Corte costituzionale

JUDGMENT NO. 411 OF 2008

GIOVANNI MARIA FLICK, President
GIUSEPPE TESAURO, Author of the Judgment

JUDGMENT NO. 411 YEAR 2008

In this case the Court considered a direct application by the office of the Prime Minister challenging a Sardinian regional law making various provisions in the area of public sector contracts (also implementing directive 2004/18/EC). The Court struck down the regional legislation because it enacted exceptions to the general rules enacted in the framework state legislation contained in the Code of public works contracts, public supply contracts and public services contracts, and also made provision in the area of competition law and private law, both matters reserved exclusively to the state.

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,

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 5 (*sic.*: Article 5(1) and (6)), Article 9, Article 11 (*sic*: Article 11 (12)-(16)), Article 13 (*sic.*: Article 13(3), (4) and (10)), Article 16 (*sic.*: Article 16(12)), Article 20 (*sic.*: Article 20(5)), Article 21 (*sic.*: Article 21(1)), Article 22 (*sic.*: Article 22(2), (14), (17) and (18)), Article 24, Article 26 (*sic.*: Article 26(2)), Article 30 (*sic.*: Article 30(3)), Article 34 (*sic.*: Article 34(1)), Article 35 (*sic.*: Article 358(2)), Article 36, Article 38 (*sic.*: Article 38(1)), Article 39 (*sic.*: Article 39(1) and (3)), Articles 40 and 41, Article 46 (*sic.*: Article 46(4) and (7)), Article 51 (*sic.*: Article 51(1) and (3)), Article 54 (*sic.*: Article 54(1), (2), (8), (9), (10) and (11)) Articles 57, 58, 59 and 60 and Schedule I (paragraphs 45.23, 45.24, 45.25) of Sardinia Region law

No. 5 of 7 August 2007 (Procedures for the award of contracts for public works, public supplies and public services implementing Community directive No. 2004/18/EC of 31 March 2004 and provisions governing the various stages of public sector contracts), pursuant to the appeal by the President of the Council of Ministers, served on 8 October 2007, filed in the Court Registry on 16 October 2007 and registered as No. 46 in the Register of Appeals 2007.

Considering the entry of appearance by Sardinia Region;

having heard the judge rapporteur Giuseppe Tesauro in the public hearing of 21 October 2008:

having heard the *Avvocato dello Stato* Francesco Lettera for the President of the Council of Ministers and Paolo Carrozza and Graziano Campus, barristers, for Sardinia Region.

The facts of the case

1. – By appeal served on 8 October 2007, and filed on 16 October, the President of the Council of Ministers, represented and advised by the *Avvocatura Generale dello Stato*, seized the Court directly with questions concerning the constitutionality of Article 5 (*sic.*: Article 5(1) and (6)), Article 9, Article 11 (*sic.*: Article 11(12)-(16)), Article 13 (*sic.*: Article 13(3), (4) and (10)), Article 16 (*sic.*: Article 16(12)), Article 20 (*sic.*: Article 20(5)), Article 21 (*sic.*: Article 21(1)), Article 22 (*sic.*: Article 22(2), (14), (17) and (18)), Article 24, Article 26 (*sic.*: Article 26(2)), Article 30 (*sic.*: Article 30(3)), Article 34 (*sic.*: Article 34(1)), Article 35 (*sic.*: Article 35(2)), Article 36, Article 38 (*sic.*: Article 38(1)), Article 39 (*sic.*: Article 39(1) and (3)), Articles 40 and 41, Article 46 (*sic.*: Article 46(4) and (7)), Article 51 (*sic.*: Article 51(1) and (3)), Article 54 (*sic.*: Article 54(1), (2), (8), (9), (10) and (11)) Articles 57, 58, 59 and 60 and Schedule I (paragraphs 45.23, 45.24, 45.25) of Sardinia Region law No. 5 of 7 August 2007 (Procedures for the award of contracts for public works, public supplies and public services implementing Community directive No. 2004/18/EC of 31 March 2004 and provisions governing the various stages of public sector

contracts), with reference to Article 3 of the Special Statute of Sardinia Region, enacted pursuant to constitutional law No. 3 of 1948 and Article 117 of the Constitution.

2. – The applicant states that Sardinia Region, exercising its own primary legislative competence over "public works of regional interest" (Article 3(e) of the Special Statute), adopted regional law No. 5 of 2007 in order to enact a system of rules governing contracts for public works, public services and public supplies "purporting to implement the new Community legislation". Certain provisions contained in the said law – intended to regulate all public contracts implemented within the region, for any amount – did not however "comply with the constitutional principles which govern the division of legislative competences in this area of law". They infringed matters falling under the legislative competence of the state, such as competition law and private law, expressly mentioned under Article 117(2)(e) and (l) of the Constitution, thereby breaching the state legislation enacted in order to regulate these matters by legislative decree No. 163 of 12 April 2006 (Code of public works contracts, public supply contracts and public service contracts implementing directives 2004/17/EC and 2004/18/EC), which constitute socio-economic reforms binding on the autonomous provinces.

In particular, the applicant contests Article 5(1) of regional law No. 5, insofar as it provides that the administrations and public bodies are required to draw up and approve a three-yearly programme only for public works for amounts above 200,000 Euro, breaching Article 128 of legislative decree No. 163 of 2006, thereby moreover stipulating that the programming was no longer compulsory for a significant number of public works for which state legislation requires that there must "necessarily" be a "close relationship between programming, planning, financing and implementation, which constitutes one of the *cornerstones of proper administration* pursued by the reform of public works", hence enacting a principle. Similarly, Article 5(6) is claimed to be unconstitutional insofar as it requires – for the purposes of the inclusion of a works project in an annual list – only a feasibility study for public works for amounts lower than 2,000,000 Euro and a preliminary project only for public works for amounts above 2,000,000 Euro, whilst the corresponding

state provision requires a feasibility study for public works for amounts lower than 1,000,000 Euro and a preliminary project per for public works above than amount.

Also Article 9 of the same regional law is argued to be unconstitutional in that, by regulating the planning and types of project in a manner which departs from that stipulated by the state in the corresponding provisions of legislative decree No. 163 of 2006, it infringes the state's exclusive competence over planning, since the regulation of planning – which lays down rules governing the implementation of public works, as well as providing a fundamental document for tender contracts by "specifying the performance required from the contractor" – must be structured identically throughout the country.

The applicant goes on to contest Article 11(12), (13), (14), (15) and (16) of regional law No. 5 insofar as they enact legislation concerning the award of works planning and management appointments which departs from that laid down by the state legislature, thereby encroaching on the area of exclusive state competence over competition law and having the effect of "opening up or closing the market to significant bands of public contracts".

The applicant also challenges Article 13(3), (4) and (10) of regional law No. 5, insofar as they require that projects be validated by an accreditation body according to UNI CEI EN standards only for projects relating to contracts with a value greater than 25,000,000 Euro, in contrast with the provisions of Article 112 of legislative decree No. 163 of 2006, which stipulates it as a requirement for projects relating to contracts for a value greater than 20,000,000 Euro, thus unlawfully broadening the area accessible to non accredited project assessors and restricting that reserved to accredited project assessors, infringing the exclusive state competence over such matters.

The following are also claimed to be unconstitutional: Articles 16(12) (concerning the award of public works contracts by the transfer of immoveable property), 20(5) (concerning justifications accompanying the bid), 21(1) (concerning the recourse to the simplified procedure), 22(2), (14), (17) and (18) (concerning the publication of tender notices), 24 and 30(3) (concerning the qualification of the bodies carrying out public works and the specification of criteria for admission to tender procedures), 26 (concerning grounds for

exclusion from tender procedures), 38(1) and 39(1) and (3) (concerning the recourse to private law negotiations), 40 and 41 (concerning the provision of services and supplies directly by the region), 46(4) and (7) (concerning the award of engineering and architectural services), 54(1), (2), (8), (9), (10) and (11) (concerning guarantees and insurance) of the regional law under examination, insofar as they impose regulations governing tender procedures and criteria for the award of contracts that differ from those enacted by the state legislature, which is vested with exclusive competence over competition law.

The applicant also challenges Articles 35(2) and 36 of regional law No. 5 of 2007, insofar as they regulate the figure of the promoting body, which is granted a preferential right which enables it, all things being equal, to be granted priority over the successful tenderer in procedures to award a concession, thereby providing for more favourable treatment which alters the formal equality (or *par condicio*) between tenderers, infringing the exclusive state competence over competition law and in breach of Community law.

Article 34(1) is also argued to infringe state legislative competence – insofar as it sets a limit to the amount which the public awarding body may pay to the licence holder along with the proceeds of the management, in contrast with the state legislation which does not set any limit (Article 143 of legislative decree No. 163 of 2006) – since the definition of the performance required from the parties pursuant to that provision occurs within a purely contractual framework, which concerns private law relations.

Article 51(1) and (3) are similarly argued to be unconstitutional, insofar as they enact legislation providing for the adaptation of prices which differs from that stipulated by Parliament, which seeks to maintain reciprocity of obligations in spite of the significant factors which interfere with the market, and hence intervenes in a sector falling under private law, a matter for exclusive state competence.

Also Articles 57, 58, 59 and 60 of regional law No. 5 are claimed to infringe areas under state competence, insofar as they govern the completion of public works, the commencement of services by suppliers or service providers, the suspension of works, sub-contracting, testing and inspections and the regular implementation of orders, as well as the

final inspection of public works, making provision with regard to various aspects falling under contract law. Finally, the applicant also challenges paragraphs 45.23, 45.24, 45.25 of Schedule I on the grounds that they contrast with the schedules to legislative decree No. 163 of 2006 which transpose, copying *verbatim*, the contents of the schedules to the Community directive, thus also violating the obligation to comply with Community law laid down in Article 3(1) of the Sardinian Statute.

3. – Sardinia Region entered an appearance in the proceedings, requesting that the questions of constitutionality be ruled in part inadmissible, and in any case groundless.

The Region argues that the appeal is inadmissible due to the extremely generic nature in which both the constitutional principles invoked as well as of the grounds for challenge concerning some of the contested provisions are identified, with the result that it is impossible to define the object of the proceedings.

The challenges relating to Article 117 of the Constitution are claimed to be inadmissible, since the appeal does not contain any arguments capable of demonstrating that it applies to Sardinia Region, the autonomy of which is upheld by a special statute enacted pursuant to Article 116 of the Constitution.

On the merits, in summary, the Region points out that regional law No. 5 of 2007 implements Community directive 2004/18/EC of 31 March 2004, under the terms of the primary legislative competence, granted to Sardinia Region under Article 3(1)(e) of the Special Statute, in the area of "public works of regional interest". Therefore, the claims averred by the applicant that the exclusive state competence over "competition law" and "private law" was violated due to the overlap between the above areas of state law and matters concerning contracts for public works, public services and public supplies of regional interest are groundless. The state competences in the above areas of law – the Region argues – do not in fact entitle the state to pass legislation which undermines any regional freedom of action regarding public works, public services and public supplies of regional interest: there are in particular non marginal aspects – concerning the regulation of contracts – pertaining to organisational, procedural, financial and other matters, including the planning of works, services and supplies, testing and inspections, and the tasks and

prerequisites of the person responsible for the procedure which cannot be considered as falling under state competence by virtue of the cross-cutting nature of competition law requirements.

As regards the alleged violation of the limits imposed by fundamental provisions of socio-economic reform, the Region observes that the case law of the Constitutional Court has repeatedly asserted that not all of the provisions contained in laws enacting reforms have the status of "fundamental principles", and this status is to be recognised only for provisions that set out the basic choices which make up the framework of the reform legislation, as well as any other provisions which, whilst they do not themselves perform the role of laying the bases for the new legislation, are associated with them by virtue of the fact that they are substantively identical or necessarily inter-related, such that their absence from or contradiction by other legislation would end up being detrimental to the achievement of the reform objectives, or modifying or distorting their extent.

4. – In the public hearing the parties reiterated their requests that the Court accept the arguments contained in their written submissions.

Conclusions on points of law

1. – The President of the Council of Ministers contests numerous provisions of Sardinia Region law No. 5 of 7 August 2007 (Procedures for the award of contracts for public works, public supplies and public services implementing Community directive No. 2004/18/EC of 31 March 2004 and provisions governing the various stages of public sector contracts) on the grounds that they fall outwith the primary legislative competence which Article 3(e) of the Special Statute confers upon Sardinia concerning public works of exclusive regional interest and impinge upon matters falling under exclusive state competence, such as competition law and private law, mentioned under Article 117 of the Constitution, competences exercised by the state through the provisions contained in legislative decree No. 163 of 12 April 2006 (Code of public works contracts, public supply

contracts and public service contracts implementing directives 2004/17/EC and 2004/18/EC).

In particular, the applicant challenges: Article 5(1) insofar as, in the area of public works programming, it requires public administrations and other public bodies to approve a three-year programme only for public works for amounts above 200,000 Euro, breaching Article 128 of legislative decree No. 163 of 2006, thereby however stipulating that the programming was no longer compulsory for a significant number of public works for which however it is required under state legislation and impinging upon one of the cornerstones of proper administration pursued by the reform of [the law governing] public works; Article 5(6) insofar as it requires – for the purposes of the inclusion of a works project in an annual list – only a feasibility study for public works for amounts lower than 2,000,000 Euro, whereas state legislation by contrast requires a preliminary project for public works for amounts greater than 1,000,000 Euro; Article 9 insofar as it regulates the planning and types of project in a manner which departs from that stipulated by the state in the corresponding provisions of legislative decree No. 163 of 2006; Article 11(12)-(16) insofar as, in matters concerning the award of works planning and management appointments, it enacts legislation which departs from that laid down by the state legislature; and Article 13(3), (4) and (10) insofar as insofar as they require that projects be validated by an accreditation body according to UNI CEI EN standards only for projects relating to contracts with a value greater than 25,000,000 Euro, in contrast with the provisions of Article 112 of legislative decree No. 163 of 2006, which stipulates it as a requirement for projects relating to contracts for a value greater than 20,000,000 Euro.

The applicant also challenges Article 16(12) (concerning the award of public works contracts by the transfer of immoveable property), Article 20(5) (concerning justifications accompanying the bid), Article 21(1) (concerning the recourse to the simplified procedure), Article 22(2), (14), (17) and (18) (arrangements governing the publication of tender notices), Article 24 and Article 30(3) (concerning the qualification of the bodies carrying out public works and the specification of criteria for admission to tender procedures), Article 26(2) (concerning grounds for exclusion from tender procedures), Articles 35(2) and (36)

(which recognise the promoting body's right to preferential treatment over the successful tenderer), Article 38(1) and 39(1) and (3) (concerning the recourse to private law negotiations), Articles 40 and 41 (concerning the provision of services and supplies directly by the region), Article 46(4) and (7) (concerning the award of engineering and architectural services), and Article 54(1), (2), (8), (9), (10) and (11) (concerning guarantees and insurance for the bid), insofar as they impose regulations governing tender procedures and criteria for the award of contracts that differ from those enacted by the state legislature, which is vested with exclusive competence over competition law.

Also Articles 34(1) (which makes provision regarding limits on the consideration), 51(1) and (3) (which defines the procedures for the adaptation of prices), as well as Articles 57, 58, 59 and 60 (which govern, respectively, the completion of public works, the commencement of services by suppliers or service providers, the suspension of works, sub-contracting, testing and inspections and the regular implementation of orders, as well as the final inspection of public works) are argued to be unconstitutional since, by legislating with regard to various aspects falling under contract law, they encroach on the state's sphere of competence.

Finally, the applicant also challenges paragraphs 45.23, 45.24, 45.25 of Schedule I on the grounds that these also contrast with the schedules to legislative decree No. 163 of 2006, which transpose, copying *verbatim*, the contents of the schedules to the Community directive, thus also violating the obligation to comply with Community law.

2. – As a preliminary matter, the Court finds that the objections raised by the respondent Region that the appeal is inadmissible due to the generic identification of the principles [invoked], as well as the generic nature of the challenges raised against some of the contested provisions, are groundless.

In the appeal, the principles at issue in the case are identified with sufficient clarity and the challenges are argued, albeit succinctly, with reference to each of them (judgment No. 62 of 2008), in such a manner as to permit the unequivocal identification of the issues raised in the case and the grounds underlying all of the doubts regarding the provisions' constitutionality raised (most recently, judgment No. 320 of 2008).

2.1. – Similarly, the objection which the Region formulates that the head of the appeal averring a violation of Article 117 of the Constitution is inadmissible, since it does not specify why this constitutional provision should apply against a region governed by special statute, is also groundless.

Indeed, it is clear from the appeal that the President of the Council of Ministers complains of the alleged violation of the limits which Article 3(e) of the Special Statute of Sardinia Region places on the primary legislative competence of the Region in the area of "public works of regional interest" by the contested regional legislation, which therefore infringes the exclusive legislative competence of the state over the matters expressly listed in Article 117(2) of the Constitution (namely competition law and private law); moreover, it is also implicitly stated in the Special Statute that Sardinia Region has no competence over such matters (see in particular, judgment No. 373 of 2007).

3. – On the merits, the complaints raised against all the contested regional provisions with reference to Article 3(e) of the Statute are well founded.

This Court has already observed that the law governing public sector contracts, considered as a whole, embraces various "legislative fields" which "are classified depending upon the nature of the relevant project": this area of law accordingly involves an interference between matters under exclusive state competence and matters falling under regional competence, which however "occurs in a special way, as it does not normally result in an interaction *stricto sensu*", but in the "priority of state legislation over any other source of law" (judgment No. 401 of 2007) with regard to matters falling under exclusive state competence, exercised when enacting the provisions contained in legislative decree No. 163 of 2006.

As far as the identification of the "legislative fields" mentioned above is concerned, the Court went on to clarify that the legislation governing tender procedures and, in particular, the regulation of the qualification and selection of tenderers, tender procedures and award criteria, including those which must apply to planning activities, seek to ensure that the same are carried out in accordance with competition law requirements and the Community law principles of the free movement of goods, the freedom to provide services and the

freedom of establishment, as well as the constitutional principles of transparency and equal treatment (judgments No. 431 and No. 401 of 2007). Insofar as this legislation seeks to attain the fill liberalisation of the market for public sector contracts, it falls within the ambit of competition law, under the exclusive competence of the state legislature (judgments No. 401 of 2007 and No. 345 of 2004), which is therefore entitled to enact comprehensive and detailed legislation governing the procedures in question (adopted under legislative decree No. 163 of 2006) that may also apply to matters falling under the legislative competence of the regions insofar as it relates to the reference market for the economic activities (judgment No. 430 of 2007).

Similarly, this Court has recognised that "the negotiation stage of contracts entered into by the public administration – which embraces the entire regulation of performance pursuant to the contractual relationship, including provisions governing testing and inspection, is characterised by the normal absence of any powers of authority for the public body, which are replaced by the exercise of contractual autonomy – must be classified as a private law matter" (judgment No. 401 of 2007), under the exclusive competence of the state legislature, which also in this case exercised this competence by adopting the provisions contained in legislative decree No. 163 of 2006.

Article 4(5) of legislative decree No. 163 of 2006 must be read in the light of these indications; in stating that "the regions governed by special statute and the autonomous provinces of Trento and Bolzano shall amend their legislation in line with the provisions contained in the statutes and in the relevant implementing provisions", it requires also that the regions governed by special statute (in the absence of provisions contained in the respective regional statutes conferring competence over the matters covered by the provisions contained in the Code of [public sector] contracts) bring their own legislation governing public sector contracts into line with the provisions laid down in the Code.

In the case before the Court, Article 3(e) of the Statute of Sardinia Region confers upon the region primary legislative competence in the area of public works of regional interest, which therefore does not extend to the provisions governing tender procedures and the

implementation of the contractual relationship: these sectors are regulated by the provisions laid down by the Code, which the regional legislature should therefore have complied with.

3.1. – By enacting the contested provisions, Sardinia Region by contrast legislated in areas already expressly classified by this Court first as falling under respectively "competition law" and "private law", passing legislation which departed from that laid down by the state legislature in legislative decree No. 163 of 2006 when exercising its exclusive competences, and failing to comply with the requirement to bring its own legislation into line with legislative decree No. 163.

In fact, one group of the contested regional provisions applies to procedures governing the qualification and selection of tenderers, procedures for award as well as assessment criteria, matters falling – as mentioned above – under competition law, also clearly interfering with the relevant rules applying in the sector of public contracts. In particular, they make provision in the areas of: planning and types of project (Article 9), specifying different criteria for the performance of the activities, and undermining the competitiveness and free movement of economic operators; criteria for the award of works planning and management appointments, in particular by providing for different thresholds and procedures (Article 11(12)-(16)); project assessment, in particular by widening the area accessible to non accredited project assessors and restricting the area reserved to accredited project assessors (Article 13(3), (4) and (10)); specification of different assessment criteria for the award of public works [contracts] paid for by the transfer of public property as well as different criteria for the completion of tender procedures (Article 16(12)); justifications accompanying the bid, specifically by limiting the obligation to submit the same only to cases involving abnormally low bids (Article 20(5)); recourse to simplified tender procedures, specifically by broadening the cases in which this is possible (Article 21(1)); publication of tender notices, specifically by excluding the requirement for publication of tender notices in the Official Journal of the Italian Republic, replacing it with the publication of notices on the Region's websites, as well as the introduction of less stringent publication requirements for tender notices for lower value public works contracts (Article 22(2), (14), (17) and (18)); regional qualification of the bodies carrying out public works

and specification of self-standing criteria for admission to tender procedures (Articles 24 and 30(3)); regulations governing grounds for exclusion from tender procedures, introducing additional grounds including that of the failure to carry out a survey according to the procedures stipulated by the tendering authority (Article 26(2)); recognition of the promoting body's right to preferential treatment over the successful tenderer (Article 35(2) and 36); specification of special cases in which the recourse to private law negotiations is permitted with or without publication of a tender notice (Articles 38(1), and 39(1) and (3)); specification of new cases in which services and supplies may be provided directly by the region (Articles 40 and 41); determination of regional criteria for the award of engineering and architectural services (Article 46(4) and (7)); and specification of guarantees and insurance in support of the bid (Article 54(1), (2), (8), (9), (10) and (11)).

Article 5(1) and (6) of regional law No. 5 of 2007 must be classified as falling under the area of "competition law", under the exclusive competence of the state. Indeed, by legislating in the area of regional public works programming, this provision removes the requirement for programming, imposed under state legislation, for a large number of public works and exempts a correspondingly high number of public works from the obligation to carry out precautionary preliminary planning as a requirement for their inclusion within a programme, stipulating that a mere feasibility study is sufficient, in clear contrast with the provisions enacted by the state legislature. In this way, law No. 5 encroaches on the sphere of competence of the state in that, due to the close connection between the programming, planning, financing and implementation of public works, it impinges upon the specification of the criteria according to which the activity concerned must be carried out, clearly hindering the free movement of economic operators in the market sector in question, and further contrasting with the principle of the proper functioning of the public administration.

Articles 34(1), 51(1) and (3), as well as Articles 57, 58, 59 and 60 of regional law No. 5 must be classified as falling within the ambit of contractual relations and the implementation of the same – and hence the area of "private law". Insofar as they lay down, respectively, rules concerning the limits to consideration, price variations as well as the completion of public works, the commencement of services by suppliers or service

providers, the suspension of works, sub-contracting, testing and inspections and the implementation of orders which differ from those enacted by the state legislature, these provisions encroach upon the sphere of legislative competence reserved to the latter by modifying the contractual rules which govern private law relationships (judgments No. 322 of 2008, No. 431 and No. 401 of 2007).

As far as paragraphs 45.23, 45.24, 45.25 of Schedule I of regional law No. 5 of 2007 are concerned, contested on the grounds that they contrast with the schedules to legislative decree No. 163 of 2006, the Court finds that these also unlawfully make provision regarding matters reserved to the exclusive legislative competence of the state, since they enact legislation which departs from national provisions in sectors falling, on the basis of the above arguments, under the areas of competition law and private law.

Ultimately, all of the contested regional provisions are unconstitutional due to violation of Article 3(e) of the Statute, since they enact provisions which depart from national legislation, which they should however have complied with pursuant to Article 4(5) of legislative decree No. 163 of 2006, concerning matters – competition law and private law – falling outwith regional legislative competence and correspondingly reserved to the state.

The further grounds for challenge are moot.

ON THOSE GROUNDS

THE CONSTITUTIONAL COURT

declares that Article 5(1) and (6), Article 9, Article 11(12), (13), (14), (15) and (16), Article 13(3), (4) and (10), Article 16(12), Article 20(5), Article 21(1), Article 22(2), (14), (17) and (18), Article 24, Article 26(2), Article 30(3), Article 34(1), Articles 35(2) and 36, Articles 38(1) and 39(1) and (3), Articles 40 and 41, Article 46(4) and (7), Article 51(1) and (3), Article 54(1), (2), (8), (9), (10) and (11), Articles 57, 58, 59 and 60, and Schedule I (paragraphs 45.23, 45.24, 45.25) of Sardinia Region law No. 5 of 7 August 2007 (Procedures for the award of contracts for public works, public supplies and public services implementing Community directive No. 2004/18/EC of 31 March 2004 and provisions governing the various stages of public sector contracts) are unconstitutional.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 3 December 2008.

Signed:

Giovanni Maria FLICK, President

Giuseppe TESAURO, Author of the Judgment

Giuseppe DI PAOLA, Registrar

Filed in the Court Registry on 17 December 2008.

The Director of the Registry

Signed: DI PAOLA