JUDGMENT NO. 32 YEAR 2014

In this case the Court heard a referral order questioning the constitutionality of provisions introduced into the text of a decree-law upon conversion that bore no relationship with the area of law or purpose of the decree-law as issued. The contested legislation abolished the difference between the treatment of hard and soft drugs under the criminal law, whereas the decree-law issued concerned the security and financing of the Winter Olympics, the functioning of the Interior Ministry administration and the recovery of re-offending drug addicts. In this case the Court held that there was no functional relationship, and in addition, the fact that the government had associated the approval of the legislation with a vote of confidence had prevented an adequate parliamentary debate from being conducted, and thus struck down the legislation as unconstitutional.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 4-bis and 4-vicies ter(2)(a) and (3)(a), no. 6 of Decree-Law no. 272 of 30 December 2005 (Urgent measures to guarantee the safety and financing of the upcoming Winter Olympics, and the functioning of the Interior Ministry administration. Provisions to promote the recovery of re-offending drug addicts and amendments to the consolidated text of laws governing narcotic and psychotropic substances, and the prevention, cure and rehabilitation of the relative states of drug addiction, enacted pursuant to Presidential Decree no. 309 of 9 October 1990), converted with amendments into Article 1(1) of Law no. 49 of 21 February 2006, initiated by the Third Criminal Division of the Court of Cassation by the referral order of 11 June 2013, registered as no. 227 in the Register of Referral Orders 2013 and published in the Official Journal of the Republic no. 44, first special series 2013.

Considering the entry of appearance by M.V. and the intervention by the President of the Council of Ministers;

having heard the judge rapporteur Marta Cartabia at the public hearing of 11 February 2014;

having heard Counsel Michela Porcile and Counsel Giovanni Maria Flick for M.V. and the State Counsel [*Avvocato dello Stato*] Massimo Giannuzzi for the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.– The Third Criminal Division of the Court of Cassation has raised questions concerning the constitutionality of Articles 4-bis and 4-vicies ter(2)(a) and (3)(a), no. 6 of Decree-Law no. 272 of 30 December 2005 (Urgent measures to guarantee the safety and financing of the upcoming Winter Olympics, and the functioning of the Administration of Internal Affairs. Provisions to promote the recovery of re-offending drug addicts and amendments to the consolidated text of laws governing narcotic and psychotropic substances, and the prevention, cure and rehabilitation of the relative states of drug addiction, enacted pursuant to Presidential Decree no. 309 of 9 October 1990), converted with amendments into Article 1(1) of Law no 49 of 21 February 2006, with reference to Article 77(2) of the Constitution.

In the opinion of the referring court, the contested provisions, which were introduced upon conversion into law, fail to satisfy the prerequisite of homogeneity with the original provisions of the Decree-Law. That prerequisite is in fact required under Article 77(2) of the Constitution which, according to the settled case law of the Constitutional Court (see Judgment no. 22 of 2012), requires that there must be a functional inter-relationship between the decree-law adopted by the government and the conversion law, which is subject to a special simplified approval procedure which differs from the ordinary procedure. The conversion law thus amounts to a law that is "specialised and intended for specific function", which cannot incorporate any additional content, even in relation to governmental measures that initially contained heterogeneous provisions (see Order no. 34 of 2013), but may only contain provisions that are consistent with the original content of the decree-law, either in objective and substantive terms or from a functional and purposive viewpoint.

The referring court observed that in this case, the provisions originally contained in the Decree-Law concerned the security and financing of the Winter Olympics (which were due to be held shortly afterwards in Turin), the functioning of the Administration

of Internal Affairs and the recovery of re-offending drug addicts. By contrast, the contested provisions, which were only introduced upon conversion into law, are claimed not to be related in any way to the former as they are aimed at implementing a radical and complex reform of the consolidated text of laws on narcotic substances and the punishment of the offences provided for thereunder.

In particular, the Court of Cassation noted that Article 4-bis – which amended Article 73 of Presidential Decree no. 309 of 9 October 1990 (Consolidated text of laws governing narcotic and psychotropic substances, and the prevention, cure and rehabilitation of the relative states of drug addiction) – put in place an identical framework of rules applicable to violations involving all narcotic substances, thereby harmonising punishments that had previously been different depending upon whether the offences involved narcotic or psychotropic substances included in tables II and IV (known as "soft drugs") or those included in tables I and III (known as "hard drugs"): in fact, Article 4-vicies ter of the conversion law also in parallel amended the system of tables previously put in place by Articles 13 and 14 of Presidential Decree no. 309 of 1990, incorporating into the new table I narcotic substances that had previously been split into different groups.

As a result of these amendments, the punishments for offences involving so-called "soft drugs", including in particular derivatives of cannabis, which had previously attracted punishment to a term of imprisonment of between two and six years and a fine of between EUR 5,164 and EUR 77,468, were increased to a term of imprisonment of between six and twenty years and a fine of between EUR 26,000 and EUR 260,000.

Considering the profoundly different content, aim and rationale of the Decree-Law compared to the new provisions introduced upon conversion, the referring court considers that Article 77(2) of the Constitution has been violated due to the failure to satisfy the prerequisite of homogeneity, that is, the functional interrelationship required under that Article of the Constitution.

The Court of Cassation has also raised a question in the alternative concerning the constitutionality of Articles 4-bis and 4-vicies ter on the grounds that they do not fulfil the prerequisite of necessity and urgency required under Article 77(2) of the Constitution. According to the referring courts in fact, in the event that the Constitutional Court were to reject the arguments concerning the lack of homogeneity

of the contested provisions having regard to the content and rationale of the Decree-Law, and were it to conclude that they were not entirely heterogeneous when compared to the Decree-Law, since the conversion law cannot remedy defects within the Decree (see Judgments no. 128 of 2008 and no. 171 of 2007), the introduction upon conversion of provisions with no link to the grounds for necessity and urgency legitimising governmental action – which evidently do not obtain in this case – could not be regarded as legitimate.

2.– As a preliminary matter, it must be observed that – without prejudice to the admissibility of the intervention by that party as a defendant in the case before the referring court, who is thus a party to the proceedings (see *inter alia* Judgments no. 304 of 2011, no. 138 of 2010 and no. 263 of 2009) – the arguments submitted by the private party introduce grounds for unconstitutionality that were not raised in the referral order, with the aim of broadening the *thema decidendum*. In fact, the entry of appearance avers a twofold violation of EU law in relation both to Council Framework Decision no. 2004/757/JHA of 25 October 2004 (Framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking), as well as Article 49(3) of the Charter of Fundamental Rights of the European Union.

It must be pointed out however that this line of argumentation and this objection have already been ruled manifestly unfounded by the Court of Cassation and that the examination of this issue cannot be upheld as admissible within these interlocutory proceedings as the private party that has entered an appearance cannot extend the limits of the question as set forth in the referral order from the referring court (see *inter alia*, Judgments no. 56 of 2009, no. 86 of 2008 and no. 174 of 2003). The above applies irrespective of the failure to state the provisions of the constitution with reference to which EU law is significant in these proceedings.

3.– As regards the admissibility of the questions raised by the Court of Cassation, it is noted that the State Counsel has averred that they are not relevant as the referring court failed to consider the possibility of tailoring the punishment to the different types of narcotic substance by applying Article 73(5) of Presidential Decree no. 309 of 1990, which provides for more lenient penalties for minor offences.

The objection is unfounded as the Court of Cassation expressly stated in the text of its referral order that the Trento Court of Appeal had provided appropriate, specific and adequate justification as to why the offence cannot be classified as minor in this case for the purposes of Article 73(5).

It need hardly be added that, in the light of the considerations set out above, it is evident that the amendments made to Article 73(5) of Presidential Decree no. 309 of 1990 by Article 2 of Decree-Law no. 146 of 23 December 2013 (Urgent measures to protect the fundamental rights of prisoners and on the controlled reduction of the prison population), converted with amendments into Article 1(1) of Law no. 10 of 21 February 2014, cannot have any impact on the questions raised. As this amounts to subsequently enacted legislation relating to provisions not applicable in the proceedings before the referring court, it is not considered necessary to remit the proceedings to the referring court as the subsequently enacted amendments relate to a provision that has already been found not to apply in this case, and which thus cannot have any effect on the specific procedural deficiency objected to by the referring court relating to the adoption of the conversion Law no. 49 of 2006 on the grounds that it contained different provisions. Moreover, the effects of these constitutionality proceedings do not relate in any way to the aforementioned amendment ordered by Decree-Law no. 146 of 2013, as it was enacted after the contested provision and is independent from it.

4.– On the merits, the question concerning the constitutionality of Articles 4-bis and 4-vicies ter of Decree-Law no. 272 of 2005, as converted into Article 1(1) of Law no. 49 of 2006, is well founded with reference to Article 77(2) of the Constitution on the grounds that the provisions of the Decree-Law are not homogeneous with, and thus have no functional causal connection with, the contested provisions introduced by the conversion law.

4.1.– In this regard it is necessary to refer to the case law of this Court, and in particular to Judgment no. 22 of 2012 and Order no. 34 of 2013, in which it is clarified that the content of a conversion law must be homogeneous with that of the respective decree-law. This is due not only to the rules of proper legislative technique but also to Article 77(2) of the Constitution itself, which provides for “a functional inter-relationship between the decree-law adopted by the government and the conversion law,

which is subject to a special approval procedure different from the ordinary procedure" (see Judgment no. 22 of 2012).

Conversion laws – which the Chambers must be convened to approve, even if they have been dissolved, within five days of the tabling of the relative draft legislation (see Article 77(2) of the Constitution) – are governed by a simplified parliamentary procedure and subject to particularly strict time-scales, which are justified in the light of their status as legislation aimed at stabilising a measure with the force of law, having been issued provisionally by the government and remaining valid for a brief and limited period of time.

The limits on the amenability of a decree-law to amendment result from its status as legislation with circumscribed competence. The conversion law cannot therefore incorporate any further content, as is moreover prescribed also by the parliamentary rules of procedure (see Article 96-bis of Rules of Procedure of the Chamber of Deputies and Article 97 of the Rules of Procedure of the Senate of the Republic, as interpreted by the House Rules Committee in its opinion of 8 November 1984). By contrast, the simplified procedure could be exploited for reasons which have nothing to do with those justifying the measure with the force of law, to the detriment of the ordinary dynamics of parliamentary debate. Thus, the inclusion of amendments and additional articles that are not pertinent to the object or purposes of the Decree-Law give rise to a deficiency within the conversion law in this regard.

It is important to stress that the requirement that the Decree-Law be consistent with the conversion law does not as a general matter prevent the Chambers from making amendments to the text of the decree-law, modifying the provisions contained in it on the basis of the conclusions reached within parliamentary debate; this serves solely to avert any misuse of that power, which occurs whenever any draft legislation is introduced in the formal guise of an amendment, but which seeks to enact entirely different provisions, thereby severing the essential link between the Decree-Law and the conversion law, which is presupposed by the sequence laid down by Article 77(2) of the Constitution.

This also applies in cases involving governmental measures that have varying content from the outset, as occurred in this case. For these types of measure – which are not in themselves immune from problems with regard to the prerequisite of

homogeneity (see Judgment no. 22 of 2012) – any further provision introduced upon conversion must be strictly related to one of the issues already regulated by the decree-law or the predominant rationale of the original measure considered as a whole.

If the conversion law severs that link it will result in a procedural deficiency, whilst it is obvious that the matters regulated by the amendments note related to the decree-law may be covered by separate draft legislation, which will then be debated in the ordinary manner prescribed by Article 72 of the Constitution.

Thus, the heterogeneous nature of the provisions introduced upon conversion results in a procedural deficiency within that legislation which, as for any other deficiency within the law, it falls to this Court alone to ascertain. The procedural deficiency is peculiar in that, due to its very nature, it can only be established through an examination of the substantive content of the individual provisions introduced during the parliamentary stage, when compared with the original decree-law. Following such an examination, any provisions that have intruded into the legislation will be affected by a deficiency in terms of their formulation, due to their violation of Article 77 of the Constitution, whilst all parts of the measure that are substantially aligned with the original decree-law in terms of subject matter or purpose will be unaffected.

4.2.– In the present case therefore, the Court has been called upon to ascertain whether the content of the contested provision introduced upon conversion is functionally related to Decree-Law no. 272 of 2005, in order to assess whether the power of conversion provided for under Article 77(2) of the Constitution was correctly exercised by the Houses of Parliament.

To that effect, it is noted that the provisions originally contained in the Decree-Law concern the hiring of personnel by the national police [*Polizia di Stato*] (Article 1), measures to ensure the proper functioning of the Civil Administration of Internal Affairs (Article 2), financing for the Winter Olympics (Article 3), the recovery of prisoners addicted to drugs (Article 4) and the voting rights of Italians resident abroad (Article 5).

It may easily be noted, and was moreover pointed out by the State Counsel, that the only part of the legislation to which the contested provisions introduced by the conversion law could hypothetically relate is Article 4, the aim of which was to prevent

the interruption of recovery programmes for specific classes of re-offending drug addicts.

Such persons had in fact been subject to the – at the time – very recent Law no. 251 of 5 December 2005 (Amendments to the Criminal Code and to Law no. 354 of 26 July 1975 on mitigating circumstances, re-offending, assessment of the subsistence of constituent elements of the offence for re-offenders, usury and time barring), known as the "ex Cirielli Law", Article 8 of which introduced Article 94-bis into Presidential Decree no. 309 of 1990, thereby reducing from four to three years the maximum penalty up to which re-offenders were eligible for probation in order to undergo a programme of treatment to recover from drug addiction; moreover, Article 9 of the Law introduced letter c into Article 656(9) of the Code of Criminal Procedure, providing that sentences could not be suspended for re-offenders, including drug addicts undergoing a programme of treatment to recover from drug addiction.

Having concluded that there was an extraordinary and urgent need to guarantee the efficacy of the recovery programmes mentioned also for re-offenders, the government therefore enacted Article 4 of Decree-Law no. 272 of 2005 which thus repealed Article 94-bis and amended Article 656(9)(c) of the Code of Criminal Procedure, reintroducing the option of suspended sentences for drug addicts undergoing a programme of treatment in accordance with the conditions previously applicable.

Article 4 thus contains provisions of a procedural nature concerning the manner in which sentences are enforced, the aim of which is to prevent the interruption of programmes to recover from drug addiction. They thus focus on the drug addict as an individual and pursue a specific and well defined goal: his or her recovery from the use of drugs, irrespective of the offence committed, and whether it is drug-related or not.

The provisions contained in Articles 4-bis and 4-vicies ter, which were introduced upon conversion into law, do not have this effect, as they relate to narcotics and not the drug addict as an individual. Moreover, they are provisions of a substantive and not a procedural nature, as they make provision in relation to drug offences.

They are thus provisions that are different in terms of their subject matter and their purpose, which means that the contested provisions, which were added upon conversion, bear no relation to the content and purpose of the Decree-Law into which they were introduced.

4.3.– The symptomatic aspects which point towards that conclusion include the fact that Parliament itself was forced to amend the original title of the Decree-Law upon conversion, expanding it by adding the phrase "and amendments to the consolidated text of laws governing narcotic and psychotropic substances, and the prevention, cure and rehabilitation of the relative states of drug addiction, enacted pursuant to Presidential Decree no. 309 of 9 October 1990", thereby covering the area of law to which the provisions introduced in the conversion law related. This is an indication of the fact that the legislator itself concluded that the changes introduced by the conversion law could not be classed under the matters already governed by the Decree-Law as stated in its original title.

On the other hand, the opinion delivered by the Legislation Committee of the Chamber of Deputies (in its session of 1 February 2006) concerning bill C. 6297 on the conversion into law of Decree-Law no. 272 of 2005 is no less significant. That opinion states that the "heterogeneous nature of the contents of the bill – which was moreover already a feature of its original formulation within 5 articles […] – was significantly increased following the inclusion during the conversion procedure before the Senate of a large number of further provisions (contained in 25 new articles) concerning principally, although not exclusively, measures to combat the dissemination of narcotics, taken over from draft legislation which had been before the Senate for some time (S. 2953)".

4.4.– Moreover, the non-homogeneous nature of the contested provisions vis-à-vis the Decree-Law to be converted is absolutely evident, also in the light of the scope of the changes made by the contested Articles 4-bis and 4-vicies ter and the delicacy and complexity of the area of law regulated by them.

In fact, whilst they are contained in only two articles, the amendments enacted bring about a systematic change to the rules governing narcotics offences, with regard both to the scope of the offences and to punishment, the fulcrum of which consists in the harmonisation of offences relating to so-called "hard" drugs with those relating to so-called "soft" drugs, which had however been treated differently under the previous legislation.

Such a far-reaching and incisive reform, involving delicate choices of a political, legal and scientific nature, would have required an adequate parliamentary debate,

which would only have been possible had the ordinary procedures applicable to the enactment of legislation under Article 72 of the Constitution been followed.

It should be added that a legislative enactment on such a scale – which, not by chance, formed part of a self-standing bill S. 2953 which had been pending before the Senate awaiting approval for three years – by contrast ended up being hastily incorporated into a "mass amendment" tabled by the government, which replaced the entire text of the draft conversion law, was tabled directly in the Senate Assembly and was associated by the government with a vote of confidence (in the session of 25 January 2006), thereby precluding a specific discussion and appropriate deliberation regarding the individual aspects of the rules introduced in that manner.

Moreover, as a result of the "blocked vote" brought about by the confidence vote under applicable parliamentary procedures, it was also not possible to make any change to the text tabled by the government as no amendments, sub-amendments or additional articles may be tabled to motions associated with a confidence vote, and it is also not permitted to vote separately on its constituent parts.

In addition, it was not possible to remedy this shortcoming during the second and definitive reading before the other House of Parliament, given that also in this instance, during the session of 6 February 2006, the government associated the vote on the text approved by the Senate with a vote of confidence, thereby obliging the Assembly of the Chamber of Deputies to vote on it "en masse".

It must also be noted that the tabling by the government of a mass amendment to the draft conversion law did not enable the Senate committees to examine the draft legislation and draw up a report as required under Article 72(1) of the Constitution.

Moreover, the impending end of the legislature (formalised by Presidential Decree no. 32 of 11 February 2006 on the "Dissolution of the Senate of the Republic and the Chamber of Deputies") and the absolutely urgent need to convert into law certain provisions contained in the original Decree-Law, including those concerning the security and financing of the 2006 Turin Winter Olympics, *de facto* prevented the President from exercising his power to request that legislation be reconsidered under Article 74 of the Constitution, as he besides does not have the power to make a partial referral for reconsideration.

Findings to this effect have in fact been made in repeated interventions by the President of the Republic – letter sent on 27 December 2013 to the Presidents of the Senate and the Chamber of Deputies concerning the conduct of the parliamentary procedure for the conversion into law of the so-called "save Rome" Decree-Law (Decree-Law no. 126 of 31 October 2013); letter sent on 23 February 2012 to the Presidents of the Senate and the Chamber of Deputies; letter sent on 22 February 2011 to the Presidents of the Senate and the Chamber of Deputies; message sent to the Houses of Parliament on 29 March 2002) – and recently also by the President of the Senate (announcement by the President of the Senate sent on 28 December 2013), all of which interventions were intended to highlight the abuse of the decree-law as a legislative instrument and, in particular, the improper use of conversion laws, in breach of Article 77(2) of the Constitution.

Accordingly, precisely in view of the circumstances of this case, it may clearly be understood how compliance with the requirement of homogeneity and functional interrelatedness between the provisions of the Decree-Law and those of the conversion law, as required under Article 77(2) of the Constitution, is of fundamental importance in order to ensure that the institutional relations between the government, Parliament and the President of the Republic remain within constitutional limits with regard to the enactment of legislation.

4.5.– To conclude on this point, it must be noted that in the case brought before the Court for examination, there are various parallel indications which make it clear that there is no functional interrelationship between the contested provisions and the original provisions of the Decree-Law.

Absent the necessary logical and legal link required under Article 77(2) of the Constitution, the contested Articles 4-bis and 4-vicies ter must be deemed to have been adopted notwithstanding the failure to fulfil the prerequisites for the legitimate exercise of the legislative power of conversion, and are thus unconstitutional.

As the deficiency in question is of a procedural nature, which moreover – as noted above – is only apparent from an analysis of the legislative content introduced upon conversion, the declaration of unconstitutionality applies to the two contested provisions in their entirety and those two provisions alone, although this is without prejudice to any

assessments that may be made by this Court in relation to any further challenges concerning other provisions of the same Law.

5.– In consideration of the particular procedural deficiency ascertained by this Court, due to the failure to comply with the prerequisites laid down by Article 77(2) of the Constitution, it must be concluded that, after the contested provisions have been struck down, Article 73 of Presidential Decree no. 309 of 1990 and the relative tables will take effect once again in the version in force prior to the amendments made by the contested provisions, as they were never validly repealed.

The power of conversion cannot in fact be regarded as a mere manifestation of the ordinary legislative power of the Chambers of Parliament, as the conversion law is "specialised and intended for a specific function" (see Judgment no. 22 of 2012 and Order no. 34 of 2013). It is premised on the existence of a decree to be converted, and must reflect the legislative content of that decree; for this reason it is not voted on article by article, but is in general comprised of one single article on which a vote is taken – subject to any amendments tabled, within the limits mentioned above – under the terms of an ad hoc procedure (Article 96-bis of the Rules of Procedure of the Chamber of Deputies; Article 78 of the Rules of Procedure of the Senate), which must necessarily be concluded within sixty days, failing which the decree-law will cease to have effect *ex tunc*. Where the Houses of Parliament do not respect the typical function of the conversion law, using the special procedure provided for in relation to it in order to pursue ulterior goals in addition to the conversion of the decree-law, such actions will be *ultra vires*.

In these cases, according to the case law of this Court, the act affected by a fundamental deficiency with regard to its formation is incapable of changing the legal order, and thus also of repealing the previous legislation (see Judgments no. 123 of 2011 and no. 361 of 2010). In this sense, the situation is equivalent to that involving the annulment of legislative provisions enacted without the requisite authority, in which cases this Court has already acknowledged that the previous legislation will apply as a consequence of the declaration of unconstitutionality (see Judgments no. 5 of 2014 and no. 162 of 2012), on the grounds that, due to the fundamental procedural flaw affecting it, the act is incapable of having a repealing effect, or even of amending or replacing legislation.

It must therefore be concluded that the provisions governing narcotics offences contained in Presidential Decree no. 309 of 1990, as in force prior to the 2006 amendment, will apply once again, as they were not validly repealed.

It need hardly be added that conduct involving the illegal trade in drugs must be criminalised, as required under EU law. More specifically, Framework Decision no. 2004/757/JHA of 2004 lays down minimum rules on the constituent elements of offences and the sanctions applicable to the illegal trafficking of narcotics, requiring that all Member States punish certain intentional conduct when committed without right, subject to exceptions for personal consumption as defined under the respective national laws. Thus, were the rules on punishment contained in Presidential Decree no. 309 of 1990 not to return into force, certain types of conduct covered by a supranational requirement of criminalisation would not be punished. This would amount to a violation of EU law, which Italy is required to abide by under Articles 11 and 117(1) of the Constitution.

6.– Thus, having established that once the contested provisions have been declared unconstitutional, Article 73 of Presidential Decree no. 309 of 1990, as in force prior to the amendments introduced by the contested provisions, will return into force, it must be noted that, whilst it provides for less severe punishment compared to the repealed provisions applicable to offences involving so-called "soft drugs" (punished by a term of imprisonment of between two and six years and a fine, rather than a term of imprisonment of between six and twenty years and a fine), it provides vice versa for more severe penalties for offences involving so-called "hard drugs" (punished by a term of imprisonment of between eight and twenty years, rather than a term of between six and twenty years).

It is important to reiterate that, according to the case law of this Court since Judgment no. 148 of 1983, it has been concluded that any effects to the detriment of the defendant of a decision by the Court will not preclude an examination of the merits of the contested legislation, subject to the proviso that the Court is prohibited (in accordance with the principle that the criminal law may only be amended by primary legislation laid down by Article 25 of the Constitution) from "creating new rules of criminal law" (see Judgment no. 394 of 2006), whether these relate to offences or punishment. Such an eventuality does not obtain in these proceedings as the Court's

decision does nothing other than remove the obstacles on the application of provisions laid down by the legislator.

As regards the effects on the individual defendants, it will be for the ordinary court, as the body charged with interpreting the law, to ensure that the declaration of unconstitutionality does not have detrimental effects on their legal position, taking account of the principles applicable to the enactment of criminal legislation at different points in time under Article 2 of the Criminal Code, which implies that the rule of criminal law that is most favourable to the defendant must apply.

Similarly, the ordinary courts will have the task of identifying which rules enacted after the contested provisions will no longer be applicable on the grounds that they no longer have any object (as they refer to provisions no longer in force) and those that by contrast must continue to apply as they are not premised on the validity of Articles 4-bis and 4-vicies ter, to which this decision relates.

7.– The above decision renders moot the further question raised in the alternative by the Court of Cassation.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

declares that Articles 4-bis and 4-vicies ter of Decree-Law no. 272 of 30 December 2005 (Urgent measures to guarantee the safety and financing of the upcoming Winter Olympics, and the functioning of the Interior Ministry administration. Provisions to promote the recovery of re-offending drug addicts and amendments to the consolidated text of laws governing narcotic and psychotropic substances, and the prevention, cure and rehabilitation of the relative states of drug addiction, enacted pursuant to Presidential Decree no. 309 of 9 October 1990), converted with amendments into Article 1(1) of Law no 49 of 21 February 2006, are unconstitutional.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 12 February 2014.