JUDGMENT NO. 63 YEAR 2019

The judgment holds that the principle of the retrospective application of a more lenient criminal provision (*lex mitior*) also applies to administrative offences and penalties of a "punitive" nature, unless compelling reasons justify a departure from this principle.

The Court examined a provision that explicitly excluded the retrospective application of a provision setting forth a new minimum penalty for the administrative offence of insider dealing, which was significantly lower than that in force at the time the offence was committed.

According to the Court's established case law, the obligation to retrospectively apply a *lex mitior* is not included in the principle of legality in criminal matters established by Article 25 (2) of the Constitution (*nullum crimen, nulla poena sine lege*), but is grounded, in the Italian legal order, on the principles of equality of treatment and reasonableness based on Article 3. These principles preclude the application of a criminal sanction that a subsequent law considers excessive in respect to the seriousness of the offence, unless compelling reasons can be shown in support of the only *pro futuro* application of the more favourable penalty established by the new law.

Judgment No. 236 of 2011 had already pointed out that the principle of the retrospective application of the *lex mitior* in criminal matters has also been recognised by the ECtHR, in its judgment *Scoppola v. Italy*, as part of the guarantees enshrined in Article 7 ECHR. This had led the Court to the conclusion that the principle is based, in the Italian legal order, also on Article 117 (1) of the Constitution, which requires that national and regional legislation be in line with the obligations stemming from EU and international law.

In this new judgment, the Court applies for the first time its previous case law on the retroactive application of a *lex mitior* in criminal matters to the field of administrative offences and sanctions that reveal, nonetheless, a "punitive" nature according to the *Engel* criteria. Since the State was unable to show any compelling reason to justify departure from that principle, the impugned provision was held in breach of both Articles 3 and 117 (1) in conjunction with Article 7 ECHR and, therefore, unconstitutional.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 6(2) of Legislative Decree No. 72 of 12 May 2015 (Implementation of Directive 2013/36/EU, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Amendments to Legislative Decree No. 385 of 1 September 1993 and Legislative Decree No. 58 of 24 February 1998), initiated by the Milan Court of Appeal, First Civil Division, in proceedings between G.P. and the National Commission for Companies and the Stock Exchange (CONSOB), with the referral order of 19 March 2017, registered as Case No. 87 in the 2017 Register of Referral Orders and published in the *Official Journal of the Republic* No. 25, first special series, 2017.

Having regard to the entry of appearance filed by G. P. and CONSOB, and the statement

in intervention filed by the President of the Council of Ministers;
after hearing Judge Rapporteur Francesco Viganò at the public hearing of 5 February 2019;
after hearing Counsel Andrea Giussani for G. P., Paolo Palmisano and Salvatore Providenti for CONSOB and State Counsel [*Avvocato dello Stato*] Paolo Gentili for the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.– [omitted]

[T]he Milan Court of Appeal raised – with reference to Articles 3 and 117(1) of the Constitution, the latter in relation to Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, ratified and implemented by Law No. 848 of 4 August 1955 – questions as to the constitutionality of the same Article 6(2) of Legislative Decree No. 72 of 2015, insofar as this provision "modified the sanctions pursuant to Article 187-*bis*" of Legislative Decree No. 58 of 1998 "in implementing Article 3 of Delegated Law No. 154/2014, excluding the retroactivity *in mitius* of the more favourable provision laid down by Article 6(3) of Legislative Decree No. 72 of 2015.

2.- In order to assess the admissibility and well-foundedness of the questions raised, a brief summary of their legal context is appropriate.

2.1.– Insider dealing was first treated as a crime in the Italian legal system by Article 2(1) of Law No. 157 of 17 May 1991, implementing obligations imposed at Community level by Council Directive 89/592/EEC of 13 November 1989 on the coordination of regulations concerning operations carried out by persons in possession of inside information (*insider trading*). This crime later merged, with important amendments, into Article 180 of the Consolidated Finance Law through Legislative Decree No. 58 of 1998. When transposing Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and manipulation of the market (market abuse) – implemented by Law No. 62 of 18 April 2005, by which, among other things, the Consolidated Finance Law of 1998 was amended – two new provisions of the new consolidated text were dedicated to insider dealing: Article 184, which continued to define such conduct as a crime, albeit in an amended version with respect to the previous rules; and Article 187-*bis*, which introduced a new administrative offence, insider dealing, with broader boundaries than the corresponding crime, and punished with administrative fines ranging from 20,000 up to 3 million euro, which may be increased – under paragraph 5 of the same article – up to three times or up to the amount of ten times the product or the profit obtained from the offence if greater, should these seem to be inadequate even when the maximum is imposed, having taken into consideration the personal characteristics of the offender or the amount of the product or profit realised.

2.2.- A few months later, in the wake of well-known financial scandals that had come to light in the meantime, Article 39 of Law No. 262 of 28 December 2005 (Provisions for the protection of savings and the regulation of financial markets) broadly provided, in paragraph 1, for the penalties prescribed for the offences provided for in Legislative Decree No. 385 of 1 September 1993 (Consolidated Banking and Credit Law), in the Consolidated Finance Law and in Law No. 576 of 12 August 1982 (Reform of Insurance Supervision) to be doubled, and in paragraph 5 – as far as it is directly relevant here – the quintuplication of all the administrative fines provided for in these bodies of law.

As a result of the said reform, therefore, the fine established for the administrative offence of insider dealing under Article 187-*bis* of Legislative Decree No. 58 of 1998 was raised to a minimum of 100,000 euros and a maximum of 15 million euros.

2.3. Nine years later, Law No. 154 of 2014 delegated the Government to revise the administrative fines envisaged by the Consolidated Banking Law and the Consolidated Finance Law (Article 3(1), letters *i* and *m*), with the task, among other things, of "assessing the extension of the principle of *favor rei* to cases when the discipline in force was amended at the time when the violation was committed" (Article 3, paragraph 1, letter *m*, number 1).

In implementing the delegation, Article 6(3) of Legislative Decree No. 72 of 2015 laid down that "Article 39(3) of Law No. 262 of 28 December 2005 is not applicable to the administrative penalties envisaged by Legislative Decree No. 58 of 24 February 1998": the effect was therefore to restore the legal framework originally established by Law No. 62 of 2005 for the administrative offences it provided for, without the quintuplication in fact introduced by Law No. 262 of 2005.

Therefore, as a result of Article 6(3) of Legislative Decree No. 72 of 2015, the administrative offence provided for by Article 187-*bis* of Legislative Decree No. 58 of 1998 was again punished by means of an administrative fine ranging from 20,000 to 3 million euro, without prejudice to the possibility of proceeding to apply the increases provided for in paragraph 5 of the same Article 6.

Article 6(2) of Legislative Decree No. 72 of 2015 – disputed here – established, however, that "[t]he amendments made to Part V of Legislative Decree No. 58 of 24 February 1998 apply to breaches committed after the provisions adopted by CONSOB and the Bank of Italy in relation to their respective areas of competence entered into force [...]. Breaches committed before the date on which the provisions adopted by CONSOB and the Bank of Italy came into force continue to be subject to the provisions of Part V of Legislative Decree No. 58 of 24 February 1998, effective before the entry into force of this Legislative Decree".

In this way, the delegated legislator not only implicitly ruled out the possibility that the amendments made to Part V (relating to penalty provisions) of the Consolidated Finance Law could have retroactive effect with respect to acts committed before Legislative Decree No. 72 of 2015 came into force, but even postponed the application of the new provisions until the entry into force of the regulations that the Bank of Italy and the National Commission for Companies and the Stock Exchange (CONSOB) were supposed to adopt under the Legislative Decree itself.

These regulations were, in fact, adopted by CONSOB with Resolution No. 19521 of 24 February 2016, which amended the regulations in force on the penalty procedure of CONSOB itself, and then by the Bank of Italy with a decision of 3 May 2016, which also amended its own penalty procedure.

[omitted]

4.3. A second objection regarding the inadmissibility of those questions, raised by the State Counsel's Office, concerns the powers of this Court to review possible conflicts between disputed provisions and those of the Charter of Fundamental Rights of the European Union (CFREU): these rules were evoked in the reasoning section of the order, which furthermore emphasises the incompatibility of the transitional provisions laid down in Article 6(2) of Legislative Decree No. 72 of 2015 with the principle of the necessary retroactivity of the more favourable criminal provisions laid down in Article 49(1), third sentence, CFREU.

However, this objection must be disregarded.
Even disregarding the fact that Article 49(1) CFREU is not invoked in the operative part of the referral order, where the referring court sought to formulate the questions submitted to this Court in clear and definitive terms, it must be reiterated here – on the basis of the principles already set out in Judgments no. 269 of 2017 and No. 20 of 2019 – that this Court cannot be considered precluded from examining the merits of the questions as to constitutionality raised in relation to both internal provisions and – by means of Articles 11 and 117(1) of the Constitution – the corresponding provisions of the Charter, which essentially protect the same rights. This is without prejudice to the power of ordinary courts themselves to refer the matter to the Court of Justice of the European Union for a preliminary ruling, even after incidental proceedings as to constitutionality, and – if the prerequisites are satisfied – not to apply, in the specific case of which they are seized, the domestic provision in conflict with the rights enshrined in the Charter.
Where it is the ordinary court itself that raises a question as to constitutionality that also involves the provisions of the Charter, this Court will, possibly after referring the matter to the Court of Justice of the European Union for a preliminary ruling, provide an answer to this question, if appropriate by declaring void the provision, because of its incompatibility with the Charter (and therefore with Articles 11 and 117(1) of the Constitution).

[omitted]

6.– On the merits, the questions are well founded with regard to both Articles 3 and 117 (1) of the Constitution.
The principle of retroactivity of *lex mitior* with regard to criminal matters is in fact based, according to the case law of this Court, both on Article 3 of the Constitution, and on Article 117(1); and any possible departure from this principle must be shown to be grounded on compelling reasons to be considered in line with the Constitution (see point 6.1. *below*). The principle also applies to administrative penalties of a "punitive" nature (see point 6.2. below). The administrative penalties for insider dealing referred to in Article 187-*bis* of Legislative Decree No. 58 of 1998 are of a "punitive" nature, and as such fall within the scope of application of the principle of retroactivity of the *lex mitior* (point 6.3. below). The exception to the principle of retroactivity of the *lex mitior* laid down by Article 6(2) of Legislative Decree No. 72 of 2015, disputed here, is not based on compelling reasons and is, therefore, unconstitutional insofar as it excludes the retroactive application of amendments *in mitius* to the administrative penalties envisaged for the offence of insider dealing under Article 187-*bis* of Legislative Decree No. 58 of 1998 (see point 6.4 *below*).
6.1.- According to the established case law of this Court (Judgments No. 236 of 2011, No. 215 of 2008 and No. 393 of 2006), the rule of the retroactivity of the *lex mitior* with regard to criminal matters does not fall within the scope of Article 25(2) of the Constitution, which enshrines the – apparently opposite – principle whereby "[n]o one may be punished except on the basis of a law in force at the time the offence was committed".
This latter principle must, in reality, be interpreted as prohibiting the retroactive application only of criminal laws that establish new crimes, or that increase the penalty already envisaged for an existing crime. In itself, it does not preclude the possible retroactive application of laws that, on the contrary, abolish previous crimes or mitigate the penalty already envisaged for them. The retroactive application of a a more lenient criminal law cannot, however, be considered to be imposed by Article 25(2) of the

Constitution either, since the immediate purpose of Article 25 (2) is to protect individual self-determination, and make sure that individuals will not be surprised by the imposition of a penal sanction that they could not foresee at the time the offence was committed. This guarantee is not put into question by the application of the criminal provision that was in force at the time the offence was committed, even if a subsequent provision has provided for a more favourable treatment of the same offence, "for the obvious reason that, in this case, the *lex mitior* came into force *after* the offence was committed, with regard to which the offender had freely made his decision on the basis of the previous (and for him less favourable) normative framework" (Judgment No. 394 of 2006).

Nevertheless, the rule on the retroactive application of the *lex mitior* with regard to criminal matters – laid down in ordinary legislation by Article 2(2), (3) and (4) of the Criminal Code – is not without a constitutional basis. The established case law of this Court finds its legal basis, first of all, in the principle of equality provided for by Article 3 of the Constitution, "which requires, in principle, the application of the same penalties for the same offences, regardless of whether they were committed before or after the law providing for the *abolitio criminis* or the mitigating amendment" (Judgment No . 394 of 2006) came into force. Indeed, as a general rule, "[i]t would not be reasonable to punish (or to continue to punish more severely) an individual for conduct which, according to subsequent legislation, any other person may lawfully commit (or for which a less severe punishment is envisaged)". (Judgment No. 236 of 2011).

Grounding the retroactivity of the *lex mitior* in Article 3 of the Constitution rather than Article 25(2) also marks, however, the limit of the constitutional safeguard of which the rule in question constitutes an expression. While, in fact, the non-retroactivity *in peius* of the criminal law constitutes an "absolute and non-derogable value", the rule of retroactivity *in mitius* of the same criminal law is "subject to restrictions and exceptions under constitutional law when supported by adequate justification" (Judgment No. 236 of 2011).

The criterion for evaluating the constitutionality of possible legislative exceptions to the retroactivity of *lex mitior* with regard to criminal matters on the basis of Article 3 of the Constitution, was the object of in-depth analysis by this Court in its judgment No. 393 of 2006. On that occasion, the Court observed that the retroactivity of the more lenient criminal law is now affirmed not only in ordinary legislation, pursuant to Article 2 of the Criminal Code, but is widely recognised in international and European Union law as well. The retroactivity of the *lex mitior* with regard to criminal matters is stated, in particular, in Article 15(1)(iii) of the International Covenant on Civil and Political Rights and in Article 49(1), third sentence, CFREU. This led the Court to conclude that the value protected by the principle in question "can be sacrificed by an ordinary law only when necessary to protect competing interests of the same value [...]. Consequently, the scrutiny under Article 3 of the Constitution on the constitutionality of law providing for an exception to the principle of retroactivity of the *lex mitior* in criminal matters must be a strict one. It will not suffice for the State to show that the derogating rule is not manifestly unreasonable" (Judgment No. 393 of 2006).

In applying this criterion, the same Judgment No. 393 of 2006 found it unreasonable, and therefore unconstitutional, to derogate from the retroactivity of the more favourable amendments introduced by Law No. 251 of 5 December 2005 to the regulation of the statutory limitation of the offence, referring to proceedings pending at first instance for which the opening of the trial had already been declared.

The subsequent Judgment No. 72 of 2008, on the other hand, upheld this exception with respect to proceedings already pending on appeal, thereby recognising the compelling need to protect the constitutional interests involved, potentially affected by the dispersion of the procedural activities already carried out, which would have resulted from the general application of the new and shorter limitation periods to proceedings already concluded at first instance.

The question of the constitutionality of the derogation from retroactivity, in relation to proceedings pending appeal, of the more favourable limitation provisions introduced by Law No. 251 of 2005 was examined again by this Court some years later against the background of the Judgment by the Grand Chamber of the European Court of Human Rights of 17 September 2009, *Scoppola v. Italy*. This ruling had, for the first time, inferred the principle from Article 7 ECHR that "If the law in force at the time when the offence was committed and later [laws] differ, the law to be applied is the one whose provisions are most favourable to the defendant". This holding had led the Court of Cassation to raise again a question as to the constitutionality of the same transitional provisions that had already been upheld by judgment No. 72 of 2008, arguing – this time – that these provisions were in breach with Article 117(1) of the Constitution in relation to Article 7 ECHR, as interpreted in *Scoppola*.

With the above-mentioned judgment No. 236 of 2011, this Court stated that the "principle of the retroactivity of the more favourable legislation" has, "through Article 117(1) of the Constitution, acquired a new basis in Article 7 ECHR, as interpreted by the Strasbourg Court". Nevertheless, it reiterated that this principle cannot be considered as being absolute, since the legislator is allowed to "introduce exceptions or restrictions when supported by a compelling justification". Judgment No. 236 of 2011 held, in fact, that such a compelling justification was to be found in the very same reasons that had led the Court, in its previous judgment No. 72 of 2008, to uphold the challenged provisions.

In sum, constitutional case law has come to assign a dual basis to the principle of the retroactivity of the *lex mitior* in criminal matters. The first one – of domestic origin – can be found on the principle of equality provided for by Article 3 of the Constitution […]. The other – of international origin, but which has now entered our legal system through Article 117(1) of the Constitution – finds its origin in Article 7 ECHR, as interpreted by the Strasbourg case law (in addition to the *Scoppola* judgment, European Court of Human Rights, decision of 27 April 2010, *Morabito v. Italy*; Judgment of 24 January 2012, *Mihai Toma v. Romania*; Judgment of 12 January 2016, *Gouarré Patte v. Andorra*; Judgment of 12 July 2016, *Ruban v. Ukraine*), as well as in the other rules of international human rights law binding on Italy that set out the same principle, including Article 15(1) of the International Covenant on Civil and Political Rights and Article 49(1) CFREU […].

Common to all these normative bases is the rationale of the guarantee, which lies in the right of the perpetrator of a crime to be judged, and if necessary punished, on the basis of the *current* assessment by the legal system of the seriousness of the offence that he or she has committed, rather than on the basis of the assessment underlying the law that was in force at the time the offence was committed of the commission of the offence.

[…]

6.2.- Whether, and if so to what extent, the principle of retroactivity of the *lex mitior* is also applicable to *administrative* penalties, is a question recently examined by this Court in Judgment No. 193 of 2016.

On that occasion, the Court noted that the Strasbourg case law had "never addressed the system of administrative penalties as a whole, but rather individual and specific

regulations, in particular those which, while being classified as administrative under domestic law, show 'punitive' characteristics in the light of Convention law". In the absence of any "obligation arising from Convention law to extend the principle of the retroactivity of the more favourable law to the whole system of administrative penalties", judgment No. 193 of 2016 upheld Article 1 of Law No. 689 of 24 November 1981, which the referring court had challenged because of its alleged incompatibility with Articles 3 and 117(1) of the Constitution (the latter in relation to Articles 6 and 7 ECHR), insofar as it did not lay down a general rule regarding the application of the subsequent and more favourable law in the field of administrative offences. This Court held that such a general rule, if introduced, would have led to "disregarding the need for prior assessment of an individual penalty (considered 'administrative' in domestic law) as 'criminal according to the Convention', in the light of the so-called *Engel* criteria".

With regard, however, to individual administrative penalties that do have a "punitive" nature and purpose, the complex of principles set out by the Strasbourg Court with regard to "criminal matters" – including, therefore, the principle of the retroactivity of the *lex mitior*, within the limits just now specified (see point 6.1., above) – cannot but extend to them.

This conclusion is not precluded by the absence, thus far, of specific precedents in the case law of the Strasbourg Court. As pointed out recently by this Court, "the idea that a national court cannot apply the ECHR in matters that have not been specifically addressed by the Strasbourg Court shall be rejected" (Judgment No. 68 of 2017).

Moreover, the extension of the principle of the retroactivity of the *lex mitior* to administrative penalties with a "punitive" nature conforms to the logic underlying the constitutional case law that has developed, on the basis of Article 3 of the Constitution, with regard to specifically criminal penalties. Where the administrative sanction is in fact of a "punitive" nature, there will, as a rule, be no reason to continue to apply the penalty to the offender if his or her conduct is subsequently no longer considered unlawful; nor will there be grounds to continue to apply it to an extent considered now excessive (and therefore disproportionate) in relation to the revised assessment of the seriousness of the offence, unless there are compelling reasons to protect competing interests of constitutional rank.

6.3.– There is no doubt that the administrative penalty provided for by Article 187-*bis* of Legislative Decree No. 58 of 1998 is punitive in nature, and is therefore subject to the guarantees that the Constitution and international human rights law provide in relation to criminal matters, including the retroactivity of the *lex mitior*.

This Court has already had occasion to affirm, on two separate occasions, the substantially punitive nature of the value-based confiscation envisaged for the administrative offence of insider dealing (Judgments No. 223 of 2018 and No. 68 of 2017); and this classification must also necessarily extend to the administrative fine established for the same offence, which will now be considered here. This penalty cannot be considered as a measure merely restoring the *status quo ante*, nor as simply aiming to prevent new offences. It is, in fact, a penalty with a very strong punitive effect, which can today reach up to 5 million euro (which in turn can be tripled or raised to ten times the profit gained or losses avoided), and is, in any case, meant, in the legislator's intention, to exceed the value of the profit actually gained by the offender – which is, in turn, liable to be confiscated. Such a heavy penalty can only be explained in terms of a punishment for the perpetrator of the offence in question, serving as a deterrent for future perpetrators, just as punishments in the strict meaning of the term.

Moreover, precisely in view of the "punitive purpose" of this administrative penalty and its "high degree of severity", the Court of Justice of the European Union has recently declared its "criminal" nature within the meaning of Article 50 CFREU (Court of Justice of the European Union, Judgment of 20 March 2018, *Di Puma and others*, in Cases C-596/16 and C-596/16, paragraph 38).

6.4.- It remains, therefore, to be verified whether the exception, established by the provision disputed here, to the retroactivity of the more favourable sanctioning regime introduced by Legislative Decree No. 72 of 2015 (…) can be considered lawful in the light of the test mentioned above.

The question can only be answered in the negative.

In the explanatory report accompanying the challenged provision, the Government declared its intention not to provide for retrospective applications of the amendments "both because of the suspected unreasonableness of the introduction of this principle only in reference to specific provisions and to prevent it being applied to all proceedings still *sub judice*", thereby creating the risk of "negative repercussions on ongoing proceedings leading to penalties".

The first reason is, *ictu oculi*, unfounded: it is, if anything, the general absence of a provision for the retroactivity of amendments regarding penalties *in melius* that ought to be suspected of unreasonableness, and therefore in need of a specific justification in terms of the requirement to protect constitutionally relevant competing interests. Such interests cannot, on the other hand, be identified simply as the need to avoid "negative repercussions on ongoing proceedings leading to penalties", since the influence of *lex mitior* on proceedings leading to penalties that have not been decided yet is the necessary consequence of the principle of retroactivity of the *lex mitior* itself.

Neither does the legislator's decision to postpone the entry into force of the amendments to the penalties available for the offences laid down in Part V of Legislative Decree No. 58 of 1998 when the new regulatory provisions of the Bank of Italy and CONSOB came into force is supported by the aim of protecting binding countervailing interests of constitutional rank […]. In fact, the above-mentioned regulations of the Bank of Italy and CONSOB almost exclusively concern the procedure for determining the penalty and do not affect the categorisation of the offences, nor – except to a very marginal extent – the method of determining administrative fines, which is directly considered here.

Consequently, the decision of the legislator in 2015 to derogate from the retroactivity of the new and more favourable penalty frameworks arising from Legislative Decree No. 72 of 2015 unreasonably sacrifices the right of those who have committed the crime of insider dealing to be sentenced to a penalty proportionate to the gravity of the crime, according to the legislator's new assessment. This different assessment, indeed, certainly reflects a fresh awareness of the non-proportionate nature of the legal minimum of 100,000 euros provided for at the time of the commission of the offence.

It therefore follows that Article 6(2) of Legislative Decree No. 72 of 2015 is unconstitutional insofar as it does not provide for the retroactive application of the amendments brought about by paragraph 3 of the same Article 6 to the administrative penalties established for the offence disciplined under Article 187-*bis* of Legislative Decree No. 58 of 1998.

[…].

ON THESE GROUNDS
THE CONSTITUTIONAL COURT

1) *declares* that Article 6(2) of Legislative Decree no. 72 of 12 May 2015 (Implementation of Directive 2013/36/EU, which amends Directive 2002/87/EC and repeals Directives 2006/48/EC and 2006/49/EC on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Amendments to Legislative Decree No. 385 of 1 September 1993 and to Legislative Decree No. 58 of 24 February 1998) is unconstitutional insofar as it excludes the retroactive application of the amendments brought about by paragraph 3 of the same Article 6 to the administrative penalties envisaged for the crime disciplined by Article 187-*bis* of Legislative Decree No. 58 of 24 February 1998 (Consolidated Law on the provisions on financial intermediation under Articles 8 and 21 of Law No. 52 of 6 February 1996);

2) *declares*, as a consequence, and in the meaning of Article 27 of Law No. 87 of 11 March 1953 (Provisions on the Constitution and Functioning of the Constitutional Court), that Article 6(2) of Legislative Decree No. 72 of 2015 is unconstitutional insofar as it excludes the retroactive application of the amendments brought by paragraph 3 of the same Article 6 to the administrative penalties envisaged for the offence disciplined by Article 187-*ter* of Legislative Decree No. 58 of 1998;

[omitted]

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 20 February 2019.

Signed: Giorgio LATTANZI, President

Francesco VIGANÒ, Author of the Judgment