Corte costituzionale

JUDGMENT NO. 26 OF 2008

FRANCO BILE, PRESIDENT

SABINO CASSESE, AUTHOR OF THE JUDGMENT

JUDGMENT No. 26 YEAR 2008

This case concerned a jurisdictional dispute between the public prosecutor's office at the Tribunale di Roma and the Parliamentary Investigatory Committee on the Deaths of Ilaria Alpi and Miran Hrovatin, in which the former requested the court to order that the latter was not entitled to prevent the former from carrying out joint technical and non repeatable investigations on the vehicle on board which Alpi and Hrovatin were travelling at the time of the attack in which they lost their lives. The Court held that the duty of loyal cooperation required each body to respect the investigative powers of the other. Since the purpose of the parliamentary information (fact finding) and the judicial proceedings (establishment of criminal responsibility) are different, the exercise of the powers of the one may never occur to the detriment of the other.

THE CONSTITUTIONAL COURT

Composed of: President: Franco BILE; Judges: Giovanni Maria FLICK, Francesco AMIRANTE, Ugo DE SIERVO, Paolo MADDALENA, Alfio FINOCCHIARO, Alfonso QUARANTA, Franco GALLO, Luigi MAZZELLA, Gaetano SILVESTRI, Maria Rita SAULLE, Giuseppe TESAURO, Paolo Maria NAPOLITANO,
gives the following

JUDGMENT

in proceedings concerning a jurisdictional dispute between branches of state arising pursuant to the note of 21 September 2005 (protocol No. 2005/0001389/SG-CIV) issued by the Parliamentary Investigatory Committee on the Deaths of Ilaria Alpi and Miran Hrovatin, as well as the decision of 17 September 2005 (protocol No. 3490/ALPI) of the chairman of the committee, the honourable Carlo Taormina, commenced pursuant to an appeal of the Public Prosecutor's Office [*Procura della Repubblica*] at the *Tribunale di Roma* served on 10 March 2006, filed in the Court Registry on 22 March 2006 and registered as No. 37 in the Register of disputes between branches of state 2005, merits phase.

Considering the entry of appearance by the Chamber of Deputies;

having heard in the public hearing of 29 January 2008 the Judge Rapporteur Alfonso Quaranta;

having heard Franco Ionta for the Public Prosecutor's Office at the *Tribunale di Roma*, and Massimo Luciani, barrister, for the Chamber of Deputies.

The facts of the case

1.The Public Prosecutor's Office at the *Tribunale di Roma* commenced, by application filed in the Court Registry on 5 October 2005, a jurisdictional dispute between branches of state against the Parliamentary Investigatory Committee on the Deaths of Ilaria Alpi and Miran Hrovatin.

1.1.The applicant claims that it became aware through the press “of the arrival in Italy of the Toyota vehicle on board which Ilaria Alpi and Miran Hrovatin had presumably been killed on 20 March 1994”, and that it had accordingly initiated – in September 2005 – an exchange of correspondence with the parliamentary committee, pointing to “the opportunity of carrying out joint technical investigations” on the vehicle in question which were necessary for each of the two authorities for the performance of their respective investigative activities.

The applicant however submits that – after having informed the Public Prosecutor's Office that the parliamentary organ in question had “taken control of the motor vehicle by seizure", ordered “also pursuant to Article 360 of the Code of Criminal Procedure” “technical investigations", some of which were “of a non-repeatable nature” – the chairman of the Committee communicated by note (protocol No. 2005/0001389/SG-CIV) which arrived with the Public Prosecutor's Office on 21 September 2005, that it was unable “to adhere to the request” submitted, “pointing out that, amongst other things, the resolution establishing the Committee” chaired by the same “required investigations not only into the facts and persons responsible, but also the institutional shortcomings, including those involving the multiple court procedures to which the case had been subject".

The Public Prosecutor's Office at the *Tribunale di Roma* commenced the present jurisdictional dispute, requesting the annulment of the note – and of the decision of the

chairman of the aforementioned parliamentary committee of 17 September 2005 (protocol No. 3490/ALPI) which appointed the honourable Dr Alfredo Luzi as an expert consultant “with a view to carrying out technical investigations, including those of a non-repeatable nature, on the vehicle in question” – and submitting the following arguments.

1.2.The applicant points out first that a prerequisite for the existence of a jurisdictional dispute between branches of state is – pursuant to Article 37(1) of law No. 87 of 11 March 1953 – that it arise “between organs competent to make definitive declarations of the position of the branch of state to which they belong".

The aforementioned organs include – the applicant continues – both “individual courts, in view especially of the “variegated” nature which characterises the judiciary", as well as “investigatory organs” concerning “the constitutionally guaranteed responsibility for the exercise of criminal actions” (citing constitutional court judgments No. 150 of 1981 and No. 231 of 1975, as well as order No. 132 of 1981).

It is equally beyond doubt – according to the applicant Public Prosecutor's Office – that the parliamentary investigatory committee has capacity to be sued, since the court has found “since 1975” that “pursuant to Article 82 of the Constitution, the power recognised to the Houses of Parliament to order investigations into matters of public interest cannot be exercised other than through the actions of committees established to this end. And it may therefore be concluded that, in carrying out their mandate and for its duration, these committees substitute Parliament itself *ope constitutionis*, and hence may express the definitive position of Parliament pursuant to Article 37(1)” of law No. 87 of 1953 (citing judgment No. 231 of 1975 and orders No. 229 and No. 228 of 1975).

Therefore, in the light of the above considerations – the application states – “it is possible to conclude” that the Public Prosecutor's Office in Rome and the parliamentary investigatory committee on the deaths of Ilaria Alpi and Miran Hrovatin “are subjects which have standing, both as applicants and as respondents, to be parties to a jurisdictional dispute between branches of state".

1.3."As far as the requirements on a theoretical level are concerned", the applicant continues, the Constitutional Court “some time ago overcame the restrictive notion of the conflict of competences as a *vindicatio potestatis*, recognising the admissibility of

so-called “conflicts by interference” or “conflicts by infringement”” (citing judgments No. 126 of 1994, No. 473 of 1992, No. 204 of 1991 and No. 731 of 1988), which occur “when an organ, which need not necessarily claim that it itself is competent to carry out a particular action, complains that an act or omission by another organ has infringed its competence or has prevented the exercise thereof".

According to the claimant, this situation is precisely that which has arisen in the case before the court since, whilst it is beyond doubt that the parliamentary committee has “the power to carry out investigative acts” (pursuant to Article 82(2) of the Constitution), the decision taken by the same “to carry out its own investigations on the vehicle", whilst precluding the possibility of similar action by the court authorities, “causes detriment to the Public Prosecutor's Office in that it prevents it from exercising the functions conferred on it by the Constitution", and more specifically of undertaking that technical investigation in such a way as to “gather all the elements necessary in order to reach its own conclusions in relation to the exercise of the criminal action", which clearly breaches the principle of the compulsory nature of the same “enshrined in Article 112 of the Constitution", in addition to the principles “of the independence and autonomy of the courts” (pursuant to Articles 101, 104 and 107 of the Constitution).

The Public Prosecutor's Office was in particular precluded the possibility “of seizing the motor vehicle on board of which Ilaria Alpi and Miran Hrovatin were travelling", and thereby “of inspecting and carrying out investigations on the vehicle with a view to creating a precise reconstruction of the events, activities all essential within the context of the criminal action at issue, and the failure to carry out of which has resulted in a complete paralysis” of proceedings.

In this way moreover, the “opportunity for an effective coordination between the Committee and the court authorities” envisaged “when the Committee itself was established by resolution of the Chamber of Deputies of 31 July 2003 (Article 6(3)), as well as in the internal regulation approved by the Committee in its sitting of 4 February 2004 (Article 22(1))”, is disregarded.

1.4. For these reasons therefore, the Public Prosecutor's Office in question commenced the present jurisdictional dispute between branches of state against the Parliamentary Investigatory Committee on the Deaths of Ilaria Alpi and Miran

Hrovatin, requesting – by way of a court order that the Committee did not have the power to adopt it – the annulment of the note of 21 September 2005 (protocol No. 2005/0001389/SG-CIV) issued by the Committee (by which the Committee refused to accept the applicant's request to consider "the opportunity of carrying out joint technical investigations"), as well as the corresponding annulment also of the chairman's decision of 17 September 2005 (protocol No. 3490/ALPI) to appoint Dr Alfredo Luzi as an expert consultant.

2. Following the Court's session in chambers on 20 February 2006, the dispute was declared admissible by order No. 73 of 24 February 2006.

On 10 March 2006 the application and the above order were served – pursuant to the request of 1 March of the Public Prosecutor's Office in Rome – on the chairman of the parliamentary investigatory committee.

3. By written statement filed in the court registry on 29 March 2006 the Chamber of Deputies entered an appearance, expressly with a view to "bringing to the court's attention the conclusion of the activity of the parliamentary investigatory committee" in question (its last session being held on 23 February 2006, following which its concluding report was approved and the necessary administrative arrangements were made), as well as to "point out the reasons why the very grounds for the dispute appear to have lapsed". On these grounds it accordingly requested that the dispute commenced be "declared inadmissible".

4.— Shortly before the public hearing of 5 June 2007, the Chamber of Deputies filed an additional written statement, reiterating the arguments already submitted.

5.— The applicant juridical authority appeared in this public hearing, in the person of Mr Franco Ionta, authorised to that end by the Public Prosecutor's Office pursuant to Article 37, last sub-section, of law No. 87 of 11 March 1953.

Having reiterated the arguments in support of the action, the applicant responded to the preliminary challenges made by the Chamber of Deputies.

6.— By judgment No. 241 of 2007, this court held "groundless the preliminary challenges to the admissibility of the dispute due to the absolute nullity of the service, as well as to the inadmissibility of the same due to supervening absence of interest raised by the Chamber of Deputies".

The above judgment also set “a deadline of sixty days for the Chamber of Deputies and the applicant Public Prosecutor's Office at the *Tribunale di Roma*” – starting from the date on which the decision was published in the *Official Journal* – “for the filing of any written statements", finding this to be necessary precisely in view of the “operational choice of the Chamber of Deputies not to submit defensive arguments on the merits in relation to the *thema decidendum*” due to the novel nature and special circumstances of the case, a choice made “on the assumption that it was not the appropriate interlocutor in these proceedings.

7.— On 27 July 2007, the Chamber of Deputies submitted a written statement, requesting that the application be “declared inadmissible", or in the alternative that it be dismissed.

7.1.— Arguing that “procedural challenges may be raised at all stages of constitutional proceedings", and pointing out that those raised in the above written statement are based on the “occurrence of new facts after the first statements in defence of its position", that is on the substantive requests of the applicant, which – as the court found in judgment No. 241 of 2007 – “had not been included in the previous submissions", the Chamber of Deputies submits, in the following order, “that the application is procedurally inadmissible due to supervening absence of interest” as and also substantively inadmissible “on the grounds that the *petitum* contradicts the *causa petendi*".

In fact, given that – following judgment No. 241 of 2007 – the applicant itself requested “the discontinuation of criminal investigations aimed at identifying the persons who ordered the killing of Ilaria Alpi and Miran Hrovatin", it is clear that any “annulment of the contested acts would be *inutiliter datum*", in view of the fact that the jurisdictional dispute must concern “conflicts which are not abstract or hypothetical, but current and concrete” (citing Constitutional Court judgment No. 404 of 2005). In fact, the events described indicate a supervening absence of interest in the resolution of proceedings, especially where it is considered that it is precisely the application which created “a relationship of logical necessity between the fact that the investigations were in progress” (or rather, that they had been) “and the infringement of competence suffered” by the applicant .

Furthermore, the application is argued to be inadmissible on the grounds that the object of the dispute in question was not specified with sufficient precision.

Since the dispute turns “entirely and exclusively on the issue as to whether those investigations” – carried out on the vehicle on board which Alpi and Hrovatin were travelling – “should be carried out “at least jointly” as requested by the Public Prosecutor's Office in Rome", it is clear that the arguments submitted by the applicant – along the request for annulment contained in the *petitum* of the writ which commenced the present dispute – cannot “give rise to a dispute concerning a limitation of powers", as the case was classified by the applicant. It was in fact the latter which expressly asserted “that only a seizure measure of its own could have satisfied the requirements of justice", since only by doing so would it “have been able to 'make findings and carry out the investigations"' necessary for its inquiries. In this way however, the applicant “submits arguments and, on the merits, makes requests which would make sense only in a dispute for *vindicatio potestatis*".

7.2.— In the alternative, as far as the application is concerned on the merits, the Chamber of Deputies submits that it should be dismissed for the following reasons.

The respondent points out in the first place that the acts carried out by parliamentary investigatory committees may “perfectly well be used by the courts” due to the complete “correspondence between the powers and restrictions” which apply to both in the exercise of their respective functions (citing on this point judgment n. 231 of 1975).

Furthermore, in the case before the court, the parliamentary investigatory committee “not only did not place obstacles” in the way of the transmission of the results of the expert consultant's investigation, “but made available to the applicant the very vehicle on which the investigations had been carried out", without therefore making it necessary to subject the vehicle to a seizure measure “in order to carry out any findings and supplementary investigations as may have been considered necessary by the applicant". In fact, according to the Chamber of Deputies, to this end the simple “making available” of the property would have been sufficient, an act which would have allowed the applicant to “maintain” its “own jurisdictional powers” (citing judgment No. 149 of 2007), and hence to safeguard the “constitutional competences at issue".

Nor on the other hand could any different conclusion follow – in contrast to the assertions of the applicant – by invoking the principle of loyal cooperation, since if the appeal framed in such terms were to be accepted it would end up conferring on this principle a constitutionally binding content, whilst its function by contrast depends on “choices which Parliament may make between different theoretically possible models", provided that they are intended to strike a “rational and measured balance” between “the requirements of the rule of law, which tend to overstate the values related to the exercise of the courts' functions", and “the safeguarding of spheres of autonomy shielded from ordinary law, which allows the body politic to maintain its unswerving freedom of action” (citing on this point judgment No. 149 of 2007; reference is also made to judgments No. 451 of 2005, No. 263 of 2003 and No. 225 of 2001).

Besides, whilst the existence of “various measures for integration or coordination on an equal footing” intended to implement the principle of loyal cooperation in concrete terms has been upheld in general terms in constitutional case law (citing judgment No. 214 of 1998), even where – as in the case before the court – supplementary rules are lacking, “the need for flexibility in the models of loyal cooperation is even more pressing” since – the Chamber of Deputies stresses – the Constitutional Court may not introduce “through interpretation an entirely new body of procedural rules". However, the case before the court would have this outcome, since acceptance of the applicant's claims would end up imposing “one and only one form of loyal cooperation” doing so “against the backdrop of a complete absence of rules imposing a frame of reference even in simple terms".

Accordingly, in contrast to the arguments of the applicant Public Prosecutor's Office at the Court, the respondent submits that in the case before the court “the Committee's acceptance that it should not proceed 'independently' is not the only way of ensuring compliance with the principle of loyal cooperation; indeed, it is by contrast possible to pursue other paths which are also capable of safeguarding the prerogatives of both branches of state involved". Furthermore, even in that which the Chamber of Deputies indicates as the leading case in this area (judgment No. 231 of 1975), the court upheld as admissible “investigations carried out or directly ordered by the Committee", i.e. “acts carried out by it or directly ordered for its own purposes and according to its own

working procedures". If any other conclusion were reached, which thereby required the Chamber of Deputies (and on its behalf the Investigatory Committee) “to interpret the principle of loyal cooperation between the branches of state not in terms of the notification and transmission or making available of acts, documents and property", but rather “in terms of the joint performance of any eventual investigations", it would end up confusing that principle “with the interference of one branch in the ongoing operations of another".

8. On 16 January 2008, the Chamber of Deputies submitted an additional written statement arguing that judgment No. 241 of 2007 “does not prevent the parties from filing written statements shortly before the hearing” pursuant to Articles 10 and 26(4) of the supplementary rules for proceedings before the Constitutional Court.

The Chamber of Deputies went on to note that it had claimed that the dispute was inadmissible due to a supervening lack of interest to sue on the grounds that the applicant Public Prosecutor's Office had filed a request for the discontinuation of the investigation into the persons who ordered the murders of Alpi and Hrovatin .

The arguments submitted in support of this challenge – the Chamber of Deputies goes on to argue – should be accepted, even though it would appear from press articles that the judge for preliminary investigations “rejected the request for discontinuation, granting six months for the conduct of additional inquiries". However, in proceedings concerning disputes over competence “the interest in a resolution of the dispute can be inferred only and exclusively from the decisions and actions of the parties to the dispute".

It is on the other hand significant – again in the opinion of the Chamber of Deputies – that the Roman judge for preliminary investigations was led to reach his decision on the basis of the evidence gathered – following the outcome of the technical investigation carried out by Dr Luzi – by the parliamentary investigatory committee. In this way, the judge for preliminary investigations in fact confirmed the assertions made by the Chamber of Deputies – in support of the request for dismissal of the appeal – that actions carried out by the Committee are fully usable in criminal proceedings.

In the hearing of 29 January 2008 the parties reiterated their respective arguments. In particular, the applicant Public Prosecutor's Office requested that the court order that the

measure adopted by the judge for preliminary investigations pursuant to Article 409(4) of the Code of Criminal Procedure be accepted as evidence and asked in addition that the document be maintained secret in relation to certain limited points.

The Constitutional Court reserved judgment over whether to accept this document, which it has in any case ordered be filed as a bundle in the Court Registry.

Conclusions on points of law

1.— This court is again called upon to examine a jurisdictional dispute between branches of state, already declared admissible by order No. 73 of 2006 and considered in the non-definitive decision adopted in judgment No. 241 of 2007 concerning the preliminary challenges raised by the Chamber of Deputies that the dispute was inadmissible "due to the absolute nullity of the service, and the supervening absence of interest to sue". The dispute was commenced by the Public Prosecutor's Office at the *Tribunale di Roma* against the Parliamentary Investigatory Committee on the Deaths of Ilaria Alpi and Miran Hrovatin.

The proceedings concern a request for a court order that the aforementioned parliamentary committee – and now on its behalf the Chamber of Deputies, since judgment No. 241 of 2007 recognised that "in the event of a termination for any reason of the activities of the Committee (such as for example the expiry of the time limit for its duration or the conclusion of its functions), the procedural standing to sue and to be sued shall be adopted by the Chamber" – was not entitled to interfere in the exercise of the competences conferred by the Constitution on the applicant court authority, in particular preventing it from carrying out joint technical and non repeatable investigations on the vehicle on board which Alpi and Hrovatin were travelling at the time of the attack in which they lost their lives.

By initiating a complaint of infringement, the applicant argues that the above parliamentary body interfered – denying it the possibility of participating in the non repeatable technical investigation ordered on the vehicle constituting the "instrument by which the offence was committed" – with the activities institutionally reserved to it, consisting in the "collation of all elements necessary in order draw conclusions concerning the exercise of the criminal action", clearly violating the principle of the

compulsory nature of the same, “enshrined in Article 112 of the Constitution", in addition to the principles “of the independence and autonomy of the judiciary” (pursuant to Articles 101, 104 and 107 of the Constitution).

On these grounds therefore, the applicant requested the annulment of the decisions by which, after having appointed – by decision of 17 September 2005 (protocol No. 3490/ALPI) – the expert consultant for the performance of technical investigations, including non repeatable tests, on the motor vehicle, the Committee, in the person of its chairman, refused to consent to the participation of the applicant in the technical investigations to be carried out on the motor vehicle (note of 21 September 2005, protocol No. 2005/0001389/SG-CIV).

2.— Having summarised the object of the dispute, it is first necessary to examine the additional preliminary challenges raised at this stage of proceedings by the Chamber of Deputies.

The respondent claims, in the first place, that in view of the request of the Public Prosecutor's Office to discontinue criminal proceedings relating to the identification of the persons who ordered the double murder (irrespective of the fact that this request was rejected, pursuant to Article 409(4) of the Code of Criminal Procedure, by the judge for preliminary investigations, since in proceedings involving jurisdictional disputes “the interest in a ruling on the dispute can be inferred only and exclusively from the decisions and actions of the parties to the dispute in question"), any “annulment of the contested decisions would be *inutiliter datum*". This is because rulings on disputes over competence must relate to “disputes which are not abstract or hypothetical but current and concrete” (citing on this point order No. 404 of 2005), as well as the fact that the parliamentary committee in any case made the results of the expert's report available to the applicant.

Secondly, the respondent also claims that the application is inadmissible due to an alleged “contradiction between the *petitum* and the *causa petendi*", since – in spite of its complaint that it was hindered in the exercise of its own competences as conferred by the Constitution – the applicant “submits arguments and, on the merits, makes requests which would make sense only in a dispute for *vindicatio potestatis*", and not for infringement, as by contrast the dispute was classified in the application.

3.— Both challenges are groundless.

3.1.— As regards the first challenge, it is sufficient to note that, since the application seeks to obtain a ruling that the parliamentary investigative committee was not entitled to interfere – by preventing the applicant from participating in non repeatable technical investigations on the vehicle – in the exercise of the investigative functions institutionally vested in the courts, the events which occurred after this decision was reached by the parliamentary committee are irrelevant for the *thema decidendum*. This applies both to the choice of the Public Prosecutor's Office to request discontinuation of proceedings pursuant to Article 415(1) of the Code of Criminal Procedure (and which justified this court's finding, given its irrelevance for the purposes of its decision, not even to take into consideration the order issued by the judge for preliminary investigations at the *Tribunale di Roma* pursuant to Article 409(4) of the Code of Criminal Procedure; and it hereby orders that the order be remitted to the applicant in a closed bundle), as well as the decision of the parliamentary committee to make the results of the technical investigation ordered on its own initiative available to the Public Prosecutor's Office.

As far in particular as the Committee's decision is concerned, it must again be reiterated that the applicant juridical authority complains in this dispute that it was deprived of the power to *participate* in the performance of the technical investigation ordered by the parliamentary committee (which would have enabled the Public Prosecutor's Office to focus the performance also on those investigative issues most closely related to those falling within its remit as conferred by the Constitution); this means that the possibility of making use *ex post* of the results of the examination carried out by the expert appointed by the parliamentary body cannot be considered to be capable of satisfying the claim made in the appeal.

On this issue therefore, there is clearly a difference between the facts before the court and those covered by order No. 404 of 2005 of this court, which the Chamber of Deputies invoked in its defence. In this judgment, the court found that "the carrying out of an inspection by the applicant juridical authority pursuant to Article 244 *et seq* of the Code of Criminal Procedure" – a decision initially opposed by the President of the Council of Ministers, who however subsequently changed his position, expressly

allowing the “Public Prosecutor's Office at the *Tribunale di Tempio Pausania* access to the area, which had previously been a restricted area” – “removed the obstacle to the exercise of the investigatory powers vested in the said juridical authority, thereby causing the object of the dispute to lapse".

The case before the court on the other hand involved a different set of facts since, even though the results of the investigation carried out and the vehicle in question were made available (*rather*: of that which remained of it following the outcome of the technical investigation, also due to its non-repeatable nature), the decision by which the parliamentary committee refused to accept the applicant's request does not have any bearing on the Committee's capacity to infringe the competences of the applicant.

3.2.— Nor on the other hand – in relation to the other preliminary challenge raised by the Chamber of Deputies – is there any “contradiction” between the *petitum* and the *causa petendi* of the application: the Public Prosecutor's Office in Rome was neither attempting to contest the jurisdiction of the Investigatory Committee, nor “claiming” for itself exclusive jurisdiction, but rather simply to seek confirmation of the infringement of its constitutional competence resulting from the choice of the parliamentary committee to deny it any form of participation in the performance of technical investigations which (also) the applicant could have carried out pursuant to Article 360 of the Code of Criminal Procedure.

4.— The application is well-founded on the merits, within the limits set out in the following.

4.1.— The investigatory committee – which without doubt has the right to order the performance of non repeatable technical investigations and when carrying out the investigations and examinations reserved to it may exercise the same powers as the courts pursuant to Article 82(2) of the Constitution (which therefore means that the note adopted on 17 September 2005 by the chairman of the aforementioned parliamentary committee, and the related appointment of the expert, cannot be annulled) – should have respected the prerogatives of the applicant juridical authority, which was also vested with parallel investigatory powers under constitutional law.

Furthermore, within this context it is not without significance that, pursuant to Article 371 of the Code of Criminal Procedure, for related investigations carried out by offices

other than that of the public prosecutor (and therefore by subjects ordinarily vested with investigatory powers), the law provides not only for reciprocal coordination with a view to ensuring “the speed, value for money and efficiency of the investigations", but also the possibility of “jointly carrying out individual acts". The above provision of the Code of Criminal Procedure must certainly be recognised as having the status of a general principle, as such applicable beyond the confines of its own specific context.

Moreover, in the case before the court, the conclusion that the joint investigation was in actual fact required flows from the duty to respect the principle of loyal cooperation.

4.2.— It is of particular significant in this context that, in contemplating “appropriate coordination” between the Committee “and the courts", specifically with reference to the appointment of consultants and experts, the provisions contained both in the order establishing the Committee (Article 6(3) of the Resolution of the Chamber of Deputies of 31 July 2003) as well as in the Committee's internal regulation (Article 22(1) of the internal regulation approved by the Committee in its session of 4 February 2004) confirmed the requirement that the expert's investigation be carried out in accordance with the above principle.

The need to comply with this requirement therefore means that the request of the Public Prosecutor's Office in Rome must be accepted; this is necessary clearly in order to allow for the broadest possible range of investigations in the search for the truth concerning the events.

Moreover, the above solution appears to be the only one which also takes into account the variety of substantive matters and functions which characterise the investigative powers of parliamentary investigative committees and judicial bodies; these differences mean that, even if the exercise of their powers overlap, the goals which those bodies are required to pursue nonetheless always remain distinct.

This court has in fact already found that the task of the parliamentary investigative committees “is not to sit in judgment”, but only to gather the information and data necessary in order for Houses of Parliament to exercise their functions", and therefore their “purpose [is] to make available to the Houses all useful elements so that the latter may, in full awareness of the relevant facts, decide which action to adopt, either promoting legislative measures or inviting the government to adopt, in matters falling

under its competence, the necessary measures" (see the succinct terms of judgment No. 231 of 1975).

In fact it is precisely due to the differences between the goals inherent in the investigative powers vested respectively in parliamentary investigative committees and investigative judicial bodies that the court must find that the exercise of one may never occur to the detriment of the other (and vice-versa); the court must therefore reiterate its previous finding that "the normal administration of justice (…) cannot be paralysed at the mere discretion of parliamentary organs" (as by contrast occurred in this case), "and the courts may and must desist only where the exercise of their powers would unlawfully impinge upon matters which fall both subjectively and objectively outwith their competence and over which parliamentary organs have been found to have jurisdiction" (judgment No. 13 of 1975).

4.3.— Moreover, it cannot be argued – as is claimed by the respondent Chamber of Deputies – that the acceptance of the request for participation in the technical investigations presented by the Public Prosecutor's Office would be tantamount to a distortion of the principle of loyal cooperation, and thus end up legitimating "interferences of one branch of state with the ongoing operations of another".

Whilst it may in fact be true that "on account of its flexibility" the principle of loyal cooperation "allows for the special circumstances of individual situations to be taken into account" (judgment No. 50 of 2005), the court finds that precisely the particular circumstances of the present case – and in particular the fact that the Investigatory Committee was also charged (Article 1 of the resolution establishing the committee) with the typical investigative task of "verifying the facts" which "led to the murders" of Alpi and Hrovatin – meant that it was necessary to accept the request made by the Public Prosecutor's Office simply to participate in the technical investigations, since that request did not amount to a "claim" to any exclusive legislative powers of inquiry (thereby interfering in the constitutional prerogatives of the Committee), but rather simply an attempt to guarantee the integrity of the competences vested in the courts pursuant to the Constitution.

In the light of the points made above, the court finds that the principle of loyal cooperation, which must always characterise the relationship between different

branches of state, has been breached, which means that the constitutional principles invoked in the application and contained in Articles 101, 104, 107 and 112 of the Constitution have also been breached. The court therefore finds that the Parliamentary Investigatory Committee on the Deaths of Ilaria Alpi and Miran Hrovatin was not entitled to prevent the performance of the investigation which, as requested by the applicant, should have been carried out jointly by both parties. Moreover, precisely on account of its "non repeatable" nature pursuant to Article 360 of the Code of Criminal Procedure, the failure to carry it out resulted in an infringement of the prerogatives of the applicant, which had clear implications for the "normal course" of the procedures reserved to it.

on those grounds

THE CONSTITUTIONAL COURT

rules that the Parliamentary Investigatory Committee on the Deaths of Ilaria Alpi and Miran Hrovatin was not entitled to issue the note of 21 September 2005 (protocol No. 2005/0001389/SG-CIV), by which it declined the request made by the Public Prosecutor's Office at the *Tribunale di Roma* to consent to the performance of joint technical investigations on the motor vehicle as the instrument whereby the offence was committed, and in consequence annuls that decision.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 11 February 2008.

Signed:

Franco BILE, President

Alfonso QUARANTA, Author of the Judgment

Giuseppe DI PAOLA, Registrar

Filed in the Court Registry on 13 February 2008.

The Director of the Registry

Signed: DI PAOLA