

JUDGMENT NO. 183 YEAR 2018

In this case the Court held a jurisdictional dispute concerning regional legislation from Veneto that purported to require national bodies and authorities to display certain regional symbols. The Court held that “the contested legislation encroaches upon the exclusive legislative competence of the state over the 'legal and administrative organisation of the State and of national public bodies'”. This is because “the contested provision states that the regional standard must also be displayed on buildings used by state bodies and offices, as well as on buildings and vessels used by national public bodies and entities”. It is thus not possible to enact regional legislation requiring state bodies to use any specific regional symbols.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 3(1) and 8(1) of Veneto Regional Law no. 28 of 5 September 2017 (New provisions on the use of the official symbols of the Veneto Region, amendments and supplements to Regional Law no. 56 of 20 May 1975 “Banner and coat of arms of the Region”), initiated by the President of the Council of Ministers by the application served on 9-11 October 2017, filed with the Court Registry on 13 October 2017, registered as no. 83 in the Register of Applications 2017 and published in the *Official Journal* of the Republic no. 49, first special series 2017.

Considering the entry of appearance by the Veneto Region;

having heard the judge rapporteur Franco Modugno at the public hearing of 5 June 2018;

having heard State Counsel [Avvocato dello Stato] Leonello Mariani for the President of the Council of Ministers and Counsel Mario Bertolissi, Counsel Luigi Manzi and Counsel Ezio Zanon for Veneto Region.

[omitted]

*Conclusions on points of law*

1.– The President of the Council of Ministers has filed questions – with reference to Articles 3, 5 and 117(2)(g) of the Constitution – concerning the constitutionality of Articles 3(1) and 8(1) of Veneto Regional Law no. 28 of 5 September 2017 (New provisions on the use of the official symbols of the Veneto Region, amendments and supplements to Regional Law no. 56 of 20 May 1975 “Banner and coat of arms of the Region”).

The first of the two provisions has been challenged by the applicant on the grounds that, in introducing Article 7-bis(2)(a), (d), (f) and (n) to Veneto Regional Law no. 56 of 20 May 1975 (Flag, banner, sash and coat of arms of the Region), it provides for the obligation to display the flag of the Veneto Region outside buildings hosting prefectures, local offices of the state administrations and other public bodies, including state and national public bodies (letter *a*), outside buildings hosting public entities – including also state and national public entities – that receive ordinary financing or contributions out of the regional budget (letter *d*), on boats owned by public bodies, and thus also on vessels owned by state and national bodies (letter *n*), and also whenever the Italian or European flag is displayed (letter *f*).

In the opinion of the President of the Council of Ministers, the contested provision violates Article 117(2)(g) of the Constitution, which vests the State with exclusive legislative competence over the “administrative system and organisation of the State and of national public bodies”, introducing obligations – which are, moreover, backed by sanctions – for officials in charge of state bodies and offices and of national bodies and entities, in contrast with the configuration of powers provided for under Law no. 22 of 5 February 1998 (General provisions concerning the use of the flag of the Italian Republic and that of the European Union) and the Decree of the President of the Republic no. 121 of 7 April 2000 (Regulations governing the use of the flags of the Italian Republic and of the European Union by state administrations and public entities).

The contested regional provision is also claimed to violate Article 3 of the Constitution in providing for identical sanctions in respect of situations that are clearly different both in terms of the right of public ownership or possession and also in functional terms (buildings hosting state offices, or otherwise non-regional offices, and buildings hosting regional offices), as well as Article 5 of the Constitution because, by requiring buildings hosting state offices or national public entities to display the official symbol of the Region, they undermine the principle of the unity and indivisibility of the Republic.

For the same reasons, it is argued that Article 8(1) of Veneto Regional Law no. 28 of 2017 is also unconstitutional on the grounds that, by introducing Article 7-*septies*(1) into Veneto Regional Law no. 56 of 1975, it stipulates the administrative sanction that is applicable to any persons who have breached the provisions laying down the requirement to display the Veneto flag pursuant to the new Article 7-*bis*(2) of that Law, which is thus also applicable to officials in charge of state bodies and offices and of state or national bodies and entities.

2.– Before examining the questions, it is necessary to review the reference legislative framework.

2.1.– The Constitution dedicates a specific article to the flag – Article 12 – which is contained in the initial section entitled “[f]undamental principles”. According to that Article, “[t]he flag of the Republic is the Italian tricolour: green, white and red, in three vertical bands of equal size”.

The inclusion within the Constitution of a provision concerning the national flag was considered to be clearly appropriate by the Constituent Assembly because, as was noted by the Chairman of the “Committee of 75” [the committee charged with drafting the Constitution], the *onorevole* Ruini, it reflected the requirement “contained in all constitutions of stipulating, also for international considerations, the characteristics of the Nation’s standard”. In fact, since ancient times the flag has represented a distinctive mark of the personality of the state on international level. Furthermore, it has taken on a more profound meaning within the modern age: as an instrument for identification by the Nation with its own State. In other words, the flag is the symbolic expression of the Italian national state.

Moreover, the flag is the only one of the symbols of the Republic that is considered within the Constitution. According to the currently prevailing view, the most significant effect of that choice is that the national emblem is considered in rigid terms: in identifying the “Italian tricolour” as the flag of the Republic and elevating it to the status of a symbol of national unity, the Constituent Assembly established that this means of identification could not be changed by the political majority of the

time, by adding for example the symbols of its own ideology, which as a matter of necessity would not reflect that unity.

This Court has also taken the opportunity to point out the different significance that the national flag has within the pluralist democracy outlined by the Constitution compared to the regime that preceded it. It did so specifically in Judgment no. 189 of 1987, which ruled unconstitutional Articles 1 and 3 of Law no. 1085 of 24 June 1929 (Provisions governing the display of foreign flags) insofar as they imposed a prohibition, backed up by criminal law sanctions, on displaying foreign flags in public without the prior authorisation of the local political authorities. On that occasion, this Court noted that, within an authoritarian state, the flag constitutes a symbol “of the national sovereignty of a State that ‘does not recognise’ any values other than those that it embraces and implements”: this, coupled with the resulting “fact that it is fundamentally impossible for there to be any debate between ‘valid’ (national) values and ‘invalid’ ideologies”, gives rise to the general prohibition on the displaying of foreign flags.

On the other hand, within the changed political climate, flags “no longer represent the emblem or symbol of territorial sovereignty conceived of in the meaning mentioned above, but rather symbolically designate a certain country, the identity of a certain State” and potentially the ideals that it promotes on international level. Under these circumstances, there could be no grounds for the prohibition: “[a] democratic State cannot fear engagement with the ideals pursued by the peoples of other states and by different nations”.

2.2.– Moreover, for a long time the only general legislation governing the use of the national flag by public institutions – an aspect which is of particular interest in these proceedings – was that laid down by legislation enacted during the Fascist period (specifically Royal Decree-Law no. 2072 of 24 September 1923 laying down “Provisions governing the use of the national flag”, converted with amendments into Law no. 2264 of 24 December 1925).

The first legislation regulating this matter during the republican era was contained in an act of secondary legislation (Decree of the President of the Council of Ministers of 3 June 1986 laying down “Provisions governing the use of the flag of the Republic by state administrations and public entities”). That provision was subsequently replaced by Law no. 22 of 1998, which is still in force and is cited at various points by the President of the Council of Ministers in support of the application: this Law regulates the use not only of the flag of the Republic but also of that of the European Union.

The 1998 Law – which declares that it was adopted “by way of implementation of Article 12 of the Constitution and as a consequence of Italy’s membership of the European Union” (Article 1(1)) – provides specifically that the two flags must be displayed at all times outside a series of public buildings, starting from those hosting the central offices of constitutional bodies as well as those of bodies of constitutional significance (Article 2(1) and (2)).

In classifying its provisions as “general rules in this area” (Article 1(2)), the 1998 Law delegates the task of implementing and supplementing the provisions of the Law, authorising the government to adopt secondary regulations and the regions to enact their own provisions. The criterion for distinguishing between the remit of governmental regulations and regional legislation is the type of building. In fact, it is stipulated that the regions may only enact implementing legislation in circumstances

falling under Article 2(1)(c) of Law no. 22 of 1998, that is exclusively in relation to the display of national and European flags at buildings hosting regional, provincial and municipal councils (whilst those bodies are sitting). All other circumstances falling under Article 2 are to be covered by the governmental regulation (Article 1(2)).

Subject to the same limits on competence mentioned above, Law no. 22 also authorises the government to issue regulations and the regions to enact legislation making supplementary provision on the manner in which the said two flags may be used and displayed, along with “banners, coats of arms and standards”, including by other bodies governed by public law (Article 2(3)).

The government regulation, laid down by Decree of the President of the Republic no. 121 of 2000, expands the range of buildings outside of which the flags of the Italian Republic and of the European Union must be displayed to include, *inter alia*, those used as central or local offices, where the associated district is at least as large as the relevant province, as well as those of independent authorities and national public entities (Article 1(1)); it also stipulates a series of situations in which flags must be displayed also within public buildings (Article 6). In addition, it regulates the arrangements applicable to such displays and the duration thereof (Articles 2-5 and 7-11).

The regulation concludes with a specific provision – Article 12 – concerning the regions and local authorities. According to that provision, “[t]he displaying of flags outside and inside the offices of the regions and of the local authorities shall be governed by separate legislation and regulations made by the respective administrations”. Provision shall nonetheless be made to the effect that the national flag and the European flag must be “displayed along with the standard or banner of the entity whenever the display of the latter is required, affording primary dignity to the national flag”.

2.3.– One of the most innovative aspects of the 1998 Law and the 2000 regulations thus consists in the acknowledgement of the decentralised nature of the Republic and the fact that the national flag must consequently be displayed alongside the symbols of self-governing territorial units. This acknowledgement manifests itself through two aspects: first, the regions and the local authorities are permitted to regulate the displaying of flags, including the national flag, both outside and inside their own offices; secondly, the existence of “standards” and “banners” of those entities is recognised, which are to be regulated by the separate legislation and regulations that the entities in question may enact.

As regards in particular the regions – including both ordinary regions and those governed by special statute – their various statutes already provided prior to the enactment of the 1998 Law that the regions should have their own official symbols. In fact, some regional laws had been adopted to identify those very symbols.

By Judgment no. 365 of 1990, this Court held that the regions had competence to enact legislation to stipulate and define their own symbols, even if no express provision to that effect was contained in the respective statute. The Court ruled that the general foundation for this power was the principle of autonomy laid down by Article 5 of the Constitution, in relation to Articles 115 *et seq.* of the Constitution, a principle which “seeks to confer the utmost significance on local communities, and [...] in particular on the regions, as real subjects of our legal system (which results on a unitary basis from their diversity), as fixed reference points for its democratic

fabric”. The scope of the principle thereby identified “implies that the power to choose the signs that are most suited to distinguishing the identity of the community represented by it must be considered to be a core element of the region’s self-governing powers”.

2.4.– In fact, the enactment of Law no. 22 of 1998 was followed by the enactment of detailed legislation concerning such matters within a number of regions, in particular in relation to flags. Moreover, the regional legislation enacted after 1998 has not been limited, as the previous legislation was, to describing the official symbols of the respective region, but specifically regulates the locations and situations in which they are to be displayed and the manner in which this is to occur: in doing so, this legislation thus contains parallel provision to that laid down by Law no. 22 of 1998 and by the Decree of the President of the Republic no. 121 of 2000 in relation to the national flag.

As far as the Veneto Region in particular is concerned, it enacted legislation to regulate its own official symbols as far back as 1975 (Veneto Regional Law no. 56 of 1975). The original wording of that Law stated that the official symbols of the Region included the flag, alongside the banner and the coat of arms (Article 3(2)). However, in keeping with the scope of the law at the time, said Law limited itself to stipulating the characteristics of the flag, without in any way regulating the manner in which it was to be used by the public authorities.

Provisions governing the use and display of the regional flag were introduced – in the wake of the enactment of (State) Law no. 22 of 1998 – by Veneto Regional Law no. 10 of 10 April 1998 (Provisions on the use and display of the flag of the Veneto Region), which was subsequently supplemented by Veneto Regional Law no. 35 of 24 November 2003 (Amendment of Regional Law no. 10 of 10 April 1998 “Provisions on the use and display of the flag of the Veneto Region”, as amended). Specifically, that Law stipulated that the flag must be displayed (for periods of time which differed from case to case) outside the offices of regional, provincial, municipal and district bodies, along with “polling stations during elections” held by the Veneto Region and “school buildings” (Article 2).

However, whilst Article 1(4) of Veneto Regional Statute Law no. 1 of 17 April 2012 (Statute of Veneto) provided that “[t]he Region shall be represented by the flag, the banner and the coat of arms”, the issue was overhauled by Veneto Regional Law no. 28 of 2017 laying down substantially broader provisions – which are disputed in these proceedings – which repealed Regional Law no. 10 of 1998, and introduced new provisions governing the use of official symbols into Veneto Regional Law no. 56 of 1975.

In particular, Article 3(1) of the contested Law introduces Article 7-*bis* into the 1975 Law, paragraph 1 of which stipulates that the flag of Veneto shall be displayed outside public buildings within the Veneto Region “under the circumstances provided for by law and, pursuant to an express instruction or authorisation of the President of the Regional Executive, during events of particular regional or local importance and solemnity”.

Paragraph 2 of Article 7-*bis* goes on to set out a long list of situations in which the flag “shall also be displayed”: in using this verb form [in Italian, the present indicative], this wording unequivocally establishes an element of compulsion for the action. This is moreover confirmed by the provisions of Article 7-*septies* (which was added by Article 8(1) of Veneto Regional Law no. 28 of 2017) – to which the

applicant's objections likewise apply – which provides that “[t]he violation of the provisions laid down by Article 7-bis(2) shall result in the imposition of an administrative penalty on transgressors of between 100 (one hundred) euros and 1,000 (one thousand) euros”.

The salient fact for our present purposes – which at the same time also amounts to a distinguishing feature of the Veneto legislation within the dense body of regional legislation governing such matters – is that, in contrast to the repealed Article 2(2) of Veneto Regional Law no. 10 of 1998, the contested provision states that the regional standard must also be displayed on buildings used by state bodies and offices, as well as on buildings and vessels used by national public bodies and entities.

The objections of the President of the Council of Ministers concern specifically the provisions laid down by paragraph 2(a), (d), (f) and (n) of the new Article 7-bis, which provide that the Veneto flag must be displayed: “*a*) outside buildings hosting prefectures, local offices of the state, regional, municipal, provincial and metropolitan city administrations, along with the offices of consortia and unions of local bodies, mountain communities and other public bodies” (a formulation which, considering its generic nature, is also capable of covering national public bodies); “*d*) outside public bodies that receive ordinary financing or contributions out of the regional budget” (thus not excluding national public bodies, also in this case); “*f*) whenever the flag of the Republic or of the European Union is displayed”; “*n*) on vessels owned by the region, municipalities, provinces and the metropolitan city and other public bodies and on private vessels purchased with a contribution, either full or partial, from the Veneto Region” (where, once again, the blanket expression “public bodies” is capable of covering also national bodies).

3.– In view of the above, the questions raising doubts as to the compatibility of Article 3(1) of Veneto Regional Law no. 28 of 2017 with Articles 5 and 117(2)(b) of the Constitution are well-founded.

3.1.– Following the order of the objections submitted by the applicant, which reflects their respective relationship of legal and logical priority (the fact that the objections alleging a violation of the division of legislative competence must be resolved before those relating to the content of the regional legislation contested, Judgment no. 81 of 2017), it must be noted first and foremost that the contested legislation encroaches upon the exclusive legislative competence of the State over the “legal and administrative organisation of the State and of national public bodies” (Article 117(2)(g) of the Constitution).

The case law of this Court is in fact settled in asserting that the regions “cannot impose any tasks and powers on State bodies and administrations in addition to those established under State legislation”, failing which they will violate Article 117(2)(g) of the Constitution (Judgments no. 9 of 2016, no. 104 of 2010, no. 10 of 2008 and no. 322 of 2006; also, by analogy, Judgments no. 2 of 2013, no. 159 of 2012 and no. 134 of 2004).

That exclusion also applies in relation to the provision for “forms of cooperation and coordination” which, in the event that they impinge upon the tasks and powers of State bodies, “cannot be governed unilaterally and authoritatively by the regions, not even when exercising their own legislative powers”; any such provision must be rooted in or have as its necessary prerequisite State legislation that envisages or allows for the adoption of such legislation, or must be adopted with the agreement of the bodies concerned (Judgments no. 9 of 2016, no. 104 of 2010, no. 10 of 2008, no.

322 and no. 30 of 2006; also, by analogy, Judgment no. 213 of 2006). This is regardless of the fact that the respondent in these proceedings improperly invoked the principle of loyal cooperation, in respect of a legislative provision introduced unilaterally by the Region.

This Court has had the opportunity to assert, within a jurisdictional dispute between branches of state concerning an issue that has a certain similarity with the question of symbols, that the region does not have the power to regulate any order of priority between public offices where that order also includes State bodies. This is because such a decision – even if it is limited only to local ceremonies – in any case impinges upon the issue of the “administrative system and organisation of the State and of national public bodies”, exclusive jurisdiction over which is vested by Article 117(2)(g) of the Constitution in the State, in order to ensure its unitary exercise (Judgment no. 311 of 2008).

On the other hand, it goes without saying that, in the light of the unequivocal wording of Article 117(2)(g), the principles referred to above will apply in the same manner also to the organs of “national public bodies”.

In the case under examination, the contested regional provision charges State bodies and administrations (starting from prefectures) and national public bodies and entities with a specific *positive* obligation (to display the Veneto flag outside the buildings in which the offices in question are based, or on the vessels owned by the bodies).

Notwithstanding the purely material nature of the activity considered in itself, this does not preclude the possibility that it may be classified under the area of “administrative organisation”, considering that the public display of an official symbol ends up having a connotative value for the functions which the offices and entities in question are required to perform (as well as of the offices and entities themselves).

Moreover, it is not possible to invoke from the opposite perspective – as the respondent seeks to do – the acknowledgement by this Court (given prior to the reform of Title V of Part II of the Constitution) of the powers of the regions to enact legislation adopting and defining regional symbols, on the basis of the general principle of autonomy laid down by Article 5 of the Constitution (Judgment no. 365 of 1990). Within this context there can be no discussion of the power of the region – in the words of Judgment no. 365 – “to choose the signs that are most suitable for distinguishing the very identity of the collectivity that it represents”; however, the focus must be on the fact that the [Veneto] Region purports to require the usage of those signs by bodies and entities which, whilst operating within the territory of the region, are manifestations of a distinct and broader community (that of the Nation as a whole).

In view of this consideration, the fact – on which counsel for the Region places particular emphasis – that the contested provision was enacted in an area distinct from that regulated by Law no. 22 of 1998 (which deals only with the display of the national flag and that of the European Union, leaving the task of introducing more detailed provisions and supplementary rules to State and regional implementing legislation) is irrelevant. Be that as it may, it is not legitimate to infer from this that the regional legislator is empowered to require also State bodies and national public entities to use the standard of Veneto.

3.2.– Moreover, also the objection concerning a violation of Article 5 of the Constitution, insofar as it sets out the principle of the unity and indivisibility of the Republic, is well founded.

In this regard, Article 5 of the Constitution must be construed in the light of the specific constitutional provision – which is also enumerated, as mentioned above, amongst the “[f]undamental principles” – concerning the flag: namely Article 12 (even though it is not invoked as a parameter by the applicant), which stipulates that the flag of the Republic is the “Italian tricolour”, elevating it to the status of a symbol of national unity.

Considered in the light of Article 12, Article 5 of the Constitution provides that the State may not be forced under regional legislation to use publicly any symbols – such as, in this case, the regional flags – which the Constitution does not allow to be considered as symbolic of the entire national community.

It is not possible in this regard to endorse the argument proffered by counsel for the Region that the contested provision, far from violating Article 5 of the Constitution, in actual fact implements it in that, whilst classifying the Republic as “one and indivisible”, it charges it with the task of promoting local autonomy, thereby asserting the principle of pluralism. It is argued – by the respondent – that the display of the Veneto flag alongside (and not instead of) the national flag seeks specifically to bring to the fore the relationship between the state offices and the local context within which they operate. In doing so it purportedly creates a synthesis of plurality within unity that is not dissimilar, in essence, from that which justifies the joint display – required under State legislation itself – of the national flag alongside the flag of the European Union within the offices of the highest organs of the State.

It must be pointed out in this regard that the unity and indivisibility of the Republic – which are required under the Constitution as characteristic features of the State as a body that constitutes an expression of the national community – require the regions to refrain from seeking to require that the flag of the Republic, which is classified by the Constitution as a “typifying” symbol [of the Nation], be displayed alongside the standards of local government bodies in all situations in which the symbol itself performs the role of manifesting the “national” character of the activity carried out by particular bodies, entities or offices.

Moreover, the reference by the Region to the joint display of the flags of Italy and of the European Union, as provided for under State legislation, does not provide any evidence that the position should be otherwise. Leaving aside the clear difference in nature between the relations between the European Union and the Member States on the one hand, and the relations between the Italian Republic and the regions on the other, it must be pointed out that, in enacting Law no. 22 of 1998, the State provided for the joint display of the two flags – the Italian flag and the EU flag – outside Italian public offices, just as the regions may indeed provide for the joint display of the regional flag and of the Italian flag – and also indeed of the European flag – within their own offices and within the offices of local entities. Conversely, the Italian State has made no attempt to require the display of the national flag by bodies and offices representing the supranational community of which Italy is a member, as by contrast the Veneto Region seeks to do, *mutatis mutandis*, under the contested legislation, in dealings with the State.

3.3.– Article 3(1) of Veneto Regional Law no. 28 of 2017 must therefore be declared unconstitutional insofar as, in introducing Article 7-bis(2)(a), (d), (f) and (n) into

Veneto Regional Law no. 56 of 20 May 1975, it stipulates an obligation to display the regional flag outside public buildings hosting state bodies and offices and public entities and bodies, as well as on any vessels owned by the foregoing.

3.4.– The question raised with reference to Article 3 of the Constitution is moot.

4.– As regards on the other hand the questions concerning the provision for sanctions made by Article 7-*septies*(1) of Veneto Regional Law no. 56 of 1975, introduced by Article 8(1) of Veneto Regional Law no. 28 of 2017, it must be pointed out that this provision identifies sanctionable conduct through a mere reference to the provision that imposes the obligation to display the regional flag (the new Article 7-*bis*(2) of Veneto Regional Law no. 56 of 1975).

Therefore, due to the partial repeal of this latter provision as a result of the declaration that it is unconstitutional to the extent mentioned above, the provision laying down sanctions remains applicable exclusively to situations different from those declared unconstitutional, to which the applicant's objections relate. It is not therefore necessary to take any further, self-standing action in order to limit the scope of the provision.

The questions concerning Article 8(1) must be ruled unfounded (for a similar situation, see Judgment no. 121 of 2018, section 11.3 of the *Conclusions on points of law*).

5.– Finally, the decision concerning the merits of the application renders moot the interim request for a suspension of the effect of the contested provisions, filed by the President of the Council of Ministers (Judgments no. 5 of 2018, no. 145 and no. 141 of 2016).

**ON THESE GROUNDS  
THE CONSTITUTIONAL COURT**

1) *declares* that Article 3(1) of Veneto Regional Law no. 28 of 5 September 2017 (New provisions on the use of the official symbols of Veneto, amendments and supplements to Regional Law no. 56 of 20 May 1975 “Banner and coat of arms of the Region”) is unconstitutional insofar as, in introducing Article 7-*bis*(2)(a), (d), (f) and (n) into Veneto Regional Law no. 56 of 20 May 1975 (Flag, banner, sash and coat of arms of the Region), it stipulates an obligation to display the regional flag outside public buildings hosting state bodies and offices and public entities and bodies, as well as on any vessels owned by the foregoing;

2) *rules* that the questions concerning the constitutionality of Article 8(1) of Veneto Regional Law no. 28 of 2017 insofar as it introduces Article 7-*septies*(1) into Veneto Regional Law no. 56 of 1975 raised, with reference to Articles 3, 5 and 117(2)(g) of the Constitution, by the President of the Council of Ministers by the application mentioned in the headnote, are unfounded.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 5 June 2018.