Judgment no. 40 of 2014). Nevertheless, the general and immutable nature of public financial obligations requires that, independent of the special regime enjoyed by the local authorities within the special autonomous regions for purposes of meeting macroeconomic goals, reported culpable deviations in individual budget management must be accompanied by a homogeneous system of penalties, commensurate with the extent of the infractions (which, in the present case, refer to a regional or provincial regulatory fabric) committed by local authorities. Thus, irrespective of the complex and constant succession of different regulatory formulations that have been used to express it over time, the principle of the immutability of penalties for the territorial authorities which culpably default on public financial objectives (if understood in a way that complies with the applicable provincial [and regional] regulations) does not contradict the statutory parameters referred to by the Applicants and the corresponding challenges are, therefore, unfounded" (Judgment no. 94 of 2018).

If the immutability of a common penalty scheme – albeit one that is articulated in a way which changes over time due to the technical elements that implement European and national obligations – for all local authorities involved in reaching public finance goals explains the reason why the powers of the provincial legislator play no role in its determination, this does not mean that the State legislator may require the amount of the penalties that may be applied to the local authorities of the special autonomous territories – which are tasked, in the context of their own powers in the area of local finance, with financing their own authorities and taking responsibility for the macroeconomic goals assigned to them – must flow to the State Treasury instead of the treasuries of the autonomous territories themselves.

The challenged provision must, therefore, be declared to be partially unconstitutional, in reference to Article 117(3) of the Constitution, "co-ordination of public finance."

6.3.1.– The additional challenges to Article 1(475) of Law no. 232 of 2016, brought by the Autonomous Provinces, are absorbed.

6.4.– The questions of constitutionality raised by the Autonomous Region of Friuli-Venezia Giulia and by the Autonomous Province of Trent concerning Article 1(483) of Law no. 232 of 2016, including as read in combination with the preceding section

479(*a*), in reference to Articles 81 and 97 of the Constitution, Article 5 of Constitutional Law no. 1 of 2012, Article 9(4) of Law no. 243 of 2012, and the related statutory parameters, are unfounded as specified hereinafter.

Article 1(479) of Law no. 232 of 2016, in the part relevant for present purposes, provides that "*a*) to those regions that meet the balance described in paragraph 466, and which have a cash balance between final revenues and expenses that is not negative, shall be allotted, by decree of the Ministry of Economy and Finance, by 30 July of each year, any potential resources collected by the State budget by 30 June in accordance with paragraph 475(*b*), to be used for investment purposes. The calculation of the resources allotted to each region shall be determined by agreement of the Permanent Conference for the Relationships between the State, the Regions, and the Autonomous Provinces of Trent and Bolzano. The regions which achieve a final cash balance that is not negative shall transmit to the Ministry of Economics and Finance, Department of General Accounting of the State, information concerning the report as at 31 December on the balance described in paragraph 466 and the certification of the relevant results, on both an accrual and a cash basis, following the method prescribed by the decrees described in paragraph 469. For purposes of the cash balance, the advance granted by the State Treasury during the course of the fiscal year in order to fund the healthcare recorded in the designated section of the ledger, net of the related accounting adjustments imputed to the same fiscal year […] is relevant."

Article 1(483) of Law no. 232 of 2016 states that, "[f]or the Friuli-Venezia Giulia and Trentino-Alto Adige Regions, as well as for the Autonomous Provinces of Trent and Bolzano, the provisions of paragraphs 475 and 479 of this Article shall not apply, and the regulatory scheme found in the internal stability agreement found in Article 1(454) *et seq*. of Law no. 228 of 24 December 2012 shall apply, as implemented by the agreements signed with the State."

The Applicants bring the present challenges as a precautionary matter, in the event that the clause of "non applicability" from paragraph 483 were held not to apply (it was, in any case, repealed as of 1 January 2018), in case a conclusion were reached that the special autonomous territories are included in the penalty scheme described in paragraph 475, but not in the incentive system outlined in paragraph 479.

Aside from the unclear legislative orientation when it comes to the protective clauses, characteristic of the extremely sensitive matter of the financial relationship between the State and the special autonomous territories, the challenged provision may be applied to the applicant special autonomous territories only in the ways previously specified. As explained above, the Applicants operate within a regime that is heterogenous with respect to, and that falls outside of, the ordinary system for funding local authorities, but they are not exempt from the general system of penalties. The earlier observations made about the special autonomous territories' subjection to the penalty system, considered at point 6.3, albeit in line with their individual public finance rules, also have a bearing here.

In conclusion, from the above considerations it unequivocally follows that the Applicant territories – while remaining subject to the duties and objectives of public finance, according to the individual sets of regulations in place for each one – do not participate in the State funds that concern, respectively, the State taking ownership of the total amount of penalties and the correlated distribution of awards connected with the standard regime of the other territories. This leads to the conclusion that the questions under examination are unfounded.

6.5.– The question of the constitutionality of Article 1(519) of Law no. 232 of 2016, raised in reference to Article 136 of the Constitution, for violation of the final constitutional rulings laid out in Judgment no. 188 of 2016 of this Court, must be placed ahead of the others, due to its position of logical priority, since it "has to do with the very exercise of legislative power, which would be prevented by the constitutional precept presumed to have been violated (see, among many, Judgments no. 5 of 2017, 245 of 2012, and 350 of 2010)" (Judgment no. 231 of 2017).

The Applicant maintains that said provision reproduces the same rule, concerning the economic-financial relationships with the State – Article 1(729) of Law no. 147 of 27 December 2013, "Provisions for the formation of the annual and multi-year budget of the State (2014 Stability Law)" – which was already declared unconstitutional to the extent that it applied to the Autonomous Region of Friuli-Venezia Giulia (Judgment no. 188 of 2016).

The question is well founded.

Dealing with violations of final constitutional rulings, this Court "has already explained (see, among many, Judgments no. 250 and 5 of 2017, 72 of 2013, and 350 of 2010) that this defect exists whenever a provision is intended to 'keep alive or […] revive, even if only indirectly, […] the effects of the regulatory structure that formed the object of the […] ruling of unconstitutionality' (Judgment no. 72 of 2013), or which 'revives or preserves the efficacy of a rule already declared unconstitutional' (Judgment no. 350 of 2010). Hence, a constitutional ruling is violated not only when the legislator adopts a rule that amounts to a 'mere reproduction' of the one already found to violate the Constitution (Judgments no. 73 of 2013 and 245 of 2012), but also when the new scheme intends to 'pursue and reach, "even indirectly," corresponding results' (Judgments no. 73 of 2013, 245 of 2012, 922 of 1988, 223 of 1983, and 88 of 1966)" (Judgment no. 231 of 2017).

The challenged provision provides that, "[t]he Ministry of Economy and Finance and the Friuli Venezia Giulia Region shall proceed, by agreement to be reached by 30 June 2017, to ascertain the amount of the funds withheld concerning the Friuli-Venezia Giulia Region, in compliance with Article 1, paragraphs 711, 712, and 729 of Law no. 147 of 27 December 2013, for the years 2012 to 2015, by operation of the modifications effected for the year 2010 in the area of local real estate taxes."

Article 1(729) of Law no. 147 of 2013 was declared unconstitutional to the extent it referred to the Autonomous Region of Friuli-Venezia Giulia, following a preliminary financial analysis performed jointly with the parties, according to a procedure allowing for their contestation (Preliminary Order of 14 January 2016), by Judgment no. 188 of 2016 of this Court. In that judgment, this Court held that the provision violated the principle of neutrality of the fiscal effects of the reform with regard to financial relations between the State and the Autonomous Region of Friuli-Venezia Giulia, a principle established by paragraphs 157 and 159 of Article 1 of Law no. 220 of 13 December 2010, taken together, on "Provisions for the formation of the annual and multi-year budget of the State (2011 Stability Law)," rules that are interposed in relation to the implementation of said reform. The State legislator, rather than adjusting the estimated amount to be withheld according to the revenue actually accrued after the substitution of the ICI with the *imposta municipale propria* (IMU), had "proceeded unilaterally by establishing the withheld sums, calculated on a purely estimated basis. Since the Applicant has referred to the neutrality requirement, provided for by the aforementioned

paragraphs 157 and 159, taken together, it is with respect to these paragraphs that the challenged provision must be declared unconstitutional" (Judgment no. 188 of 2016).

The declaration of unconstitutionality was supported by several reasons, among which it is useful to recall "b) the challenged rule [did] not configure the withheld funds as a preliminary amount susceptible to adjustment, in the sense already explained by this Court in Judgment no. 77 of 2015; c) the principle of neutrality of the effects of the reform in the area of the financial relations between the State and the Autonomous Region of Friuli-Venezia Giulia [was] not complied with; d) the challenged rule [did] not provide for the demonstrability of the analysis data on the composition of revenue, necessary to carry out adjustment operations, and to stabilize and put in place the fiscal revenues of the Region and its local authorities. […] A few clarifications are in order concerning the effects the declarations of unconstitutionality will have on the withholding mechanism. On the basis of the principle of the dynamic balance of the budget, this mechanism shall lapse from the date of the publication of this judgment, on the understanding, however, that the preliminary amounts already withheld must be reconciled with verified fiscal revenue data, and any excess funds are to be restored to the Applicant Region" (Judgment no. 188 of 2016).

The rule under review, rather than providing the initial and final financial terms of reference for making the adjustment between the withheld amounts and verified actual revenue, in a way that would render the effects of the fiscal reform neutral, proposes to use 2010 revenue as a "standard" term "for the years 2012 to 2015" – the year least advantageous for the Autonomous Region of Friuli-Venezia Giulia due to the "oscillation" of the fiscal revenue of that Region, which is partly the result of its cross-border location.

Aside from the fact that the adjustment must be made on the basis of real, and not theoretical, data in order to convert the withheld amounts into a final contribution to State finances, it is clear that, in the present case, the State legislator has sought to pursue (albeit by means of a different regulatory technique) the same result sought by the rule struck down by Judgment no. 188 of 2016 of this Court (and, analogously, Judgment no. 231 of 2017).

In light of constitutional case law, challenged paragraph 519, because it intends to achieve results that correspond to those of Article 1(729) of Law no. 147 of 2013, already held to be unconstitutional by Judgment no. 188 of 2016 of this Court to the extent it referred to the Autonomous Region of Friuli-Venezia Giulia, goes against Article 136 of the Constitution, violating final constitutional rulings.

Therefore, it must be declared unconstitutional because it determines the definitive amount of the contribution to public finance purposes owed by the Autonomous Region of Friuli-Venezia Giulia by referring to 2010 revenue outcomes, rather than those of the fiscal years in which the funds were withheld, and fails to provide that the corresponding adjustments be made jointly with the Region itself, through the sharing of fiscal analysis data from the taxable period subject to the reserves involved in the adjustments.

6.5.1.– The other challenges concerning Article 1(519) of Law no. 232 of 2016 are absorbed.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having set aside its decision on the additional questions of constitutionality raised with the applications in the Headnote for separate rulings; and

having joined the judgments,

1) *declares* that Article 1(466) of Law no. 232 of 11 December 2016 (Preliminary Budget of the State for the 2017 fiscal year and multi-year budget for the three-year period 2017-2019), in the part in which it states that, starting from 2020, for purposes of balancing the budgets of local authorities, the previously committed expenses coming from earlier fiscal years must be funded only by the allotted revenue, and in the part in which it fails to provide that the insertion of administrative surpluses and of the earmarked multi-year fund into the budgets of said territories shall have neutral effects with respect to balancing the relevant fiscal year, is unconstitutional;

2) *declares* that Article 1(475)(*a*) and (*b*) of Law no. 232 of 2016, in the part in which it provides that the local authorities of the Autonomous Provinces of Trent and Bolzano and of the Region of Friuli-Venezia Giulia are obliged to pay the penalty amount for failure to meet the public finance objective to the State Treasury rather than to that of said special autonomous territories, is unconstitutional;

3) *declares* that Article 1(519) of Law no. 232 of 2016 is unconstitutional;

4) *declares* that the question of constitutionality concerning Article 1(463) of Law no. 232 of 2016, raised by the Autonomous Region of Friuli-Venice Giulia in reference to Articles 3, 25(2), and 97 of the Constitution, as well as to Articles 48 and 49 of Constitutional Law no. 1 of 31 January 1963 (Special Statute of the Friuli-Venezia Giulia Region), with the application indicated in the Headnote, is unfounded for the reasons described in the reasoning section;

5) *declares* that the questions of constitutionality concerning Article 1(479)(*a*) and (483) of Law no. 232 of 2016, raised, in reference to the principle of reasonableness enshrined in Article 3 of the Constitution, to Articles 81 and 97 of the Constitution, to Article 5 of Constitutional Law no. 1 of 20 April 2012 (Introduction of the principle of a balanced budget into the Constitution), and to Article 9(4) of Law no. 243 of 24 December 2012 (Provisions for implementing the principle of a balanced budget principle in accordance with Article 81(6) of the Constitution), by the Autonomous Region of Friuli-Venezia Giulia and by the Autonomous Province of Trent, with the applications indicated in the Headnote, are not founded.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 7 March 2018.