



Corte costituzionale



## **JUDGMENT NO. 10 OF 2009**

*GIOVANNI MARIA FLICK, President*

*PAOLO MARIA NAPOLITANO, Author of the Judgment*



## JUDGMENT NO. 10 YEAR 2009

**In this case the Court considered provisions enacted by Puglia Region which prohibited the treatment of hazardous and non hazardous special waste produced outwith the region, unless the treatment plant located in Puglia was geographically closest to the place where the waste is produced. The Court drew a distinction between non hazardous urban waste, for which the principle of self-sufficiency in disposal applied, and special waste, where self-sufficiency could not apply due to difficulties in precisely forecasting the quality and quantity of waste for disposal (even though it was an aspiration under state legislation). Furthermore, the legislation was also unconstitutional since it infringed the state's exclusive legislative competence over the “environment and ecosystem.**

### THE CONSTITUTIONAL COURT

Composed of: President: Giovanni Maria FLICK; Judges: 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, Giuseppe FRIGO, Alessandro CRISCUOLO,  
gives the following

### JUDGMENT

in proceedings concerning the constitutionality of Article 3(1) of Puglia Region law No. 29 of 31 October 2007 (Provisions governing the disposal of hazardous and non hazardous special waste produced outwith Puglia Region which transits through the region and is sent to waste disposal plants located in Puglia Region), commenced pursuant to the referral orders of 21 February 2008 by the Regional Administrative Tribunal for Puglia, Separate Chamber for Lecce, and of 24 April 2008 by the first division of the Regional

Administrative Tribunal for Puglia, ruling on appeals filed by Vergine S.r.l. and others against Puglia Region and others and by the company Recuperi Pugliesi S.r.l. against the Province of Bari and others, registered as Nos. 144 and 259 in the Register of Orders 2008 and published in the *Official Journal of the Republic* Nos. 21 and 37, first special series 2008.

*Considering* the entries of appearance by Vergine S.r.l., the Municipality of Foggiano and others and the Committee “Vigiliamo per la Discarica” [*“Landfill watch”*], the company Recuperi Pugliesi S.r.l. and Puglia Region;

*having heard* the judge rapporteur Paolo Maria Napolitano in the public hearing of 16 December 2008;

*having heard* Pietro Quinto, barrister, for Vergine S.r.l., Antonio Lupo, barrister, for the Municipality of Foggiano and others and for the committee “Vigiliamo per la Discarica”, Giuseppe Mariani, barrister, for the company Recuperi Pugliesi S.r.l., and Bartolomeo Della Morte and Maria Alessandra Sandulli, barristers, for Puglia Region.

#### *The facts of the case*

1. – By referral order of 21 February 2008 (No. 144 of 2008), the Regional Administrative Tribunal for Puglia, Separate Chamber for Lecce, raised with reference to Articles 117(3), 41 and 120 of the Constitution the question of the constitutionality of Article 3(1) of Puglia Region law No. 29 of 31 October 2007 (Provisions governing the disposal of hazardous and non hazardous special waste produced outwith Puglia Region which transits through the region and is sent to waste disposal plants located in Puglia Region).

According to the referring court, the contested regional provision does not comply with the fundamental principles enacted by state legislation regarding the disposal of hazardous and non hazardous special waste, in particular by legislative decree No. 22 of 5 February 1997 containing provisions for the “Implementation of directives 91/156/EEC on waste, 91/689/EEC on hazardous waste and 94/62/EC on packaging and packaging waste”, the

contents of which were transposed into legislative decree No. 152 of 3 April 2006 containing “Provisions governing environmental matters”, insofar as it purported to impose geographical limitations on the same.

1.1. – The Regional Administrative Tribunal for Puglia raised the question of the constitutionality of the provision cited above during the course of proceedings commenced by the company Vergine S.r.l. – the owner of a landfill for non hazardous special waste operating within the territory of the Municipality of Taranto – seeking to obtain the annulment of a note-measure of the Ecology and Environment Department of the Province of Taranto by which, according to the facts as ascertained by the lower court, the company was prohibited under the terms of regional law No. 29 of 2007 from disposing of non hazardous special waste originating from other regions in Italy.

1.2. – On the question of relevance, the lower court – given the status of the note concerned as a measure and the close connection between the new provisions governing the disposal of special and hazardous waste produced outwith Puglia Region, contained in regional law No. 29 of 2007, and the contents of the contested decision – considers that a ruling cannot be made on the appeal without resolving the question of the constitutionality of the contested provision which governs the facts at issue in the case.

1.3. – Therefore, according to the referring court, the Community law in force in the area of waste disposal – directive No. 2006/12/EC of 5 April 2006 (Directive of the European Parliament and of the Council on waste) and regulation 2006/1013/EC of 14 June 2006 (Regulation 2006/1013/EC of 14 June 2006 on shipments of waste) – does not impinge upon the question of constitutionality since although both directive 2006/12 as well as regulation 2006/1013 grant the Member States the right to restrict the transportation of waste, neither contains precise and automatically applicable regulations which may be applied to the facts at issue in the proceedings before the lower court.

1.4. – The referring Regional Administrative Tribunal refers to the assertions contained in various judgments handed down by the Constitutional Court in this area, in an attempt to extend their scope for the purposes of the non manifest groundlessness of the question, and with a view to resolving the question referred to the Constitutional Court (judgments No.

12 of 2007, No. 161 of 2005, No. 505 of 2002, No. 335 of 2001, No. 281 of 2000 and No. 196 of 1998) according to which, in summary, the principle of self-sufficiency in the disposal of non hazardous urban waste laid down by Article 182(5) of legislative decree No. 152 of 3 April 2006 – which restated Article 5(5) of legislative decree No. 22 of 5 February 1997 – is not applicable to hazardous or special waste for which on the other hand the requirement to identify appropriate plant for the relative disposal is predominant, and the application of this criterion does not permit the prior determination of a geographical limit for disposal.

According to the Regional Administrative Tribunal therefore, by restricting the disposal of hazardous and non hazardous special waste originating from outwith the region only to cases in which the facilities located in Puglia Region are the appropriate waste disposal plants that are closest to the place where the special waste is produced, the contested provision introduces a “relative prohibition” on disposal (for the purposes of judgment No. 505 of 2002) which, on the basis of the case law of the Constitutional Court cited above, violates Articles 117(3), 120 and 41 of the Constitution.

In fact, in the opinion of the referring court, Article 3(1) of Puglia region law No. 29 of 2007 breaches Article 117(3) of the Constitution in that it does not respect the fundamental principles enacted under state legislation including, in particular, by legislative decree No. 152 of 2006. The provision is also argued to violate Article 120 of the Constitution insofar as the contested regional legislation imposes an unjustified restriction on the freedom of movement of goods between the regions, as well as Article 41 of the Constitution, since the provision unjustifiably impinges both upon the rights of the operators of waste disposal plants, which would be penalised by the establishment of obstacles to the free movement of goods between the regions, as well as on those of waste producers which, precisely as a result of the aforementioned restrictions, would suffer the related inefficiencies in the disposal service.

2. – The company Vergine S.r.l. entered an appearance, the representative of which restated, albeit according to more complex arguments, the grounds for unconstitutionality indicated by the lower court in the referral order, asserting moreover that the regional

legislation is also “*ultra vires*”, since Puglia region law No. 29 of 2007 pursued the goal of preventing the disposal in Puglia of special waste produced outwith the relevant regional territory, that is a “goal different from that specified in the constitutional provision”.

2.1. – In a subsequent written statement of 25 November 2008, the company Vergine S.r.l. reiterated that the regional law was unconstitutional on the grounds that it was *ultra vires* and due to violation of the fundamental principles enacted under state legislation. The representative of the company argues that the “mapping” on the basis of which, according to the intervener in support of the administrative measure in proceedings before the lower court, the committee “Vigliamo per la Discarica”, it was theoretically possible to issue the certification required under regional law No. 29 of 2007 – Waste Report 2006 – contains insufficient information in order to permit the administrative authorities of other regions to issue such certification, given the absence of any indication of the authorised daily amount for each plant or of the authorised EWC codes (indicating the type of special waste which may be treated) and due to the obsolescence of the information contained in the document concerned.

According to the company Vergine S.r.l. therefore, the contested legislation amounts to an unreasonable incursion into the legislative sphere of other regions, by virtue of the imposition on the same of an administrative requirement to act concerning the management of waste disposal certification. The unreasonableness is moreover demonstrated by the fact that the contested legislation does not impose on the administrative authorities in Puglia the corresponding obligation to issue specific certification to the regional producers of special waste which intend to or actually dispose of waste outwith Puglia Region.

The company's representative therefore argues that the provisions contained in regional law No. 29 of 2007 concern matters which fall under the exclusive competence of the state over the environment and, recalling the recent Constitutional Court judgment No. 62 of 2008, asserts that any regional initiatives – which are legitimate where they protect interests falling under regional competence – may be undertaken only where they respect the uniform levels of protection established by the state, which was not the case for the contested legislation.

Finally, the company claims that the regional provision is unconstitutional due to violation not only of the principles already invoked, but also of Articles 32, 117(1) and 3 of the Constitution.

3. – Puglia Region entered an appearance, arguing that the question was inadmissible and, in the alternative, groundless.

Regarding admissibility, the region's representative argues first and foremost that it is not necessary to resolve the question in order to rule on the proceedings before the lower court, given that the note contested before the Regional Administrative Tribunal does not consist in the mere or straightforward application of the regional law at issue in these proceedings, which by no means imposes a prohibition on disposal, but stipulates only that special waste be disposed of in the appropriate plant closest to its place of production. In any case, again according to the region, the question is manifestly inadmissible due to the failure to give any reasons regarding the actual impact which the corrective measure requested would have on the ruling on the dispute. Again according to the region's representative, the question is inadmissible also on the grounds that the referring court did not exercise the power, recognised to it under the legal order, to interpret and apply the law since it did not interpret the contested provision in a manner compatible with constitutional principles.

The question is also argued to be inadmissible on the grounds that the referring court did not correctly specify the subject-matter of these proceedings, since one cannot limit oneself only to Article 3 of regional law No. 29 of 2007 when identifying the provision to be placed before the Court for review, but it is also necessary to refer to the combined provisions of Articles 2, 3 and 4 of the same law, which, again according to the region's representative, do not contain any prohibition on the disposal of hazardous or non hazardous waste produced outwith the region, but set out a perfectly balanced system.

In the alternative, the region's representative argues that that question is groundless, since the arrangements provided for under Article 3 of regional law No. 29 of 2007, read in conjunction with Article 4 of the same law, do not satisfy the prerequisites for a “relative” prohibition on the disposal of waste (under the terms of judgment No. 505 of 2002), since they do not refer to any numerical parameter, nor to receptive capacity percentages of

landfills, and therefore respect the principles specified under Article 182 of legislative decree No. 152 of 2006. The region concludes asserting that since the contested provision does not impose any limits on the transfer of special waste from outwith the region, but rather lays down arrangements which seek to apply the criteria of specialisation and proximity, stipulating that the principle of specialisation-appropriateness shall have logical priority, it does not contrast with the constitutional provisions which guarantee the free movement of goods between the regions and the freedom of economic initiative (Articles 41 and 120 of the Constitution).

4. – The municipalities of Faggiano, Fragagnano, Lizzano and Monteparano and, with an identical written statement, the committee “Vigiliamo per la Discarica” entered appearances, all of which were already parties to the main proceedings.

These parties in the first place argued that the question of the constitutionality of the contested provision was inadmissible due to the failure by the lower court to consider whether it complied with directives No. 75/442/EEC (Council Directive on waste), No. 2006/12/EC of 5 April 2006 (Directive of the European Parliament and of the Council on waste), regulation No. 2006/1013/EC of the European Parliament and of the Council of 14 June 2006, as well as numerous judgments of the Court of Justice. Had the lower court taken this legislation and case law into account before referring the question to the Court, it would have been able to conclude that the contested regional legislation correctly applied the Community law principle of proximity of the disposal of waste aimed at limiting the movement of the same and to promote disposal in the appropriate plant closest to the place of production.

Finally, the above parties emphasised that the contested provision also complies with and is compatible with the constitutional principles (in particular, Article 117(3) of the Constitution), as well as with Articles 3-*bis*, 3-*ter*, 182 and 199 of legislative decree No. 152 of 2006, amounting to a specific implementation of the principle of proximity referred to in legislative decree No. 152.

5. – In a subsequent referral order of 24 April 2008 (No. 259 of 2008), the first division of the Regional Administrative Tribunal for Puglia raised a similar question of the

constitutionality of the same regional provision, with reference to Articles 117(2)(s), 41(1) and 120(1) of the Constitution.

The question was raised during the course of proceedings (entirely similar to those covered by order No. 144 of 2008) commenced by the company Recuperi Pugliesi S.r.l. – operating in the hazardous and non hazardous special waste disposal and recovery sector in the province of Bari – seeking to obtain the annulment of the note-measure of the Director of the “Waste” department of the Province of Bari which prohibited the said company, under the terms of regional law No. 29 of 2007, from disposing of special waste originating from other regions.

5.1. – The referring court considers that a decision on the question of constitutionality raised is important for the purposes of ruling in the main proceedings, since there is a close relationship between the new regional legislation and the issue of the measure contested in the proceedings before the lower court, since the new regulation renders *de facto* impossible the disposal in Puglia of waste originating from other regions of Italy: therefore, it is not possible for it to rule on the appeal without addressing the question of constitutionality.

In fact, whilst the application of Article 3(1) of Puglia region law No. 29 of 2007 would entail the dismissal of the appeal under review, on the contrary a declaration that the provision was unconstitutional would deprive the administrative measure contested in the proceedings before the lower court of its foundation in law.

5.2. – The referring court asserts also in this referral order, primarily, that the Community legislation in force governing waste disposal – directive No. 12/2006/EC of 5 April 2006 and regulation No. 1013/2006/EC of 14 June 2006 – is not relevant for the purposes of the question of constitutionality at issue, for reasons practically identical to those expressed on this point by the Regional Administrative Tribunal for Puglia, Separate Chamber for Lecce, in the previous referral order.

5.3. – Accordingly, after a broad and detailed examination of the constitutional case law on this issue, and for reasons similar to those given by the other referring court, the lower

court argues that Article 3(1) of Puglia region law No. 29 of 2007 violates Articles 117(2)(s), 41(1) and 120(1) of the Constitution.

The contested provision is also argued to violate Article 117(2)(s) of the Constitution on the grounds that it infringes the exclusive competence vested in the state over the environment and ecosystem pursuant to Article 117, and since it does not respect the fundamental principles enacted by state legislation. Moreover, the contested regional provision is argued to violate Articles 41(1) and 120(1) of the Constitution. The reasons given are identical to those given by the other referring court in referral order No. 144 of 2008.

6. – The company Recuperi Pugliesi S.r.l. entered an appearance, and its representative essentially restated the grounds for unconstitutionality indicated by the lower court in the referral order.

7. – Puglia Region entered an appearance, requesting the Constitutional Court to rule that the question is manifestly inadmissible and, in the alternative, manifestly groundless, reserving the right to submit further arguments and claims.

7.1. – Shortly before the public hearing, the representative of Puglia Region filed a written statement in which it restated the request for a ruling that the question before the Court is (manifestly) inadmissible or, in the alternative, (manifestly) groundless, on the basis of arguments identical to those contained in the entry of appearance of 3 June 2008 concerning the previous question before the Court.

#### *Conclusions on points of law*

1. – The Regional Administrative Tribunal for Puglia, Separate Chamber for Lecce, questions, with reference to Articles 117(3) 120 and 41 of the Constitution, the constitutionality of Article 3(1) of Puglia Region law No. 29 of 31 October 2007 (Provisions governing the disposal of hazardous and non hazardous special waste produced outwith Puglia Region which transits through the region and is sent to waste disposal plants located in Puglia Region) insofar as, by restricting the disposal of special hazardous and

non hazardous waste originating from outwith the region only to the cases in which the facilities located in Puglia Region are the appropriate waste disposal plants that are closest to the place where the special waste is produced, it amounts to a “relative prohibition” on disposal (under the terms of judgment No. 505 of 2002).

2. – Subsequently, by an order of 24 April 2008 (No. 259), the first division of the Regional Administrative Tribunal for Puglia raised a similar question of constitutionality regarding the above regional provision, with reference to Articles 117(2)(s), 120(1) and 41(1) of the Constitution.

The contested provision is claimed to violate, on grounds identical to those stated in the earlier order, Articles 120(1) and 41(1) of the Constitution. It is also stated to breach Article 117(2)(s) of the Constitution since, according to the referring court, it infringes the exclusive competence vested by that Article in the state over environmental protection and the ecosystem (under the terms of judgment No. 161 of 2005) and does not respect the fundamental principles enacted under state legislation concerning environmental matters (now by legislative decree No. 152 of 3 April 2006 containing “Provisions governing environmental matters”).

3. – The Court must order the joining of the relative proceedings in order for them to be treated together and resolved with a single decision, since they concern the same provision and raise questions that are entirely similar.

4. – As a preliminary matter, for both of the questions, the Court finds that the proceedings cannot extend to an assessment as to whether the contested regional provision has violated the principles invoked by the company Vergine s.r.l. and the company Recuperi Pugliesi in addition to those raised by the referring Regional Administrative Tribunal (namely of Articles 32, 117(1) and 3 of the Constitution) since, according to settled constitutional case law, the subject-matter of incidental proceedings before the Constitutional Court is identified exclusively in the referral order, and the examination of further grounds raised by the private parties that have entered appearances is a matter that cannot be addressed in the proceedings (judgments No. 362 and No. 325 of 2008; order No. 242 of 2006).

5. – Again as a preliminary matter and in relation to the question raised in referral order No. 144 of 2008, the Court finds that the challenge that the referral is inadmissible filed by the representative of the municipalities of Faggiano, Fragagnano, Lizzano and Monteparano and of the Committee “Vigiliamo per la Discarica” concerning the lower court's failure to consider the compatibility of the contested provision with the Community law in force governing waste disposal – in particular, with reference to directive No. 12/2006/EC of 5 April 2006, regulation No. 1013/2006/EC of 14 June 2006, and the judgments of the ECJ of 9 July 1992 in Case C-2/90, of 17 March 1993 in Case C-155/91 and of 28 June 1994 in Case C-187/93 – is irrelevant as the referring court ruled, not implausibly, that the reference to Community law with regard to this question of constitutionality was irrelevant. Indeed, the lower court asserts, within this context, that this legislation is limited “simply to legitimising the power of the Member States to limit the transfer of waste, and does not specify any precise and self-applying substantive requirements which may be applied in the specific case before the court”.

5.1. – The Court also rejects the challenges formulated by the Region that the questions are inadmissible.

The order of 21 February 2008 from the Separate Chamber for Lecce of the Regional Administrative Tribunal Puglia states that, following notification of the publication of the regional law concerned in the *BURP* [Official Bulletin of Puglia Region], the contested decision asserted that under the terms “of the aforementioned law, the disposal in Puglia of special hazardous and non hazardous waste originating from other regions is prohibited unless accompanied by certification attesting that no plant closer to the place where the waste is produced exist or are operational. Accordingly, the transfer to Puglia of special waste originating also from Lazio, Tuscany and Umbria Regions” is in consequence forbidden.

In the order of 24 April 2008 from the first division of the Regional Administrative Tribunal for Puglia it is likewise stated that the decision placed before it for review stated, after referring to the provisions contained in the regional law No. 29 of 2007, that “where the disposal of special waste at plant located within the region occurs in violation of the

provisions referred to, the management requirements contained in the authorisation measures shall be deemed not to have been fulfilled, with the resulting liability to incur the sanctions provided for by law”.

Confronted with regulatory content of this nature, having found in both cases that the administrative decision correctly applied the regional law, also finding that any efforts at interpretation in order to ensure that the provision which it was required to apply was compatible with constitutional law would breach the limits which Italian law places on interpretative activity, the court's view which led it to do raise the question of constitutionality on the grounds that it was necessary for the resolution of the proceedings under its purview was at the very least not implausible.

Finally, as regards the allegedly incorrect specification of the subject-matter of proceedings, on the grounds that the two referring courts challenged only Article 3 of the law under examination (*sic*: only Article 3(1)) – failing to take into consideration the overall scope of this legislation which, in order to be understood fully, would have required an extension of the examination also to Articles 2 and 4 – it is sufficient, in order to rule the objection inadmissible, to note that the referring courts have identified Article 3(1) as the central core of the law, since it was recognised as breaching the constitutional principles invoked. In actual fact, as will be specified below under paragraph 11, the invalidation of the contested provision has the effect of depriving the other regional provisions referred to by Puglia Region of autonomous regulatory capacity.

6. – On the merits, the question is well founded.

7. – This Court has on various occasions already issued rulings on the limits to which regional legislation is subject when regulating the disposal of waste originating from other regions, arriving at two different solutions depending on the type of waste in question.

Whilst on the one hand it has held that, in view of the principle of self-sufficiency expressly enacted now by Article 182(5) of legislative decree No. 152 of 2006, but previously also by Article 5(5) of legislative decree No. 22 of 5 February 1997 (Implementation of directives 91/156/EEC on waste, 91/689/EEC on hazardous waste and 94/62/EC on packaging and packaging waste), the prohibition on the disposal of waste

produced outwith the region applies to non hazardous urban waste, on the other hand this Court has held that the principle of local self-sufficiency and the related prohibition on the disposal of waste originating from outwith the region cannot apply either to hazardous special waste (judgments No. 12 of 2007, No. 62 of 2005, No. 505 of 2002 and No. 281 of 2000), or to non hazardous special waste (judgment No. 335 of 2001).

The court has in fact found that for certain types of waste it is not possible to forecast reliably the quantity and quality of the material for disposal which, as a result, makes it impossible “to identify an optimum geographical area which can guarantee the objective of self-sufficiency in disposal” (judgment No. 335 of 2001).

8. – With particular reference to the transport of waste, this Court has also prevented the regions, including both the ordinary regions as well as those governed by special statute, from adopting measures aimed at hindering “in any way the free movement of persons and goods between the regions” (judgments No. 64 of 2007; No. 247 of 2006; No. 62 of 2005 and No. 505 of 2002) and has repeatedly reiterated “the general constraint imposed on the regions by Article 120(1) of the Constitution which prohibits any measure capable of hindering the free movement of persons and goods between the regions” (judgment No. 161 of 2005).

On the basis of these findings, this Court has ruled that numerous regional provisions which prohibited the disposal of waste other than non hazardous urban waste originating from outwith the region violated Article 120 of the Constitution on the grounds that they created obstacles to the free movement of persons and goods between the regions, as well as the fundamental principles contained in the socio-economic reference provisions introduced by legislative decree No. 22 of 1997, and reproduced by legislative decree No. 152 of 2006.

9. – Although the contested regional provision does not impose an absolute prohibition on the disposal of waste originating from outwith the region, but a relative provision – insofar as it permits the disposal of hazardous and non hazardous special waste from outwith the region “provided that the plant located in Puglia Region are the appropriate waste disposal plants that are closest to the place where the special waste is produced” –

this does not mean that the contested provision is not unconstitutional. This Court has in fact already held that the stipulation, under a regional provision, of a prohibition, even where, as in the case under examination, it is relative and not absolute, does not “justify a conclusion which differs from that reached in the judgments cited regarding the provisions reviewed therein which imposed an absolute prohibition” (judgment No. 505 of 2002).

Therefore, Article 3(1) of Puglia Region law No. 29 of 2007 – insofar as it introduced limits, albeit relative, on the transport of special waste into the region – violates Article 120 of the Constitution, which prohibits the regions from adopting measures which create obstacles to the free movement of goods.

10. – The complaint regarding the violation of the exclusive state competence over the matter in question is also well founded.

According to the settled case law of this Court, the law governing waste is classified under “protection of the environment and ecosystem”, which falls under the exclusive competence of the state pursuant to Article 117(2)(s) of the Constitution. By imposing a prohibition, on the basis of geographical criteria, on the disposal of hazardous and non hazardous special waste from outwith the region, the contested regional provision breaches the provisions laid down by Article 182(3) of legislative decree No. 152 of 3 April 2006 (which reproduces the provisions previously contained in Article 5(3) of legislative decree No. 22 of 5 February 1997), which does not laid down specific prohibitions, albeit expressing a favourable view of “an integrated and adequate network of plant ...in order to permit the disposal of waste in one of the appropriate plants that is closest to the place where the waste is produced or collected in order to reduce transport of the waste”. Whereas under the terms of the state legislation, the use of the disposal plant that is closest to the place where the special waste is produced amounts to the primary option to be adopted, whereas others are also “permitted”, under the terms of the contested regional legislation this solution is mandatory. This provision in addition contrasts with the very concept of an “integrated network of disposal plant” which presupposes the possibility of interconnection between the various sites which make up the integrated system and not hindrances created by blockages which prevent access to some of its parts.

The prohibition is lawful, for the reasons set out under paragraph 7 above, with reference to non hazardous urban waste since this is provided for under state legislation, whilst it breaches the Constitution insofar as a regional legislative source contemplates such a prohibition for other types of waste originating from outwith the region.

Since the challenge to the provision's constitutionality has been accepted with reference to these principles, the remaining challenges to its constitutionality averred by the referring courts are moot.

11. – Since the remaining provisions contained in the regional law are inseparably linked to that subject to the specific challenge, the declaration of unconstitutionality must accordingly be extended to the remaining provisions contained in Puglia Region law No. 29 of 2007.

on those grounds

THE CONSTITUTIONAL COURT

hereby,

*declares* that Article 3(1) of Puglia Region law No. 29 of 31 October 2007 (Provisions governing the disposal of hazardous and non hazardous special waste produced outwith Puglia Region which transits through the region and is sent to waste disposal plants located in Puglia Region), as well as the remaining provisions of regional law No. 29, are unconstitutional.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 14 January 2009.

Signed:

Giovanni Maria FLICK, President

Paolo Maria NAPOLITANO, Author of the Judgment

Maria Rosaria FRUSCELLA, Registrar

Filed in the Court Registry on 23 January 2009.

The Registrar

Signed: FRUSCELLA