Corte costituzionale

JUDGMENT NO. 104 OF 2007

Franco BILE, President

Sabino CASSESE, Author of the Judgment

JUDGMENT No. 104 YEAR 2007

In this case the Court considered various appeals from the Council of State relating to proceedings in which certain directors general within the health service had challenge legislation providing for their automatic "non-confirmation" (i.e. dismissal) within 90 days of the new regional cabinet taking office. The Court held that the contested provisions were unconstitutional insofar as they violated the principles of impartiality and the proper functioning of the public administration required that the post of director general be accompanied by guarantees, namely that appointments be made on the basis, amongst other things, of their aptitudes and professional capacities and that any early termination occur pursuant to an evaluation of the results obtained under which the director was guaranteed the right to a fair hearing. The Court therefore ruled the contested provisions unconstitutional.

THE CONSTITUTIONAL COURT

composed of: President: Franco BILE; Judges: Giovanni Maria FLICK, Francesco AMIRANTE, Ugo DE SIERVO, Romano VACCARELLA, Paolo MADDALENA, Alfio FINOCCHIARO, Alfonso QUARANTA, Franco GALLO, Luigi MAZZELLA, Gaetano SILVESTRI, Sabino CASSESE, Maria Rita SAULLE, Giuseppe TESAURO, Paolo Maria NAPOLITANO,

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 96 of Sicily Region law No. 2 of 26 March 2002 (Programmatic and financial provisions for the year 2002); of the combined provisions of Article 55(4) of Lazio Region law No. 1 of 11 November 2004 (New Statute of the Lazio Region) and Article 71(1), (3) and (4)(a) of Lazio Region law No. 9 of 17 February 2005 (Regional finance law for the financial year 2005); of the combined provisions of Article 53(2) and/or Article 55(4) of Lazio Region law No. 1 of 11 November 2004 and Article 71(1)(3) and (4)(a) of Lazio Region law No. 9 of 17 February 2005; of Article 43(1) and (2) of Lazio Region law No. 4 of 28 April 2006,

containing the "Regional finance law for financial year 2006 (Article 11 of regional law no. 25 of 20 November 2001)"; respectively commenced by the *Tribunale di Palermo* pursuant to a referral order of 19 October 2004; by the Council of State, pursuant to six referral orders of 19 October 2005 and a referral order of 7 February 2006; by the Regional Administrative Tribunal [TAR] for Lazio pursuant to the referral order of 3 July 2006; registered as Nos. 589 in the Register of Orders 2005 and 9, 10, 11, 12, 13, 14, 237 and 431 in the Register of Orders 2006 and published in the *Official Journal of the Republic* No. 52, first special series 2005, and No. 4, 29, 43, first special series 2006.

Considering the entries of appearance by Patrizio Valeri and Domenico Alessio, Giuseppina Gabriele, Benito Battigaglia and Carlo Mirabella, Ernesto Petti, Adolfo Pipino, Pietro Grasso and Luigi Macchitella, Giancarlo Zotti, Franco Condò, Rosaria Marino, the Lazio Region and the Sicily Region;

having heard the Judge Rapporteur Sabino Cassese in the public hearing of 6 March 2007 and in chambers on 7 March 2007;

having heard Francesco Castiello and Mario Sanino, Barristers, for Patrizio Valeri and Domenico Alessio; Rosaria Russo Valentini, Barrister, for Giuseppina Gabriele, Adolfo Pipino, Pietro Grasso and Luigi Macchitella; Alfredo Zaza d'Aulisio, Barrister, for Benito Battigaglia and Carlo Mirabella; Corrado De Simone, Barrister, for Ernesto Petti; Diego Perifano, Barrister, for Giancarlo Zotti; Francesco Castiello and Guido De Santis, Barristers, for Franco Condò; Gennaro Terracciano and Luca Di Raimondo, Barristers, for Lazio Region.

The facts of the case

1. - The Council of State raised, pursuant to six orders (orders Nos. 9-14 of 2006), the question of the constitutionality of the "combined provisions" of Article 71(1), (3) and (4)(a) of Lazio Region law No. 9 of 17 February 2005 (Regional finance law for the financial year 2005) and Article 55(4) of Lazio Region law No. 1 of 11 November 2004 (New Statute of the Lazio Region), with reference to Articles 97, 32, 117(3), last sentence, and 117(2)(l) of the Constitution.

1.1. - The question arose in appeal proceedings against the rulings in which the Regional Administrative Tribunal for Lazio rejected the applications for interim

injunctions against the measures by which Lazio Region had terminated the appellants' appointments as directors general of local health authorities or hospital trusts and appointed new directors general; in doing so the region had applied the "combined provisions" of Article 55(4) of the Statute of the Lazio Region and Article 71 of regional law No. 9 of 2005.

Article 55 ("Dependant Public Bodies") of the Regional Statute – having first provided that a regional law may create "public bodies dependant on the Region for the exercise of administrative, technical or specialist functions falling under the competence of the region" (sub-section 1) – provides that "[the] appointments of members of the executive organs shall cease on the ninetieth day after the first meeting of the [regional] cabinet, unless they are re-confirmed according to the same procedures provided for their appointment" (sub-section 4).

Under the terms of Article 71 of regional law No. 9 of 2005 ("Provisions governing the first implementation of Statute provisions concerning appointments and the conferral of responsibility in regional authorities and dependant bodies"), "pending the adaptation of regional legislation" with the Statute, the provisions of the Regional Statute (including Article 55(4)) "concerning the resolution of the appointments of members of the executive organs of dependant public bodies and the statutory termination of directorship appointments with the Region and dependant public bodies" shall apply "notwithstanding any provisions contained in the specific laws governing such matters" (sub-section 1), "following the first renewal after the entry into force of the Statute of the reference organs of the region or of dependant public bodies" (sub-section 3); in particular, in order to ensure the complete application of the provisions (*inter alia*) of Article 55(4) of the Statute, "where a position on an executive organ in a dependant public body, including financial bodies, at the time of the Statute's entry into force is covered by an employment relationship governed by private law, the duration of the contract shall be adapted *de iure* to the time limits provided for under Article 55(4)" (sub-section 4(a)), providing – as mentioned above – that "[the] appointments of the members of the executive organs shall cease on the ninetieth day after the first meeting of the [regional] cabinet, unless they are re-confirmed according to the same procedures provided for their appointment".

The referring court does not doubt that the disputes fall under the jurisdiction of the administrative courts, given that the contested measures "are a clear manifestation of an extraordinary power conferred on the regional administration concerning the organisation of bodies dependant on it on the basis of a discretionary assessment of the fulfilment of the legal prerequisites, in relation to which only legitimate interests in its proper exercised may be exercised".

On the question of relevance, and in contrast to the submissions of the appellants – that the local health authorities are "autonomous bodies" rather than "dependant" on the Region, with the result that the regional provisions mentioned above cannot apply to them – the court finds that the local health authorities are regionally controlled bodies, with the result that the contested provisions apply.

Having found that the appellants' applications for interim injunctions did not satisfy the requirement of a *prima facie* case and that the interim appeal should be dismissed, the referring court considers that the legislation on which the measures appealed before the TAR for Lazio are based, and which it should therefore apply in order to dismiss the interim appeal, may be unconstitutional on several grounds.

In the first place, in providing that Article 55 of the Regional Statute shall apply "notwithstanding the provisions contained in specific laws governing such matters" "following the first renewal after the entry into force of the new Statute of the reference organs of the region", Article 71 of regional law No. 9 of 2005 is stated to associate the termination of the appointment with the new regional cabinet, "with the clear goal of allowing the political forces represented in the new cabinet to replace the persons in charge of the executive organs". This is said to result in "an interruption in the continuity of administrative action carried on by the occupant of the post, not as a result of any assessment of the quality of this [action], but rather the extraneous event of the formation of a new cabinet following the electoral result", which means that the regional legislation breaches the constitutional principles of the proper conduct and impartiality of the public administration required under Article 97 of the Constitution.

Moreover, Article 55(4) of the Regional Statute is, in the absence of any "performance assessment (cf. judgment No. 193 of 16 May 2002 of the Constitutional Court), [in any case likely to have an impact on] the stability and autonomy which enables directors to

ensure that their actions comply with the above principles", due to the manner in which it was implemented by Article 71 of regional law No. 9 of 2005.

Since the activity of the director general of a local health authority is carried on in the healthcare sector, the provision is in addition argued to breach the fundamental goals contained in Article 32 of the Constitution.

The contested provisions are finally argued to violate a fundamental principle pertaining to "healthcare", and hence to be in breach of Article 117(3) of the Constitution. In particular, national legislation expresses the fundamental principle that the employment relationship of directors general in the local health authorities must be guaranteed stability and autonomy to an extent which is "left over to the discretion of the regional parliament, but which is in any case appropriate in order for these functionaries to carry out their specific duties according to the requirement [...] of adequacy of administrative action contained in Article 97 of the Constitution". By contrast, the regional legislation in question introduces an element of instability into that relationship.

Finally, the provision requiring the termination of appointments was, according to the referring court, *ultra vires* for the regional parliament, "in that, insofar as it affected the underlying employment relationship, which it in fact terminated, it in reality legislated in the area of 'private law', attributed by Article 117(2)(l) of the Constitution to the exclusive legislative power of the state".

1.2. - The private parties to the main proceedings entered appearances, some of whom also submitted written statements.

1.2.1. - The representatives of the appellants in the proceedings before the lower courts emphasise that the contested provisions breach Articles 97 and 98 of the Constitution by associating the termination of the appointment with a fact – the formation of the new regional cabinet – that is extraneous to the assessment of the activity carried on by the relevant director general; moreover, "by destabilising the organisational structure of the health authorities", it is argued to be "in flagrant breach with the system founded on Article 32 of the Constitution" established by legislative decree No. 502 of 1992, which provides that the employment relationship of directors general in health authorities last for at least three years, and by Lazio Region law No. 18 of 1994, which guarantees the stability of the relationship up until the expiry of the contract.

The provisions are also argued to be in breach of the following:

- Article 117(1) of the Constitution, insofar as "the stability of the relationship between the health authority and its director and the efficient protection of the fundamental public interest protected by Article 32 of the Constitution is also regulated by Article II-63(1) of the Treaty Establishing a Constitution for Europe (29 October 2004)";
- "the principles underlying the combined provisions of Articles 32 and 98 of the Constitution", insofar as "the spoils system appears to be objectively unsuitable for the healthcare sector, since through the provision of an essential public service, the health authorities must necessarily further the fundamental goals imposed by Article 32 of the Constitution in conditions of autonomy and immunity from influence by any political grouping, in accordance with Article 98 of the Constitution with which the above Article 32 is related in a logical and systematic context of necessary and inevitable inter-reference";
- Article 117(2)(l) of the Constitution, insofar as the provision of the resolution of the appointments of the directors general of the health authorities of the Lazio Region before the expiry of the deadline agreed under contract "rescinds the contract of employment" and therefore affects an area of law – i.e. private law – which falls under the exclusive legislative jurisdiction of the state.

1.2.2. - The representatives of the opposing interested parties in proceedings before the lower courts argue that the question is inadmissible and in any case unfounded.

On the question of admissibility, it is argued that the referring court in the first place failed to search for any constitutionally informed interpretation of the provisions averred to be unconstitutional; moreover, the reasons given for the existence of its own jurisdiction were "clearly contradictory" in that they confused the taking office of the new regional cabinet, which resulted in the automatic termination of the appointment, with the exercise of "a discretionary judgment on the compliance with the prerequisites required by law", which gives rise only to legitimate interests which may be protected before the administrative courts.

Regarding the issue of manifest groundlessness, the defendant notes in the first place that, in associating the violation of the principles of the proper functioning and impartiality of the public administration required under Article 97 of the Constitution with the lack of "any performance assessment" of the director general, the referring

court ends up transferring to the institution of the automatic resolution of appointments a framework which applies to the situation – entirely different from that before the court – concerning the termination of appointments governed by Article 3-*bis*(7) of legislative decree No. 502 of 30 December 1992 (Reform of legislation governing the healthcare sector pursuant to Article 1 of law No. 421 of 23 October 1992), following an assessment of the existence of "serious reasons", a finding of "a situation of serious deficit" or again the "breaking of the law or violation of the principle of the proper functioning and impartiality of the administration"; in short therefore, in situations or following behaviour which amounts to a breach of obligations assumed under contract.

Furthermore, there is argued not to have been any violation of Article 32 of the Constitution, since it is not clear why the termination of the appointment of a director general of a local health authority could have negative consequences for an effective protection of the right to healthcare. Besides, the post of director general is in any case fixed-term and the region may indeed provide for the dismissal of the director general before the expiry of the contractually agreed deadline, provided certain prerequisites have been satisfied (applying Article 3-*bis*(7) of legislative decree No. 502 of 1992).

As far as the violation of Article 117(3) of the Constitution is concerned, the defence argues that the breach by the region of fundamental principles in the area of "healthcare protection" legislation should have been illustrated with specific reference to the provisions of national law claimed to have been violated.

Moreover, the exclusive legislative competence of the state in "private law" matters is argued not to have been infringed. Indeed, even after the privatisation of public-sector employment, the regions have not been comprehensively precluded from passing legislation governing the employment status of employees and directors. This is in the first place because, pursuant to Article 117(4) of the Constitution, the regions enjoy "legislative powers in the area of administrative organisation and personnel management" (judgment No. 2 of 2004); furthermore, as far as directors in particular are concerned, "even national legislation [...] does not preclude an, albeit reduced, regional legislative competence in this area" (judgment No. 2 of 2004)". Finally, it would not appear to be correct to classify under "private law" all aspects pertaining to employment relations between the regions (and regionally controlled bodies) and their respective employees, given the public law status of "numerous aspects of privatised

relationships most closely related to the organisation of the business of administration, including in particular those concerning directors" (judgment No. 313 of 1996).

1.3. - Lazio Region entered an appearance in all cases, arguing that the regional legislation did not violate Articles 97, 32 and 117 of the Constitution.

According to the region, "the introduction of the system of legislative resolution of appointments is the necessary and logical consequence of the tendency towards the elimination of stability in employment in senior positions in the administration, which has characterised legislative reforms concerning public sector employment in recent years". The employment relationship of the most senior directors in the administration has in fact evolved by virtue of the "necessary connection" which, without prejudice to the distinction between their respective roles, must exist "between activity of a political nature assigned to governmental organs and the initial transformation of political directives into management decisions" by senior directors.

Following the same logic, Article 55 of the Regional Statute and regional law No. 9 of 2005 do not conflict with any provision or principle of constitutional or Community law, but are rather limited to formalising that which was already a general principle and common practice both in Lazio and in other regions, as well as in the state administration: appointments to senior administrative positions occur "on the basis of a senior administrative assessment which does not require any specific reasons, provided of course that the appointee fulfils the professional requirements necessary in order to perform correctly the duties to which he is assigned". Moreover, whilst it may be true that "the administrative apparatus is the principal instrument through which public policies are implemented in accordance with the electoral mandate", "the primary requirements of the political leaders of the administrations is that of being able to form a competent team of directors, where possible chosen on the basis of trust, which shares the choices and priorities and undertakes to implement them without imposing obstacles or indulging in obstructionist practices". By contrast, "the fundamental immobility of directors, which was for a long time the defining feature of our legal system, does not appear to be compatible with this model", especially "following the introduction in the nineties of the direct election of the senior figures in local authorities (including in particular mayors) and more recently of the leaders of the regional administrations".

Nevertheless, the provision of the possibility of reconfirmation according to the normal procedures in place for appointments, and the fact that during the ninety days after the formation of the new regional cabinet the directors general continue to carry out their duties in the normal fashion, including on the basis of guidelines released during that period, are intended to guarantee the continuity of their action, as well as the participation of the directors themselves in the procedures for new appointments.

It follows from the above that there has been no violation of Article 32 of the Constitution, since the right to healthcare is protected precisely through the continuity of action and the absence of forms of legal or psychological pressure on the directors general of the local health authorities.

Finally, the provisions suspected to be unconstitutional are claimed not to violate Article 117(2) of the Constitution in any way, as they do not contain any "private law" provisions, but only organisational rules which impinge upon the duration of the quasi-freelance status of directors general of local health authorities.

The region stressed that its arguments are confirmed by the recent judgment of this court, No. 233 of 2006, which upheld the constitutionality of certain laws of the Abbruzzo and Calabria regions. In particular, the region goes on to argue, the Constitutional Court upheld the constitutionality of legislation which provided that appointments to the senior organs of regional bodies made by bodies representing the region are characterised by *delectus personae*, in the sense that they are based on personal assessments in line with the region's political orientation.

2. - The Council of State raised (order No. 237 of 2006) the question of the constitutionality of the "combined provisions" of Article 53(2) "and/or" of Article 55(4) of Lazio Region law No. 1 of 2004 and of Article 71(1), (3) and (4) of Lazio Region law No. 9 of 2005, due to a breach of Articles 97, 117(3), last sentence, and 117(2)(l) of the Constitution.

The question arose during the course of appeal proceedings against an order of the TAR for the Lazio Region suspending the measure by which Lazio Region had terminated the appointment of the director general of the *Agenzia regionale per la protezione ambientale del Lazio* (ARPA) [Regional agency for the protection of the environment for Lazio], applying Article 55 of the new Regional Statute approved by regional law No. 1 of 2004, and Article 71 of regional law No. 9 of 2005.

The referring court found that it had jurisdiction, as the contested measures were a "are a clear manifestation of an extraordinary power conferred on the regional administration concerning the organisation of bodies dependant on it on the basis of a discretionary assessment of the fulfilment of the legal prerequisites, in relation to which only legitimate interests in its proper exercised may be exercised".

Regarding the issue of relevance, the lower court finds that the application to the ARPA for Lazio of the above regional provisions stems from the fact that the body is regionally controlled. In fact, regional law No. 45 of 6 October 1998 (Creation of the regional agency for the protection of the environment for Lazio-ARPA) expressly: classifies the ARPA as a regionally controlled body endowed with legal personality (Article 2) operating in environmental matters on behalf of the region, the local authorities and the operators of the regional natural areas (Article 3); subjects it to the control and oversight of the regional council (Article 9); reserves to the regional cabinet the power to appoint the director general (Article 5); recognises that its personnel, property and endowments fall under the aegis of the region (Article 19) and that funding is prevalently regional (Article 20).

Accordingly, both Article 55 of the Statute and Article 71 of regional law No. 9 of 2005 apply to the ARPA as a public body dependent on the region.

In any case, the referring court adds, even were it to be found that ARPA fell under the "administrative units" contemplated by Article 54 of the Statute, it would fall all the same under spoils system rules, since Article 71(3) of regional law No. 9 of 2005 expressly refers to Article 53(2) of the Statute, which provides for the application of that system also to administrative positions "of particular importance and responsibility".

According to the referring court, the above regional legislation may be unconstitutional on various grounds, which largely coincide with those set out in the orders mentioned above in paragraph 1 (orders 9-14 of 2006).

In particular, the referring court notes that the regional law establishing the ARPA (Article 5(6) of law No. 45 of 1998) contained a "fundamental principle according to which the director general's post must be guaranteed such a measure of stability and independence [...] as is suitable for the exercise [...] of his specific duties, according to the requirements [...] of the adequacy of administrative action under Article 97 of the

Constitution". The regional legislation on the other hand introduced an element of instability into that relationship.

Again, the provision for the resolution of appointments falls outwith the jurisdiction of the regional parliament since, by impinging upon the regulation of the underlying employment relationship which it terminates, it in reality has effects over a "private law" matter, which Article 117(2)(l) of the Constitution reserves to the exclusive legislative jurisdiction of the state.

2.1. - The private party entered an appearance, arguing in the first place that the ARPA could not be regarded as a regionally controlled body for the purposes of Article 55 of the Statute, as asserted by the referring court, but rather as an agency described under Article 54 of the Statute as an autonomous administrative unit; this means that none of the provisions mentioned by the court applies to it.

Having said this, the private party shares the doubts over constitutionality of the provisions expressed by the lower court in the context of its discussion of the legislative framework.

2.2. - Lazio Region entered an appearance, arguing that the recent Constitutional Court judgment No. 233 of 2006 had resolved in its favour questions of constitutionality which were materially similar to those raised by the referring court.

In a written statement submitted shortly before the hearing, the region pointed out that the private party had withdrawn its appeal pending before the Council of State.

3. - The TAR for Lazio raised (order No. 431 of 2006) the question of the constitutionality of Article 43(1) and (2) of Lazio Region law No. 4 of 28 April 2006, containing the "Regional finance law for the financial year 2006 (Article 11 of regional law No. 25 of 20 November 2001)", with reference to Articles 3(1) and 97 of the Constitution.

Article 43 of regional law No. 4 of 2006 provides – *inter alia* – that "pending the adaptation of regional law No. 45 of 6 October 1998, as amended, as part of the organisational restructuring of the Regional agency for the protection of the environment for Lazio (ARPA), being a regionally controlled body, and also with a view to achieving a greater operational rationalisation of the same in accordance with the principles contained in the Statute, the administrative body provided for under the aforementioned law, comprised of the director general and two vice-directors, shall

cease to exist" (sub-section 1); "the President of the Region shall appoint, at his discretion applying the criterion of trust, an extraordinary commissioner and two deputy commissioners who shall work together with him in the tasks formerly falling within the jurisdiction of the body mentioned in sub-section 1, including those relating to the appointments of technical director, administrative director and the directors of the various provincial sections of the ARPA" (sub-section 2).

The TAR notes that the appellant, the director of the ARPA for Lazio, contested the measure by which the extraordinary commissioner of the body was appointed pursuant to Article 43 of regional law No. 4 of 2006; it goes on to note that the appellant had previously also contested the measure by which the President of the Lazio Region had terminated his appointment as director general of the body in accordance with Article 71 of regional law No. 9 of 2005, which provided for the statutory termination of directorship appointments with the region and dependent public bodies within ninety days of the first meeting of the new regional cabinet.

The measure contested before the referring TAR was adopted pursuant to Article 43 of regional law No. 4 of 2006; this means, according to the referring tribunal, that in the absence of a ruling that the contested provision is unconstitutional, the appeal against the administrative measure must be dismissed.

On the issue of non-manifest groundlessness, the referring tribunal essentially points to the contrast between the provision at issue and the constitutional principles of rationality and the proper functioning of the public administration. In fact, judgments concerning the rationality and compliance with the principle of proper functioning must contain an external assessment of the legislative choices and, in accordance with the settled case law of the Court, the violation of the principle of proper functioning may only be invoked where the legislative measures introduced are found to be manifestly irrational in the light of the substantive goals pursued. In the case before the court, the provision considered as a whole is irrational and arbitrary in that, whilst on the one hand it abolishes the administrative organ of the body (director general and vice-directors), it provides on the other hand for the appointment of an extraordinary body charged with carrying out the same operational tasks as the abolished body.

This means that the provision breaches the rule that organisational measures within the public administration must comply with the principle of proper functioning contained in

Article 97 of the Constitution; moreover, the hybrid nature (i.e. law-measure) of the provision in question breaches Article 3 of the Constitution.

3.1. - The appellant in proceedings before the TAR entered an appearance, arguing that a straightforward reading of Article 43 of regional law No. 4 of 2006 shows that the provision in question is a hybrid between a law and a measure. The law-measure in fact specifically makes provision in relation to a specific relationship, since the region transferred to the legislative sphere the contents of the measure resolving the director's appointment.

It follows from this that the provision is irrational in that it lacks any objective rationale related to requirements of an organisational nature capable of justifying its adoption. It moreover violates the right to a defence guaranteed under Article 24 of the Constitution, insofar as it deprives the direct addressee of the provision – i.e. the previous director of the ARPA – of any possibility to mount a defence and/or to resist the measure ordering his dismissal.

3.2. - Lazio Region entered an appearance, arguing that the question is unfounded.

It argues that the contested provision was passed against the background of the reorganisation of the ARPA, pending the adaptation of the agency with the principles contained in the new Statute contained in regional law No. 1 of 2004.

On the basis of the above premise, the region argues that there has been no breach of Article 97 of the Constitution, since the ARPA is subject to a “general power of oversight and control” by the regional council, which also aims to ensure that the management of the Agency complies with regional programming guidelines.

The fact that the contested provision provides for the appointment of an extraordinary body with the same operational tasks as the abolished body is explained by “[the] goal of better assuring organisational continuity without modifying the existing arrangements for the distribution of tasks and functions which would otherwise have entailed more complex reorganisational measures not justified by the transitional and temporary nature of the institution of compulsory external administration and the role attributed to it”.

Similarly, there has no breach of Article 3 of the Constitution, as it is clear from the contents of the contested provision that it by no means discriminates against the appellant. Indeed, the Constitutional Court has held that legislative bodies are not

subject to the limits applicable to administrative acts and has accordingly accepted that the law may have any substantive content, and is hence not limited to the imposition of general and abstract provisions, which means that the law may also have a particular and concrete content and carry out a task substantively identical to that of administrative acts, naturally subject to the limits imposed by constitutional law.

3.3. - In a written statement submitted shortly before the hearing, the region argued that the appellant in proceedings before the lower court had withdrawn its appeal pending before the TAR for Lazio. It therefore submitted that the question of constitutionality was irrelevant. It argued in any case that the question was unfounded.

4. - The *Tribunale di Palermo* raised (order No. 589 of 2005) the question of the constitutionality of Article 96 of Sicily Region law No. 2 of 26 March 2002 (Programmatic and financial provisions for the year 2002), insofar as it provides that "appointments falling under sub-sections 5 and 6 previously conferred by contract may be terminated, amended or renewed within ninety days of the date on which the director general takes office in the organisation under his control", with reference to Articles 14 of the Special Statute for the Sicily Region (royal legislative decree No. 455 of 15 May 1946, converted into constitutional law No. 2 of 26 February 1948) and 97(1) of the Constitution.

Article 96 of regional law No. 2 of 2002, amending Article 9 of regional law No. 10 of 15 May 2000 (Miscellaneous provisions on directorships and the working and employment relations for Sicily Region employees. Assignation of functions and tasks to the local authorities. Creation of the Advisory Centre for Productive Activities. Miscellaneous provisions in the area of civil protection. Miscellaneous provisions in the area of pensions), provides that directorship appointments to posts other than general director "previously conferred by contract may be terminated, amended or renewed within ninety days of the date on which the director general takes office in the organisation under his control", in the absence of which they are regarded as confirmed until their "material expiry", and specifies that this provision "may not be derogated from in contracts or collective bargaining agreements, including those already concluded".

The question arose in proceedings in which the appellant, a former service director in the Professional Training Department of the regional administration, requested: the

invalidation of the "note" by which the director general of the defendant local government department, who had recently taken up office, terminated his directorship appointment previously conferred by contract; the invalidation of the "note" by which he had been appointed to a professionally and financially non-equivalent post to that from which he had been removed; the right to maintain the level, appointment and remuneration previously enjoyed and to payment of the sums withheld pursuant to his removal; an award of damages.

On the question of relevance, the court notes that the assessment of the decisions taken by the defendant administration – to be made in accordance with the provision averred to be unconstitutional – is an essential prerequisite for all claims placed before the court.

Regarding the issue of non-manifest groundlessness, the court finds that the introduction of the so-called spoils system also for directorship levels lower than that of general director in Article 96 of regional law No. 2 of 2002 does not appear to be consistent with the provisions contained in Article 19(8) of legislative decree No. 165 of 30 March 2001 (General provisions governing employment in the public administrations), both in its original form and as subsequently amended by Article 3(1)(i) of law No. 145 of 15 July 2002 (Provisions for the reorganisation of public-sector directors and to promote the exchange of experience and interaction between the public and private sectors), which is nonetheless a "fundamental provision of socio-economic reform" (Article 1(3) of legislative decree No. 165 of 2001), which Sicily Region is obliged to comply with when exercising its exclusive legislative powers in relation to the "legal and economic status of employees and functionaries of the Region" (Article 14(q) of the Statute).

It goes on to argue that this inconsistency takes on particular significance in the wake of the so-called privatisation of public sector employment, in that it amounts to a regional legislative intervention in the area of relations between private parties (citing in support of the argument Article 5(2) of legislative decree No. 165 of 2001) which constitutional case law has consistently precluded also for regions with special autonomous status.

Again, the provision in question implies the creation of a marked degree of instability in the posts of second and third level directors, since the deadline of ninety days within which the appointments of junior directors may be amended or terminated recurs on

every “rotation” of general directors; this all entails a possible detriment for the proper functioning of the public administration.

Finally, even though the so-called spoils system method may be justifiable for the most senior directorship posts, its application to the broader area of second and third level directors – whose duties are not strictly related to political directives and for whom by contrast the recourse to selection criteria which privilege, albeit indirectly, political loyalty could give rise to the practice of political patronage at odds with the goal of the separation between political direction and administrative management which inspired the directorship reform contained in legislative decree No. 165 of 2001 – does not appear to be consistent with the principle of impartiality in administrative action.

4.1. - Sicily Region entered an appearance, averring that the question was unfounded.

It argues in the first place that, following the reform of Title V of the Constitution and of the division of competences between the state and the regions, the limits of socio-economic reforms can no longer be considered to apply to matters falling under the exclusive legislative competence of Sicily Region. The regional provision which the TAR suspects is unconstitutional in fact legislates in an area (“legal and economic status of employees and functionaries of the Region”) falling under the exclusive jurisdiction of the region (Article 14(q) of the Statute), and which coincides with an area now falling under the exclusive (“residual”) legislative jurisdiction also of the ordinary regions. This legislative power is also vested in Sicily Region pursuant to Article 10 of constitutional law No. 3 of 18 October 2001 (Amendments to Title V of Part II of the Constitution). It follows that, whilst the limitation of the spoils system to directors general is a fundamental principle of the reform of state directorships, this principle does not circumscribe the exercise of regional legislative autonomy in matters concerning the regulation of its own directors.

It is equally mistaken, according to the region, to conclude that the contested provision violates Article 97 of the Constitution, insofar as it impinges on the autonomy and independence of intermediate directors and results in an interruption in the business of administration. It points out that, up until ninety days after the new director general takes office, the subordinate directors remain in their posts unless and until they are terminated or modified, and that the autonomy and independence of directors are guarantees which must apply not for the appointment of an individual to a given

directorship post, but rather for the performance of the duties specifically assigned to the director.

Conclusions on points of law

1. - The court is confronted with questions of the constitutionality of legislative provisions of Lazio Region and Sicily Region concerning the regime applicable to directors in local health authorities and hospital trusts, as well as the administration and regional bodies.

The cases may be joined and considered in a single judgment.

2. - By six orders with identical contents (orders Nos. 9-14 of 2006), the Council of State raised the question of the constitutionality of the "combined provisions" of Article 55(4) of Lazio Region law No. 1 of 11 November 2004 (New Statute of the Lazio Region), and Article 71(1), (3) and (4)(a) of Lazio Region law No. 9 of 17 February 2005 (Regional finance law for the financial year 2005), with reference to Articles 97, 32, 117(3), last sentence, and 117(2)(l) of the Constitution.

As regards Lazio Region, the provisions in question structure – in the case before the court as applied to the directors general of local health authorities – the nature of relations between political and administrative spheres characterised by "the fundamental choice of aligning the duration of directorship appointments and posts with that of the bodies providing political direction" (judgment No. 233 of 2006).

2.1. - It is necessary in the first place to consider the objection of inadmissibility raised by certain private parties (the beneficiaries of the measures contested in the principal proceedings), which argued that the referring court followed "clearly contradictory" reasoning in identifying the grounds for its jurisdiction in that it confused the taking of office of the new regional cabinet – i.e. the circumstance which, under the terms of the contested provisions, gives rise to the autonomic termination of the appointment – with the administrative discretion in establishing the effect (the automatic termination of the appointment) of the provision.

In the principal proceedings, the interested parties contested in the first place the letter by which the president of the region notified each of them that the appointment as director general would terminate on the ninetieth day after the new regional cabinet had

taken office, thus expressing a desire not to confirm them in their posts; secondly, they contested the appointments of the new directors general.

The discretionary nature both of the "non-confirmation" as well as the new appointments means that the referring court's assertion of its own jurisdiction, for which brief reasons are given, is not implausible.

2.2. - Again with regard to the admissibility of the question, there is no doubt that, in contrast to the arguments of certain private parties, the local health authorities fall under the "dependent public bodies" to whose "executive organ members" the automatic termination governed by the contested provisions applies.

The local health authorities were in fact established pursuant to regional legislation (for Lazio, by regional law No. 18 of 16 June 1994 containing "Provisions for the reorganisation of the regional health service pursuant to legislative decree No. 502 of 30 December 1992 as amended. Creation of local health unit trusts and hospital trusts"); they are subject to the regional control, oversight and direction, both in relation to their activities and the executive organs; their budgets and statements of account are approved by the region, which guarantees the necessary financial resources; their institutional head – the director general – is appointed by the president of the region. In any case, Lazio Region has defined as public bodies dependent on the region all those "which operate within the region and in the matters reserved to the competence of the region" (Article 56 of regional law No. 25 of 20 November 2001 containing "Provisions in the area of regional programming, the budget and accounting"). Finally, the case law of the court classifies the local health authorities as the "instrument through which the region provides health services when exercising its competence over healthcare matters conferred on it by the Constitution" (judgment No. 220 of 2003).

2.3. - The autonomous grounds of appeal proposed with reference to Articles 98 and 117(1) of the Constitution by certain private parties are on the other hand inadmissible, since these parties may only submit arguments in relation to the grounds of unconstitutionality proposed by the referring court.

2.4. - On the merits, the referring court submits that Article 97 of the Constitution has been violated on the grounds that, by associating the termination of the appointment with the renewal of the regional cabinet, the contested provisions have "the clear purpose of allowing the political authorities represented in the new cabinet to substitute

the persons in charge of the executive organs" of the bodies controlled by the region. This results in "an interruption in the continuity of the administrative action carried on by the occupant of the post" which does not occur pursuant to an assessment of the activity carried out (reference is made on this point to judgment No. 193 of 2002), but as a consequence of an objective event, i.e. the taking of office of the new cabinet in line with the outcome of elections; this means that the provisions breach the principles of the proper functioning and impartiality of the administration.

2.5. - The question is well founded.

2.6. - As structures charged with providing assistance, services and healthcare in the ambit of the regional health services, local health authorities perform tasks of an essentially technical nature, which they carry out in the legal guise of a state-run company endowed with operational autonomy and on the basis of the general guidelines contained in the regional health plans and in the applicational guidelines given to the regional councils (Article 3 of legislative decree No. 502 of 30 December 1992 containing a "Reorganisation of legislation governing the healthcare sector, pursuant to Article 1 of law No. 421 of 23 October 1992"; Article 1 of Lazio Region law No. 18 of 1994).

In accordance with these characteristics, the law provides that the persons appointed as directors general of the local health authorities possess specific cultural and professional attributes and be subject to regular controls on the objectives and business results achieved (in addition to the resolution of the employment contract where there are grounds for dismissal, or due to violation of the law or of the principles of impartiality and proper functioning) (Article 8 of Lazio Region law No. 18 of 1994).

In particular the Lazio Region law provides that the appointment of the directors general in the local health authorities occur on conclusion of a procedure in which, following publication of a notice in the Official Journal (which must also be notified in the Official Bulletin of the Region), the president of the region chooses the directors, taking advice from "three experts" in senior company management or from a "service agency nationally accredited for consultancy, training and the recruitment of company managers and directors", having heard the non-binding opinion of the advisory board with competence over healthcare matters (Article 8(1)-(2) of regional law No. 18 of 1994). Moreover, the "resolution" of the appointment due to serious shortfalls in

business management, serious breaches of the law or of the principles of proper functioning and impartiality of the administration or on other serious grounds may occur by resolution – which must clearly be supported by reasons – of the regional council, exercising its oversight functions "over the correct and efficient management of the resources assigned, the impartiality and proper functioning of the activities and the quality of service" (Article 8(6) and (6-*bis*) and Article 2(2)(e) of regional law No. 18 of 1994).

The directors general of the local health authorities are therefore classified under this legislation as professionals who are placed under a duty to achieve results (the object of a self-standing contract of employment) and have the task of pursuing the management and operational objectives contained in the regional health plan (in turn developed in accordance with the national health plan), the guidelines of the council, the measure by which he is appointed and the employment contract with the regional administration.

2.7. - The contested provisions, which introduced in Lazio Region – as a permanent regime – the automatic resolution of the appointments of directors general on expiry of the ninetieth day after the taking of office of the regional cabinet, must be considered against this backdrop of relations between directors general of the local health authorities and the regional administration.

This automatic resolution does not comply with the requirement to maintain a direct relationship between the political authorities and the director general, and hence the "coherence between the regional political authorities [...] and the senior administrative organs [...]" (judgment No. 233 of 2006). In fact, it also occurs where the regional government is confirmed in office in the elections which lead to the creation of the new cabinet. Furthermore, this requirement cannot be satisfied by cases in which the director general is re-confirmed, since there is no provision that this occur pursuant to a specific assessment, or that reasons be given.

Moreover, there is a range of intermediate levels in the regional organisational structure along the line connecting the political authorities with the directors general of the local health authorities. Contacts between them are filtered through structures answerable to the council: direct collaboration offices, a department and, within the latter, a general directorate ("Regional healthcare and regional health service"), made up of 18 "areas" and provided with its own staff structure for the "Coordination of social and healthcare

measures". Accordingly, there is no direct and non-mediated institutional relationship between the political authorities and directors general.

Finally, the automatic resolution of the appointment of the director general is related to the occurrence of an event – the passing of ninety days after the taking of office of the regional cabinet – which has nothing to do with the relationship between the political authorities and the directors general of the local health authorities. The director general is dismissed (i.e. removed from his appointment and dismissed form his post) by the region for reasons entirely extraneous to the relationship, and not on the basis of an assessment of the business results or the achievement of healthcare and service provision objectives, or – again – due to one of the other grounds which allow for the termination of the relationship due to breach of contract.

2.8. - The contested provisions violate Article 97 of the Constitution on the dual grounds of impartiality and the proper functioning of the administration.

Article 97 of the Constitution subjects public offices to a (relative) statutory reservation*, placing them beyond the exclusive control of the government; it provides that public offices be organised according to the principles of impartiality and efficiency, also stipulating that access to public positions occur as a rule through procedures based on merit.

This court has consistently found that "the principle of impartiality laid down in Article 97 of the Constitution – which is practically symbiotic with the principles of the rule of law and the proper functioning of the business of administration – constitutes an essential value which must inform the organisation of public offices, in all their different manifestations" (judgment No. 453 of 1990).

It has moreover stressed that "the principle of impartiality [...] is directly reflected in other constitutional provisions, such as Article 51 (all citizens are eligible for public office under equal conditions, according to the rules established by law) and Article 98 (public officials are in the exclusive service of the Nation) of the Constitution, which intend to protect the public administration and its employees from political or other partisan influences, in relation to the various stages of public sector employment considered overall (access to public office and career development)" (judgment No. 333

---

* Translator's note: A relative statutory reservation means that the general principles in a given area of law must be contained in primary legislation, although more detailed provision may be made by administrative act.

of 1993). This assertion mirrors the comments of the rapporteur from the Second Subcommittee of the Constituent Assembly on the text of the future Article 97 of the Constitution that "the need to include in the Constitution certain provisions concerning the public administration" entails, amongst other things, the requirement "to provide civil servants with certain guarantees protecting them from the influence of political parties. The goal of a democratic Constitution, under which political parties take turns in office, is to guarantee a certain degree of independence to civil servants in order to allow for an objective administration of public affairs and not an administration by parties".

The court then went on to find that Articles 97 and 98 of the Constitution are corollaries of the requirement of impartiality, which give expression to the distinction between politics and administration, between government action – normally tied to the priorities of the political grouping which has the majority in Parliament – and the business of administration which, "in implementing the guidelines of the majority, is on the other hand bound to act without reference to any party political affiliation with a view to pursuing the public goals identified in legislation". Against this background, which is "intertwined with the constitutional structure of administrative authority in the context of a pluralist democracy", it is possible to explain how "public competitions, as a technical and neutral mechanism for selecting the most able candidates, remains the best method of staffing the bodies called upon to carry out their own functions in an impartial fashion and in the exclusive service of the Nation" (judgments No. 333 of 1993 and No. 453 of 1990).

The pursuit of the interest in the choice of persons most suitable to fulfil the public role must occur "irrespective of any reference to the political alignment [...] of the various candidates" (judgment No. 453 of 1990) and in such a way that "the exclusively technical nature of the judgment [be] safeguarded from any risk of distortion by partisan interests", thereby "guaranteeing end choices based on the application of neutral parameters and determined solely by an assessment of the aptitudes and preparation of the candidates" (judgment No. 453 of 1990). As a result, the selection of public officials may not be contaminated by interferences of a political nature "representing interests not related to objective and neutral values" (judgment No. 333 of 1993). The only exception to this stems from the requirement that certain posts – those which work

closely together with the political authorities – are conferred on individuals selected according to the principle of *delectus personae*, in other words according to procedures which aim to "reinforce the cohesion between the regional political authorities (which provide the general guidelines for administrative action and make the appointments in question) and the leading individuals within the civil service (who are appointed to these posts and who are charged with the implementation of the programme specified), in order to ensure the proper functioning of the directional activity of the body (Article 97 of the Constitution)" (judgment No. 233 of 2006).

2.9. - The principle of efficient administration manifests itself in turn in a series of rules which range from the requirement for a rational organisation of offices to that of ensuring their correct functioning; it is also necessary to guarantee the regularity and continuity of administrative action and, in particular, or public services, also in the event of a change in the political equilibrium (except – as mentioned above – in cases where the functionary is removed pursuant to a finding of liability as provided for by legislation); directors must be subject to periodical reviews of their respect for the principles of impartiality, proper functioning, flexibility and transparency, as well as an assessment of their performance with reference to predetermined results and objectives (except, again, in cases in which the director is removed following a negative assessment).

Moreover, as far as directors are concerned, this court has emphasised that the fact that their employment relationship is governed by private law does not mean that they are no longer subject to "the requirement to pursue general interests" (judgment No. 275 of 2001); within this logic, it has also found that directors enjoy "specific guarantees" that appointments be made "on the basis, amongst other things, of their aptitudes and professional capacities" and that any early termination occur pursuant to an evaluation of the results obtained (judgment No. 193 of 2002; order No. 11 of 2002); it has furthermore found that Parliament "has reinforced [by legislative decree No. 80 of 1998] the principle of the distinction between the political-administrative functions of governmental bodies and the directors' role of management and administrative implementation", precisely in order to place the (general) directors "in a condition to perform their duties respecting the principles of impartiality and the proper functioning of the public administration" (order No. 11 of 2002).

The law governing the fairness of administrative procedures is informed by the same principles, especially after the entry into force of law No. 241 of 7 August 1990 (New provisions governing administrative procedures and the right of access to administrative documents), as amended by law No. 15 of 11 February 2005, according to which the addressee of an act must be notified of the commencement of the procedure and be allowed to make his own representations, and also has the right to obtain a decision with reasons, and to appeal to the courts.

2.10. - In conclusion, the principles of impartiality and the proper functioning of the public administration require that the post of director general be accompanied by guarantees; in particular, a guarantee that any decision by the political authorities to terminate in advance the appointment of the director general of a local health authority respect the principle of a fair hearing. The operational subordination of the director may not turn into a political subordination. Directors are subject to the directives and judgments of the political authorities, and may be removed by decision of the latter. However, they may not be placed in a situation of instability which allows for the resolution of appointments without the guarantee of a fair hearing.

This court therefore finds that the "combined provisions" of Article 71(1), (3) and (4)(a) of Lazio Region law No. 9 of 2005 and of Article 55(4) of Lazio Region law No. 1 of 2004 are unconstitutional, insofar as they provide: that the appointments of the directors general of the local health authorities shall terminate on the ninetieth day after the first meeting of the regional cabinet, unless they are re-confirmed according to the same procedures provided for their appointment; that the resolution shall become operational following the first renewal after the entry into force of the new Statute; that the duration of contracts for the directors general of local health authorities shall be legally amended to take account of the deadline for the resolution of the appointment.

The other grounds of appeal are moot.

3. - The Council of State (order No. 237 of 2006) raised the question of the constitutionality of Article 53(2) "and/or" of Article 55(4) of Lazio Region law No. 1 of 2004 (New Statute of the Lazio Region) and of Article 71(1), (3) and (4) of Lazio Region law No. 9 of 2005, due to breach of Articles 97, 117(3), last sentence, and 117(2)(l) of the Constitution.

The region's argument that the withdrawal of the appeal in proceedings before the TAR for Lazio (in which the order contested in proceedings before the lower court was issued) is not relevant, is in any case inadmissible.

It is in fact formulated both in cumulative ("and") and alternative ("or") terms, without any indication of priority between the two possibilities and without any identification of the provision found to be applicable in the principal proceedings, leaving to this court the decision as to which provision is to be declared unconstitutional.

4. - The TAR for Lazio (order No. 431 of 2006) raised the question of the constitutionality of Article 43(1) and (2) of Lazio Region law No. 4 of 28 April 2006, containing the "Regional finance law for the financial year 2006 (Article 11 of regional law No. 25 of 20 November 2001)", with reference to Articles 3(1) and 97 of the Constitution.

The argument that the withdrawal of the appeal in proceedings before the lower court is immaterial, is unfounded.

The referring court does not present persuasive arguments which demonstrate the hybrid nature – i.e. part law (or rather, part norm) and part measure – of the contested provision.

It limits itself first to pointing out the "irrationality" of the law, by virtue of the fact that, after having abolished an ordinary body (the director and two vice-directors of the ARPA), it confers the same functions on an extraordinary body (the commissioner and two deputy commissioners); secondly, it mentions the "presumably discriminatory nature of the contested provision".

On the one hand, it is entirely normal in matters concerning the reorganisation of public authorities that extraordinary bodies take on the activities of normal bodies. However, the referring court does not present any arguments concerning the discriminatory nature of the provision.

5. - The *Tribunale di Palermo* (order No. 589 of 2005) raised the question of the constitutionality of Article 96 of Sicily Region law No. 2 of 26 March 2002 (Programmatic and financial provisions for the year 2002), insofar as it provides that "appointments falling under sub-sections 5 and 6 previously conferred by contract may be terminated, amended or renewed within ninety days of the date on which the director general takes office in the organisation under his control", with reference to Articles 14

of the Special Statute of the Sicily Region (royal legislative decree No. 455 of 15 May 1946, converted into constitutional law No. 2 of 26 February 1948) and 97(1) of the Constitution.

The question is well founded.

In the first place the court finds that the principles of national law (law No. 145 of 2002) governing directors in the state administrations do not apply either in regions governed by special statute or in ordinary regions (judgment No. 233 of 2006).

Secondly – with reference to Article 97 of the Constitution – the Court has already found that, whilst the regional council's power to appoint individuals selected according to the principle of *delectus personae* to so-called "leading" directorship positions aims to ensure the continuity between political authorities and senior directors which may justify the termination of the latters' appointments made by the previous regional council, "the 'non general' level directorship appointments remain extraneous [to] this framework , as they are not made directly by the political authorities and are hence not related to it by the same degree of proximity which characterises senior appointments" (*ibid*).

It should be added that, in the case before the court, the rotation of the occupants of non-senior directorship posts occurs at the discretion of the director general appointed by the regional government, thereby adding further grounds for termination – which moreover do not impose any requirement for an assessment or to give reasons – to those contained in Article 10(3) of regional law No. 10 of 15 May 2000 (Miscellaneous provisions on directorships and the working and employment relations for Sicily Region employees. Assignation of functions and tasks to the local authorities. Creation of the Advisory Centre for Productive Activities. Miscellaneous provisions in the area of civil protection. Miscellaneous provisions in the area of pensions) concerning negative results in assessments of the achievement of results and objectives by directors. This breaches both the principle of rationality invoked in judgment No. 233 of 2006, as well as the right to a fair hearing discussed above.

The court therefore finds that Article 96 of Sicily Region law No. 2 of 2002 is unconstitutional insofar as it provides that the appointments mentioned in sub-sections 5 and 6 of the same article may be terminated within ninety days of the date on which the director general takes office in the organisation under his control.

on those grounds

THE CONSTITUTIONAL COURT

hereby,

declares that the "combined provisions" of Article 71(1)(3) and (4)(a) of Lazio Region law No. 9 of 17 February 2005 (Regional finance law for the financial year 2005) and Article 55(4) of Lazio Region law No. 1 of 11 November 2004 (New Statute of the Lazio Region) are unconstitutional insofar as they provide that the appointments of the directors general of local health authorities shall cease on the ninetieth day after the first meeting of the regional cabinet, unless they are re-confirmed according to the same procedures provided for their appointment; insofar as this resolution becomes operational following the first renewal after the entry into force of the new Statute; and insofar as the duration of the contracts for directors general of local health authorities is adjusted by statute to the deadline for the resolution of the appointment;

declares that Article 96 of Sicily Region law No. 2 of 26 March 2002 (Programmatic and financial provisions for the year 2002) is unconstitutional insofar as it provides that appointments falling under sub-sections 5 and 6 already made by contract may be terminated within ninety days of the arrival of the director general in the organisation under his control;

declares that the question of the constitutionality of Article 53(2) "and/or" Article 55(4) of Lazio Region law No. 1 of 2004 and Article 71(1), (3) and (4) of Lazio Region law No. 9 of 2005, raised with reference to Articles 97, 117(3), last sentence, and 117(2)(l) of the Constitution, by the Council of State pursuant to the order (order No. 237 of 2006) mentioned in the headnote, is inadmissible;

declares that the question of the constitutionality of Article 43(1) and (2) of Lazio Region law No. 4 of 28 April 2006, containing the "Regional finance law for the financial year 2006 (Article 11 of regional law No. 25 of 20 November 2001)", raised with reference to Articles 3(1) and 97 of the Constitution, by the Regional Administrative Tribunal for Lazio pursuant to the order mentioned in the headnote, is unfounded.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 19 March 2007.

Signed:

Franco BILE, President

Sabino CASSESE, Author of the Judgment

Gabriella MELATTI, Registrar

Deposited in the Court Registry on 23 March 2007.

The Registrar

Signed: MELATTI