Corte costituzionale

JUDGMENT NO. 131 OF 2008

FRANCO BILE, PRESIDENT
LUIGI MAZZELLA, AUTHOR OF THE JUDGMENT

JUDGMENT No. 131 YEAR 2008

In this case the Court considered a challenge by the President of the Council of Ministers against a Calabria Region law containing general provisions regulating the international activity of the region, who argued that the provisions violated the state's exclusive competence over foreign policy. The Court struck down the provisions which purported to regulate the area of development cooperation, as well as humanitarian and emergency cooperation, whilst it upheld the constitutionality of those intended to familiarise regional citizens with a culture of tolerance and cooperation which did not infringe the exclusive prerogatives of the state.

THE CONSTITUTIONAL COURT

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

JUDGMENT

in proceedings concerning the constitutionality of Articles 5, 6 and 8 of Calabria region law No. 4 of 10 January 2007 (International cooperation and international relations of Calabria Region), commenced pursuant to an application by the President of the Council of Ministers served on 12 March 2007, filed in the Court Registry on 14 March 2007 and registered as No. 15 in the Register of Appeals 2007.

Considering the entry of appearance by Calabria Region;

having heard the judge rapporteur Luigi Mazzella in the public hearing of 1 April 2008;

having heard the *Avvocato dello Stato* Massimo Salvatorelli for the President of the Council of Ministers and Giuseppe Naimo, barrister, for Calabria Region.

The facts of the case

1. – In the application served on 12 March 2007 and filed in the Court Registry on 14 March, the President of the Council of Ministers, represented and advised by the *Avvocatura Generale dello Stato*, raised, with reference to Article 117(2)(a) and (3) of the Constitution, and in relation to state law No. 49 of 26 February 1987 (New provisions governing cooperation between Italy and the developing countries), the question of the constitutionality of Articles 5, 6 and 8 of Calabria region law No. 4 of 10 January 2007 (International cooperation and international relations of Calabria Region).

According to the applicant, the law in question, which regulates the actions and initiatives of Calabria Region motivated by international solidarity, exceeds the concurrent legislative competence conferred on the regions by Article 117(3) of the Constitution over "international relations and relations with the European Union". Matters relating to development cooperation, which concern international cooperation, an "integral part of Italy's foreign policy" (as provided for under Article 1(1) of law No. 49 of 1987), are argued to fall under the exclusive competence of the state pursuant to Article 117(2)(a) of the Constitution.

According to the state representative, the law is unconstitutional on various grounds. First, in laying down the objectives of and procedures for international development initiatives also in emergency situations, and furthermore in providing for the direct deployment of human and financial resources in projects intended to offer socio-economic benefits to the populations of the beneficiary states, Articles 5, 6 and 8 purport to authorise and regulate a range of activities typical of foreign policy, which are reserved exclusively to the state under the terms of Article 117(2)(a) of the Constitution.

Secondly, the contested provisions also breach Article 2(2) of law No. 49 of 1987, which reserves to the Minister for Foreign Affairs, *inter alia*, "choices over priorities in relation to geographical areas and individual countries, as well as the different sectors in

the ambit of which development cooperation is to be pursued and the indication of the mechanisms for interventions".

The state representative claims that this view has also been supported by the Constitutional Court which, in judgment No. 211 of 2006, struck down as unconstitutional, on the grounds that they encroached into the area of "foreign policy", certain provisions of Trento Province law No. 4 of 15 March 2005 (Actions and initiatives motivated by international solidarity of the Autonomous Province of Trento), the contents of which were in its view similar to the articles from the law under examination contested above.

2.– Calabria Region entered an appearance, arguing that the application was inadmissible because the reasons given in support were excessively generic, embracing disparate areas of regional action, which moreover lacked international significance.

On the merits, the region argues that, contrary to the assertions of the President of the Council of Ministers and as held by the Constitutional Court in relation to Trento Province law No. 4 of 2005, the Calabria law provides for activities which, far from being independent of and not coordinated with national foreign policy, operate within the context of foreign policy objectives and initiatives, and can therefore be regarded as falling within the limited ambit of the "foreign power" of the regions, provided for under Article 117(5) of the Constitution.

3. – In a written statement filed on 13 March 2008, the *Avvocatura Generale dello Stato* disputed the challenge made by Calabria Region that its complaint was generic, arguing that the contested provisions, considered overall, related to international cooperation activities which the Constitutional Court had already found to form part of the foreign policy of the state.

4. – By written statement filed on 19 March 2008, Calabria Region reaffirmed its challenge to the admissibility of the action and requested, on the merits, that it be rejected.

Findings on points of law

1. – The President of the Council of Ministers questions, with reference to Article 117(2)(a) and (3) of the Constitution, and in relation to state law No. 49 of 26

February 1987 (New provisions governing cooperation between Italy and the developing countries), the constitutionality of Articles 5, 6 and 8 of Calabria region law No. 4 of 10 January 2007 (International cooperation and international relations of Calabria Region).

Calabria Region law No. 4 of 2007 contains general provisions regulating the international activity of the region. In particular, it identifies the countries that are to benefit from regional initiatives (Article 1(1)) and the general goals of the international activity of the region (Article 1(2)). It goes on to stipulate that such activities may be sub-divided into five different types of initiative: "cooperation with regions and territories of the Member States of the European Union" (Article 3); "cooperation and institutional partnership and institutional relations" (Article 4); 3) "international cooperation" (Article 5); "humanitarian and emergency cooperation" (Article 6); the "internationalisation of the economy and system of production" (Article 7). It also provided that all of the activities mentioned be treated in a triennial statement of policies approved annually by the regional council and an annual operational and implementation plan, and that the administrative measures necessary to implement the plan be carried out by the regional government (Article 8).

The President of the Council of Ministers contests Article 5, concerning "international cooperation", Article 6, concerning "humanitarian and emergency cooperation", and Article 8, which governs the "programming of initiatives and procedures for their implementation", arguing that these provisions breach Article 117(2)(a) of the Constitution, which confers exclusive legislative competence on the state over foreign policy, and invoking in support of its arguments Constitutional Court judgment No. 211 of 2006.

2. – The region argues that the application is inadmissible on the grounds that it is generic, since the contested provisions concern disparate areas of action.

This challenge is groundless.

Articles 5 and 6 of regional law No. 4 of 2007 each govern a homogeneous category of international initiatives of the region: respectively "international cooperation" and "humanitarian and emergency cooperation". These categories share the characteristic, according to the *Avvocatura Generale*, that they are inherently related

to the issue to development cooperation, and therefore to the foreign policy of the state. The description of the individual initiatives contained, respectively, in Article 5(4) and Article 6(3) is therefore nothing other than a list of the possible initiatives which may be carried out within the ambit of this area of law.

The applicant argues that, in laying down objectives of and procedures for international development initiatives also in emergency situations, and furthermore in providing for the direct deployment of human and financial resources in projects intended to offer socio-economic benefits to the populations of the beneficiary states, the contested provisions purport to authorise and regulate a range of activities typical of foreign policy. In essence, the applicant disputes at root the region's competence to regulate initiatives which have the characteristics described in Article 5(1) and Article 6.

The *thema decidendum* placed before the Court is therefore sufficiently clear and unequivocal. It consists in verifying whether the activities of "international cooperation" and "humanitarian and emergency cooperation", as defined in Articles 5 and 6, fall under the competence of the regions or are a "foreign policy" matter.

3. – On the merits, the questions are in part well-founded.

3.1. – It must be pointed out that this Court has held that "in delineating the legislative competence vested exclusively in the state, Article 17(2)(a) underscores a conceptual dichotomy between mere 'international relations' on the one hand and 'foreign policy' on the other, which is not repeated in Article 117(3) (which provides for the concurrent regional competence over international matters). Therefore, foreign policy is a characteristic and typical element of the activities of the state, which has a meaning that is both different from and more specific than the term 'international relations'. Whilst 'international relations' refer in theory to individual relations, certain features of which are extraneous to our legal order, 'foreign policy' concerns the international activity of the state considered as a unitary body in relation to its goals and its policies" (judgment No. 211 of 2006).

As asserted in the above judgment, any regional legislation which confers upon a region the power to determine international cooperation objectives and emergency interventions, as well as the beneficiaries thereof, on the basis of criteria established by

the region must therefore be regarded as breaching state competence over foreign policy. In fact, insofar as they imply the direct deployment of human and financial resources in projects intended to offer socio-economic benefits to the populations of the beneficiary states, thereby touching on the matter of international cooperation, such provisions end up authorising and regulating a range of foreign policy activities reserved exclusively to the state.

Certain competences provided under the contested Articles however concern development cooperation only in study-related matters and initiatives to raise the awareness of the regional general public. By virtue of their status as legislation concerning activities to be carried out within the region, they do not interfere with the state's foreign policy. In fact, the contested regional law contains a definition of international cooperation which is incorrect and, in essence, broader than that set out in judgment No. 211 of 2006, including also initiatives and projects intended to support, on a more general level, the promotion of human rights and democratic principles both inside the region as well as abroad. It is therefore indispensable to analyse the individual provisions of the regional law in order to establish which of them relates to the foreign policy of the state.

3.2 – From this viewpoint, the activities listed in Article 5(4)(*a*), (*b*) and (*c*) must without doubt be considered to infringe the competence of the state in that, through their regulation of aspects of development cooperation similar to those provided for under state legislation in this area – such as the spread and consolidation of democracy and the rule of law in the interested countries, as well as the promotion and safeguarding of human rights – they interfere with the foreign policy of the state.

Similarly, the competences listed in letters (*i*), (*j*), (*k*), (*l*), (*m*), (*o*) and (*p*) of Article 5(4) all fall within the ambit of development cooperation, as defined in judgment No. 211 of 2006. In particular, the provision contained in letter (*i*) (support for programmes intended to protect and exploit environmental, landscape and natural resources) would not make sense unless it referred to cooperation initiatives with foreign countries; the "support for initiatives for the protection of minors and the rights of children, and the implementation of gender policies" covered by letter (*j*) falls within the above notion of cooperation, since the promotion of activities intended to promote equality between

men and women and to eliminate the factors which in practice hinder such equality, amounts to an interference in the social policies of other countries using the resources of the Italian state; the "study and research activities, experience and information exchanges and disclosure of information which aim to promote European unity and a common European identity, the extension of the concept of citizenship and the participation in institutional procedures at all levels" falling under letter (*k*), the "information and consultancy initiatives, the carrying out of feasibility studies and their realisation, with a view to achieving the transfer of appropriate systems and technologies by Calabrian companies within the ambit of cooperation programmes financed by national and international organs" mentioned in letter (*l*), and "the deployment, also under the terms of agreements with regionally controlled bodies and territorial bodies, of qualified personnel with tasks of technical assistance, administration and management, assessment and monitoring of international cooperation activity" mentioned in letter (*m*) are all directly related to development cooperation. Furthermore, the "innovative and experimental initiatives in the labour market, the sector of international credit and commerce, and in public policies for local development also in order to ensure the integration of cooperation initiatives with economic development activities" falling under letter (*o*) cannot but be a matter for the state, insofar as they must necessarily be coordinated with foreign policy initiatives. Furthermore, the "improvement of migratory flows in Calabria", to be implemented "also by favouring positive selection, training, integration and the issue of residence permits to immigrants, promoting remittances to their countries of origin and favouring their employment in those countries" mentioned in letter (*p*) is a matter relating directly to immigration policy, which is unreservedly reserved to the state.

By contrast, the activities mentioned in letters (*d*), (*e*), (*f*), (*g*) and (*h*) of Article 5(4) are directed at citizens resident in the region and have the sole goal of familiarising the regional community with a culture of tolerance and cooperation. These are initiatives intended to be carried out inside the region and as such do not fall within the definition of cooperation development adopted by the Court in judgment No. 211 of 2006.

A similar argument also applies to the provisions contained in letter (*q*) of Article 4(5) (advancement of the communities of Calabrian origin abroad), in relation to which

the Court finds that the provision contemplates merely activities to promote and protect the cultural identity of these communities, which are of a typically regional interest.

The assessment of the provision contained in letter (*n*) of Article 5(4) is more detailed. In fact, whereas the "professional training and social advancement of foreign citizens to be carried out in Calabria and in other countries" directed at citizens of developing countries are in any event activities objectively capable of creating bonds of recognition and ties with foreign states and fall within the ambit of development cooperation referred to by judgment No. 211 of 2006, the "training of personnel resident in Italy intended to carry out international cooperation activities" may on the other hand fall within regional competence over professional training, since it is aimed at Italian citizens resident in Calabria. From this perspective, the court finds that it is immune to the challenges raised.

3.3. – As far as Article 6 concerning humanitarian and emergency cooperation is concerned, the Court finds that it is unconstitutional as regards the provisions contained in letters (*a*), (*c*), (*e*) and (*f*). The following matters, as cooperation initiatives, fall within the ambit of the foreign policy of the state: the provision of basic materials and equipment to affected populations, which imply choices in the identification of the groups to be assisted (consider situations involving armed conflict between two states); technical cooperation, also through the dispatch of regional personnel, including the eventual coordination of the human resources made available by associations, institutes and public or private bodies, which is premised on a choice regarding the geographical areas and populations to which technical cooperation is to be offered; support for bodies which pursue the goal of humanitarian cooperation and emergency assistance; and finally, the establishment and collection of funds, including the promotion of public donations to be registered under the appropriate "budget chapter" for initiatives in favour of populations affected by emergencies.

By contrast, Article 6(3)(b) (concerning "healthcare and hospital treatment for foreign citizens who, as a result of the events mentioned in sub-section 1, are hosted in the region, including where appropriate the acceptance of carers, provided that they have been duly authorised to remain in Italy") and 6(3)(d) (which provides for the mere "collection and distribution of information on assistance and emergency initiatives

organised by regional bodies as well as initiatives aimed at the coordination thereof with the requests and initiatives of the state authorities, the European Union and international organisations") are legitimate provisions, given that, as regards the former, the healthcare and hospital treatment is provided to persons who are lawfully present in Italy, whilst for the latter, the provision is merely of an ancillary nature *vis-a-vis* humanitarian and emergency initiatives *stricto sensu*.

3.4 – The region argues that the compatibility of the initiatives provided for with state foreign policy can be safeguarded by Article 1(2), which provides that promotional activities must be compatible with governmental and Community cooperation.

By contrast, in judgment No. 211 of 2006, this Court has already held that provisions similar to those invoked by the region provide inadequate safeguards for state prerogatives.

Against this background, not even the more explicit reference contained in Article 8(7) to the crossover mechanisms between regional activity and the national policy level is sufficient. This mechanism, provided for under Article 6 of law No. 131 of 5 June 2003 (Provisions governing the adaptation of the legal order of the Republic with constitutional law No. 3 of 18 October 2001), which provides that the triennial planning document and the annual operational plan shall be communicated to the Minister for Foreign Affairs and the Office of the President of the Council of Ministers for a review of the compatibility of regional initiatives with the general goals of state foreign policy.

In fact, Article 6 of law No. 131 of 2003, contained in the state law implementing the reform of Title V of Part II of the Constitution, concerns the activity of the regions and provinces in relation to the so-called foreign power of the regions, which consists exclusively in the power to transpose and implement international agreements, to reach understandings with foreign sub-state territorial bodies and to conclude with foreign states executive agreements or agreements to implement international treaties which have already entered into force, as well as agreements of a technical/administrative or programmatic nature. It is therefore a provision circumscribed to the limited domain of the shared competence over international relations, and cannot be used as a basis for the subsequent ratification by the state of a regional activity which infringes the exclusive competence of the state over foreign policy.

As the Court held in judgment No. 211 of 2006, Article 6 is intended to apply only to activities which fall strictly within the international competence of the regions, and cannot refer to initiatives within the exclusive competence of the state, which would *per se* be contradictory.

In other words, a regional law cannot extend the control mechanism provided for under Article 6 of law No. 131 of 2003 beyond the applicational scope of the same state law which introduced it into the legal order. On the other hand, the activity of the state authorities is necessarily defined and regulated only by state laws and cannot be augmented pursuant to the effects of a regional law.

It follows that the contested Article 8(7) must be declared unconstitutional.

Since the ruling of unconstitutionality applies only to the provisions which provide for competences that infringe the prerogatives of the state, the Court finds that the contested Article is immune from the other heads of the challenge.

On those grounds

THE CONSTITUTIONAL COURT

1. *declares* that the following provisions are unconstitutional:

- Article 5 of Calabria region law No. 4 of 10 January 2007 (International cooperation and international relations of Calabria Region), with regard to sub-section 4(*a*), (*b*), (*c*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*) (the last with regard to the words "the professional training and social advancement of foreign citizens to be carried out in Calabria and in other countries"), (*o*) and (*p*);

- Article 6 of regional law No. 4, with regard to the competences provided for under letters (*a*), (*c*), (*e*) and (*f*);

- Article 8(7) of regional law No. 4;

2. *rules* that the other questions concerning the constitutionality of Articles 5, 6 and 8 of Calabria Region law No. 4 of 2007 raised by the President of the Council of Ministers in the application mentioned in the headnote, with reference to Articles 117(2)(a) and (3) of the Constitution, are groundless.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 5 May 2008.

Signed:

Franco BILE, President

Luigi MAZZELLA, Author of the Judgment

Giuseppe DI PAOLA, Registrar

Filed in the Court Registry on 14 May 2008.

The Director of the Registry

Signed: DI PAOLA