JUDGMENT N0. 265 YEAR 2016

In this case the Constitutional Court considered an application from the President of the Council of Ministers challenging a Piedmont regional law that limited certain passenger transportation services only to authorized taxi and car service providers (NCC), alleging that it violated Article 117 of the Constitution in two ways: first, by hampering market development in the area of local transportation services and blocking the entrance of innovative transportation services, rendered possible by new technologies, into the market; and, second, by failing to respect EU law and the principle of competition, which allows the market to be conditioned only if strictly necessary and in ways concretely tailored to the pursuit of purposes of legitimate public interest. Concerning the latter alleged violation, the Court held that it was inadmissible, on two independently sufficient grounds: the Application lacked the requisite total correspondence to the resolution by the Council of Ministers that had authorized it; and the Application failed to specify any particular source or provision of EU law or any argument demonstrating that such rules applied to the specific case. Then the Court held that the former question was well-founded, and the challenged provision unconstitutional because it touched on an area relevant to free competition and, as such, came under the exclusive legislative competence of the State. Pointing out that the issue of passenger transportation services summoned by means of electronic applications, facilitated by technological advancements, was one being debated at national and supranational levels all over the world, the Court called on the competent legislator to act swiftly to take the development into account with an update to the 1992 law in force.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 1 of Piedmont Regional Law no. 14 of 6 July 2015, "Urgent measures to prevent operation without permit: Modifications to Regional Law no. 24 of 23 February 1995 (General law on non-scheduled public transportation services by road without set routes)," brought by the President of the Council of Ministers with an application served on 7-9 September 2015, filed with the Court Registrar on 9 April 2015, and registered as no. 83 of the Register of Applications 2015.

Considering the entry of appearance of the Region of Piedmont;

Having heard from Judge rapporteur Marta Cartabia during the public hearing on 8 November 2016;

Having heard from State Counsel [*Avvocato dello Stato*] Chiarina Aiello for the President of the Council of Ministers and Counsel Alessandra Rava for the Region of Piedmont.

[omitted]

Conclusions on points of law

1.– With the application served on 7-9 September 2015 and filed on 10 September 2015 (Register of Applications no. 83 of 2015), the President of the Council of Ministers, represented by the *Avvocatura generale dello Stato* (State Counsel's Office), questions the constitutionality of Article 1 of Piedmont Regional Law no. 14 of 6 July 2015,

establishing "Urgent measures to prevent operation without permit: Modifications to Regional Law no. 24 of 23 February 1995 (General law on non-scheduled public road transportation services)," which adds Article 1-*bis* to the cited Piedmont Regional Law no. 24 of 1995, by virtue of which the service of transporting passengers, which entails summoning, by any means, a motor vehicle with the duty to provide monetary compensation, may only be exercised by subjects who perform taxi services or car services (*noleggio con conducente*, rental of vehicle with driver, hereinafter NCC), or else face the administrative sanctions established for the unauthorized exercise of said services under Articles 85 and 86 of Legislative Decree no. 285 of 30 April 1992 (New road traffic code).

According to the applicant, the questioned provision, with regard to its conformity to the competences of the legislator, violates Article 117, second paragraph, letter e) of the Constitution because, despite conforming to national regulations (Law no. 21 of 15 January 1992, "Framework law for the transportation of persons with public motor vehicle services without set routes"), it prevents market development in the area of non-scheduled local transportation services by road, blocking the entrance into the market of innovative opportunities made possible by new technologies. Moreover, with regard to the substance, the same provision allegedly violates Article 117, first paragraph, of the Constitution, which obliges all legislation, regional legislation included, to respect the principles of EU law and the principle of competition, which allows the market to be conditioned only if strictly necessary and in ways concretely tailored to the pursuit of purposes of legitimate public interest.

2.– The question relating to Article 117, first paragraph, of the Constitution is not admissible, for two independent sets of reasons.

First of all, concerning this point the application lacks the required total correspondence that must exist between the application and the resolution by the Council of Ministers that authorized it (see, among many, Judgments no. 1 of 2016, as well as no. 250 and 153 of 2015), since the resolution makes no mention of Article 117, first paragraph, of the Constitution and, on the contrary, refers to both the "national and EU principles concerning competition" only with reference to Article 117, second paragraph, letter e) of the Constitution.

Second, the European rules are mentioned in exceedingly generic terms (see, among many, Judgments no. 79 of 2014 and no. 199 of 2012): the application fails to specify any particular source or provision; it makes only a general reference to the "principle of competition," which is simply described as the prohibition of disproportionately restrictive rules; it also fails to include any argument concerning the prerequisites for the applicability of European Union rules – which, furthermore, are not fully identified, as we have observed – to the regulatory situation under examination (Judgment no. 63 of 2016).

3.– On the other hand, the objection that the challenge referring to Article 117, second paragraph, letter e) of the Constitution is inadmissible must be rejected due to its vagueness, owing to an inadequate reconstruction of the regulatory framework.

In principle, the Court cannot admit a direct application the motives for which are general, confused, or contradictory as a result of an inadequate reconstruction of the regulatory framework (see, among many, Judgments no. 86 of 2016, as well as Judgments no. 171, 82, and 60 of 2015). It is not sufficient for the direct application to merely identify the issue precisely in its regulatory terms, indicating the constitutional and ordinary laws the definition of the compatibility or incompatibility with which

constitutes the object of the constitutional challenge; it is also necessary for it to develop an argument in support of its allegations, and it is required to do so in terms that are even more rigorous than those in the pending proceedings (see, among many, Judgment no. 131 of 2016). This argument, in turn, may require an analysis of further regulatory provisions, concerning the essential terms of the issue.

In the present case, the President of the Council of Ministers refers to Law no. 21 of 1992, making no specific reference to any particular provisions, nor to the further legislative measures that have taken into consideration the issue of non-scheduled public transportation services. Nevertheless, the central core of the applicant's argument is easily understood: without calling into question the conformity of the challenged regional provision with Law no. 21 of 1992, it alleges that they invade the area of protection of competition, which is reserved to the competence of the State, moreover creating potential interference with any different and innovative exercises of this competence that may be made by the State legislator.

4.– In these terms, the question is well founded.

4.1.– The contents of Article 1 of the Piedmont Regional Law no. 14 of 2015, its official title ("Urgent measures to prevent operation without permit"), the working sessions in which it was prepared (Regional Council of Piedmont, Second Legislative Commission, summary of session no. 41 of 18 June 2015), and the defensive arguments presented by the Piedmont Region univocally demonstrate that the provision at issue was approved in light of the recent emergence of forms of passenger transportation for hire made possible by new technological tools, concerning which problems of noncompliance with present State legislation concerning non-scheduled public transport services were raised from a number of perspectives. The Region's defense focuses on transportation services for hire through information technology applications and, to that end, primarily refers to the decisions of a number of justices of the peace, concerning the administrative sanctions imposed on drivers offering said services, as well as, in the course of the public hearing, the Order of 2 July 2015 of the Tribunal of Milan, special section on the topic of enterprise "A," which held that the managers of certain information technology platforms were using unfair competition practices against traditional vehicle operators in the sector of non-scheduled passenger transportation.

4.2.– In particular, the questioned provision touches on a crucial aspect of the issues under examination, given that it defines the category of subjects who are authorized to operate in the sector of passenger transportation with new methods permitted by information technology platforms, reserving it exclusively to those authorized to provide taxi and NCC services.

The regulatory significance of the questioned provision can be unambiguously inferred, both from the Article's caption, "[e]xclusivity of transport service," and from a plain reading of the text, which provides that "[t]he service of transportation of passengers, which entails summoning, by any means, a motor vehicle with the duty to provide monetary compensation, may only be exercised by those subjects who carry out the service described in Article 1, paragraph 3, letters a) and b)" of Piedmont Regional Law no. 24 of 1995, that is to say taxi and NCC service providers.

4.3.– Defining which subjects are authorized to offer the relevant types of services is crucial for the purpose of configuring a given sector of economic activity. It involves making a choice that imposes a limit on the freedom of individual economic initiative and affects the competition between economic actors in the relevant market. Thus, this falls entirely under the ample notion of competition found in paragraph 2, letter e) of

Article 117 of the Constitution, which includes (see, among many, Judgment no. 125 of 2014) both regulatory measures that have a significant impact on competition, including legislative measures of a specifically protective nature, which oppose the actions and practices of businesses that are damaging to the competitive structure of markets, as well as the affirmative measures intended to open a market or bolster its openness, reducing the obligations associated with the way in which economic activity may be exercised, particularly barriers to entry into the market and obstacles preventing the free expression of entrepreneurial ability and competition between businesses.

Moreover, with specific regard to the transportation of passengers through NCC services (involving buses), this Court recently explained that it falls under the exclusive legislative competence of the State to protect open competition to define the balancing points between the free exercise of these types of activities and the public interests that interfere with them (Judgment no. 30 of 2016).

This is, in and of itself, a sufficient indication of the well-foundedness of the challenge to Article 1 of Piedmont Regional Law no. 14 of 2015.

5.– It is well known that, with regard to the structure put in place by current State legislation, the essential aspects of which have been fixed since 1992, technological evolution, and the economic and social changes that have resulted from it, raise issues that have been broadly discussed not only in courts, but also within agencies and political institutions, due to the plurality of the interests involved and the new issues arising from their intersection. Moreover, concerning certain modes of transportation by summons through information technology applications, questions similar to the ones at issue before this Court are being presently debated by the European Union, many of its Member States, and other countries throughout the world. In the context of such a lively debate, concerning phenomena whose spread is largely enabled by new technologies, it is understandable that, particularly in the metropolitan areas that are most directly involved, the question of a clear and updated legal framework arises.

It is, therefore, preferable that the competent legislator promptly address these new needs for regulation.

Nevertheless, keeping in mind the object of the present judgment and its limits, this Court only makes the pure and simple observation that the challenged regional provision touches on an area relevant to free competition, and, as such, comes under the exclusive legislative competence of the State, which, moreover, reflects the (at the least) national dimension of the interests involved.

6.– It is therefore necessary to declare the challenged regional provision to be unconstitutional for its violation of Article 117, second paragraph, letter e) of the Constitution.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) *declares* that Article 1 of Piedmont Regional Law no. 14 of 6 July 2015, "Urgent measures to prevent operation without permit: Modifications to Regional Law no. 24 of 23 February 1995 (General law on non-scheduled public transportation services)" to be unconstitutional;

2) *declares* the question of the constitutionality of Article 1 of Piedmont Regional Law no. 14 of 2015, raised by the President of the Council of Ministers with the application indicated in the headnote in reference to Article 117, first paragraph, of the Constitution, to be inadmissible.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 8 November 2016.