JUDGMENT No. 81 YEAR 2018

In this case, the Court considered a direct application from the President of the Council of Ministers challenging a Veneto regional law classifying the "Veneto people" as a national minority under the international Framework Convention for the Protection of National Minorities. The law classified the "Veneto people," including but not limited to the Ladin and Cimbric linguistic minorities, as a national minority; claimed to implement the Framework Convention, established a regional association to field spontaneous claims of membership in the minority, and called on central and peripheral administrations to handle the implementation and expenses of the law. The Court first rejected the intervention of a private association and private individual on the grounds that proceedings in which the Court is seized by direct application may only be carried out between parties with legislative powers. Then, the Court overruled an objection by the defendant Region that there was no injury to give standing in the case, holding that the burdens the law claimed to impose upon the central administration to implement and cover the expenses of the law were real and not merely aspirational, as the defense claimed. Finally, on the merits, the Court found the Applicant's challenge to be well-founded, and struck down the full text of regional law. The Court held that protection of minorities (including linguistic minorities) is a supreme principle of the pluralistic constitutional system, and that both State-level and regional and provincial lawmakers must be involved in actively ensuring the concrete effectiveness of such protection. However, the Court further held that the identification of national minorities must fall within the exclusive purview of the State legislator, for the assurance of uniformity throughout the nation. Moreover, the Regions may not classify themselves, as such, as "national minorities," which would undermine the unity of the conglomeration of regions within the Republic. The Court did not consider the separate grounds for challenging Article 4 of the same regional law, since this challenge was absorbed into its judgment on the law's full text.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of the full text of Law no. 28 of 13 December 2016 of the Veneto Region (Application of the Framework Convention for the Protection of National Minorities), and of Article 4 of the same law, initiated by an application by the President of the Council of Ministers, sent to be served on 13 February 2017, filed with the Registry on 20 February 2017, registered as no. 16 of the 2017 Register of Referrals, and published in the Official Journal of the Republic no. 13, first special series of 2017.

Considering the entry of appearance of the Veneto Region and the interventions of the association "*Aggregazione Veneta – Aggregazione delle associazioni maggiormente rappresentative degli enti ed associazioni di tutela della identità, cultura e lingua venete*" [An aggregation of the associations that best represent the entities and associations that work to protect the identity, culture, and language of the Veneto Region] and L.P.;

having heard from Judge Rapporteur Marta Cartabia;

having heard from State Counsel Gabriella Palmieri on behalf of the President of the Council of Ministers and from Counsel Mario Bertolissi and Andrea Manzi on behalf of the Veneto Region and Marco Della Luna on behalf of the association "*Aggregazione Veneta – Aggregazione delle associazioni maggiormente rappresentative degli enti ed associazioni di tutela della identità, cultura e lingua venete*" and L.P.

[omitted]

Conclusions on points of law

1.– The President of the Council of Ministers raises questions concerning the constitutionality of the Veneto Regional Law no. 28 of 13 December 2016 (Application of the Framework Convention for the Protection of National Minorities), challenging it in its entirety for alleged violations of Articles 2, 3, 5, 6, 80, 114, and 117(2)(*a*) of the Constitution. The referral also specifically alleges that Article 4 of the same regional law violates Articles 81(3) and (4), 117(2)(*g*) and (*e*), and 118(1) of the Constitution.

1.1. – As a preliminary matter, the procedural order attached to this Judgment, which declared the intervention inadmissible, is reaffirmed.

1.2. – The challenged regional law is composed of five articles.

Article 1, entitled "National Minorities," provides that the "Veneto people" – which is defined by reference to Articles 1 and 2 of the Statutory Regional Law no. 1 of 12 April 2012 (Statute of Veneto) and includes the Cimbric and Ladin ethno-linguistic communities as well as "communities historically and culturally or linguistically tied to the Veneto people even outside the territory of the region" – is "entitled to the rights" under the Framework Convention for the Protection of National Minorities, completed in Strasbourg on 1 February 1995 and ratified and executed with Law no. 302 of 28 August 1997.

Article 2 establishes that the "law enters into effect with regard to all the areas" provided for by the Framework Convention in compliance with the criteria and methods determined by the Regional Government and "without placing duties on the Region."

Article 3 states describes the "Aggregation of the associations that best represent the entities and associations that work to protect the identity, culture, and language of the Veneto Region, to be constituted by the Regional Government" which will be tasked with "collecting and evaluating the spontaneous declarations" of belonging to the Veneto national minority. The task of overseeing the new body's activities falls to the Regional Government.

Article 4 deals with financial matters, providing that all expenses relating to the implementation of the challenged law in the territory of the region "shall be determined by and at the expense of whichever central or peripheral administration is called upon to implement it […] with potential reimbursement from the central administration."

Lastly, Article 5 sets the time for the law's entry into force as the day after its publication.

1.3. - The President of the Council of Ministers presents three grounds for challenging the full text of Regional Law no. 28 of 2016.

First, the Applicant alleges that Articles 5, 6, and 114 of the Constitution have been violated in that the population in question, as one of the exponential entities that make up the Republic cannot, on this basis alone, be categorized as a "national minority," separate from the majority of the Italian people. The principle of unity and indivisibility enshrined in Articles 5 and 114 of the Constitution allegedly prevents conceiving of the Republic as "a material sum of minorities" and, in any case, the national minorities

cannot overlap with the personal components of the various articulations of the Republic itself, that is, with the Regions.
Second, the Applicant alleges that Articles 2 and 3 of the Constitution have been violated, on the grounds that recognizing a minority is only possible and necessary when, in the absence of such a recognition, the collective identity of that group would be denied, equating a collective situation of marked cultural differences with the condition of the general population. The present case allegedly fails to meet the only circumstances necessary to justify recognition of a Veneto minority.
Third, the President of the Council of Ministers claims that the regional legislator is not authorized to adopt the challenged law, since the implementation of the Framework Convention for the Protection of National Minorities falls under the exclusive legislative competence of the State in the area of "foreign policy and international relations of the State" under Article 117(2)(*a*) of the Constitution. Moreover, the application alleges that the Veneto Region only formally relies on the national legislation ratifying the Framework Convention, while in reality, for all purposes, it has adopted its own particular law of ratification, consequently violating Article 80 of the Constitution.
1.4. – In the event that the challenges concerning Regional Law no. 28 of 2016 in its entirety are rejected, the President of the Council of Ministers separately challenges Article 4 of the same law, alleging that it violates Article 117(2)(*g*) of the Constitution, concerning the "administrative organization of the State," on the grounds that the Regions cannot impose duties on State entities and administrations in addition to those prescribed by state law. The same provision allegedly also violates Article 117(2)(*e*) of the Constitution, relating to the "equalization of financial resources," on the grounds that regional laws cannot provide for "re-balancing the available financial resources between the different levels of government endowed with different financial capacities."
Finally, the challenged provision allegedly does not respect the principles contained in Article 81(3) and (4) and Article 118(1) of the Constitution, given that the challenged regional law does not quantify the expenses nor does it identify the means by which to address them, and, in any case, it illegally imposes new administrative and financial duties on the state administrations.
2. – In its defense, the Region makes a preliminary objection that the application is inadmissible on the grounds that there is no injury stemming from the challenged regional law.
The objection is unfounded.
Veneto Regional Law no. 28 of 2016 characterizes the "Veneto people" as a "national minority" worthy of protection as described by the Framework Convention, and calls upon the central and peripheral administrations to make this protection effective. It also provides for the establishment of a new regional body tasked with collecting and evaluating individual claims of membership in the minority. Contrary to the claims of the Region in its defense, this is not a matter of mere aspirations or wishful thinking, but rather one of precepts with regulatory content. Thus, the objection of inadmissibility on the grounds that the challenged act has not caused an injury must be rejected (for an analogous holding see, most recently, Judgment no. 245 of 2017).
Nor may the contents of the challenged regional law ever be interpreted, as the Defendant suggests, as a mere request that the State effectively implement the Framework Convention for the Protection of National Minorities within the Veneto Region. It bears keeping in mind, first of all, that the State has already ratified and

adopted the Framework Convention with the passage of Law no. 302 of 1997. In any case, the tool available to all the Regions to prompt the intervention of the State in the areas falling in the scope of its competence is certainly not the adoption of a regional law, but rather the legislative faculty to submit national bills to Parliament, which is granted to each regional government by Article 121 of the Constitution. The Region should have made use of this tool if, in fact, it had been pursuing the purpose of prompting the state legislator to adopt further measures under its power to protect minorities, geared toward the "protection and appreciation of living and vital heritages of collective interest" in the territory of the region, as the Veneto Region states in its brief, echoing the words of this Court (Judgment no. 170 of 2010).

3. – On the merits, the questions concerning the constitutionality of all of Regional Law no. 28 of 2016 are well founded.

3.1. – To correctly frame the questions brought before the Court, it is important to start by saying that the protection of minorities – guaranteed by Article 6 of the Constitution, with specific reference to linguistic minorities – is an expression of the fundamental principles of social pluralism (Article 2 of the Constitution) and of formal and substantive equality (Article 3 of the Constitution). These principles shape the entire constitutional system and, for this reason, they are numbered among its supreme principles (Judgments no. 88 of 2011, 159 of 2009, 15 of 1996, and 62 of 1992).

The linguistic dimension referred to in Article 6 of the Constitution, a factor this Court has more frequently been called upon to consider, is "an element […] of fundamental importance" which, together with national, ethnic, religious, and cultural factors, contributes to defining the "individual and collective identity" of persons and groups (Judgments no. 159 of 2009, 15 of 1996, and 261 of 1995). This identity is the object of the protection put in place by the aforementioned constitutional principles, as well as an increasing number of international documents (see, for example, the extensive references contained in Judgments no. 159 of 2009, 15 of 1996, and 62 of 1992). Moreover, in the case law of this Court, the protection of linguistic minorities under Article 6 of the Constitution is considered to be the paradigmatic expression of a broader and more detailed guarantee of identities and cultural pluralism, principles which should be considered applicable to all minorities, whether religious, ethnic, or national, as well as linguistic ones.

3.2. – The defendant Region accurately observes that the protection of minorities calls for "the establishment both of additional rules for implementation, and structures or institutions intended to render them operative in the concrete" (Judgments no. 159 of 2009, 15 of 1996, 62 of 1992, and 28 of 1982), since only these may render the principles proclaimed by Article 6 of the Constitution and the applicable international agreements concretely effective.

With regard to the question of who is entitled to exercise the powers that serve this purpose, this Court first affirmed that only the State legislator is authorized to establish rules for the protection of minorities, based on the non-derogable requirements of unity and equality (Judgments no. 14 of 1965, 128 of 1963, 46 and 1 of 1961, and 32 of 1960). Later, this Court held that regional and provincial legislators were also able to adopt regulations in this area, especially for purposes of guaranteeing and promoting the cultural identity and historical heritages of their communities, but always in full compliance with the relevant laws established by the State legislator (Judgments no. 261 of 1995, 289 of 1987, and 312 of 1983).

More recent constitutional case law has been clear in holding that the protection of minorities resists being rigidly configured in terms of an "area" that can be fit into one of the categories listed in Title V of Part II of the Constitution, and that its implementation by means of ordinary legislation requires both action by the State legislator and the cooperation of regional legislators (Judgment no. 159 of 2009). Indeed, the principles contained in Articles 2, 3, and 6 of the Constitution are always addressed to the "Republic" on the whole and thus involve all its component parts – institutional and social, central and peripheral – in the work of promoting pluralism, equality, and, specifically, the protection of minorities. Therefore, when it comes to legislation, the implementation of these principles demands the necessary concurrence between regional legislation with State-level legislation.

Nevertheless, the task of determining the elements that identify a minority to be protected must fall to the State legislator, because these must necessarily be uniform throughout the entire national territory. Moreover, the State legislator is best positioned to safeguard differences precisely because of its capacity to safeguard commonalities which, therefore, enables it to make pluralism and uniformity compatible (Judgment no. 170 of 2010), including in the implementation of the principle of the unity and indivisibility of the Republic under Article 5 of the Constitution.

The contents of Judgment no. 170 of 2010 (dealing with the protection of linguistic minorities, but extending, for the reasons described above, to the more general protection of minority groups, should be understood within this framework. Under that judgment, regional legislators are not permitted to frame or represent their "own" community, as such, as a "minority," "since it is entirely clear that, as a general matter, the political and administrative articulation of the different territorial entities within one and the same larger, composite, institutional whole cannot be considered to automatically correspond (nor, in the specific sense, be analogously understood as) a division of the 'people,' understood to mean a 'general' community, into its unlikely 'fractions'" (Judgment no. 170 of 2010). Acknowledging that the regional legislator had such power would, indeed, mean introducing an element of fragmentation in the national community, contrary to Articles 2, 3, 5, and 6 of the Constitution.

Therefore, leaving aside any consideration of whether the challenged regional law complies with the specific contents of the Framework Convention for the Protection of National Minorities, to which it refers (which, moreover, chiefly contains a list of rights of an individual nature, and does not establish collective rights of minority groups), the challenged regional law, inasmuch as it characterizes the "Veneto people" as a "national minority" under the meaning of the cited Framework Convention, violates the principles this Court has developed in its case law in this area.

As a result, the full text of Regional Law no. 28 of 2016 must be declared unconstitutional, in reference to Articles 2, 3, 5, and 6 of the Constitution.

3.3.– The other grounds for the challenge are absorbed into this judgment.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) *declares* that the intervention of "*Aggregazione Veneta – Aggregazione delle associazioni maggiormente rappresentative degli enti ed associazioni di tutela della identità, cultura e lingue venete*" and L.P. is inadmissible;

2) *declares* that the law of the Veneto Region no. 28 of 13 December 2016 (Application of the Framework Convention for the Protection of National Minorities) is unconstitutional.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 20 March 2018.

Annexed:
The Order read at the hearing of 20 March 2018

ORDER

Given that the President of the Council of Ministers initiated proceedings challenging the constitutionality (with r.r. no. 16 of 2017) of Veneto Regional Law no. 28 of 13 December 2016 (Application of the Framework Convention for the Protection of National Minorities), with regards to the entire text of the law and its Article 4;
that the association "*Aggregazione Veneta – Aggregazione delle associazioni maggiormente rappresentative degli enti ed associazioni di tutela della identità, cultura e lingua venete*," in the person of its legal representative L.P., jointly with L.P. on his own behalf, filed an intervention on 6 April 2017;
and that the intervening private parties have objected to the Application on the grounds of untimeliness and unfoundedness; and
Considering that constitutional proceedings initiated by direct application are carried out exclusively between subjects endowed with legislative power and do not allow for interventions by subjects not so endowed, to which other forms of legal protection are available where the prerequisites are met (for all see, most recently, Judgment no. 5 of 2018)

ON THESE GROUNDS
THE CONSTITUTIONAL COURT

declares that the intervention of "*Aggregazione Veneta – Aggregazione delle associazioni maggiormente rappresentative degli enti ed associazioni di tutela della identità, cultura e lingua venete*" and L.P. in proceedings initiated by the President of the Council of Ministers with the indicated Application r.r. no. 16 of 2017 is inadmissible.

Signed : Giorgio Lattanzi, President