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Budgetary autonomy of Parliaments: a comparison between five EU countries

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The aim of the paper is to analyze and compare the forms of budgetary autonomy of the Parliaments in five EU countries, namely Austria, Germany, Italy, Slovenia and Spain. These country cases are examined in the five contributions included in the paper and specifically devoted to each country under consideration. More specifically, budgetary autonomy is examined with regard to the various stages of the budget cycle with the aim of verifying, inter alia, the power of a Parliament of: deciding the overall size of its own budget and the allocation of financial resources across various spending programs and functions; dealing with the execution of the approved budget and the use of the pre-assigned financial resources; overseeing the execution of the budget over the fiscal year; performing ex-post controls on the legitimate, effective and appropriate use of the funds. The framework emerging from such analysis shows differences deriving from national peculiarities along with some similarities that arise from a certain number of shared principles and models. Actually, the five country cases under observation differ significantly due to varying constitutional, historical and political factors but, despite all the differences observed, it is possible to detect common traits or trends converging to similar ways of interpreting and affirming parliamentary financial autonomy. These features are examined in the following contributions not only in “static” terms but also considering the recent evolution leading to the present situation. Therefore, also the progression towards the current degree of autonomy becomes one of the crucial elements of comparison, inspiring the current research.

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BUDGETARY AUTONOMY OF PARLIAMENTS: A COMPARISON BETWEEN FIVE EU COUNTRIES - A FEW CONCLUSIVE REMARKS - Author: Paola Bonacci 64

Preliminary remarks

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Summary: 1. Introduction. 2. Types of Parliamentary autonomy. 4. The financial autonomy of Parliaments at the various stages of the budget cycle. 5 To what extent is comparison actually possible?

1. Introduction

Budgetary autonomy is a requisite of the institutional independence of a Parliament: it draws its origin from the principle of the division of powers which represents a commonly agreed legal standard, underlying the organization and the functioning of public institutions in democratic countries.

Yet the degree and nature of budgetary autonomy vary greatly across countries, largely depending on historic reasons, legal traditions, institutional patterns and different constitutional design. Moreover, such prerogatives may find their basis in statutory provisions and/or in institutional practices; in certain cases, they are declared or reinforced by decisions of the Courts, resulting from contentious proceedings.

As a result of this variety, an accurate comparative analysis regarding this subject would require an appropriately large sample number of country cases to be examined and, therefore, would go well beyond the scope of the present study, which is limited to only five EU countries, namely Austria, Germany, Italy, Slovenia and Spain.

More precisely, the aim of this analysis is to highlight the main features of the abovementioned country cases, with the intent of verifying whether, despite all the differences observed, it is possible to detect common traits or trends converging to similar ways of interpreting and affirming parliamentary financial autonomy.

Actually, the five cases under observation differ significantly due to varying constitutional, historical and political factors; therefore, even though not susceptible of a neat categorization, the same cases give evidence of five peculiar ways of pursuing, affirming, exercising parliamentary financial autonomy.

At the same time, the selected country cases share some homogeneous legal and financial standards due to the common European Union and Euroarea membership. These shared elements provide a basis and a large interest for comparison, despite notable constitutional and procedural differences.

Moreover, while numerically limited, the five-case sample has turned to be representative for a number of reasons.

It has a diversified geographic spread: two Southern European Parliaments (Italy and Spain) and three Parliaments from Central Europe (Austria, Germany and Slovenia), with Slovenia also reflecting the institutional trajectories of countries once located in what used to be defined as “Eastern Europe”. The set is also diachronically meaningful within the EU history: it includes two founding Member States (Italy and Germany), one accession from 1986 (Spain), one from 1995 (Austria) and one from 2004 (Slovenia). By combining founding and later-accession Member States across two European macro-areas, the study captures different constitutional traditions and

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1 The views and opinions expressed in this essay are solely those of the authors and do not necessarily reflect the official policy or position of the administration they are associated with.

different stages in the EU integration process.

At the same time, focusing only on five cases allows a closer observation of the specific budgetary procedures that most affect autonomy (drafting, negotiation, adoption and execution of the parliamentary budgets). The sample also introduces institutional differences which are relevant to the research aim – federal vs. unitary settings, different degrees of constitutional parliamentary self-determination, and diverse external-audit arrangements – without losing comparability in the light of some principles deriving from the common EU environment.

In addition, all the selected countries have bicameral parliamentary systems, with recognized and formalized prerogatives of Parliaments in the budgetary processes (approval of the general State Budget, Budget monitoring and oversight, approval of the Statement of accounts, etc.), even though, within the single national frameworks, the two Chambers may play very different roles in the decision making concerning the budget, as better explained in the final chapter of this study, containing some conclusive remarks.

In conclusion, the following contributions - all written by current or former parliamentary officials – give evidence of a restricted but varied range of budgetary autonomy systems which present both similarities and differences between each other. These features are examined in the following articles not only in “static” terms but also considering the recent evolution leading to the present situation and often – but not always - conducive to enhanced forms of budgetary autonomy.

Therefore, also the progression towards the current degree of autonomy becomes one of the crucial elements of comparison, inspiring the current research.

The idea of carrying out such study originated from a parliamentary seminar held in Berlin on 30 June – 1 July 2022 and attended by delegates from various EU and non-EU countries, who shared information, insights, and practices concerning the budgetary sovereignty of Parliaments and explored practical ways for its realization.²

The authors of the present study hope that the analysis can be expanded to other States in the near future so as to make the comparison more comprehensive and informative.

2. Types of parliamentary autonomy

Autonomy can be divided into several components. Couderc distinguishes functional, administrative, and financial autonomy.³ Maes categorizes it as regulatory, operational, and financial autonomy⁴. Grad divides it into regulatory (or procedural) autonomy, administrative autonomy, financial autonomy, and autonomy in security and police matters.⁵ Regulatory autonomy refers to the right of an institution to govern its work and operations with its own rules. It represents the right to self-organization, enabling autonomous legal regulation of its functions and operations within the framework of the constitution and the law.⁶ Maes emphasizes that normative autonomy is twofold. Firstly, the institution must have the opportunity to participate in the preparation of

² ECPRD Seminar on “Budgetary Sovereignty of Parliaments”, Economic and Budgetary Affairs Area of Interest, organized by the Bundesrat with the cooperation of the Bundestag (Berlin, 30 June-1 July 2022).

³ Courdec, M. (1998). The administrative and financial autonomy of parliamentary assemblies. *Constitutional and parliamentary information*, p.2.

⁴ Maes, E. (2020). The Independence of the Belgian Constitutional Court. *European Yearbook of Constitutional Law 2019. Judicial Power: Safeguards and Limits in a Democratic Society*, p.21.

⁵ Grad, F. (2000). *Parlament in vlada*. Uradni list Republike Slovenije, p.79.

⁶ Grad, F., Kaučič, I., & Zagorc, S. (2016). *Ustavno pravo*. Pravna fakulteta, Univerza v Ljubljani, p. 347.

legislative regulations that concern it. Secondly, the institution must have the ability to establish its own rules of operation.⁷ Regulatory autonomy can provide an important legal basis for all other types of autonomy, including financial, administrative, and security autonomy. Administrative autonomy relates to the authority of an institution to make decisions about the organization of its services. It is typically regulated through internal rules that serve as a legal basis for the organization and operation of the institution's services. Administrative autonomy may be established at either the constitutional or legislative level⁸. Lastly, security autonomy is significant as it allows the institution to independently ensure the safety of persons holding public offices and employed public servants through its internal acts.

In the following contributions, the authors will focus on the financial autonomy of Parliaments, which forms the basis for institutional, administrative and security autonomy. More precisely, in the present paper the two expressions, "budgetary autonomy (or sovereignty)" and "financial autonomy", are often used synonymously, even though a slight difference can be recognized in conceptual terms. In fact, financial autonomy implies budgetary independence - namely the capacity of a public body to decide about its own budget - but with a broader scope: it means the ability of deciding, controlling, managing their own financial resources and making decisions in financial matters without external interfering. According to one of the available definitions, it consists mainly of budgetary autonomy and the autonomy to manage an institution's assets⁹.

Without financial autonomy, which enables an institution to assess its annual financial needs based on its responsibilities throughout the year, autonomous operation is impossible. If an institution lacks financial autonomy, the Government, with the support of the majority of members of the National Assembly, can significantly influence the institution's operations by intervening in its budget, with consequences in all areas, including financial, administrative, organizational, and security components. It can compromise the institution's ability to fulfill its mandate independently and effectively, thereby undermining the principle of checks and balances and potentially weakening democratic governance. For these reasons, financial autonomy is crucial for safeguarding the independence and effectiveness of institutions within a democratic system.

Therefore, in the following essays, the notion of budgetary autonomy is considered in its strict interrelation with the wider concept of financial autonomy.

3. The autonomy of Parliaments at the various stages of the budget cycle

According to the "Indicators for Democratic Parliaments"¹⁰, Parliamentary autonomy has four major dimensions: institutional, procedural, budgetary and administrative. Budgetary autonomy, in turn, may be declined in many forms but shares the indispensable requisite that a Parliament is demonstrably capable of making independent decisions on the financial means it needs to perform its functions and

7 Maes, E. (2020). The Independence of the Belgian Constitutional Court. *European Yearbook of Constitutional Law 2019: Judicial Power: Safeguards and Limits in a Democratic Society*, p.21.

8 Grad, F., Kaučič, I., & Zagorc, S. (2016). *Ustavno pravo*. Pravna fakulteta, Univerza v Ljubljani, p. 347.

9 Ibidem.

10 The Indicators for Democratic Parliaments are a multi-partner initiative led by the Inter-Parliamentary Union (IPU), in partnership with the Commonwealth Parliamentary Association (CPA), Directorio Legislativo Foundation, Inter Pares / International IDEA, National Democratic Institute (NDI), United Nations Development Programme (UNDP); UN Women; and Westminster Foundation for Democracy (WFD). (<https://www.parliamentaryindicators.org/about/partners>).

on the use of these resources. Budgetary autonomy also entails the oversight of parliamentary spending and the evaluation of its results.

More specifically, budgetary autonomy “implies that the parliamentary budget is not subject to approval or allowance by the executive, and that parliament alone can execute it. It also means that the parliamentary budget is recognized by the government in the annual budget cycle, with allocated resources for parliament in the budget plan”¹¹

So, the budgetary sovereignty of a given Parliament can be considered with reference to its respective degree of autonomy at the different stages of the budget cycle. More specifically, budgetary autonomy relates to the power of a Parliament to:

- decide the overall size of parliamentary budgets and the allocation of financial resources across various spending programs and functions;
- ensure the execution of the approved budget with a guarantee of the full availability of the pre-assigned financial resources;
- oversee the execution of the budget over the fiscal year without interference from the executive or other institutions;
- conduct ex-post controls on the legitimate and appropriate use of funds and report on the results of parliamentary spending.

By following these criteria, we could try to compare the different forms of parliamentary budgetary autonomy in the five country cases examined in the following chapters and highlight the differences deriving from national peculiarities along with the similarities that arise from shared constitutional principles and models.

Starting from the stage of budgets’ drafting, we may observe a general involvement of parliamentary bodies in this phase, although with significative differences. The first item to investigate is the role of a Parliament in preparing, adopting, and possibly changing its budget over the fiscal year.

In principle, a Parliament has full autonomy if it is entitled to fix the amount of resources it deems necessary for the performance of its own functions. Autonomy also requires for a Parliament the capacity of deciding on the allocation of these funds among different destinations without any interference from the executive or any other independent institution, including the other Chamber (in case of bicameral parliamentary systems). This model of independence in the preparation of the budget, which fully accords with the constitutional principle of the separation of powers, is thoroughly applied in various EU countries, such as – among those included in the present study – Italy and Spain, whose Parliaments autonomously prepare their budgets.

In other cases (like in Germany and Austria), the budget drafting process entails an interaction between parliamentary authorities and the executive, that follows specific procedures and negotiations, that are designed to safeguard both parliamentary autonomy and the prerogatives of the Federal Government to decide on the content of federal budgets.

Lastly, Slovenia’s case warrants separate and attentive consideration. In fact, in 2020 an important decision of the Constitutional Court for the first time defined the content of the financial autonomy of Slovenian constitutional bodies, including the two Houses of the Parliament (the National Assembly and the National Council). Following this

¹¹ Idem.

ruling, in 2023 the National Assembly of Slovenia approved an amendment to the 1999 law regulating the public finance subject, aimed at aligning the contents of the law to the Court's decision.

Therefore, Dušan Štrus's essay on the Slovenian case provides a twofold description of the role of parliamentary institutions in the decision-making process regarding their own budgets: the first part focuses on the situation prior to the 2023 reform, the second part is centered on the most recent developments since then. As the author points out, notwithstanding the principle of autonomy recognized by the 2020 Constitutional Court's decision and the consequent changes to the relevant legislation, the National Council remains *de facto* unable to "influence the scope of its own budget¹²", due to its limited involvement in the overall State budget procedure and the possibility for the majority in the National Assembly to approve amendments aimed at reducing the Council's endowment, without prior consultation.

Therefore, this country case study describes a still evolving process towards comprehensive forms of budgetary autonomy for parliamentary bodies; it also highlights interesting interactions between jurisdictional decisions, legislative processes and political factors, influencing the effective exercise of parliamentary financial autonomy.

By contrast, as already noted, in Spain and in Italy, each House autonomously drafts its own budget. This is also a consequence of the right of the chambers of independently regulating their activities, recognized by the Constitutions of the two States.¹³ Yet, there is a relevant distinction at a procedural level. In Spain the parliamentary budgets are entirely included in the State budget and approved with the same procedure followed for the latter one: thus, the budget sections and items concerning the Parliament do not become effective until the budget law is enacted and enters into force; in addition, the possibility of modifying them during the discussion of the State budget is not totally excluded. Differences can be noted in the case of Italy, where each House draws up and approves its own budget with separate and autonomous deliberations which have definitive effect. As a result, the total sum of the approved appropriations, which is included in the draft State budget, cannot be altered during the subsequent parliamentary discussion of the State Budget Bill.

One more important point is to be considered: either parliamentary budget is (in its entirety) included in the State budget or not, if Parliaments are fully independent in deciding their own budgets, the relevant decision-making is not formally subject to directives and instructions regarding the formation of the entire State budget. However, in practice, each Chamber might be indirectly influenced by the general strategy and the guiding orientations of the government concerning the formation of the State budget for the following fiscal years. In fact, Parliaments are generally inclined to apply these general directives even if this is not obligatory (as underlined by Alfonso Cuenca Miranda in his contribution on the Spanish case¹⁴).

In other states, like in Austria, where an explicit guarantee for budgetary autonomy of the Parliament is not provided at a constitutional level, the general regulations and guidelines governing the preparation of the State budget as well as the spending ceilings set by the government budget authorities for the entire budget also apply to

12 Dušan Štrus "Financial Autonomy of the Parliament of the Republic of Slovenia", in this paper.

13 Spanish Constitution explicitly states that the Houses autonomously approve their budgets (article 72). For Italy, article 64 of the Constitution stipulates that "Each House adopts its own Rules by an absolute majority of its member", thereby recognizing the right of the Houses to regulate, through their own Rules of Procedure, their needs and general functioning and, thus, their financial and budgetary autonomy.

14 As Alfonso Cuenca Miranda says in his essay "the Houses draw up and approve their budgets autonomously, and the Government cannot issue binding orders or instructions. In practice, however, there is minimal coordination through informal mechanisms", A. Cuenca Miranda, *The budgetary autonomy of the Chambers in Spain*, in this paper.

Parliament. Therefore, in accordance with the “top-down approach”, the two Houses (the National Council and the Federal Council) are subject to the Minister of Finance’s instructions in preparing their budgets, just as any other authority responsible for implementing and managing the State budget. In case of divergences, negotiations often take place to consider the requests of parliamentary bodies. This procedure is thoroughly described by Helmut Berger in his contribution.

In Germany the preparation of the Federal Budget usually follows a “top-down” approach as well, with the federal government authorities initially setting reference figures (benchmarks) for the entire federal budget and its individual sections. Parliamentary bodies, however, are exempted by the “top-down procedure”. The estimates presented by the Bundestag, the Bundesrat and other supreme federal institutions may not be altered by the federal Ministry of Finance without consulting the institutions concerned and, in case of disagreement, the relevant issues are reported to the Federal Government for the subsequent deliberations. As Felix Wehrmann says in his contribution, “The Bundestag and Bundesrat (...) have no power to take decisions independently of the Federal Ministry of Finance and the Federal Government concerning the drafting of the budget but are restricted at that stage to forwarding their estimates, (...)”¹⁵. Nonetheless, the requests of the Parliament receive special attention during the formal and informal interactions, which take place between the Government and the two Chambers.

So, we may say that in Germany, as well as in Austria, the Executive plays a prevailing role in the phase of the budget drafting, but, in case of divergences, negotiations will reestablish a balance between the Minister of Finance, the Council of Ministers and the requests of the parliamentary bodies.

In any case, in both countries, Parliaments regain a full power of decision in the following stage of the Federal Budget approval. Since parliamentary budgets are parts of the general State budget, during the legislative procedure for the approval of the relevant Budget Bill the parliamentary bodies may amend budget items, including those concerning the appropriations for parliamentary functions and structures. This prerogative indirectly improves the position of the Chambers in the phase of the negotiations for preparing the budget chapters of Parliament in the Federal Budget. As Helmut Berger says regarding the case of Austria, “National Council’s budget sovereignty weighs more heavily in parliament’s ability to determine its budget autonomously, as it allows existing restrictions in the budgetary autonomy to be effectively addressed. This also has practical repercussions on Parliament’s negotiating powers towards the Ministry of Finance in the budget preparation procedure as they are significantly strengthened”.¹⁶

This is also true for Germany: while the Bundestag and the Bundesrat cannot plently exercise their decision power at the stage of the budget drafting, Parliament has full autonomy in the phase of the adoption of the budget. More precisely, “the Bundestag may alter the budgetary estimates proposed by the Federal Government. This also applies to its own budget and that of the Bundesrat. The budgetary powers of Parliament also permit the Bundestag to increase projected amounts of expenditure (...)”¹⁷.

A peculiarity of the German case is the asymmetry between Bundesrat and Bundestag in the decision-making concerning their respective budgets, as described in detail in

¹⁵ Felix Wehrmann, Budgetary autonomy of the Bundestag and Bundesrat in the context of the budget cycle, in this paper.

¹⁶ Helmut Berger, The budgetary autonomy of the Austrian Parliament, in this paper.

¹⁷ Felix Wehrmann, *Ibidem*.

the essay on Germany. In fact, as the author of this contribution says “the decision on the general budget, including the Bundesrat budget, is taken by the Bundestag. The Bundesrat cannot alter it unilaterally.” Furthermore, it is stated that the Bundestag may reject an objection to the Budget Act raised by the Bundesrat.¹⁸

Another crucial issue is the degree of autonomy recognized to Parliaments at the stage of the execution of the budget: the level of independence of the parliamentary bodies in this phase varies a lot in accordance with the relevant constitutional arrangements and the degree of centralization in the execution of the State budget. In Austria, the President of the National Council and the President of the Federal Council, as representatives of budget-managing bodies, have the same obligations as the federal ministers. Consequently, some financial transactions are subject to the approval of the Minister of finance. This is not the case in Italy and Spain whose Parliaments are not subject to specific limitations and do not need any kind of authorization to perform their own budgets.

Without entering further procedural details about parliamentary budgets’ execution, a more essential question is whether Parliaments can fully rely during the fiscal year on the amount of financial resources appropriated to them in the phase of budget approval. In other words: can the financial means allocated for a House be changed during the fiscal year by the Government or by any other authorities (for instance, the other House, in case of a bicameral system)?

These are politically sensitive matters that have to do with the power of Governments to impose spending cuts to Parliaments during the implementation of the budget. For instance, in Slovenia, before the important amendment approved in 2023 (as described in the contribution of Dušan Štrus), the Financial Law also allowed for limitations and interferences of the government in the implementation of the budgets of constitutional institutions, especially for urgency reasons. The Constitutional Court argued that those measures did not violate the financial autonomy of the Parliament, but the need for the Parliament to acquire the prior approval of the Minister of finance to conclude contracts and, thus, use the resources allocated for parliamentary work was to be considered not consistent with Constitution.

However, in almost all the cases examined in this study, a simple imposition of spending cuts in the phase of the budget’s execution would probably be considered, either directly or via interpretation, contrary to Constitution or to some principles of constitutional level, applicable to parliamentary financial activities. Nevertheless, in all the countries under consideration we can observe a general tendency of Parliaments to conform to common standards of fiscal discipline and to voluntarily adopt, both in the budget drafting and approval and in the implementation stage, measures consistent with the governmental policies aimed at reducing and/or rationalizing public spending.

Finally, as regards the controls on the execution of the budget, neither in Spain nor in Italy are Parliaments subject to external control, not even by the Court of Auditors. The budgets of the Chambers are implemented according to each Chamber’s rules without any external interference. In other countries, the management of parliamentary budgets may be subject to external judicial and/or auditing control. This is for instance the case of the Austrian Parliament, whose spending is reviewed by the Court of Auditors, which is competent on all the chapters of the state budget, including those regarding parliamentary bodies. The Austrian Parliament is also subject to

¹⁸ Felix Wehrmann, *Ibidem*.

the reporting and control procedures on the achievement of the objectives that it is expected to pursue in the general framework of Austria's performance budget system. However, in countries where Chambers are not subject to external controls, sometimes this status was considered controversial and needed a judicial recognition. Constitutional Courts have played a crucial role over time in advancing the precept of parliamentary exemption from external controls. For instance, in Italy, it took a 1985 decision of Constitutional Court¹⁹ to definitely clarify that control on parliamentary budgetary procedures belong to the Chambers.

5. To what extent is comparison actually possible?

Considering the different forms and nuances according to which financial and budgetary autonomy of parliamentary bodies may be declined in various countries, it is legitimate to wonder whether a comparison exercise can be meaningfully based on such a restricted number of country cases as those examined in the present study.

As already mentioned, the present analysis makes no claim to be exhaustive, nor does it aim at highlighting all the differences between the five cases under consideration. However, there is a common thread connecting the following contributions, which may be pointed at as the focus and the essential purpose of this comparative exercise. This primary objective is to explore how each of the examined Parliaments has, over time, identified, pursued, strengthened and safeguarded its own way to intend and interpret financial and budgetary autonomy, viewed as a key aspect of parliamentary sovereignty.

From this - we may say "dynamic" - perspective, it will be possible to look into both the differences and the similarities, illustrated in the following essays and try to draw, in the final part of this paper, some conclusive considerations about the current state of independence in the five selected Parliaments as well as more general reflections concerning financial and budgetary autonomy of Parliaments.

¹⁹ Ruling of Italy's Constitutional Court no. 154 of 6 May 1985.

The budgetary autonomy of the Austrian Parliament

Author: Helmut Berger (*)

Summary: 1. Federal legislative bodies in Austria. 2. Budgetary sovereignty of the National Council. 2.1 Budget submission and parliamentary budget deliberations. 2.2 Scope and limits of the National Council's budgetary sovereignty. 3. Parliament as a budget-managing body. 4. The budget of the Austrian Parliament. 5. Autonomy of the Parliament during the budget cycle. 5.1 Preparation of Parliament's budget draft. 5.2 Adoption of Parliament's budget. 5.3 Amendment of Parliament's budget estimates. 5.4 Implementation of the parliamentary budget. 5.5 Monitoring the implementation of the parliamentary budget. 6. Conclusion

1. Federal legislative bodies in Austria

The separation of powers is a fundamental principle of the Austrian constitution, which provides for an organizational separation of legislative and executive bodies, as well as the fundamental separation of jurisdiction and administration.

Legislation is enacted by Parliament, which is composed of two chambers, the National Council and the Federal Council. The National Council is elected directly by the people for a legislative period, which generally lasts five years. The Federal Council, also known as the- chamber of the federal states, represents the nine federal states in the legislative process.²⁰ The members are delegated to the Federal Council by the state parliaments and roughly reflect the political composition of the respective state parliament.

The National Council is the central Chamber of Parliament for federal legislation. Only the National Council can pass federal laws, but it exercises legislation jointly with the Federal Council. Therefore, all legislative resolutions of the National Council must be forwarded to the Federal Council. The Federal Council then assesses whether the respective legislative resolution is subject to its right of participation. As a rule, the Federal Council has a so-called suspensive veto against resolutions of the National Council. The National Council can overcome an objection by the Federal Council by repeating the resolution (insistence resolution).²¹ In individual cases concerning the competences of the states or the rights of the Federal Council itself, the Federal Council has an absolute right of veto.²²

However, the National Council has exclusive competence in budgetary matters, in particular when deciding on the federal medium-term expenditure framework and the annual budget. Since it concerns the federal budget, the National Council is to decide alone and without the involvement of the federal states; the Federal Council therefore has no right to participate in the budget decision.²³

To understand the budget autonomy of the Austrian Parliament, it is essential to first take a closer look at the budgetary sovereignty of the National Council, because there are generally no special regulations for the Parliament's budget, and the budgetary sovereignty of the National Council and the general provisions of the federal organic budget legislation are also central to the setting and implementation of the Parliament's budget.

20 (*) Former Head of the Austrian Parliamentary Budget Office.

An essential element of a federal state is the participation of the federal states in the legislation of the central state (Bußjäger in Rill-Schäfer, Kommentar Bundesverfassungsrecht, ed. Kneihls/Lienbacher, on Art. 42 (1-4) BVG, p. 1).

21 Art. 42 (4) Federal Constitutional Act

22 Art. 44 (2) Federal Constitutional Act.

23 Art. 42 (5) of the Federal Constitution Act is based on the constitutional concept of the federal government and the federal states as separate political state units that can make independent decisions on certain key issues without influencing each other. The National Council is thus the sole holder of federal budgetary sovereignty with sovereignty over the disposal of federal assets.

2. Budgetary sovereignty of the National Council

The National Council decides on the Federal Medium-Term Expenditure Framework Act (medium-term budget planning) and the annual Federal Finance Act (budget). The power to decide on the federal budget is referred to as the budgetary sovereignty of the National Council. It is one of the oldest and most important rights of Parliament and is therefore sometimes referred to as the “royal right” of Parliament. The National Council also exercises accompanying budgetary control and approves the annual federal financial statement submitted by the Austrian Court of Audit in the form of a legislative resolution.

2.1 Budget submission and parliamentary budget deliberations

Resolutions on the annual Federal Finance Act follow a specific constitutional procedure. In contrast to the other legislative decisions of the National Council, the Federal Constitution provides very precise rules for the preparation, adoption and control of the budget.²⁴ The Federal Organic Budget Act of 2013 lays down more detailed provisions on the preparation of the budget and other federal budget management operations.²⁵ The entire budget process is also integrated into the European Semester, which serves to coordinate and monitor the budgetary policy of the EU member states.

Through the budget, the federal government primarily sets its priorities for the following year. The budget is therefore often referred to as policy in numerical form and the draft budget expresses the social, economic, cultural and other objectives pursued by the government. With impact-oriented management, which has been anchored in Austrian Organic Budget Act since 2013, the political priorities of the federal government are expressed even more strongly in the budget.²⁶ In addition to the budget figures, the budget contains information on the goals the government is striving to achieve, how these are to be implemented and how success in achieving these goals is measured. Art. 51 of the Federal Constitutional Act therefore stipulates that the federal government has the prerogative to draw up the budget and submit it to the National Council. The Federal Government must submit the draft Federal Finance Act to the National Council no later than ten weeks before the start of the budget year. Deliberations in the National Council must be based on the respective draft of the Federal Government. Only if the federal government fails to submit a draft budget on time can the members of the National Council draw one up by themselves.²⁷

The drafts of the Federal Medium-Term Expenditure Framework Act and the Federal Finance Act are prepared by the Minister of Finance with the involvement of the budget-managing bodies. In addition to the individual federal ministers, the budget-managing bodies also include the Federal President, the President of the National Council and the Federal Council, the Presidents of the Constitutional Court, the Administrative Court and the Court of Audit as well as the Chairman of the Ombudsman Board.²⁸ In contrast to other draft laws of the federal government, there

²⁴ Art 51 and Art 51a of the Federal Constitutional Act.

²⁵ Art 51 (9) of the Federal Constitutional Law provides for a harmonization requirement, the content and scope of which are poorly defined. See the explanations in Lödl/Antl/Janik/Petridis-Pierre/Pfau, *Bundeshaushaltsrecht*, 4th edition, 2019, p. 55.

²⁶ The principle of impact orientation enshrined in Art 51 (8) of the Federal Constitutional Act, in particular taking into account the goal of actual equality between women and men, represents one of the four principles of federal budget management alongside transparency, efficiency and the most accurate possible presentation of the federal government's financial situation.

²⁷ Art. 42 (1) Federal Constitutional Act.

²⁸ Sec. 6 of the Federal Organic Budget Act 2013.

is no pre-parliamentary review process, but the budget drafts remain confidential until the start of the budget deliberations in the National Council.

The draft budgets are adopted unanimously by the Federal Government in the Council of Ministers and forwarded to the National Council. After the budget speech by the Minister of Finance, the first reading takes place the following day in the plenary session of the National Council. The Federal Constitution stipulates in Art. 51d of the Federal Constitution Act that the deliberations on the budget draft must take place in the Budget Committee. In the Austrian parliament, unlike many other parliaments, the sectorial committees are therefore not involved in the budget deliberations. However, the Rules of Procedure of the National Council allow a member of the Budget Committee to be represented by a substitute member or by another member of the same parliamentary group.²⁹ This means that, as a rule, the members of the respective sectorial committee act as members of the budget committee when discussing the relevant budget chapter.

The deliberations in the Budget Committee last for over a week and begin with a public expert hearing, where the overall budget is discussed with the Federal Minister of Finance. Subsequently, all budget chapters (in 2024, the Austrian budget has 35 budget chapters representing materially related budget areas) are discussed with the heads of the relevant budget-managing bodies (usually the responsible minister). Parliament's budget is regulated in a separate budget chapter (Chapter 02 - Federal Legislation) and is also part of the government budget bill. As with the other budget chapters, it is also discussed in the Budget Committee with the President of the National Council. MPs are supported in their deliberations by the Parliamentary Budget Office, which offers MPs information sessions on the budget and prepares an overall analysis of the budget and individual analyses of all 35 budget chapters in addition to a reading guide for the budget documents.

After the committee deliberations, the second and third readings take place in plenary, whereby all budget chapters are also discussed with the Federal Minister of Finance and the heads of the respective budget-managing bodies. At the end of the budget deliberations, the National Council adopts the Federal Medium-Term Expenditure Framework Act and the Federal Finance Act by a simple majority; the Federal Council has no right of objection against these legislative decisions.

2.2 Scope and limits of the National Council's budgetary sovereignty

The rights of the National Council within the framework of budget deliberations correspond to those for other government bills. As with any other legislative proposal, amendments can be tabled in the Budget Committee and in the plenary debates of the National Council until the end of the second reading. Motions for draft resolutions may also be tabled, provided they are related to the content of the draft budget. Only independent private members' motions by the Budget Committee for the enactment of (other) laws are not permitted when it deals with the budget.³⁰

Within the scope of its budgetary sovereignty, the National Council can therefore amend the draft budget submitted by the government in any direction. It is therefore not restricted in terms of amount or the scope of the budget allocation to make changes to the budget and is also not bound by the key figures proposed by the government, such as total expenditure, the budget deficit or the national debt. It can

²⁹ Sec. 32 (3) Rules of Procedure Act of the National Council

³⁰ Sec. 27 (2) Rules of Procedure Act of the National Council

therefore also decide on additional expenditure that increases the deficit and must be covered by additional borrowing. In principle, the National Council could also make changes to the performance information in the budget, as this is also covered by the normative budget decision.

The constitutional budgetary sovereignty of the National Council's is therefore very far-reaching by international standards. In practice, however, amendments to the government's draft budget in the National Council are very rare and constitute an exception. There are several reasons for this, partly inherent in the budgetary system itself, which primarily assigns a supervisory role to the Parliament in budget matters, and partly in the traditional Austrian system of government.

Budget decisions in Austria are made at a very high aggregate level. Only around 70 global budgets are legally binding for implementation for the executive, with the 15 largest global budgets recently covering more than 80 % of the total disbursements of the budget estimate.³¹ The government can therefore use funds very flexibly. The Organic Budget Act also provides for very extensive flexibility instruments in budget implementation, which make budget reallocations much easier.³² In recent years, due to the multiple crises (COVID-19, energy crisis, inflation, etc.), extensive authorizations have also been provided in the presented budgets, allowing the Minister of Finance to significantly exceed the budgeted amounts without the prior involvement of the National Council. This high degree of flexibility in budget implementation stands in clear tension with the budget sovereignty of the National Council and restricts it³³, even if it is based on the budget resolution of the National Council or the applicable Organic Budget Act. As majority governments are the rule in Austria and there is strong party discipline in Parliament, the government is assured of a majority for its draft budget. When amendments to the budget are made in Parliament, they are therefore always proposed by motions of members of the governing parties or are based on a broad political consensus due to a special situation (e.g. a natural disaster). However, the few changes in this regard in recent years have also affected especially the budget estimates for Parliament itself.

3. Parliament as a budget-managing body

While international examples show that parliamentary autonomy - i.e. the right of parliament to regulate its own affairs - has an equivalent in the regulations on the allocation and use of resources, the Austrian Federal Constitutional Act does not provide an explicit guarantee for the budget autonomy of Parliament. The general rules in Austrian Organic Budget Act for drawing up and implementing the budget therefore also apply to Parliament.

The President of the National Council is the supreme administrative organ in the execution of administrative matters under his competence and he exercises these powers in his own right.³⁴ The President of the National Council is also responsible in particular for the Parliamentary Administration, which supports parliamentary tasks and deals with administrative matters relating to the federal legislative bodies.³⁵ The

31 See in particular Berger, Reformbedarf im Haushaltsrecht aus Sicht der parlamentarischen Mitwirkung und Kontrolle, Das öffentliche Haushaltswesen in Österreich, 2023/2, p. 202.

32 See the explanatory notes to the government bill 480 BlgNR, 24. Legislative period on section 86 of the Federal Organic Budget Act 2023.

33 Berger, Reformbedarf im Haushaltsrecht aus Sicht der parlamentarischen Mitwirkung und Kontrolle, Das öffentliche Haushaltswesen in Österreich, 2023/2, p. 198.

34 Art. 30 (6) Federal Constitutional Act.

35 Art. 30 (3) Federal Constitutional Act.

President appoints its staff and exercises all other powers regarding personnel matters. The President may also assign staff members of the Parliamentary Administration to the parliamentary groups to perform parliamentary duties³⁶. In the sphere of the second chamber, the Federal Council, the internal organization of the Parliamentary Administration is to be regulated in agreement with the Chairman of the Federal Council, who also has the right to issue instructions with regard to the tasks assigned to the Federal Council.³⁷

The constitutional position of the President of the National Council (and the Federal Council) as a supreme administrative organ is reflected in the Rules of Procedure and in the Organic Budget Act provisions. The President of the National Council and the President of the Federal Council are a budget-managing bodies, with the same rights and obligations as federal ministers, for example.³⁸ They are particularly bound by equal obligations towards the Federal Minister of Finance in budget preparation and execution. As budget-managing bodies they are in particular obliged to participate in the preparation and drafting of budget proposals, to manage the cash, operating and assets budget, and to prepare the final accounts.³⁹ They are bound by Organic Budget Act and must adhere to the guidelines and directives of the Federal Minister of Finance. The budget of the Austrian Parliament is part of the Austrian federal budget and the general regulations for its preparation also apply to the Parliament. All bodies responsible for implementing the budget, including the Presidents of the National Council and the Federal Council, are also bound by the Minister of Finance's powers of participation in the financial management⁴⁰. In particular, for projects of extraordinary financial importance, agreement with the Federal Minister of Finance must be reached in advance, who shall issue more detailed provisions by decree⁴¹. Exceeding budget allocations⁴² and the withdrawal of reserves⁴³ from budget funds not used in previous years are also only permitted with the approval of the Minister of Finance.

4. The budget of the Austrian Parliament

The Austrian Parliament has one of the currently 35 budget chapters in the Austrian federal budget. Budget chapters are also set up, for example, for the Austrian Court of Audit or for all federal ministries, whereby several budget chapters can also be assigned to individual federal ministries. However, a budget chapter can only be allocated to one budget-managing body at a time. Budget chapters may in turn be divided into several global budgets and further into detail budgets according to functional or thematic criteria.⁴⁴ The legal binding effect only applies to the level of the global budgets; the detail budgets only have an administrative binding effect, allowing reallocations within and between the detail budgets.⁴⁵

Both chambers of the Austrian Parliament are jointly budgeted under one budget

36 Art. 30 (5) Federal Constitutional Act.

37 Art. 30 (3) Federal Constitutional Act

38 Sec. 6 of the Federal Organic Budget Act 2013

39 Sec. 6 of the Federal Organic Budget Act 2013

40 The Austrian constitutional budget legislation takes a systemic decision that assigns the Federal Minister of Finance a dominant position in the budget management (and in this area only). The relevant legislative materials concede the Minister of Finance a leading competence in matters of budget management, from which also the obligations of the legislative and judicial bodies to reach agreement with the Federal Minister of Finance in the case of certain legally regulated budget-relevant processes result (Hengstschläger in Korinek-Holoubeck, *Kommentar Österreichisches Bundesverfassungsrecht*, ed. Bezemek, Fuchs, Martin, Zellenberg, on Art. 51b B-VG, RZ 18).

41 Sec. 58 of the Federal Organic Budget Act 2013.

42 Sec. 54 of the Federal Organic Budget Act 2013.

43 Sec. 56 of the Federal Organic Budget Act 2013.

44 For the structure of the federal budget, see Sec. 24 of the Federal Organic Budget Act 2013.

45 Sec. 27 of the Federal Organic Budget Act 2013. On the binding effects, see the explanations in Lödl/Antl/Janik/Petridis-Pierre/Pfau, *Bundshaushaltsrecht*, 4th edition, 2019, p. 352.

chapter, namely “Chapter 02 – Federal Legislation”, whereby specific expenses such as the salaries of Members of Parliament or administrative costs relating exclusively to services for the respective parliamentary process allocated for each chamber in separate detail budgets. Parliament’s budget chapter has only one global budget (GB), which is, however, divided into a total of six detail budgets (DB), in which the following payments for the two chambers are accounted for in detail:⁴⁶

- The disbursements of DB 02.01.01 “National Council” and DB 02.01.02-“Federal Council” mainly include the remuneration entitlements of Members of Parliament and the transfer payments for their pensions. Furthermore, the expenses for Parliamentary staff of the members of the National Council are budgeted here. All members of the National Council are entitled to appoint personal staff themselves; in the Federal Council, this right is limited to chairpersons of the Parliamentary groups of the Federal Council⁴⁷. Parliamentary commissions of enquiry and the costs of investigative committees are also included in these two detail budgets.
- DB 02.01.03 “Parliamentary groups funding and joint expenditure for Members of Parliament” includes in particular the funds from club funding. These funds are allocated to the parliamentary groups on the basis of the Parliamentary Groups Funding Act 1985 to fulfill their parliamentary duties.⁴⁸ This Act regulates funding for the parliamentary groups of the National Council, the Federal Council and joint Parliamentary groups, which may also include Austrian Members of the European Parliament. The funds are allocated to the political groups for specific statutory purposes, in particular expenditure on their staff, infrastructure and ICT, public relations work with a direct link to Parliamentary activities, events, hearings, press releases, publications and expenditure on international activities. The detail budget also includes the business trips of Members of Parliament to attend international institutions and conferences as well as the associated expenses of the Parliamentary Administration.
- The DB 02.01.04 “Parliamentary Administration” is the financially most significant detail budget and includes in particular the majority of the Parliamentary Administration’s personnel expenses, rents, maintenance, IT expenses, energy expenses, services for cleaning, security and public relations, office and business equipment, the library, expenses for democracy education and similar expenses.
- DB 02.01.05 “National Fund for Victims of National Socialism” includes payments resulting from Austria’s special responsibility towards the victims of National Socialism and the associated administrative costs. It also finances measures for the culture of remembrance and commemoration as well as the restoration of Jewish cemeteries in Austria.
- In DB 02.01.06 “Parliament Renovation and Interim Location”, the Parliament renovation, which has been completed meanwhile, has been charged in a separate detail budget since 2016 in order to transparently show the costs. In addition to the investments for the refurbishment, the costs associated with interim locations were also included in particular.

⁴⁶ The structure of the budget of the Austrian Parliament and the expenditure allocated to the respective detail budgets can be found in the explanatory budget document (Teilheft) on “Chapter 02 - Federal Legislation” of the Federal Budget 2024.

⁴⁷ See the regulations in the Federal Act on the Employment of Parliamentary Staff (Parliamentary Staff Act).

⁴⁸ The funds for financing and promoting political parties, on the other hand, are not part of the parliamentary budget. These are included in the budget of the Federal Chancellery, which is responsible for managing this expenditure. These funds are also based on a separate legal basis (Political Parties Act 2012 and Support of Political Parties Act 2012).

As for every other budget chapter, performance information must be specified in the budget also for “Chapter 02 - Federal legislation”. A total of four impact targets were set for 2024, such as ensuring a high quality of service for elected Members of Parliament and parliamentary groups to create scope for policy-making in the parliamentary process to strengthen parliamentarism. For each of these impact objectives, the budget document specifies the measures planned to pursue this impact objective and defines indicators to measure target achievement. One such indicator is, for example, the satisfaction of Members of Parliament with the services provided by the Parliamentary Administration, which is assessed through annual surveys.

The federal budget also includes the federal personnel plan. This plan, included as an annex to the legislative decision⁴⁹, regulates the maximum number of positions that must not be exceeded on any day of the financial year, including for the Parliamentary Administration.

5. Autonomy of the Parliament during the budget cycle

This paragraph deals with Parliament’s budget autonomy in the individual phases of the budget cycle, from planning and decision-making to budget implementation and accounting. It outlines the specific steps in each stage of the budget process and to what extent the Parliament can act independently. The explanations primarily focus on the National Council, as the regulations only have limited significance for the Federal Council. The procedures described must always be viewed in the context of the National Council’s budget authority, which applies to all budget items, and therefore also to Parliament’s budget.

5.1 Preparation of Parliament’s budget draft

The procedure for drawing up Parliament’s budget plan is based on the general procedure for the preparation and approval of the federal budget. There is no specific procedure for Parliament. The guidelines for preparing the draft budget are provided by the Ministry of Finance to the individual budget-managing bodies. Austria is pursuing a top-down approach. Based on the general budget strategy of the federal government (e.g. compliance with European fiscal rules, target values for the general government budget deficit and the public debt level, savings in certain expenditure categories) and the principles for budgeting the individual budget lines (e.g. personnel expenditure, ICT expenditure), the Ministry of Finance assigns the Parliamentary Administration an overall expenditure ceiling to be adhered to in the draft budget and specific key figures or benchmarks for budgeting. These relate, for example, to certain projects that have already been agreed in advance (e.g. renovation measures, restoration of Jewish cemeteries), adjustments due to inflation or general cuts that must be shouldered by all budget chapters.

The budget details are then worked out by the President of the National Council, with budgeting in Austria being very detailed down to the level of individual accounts. Unlike many other Parliaments, in Austria there is no Parliamentary Committee or another body within the Parliament involved in drawing up the budget. In accordance with the Rules of Procedure of the National Council, however, the President of the National Council must seek an agreement with the second and third President on the budget draft and also coordinate with them on the impact objectives for the

⁴⁹ The personnel plan is Annex IV to the respective Federal Finance Act.

budget chapter “Federal Legislation”.⁵⁰ The President then shall timely submit the draft estimate (for both chambers), including annexes and explanatory notes, as well as the documents required for the preparation of the draft Federal Medium-Term Expenditure Framework Act and the strategy report to the Minister of Finance. If the three Presidents of the National Council fail to reach an agreement (in good time), the President submits his draft by the set deadline.⁵¹

However, the Minister of Finance is not obliged to follow Parliament’s proposals.⁵² In recent years, there have repeatedly been significant differences between the key figures and parameters submitted by the Ministry of Finance and the Parliament’s draft estimates. In practice, negotiations are then held between the President of the National Council and the Minister of Finance, and any reductions to the Parliamentary draft budget are politically agreed. As a rule, the existing differences can be resolved. However, if this is not successful, the Minister of Finance submits his draft budget, which deviates from the President’s budget requests, to the Council of Ministers and subsequently to Parliament.

5.2 Adoption of Parliament’s budget

Parliament’s budget is part of the overall budget and is approved in the regular legislative process. The Parliament’s budget chapter (Chapter 02 - Federal Legislation) is discussed both in the Budget Committee and in the plenary session. The parliamentary debate takes place in the Budget Committee with the President of the National Council, who is supported by the staff of the Parliamentary Administration.

As part of its budget deliberations, the National Council can make any changes to the budget, including the parliamentary budget, without the involvement of the government (budget sovereignty of the National Council). The National Council is not bound by the upper limits proposed by the government and can also revise the Parliament’s budget upwards. In the past, this has usually been done in individual cases with the consent of all parliamentary groups in the National Council. The budget chapter of the Parliament is one that is traditionally more often subject to change in the National Council than other budget chapters.

Thus, Parliament has a high degree of budget autonomy when adopting its budget, as the National Council can amend and adopt its budget autonomously without restriction during the parliamentary budget process.

5.3 Amendment of Parliament’s budget estimates

If, during the budget execution phase following the budget approval, it becomes necessary to amend the budget, the National Council can make all changes (including to the Parliament’s budget). The initiative for such changes can also be taken from the National Council itself. Furthermore, the National Council has all the powers associated with its budget sovereignty. In practice, however, such a procedure is very unlikely, as amendments to the approved budget typically originate from the Government.

50 Sec. 14 (2) Rules of Procedure Act of the National Council.

51 Zögernitz, Nationalrat - Geschäftsordnung, 4th edition, 2020, p. 110 states that although the agreement between the three presidents is to be pursued, the word “in good time” in the relevant provision expresses that the documents are to be forwarded to the Federal Minister of Finance in accordance with the provisions of budgetary legislation even if no consensus could be reached.

52 Zögernitz, Nationalrat - Geschäftsordnung, 4th edition, 2020, p. 110.

5.4 Implementation of the parliamentary budget

The President has the right of disposition of the funds for the National Council in the Federal Budget.⁵³ There are no special rules here either, but budget execution is based on the same budgetary rules applied to the entire federal budget. This means that the President of the National Council can dispose of the funds approved in the budget without restriction, but must obtain the approval of the Minister of Finance for certain transactions.

Relevant transactions have already been addressed above in respect to Parliament's role as a budget-management body. In accordance with the general budget rules, unused budget appropriations can be carried forward to the next financial year without restriction. These unused allocations then constitute a reserve in Parliament's budget chapter and can be used at a later date. However, as with any other budget-managing body, the Minister of Finance must give his approval.⁵⁴ Under the Austrian budget legislation, reserves are initially unfunded, but only lead to borrowing and thus to a higher deficit when they are utilized. The Minister of Finance has the right to approve withdrawals from reserves so that he can exercise his overall responsibility for managing the federal budget. This approval requirement for reserve withdrawals has sometimes led to disagreements with ministries and poses challenges to Parliament's budget autonomy. Under the Federal Organic Budget Act, agreement with the Minister of Finance may also be required for the implementation of certain financially significant projects⁵⁵, although the Parliament's autonomy limits substantive influence in this regard. The Minister of Finance must also approve any overruns of budget allocations during budget implementation.⁵⁶

In the implementation of the budget, the Parliament's budget autonomy faces similar constraints as all other budget-managing bodies. Similar to the regulations for line ministers, the President of the National Council also requires approval from the government (more concrete the Minister of Finance) for certain financial transactions.⁵⁷ However, National Council can use its comprehensive powers within the framework of its budget sovereignty to enforce appropriate budgetary measures against the government by the budget resolution (e.g. withdrawals from reserves can already be provided for in the adopted budget, for which the approval of the Federal Minister of Finance is then not required, or the budget appropriations for Parliament can be increased).

Regarding the funding provided to parliamentary political groups, the procedure deviates in that the Parliamentary Administration is only responsible for disbursing funds to these groups, which then manage these funds autonomously. There are no specific rules governing the appropriate use of these funds, nor is there a separate body to monitor the expenditure of political groups (however, these funds are in principle also covered by the Court of Audit's audit mandate).

5.5 Monitoring the implementation of the parliamentary budget

There are also no special regulations for Parliament in terms of accompanying budgetary control and in the preparation and audit of the financial statements. In particular, no separate control committee has been set up in Parliament specifically to oversee Parliament's budget. However, all other control powers of Parliament also

⁵³ Sec. 14 (2) Rules of Procedure Act of the National Council.

⁵⁴ Sec. 56 of the Federal Organic Budget Act 2013.

⁵⁵ Sec. 58 of the Federal Organic Budget Act 2013.

⁵⁶ Sec. 54 of the Federal Organic Budget Act 2013.

⁵⁷ Stöger (in Rill-Schäfer, *Kommentar Bundesverfassungsrecht*, ed. Kneihls/Lienbacher, on Art. 51b B-VG, p. 8) states that it follows from Art. 51b of the Federal Constitutional Act and other provisions that the Federal Minister of Finance, due to his overall responsibility for the federal budget, has in the budget management some authorities over otherwise independent bodies that are organizationally not part of the administrative branch, such as the legislature and the courts. Budget management is functionally an administrative activity even for such bodies.

apply to its own budget. The Budget Committee, entrusted with the deliberation of the Federal Finance Act, is also responsible for the National Council's participation in the federal budget management ("accompanying budget control").⁵⁸ It discusses the reports on budget implementation to be submitted by the Minister of Finance, which also include the budget chapter of Parliament.

For financial control, the National Council utilizes the Austrian Court of Audit, whose reports are generally examined in the Court of Audit Committee. The Court of Audit also examines the federal financial statements, which explain the annual budget implementation, and submits these along with the results of its audit to the National Council for approval in the form of a legislative resolution.⁵⁹ The Court of Audit's audit procedures on the financial statements cover all budget chapters, including those of Parliament. In exception to the general rule regarding the parliamentary treatment of Court of Audit reports, this report is discussed in the Budget Committee.

As a supervisory body assigned to the National Council, the Court of Audit audits the entire State Administration. The Court of Audit's remit thus also covers the entire federal sector, including the Parliamentary administration, the administration of justice and the organizations controlled by federal sector entities.⁶⁰ It draws up its annual audit program autonomously, but can also be commissioned by the National Council for special audits. This right can also be executed by a minority, so that in addition to a majority decision by the National Council, 20 members of Parliament can also request such an examination.⁶¹

The National Council may by simple majority also decide to instruct the Standing Subcommittee of the Court of Audit Committee to investigate a specific matter relating to the management of federal public funds falling under the jurisdiction of the Court of Audit. Likewise, a quarter of the Members of the National Council can also request such an investigation (minority right).⁶² The Subcommittee shall commence its deliberations within four weeks and submit a report to the Audit Committee within an additional six months, which may submit this report to the National Council for deliberation.⁶³ Audits of the Parliamentary Administration by the Court of Audit, except for the examination of the yearly financial statements, are very rare.

The National Council makes much more frequent use of its right of interpellation, to which every Member of Parliament is entitled towards the President of the National Council⁶⁴, and which regularly also addresses questions regarding the financial management of the Parliamentary Administration.

6. Conclusion

Drawing a concise conclusion on the budget autonomy of the Austrian Parliament is a challenging task, as the budget-related powers of the National Council in approving

58 See Art. 51d (1) Federal Constitutional Act and § 32a (1) Rules of Procedure Act of the National Council. This also gives the Budget Committee an independent remit within the framework of federal budget management (Zögernitz, Nationalrat - Geschäftsordnung, 4th edition, 2020, p. 265).

59 Art. 121 (2) Federal Constitutional Act.

60 See Art. 121 and 126b of the Federal Constitutional Act.

61 Sec. 99 Rules of Procedure Act of the National Council.

62 While a request for an audit by the Court of Audit can only be submitted during a National Council meeting, a request for an investigation by the Standing Subcommittee of the Court of Audit Committee can also be made outside of a meeting (Zögernitz, Nationalrat - Geschäftsordnung, 4th edition, 2020, p. 62).

63 Sec. 32e Rules of Procedure Act of the National Council.

64 Sec. 89 (1) Rules of Procedure Act of the National Council. Unlike enquiries to the Federal Government or a Federal Minister, no support from other MPs is required.

the budget are very far-reaching, Parliament however is generally subject to the same restrictions of the organic budget legislation as any other budget-managing body.

The National Council's budgetary sovereignty empowers it to make extensive amendments to the draft budget submitted by the government, which also apply to Parliament's budget, and these modifications have been exercised repeatedly. Under this perspective, the budget autonomy of the Austrian Parliament can be considered very extensive.

However, within the budget cycle the Federal Organic Budget Act also contains regulations that apply to Parliament as well as to all other budget-managing bodies, which could be interpreted as an indication of a weak parliamentary budget autonomy. The Ministry of Finance for instance initially provides Parliament with the key figures for the budget preparation process and, unlike in other countries where the government does not submit a draft, Parliament's budget is part of the government's draft budget. Furthermore, we find participation rights of the Minister of Finance during budget implementation, which could be critically questioned with regard to Parliament's budget autonomy.

Another peculiarity of the Austrian system is the strong position of the President of the National Council in the preparation and implementation of the parliamentary budget, whereas in other Parliaments, parliamentary committees or other parliamentary bodies are significantly involved in these processes. However, due to the exceptional scale of the renovation project for the Parliament building, special regulations were established limiting the powers of the President in this special case.

Overall, National Council's budget sovereignty weighs more heavily in Parliament's ability to determine its budget autonomously, as it allows existing restrictions in the budgetary autonomy to be effectively addressed. This also has practical repercussions on Parliament's negotiating powers towards the Ministry of Finance in the budget preparation procedure as they are significantly strengthened.

Budgetary autonomy of the Bundestag and Bundesrat in the context of the budget cycle

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Summary: 1. Introduction. 2. The budgets of the Bundestag and Bundesrat. 3. The tasks of the relevant organs of the constitution in the budget cycle. 3.1 Drafting of the budget. 3.2 Adoption of the budget. 3.3. Execution of the budget. 3.4. Audit. 4. Conclusion.

1. Introduction

The following contribution deals with the budgetary autonomy of the Bundestag and Bundesrat in the context of the budget cycle. The essential question under examination is the extent to which these two organs of the constitution can make autonomous decisions – that is to say independently of the influence of other state authorities – on the use of their respective budgetary allocations. After a brief explanation of the position of both budgets in the general budget of the Federal Republic (see paragraph 2 below), there follows a description of the functions performed by the Bundestag and Bundesrat in the context of the budget cycle and of the extent to which the two institutions can decide on the use of their own financial resources in that process (see paragraph 3).

2. The budgets of the Bundestag and Bundesrat as components of the general budget

The budgets of the Bundestag and Bundesrat are parts of the general budget, in which all income and expenditure of the Federal Republic must be included.⁶⁶ The budget is adopted by means of the Budget Act (Haushaltsgesetz).⁶⁷ Under the law as it stands, it would be possible to adopt the budget for one or two financial years (one for each year). An annual adoption for one financial year, however, has become standard practice for the federal budget. The budget comprises various individual budgets as well as the general budget (section 13(1) of the Federal Budget Code). At the present time, there are 25 individual budgets. These are mainly apportioned to administrative departments under what is known as the departmental principle. Some, however, are allocated on the basis of thematic responsibilities under the functional principle. The Bundestag budget appropriations are made in individual budget 02. These include allocations for expenditure on financial payments to Bundestag Members and to the parliamentary groups as well as for expenditure on the administration of the Bundestag. The Bundesrat budget is set out in individual budget 03. Its main appropriation is for the administration of the Bundesrat.

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The views and opinions expressed in this and essay are solely those of the author and do not necessarily reflect the official policy or position of the administration he is associated with.

66 First sentence of Article 110(1) of the Basic Law (GG). All provisions of the Basic Law that are cited in this paper can be consulted in German at <https://www.gesetze-im-internet.de/gg/> and in English at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0657, last accessed on 28 January 2025.

67 First sentence of Article 110(2) of the Basic Law and section 1 of the Federal Budget Code (BHO). All provisions of the Federal Budget Code that are cited in this paper can be consulted (in German only) at <https://www.gesetze-im-internet.de/bho/>, last accessed on 28 January 2025.

3. The tasks of the relevant organs of the constitution in the budget cycle

The federal budget consists of the various individual budgets and the general budget, is drafted by the Federal Government and the federal administration in a procedure regulated by law. It is adopted by the Bundestag with the participation of the Bundesrat and is executed by the federal administration. Afterwards, the Bundestag and Bundesrat decide whether to grant discharge to the Federal Government. This whole process is known as the budget cycle and is characterised by the alternating involvement of the executive (Federal Government and federal administration) and the legislature (Bundestag and Bundesrat).⁶⁸ In this paragraph the tasks of the executive and the legislature within the budget cycle will be described. The aim here is to explain the decision-making powers of the Bundestag and the Bundesrat with regard to the general budget and hence to their own individual budgets too.

3.1 Drafting of the budget

In the drafting phase, the Budget Bill, along with the draft budget, is produced by the Federal Government with operational assistance from the entire federal administration.⁶⁹ The Federal Government alone may introduce the Bill and the draft budget into the legislative process. In contrast to general legislative procedure, a bill relating to the budget may not be introduced from the floor of the Bundestag or by the Bundesrat. In this sphere, the Federal Government enjoys a sole right of initiative.⁷⁰

As far as the procedure is concerned, the law stipulates that the bodies responsible for each individual budget must send estimates to the Federal Ministry of Finance.⁷¹ These comprise financial planning documents as well as documentation for the draft budget.⁷² Drafting the estimates is the duty of the Budget Officer.⁷³ In the supreme federal authorities, this is the head of the budget division.⁷⁴

In the Bundestag administration there is also a budget division, which performs the administrative groundwork for the estimates for individual budget 02. The budget of the Bundestag is formally drafted, however, by its Council of Elders.⁷⁵ The Council of Elders comprises the President of the Bundestag, her deputies and 23 other members who are appointed by the parliamentary groups.⁷⁶ The estimates are then forwarded to the Federal Ministry of Finance.

In the Bundesrat Administration, the Budget Officer draws up the estimates for individual budget 03. After consultation of the Permanent Advisory Council, which consists of delegates of the 16 federal states (Länder), the estimates are forwarded to the Federal Ministry of Finance.

In the budgetary practice of the Federal Government, the forwarding of estimates has been preceded since 2012 by a “top-down procedure” in which the Federal Government initially determines reference figures known as benchmarks

68 M. Kloepfer, *Finanzverfassungsrecht mit Haushaltsverfassungsrecht*, 2014, chapter 10, paragraph 60.

69 B. Leibinger, R. Müller and B. Züll, *Öffentliche Finanzwirtschaft*, 15th edition, 2021, point 6, paragraph 494.

70 M. Kloepfer, *Finanzverfassungsrecht mit Haushaltsverfassungsrecht*, chapter 10, paragraph 61.

71 First sentence of section 27(1) of the Federal Budget Code.

72 First sentence of section 9(2) of the Federal Budget Code.

73 Loc. cit.

74 Point 1.1 of the Administrative Regulations to section 9 of the Federal Budget Code, accessible (in German only) at https://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_14032001_DokNr20110981762.htm, last accessed on 28 January 2025.

75 Third sentence of section 6(3) of the Rules of Procedure of the German Bundestag (GOBT), accessible in German at https://www.gesetze-im-internet.de/btgo_1980.html and in English at <80060000.pdf.btg-bestellservice.de>, last accessed on 28 January 2025.

76 First sentence of Rule 6(1) of the Bundestag Rules of Procedure.

(the “benchmark decision”).⁷⁷ In that decision, the total volume of the federal budget is determined along with the total amounts of the various individual budgets.⁷⁸

However, the individual budgets of the Bundestag and the Bundesrat and of other supreme federal institutions that are not government departments, namely the Federal President, the Federal Constitutional Court, the German Supreme Audit Institution, the Federal Commissioner for Data Protection and Freedom of Information and the Independent Oversight Council, are exempted from this “top-down procedure”.⁷⁹ Accordingly, the benchmark decision does not have a restrictive effect on their budgetary submissions.⁸⁰

The aforementioned federal institutions, however, just like the federal government departments, are required to forward their estimates to the Federal Ministry of Finance. The Ministry examines the estimates and produces the draft budget. It may alter the estimates after consulting the bodies concerned.⁸¹ Divergences from the estimates of the Bundestag and Bundesrat and of other supreme federal institutions that are not government departments must be reported by the Federal Ministry of Finance to the Federal Government if the amendments in question have not been approved.⁸² The reason for imposing this notification requirement on the Federal Ministry of Finance is that the aforementioned institutions are not represented in the cabinet and therefore cannot present their views when the decision on the Budget Act and the federal budget is made.⁸³ The notification is intended to enable the Federal Government to deal separately with the reported divergences during its subsequent deliberations on the draft budget⁸⁴.

The Budget Bill is adopted by the Federal Government along with the draft budget.⁸⁵ Here, too, special conditions apply to the Bundestag, the Bundesrat and the other federal institutions that are not government departments. If the draft budget diverges from the estimates of those federal institutions and the alteration has not been approved, the parts on which no agreement has been reached must be attached in unamended form to the draft budget. The purpose of this is to ensure that the Bundestag is informed of the relevant divergence before engaging in its budgetary deliberations and can also concern itself with the counterproposal.⁸⁶

In general, the drafting stage is characterised by the far-reaching influence of the Federal Ministry of Finance, which can amend the budgets of all participating bodies,⁸⁷ as well as by the sole decision-making power of the Federal Government in respect of the draft budget, on which it decides at the end of the drafting process. The Bundestag and Bundesrat, by contrast, have no power to take decisions independently of the

77 The law does not stipulate a benchmark decision. However, this decision has usually been made in the budgetary practice since 2012. There have been two exceptions in recent years: The Federal Government of the last legislative period did not adopt a benchmark decision for the budget years 2024 and 2025. According to the coalition agreement for the current legislative period, the Federal Government will return to the “top-down procedure” by setting benchmarks, see p. 51 of the aforementioned coalition agreement, accessible (in German only) at <https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag.pdf>, last accessed on 16 May 2025.

78 A. Nebel, in E. A. Piduch, *Bundeshaushaltsrecht*, 46th supplement, 2012, on section 27 of the Federal Budget Code, paragraph 1.

79 A. Nebel, in E. A. Piduch, *Bundeshaushaltsrecht*, 46th supplement, 2012, on section 27 of the Federal Budget Code, paragraph 2; for the 2023 federal budget, see also Federal Ministry of Finance, “Verfahrenshinweise für die Aufstellung des Bundeshaushalts 2023 und des neuen Finanzplans 2022 bis 2026” of 23 December 2021, accessible (in German only) at <https://www.bundeshaushalt.de/static/daten/2023/soll/Haushalt%202023%20/Rdschr.%20Aufstellung.pdf>, last accessed on 28 January 2025.

80 V. Mayer, in E. Heuer and K. Scheller, *Kommentar zum Haushaltsrecht*, update of August 2018, on section 27 of the Federal Budget Code, paragraph 34.

81 Section 28(1) of the Federal Budget Code.

82 Section 28(3) of the Federal Budget Code.

83 A. Nebel, in E. A. Piduch, *Bundeshaushaltsrecht*, 51st supplement, February 2018, on section 28 of the Federal Budget Code, paragraph 3.

84 C. Gröpl, in idem, *Bundeshaushaltsordnung/Landeshaushaltsordnungen*, 2nd edition, 2019, on section 28 of the Federal Budget Code, paragraph 12.

85 Section 29(1) of the Federal Budget Code.

86 C. Gröpl, in idem, *Bundeshaushaltsordnung/Landeshaushaltsordnungen*, 2nd edition, 2019, on section 29 of the Federal Budget Code, paragraph 14.

87 See V. Mayer, in E. Heuer and K. Scheller, *Kommentar zum Haushaltsrecht*, update of August 2018, on section 28 of the Federal Budget Code, paragraph 7ff.

Federal Ministry of Finance and the Federal Government concerning the drafting of the budget but are restricted at that stage to forwarding their estimates, to alterations of which the foregoing special conditions apply.

After the Federal Government's decision on the Budget Bill and the draft budget, the Bill is presented to Parliament. The procedure there is discussed in the next paragraph.

3.2 Adoption of the budget

The Budget Bill with the draft budget is forwarded to the Bundesrat and introduced in the Bundestag simultaneously, normally no later than the first sitting week after 1 September.⁸⁸ Procedural sovereignty thus passes to the legislature.

3.2.1 The legislative process

3.2.1.1 First discussion round in the Bundesrat

The Bundesrat is authorised to comment on the bills within six weeks.⁸⁹ In this way the Länder are involved in the budgetary process.⁹⁰ The opinion of the Bundesrat is forwarded to the Federal Government, which draws up a counterstatement. The opinion of the Bundesrat and the counterstatement of the Federal Government are forwarded to the Bundestag.⁹¹

3.2.1.2 First reading in the Bundestag

Like every bill, the Budget Act and draft budget are discussed three times at plenary sittings of the Bundestag. The first reading normally takes place at the beginning of September. By convention, it is opened with an introductory speech by the Federal Minister of Finance.⁹² This is followed by a general debate, in the light of the draft budget, on all aspects of government policy.⁹³ Thereafter and on the following sitting days, the budgets of the various departments are discussed.⁹⁴ At the end of the first reading in the chamber, the draft budget is referred to the Budget Committee, which then discusses it as the lead committee.⁹⁵

3.2.1.3 Deliberations in the Budget Committee

The Budget Committee of the Bundestag normally deals with the draft budget at numerous meetings from late September until mid-November. The Budget Committee is a permanent committee of the Bundestag. Its composition reflects the relative strengths of the parliamentary groups. The Budget Committee has a significant influence on decision-making processes in the realm of budgetary policy.⁹⁶ In particular, it can influence the shaping of the draft budget, because it enjoys the right "to adopt amendment proposals, which will normally be carried by a parliamentary majority".⁹⁷ Since the Budget Committee is the lead committee for the draft budget, only it can

88 Section 30 of the Federal Budget Code.

89 Article 110(3) of the Basic Law.

90 Federal Ministry of Finance, *Das System der öffentlichen Haushalte*, last updated August 2015, p. 36, accessible (in German only) at [das-system-der-oeffentlichen-haushalte.pdf \(bundesfinanzministerium.de\)](https://www.bundesfinanzministerium.de/Content/DE/Pressemitteilungen/2015/08/20150818_oeffentliches_Haushaltssystem.html), last accessed on 28 January 2025.

91 Federal Ministry of Finance, *ibid.* (footnote 90 above), p. 36.

92 A. Nebel, in E. A. Piduch, *Bundeshaushaltsrecht*, 52nd supplement, May 2020, on Article 110 of the Basic Law, paragraph 73; Federal Ministry of Finance, *ibid.* (footnote 90 above), p. 36; B. Leibinger, R. Müller and B. Züll, *Öffentliche Finanzwirtschaft*, 15th edition, 2021, paragraph 513.

93 A. Nebel, *loc. cit.*

94 A. Nebel, in E. A. Piduch, *Bundeshaushaltsrecht*, 52nd supplement, May 2020, on Article 110 of the Basic Law, paragraph 73; Federal Ministry of Finance, *ibid.* (footnote 90 above), p. 36.

95 First part of the second sentence of Rule 95(1) of the Bundestag Rules of Procedure.

96 C. Gröpl, in *idem*, *Bundeshaushaltsordnung/Landeshaushaltsordnungen*, 2nd edition, 2019, on section 1 of the Federal Budget Code, paragraph 43.

97 A. Reus and P. Mühlhausen, *Haushaltsrecht in Bund und Ländern*, 2014, paragraph 622.

present the Bundestag with a recommendation for an adoption decision.⁹⁸ The specialised committees are to be consulted if they so request.⁹⁹ This means that they are entitled to express their opinion.¹⁰⁰ The Budget Committee may not deviate, however, from the estimates for individual budget 02, the Bundestag budget, except by agreement with the Council of Elders.¹⁰¹

The Budget Committee's recommendations for decisions on the amended Budget Bill and individual budgets and the report on the deliberations form the basis for the next discussion stages – the second and third readings – and for the decision adopting the budget in the plenary chamber of the Bundestag.

The recommendation for a decision normally includes any changes made to the estimates relating to the Bundestag's own budget, which are thus presented transparently to Parliament.

3.2.1.4 *Second and third readings in the Bundestag*

The second reading in the plenary chamber of the Bundestag is devoted to discussion of the individual budgets and traditionally extends over a sitting week. Regardless of the recommendations for decisions made by the Budget Committee, further amendments to the Budget Bill and the budget may be tabled at second reading.¹⁰² At the end of the deliberations a separate vote is taken on each individual budget.¹⁰³

The outcome of the vote at second reading forms the basis for the third reading.¹⁰⁴ Any amendments tabled at third reading must be signed by a parliamentary group or by five per cent of the Members of the Bundestag. They may only relate to those provisions that were amended at second reading.¹⁰⁵ Once all of the motions for amendments and decisions have been dealt with, the draft budget as a whole is put to the vote.¹⁰⁶

3.2.1.5 *Second discussion round in the Bundesrat*

On completion of its deliberations, the Bundestag forwards the adopted draft budget to the Bundesrat without delay.¹⁰⁷ Within three weeks of receiving the legislative decision, the Bundesrat may require the Mediation Committee to be convened. If the Mediation Committee proposes an amendment to the budget, the Bundestag must adopt a new decision on that proposal¹⁰⁸. After that, the Bundesrat has the opportunity to lodge an objection to the Bundestag decision within two weeks¹⁰⁹.

The Bundestag may, however, reject the Bundesrat's objection by a majority decision of its Members. If the objection decision was adopted by a simple majority of the Bundesrat votes, it may be rejected by a simple majority of the Members of the Bundestag. If, on the other hand, the Bundesrat adopted the objection by a majority of at least two thirds of its votes, its rejection by the Bundestag requires a two-thirds majority, which must correspond to at least a majority of all Bundestag Members.¹¹⁰ The Bundestag, in short, may overrule the Bundesrat in the event of conflicting views.¹¹¹

98 H. G. Ritzel, J. Bücker and H. J. Schreiner, *Handbuch für die Parlamentarische Praxis*, 2018, on Rule 95 of the Bundestag Rules of Procedure, point 2.

99 Second part of the second sentence of Rule 95(1) of the Bundestag Rules of Procedure; see also: German Bundestag, Functions and responsibilities of the committees, accessible at <https://www.bundestag.de/en/committees/function-245820>, last accessed on 28 January 2025.

100 Third sentence of Rule 95(1) of the Bundestag Rules of Procedure, read in conjunction with Rule 63(2) thereof; see also H. G. Ritzel, J. Bücker and H. J. Schreiner, *Handbuch für die Parlamentarische Praxis*, 2012, on Rule 29 of the Bundestag Rules of Procedure, point 3.

101 Rule 6(3) of the Bundestag Rules of Procedure; see also paragraph 3.1 above.

102 A. Nebel, in E. A. Piduch, *Bundeshaushaltsrecht*, 52nd supplement, May 2020, on Article 110 of the Basic Law, paragraph 73.

103 A. Nebel, *ibid.*, and Federal Ministry of Finance, *loc. cit.* (footnote 90 above), p. 37.

104 A. Nebel, *ibid.*

105 Rule 85(1) of the Bundestag Rules of Procedure; A. Nebel, *ibid.*

106 Federal Ministry of Finance, *ibid.* (footnote 90 above), p. 37.

107 Article 77(1) of the Basic Law.

108 Federal Ministry of Finance, *ibid.* (footnote 90 above), p. 39.

109 Article 77(3) of the Basic Law.

110 Article 77(4) of the Basic Law.

111 M. Kloepper, *Finanzverfassungsrecht mit Haushaltsverfassungsrecht*, 2014, chapter 10, paragraph 69.

3.2.1.6 Countersignature, certification and promulgation

Once the deliberations in the Bundestag and Bundesrat have been completed, the Budget Act with which the budget is adopted is countersigned by the Federal Minister of Finance and the Federal Chancellor, certified (signed) by the Federal President and promulgated in the Federal Law Gazette.¹¹² As a rule, it then enters into force on 1 January of the new year.

3.2.2. Budgetary powers of Parliament

The competence of the Bundestag to adopt the Budget Act and the federal budget, as described above, is an expression of the budgetary powers of Parliament. By adopting the budget in the form of a statute, Parliament confers democratic legitimacy on the budget presented by the Government.¹¹³ The budgetary powers of Parliament, in other words, equate to the right to adopt the national budget in binding form.¹¹⁴ Accordingly, sometimes the Federal Constitutional Court also uses the term *Haushaltsbewilligungsrecht*¹¹⁵ (budget approval right) and refers to the “legally comprehensive sole decision-making and adoption power of the legislature”.¹¹⁶ Although the federal budget is also referred to as “government policy in figures”¹¹⁷, Parliament ultimately decides what content the adopted Budget Act will have and so discharges its duty of budgetary oversight.¹¹⁸ The Federal Constitutional Court therefore sees the right to approve the budget as “one of the main instruments of parliamentary oversight of the government”¹¹⁹.

Accordingly, the Bundestag may alter the budgetary estimates proposed by the Federal Government. This also applies to its own budget and that of the Bundesrat. The budgetary powers of Parliament also permit the Bundestag to increase projected amounts of expenditure.¹²⁰ The first sentence of Article 113(1) of the Basic Law stipulates that laws which increase amounts of expenditure proposed by the Federal Government require the consent of the Federal Government, and this applies to the Budget Act too.¹²¹ The Federal Government, however, can validly withhold its consent only if it has previously required the Bundestag to postpone its vote or to vote a second time on such bills¹²². If the bill in question has become law, the Federal Government has six weeks to issue a refusal of consent. If consent is not refused within that time limit, it is deemed to have been given¹²³. When the Federal Government submits the countersigned bill to the Federal President, moreover, consent is deemed to have been implicitly given.¹²⁴ Since the parliamentary majority supports the Government as a rule, the provision has scarcely any relevance in constitutional practice.¹²⁵ Consent has only once been refused, in 1950, though the refusal did not relate to a Budget Bill but to another bill with financial implications.¹²⁶ Academic writers consider that the rule might

112 Article 58 of the Basic Law; GG; section 29(1) of the Joint Rules of Procedure of the Federal Ministries; Article 82(1) of the Basic Law; A. Nebel in E. A. Piduch, *Bundshaushaltsrecht*, 52nd supplement, May 2020, on Article 110 of the Basic Law, paragraph 74.

113 M. Heintzen, in I. von Münch and P. Kunig, *Grundgesetz-Kommentar*, 7th edition, 2021, on Article 110 of the Basic Law, paragraph 3.

114 K. Weber, in *idem*, *Rechtswörterbuch*, 27th edition, 2021.

115 Official Digest of the Federal Constitutional Court (BVerfGE), 45, 1 (58).

116 BVerfGE, 45, 1 (32).

117 M. Kloepfer, *Finanzverfassungsrecht mit Haushaltsverfassungsrecht*, 2014, chapter 10, paragraph 62.

118 *Ibid.*

119 BVerfGE, 55, 274 (303).

120 B. Hasenjäger, in M. Morlok, U. Schliesky and D. Wiefelspütz, *Parlamentsrecht*, 2016, chapter 25, paragraph 5.

121 H. Kube, in G. Dürig, R. Herzog and R. Scholz, *Grundgesetz-Kommentar*, 101st supplement, May 2023, on Article 113 of the Basic Law, paragraph 21.

122 First sentence of Article 113(3) of the Basic Law; T. Scheunert, in E. Heuer and K. Scheller, *Kommentar zum Haushaltsrecht*, update of May 2023, on Article 113 of the Basic Law, paragraph 17.

123 Second sentence of Article 113(3) of the Basic Law.

124 T. Scheunert, in E. Heuer and K. Scheller, *Kommentar zum Haushaltsrecht*, update of May 2023, on Article 113 of the Basic Law, paragraph 28.

125 B. Hasenjäger, *loc. cit.*

126 H. Kube, in G. Dürig, R. Herzog and R. Scholz, *Grundgesetz-Kommentar*, 101st supplement, May 2023, on Article 113 of the Basic Law, paragraph 60, with a reference to Bundestag printed paper 2/857.

only be relevant in practice if the parliamentary majority did not form the Federal Government, in other words if there were a minority government.¹²⁷ For the Bundestag budget, this means that such changes are normally accepted by the Executive.

3.3. Execution of the budget

The entry into force of the Budget Act is followed by the execution phase, that is to say the use of the funds allocated in the budget. Executing the budget is the task of the Executive – the Federal Government and federal administration¹²⁸ – and of the administrations of the supreme federal institutions that do not belong to the Executive. The Bundestag and Bundesrat, for their part, are legislative institutions. Both, however, possess administrations that assist them in their work and are responsible, among other things, for managing the budgetary resources at their disposal.

The budget authorises the administration to incur expenditure and enter into obligations.¹²⁹ Each of the supreme federal authorities has a budget officer who is responsible for managing its financial resources.¹³⁰ Overall responsibility for the general budget, however, lies with the Federal Ministry of Finance, which oversees the execution of the budget in its entirety.¹³¹

Even though the execution of the budget is incumbent on the administrations of the supreme federal authorities, the legislature can also exert influence on the execution of the budget through the Budget Act and what are known as Haushaltsvermerke (budget notes). In this way, Parliament has an additional say in the disbursement of budgetary allocations in individual areas.¹³²

In particular, an endorsement imposing a freeze on appropriated funds (Sperrvermerk) may be used to stipulate that the disbursement of specific funds by the executive requires the approval of the Bundestag.¹³³ In federal budgets, the power to issue such approvals is normally delegated to the Budget Committee. This procedure applies, for example, in the case of new measures to which budgetary funds have been allocated for the first time or in the case of complex projects in fields such as information technology or military procurement.¹³⁴ The reason for an endorsement freezing funds may also be that a measure is still at the planning stage at the time of the budget decision, and the Budget Committee is therefore to be given another opportunity to examine the actual implementation plans of the administration before definitively releasing the relevant funds.¹³⁵

In the Budget Act¹³⁶, moreover, there is normally provision for reserved rights of approval for the Budget Committee. These empower the executive to deviate from the budget specifications, for instance when funds are shifted between two budget items.¹³⁷ In addition, the Budget Act provides, in principle, for notification of the Budget Committee before the implementation of certain measures, such as the assumption of guarantees exceeding a particular value.¹³⁸

127 T. Scheunert, in E. Heuer and K. Scheller, *op. cit.*, on Article 113 of the Basic Law, paragraph 1.

128 M. Kloepfer, *op. cit.*, chapter 10, paragraph 62; D. Hugo, in E. Heuer and K. Scheller, *Kommentar zum Haushaltsrecht*, update of May 2020, preliminary remarks on Part III of the Federal Budget Code, paragraph 1.

129 Section 3(1) of the Federal Budget Code.

130 D. Hugo, in E. Heuer and K. Scheller, *Kommentar zum Haushaltsrecht*, update of May 2020, preliminary remarks on Part III of the Federal Budget Code, paragraph 21.

131 D. Hugo, in E. Heuer and K. Scheller, *loc. cit.*, paragraph 23.

132 M. Kloepfer, *op. cit.*, chapter 10, paragraph 72ff.

133 Third sentence of section 22 and second sentence of section 36 of the Federal Budget Code.

134 D. Hugo, in E. Heuer and K. Scheller, *loc. cit.*, paragraph 27.

135 D. Hugo, in E. Heuer and K. Scheller, *loc. cit.*, paragraph 29.

136 See sections 3(6) and 6(5) of the Budget Act 2024, accessible (in German only) at <https://www.bundeshaushalt.de/static/daten/2024.pdf>, last accessed on 28 January 2025.

137 M. Kloepfer, *op. cit.*, chapter 10, paragraph 74.

138 Section 3(8) of the Budget Act 2024.

3.4. Audit

The purpose of the subsequent audit is to ensure that the execution of the budget by the executive is subject to parliamentary scrutiny.¹³⁹ The legislature once more assumes responsibility at the audit stage, and the process culminates in a Bundestag decision whether to grant discharge to the Federal Government, which marks the end of the budget cycle.¹⁴⁰ The audit serves in particular to guarantee the exercise of the budgetary powers of Parliament.¹⁴¹

An important role in this context is assigned to the supreme audit institution, the Bundesrechnungshof, which audits the account submitted by the Federal Minister of Finance and determines whether the federal budget and national economy have been properly and efficiently administered. The audit findings are summarised in a set of observations, which are forwarded to the Bundestag, the Bundesrat and the Federal Government¹⁴² and serve as the basis for the subsequent discharge procedure.¹⁴³

The Bundestag and the Bundesrat decide on discharge in separate procedures.¹⁴⁴ As a rule, the Bundesrat decision is made first.¹⁴⁵ The Finance Committee of the Bundesrat forwards the discharge request from the Federal Ministry of Finance to its subcommittee, which discusses the request on the basis of the comments received from the Bundesrechnungshof and draws up a recommendation for a decision. This is submitted through the Finance Committee to the plenary chamber of the Bundesrat, which decides whether to grant discharge to the Federal Government as requested.¹⁴⁶

The parliamentary examination in the Bundestag is conducted as follows.

The Bundestag forwards the discharge request received from the Federal Ministry of Finance with the federal budget and capital account and the comments of the Bundesrechnungshof to the Budget Committee, which delegates the discharge procedure to its subcommittee, the Auditing Committee.¹⁴⁷ The recommendation for a decision on discharge that results from the deliberations of the Auditing Committee is submitted through the Finance Committee to the plenary chamber of the Bundestag. The recommendation for a decision serves as a basis for the subsequent Bundestag decision on discharge.¹⁴⁸

In practice, discharge is almost invariably granted.¹⁴⁹ There has only been one case in the history of the Federal Republic of Germany, in 1977, when the Bundesrat refused to grant discharge to the Federal Government¹⁵⁰. In that case, however, the Bundestag granted discharge.¹⁵¹ Refusal to grant discharge has no direct constitutional or other legal consequences but at most political implications.¹⁵²

139 M. Kloepfer, *op. cit.*, chapter 15, paragraph 4.

140 M. Kloepfer, *op. cit.*, chapter 10, paragraphs 60 and 76, and chapter 15, paragraph 57.

141 M. Kloepfer, *op. cit.*, chapter 10, paragraph 76.

142 Section 97 of the Federal Budget Code.

143 M. Kloepfer, *op. cit.*, chapter 15, paragraph 44.

144 Federal Ministry of Finance, *ibid.* (footnote 90 above), p. 64.

145 M. Kloepfer, *op. cit.*, chapter 15, paragraph 58.

146 Federal Ministry of Finance, *ibid.* (footnote 90 above), p. 64.

147 Federal Ministry of Finance, *ibid.* (footnote 90 above), p. 64.

148 Federal Ministry of Finance, *ibid.* (footnote 90 above), p. 64.

149 M. Kloepfer, *op. cit.*, chapter 15, paragraphs 59 and 63.

150 A. Demir, in E. Heuer and K. Scheller, *Kommentar zum Haushaltsrecht*, update of November 2020, on section 114 of the Federal Budget Code, paragraph 23, with a reference to the Bundesrat refusal to grant discharge in 1977; record of plenary proceedings for the 451st sitting of the Bundesrat, held on 4 November 1977, p. 315ff.

151 A. Demir, *ibid.*, with a reference to Bundestag printed paper 8/1899 and Bundestag record of plenary proceedings 8/99, pp. 7900-7908.

152 A. Demir, *loc. cit.*, paragraph 24, and M. Kloepfer, *loc. cit.*

4. Conclusion

With regard to the question of the budgetary autonomy of the Bundestag and Bundesrat, the following may be noted.

The budget of each of these organs of the constitution are part of the general budget, which means that the decisions on their respective budgetary funding are part of the annual decision-making on the Budget Act and the budget adopted in that Act (see paragraph 2 above).

The production of the draft budget is the task of the executive (the Federal Government and the federal administration). Neither the Bundestag nor the Bundesrat is empowered to make any final decisions in this drafting process. The two Houses, however, are exempted from the top-down procedure. There are, in addition, certain notification requirements if there is to be any deviation from the Bundestag and Bundesrat estimates in the drafting of their respective budgets (see paragraph 3.1 above).

The adoption of the general budget is effected by the Bundestag in cooperation with the Bundesrat. In its first round of deliberations, the Bundesrat has the right to deliver an opinion on the draft budget. However, the decision on the general budget, including the Bundesrat budget, is taken by the Bundestag. The Bundesrat cannot alter it unilaterally. It can only have the Mediation Committee convened with a view to obtaining the amendments that it seeks. If the mediation procedure fails, the Bundesrat may lodge an objection to the Bundestag decision. The Bundestag may overrule the objection, however, if it musters the required majority (see paragraph 3.2 above).

The execution of the budget is, in principle, incumbent on the federal administration, of which the Bundestag and Bundesrat administrations are part. Parliamentary powers of participation in the execution of the budget apply only in exceptional cases (see paragraph 3.3 above).

In the audit process, the Bundestag and the Bundesrat decide separately whether to grant discharge to the Federal Government. The decision, however, has no direct legal effect but only political significance (see paragraph 3.4 above).

In the light of the foregoing, the powers of the Bundestag within the budget cycle result in extensive budgetary autonomy for that organ of the constitution. This applies especially to the adoption of the budget by means of the Budget Act. The Bundesrat, for its part, possesses far less budgetary autonomy, for in the event of disagreement on the Budget Act, it has no means of overruling the Bundestag vote.

Budgetary Sovereignty of Parliaments: the Case of Italian Chamber of Deputies

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Summary: 1. The principle of separation of powers. 2. Features of a strong parliamentary financial autonomy. 2.1. Regulatory autonomy: the Chamber's Rules of Procedures and internal regulations. 2.2. The decision on revenues. 2.3. Internal decision-making bodies and audit. 2.4. Determination of expenditure and preparation of the budget. 3. A challenged autonomy. 3.1. Dialectic with the Executive on endowment and spending review. 3.2. Controls over budgetary accounts and their execution: practices and jurisprudence. 4. Responsibility and transparency. 4.1. Responsibility. 4.2. Transparency. 4.3. Revenues - 4.4. Expenditures and savings. 5. Conclusion.

1. The principle of separation of powers

The financial and budgetary autonomy of Parliament concerns not just public finance or the accounting system but is a crucial condition for ensuring the autonomy and independence of Parliament from the Executive, and ultimately, a vital element of democracy in a constitutional order¹⁵⁴. The principle of separation of powers states that the three fundamental functions of the State – law-making, implementing laws, and settling disputes by interpreting laws – are not concentrated in a single body but carried out independently by different bodies – legislative, executive, and judiciary – without influence or pressure from any other power. Democratic constitutions provide each constitutional body with the necessary tools to maintain its independence in performing these functions¹⁵⁵.

The most significant feature of this principle is the autonomy and independence of the Parliament from the Executive. The latter represents the political majority. The former, instead, includes representatives from all parties, both majority and opposition, which underscores the need for its independence in every democratic constitutional system.

While the historical interpretation and the actual functioning of this principle are complex, it is essential to note that this principle should not be taken for granted. There have been several attempts by the Executive throughout Italian history to undermine the autonomy of the Parliament, notably in 1899, when the Executive tried unilaterally to change the Chambers' internal regulation, and in 1939, when the Chamber of Deputies was abolished and replaced by an unelected body (the Chambers of Fasces and Corporations)¹⁵⁶.

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The views and opinions expressed in this essay are solely those of the authors and do not necessarily reflect the official policy or position of the administration they are associated with.

154 For the most recent textbooks on Italian parliamentary law, see L. Ciaurro, V. Di Ciolo, *Il diritto parlamentare nella teoria e nella pratica*, Milano, 2024; R. Ibrido, *Compendio di diritto parlamentare*, Molfetta, 2024; G. Lasorella, *Il Parlamento: regole e dinamiche*, Torino, 2023; L. Gianniti, N. Lupo, *Corso di diritto parlamentare*, Bologna, 2023. See also A. Manzella, *Il Parlamento*, Bologna, 2003 and T. Martinez, G. Silvestri, C. Decaro, V. Lippolis, R. Moretti, *Diritto parlamentare*, Milano, 2011.

155 V.E. Orlando, *Immunità parlamentari ed organi sovrani*, in *Rivista di diritto pubblico e della pubblica amministrazione in Italia*, n. 25/1933; A.M. Sandulli, *Spunti problematici in tema di autonomia degli organi costituzionali*, in *Id., Scritti giuridici*, Napoli, 1990.

156 Notably, one of the most remarkable essays on the administrative and economic autonomy of the Italian Parliament dates this period: C. Finzi, *L'autonomia amministrativa ed economica delle assemblee legislative*, Roma, 1934 (2023).

2. Features of a strong parliamentary financial autonomy

2.1 Regulatory autonomy: the Chamber's Rules of Procedures and internal regulations

Especially after the reestablishment of the democratic institutions, the need for a clear parliamentary autonomy has been broadly shared and developed within the constituent process that started in 1946¹⁵⁷.

According to Article 64 of the Italian Constitution, “Each House adopts its own Rules by an absolute majority of its member”. It means that the House itself, through its own rules (called Rules of Procedures), regulates the legislative procedures and the general functioning of the House¹⁵⁸.

According to this constitutional provision, the parliamentary Rules of Procedure cannot be considered to have only an internal legal effect, but represent a legal text of higher rank than ordinary legislation. The supremacy of the Rules of Procedure over ordinary legislation depends on two elements: the qualified majority required by Article 64 of the Constitution in order to approve and modify the Rules of Procedure, and the scope of application reserved to the Rules of Procedure. It follows that the functioning of the Houses is a matter regulated by the Rules of Procedure, of course in compliance with the Constitution, and when it comes to the functioning of the Parliament, ordinary law – let alone regulatory acts of the Executive – cannot impose any conditions or requirements but just refer to the Rules of procedure.

Within the constitutional framework provided by Article 64, the financial and budgetary autonomy of each House of the Italian Parliament is regulated by their respective Rules of Procedures and internal regulations. In this paper we will focus on the rules referred to the Chamber of Deputies. The discipline that applies to the Senate is characterized by a certain number of differences in detail, but very few or almost none in substance.

Article 66 of the Chamber of Deputies' Rules of Procedures identifies the three bodies of the House involved in the procedures for the preparation and approval of the budget: the Quaestors, the Bureau and the Assembly. The draft budget and the accounts are drawn up by the Quaestors, are agreed upon by the Bureau, and are debated and voted on by the Assembly in plenary session. Structure and functioning of these three bodies will be addressed in chapter 2.3.

Among the Rules of Procedure, Article 12 is crucial as well: it empowers the Bureau to adopt the regulations needed for applying the Rules of Procedure (internal regulations), which are made enforceable by decrees of the President of the Chamber. The internal regulations regard all matters relevant to the functioning of the Chamber, including the organization of the Departments of the administration, the status of the employees, the internal administration and accounting. One of these internal regulations is the Administration and Accounting Regulation, concerning the procedures for the preparation and approval of the budget, as well as for the implementation of revenue and expenditure and for procurement and competitive tendering.

¹⁵⁷ For a historical overview see P. Ungari, *Profilo storico del diritto parlamentare in Italia*, Roma, 1971.

¹⁵⁸ L. Gianniti, C. Di Andrea, *commento all'Art. 64*, in *Commentario alla Costituzione*, Torino, 2006.

2.2 The decision on revenues

Alongside the regulatory autonomy, a second significant feature of parliamentary financial autonomy is the fact that each House decides on the annual amount of financial resources needed for its functioning.

According to Article 10 of the Chamber of Deputies' Administration and Accounting Regulation, every year the President of the Chamber formulates the request to the Minister of Economy and Finance for the ordinary endowment. The Government includes accordingly the Chambers' endowment in the budget bill. Finally, each Chamber approves the internal budget and the financial statements with a single-chamber non-legislative act.

Summing up these steps, it might be noted that the Government accepts the request for resources without amendment or reduction, and that the budget of the Chamber is not incorporated in the State Budget. In the latter regard, the State Budget merely includes the total resources that the State appropriates for the Chambers. It follows that the State Budget and that of each Chamber are completely separate and, as a consequence, the sittings of the Assembly, the procedures and the calendar according to which they are examined and approved are different.

2.3 Internal decision-making bodies and audit

Internal decisions and controls over parliamentary budgetary procedures are carried out through two type of institutions: political and technical.

On the political/institutional side, the bodies involved according to article 66 of the Rules of Procedures have been mentioned above (par. 2.1).

First of all, the Quaestors (Collegio dei Questori), a body composed by three MPs, elected at the beginning of the parliamentary term (one out of the three usually belongs to an opposition Group). They are collectively responsible for the efficient administration of the Chamber and, "shall supervise the expenditure of the Chamber and draw up the budget and the accounts" (Article 10 of Chamber's Rules of Procedure).

The Quaestors prepare the budget with the assistance of the Departments of Chamber's administration (see below) and submit it to the Bureau for approval. As for the budget and the accounts, Quaestor do not have decision-making power (which belongs to the Bureau and, ultimately, to the Plenary Assembly), but they do have a power of initiative. On the other hand, they authorize the expenditures proposed by the Departments of Chamber's administration in execution of the budget.

A second body is the Bureau (Ufficio di Presidenza), composed of the President of the Chamber, the four Vice-Presidents of the Chamber, the three Quaestors and the Secretaries. All Parliamentary Groups must be represented in the Bureau. According to Article 12 (par. 2) of Chamber's Rules of Procedure, the draft annual and multiannual budget proposed by the Quaestors is approved by the Bureau, which approves also the final accounts for the previous year and budget adjustments for the current year. Article 12 (par. 3) also empowers the Bureau to regulate the internal administration and accounting, the organization of the Chamber's Departments, and the legal status, remunerations, pensions and conditions of service of the employees of the Chamber.

Finally, the Plenary Assembly debates and votes on the budget and on the final accounts for the previous year presented by the Bureau.

On the administrative/technical side, the following structures are involved in tasks

concerning both the preparation of the acts submitted to the examination of political bodies and the activities of control¹⁵⁹.

First of all, the Secretary General, who oversees the guidelines and exercises the supervision and control of all the activities of the administration.

The Chamber's administration also includes several Departments. The Department of Administration and the Department for Administrative Control oversee the public tender procedures and legitimacy of expenditure procedures, i.e. the correspondence of the procedure carried out with the rules established by the Administration and Accounting Regulation. The latter Department also assesses the implementation of the program of the administrative activity.

The Treasury Department prepares the budgetary documents and carries out revenue and expenditure operations during the financial year. Additionally, it oversees the correspondence of actual expenditure with the budget. It is organized to ensure the separation and reciprocal oversight of units that make expenditure commitments, order payments and perform cashier services, materially executing payments. This Department submits a six-monthly report to the Quaestors on financial management.

2.4 Determination of expenditure and preparation of the budget

Given such an organizational structure, the preparation of parliamentary budget proceeds through several steps.

In September, each Department of the Chamber's administration prepares its expenditure plans for the upcoming year based on existing laws and regulations, assuming there will be no changes to the services provided. If the estimated expenditure differs from those in the most recently approved budget, the Department must explain the reasons for these differences. Each Department also formulates its expenditure outlook for the second and third years of the multiannual budget.

The Treasury Department collects these expenditure budgets from each Department by September 30th and submits them to the Quaestors.

Based on these budgets, the Quaestors set the guidelines for the drafting of the annual and multiannual budget, determine the maximum amount for current and capital expenditure and establish the size of the reserve funds (current and capital) for unplanned expenditures. In order to ensure compliance with the guidelines, it may be necessary to modify any existing rules or regulations with financial implications, as determined by the Bureau. In such cases, the Quaestors specify the required changes.

By November 30th, the College of Quaestors, with the support of the Treasury department of the Chamber, drafts the annual and multiannual budgets in conformity with the established guidelines. During the same period, Quaestors also approve the program of administrative activities, linking estimated expenditures for goods, services, and investments with the activities planned by each Department. The program is subsequently executed by sector plans for each area of the administration.

By December 31st, the Bureau approves the draft annual and multiannual budget. Before this approval, the Bureau adopts amendments to internal rules and other regulations deemed necessary by the Quaestors.

Revenue and expenditure are managed as from January 1st in accordance with the budget approved by the Bureau.

159 La burocrazia parlamentare: funzioni garanzie e limiti, Roma, 1983, provides a lively framework of such administrative structures and functions.

During the first three months of the year, the Quaestors, drawing on the preparatory work performed by the administration, finalize the final accounts for the previous year and propose amendments to the spending plans for the current year based on the information provided by the final accounts (i.e., budget adjustment). By March 31st, the Bureau approves the final accounts for the previous year and budget adjustments for the current year.

The final accounts for the previous year and the budget - as amended by the budget adjustment - are then debated and voted by the full House. The House votes on the budget in its entirety, not the individual revenue and expenditure items. In the examination of the budget, each MP may present agendas containing instructions for Quaestors to reduce or eliminate certain expenditures or, conversely, provide for measures or activities that will involve new spending. The agendas may be accepted or rejected by the Quaestors. If rejected, they are put to a vote. During the examination of the Chamber's budget for the following year, the Quaestors report to the full House on the implementation of the agendas approved the previous year. These agendas serve as a means for all MPs, including those not on the Bureau, to influence the budget formulation of the Chamber.

3. A challenged autonomy

3.1 Dialectic with the Executive on endowment and spending review

Despite such constitutional and legal frameworks, there have been attempts by Executives to affect this parliamentary sovereignty in the Republican era too.

For example, in 1970 the Ministry of Economy and Finance requested the Chamber to fulfill the obligation, established for all public administrations by a statute (no. 629/1966), to open non-interest-bearing current account to make it possible for the State to meet its cash needs without having to issue Treasury bonds (but also to keep account movements under control). The request was not accepted by the Chamber and was never submitted again.

In 1993 the Executive reduced the endowment of constitutional bodies with a decree: the Chamber refused to convert that decree into law, committing the Government to "immediately contact all constitutional bodies in order to agree on the lines of action for an adequate reduction of budgeted expenses" and to "coordinate the procedures for the immediate self-reduction of expenses with the constitutional bodies".

In 2012-2013, in the context of the spending review legislation, the Senate approved an amendment proposed by Government that explicitly prohibits cut to the expenditures of constitutional organs (amendment that the Government opposed).

In particular, article 5 par. 9 of Decree no. 95/2012 establishes limitations (prohibitions) to the assignment of study, consultancy, managerial or executive positions, to individuals who are already private workers or retired civil servants, providing that "constitutional bodies will conform to these provisions within the scope of their autonomy".

Statute no. 147/2013 (annual and multi-annual State budget – 2014 Stability Law) at par. 487 establishes that the savings deriving from the spending review carried on by constitutional bodies in the exercise of their autonomy are "returned to the State budget in order to be allocated to the Small and medium-sized enterprises (SMEs) Fund"; while par. 489 establishes the limits to salaries (economic treatments) provided

by public administrations, specifying that “constitutional bodies will apply this provision according to their own regulations”.

3.2 Controls over budgetary accounts and their execution: practices and jurisprudence

Also with specific reference to controls over budgetary accounts and their execution, a lively dialectic developed during the Italian Republican era, in which the national Court of Auditors tried to affirm that its remit also covered the financial management of Parliament¹⁶⁰.

Between 1967 and 1968, the Corte dei conti (the national Court of Auditors) asked the Chamber and the Senate to deposit the accounts of the management of both Houses. Upon refusal, the Court dropped the initiative. Shortly after, with opinion no. 143/1968, the Constitutional Court declared that the expenditure decisions of the constitutional bodies are not subject to the control of the Corte dei conti, since this kind of control cannot apply to “the activity of those bodies, such as the Head of State, Parliament and this Court, whose position, at the top of the constitutional order, is of absolute independence: also in the matter of expenses, since they are necessary for the functioning of the body, an external feedback would undermine the free exercise of political-legislative functions or the guarantees functions”¹⁶¹.

In 1979, Corte dei conti required the treasurers of the constitutional bodies (including the Presidency of the Republic, the Chamber, and the Senate) to present their accounts. The constitutional bodies refused and raised a conflict within the Constitutional Court. In the opinion no. 120/1981, the Constitutional Court clarified that the accounting autonomy of the constitutional bodies has the rank of “real constitutional convention/custom”, that traced back to the Albertine Statute of 1848¹⁶².

Opinion n. 154/1985 can be considered the final say on the subject: here the Constitutional Court stated that the Chamber is entitled to “a guaranteed independence” from any other power, including the control of the Court of Auditors. From such constitutional case law, it follows that the controls on budgetary procedures are all internal to each Chamber¹⁶³.

4. Responsibility and transparency

4.1 Responsibility

Absence of external control does not mean lack of responsibility. On the contrary, since the beginning of the Republican experience, Parliament has embarked on a clear path toward transparency and participation in the spending reviews. Indeed, even though the Office of the President of the Republic and the Constitutional Court, as well as each House of the Parliament, have full autonomy in determining the financial resources

160 As for the judicial enforcement of this parliamentary autonomy, see S. Panunzio, *Sindacabilità dei regolamenti parlamentari, tutela giurisdizionale degli impiegati delle camere e giustizia politica nello Stato costituzionale di diritto*, in *Giurisprudenza costituzionale*, I, 1978; R. Dickmann, *Autonomia e capacità negoziale degli organi costituzionali. L'esperienza delle assemblee parlamentari*, in *Rivista trimestrale di diritto pubblico*, 1997; G. Malinconico, *Attività e prassi degli organi giurisdizionali di autodichia della Camera dei Deputati*, in *Rivista amministrativa della Repubblica italiana*, n. 5/2011.

161 Non-official translation.

162 C. Ghisalberti, *Storia costituzionale d'Italia 1848-1994*, Bari-Roma, 2002 (2023).

163 A recent account of this case law is provided by R. Miccù, M. Francaviglia, *Autonomia gestionale e finanziaria delle Camere e controllo contabile: qualcosa di nuovo ma dal cuore antico*, in *Federalismi.it*, n. 15/2019. See also S. Buscema, *Autonomia contabile degli organi costituzionali*, Padova, 1958; C. Specchia, *L'autonomia contabile e finanziaria delle Camere del Parlamento*, in *Bollettino di informazioni costituzionali e parlamentari*, n. 1/1983.

necessary for their operation, the President of the Chamber and the other involved bodies (the Bureau and the Quaestors) consider the economic conditions and any expenditure reduction targets set by the Executive and Parliament when formulating the budget requests.

In fiscal year 2012, the Chamber decided to reduce the endowments for each of the next three years. This reduction, implemented before the budget execution, made expenditure management more challenging. As a result, it was later decided to keep the endowment stable and return surplus funds to the State budget using savings from previous years. The most significant amounts were returned to the State in the years between 2016 and 2021. In all since 2013 approximately 500 million euros has been returned to the State budget.

Moreover, the resources allocated from the State budget to the Chamber of Deputies have remained constant since 2013. A notable portion of these resources covers pension expenditures for MPs and employees, which accounts for nearly half of the Chamber's total spending.

This data is worth highlighting, since the decision not to alter the amount of the annual allocation has required particularly careful and prudent management of resources in years, like the last ones (specifically 2022 and 2023), marked by high inflation rates.

4.2 Transparency

With regard to transparency, a significant milestone was established in 1956 when, breaking with an ancient tradition, the internal budget of the Chamber of Deputies was discussed publicly by the Assembly for the first time.

Today, the entire documentation concerning the budget of the Chamber and the final accounts is published on the Chamber's website. The website also provides access to the verbatim reports of budget proceedings in the Plenary and the MPs' agendas for the Quaestors. Every six months the Chamber's website publishes the list of the suppliers of goods or services and the work contractors and the payments made by the Chamber to each of them.

The budget of the Chamber of Deputies is defined annually and drafted on both an accrual and cash basis. The revenue and expenditures are organized on three levels: accounts, categories and chapters. Each revenue chapter details the amount expected to be assessed and the amount expected to be collected, while each expenditure chapter specifies the amounts to be committed and the amounts to be paid.

Additionally, the Bureau and the full House are presented with the multiannual budget alongside the annual budget. The multiannual budget spans three years and is prepared solely on an accrual basis. A table is included that shows budgeted amounts for the subsequent year and budgeted amounts for the previous year, with the percentage variation.

4.3 Revenues

The revenues in the Chamber budget are divided into four accounts: revenues from State transfers; supplementary revenues; pension revenues; and clearing items.

The vast majority of revenues is represented by the annual resources appropriated in the State budget. These account for about 97% of the revenue in the Chamber's budget (taking into account the allocation's incidence on the total revenue net of clearing entries). As mentioned above, the amount of resources allocated from the State budget

has remained unchanged since 2013.

Other sources of revenue include the sale of goods and services provided by the Chamber, reimbursements due to the Chamber from other institutions, MPs or employees in the case of goods or services provided by other vendors, for which the Chamber pays only in part, and by penalties. The latter include penalties charged to MPs for unjustified absences from the proceedings of the House and the committees.

Revenue account III includes contributions for the pensions of MPs and employees. The Chamber and the Senate, like the other constitutional bodies (Office of the President of the Republic and the Constitutional Court) and unlike all the other government entities in the country, pay pensions directly to MPs and employees.

It is also important to point to the clearing items, which are revenues that the Chamber receives and is obligated to pay in full to third parties: for example, income taxes withheld from the pay of MPs or employees or VAT withheld from payments to suppliers, which the Chamber transfers in full to the State. Revenue clearing items correspond to an equal amount of expenditure clearing items. These accounts therefore have no impact on budget balances.

4.4 Expenditures and savings

During the recent economic and financial crises, the Chamber's bodies involved in the budget process adopted measures to reduce the spending of the Chamber, in accordance with the financial objectives set by the Government and by Parliament in the framework of EU economic governance.

More precisely, these measures included reform of pension system¹⁶⁴, reduction of the salaries of employees, reduction of employees and decrease in spending on goods and services

In order to appreciate these efforts, it is worth to focus on the expenditures.

The Chamber's total expenditure, that accounts for a small fraction of all State spending, is divided into four categories: current operating expenditures, capital expenditures, pension expenditures, and clearing items. Current operating expenditures, which cover daily activities and administration support, make up nearly half of the total spending. Notably, spending on employees has decreased significantly since 2013, along with reductions in costs for goods and services. Additionally, a constitutional law entered into force at the beginning of the 19th legislature (in October 2022) reduced by a third the number of MPs, resulting in a substantial reduction of expenditure forecasts related to MPs' allowances.

Capital expenditures, a small portion of the total budget, involve spending on buildings, durable goods, and cultural assets, which support parliamentary activities and are increasingly available to the public. It is important to point that when the Chamber purchases buildings, it would then transfer the property to the State Property, which would subsequently assign the facility to Chamber for free government use. In other words, these would be transactions which, through the use of Chamber's financial resources, would end up increasing the State's real estate assets.

As mentioned above, pension expenditure for MPs and employees, which is paid directly by the Chamber, accounts for almost half of the Chamber's spending. This category was recently separated from the current operating expenditure account. The separation was intended to achieve two objectives: to show how much the

¹⁶⁴ N. Lupo, La disciplina dei vitalizi e della previdenza dei parlamentari: alcuni nodi relativi alle fonti del diritto, in Osservatorio AIC, n. 3/2017.

Chamber really spends on its current operations, while pension spending is linked to entitlements accrued in the past; and to ensure greater comparability of the Chamber's expenditure with that of other parliaments, which do not include pension expenditure in their budgets.

Expenditure is carried out at the request of each Department of Chamber's administration, which must justify the expense. The Treasury Department checks that the requested spending does not exceed the budget authorisation. Expenditure requests from each Department are submitted for authorisation to the Quaestors. All spending by the Chamber must first be authorised by the Quaestors. The only exceptions are fixed and mandatory expenditures (pensions and salaries), very large-value expenditures, which are approved by the Bureau acting on a proposal of the Quaestors, and low-value expenditures, which can be authorized by the head of the Administration Department.

Overall, the Chamber's total expenditure for 2024 is significantly below its peak level in 2011, reflecting the impact of various cost-saving measures and adjustments over the years.

5. Conclusion

The history of the Italian Parliament's budgetary autonomy began in 1851 when, for the first time, the allocations for the two branches of Parliament were included among the general State expenditures like those for the Crown. From that moment, each Chamber (Deputies and Senate) had its own internal budget, which was not subject to approval by the other Chamber or by the Crown/Executive¹⁶⁵.

Since the approval of the Constitution of Italian Republic, which entered into force in 1948, the principle of autonomy of the constitutional bodies is directly rooted in the Constitutional Charter, which however does not regulate the forms of exercise, the conditions and the scope of such autonomy. It follows that the rules, acts and behaviours put in place by the institutional actors have historically contributed to shape the administrative and economic autonomy of the constitutional bodies, providing them the current conformation.

Today, the budgetary procedure of the Italian Parliament is one of the most autonomous and independent. The budget of the Chamber is not discussed with the Executive, nor is it subject to control or approval by the executive power. It is not judged by any Court nor reviewed by external audit offices. It is implemented during the financial year according to the rules that the Chamber itself lays down.

It might seem a history of an undisputed path towards progressive autonomy and self-determination. However, it has actually been a history of periodic – sometimes intense – interactions with the Executive branch, internal controls, and rules often established in customs and judicial opinions, as well as a history of growing responsibility, transparency, and commitment in managing public resources. In short, it is a model of challenged and challenging autonomy, which demands for responsibility, accountability and self-commitment in pursuing financial objectives shared within the European Union.

165 A recent and documented account of such history is provided by U. Bellumori, *Lo sviluppo storico dell'autonomia amministrativa ed economica della Camera dei deputati*, in *Il Parlamento della Repubblica: organi, procedure, apparati*, Vol. 1, p. 243-313, Roma, 2019.

Financial Autonomy of the Parliament of the Republic of Slovenia

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Summary: 1. Introduction. 2. Adoption and implementation of the state budget and its supervision. 3. Financial autonomy as defined in the Public Finance Act until the Constitutional Court decision. 3.1. Adoption of the parliamentary budget. 3.2. Implementation of the parliamentary budget. 3.3. Financial Supervision. 4. The Decision of the Constitutional Court regarding the financial autonomy of independent constitutional institutions. 5. The manner of implementation of the Constitutional Court decision. 6. The practice after the Constitutional Court Decision. 7. Harmonization of the Public Finance Act with the decision of the Constitutional Court. 8. Conclusion

1. Introduction

The autonomy of the Slovenian Parliament is, unlike in several other countries, not directly regulated by the Constitution. Still, it derives from the constitutional principle of the separation of powers, which is based on the separation of the legislative, executive, and judicial branches of power.¹⁶⁷ This principle is the fundamental principle of the organisation of state power and is also one of the basic constitutional principles. It helps to ensure that the authorities that perform the fundamental functions of state power are relatively independent and autonomous in their operations so that none of them can prevail. Between them, there exists a sophisticated system of control, limitation, and restraint of one authority by the others, as well as intertwined co-dependency and balance.¹⁶⁸ The separation of the state power into the legislative, executive, and judicial branches does not create a relation of superiority and subordination. Still, a relation entailing the limitation and cooperation of branches of power of equivalent value, where each of them operates within the framework of its position and competencies.¹⁶⁹ The relations between them have to be such that the relative independence and integrity of an individual branch of power when performing its function are not jeopardised, and at the same time such that the branches of power affect one another and limit each other in such a way that prevents individual branches of power from performing arbitrary actions.¹⁷⁰

With specific regard to the Slovenian case, the lack of explicit constitutional regulation of parliamentary financial autonomy amounted to different interpretations of the content and scope of parliamentary autonomy, especially by the Government via a vis the two Houses of the Parliament – the National Assembly and the National Council – which was seen through the implementation of the Public Finance Act.

Due to the present legal frameworks, the Slovenian Parliament (and especially the National Council) in recent years devoted a lot of effort to the question of its financial autonomy, as it believed that the executive branch of power excessively encroached on its financial autonomy. It was precisely the latter that led to the decision of the

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Article 3 of the Slovenian Constitution, Official Gazette of the Republic of Slovenia, No. 33/91-I, 42/97, 66/2000, 24/03, 69/04, 68/06, 47/13, 75/16 and 92/21.

168 Decision of the Constitutional Court No. U-I-83/94 dated 14 July 1994, Official Gazette RS, No. 48/94.

169 Decision of the Constitutional Court No. U-I-57/06 dated 29 March 2007, Official Gazette RS, No. 33/07, Para. 35.

170 Decision of the Constitutional Court No. U-I-159/08 dated 11 December 2008, Official Gazette RS, No. 120/08, Para. 24.

Constitutional Court, which for the first time defined the content of the financial autonomy of some constitutional bodies (including the National Council) and led to subsequent legal amendments to the Public Finance Act. Despite the changes in the legislation, in practice the financial autonomy of Parliament (especially the National Council) is still curtailed, as will be shown in this study. This is also due to the specific position of the National Council in the Slovenian asymmetrical bicameral parliamentary system, which is strongly marked by the limited competencies of the National Council in the legislative procedure and the special budget approval procedure.¹⁷¹

2. Adoption and implementation of the state budget and its supervision

The state budget is prepared by the Government and adopted by the National Assembly, the National Council can only give an opinion on the budget, but cannot veto the budget, as it can only veto laws. Until 1994, the state budget was adopted in the form of a law. Since 1994 it has been adopted as a special act according to the Constitution that cannot be vetoed.¹⁷²

The National Assembly and the National Council before 2019 did not have any legal provisions regarding financial autonomy¹⁷³, so financial autonomy stemmed exclusively from the constitutional principle of the separation of powers. Since 2019 the financial autonomy of the National Assembly is regulated in the National Assembly Act,¹⁷⁴ which stipulates that the funds for the operation of the National Assembly are determined by the National Assembly and form part of the budget of the Republic of Slovenia. The amount of funds is set in such a way as to enable the exercise of the National Assembly's powers and its functioning. The National Assembly independently decides on the use of these funds.¹⁷⁵ On the contrary, the National Council does not have such provisions in the National Council Act, but as the Constitutional court stipulated the National Assembly must ensure that the National Council can autonomously and independently exercise its constitutional powers, which are, an important part of the system of checks and balances within the framework of the system of the separation of powers.¹⁷⁶

Financial autonomy is most clearly reflected in whether Parliament may prepare a budget proposal and in the Government's ability to interfere in the subject matter of the Parliament's budget before incorporating it into the state budget.

Financial supervision is an important part of financial autonomy and represents one of the four elements influencing financial autonomy. The theory¹⁷⁷ distinguishes between four forms of oversight: internal (in-house) oversight, external (independent) oversight, as well as prior (a priori) and subsequent (a posteriori) oversight. The combination of these forms of oversight, particularly the relationship between external and internal oversight, reflects the degree of financial autonomy, which is at its highest when only internal oversight of budget execution is conducted and at its lowest when only

171 Slovenian Parliament is bicameral and composed of the National Assembly as the first chamber and the National Council as the second chamber. The National Assembly has strong constitutional, legislative, nominating and oversight powers. On the contrary, the National Council has weak advisory and suspensory competencies. It can propose a law, give an opinion on a law, postpone the adoption of a law with veto power, but it cannot amend a law.

172 This was disputed before the Constitutional Court, which ruled that Article 148 of the Constitution allows the National Assembly to adopt a decision about the state's income and expenses in the form of a state budget, and for this reason, a special law is not needed. The Decision of the Constitutional Court No. U-I-40/96 dated 3 April 1997.

173 Unlike some other constitutional institutions for which a law stipulated that they can alone decide on their budget, the practice remained different.

174 Official Gazette RS, No. 66/19.

175 National Assembly Act, Article 5.

176 Decision of the Constitutional Court No. U-I-474/18 dated 10 December 2020, Official Gazette RS, No. 195/20, Para. 19.

177 F. Grad, *Parlament in vlada*, Uradni list Republike Slovenije, Ljubljana, 2000, p. 80.

external oversight is in place. On the other hand, there is the question of whether internal oversight and auditing conducted by the institution itself, aimed at assessing correctness and rectifying irregularities in its operations, genuinely diminish its autonomy. Such mechanisms do not entail substantive interference by other branches of government in the institution's work but rather represent additional measures taken by the institution itself to enhance the rationality, efficiency, effectiveness, and, ultimately, the legality of its operations. Similarly, for some aspects of external oversight managed by the supreme state auditor, such as auditing financial statements and compliance with regulations, one could find arguments that, in many cases, such oversight does not reduce the budgetary autonomy of Parliament.

The question is whether supervision represents interference of other branches of power into the work of an institution or whether it merely represents measures by an institution to improve economic rationality, efficiency, and legality. Questions of a supervisory institution which examine not only the accuracy and legality of business operations but also the efficiency and effectiveness of functioning may be excessively detailed and call into question any purchase and any concluded contract. Undoubtedly, transparency of business operations is not improved only by supervision but also by the public publication of the budget which in addition to internal and external audits also enables criticism of the interested public and strengthens the transparency of an institution.

3. Financial autonomy as defined in the Public Finance Act until the Constitutional Court decision

The Public Finance Act¹⁷⁸ is the general act regulating, amongst others, budget users and the procedure for the preparation and implementation of the budget. Since its entry into force in 1999 the Public Finance Act did not statutorily differentiate between individual bodies and organisations of the central government within the group of direct spending units (governmental, non-governmental and judicial direct spending users) which meant that all direct spending users followed the same procedures for preparation and implementation of their budget.

3.1 Adoption of the parliamentary budget

According to Article 20 of the Public Finance Act, the Ministry of Finance examined the proposals for financial plans of direct spending users and proposed the necessary adjustments according to the instructions for the preparation of the state budget proposal. If the direct spending user did not follow the proposals of the Ministry of Finance a conciliation meeting was foreseen so the direct spending user and the Ministry of Finance could reach a consensus on changes to the proposed financial plan of the direct spending user. If they did not reach it, the Ministry of Finance prepared a report for the Government, which made a final decision. If the Government did not reach an agreement with the direct spending user who is not a state administrative body and organization, it included in the budget proposal a financial plan proposal proposed by itself, and in its justification the financial plan proposal proposed by the direct user.¹⁷⁹

178 Official Gazette of the Republic of Slovenia, No. 11/11 – official consolidated text, 14/13 – corr., 101/13, 55/15 – ZFisP, 96/15 – ZIPRSI617, 13/18, 195/20 – Constitutional Court decision, 18/23 – ZDU-10, and 76/23.

179 Public Finance Act, Article 20.

Because of the lack of distinction between non-governmental spending units the National Council requested a review of the constitutionality of the Public Finance Act arguing that some Articles¹⁸⁰ of the Public Finance Act did not differentiate authorities that are included on the list of non-governmental direct spending users from governmental and judicial direct spending users and also from one another. A special emphasis was put on the status of the National Council as the upper house of the Parliament. The latter, due to its subordinate position has typically been unable to negotiate a budget sufficient to ensure its uninterrupted functioning. In most cases, negotiations with the Ministry of Finance concluded with the National Council agreeing to a slightly reduced budget proposed by the Ministry of Finance. This proposal was then approved by both the Government and the National Assembly, or the Government incorporated into the budget proposal the financial plan prepared by the Ministry of Finance. Additionally, the Government or the National Assembly have also intervened in the proposed financial plan included in the draft state budget via amendments during the budget review process, either at the Government level (in 2021) or during the procedure in the National Assembly (in 2002, 2023, and 2024).

3.2. Implementation of the parliamentary budget

The Public Finance Act in Article 40 prescribed that the Government could, by adopting specific measures, suspend the implementation of individual expenditures for 45 days. The Public Finance Act included stipulations on urgent temporary measures taken by the executive branch in case of important imbalances in the state budget that are caused by unforeseen events. These were temporally precisely defined measures stemming from the emergence of objective external causes that could not have been foreseen during the preparation and adoption of the state budget. It predicted that in this short period, these measures equally impact all direct spending users, as none of them can be completely restricted from using public resources that are necessary for their work due to exceptional and unexpected events. Moreover, it was also predicted that these measures would be determined in cooperation with direct spending authorities.¹⁸¹

3.3 Financial Supervision

Articles 102 and 103 of the Public Finance Act stipulated that the Ministry of Finance conducts budgetary inspections to oversee the implementation of the Public Finance Act and other public finance regulations for non-governmental spending users. These Articles determined the parties to an inspection procedure as regards the implementation of the Public Finance Act and other public finance regulations, which is carried out by budget inspectors of the Ministry of Finance.

4. The Decision of the Constitutional Court regarding the financial autonomy of independent constitutional institutions

In 2020 the Constitutional Court of the Republic of Slovenia decided on the financial autonomy of independent constitutional institutions (Constitutional Court, Ombudsman, Court of Audit) amongst which there was also the National Council. In its ruling, the Constitutional Court pointed out that the National Council as a

¹⁸⁰ Article 3, 20, 40, and 95, the first paragraph of Article 102, the first and second paragraphs of Article 103, Article 104, and point 9 of Article 108.

¹⁸¹ Public Finance Act, Art. 40.

representative of the legislative branch is an independent institution, whose respective constitutional positions and competencies should justify a particular regulation of its position in budget procedures. It emphasized that all the above-mentioned institutions have an important role in the functioning of the checks-and-balances system among different branches of power and consequently also have an important role in respecting the constitutionally designed principle of separation of powers. The decision of the Constitutional Court stipulates that independent constitutional institutions have an autonomous and independent position in the Constitution and sectoral legislation. However, this autonomy was very limited not only in practice but also in legislation. The Constitutional Court held that in addition to some express provisions of the Constitution as regards the powers, authorizations, and manner of decision-making of the independent constitutional bodies are to a significant extent co-determined by the principle of the separation of powers determined by the second sentence of the second paragraph of Article 3 of the Slovenian Constitution. All constitutional authorities are obliged to work for the benefit of the state. Therefore, they are also bound to cooperate and perform their work in good faith. This does not establish their rights and obligations but permeates the content of the existing relations between them. A part thereof is also the fact that based on due respect for and consideration of one another, constitutional authorities must agree as regards the amount of funds they need to perform their constitutional powers.¹⁸²

Letnar Čerňič argues that the above-mentioned decision of the Constitutional Court can be seen as a contribution by the Constitutional Court to the normative understanding of the rule of law and the rule of law in Slovenian constitutional democracy. The Constitutional Court emphasized a common constitutional requirement for constitutional bodies, including the Constitutional Court itself, regarding their independent position. Two important elements of independence in any state body are also material and financial (budgetary) independence, both in terms of the relationships among state bodies directly involved in the system of checks and balances as the central mechanism of the principle of the separation of powers and in terms of the relationships of governing state bodies with those constitutional bodies already guaranteed such a position by the Constitution due to the role assigned to them in the constitutional order.¹⁸³

In its decision, the Constitutional Court specifically emphasized that although the Government enacts its policies via the proposed budget, the functioning of independent constitutional institutions is independent of the Government's policies, which it enacts through the state budget. The constitutional role of independent constitutional institutions is not fulfilled by governmental policies, and they cannot and must not follow them precisely because of the required independence. Financial plans of independent constitutional institutions may only pursue the full and efficient realization of their constitutionally and legally defined supervisory competencies and constitutional roles. Their role in devising the state budget must be equal to the role of the Government. This does not necessarily mean an identical role but merely indicates that this role should not be subjugated, or inferior. This is necessary because the Constitution ensures the independent and autonomous position of these constitutional institutions. Such a position, a part of which is also their financial autonomy, reflects the realization of the principle of separation of powers on the constitutional level and a reflection of their specific constitutional position, independent of the Government.¹⁸⁴

182 Decision of the Constitutional Court No. U-I-474/18, Para. 17.

183 J. Letnar Čerňič: Ustavno sodišče, delitev oblasti in financiranje državnih nadzorstvenih institucij, *Pravna praksa*, št. 10, 2021, pp. 10-11.

184 Decision of the Constitutional Court No. U-I-474/18, Para. 24.

The Constitutional Court emphasized that the Public Finance Act allowed for an overwhelming influence of the Government on designing the proposal for necessary resources for the work of independent state bodies. In this manner, a relationship of financial dependence on the executive branch was introduced and consequently dismantled the established balance among the three branches of government without an appropriate foundation for this in the constitutional enforcement of the principle of separation of powers.¹⁸⁵

The Constitutional Court argued that an arrangement in which the Government could temporarily suspend the implementation of direct spending users did not per se violate the financial autonomy of Parliament. However, it found unconstitutional the Public Finance Act's stipulation which allowed the Government to decide that to conclude contracts, the Parliament had to obtain prior approval from the Ministry of Finance. This prevented the Parliament from making its own decisions regarding the use of resources secured for its work in the state budget. This stipulation allowed the Ministry of Finance to intensively interfere with the use of budgetary resources by the Parliament, which must be independent from the executive branch. The same goal could be achieved without the invasive interference in the financial independence of the Parliament.¹⁸⁶ In this way, the Constitutional Court prevented excessive interference of legislation in the autonomy and independence of Parliament after the state budget had been adopted.

The Public Finance Act defined the parties of the inspection process, which was executed by budget inspectors of the Ministry of Finance.¹⁸⁷ The Constitutional Court found an overlap of competencies of the Court of Audit and the Department for supervision of the state budget at the Ministry of Finance since they both supervised the legality of business operations, whereby the Court of Audit had wider supervisory competencies over the accuracy and efficiency of business operations. In abiding by the financial autonomy of an independent supervisory institution, the only appropriate regulation of supervision over the use of budgetary means is executed by an institution that is independent of the Government. A legislative regulation that authorized civil servants of the Ministry of Finance for this task did not fulfil this requirement. Because the use of budgetary means was deeply related to the nature of constitutional competencies that are enacted by each constitutional institution, supervision of the use of budgetary means to a certain extent necessarily touched on the subject matter of the institution's work for which budgetary means are allocated or is related to it.¹⁸⁸ For this reason, the Constitutional Court repealed the cited stipulations of the Public Finance Act, in so far as they relate to independent constitutional institutions because they conflict with the principle of separation of powers.

5. The manner of implementation of the Constitutional Court decision

In 2020 the Constitutional Court determined that until the adoption of different legislation, the Ministry of Finance must include the proposed financial plan of independent constitutional institutions into the proposed state budget which the Government submits to the National Assembly. Before this, the Ministry of Finance must notify the above-mentioned institutions about any potential and significant derogations of their proposed financial plans from fundamental economic starting

¹⁸⁵ Ibidem, Para. 25.

¹⁸⁶ Decision of the Constitutional Court No. U-I-474/18, Paras. 38-40.

¹⁸⁷ Public Finance Act, Art. 103.

¹⁸⁸ Decision of the Constitutional Court No. U-I-474/18, Paras. 41-42.

points for the preparation of a state budget proposal and allow them to rectify such derogations in an appropriate period. When presenting the proposed state budget to the National Assembly, the Government may express its reservations regarding a proposed financial plan of an independent constitutional institution if it believes that it is not by fundamental economic starting point for the preparation of a state budget proposal. In this way, it can convince deputies, deputy groups, interested working bodies, or the working body responsible for dealing with this matter to file amendments to the proposed state budget. This is only possible after independent constitutional institutions, which should have already been notified of the Government's position during the process of designing the proposed financial plan, have had the opportunity to present to the deputies their views on the matter.¹⁸⁹

6. The practice after the Constitutional Court decision

In 2021, the National Council prepared its budget for 2022. A coordination meeting with the Ministry of Finance took place following the decision of the Constitutional Court and the Ministry of Finance agreed with the growth of the budget as proposed by the National Council. And yet, the Government cut the financial resources in the proposed budget of the National Council without notifying the National Council of this beforehand. After a warning by the National Council, the Government issued an explanation that the National Council's budget must be changed because of unforeseen economic conditions and that the Government ensured additional resources in budgetary reserves. This was a violation of the Constitutional Court decision, and the National Council filed another request for a constitutional review to the Constitutional Court. In 2023, the Constitutional Court dismissed the application of the National Council, because it had already decided on the issues raised by the request with decision no. U-I-474/18 and because the National Council did not claim, nor prove, that the lower financial resources represented a harmful consequence.¹⁹⁰ With this ruling the Constitutional court put a heavy burden on the National Council (or other constitutional bodies) because they need to prove the connection between reduced financial resources and harmful consequences. This kind of proof might be extremely complex if we consider the fact that reduced financial resources can cause negative consequences for the operations of the abovementioned authorities, even though they are not necessarily reflected in the lesser exercise of their powers. Lower investment funds can, for example, lead not only to worse working conditions, inability to provide enough premises for employees, a gradual reduction in the number of employees or inadequate recruitment of new employees, but also to reduced enforcement of the authority's powers.

7. Harmonization of the Public Finance Act with the decision of the Constitutional Court

In 2023 the National Assembly adopted the amendment to the Public Finance Act¹⁹¹ to harmonize the Public Finance Act with the decision of the Constitutional Court n. U-I-474/18. With the amendment, the legislator comprehensively regulated the

¹⁸⁹ Ibidem, Para. 52.

¹⁹⁰ Decision of the Constitutional Court No. U-I-167/22, dated 23 February 2023.

¹⁹¹ Act Amending the Public Finance Act, Official Gazette of the RS, No. 76/23.

position of independent constitutional bodies to the Government, considering their financial autonomy and the principle of separation of powers. The legislator not only constitutionally harmonized the regulation for four independent constitutional bodies (the National Council, the Constitutional Court, the Ombudsman, and the Court of Audit), but also established the same regulation for the National Assembly, as the holder of the legislative branch of power, whose independent position to the Government is based on the principle of separation of powers. The National Assembly was also recognized as an independent constitutional institution in the Public Finance Act.

The changes pertained to both the preparation, implementation and oversight of the budget. Concerning budget preparation, the law stipulated that if the Government does not reach an agreement with independent constitutional bodies regarding the scope of their financial plan proposal, the Government must include the proposal prepared by the constitutional body in the budget proposal. According to the Constitutional Court's decision, the Public Finance Act now defines that during budget execution, constitutional bodies do not require consent for contract agreements. Independent constitutional bodies have been exempted from the inspection oversight of the Ministry of Finance.¹⁹²

However, the legislator has not fully aligned the new regulation with the Constitutional Court's decision. The Public Finance Act does not regulate that the Government should warn the National Assembly and independent constitutional bodies about the fundamental economic principles of the unified State budget and the significant deviations in the proposed financial plans of independent constitutional bodies from these fundamental economic principles. It does not regulate that independent constitutional bodies should cooperate with the Government and the National Assembly. The Public Finance Act and the Rules of Procedure of the National Assembly should allow the National Council (and other independent constitutional bodies) - just as the Government does - to present their views on the budget proposal and amendments related to their part of the budget to members of parliament and parliamentary groups (for example, at the session of the relevant committee). This would fully implement the Constitutional Court's decision,¹⁹³ which stated, among other things, that all constitutional bodies are obligated to act in the interest of the state and are therefore also bound to cooperation and good faith.

8. Conclusion

Although financial autonomy is not the only autonomy that independent constitutional institutions enjoy, it is an important precondition for other types of autonomy, especially administrative, organizational, and security. Financial autonomy is ensured not only with the equal role of these institutions in adopting the State budget but also with their independent decision-making regarding the use of approved financial resources and with the supervision of their use, performed by a third party, similarly independent and autonomous institution.

Before the adoption of the Constitutional Court decision, interventions in the National Council's budget proposal were carried out directly by the Ministry of Finance during the harmonization phase in the preparation of the draft state budget. The Ministry of Finance managed to reduce the National Council proposal either during negotiations

¹⁹² Ibidem, Art. 2, 3, 10 and 12.

¹⁹³ Decision of the Constitutional Court No. U-I-474/18, Para. 17.

with National Council's representatives, who were in a subordinate position, or by including its version of the National Council's budget proposal in the draft state budget prepared by the Ministry of Finance while incorporating the National Council's budget proposal into the explanatory notes accompanying the state budget.

Following the 2020 Constitutional Court decision, an intervention, not consistent with that decision, was carried out by the Government in 2021. Subsequently, in 2023 and 2024, similar interventions were equally made, but exclusively through amendments submitted by members of parliament to reduce the National Council's financial resources. The Government did not express a position on them directly. However, its stance was indirectly evident, given that the amendments were submitted by members of the ruling coalition. The National Council was neither informed in advance about the reduction of its budget nor was it equally included in the process of the reduction, with at least the possibility to present its opinion on the proposed amendment in the committee of the National Assembly. The Rules of Procedure of the National Assembly which regulate the procedure of approval of the state budget in the National Assembly have not been amended and have not been questioned yet. As a result, the National Council cannot actively participate in the budget approval process, because it lacks the right to propose amendments. Due to the above, the National Council currently has no formal authority through which it could influence the scope of its budget, although, considering the decision of the Constitutional Court, the legislator should at least consider providing independent constitutional bodies with the opportunity to participate in the aforementioned procedure.

The influence of the Government on the process of adopting and determining the amount of the National Council budget after the Constitutional Court decision has further strengthened, while the position of the National Council has been weakened, which is fundamentally contrary to the decision mentioned. Moreover, the method of withdrawing funds is in obvious conflict with the constitutional position of the National Council, as stated in the Constitutional Court's decision, which emphasizes that the relations between the National Assembly and the National Council must follow the principle of mutual respect and constructive cooperation. The Government and the National Assembly interpret the Constitutional Court's decision in a way that avoids equal dialogue with the National Council and imposes their will on the weaker body without the cooperation and even without the presence of the National Council.

Although in Slovenia parliamentary financial autonomy was developed by the Constitutional Court based on the principle of separation of powers, practice has shown that it can easily be circumvented by politics in the National Assembly. Even the decisions of the Constitutional Court can remain merely on paper if there is no tradition of ensuring parliamentary autonomy and a political culture that would implement it. Regardless of how different countries ensure parliamentary autonomy, the key is to understand the challenges in the work of the Parliament by the executive and to understand the consequences of this interference in the overall parliamentary autonomy. The Slovenian budget drafting process showed how, notwithstanding new legislative solutions, the parliamentary financial autonomy is not perceived as an absolute one, but it is dependent on the economic situation in the country. The National Assembly, Constitutional Court, Ombudsman, and the Court of Audit showed that they all adhere to the principle of self-restraint, setting an example for other budget users and ultimately enhancing their reputation.

The budgetary autonomy of the Chambers in Spain

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Summary: 1. Introduction. 2. The budgetary autonomy of Spanish Chambers: general considerations. 3. The budget cycle of Parliamentary budgets: main stages. 3.1 Preparation of the budgets. 3.2 Approval and entry into force of the budgets. 3.3 Execution of the budgets

I. Introduction

One of the elements that characterise Parliaments in contemporary constitutional systems is their special operational autonomy, particularly in relation to other powers. However, although in relation to the judiciary, the old doctrine of *acta interna corporis*, i.e. the non-monitoring of parliamentary acts by the courts of justice, has for some years now been under profound revision, if not eradication, this is not the case with the guarantees established in relation to the executive (especially in an era in which the predominance of the executive over the legislature is an undeniable reality, blurring the traditional central role that the Assemblies have traditionally played).

Parliamentary autonomy has various manifestations, including the autonomy to approve its own rules of organisation and operation, i.e. parliamentary regulations, autonomy in the selection and legal status of its staff, contractual autonomy, ..., and budgetary autonomy. The latter is one of the most peculiar elements of the parliamentary reality, given its specificity with respect to what happens with respect to other branches of government. The necessary autonomy that must govern the provision of funds to ensure the proper functioning of a Parliament, independently of the other powers, in particular the Executive, has always been a major principle in classical parliamentarianism and continues to be so in the framework of contemporary democratic systems¹⁹⁵.

As is well known, the justification for this principle of autonomy is to be found in the principle of separation of powers. Insofar as Parliament has to perform its functions in all circumstances, it is necessary that the economic resources that allow it to do so (which include the salaries of the Members of Parliament, the civil servants of the Houses and the material means to carry out parliamentary functions) are guaranteed. And this, above all, in the face of an Executive which is the power or body that normally has such funds at its disposal. Therefore, Parliament cannot be left to the whim or the discretion of the government of the day as regards the fixing or disbursement of such funds. In a pathological situation of serious confrontation between Parliament and Government, the latter, insofar as it has the budget at its disposal, could cut or even leave without resources a Parliament with which it might be at loggerheads.

This situation, which has occurred in the past, is not common in the current situation in democratic states, although it is not absolutely unimaginable. Thus, a few years ago, in a country, in the context of the confrontation between the Executive and the Assembly, the Executive decided not to release the necessary funds to a Parliament it considered illegitimate. In close connection with this, it is worth mentioning, for example, that

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The views and opinions expressed in this essay are solely those of the author and do not necessarily reflect the official policy or position of the administration he is associated with.

195 V.E. P. García-Escudero Márquez, Artículo 72 in *Comentarios a la Constitución española de 1978*, Pamplona, 2018. For a general study of the budgetary autonomy of the constitutional bodies, see S. Ruiz Tarrías, *La autonomía presupuestaria de los órganos constitucionales. Una aproximación a su configuración en el ordenamiento jurídico-constitucional español*, in *Parlamento y Presupuestos*, I Jornadas Parlamentarias de la Asamblea de Madrid, Madrid, 2002.

budgetary autonomy in many countries, as in Spain and France, is reflected in the fact that funds released by the Government and not executed by the Parliament do not have to be returned by the Parliament (as is the case with other public bodies and ministries). Instead, they become part of the so-called parliamentary budget surpluses, a real working capital that the Chambers have at their disposal and with which they could cover possible liquidity shortages, for example, in the absence of disbursements by the government, so that they could continue to function in spite of this.

2. The budgetary autonomy of Spanish Chambers: general considerations

The Spanish Constitution of 1978 enshrines the principle of autonomy of the Houses in its Article 72.1, and within it contains a reference to budgetary autonomy by stating that “the Houses autonomously approve their budgets”. The principle of budgetary autonomy in Spain has deep antecedents in our country, coming from French law, being accepted by several Constitutions and by parliamentary regulations since the 19th century. The budgetary autonomy of the Chambers in Spain covers the entire budgetary cycle, that is, the preparation, approval, execution and control of the budgets of the Chambers, aspects which will be examined below, paying particular attention to the first two¹⁹⁶.

The Spanish chambers draw up and approve their budgets autonomously, with each Chamber having its own budget. However, there is a budget corresponding to the Cortes Generales, the complex body that encompasses the Congress of Deputies and the Senate, and which includes the expenses common to both, i.e., the salaries of civil servants (since they belong to both Houses), and certain contracts or services that are provided jointly: for example, publications of the Cortes Generales or the insurance policies taken out to cover the contingencies that parliamentarians may suffer.

On the other hand, it should be noted that, although the Chambers approve their budgets autonomously, these are integrated as a section, section 02, in the corresponding draft bill for the general State budget, presented by the Government of the Nation each year before 1 October. Section 02, Cortes Generales, includes five budgets: the budget of the Cortes Generales, the budget of the Congress, the budget of the Senate, the budget of the Central Electoral Board and the budget of the Ombudsman. Accordingly, the budget of each House does not become effective, that is, it does not come into force until the General State Budget comes into force (normally on 1 January of each financial year). Thus, if the Chambers do not approve the draft general State budget law, the parliamentary budgets are not considered to have been approved with full effectiveness.

This explains why, in those cases, not infrequent in recent years, in which for various reasons the general State budget law has not been passed, extending the validity of the previous budgets from 1 January (as established in the Constitution), the budgets in force in each House have been those of the previous year, which are also considered to have been extended for these purposes. It is not unknown that the solution reached, although explicable for various reasons, also entails certain disadvantages from the point of view of parliamentary autonomy.

¹⁹⁶ See F. Sáinz Moreno, *Autonomía financiera y patrimonial de las Cámaras*, in *Revista de las Cortes Generales*, n. 82, Madrid, 2011. Also, J.A. Santamaría Pastor, *El régimen jurídico y la naturaleza de los Presupuestos de las Cámaras*, in *Parlamento y Presupuestos*, I Jornadas Parlamentarias de la Asamblea de Madrid, Madrid, 2002.

3. The budget cycle of parliamentary budgets: main stages

3.1 Preparation of the budgets

As far as the preparation of the House's budgets is concerned, it should be pointed out at the outset that the procedure is practically identical in both Houses. The physical preparation of the draft parliamentary budget is carried out by the Secretariat General, with the Budget Directorate of each House taking the lead role. At the end of May, the latter contacts the other Directorates of the Secretariat General so that they send it the budget forecasts or requests for the following financial year before 1 July.

The Budget Directorate indicates to them the expansionary or contractionary framework within which the House's budget would have to move, in accordance with the indications received from the Secretary General, who, in turn, would have initiated informal contacts with the Presidency and other members of the Bureau on this matter. Once the forecasts have been received, a phase of negotiations with the various management centres will begin with a view to fine-tuning the final figures.

One of the most relevant questions in the procedure for drawing up the Budget is whether or not there is a minimum of coordination with the Government of the Nation. In this respect, it must be remembered that the Houses draw up and approve their budgets autonomously, and the Government cannot issue binding orders or instructions. In practice, however, there is minimal coordination through informal mechanisms. Thus, each year, the Chamber's Budget Directorate gathers information from the corresponding Department of the Ministry of Finance in order to know the budgetary framework foreseen by the Government for the different public administrations, mainly, whether they will be expansionary or restrictive budgets. In particular, the most relevant aspect and normally followed by the Chambers, although not in the same percentage as for the rest of the State, is the one related to Chapter I, i.e. personnel expenses. Thus, normally, if the Government has proceeded to increase the salaries of civil servants, the chambers have also done so, although not necessarily with the same percentage increase. In the case of restrictive scenarios, also in practice the Chambers have followed the trends set for public administrations. This was the case in 2011 and in the following years in the context of the past economic crisis.

It should be noted that in practice there have been no coordination problems, although this does not mean that on occasions the direction followed by the Houses has been different from that established by the Government for the ministries (for example, in personnel policy, as mentioned above). Theoretically, however, the question arises as to whether Organic Law 2/2012 on Budgetary Stability and Sustainability is applicable to the Cortes Generales. This Organic Law, provided for in art. 135 of the Constitution, amended for this purpose in September 2011, establishes that it will be the Government and the Parliament that set and approve a deficit target for the public sector as a whole, which may not be exceeded by each administration. From a theoretical point of view, the reference to the public sector would in principle include the Cortes Generales, although this reference would in principle contradict the principle of budgetary autonomy of the Chambers. In practice, it should be stressed, no problems have arisen, especially considering the very low economic impact of the budgets of the Chambers on the accounts of the Public Sector (in 2022 the Budget of the Congress is 100 million euros, that of the Senate 60 million euros, and that of the Cortes 67 million euros).

3.2 Approval and entry into force of the budgets

With regard to the approval and entry into force of the budgets of the Chambers, in accordance with the provisions of the regulations, it is the Bureau of each Chamber, as the governing body, which approves their respective budgets. It is not, therefore, approved by the Plenary, which has been the subject of some criticism from certain doctrinal sectors. In the case of the budget of the Cortes Generales, the budget is approved by the Bureaux of both chambers at a joint meeting.

In practice, it should be noted that once the draft budget has been worked on by the General Secretariat of each House, it is first examined informally by the President and the Bureau and then, one or two weeks later, in September, it is finally adopted by the Bureau. It is rare for debates to take place in the Senate Bureau. On the rare occasions when they have occurred, it has been in connection with increases or decreases in the salaries of the staff of the chambers or of the parliamentarians themselves.

It should be borne in mind that, as stated above, the approval of the budget of the House by its respective Bureau does not entail its entry into force, which does not occur until the General State Budget Law of each year is approved and enters into force. In this way, the budget of the Chambers is included in the draft State budget law that the Government has to submit to the Cortes Generales before 1 October each year. The question arises as to whether the Government can modify the amounts of the Chambers' budgets when they are included in the preliminary draft of the State Budget Bill. In this sense, it is understood that, by virtue of the principle of autonomy of the Houses, such a possibility is forbidden, and, in fact, it has never happened in our democratic history, without prejudice to what will be said below with regard to the drafting of the budget of the Houses¹⁹⁷.

Given that the budget of the Chambers is included in the draft general State budget law, it can be said that the budgets of the Chambers are "examined" once again by the Chambers in relation to the parliamentary processing of the aforementioned draft budget law¹⁹⁸. The question arises as to whether the Chambers can modify the budgets agreed by the Committees in this procedure and, as a more tricky question, whether one of the Chambers can amend or modify the part corresponding to the budget of the other Chamber. Theoretically, the doctrine is divided on the admissibility of such a possibility. In practice, it should be pointed out that during the 8th and 9th legislatures, both in Congress and in the Senate, amendments to the draft budget law that affected the budgets of the Houses were presented and admitted for processing, and these amendments were admitted for processing regardless of whether they affected the budget of the House in which they were presented or that of the other House, although they were not finally approved. The only amendments that have been approved in this respect were those presented during the processing of the general State budget law for 2006: one tabled in the Congress that modified its own budget, and another in the Senate that modified its own.

3.3 Execution of the budgets

As has been indicated, budgetary autonomy also includes the autonomous execution of their budgets by the Chambers. Thus, it should be pointed out that the Chambers have their own regulations in this respect, regulations which, although they include

197 V.E. S. Montejo Velilla, *La autonomía financiera de las Cámaras, en especial, el caso español*, in *I Jornadas de Derecho Parlamentario*, Vol. II, Madrid, 1985.

198 See M.A. Martínez Lago, *La autonomía presupuestaria de los órganos constitucionales y el presupuesto parlamentario*, in *Revista de las Cortes Generales*, n. 82, Madrid, 2011.

some special features derived from the very structure and size of the Chambers, largely reproduce the general principles established in the General Budgetary Law for the execution of the budget by the Public Administrations. Thus, the principles of unity, universality, non-appropriation of revenue, speciality, etc., apply, although with some specificities.

It should be noted that the funds of the Chambers finally approved in the budget are drawn or issued by the Directorate General of the Treasury on a quarterly basis. The accounts of the Congress and Senate are governed by the general principles of public accounting, adapted to their particularities. Spending proposals are centralised in the General Secretariat, some of them at Directorate level, and the authorising bodies are the Bureau, which may delegate the President, the Secretary General or the Director of Budgets, depending on the amount involved.

On the other hand, the structure of the Budget is very similar to that of the Ministries, grouping the items by chapters, articles, concepts and sub-concepts, although the degree of linkage is less than in the General State Administration. The main expenditure of the Chambers corresponds mainly to chapter I, i.e. personnel expenses, which includes parliamentarians, civil servants and temporary staff. The subsidies granted by the Chambers, and included in their budgets, to the parliamentary groups, also constitute a relevant expenditure under chapter IV. Finally, it is also worth mentioning the expenditure derived from infrastructure works as well as that related to information technology, included in chapter VI.

The internal rules of each House allow budget modifications to be approved, by means of either credit transfers or extraordinary appropriations, and these are generally approved by the Bureau of the respective House. In the event of insufficient appropriations in the budget as a whole, the Budgetary Surplus Fund, i.e. an extra-budgetary fund made up of unexpended amounts from previous budgets, can be drawn on. These amounts, unlike what happens in the General State Administration, are not returned to the Treasury at the end of each financial year (due to non-execution) but become part of the fund of residual funds freely managed by the Chambers. In principle, this working capital can only be used to deal with temporary cash-flow difficulties (payment of salaries) or to meet certain investment expenditure not provided for in the ordinary budget (for example, it was used for certain urgent expenditure, for which there was no budget allocation, in the most acute phase of the Covid-19 pandemic).

At the end of each year, the financial year has to be wound up and closed. In this respect, the Budget and Contracting Directorate of each House prepares the corresponding report, which is presented and approved by the respective Bureau. In the case of the Congress of Deputies, this settlement is presented to the Plenary of the House, but not in the Senate. The aforementioned report is also published on the websites of the Chambers.

3.3 Control of the implementation of the budgets

Finally, as regards control of the implementation of the budget, it should be pointed out, firstly, that all expenditure must be subject to prior audit by the Comptroller of each House. This control is not only a control of legality, but also includes other aspects such as the effectiveness and efficiency of expenditure. To this must be added those already indicated with respect to the liquidation of the budget¹⁹⁹.

199 See I. Revuelta de Rojas, *Autonomía presupuestaria y fiscalización*, in *Revista de las Cortes Generales*, n. 82, Madrid, 2011.

In Spain there is no legal provision for any kind of external control of the budgets of the Chambers, particularly by the Court of Audit, the body which, in accordance with Article 136 of the Spanish Constitution, is the supreme auditor of public accounts. Thus, it has been understood that Parliament's budgetary autonomy excludes this type of control, and no conflict or controversy has arisen in this respect (unlike, for example, in Italy, where the Constitutional Court ruled on this point, denying the possibility of such control). However, a sector of the doctrine maintains that the principle of separation of powers would not be affected by a possible attribution to the Court of Audit of such an audit, given that the Court of Audit is a body situated in the orbit of the legislative power, and not of the executive. On the other hand, it should be pointed out that in relation to certain items of the budget of the Chambers, there is no audit, even indirect, by the Court of Audit. This is the specific case of subsidies to parliamentary groups. Since these subsidies, as they are normally linked to the party in question, are included in the consolidated accounts that the political parties submit to the Court and which the latter audits.

4. Conclusion

In short, the budgetary autonomy of the Houses is one of the pillars of the functioning of the Spanish Parliament. In general, it has not generated practical problems or major doctrinal controversies in Spain, particularly with regard to the drafting and approval of the budgets of each House. On the other hand, the figure of the budget remainders as well as the absence of external control, particularly with regard to the known subsidies to the parliamentary groups, are not entirely peaceful issues, although they have not posed problematic cases in the Spanish experience either.

Budgetary autonomy of Parliaments: a comparison between five EU countries - A few conclusive remarks -

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The above-described country cases demonstrate that, as far as financial and budgetary autonomy are concerned, representative assemblies cannot be easily assimilated to each other, even less are they liable to be included in some pre-defined or rigid categories.

Financial and budgetary autonomy of Parliaments are complex principles which sometimes are affirmed on paper, but denied in their practical exercise; by contrast, in other cases this kind of independence is fully recognized in the institutional practice even in absence of any statutory provision.

Many aspects contribute to make Parliamentary autonomy effective and operational: in primis, legal factors, such as the general legal framework, the relevant constitutional provisions, the legislation on public finance, the Courts' decisions and even the rules of procedure of the Houses. If we merely consider these aspects, it is possible that the introduction in EU countries of common legal standards due to the EU membership could promote a shared legal culture, thereby gradually conducting towards comparable forms of parliamentary autonomy.

Constitutional Courts have already played, and are also expected to play in the future, an important role in this regard: by reaffirming parliamentary budgetary independence as a logical consequence of the generally recognized principle of separation of powers, Constitutional Courts may indirectly contribute to harmonizing the precepts of parliamentary financial autonomy across Europe.

But our study shows that the elements which play a decisive role in determining the effective degree of parliamentary autonomy have to be sought mainly in constitutional practice and tradition as interpreted in the light of each country's specific political culture and evolving political balances.

Emblematic of this conclusion is the case of Slovenia, where, as Dušan Štrus says in his contribution, "even the decisions of the Constitutional Court can remain merely on paper if there is no tradition of ensuring parliamentary autonomy and a political culture that would implement it."²⁰¹

Another reflection suggested by the present analysis is that, even in countries where the principle of budgetary autonomy of Parliaments has been consolidated over years, it should not be taken for granted (as Frati and Cezzi state in their contribution on the Italian case).

Indeed, autonomy is frequently something to affirm, protect or enhance over time: also Parliaments that currently enjoy conditions of potentially unlimited independence at any stage of the internal budget cycle have been "challenged"²⁰² to uphold this statute at some time. That is the reason why, as mentioned in the introductory remarks,

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The views and opinions expressed in this essay are solely those of the author and do not necessarily reflect the official policy or position of the administration he is associated with.

201 Dušan Štrus "Financial Autonomy of the Parliament of the Republic of Slovenia", in this paper.

202 This was the case of Italy: see C. Frati and N. Cezzi, "Budgetary Sovereignty of Parliaments: the Case of Italian Chamber of Deputies", in this paper.

it is important to analyse the different forms of financial independence in a “dynamic” perspective, by taking into account how the principle of autonomy and its general acknowledgement have been evolving over time, and, for some aspects, are still evolving.

In fact, even where parliamentary financial autonomy is recognized at a constitutional level, it may happen that certain key aspects of the statute of independence are called into question. As already mentioned, in Italy, it took a ruling of the Constitutional Court in 1985 to definitely affirm the “guaranteed independence” of the Chambers from any other power, including the control of the Court of Auditors. Other problematic cases occurred in the relationship between the Italian Parliament and the Executive, even though they were definitely solved in favor of the Parliament. On the contrary, nothing controversial has occurred in Spain in this area, even if some aspects of budgetary autonomy of the Parliament are not entirely unquestioned at least from a doctrinal point of view²⁰³.

A particularly sensitive issue affecting autonomy is that of the presence or the absence of formal limitations (*ex ante*) at the stage of the budget preparation, to decide about the total amount of resources that each Parliament needs.

This aspect is not merely symbolic since it conditions a Chamber’s ability to secure the resources that make parliamentary functions effective in practice: specialised staff for committees, independent research services, IT and data infrastructure, and the organisational capacity to scrutinise government action on equal informational footing.

With regard to the capacity of Parliaments to decide about the size of their own budgets, we may observe that in some countries (like Spain and Italy) there is no formal obligation for the Chambers to comply with the general Ministry of finance’s directives or limitations concerning the overall State budget.

In other cases (Austria and Germany), as already mentioned in the introduction, the Chambers cannot plenty exercise their decision power while drafting their own budgets since they are subject, to a different extent, to the general instructions given by the Minister of Finance for the preparation of the draft State budget. Nevertheless, the requests of parliamentary bodies are attentively considered during formal and/or informal interactions between the Parliament and the Executive in order to address any possible issues. At this stage, the “negotiating power” of the Houses seem to be implicitly strengthened by their capacity to exercise an effective influence during the following phase of the parliamentary discussion and approval of the State budget, including the appropriations for the parliamentary functions.

However, the comparison among the five country cases seems to suggest a link between the degree of autonomy of a Chamber in determining its own budget and its influence within the general decision making regarding the State budget. Of course, this hypothesis needs to be verified on a better-founded ground, by looking into a larger sample of cases than the five ones examined in the present analysis.

Focusing only on the latter cases, we may see that both in Germany and in Austria the lower autonomy of one Chamber (respectively, the Bundesrat and the Federal Council) in deciding about the amount of resources allocated in its budget finds a correspondence in the asymmetrical position of the same Chamber, compared to the other one (Bundestag in Germany and National Council in Austria), in the overall process concerning the formation of the State budget.

Also in Slovenia, as Dušan Štrus says “despite the changes in the legislation, in practice

203 Cfr. Alfonso Cuenca Miranda, “The budgetary autonomy of the Chambers in Spain”, in this paper

the financial autonomy of Parliament (especially the National Council) is still curtailed, (...). This is also due to the specific position of the National Council in the Slovenian asymmetrical bicameral parliamentary system, which is strongly marked by the limited competencies of the National Council in the legislative procedure and the special budget approval procedure”.²⁰⁴

These cases seem to suggest that the prerogative of a Chamber to autonomously determine the resources it needs for its own functioning is likely to be affected not only by its “status” of being a branch of the Parliament but also by the formal role played in amending and approving the overall State budget.

A confirmation of this conclusion may come from the extensive and equal forms of financial autonomy enjoyed by the two Chambers in the Italian Parliament, whose system is characterized by a “perfect” bicameralism, also with regard to all the decisions affecting the State budget.

On the other hand, such correspondence between a Chamber’s financial autonomy and its powers in the general decision making concerning the State budget cannot be regarded as a rule: in fact, in the Spanish Parliament the two Chambers have similar forms of budgetary autonomy notwithstanding the uneven weight in amending and approving the State budget.

Therefore, even though various cases point to the existence of a correlation between the two abovementioned factors, no cause-effect relationship can be established on the basis of the limited sample under examination.

With regard to the external controls (ex post) on the execution of the parliamentary budgets, the situation emerging from this study is extremely nuanced, varying from a total absence of external control (Italy and Spain) to the submission to external judicial and/or auditing control and sometimes also to some forms of performance based control (Austria), as better explained in the introduction.

However, according to the apt expression used by Frati and Cezzi to describe the Italian case, “absence of external control does not mean lack of responsibility”²⁰⁵. All the Parliaments under consideration have developed systems to set, over time, internal controls and enhance transparency towards the general public about the use of public resources: this may be regarded as a common trend emerging from the present analysis, following a dynamic perspective.

Notwithstanding all the abovementioned distinctions, a general conclusion that can be made is that the Parliaments included in this analysis have been following a general common orientation towards limiting their spending over the last few decades.

In some cases, this has been the consequence of an imposition, due to the need to comply with general directives and spending limits set by Governments within the ordinary budget procedures and also applying to parliamentary bodies. In other situations, expenditure restraints have resulted from negotiations between Governments and Parliaments. Finally, in a number of cases, spending savings have been autonomously decided by the Chambers to contribute to the general fiscal strategy adopted by Governments.

Therefore, during the last few decades and especially after the European financial crisis started in 2009-2010, even Parliaments not subject to specific limitations and

204 Slovenian Parliament is bicameral and composed of the National Assembly as the first chamber and the National Council as the second chamber. The National Assembly has strong constitutional, legislative, nominating and oversight powers. On the contrary, the National Council has weak advisory and suspensory competencies. It can propose a law, give an opinion on a law, postpone the adoption of a law with veto power, but it cannot amend a law.

205 C. Frati e N. Cezzi, *Idem*.

benchmarks have voluntarily participated, in different ways, in the fiscal effort aimed at stabilizing public finances in their own countries. This was possible through the adoption of a sort of “self-commitment” behavior directed to contain the amount of Parliaments’ spending even when there was not an obligation to do it.

In some cases, like in Spain, the savings were made by Parliament *ex ante*, by voluntarily reducing the total amount of the endowment requested; in other contexts, like in Italy, thanks to a careful and prudent expenditure management, the Chambers put aside and returned to the State budget a certain amount of savings after the execution of the parliamentary budget. At the same time, they were able first to reduce and then, starting from 2013, to keep stable their endowment allocated from the State budget. In both cases, parliamentary engagement in the overall fiscal consolidation strategy was guaranteed, without detriment to the principle of budgetary autonomy.

More generally, the observed behaviors show a common inclination of parliamentary bodies to act in accordance with a principle of strong fiscal responsibility frequently accompanied by the intent of making this approach evident to citizens. For this reason, Parliaments are also, in different ways, committed in improving the clarity and public understanding of their own budgets and financial activities.

Finally, there is one more aspect that the examined Parliaments seem to have in common: the awareness of and the sensitivity to the expectations and reactions of the public regarding financial planning and the management of public resources. This appears to be a strong unifying factor, leading to enhanced forms of transparency, effectiveness and efficiency in the use of the financial means allocated for Parliaments, as far as “it is public opinion which in the last analysis is the real counterweight to the budgetary autonomy of parliamentary assemblies”²⁰⁶.

206 Association of Secretaries General of Parliaments, The administrative and financial autonomy of parliamentary assemblies Report prepared by Mr Michel Couderc (France), adopted at the Moscow Session (September 1998) (http://www.asgp.info/Publications/CPI-English/1998_176_autonomy.pdf)

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