JUDGMENT NO. 118 YEAR 2015

In this case the Court heard two applications from the President of the Council of Ministers challenging Veneto regional legislation providing for the calling of referendums on respectively independence and autonomy for the region. The Court largely upheld the challenges on the grounds that they concerned "fundamental choices on constitutional level, which are as such precluded from the scope of regional referendums according to the case law of the Constitutional Court", as well as the area of taxation, in respect of which the Veneto Statute does not allow consultative referendums to be held.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Veneto Regional Law no. 15 of 19 June 2014 (Consultative referendum concerning autonomy for Veneto) and Veneto Regional Law no. 16 of 19 June 2014 (Calling of the consultative referendum on independence for Veneto), initiated by the President of the Council of Ministers by the applications served on 23-28 August 2014, filed in the Court Registry on 2 September 2014 and registered as no. 67 and no. 68 in the Register of Applications 2014.

Considering the entries of appearance by Veneto Region and the intervention by Indipendenza Veneta;

having heard the judge rapporteur Marta Cartabia at the public hearing of 28 April 2015;

having heard the State Counsel [*Avvocato dello Stato*] Gian Paolo Polizzi for the President of the Council of Ministers, Counsel Ivone Cacciavillani and Counsel Mario Bertolissi for Veneto Region and Counsel Alessio Morosin for the association "Indipendenza Veneta".

[omitted]

Conclusions on points of law

1.– By two applications served on 23-28 August 2014 and filed on 2 September 2014 (Register of Applications, no. 67 and no. 68 of 2014), the President of the Council of Ministers, represented by the State Counsel, raised questions concerning the constitutionality, respectively, of Veneto Regional Law no. 15 of 19 June 2014 (Consultative referendum concerning autonomy for Veneto), with reference to Articles 3, 5, 116, 117, 119 and 138 of the Constitution and Articles 26 and 27 of the Veneto Statute, approved by Law concerning the Regional Statute no. 1 of 17 April 2012, and Veneto Regional Law no. 16 of 19 June 2014 (Calling of the consultative referendum on independence for Veneto), with reference to Articles 5, 114, 138 and 139 of the Constitution, and, with regard to Article 4 of the Law, with reference to Article 81 of the Constitution

2.– The cases may be joined and decided upon in the same proceedings as they involve the resolution of questions that are at least in part analogous in terms of the arguments, parameters and contents of the laws contested (see *inter alia*, Judgments no. 209 of 2014, no. 228 and no. 141 of 2013).

3.– It is necessary to confirm the order issued during the course of the public hearing, which is annexed to this Judgment, ruling inadmissible the intervention in the proceedings relating to Veneto Regional Law no. 16 of 2014 by the association "Indipendenza Veneta".

In fact, proceedings concerning the constitutionality of legislation initiated by a direct application are conducted exclusively between the parties vested with legislative power and do not allow for intervention by parties not vested with such power, without prejudice to the availability to such parties – where the prerequisites are met – of any other forms of judicial relief that may be open to them (see *inter alia* Judgments no. 31 of 2015, no. 210 of 2014, no. 285, no. 220 and no. 118 of 2013).

The precedents cited by counsel for the association concerning interventions by third parties in interlocutory constitutional proceedings (Orders no. 156 of 2013 and no. 251 of 2002) are not relevant.

4.– Counsel for Veneto Region has asserted that both applications are inadmissible on the grounds that the contested laws do not cause any actual harm as the popular plebiscites provided for have not yet been held and the prerequisites for holding them have not even been met: neither preliminary negotiations with the Government pursuant

to Article 1 of Veneto Regional Law no. 15 of 2014 nor the collection of private donations intended to finance the plebiscite pursuant to Article 4 of Veneto Regional Law no. 16 of 2014.

The objection is unfounded.

Leaving aside any consideration regarding the actual conduct of the Region in relation to the implementation of the contested laws (although the process has besides already been started, as regards Veneto Regional Law no. 16 of 2014, by resolutions no. 1331 of 28 July 2014 and no. 1709 of 23 September 2014 of the Regional Executive), it must be observed that proceedings initiated pursuant to a direct application by the state against a regional law (and similarly by a region against a law of the state) relate to the legislative text, irrespective of the effects actually produced by it. The short duration of the period within which an application must be filed – sixty days after publication of the regional or state legislation, pursuant to Article 127 of the Constitution – characterises such proceedings as *ex post* and theoretical proceedings: they are *ex post* because they relate to an act that has already been promulgated and published, and are theoretical because they are initiated at a time when the application of the act cannot yet have occurred, especially in the event that it requires the implementation of complex procedures or the establishment of new organisational structures. Accordingly, upon publication of a law that – as in the case under examination – is considered to be *ultra vires* in terms of the constitutional competence of the region, a challenge may be brought against it by the state, irrespective of whether the specific effects have been generated and the practical consequences have been brought about (see Judgments no. 45 of 2011, no. 407 of 2002, no. 332 of 1998).

5.– On the merits, it must be reiterated first and foremost that there is no doubt that questions of interest for the regional community, regarding which the Region may arrange for the populations resident within its territory to participate through consultative referendums, may also relate to matters that reach beyond the jurisdiction and territory of the region and touch upon national issues (see Judgments no. 496 of 2000, no. 470 of 1992, no. 256 of 1989). However, the existence of a qualified interest of this type does not authorise the Region to take initiatives – including plebiscites – with complete liberty as to form or in excess of the limits laid down by constitutional law.

Contrary to the assertions of the respondent, it is legally mistaken to assert that a consultative referendum is equivalent to any other spontaneous exercise of freedom of expression by citizens in a coordinated manner. The referendum is an instrument for interaction between the people and representative institutions, and thus always involves the entire electorate (or the relative portion of it, as is the case for regional referendums), which is called upon to express itself in relation to a pre-determined question. In addition, even when it does not give rise to immediate legal effects on the sources of law, a referendum performs the function of activating, initiating or opposing public decision making processes, which largely have legislative status. For this reason, popular referenda on national or regional level, including consultative referenda, are typified institutions and must be conducted in the manner and subject to the limits laid down by the Constitution or stipulated on the basis of the Constitution.

6.– The legislation applicable to regional referendums is contained in the Regional Statute, in accordance with Article 123 of the Constitution. As part of an exercise of the political autonomy vested in them under that provision (see Judgment no. 81 of 2012), which must occur in accordance with the rules and principles contained in the Constitution (see *inter alia* Judgment no. 81 and no. 64 of 2015), each region may specify forms, arrangements and criteria relating to popular participation in processes involving democratic control of its acts; they may even create new types of referendum in addition to those provided for under the Constitution (see Judgment no. 372 of 2004); they may involve in those consultations persons who participate consciously and stably in the life of the community, even if they do not have the right to vote and are not Italian citizens (see Judgment no. 379 of 2004).

Naturally, once they have been formalised, the choices made in the statute will govern the region's subsequent activity, including legislation, in view of the fundamental status of the regional statute (see Judgment no. 4 of 2010) and its relationship with regional laws as specified in the Constitution in terms of both hierarchy and competence (see Judgment no. 188 of 2011).

Veneto Region adopted a new Statute by Law concerning the Regional Statute no. 1 of 2012, Articles 26 and 27 of which regulate regional referendums.

Article 27 regulates "the calling of consultative referendums for the populations affected by measures or proposed measures falling under the competence of the

Council” and paragraph 3 of that Article reiterates the limits imposed upon referendums to repeal regional legislation by Article 26(4) and (5), which must accordingly apply also to consultative referendums. Article 26(4)(a) and (b) in particular are relevant for the purposes of the application filed by the State Counsel; according to those Articles, regional referendums are not permitted in relation to tax and budgetary legislation and the relative implementing provisions or in relation to regional laws and acts the contents of which constitute compliance with obligations under constitutional, international and European law. It is important to stress that, insofar as it requires compliance with constitutional obligations, the Statute does no more than restate the position within the settled case law of this Court according to which regional referendums, including consultative referendums, cannot involve choices impinging upon constitutional law (see Judgments no. 365 of 2007, no. 496 of 2000, no. 470 of 1992).

7.– Having clarified the above, the Court must rule that the question concerning Veneto Regional Law no. 16 of 2014, alleging the violation of Articles 5, 114, 138 and 139 of the Constitution, is well founded.

7.1.– This law provides (in Article 1) for the calling by the President of the Regional Executive of “a consultative referendum in order to establish the wishes of the voters of Veneto concerning the following question: ‘Do you want Veneto to become an independent and sovereign Republic? Yes or No?’”. It is a matter for the Regional Council to specify the date of the referendum, in which all citizens over the age of majority who are included in the electoral rolls of the Region’s municipalities may vote. “The proposal subject to referendum shall be approved if a majority of persons entitled to vote participates in the plebiscite and a majority of the votes validly cast is achieved” (Article 1(2)).

Article 2 concerns the procedures applicable to voting and the proclamation of the result along with the referendum campaign and, amongst other things, extends the “rights recognised under applicable legislation to parties or political groupings represented in the Regional Council and to referendum promotion committees”, in addition to associations interested in the “expression of the People of Veneto in relation to their own self-determination”.

Article 3 provides that the President of the Regional Executive and the President of the Regional Counsel shall launch institutional relations “using all resources available”

to the bodies chaired by them "in order to ensure that the referendum referred to above is called and that voting procedures are monitored with the aim of certifying the effective wishes of the People of Veneto and validating the final result"; it also charges both Presidents with the task of "protecting the right of the People of Veneto to self-determination before all competent national and international bodies".

Article 4 quantifies the costs of the plebiscite and stipulates that they are to be covered by charitable payments and donations by "citizens and undertakings".

7.2.– The consultative referendum provided for under Article 1 does not concern solely fundamental choices on constitutional level, which are as such precluded from the scope of regional referendums according to the case law of the Constitutional Court cited above, but seeks to subvert the institutions in a manner that is inherently incompatible with the founding principles of the unity and indivisibility of the Republic laid down in Article 5 of the Constitution.

The unity of the Republic is an aspect of constitutional law that is so essential as to be protected even against the power of constitutional amendment (see Judgment no. 1146 of 1988). There is no doubt – as this Court has also recognised – that the republican order is also based on principles including social and institutional pluralism and territorial autonomy, in addition to an openness to supranational integration and international law; however, these principles must be developed within the framework of the Republic alone: "The Republic, which is one and indivisible, shall recognise and promote local government" (Article 5 of the Constitution).

According to the settled case law of this Court, pluralism and autonomy do not permit the regions to classify themselves as sovereign bodies and do not permit their governmental organs to be treated as equivalent to the representative bodies of a nation (see Judgments no. 365 of 2007, no. 306 and no. 106 of 2002). *A fortiori*, the same principles cannot be taken to extremes so as to result in the fragmentation of the legal order and cannot be invoked as justification for initiatives involving the consultation of the electorate – albeit only for consultative purposes – concerning prospective secession with a view to the creation of a new sovereign body. Such a referendum initiative, as also that under examination, at odds with the unity of the Republic could never involve the legitimate exercise of power by the regional institutions and would thus lie *extra ordinem*.

7.3.– The other grounds for challenge are moot.

8.– Veneto Regional Law no. 15 of 2014 has also been challenged with reference to Articles 3, 5, 116, 117, 119 and 138 of the Constitution, along with Articles 26 and 27 of the Statute of Veneto Region, which are referred to in relation to Article 123 of the Constitution.

8.1.– Article 1(1) of the Law provides for "negotiations" between the President of the Regional Executive and the Government with the aim of "defining the contents of a consultative referendum with the intention of establishing the wishes of the Veneto electorate concerning the pursuit of further forms of autonomy for Veneto Region".

In the event that these negotiations "are not successfully concluded" within one hundred and twenty days of approval of the Law, the President of the Executive "is authorised to call a consultative referendum in order to establish the wishes of the Veneto electorate" (Article 2(1)) in relation to five questions: "1) "Do you want Veneto Region to be vested with further forms and special terms of autonomy?"; 2) "Do you want a percentage not lower than eighty percent of taxes paid each year by the citizens of Veneto to central government to be used to procure goods and services within the regional territory?"; 3) "Do you want the Region to retain at least eighty percent of the taxes collected within the regional territory?"; 4) "Do you want the proceeds deriving from the sources of financing for the Region do be exempt from hypothecation?"; 5) "Do you want Veneto Region to become a region governed by special statute?"".

Article 2(2) goes on to provide that, in the event that a majority of voters participate in the plebiscite and a majority of the votes validly cast is achieved, the President of the Regional Executive must propose to the Regional Council "a programme of the negotiations which he or she intends to conduct with the state" and present "a draft state bill laying down procedures and substantive rules concerning the recognition of further specific forms of autonomy for Veneto Region".

Article 3 makes provision in relation to the referendum procedures, stipulating *inter alia* that the plebiscite is to be held at the same time as the next elections for the European Parliament or the Italian Parliament or the next regional elections, "subject to agreement with the competent state authorities". Article 4 quantifies the burdens resulting from the implementation of the law and makes provision in relation to their coverage.

8.2.– The application filed by the President of the Council of Ministers seeks the annulment of Veneto Regional Law no. 15 of 2014 in its entirety. However, the grounds for challenge are focused exclusively on Article 2(1) and involve a variety of objections directed against the individual referendum questions contemplated thereunder in point 1), points 2) to 4) and point 5). No argument is brought against the other provisions of the contested Law; moreover, they are all related and are merely instrumental for the holding of the plebiscites provided for; this does not however mean that the application is inadmissible, considering specifically the overall homogeneity of the Law in question (see *inter alia*, Judgments no. 160 of 2012, no. 300 and no. 246 of 2010).

Accordingly, it is necessary to examine separately the individual questions put concerning to the five referendum questions.

8.3.– As noted above, Article 2(1) no. 1) provides that regional voters be asked whether they want "Veneto Region to be vested with further forms and special terms of autonomy".

The question relating to this referendum question is unfounded.

The question to be placed before the electorate evokes the provisions of Article 116(3) of the Constitution, according to which a state law may grant regions governed by ordinary statute "[f]urther forms and special terms of autonomy". Notwithstanding the implicit literal reference to Article 116(3) of the Constitution, the applicant considers that the referendum violates that constitutional provision on two grounds: first and foremost in that it disregards the conditions and limits applicable to the conferral of such additional forms and terms of autonomy, which are substantive and indicated in a closed list by Article 116(3) of the Constitution; secondly in that the special legislative procedure provided for under the constitutional provision is claimed not to allow a preliminary regional consultative referendum to be held.

It is indeed the case that the question does not specify the areas in which the regional autonomy regarding which the electorate is to be consulted is planned to be expanded. However, it is no less the case that the literal wording of the referendum question repeats verbatim the expression used in Article 116(3) of the Constitution, and thus relates to the establishment of differential levels of regional autonomy provided for under the constitutional provision invoked; it must thus be concluded that the "further forms and special terms of autonomy" regarding which the electorate has been called

upon to express its opinion may only concern the “areas of law provided for under Article 117(3) and those referred to in paragraph two of that Article under letters l), with regard solely to the organisation of the justices of the peace, n) and s)”, as explicitly provided for under the aforementioned constitutional provisions. When interpreted in this way, the referendum question is not a precursor for developments in autonomy in excess of the limits provided for under the constitution, which means that the question is unfounded in this regard.

As regards the second ground for challenge, it must be observed that there is no overlap between the regional plebiscite and the procedure provided for under Article 116(3) and (4) of the Constitution, which may thus be held in unaltered form, were it in actual fact to be activated. The consultative referendum provided for under the contested regional provision is to occur at an earlier stage that is separate from the procedure provided for under Article 116 of the Constitution, which requires the approval of a law by the state on the initiative of the region concerned, after consulting the local authorities, which law must be approved by an absolute majority of the members of the Houses of Parliament and on the basis of an agreement between the state and the region.

The referendum to which the contested provision relates is to be held in advance of the acts and stages comprising the procedure provided for under the Constitution. The act of regional initiative referred to under Article 116(3) of the Constitution, along with the procedure governing its adoption by the competent regional bodies, is legally independent and distinct from the referendum, even though it may be conditioned politically by its outcome. Moreover, were it to be held, the plebiscite would not make it possible to derogate from any requirement for action under constitutional law, including the consultation of the local authorities. The question is thus unfounded also in this regard.

8.4.– As regards the questions provided for under Article 2(1) no. 2), 3) and 4) of Veneto Regional Law no. 15 of 2014, the challenges alleging the violation of Articles 26 and 27 of the Statute of Veneto Region, and thus of Article 123 of the Constitution, are well founded.

Questions no. 3) and no. 2) delineate respectively a financial structure within which at least eighty percent of the taxes collected within the regional territory, or which are

paid by the “citizens of Veneto”, are to be withheld by the Region, whilst at least eighty percent of the part collected by the “central government” should be used within the regional territory “to procure goods and services”. The referendum and the resulting initiatives taken by the representative bodies of the Region provided for under the contested law thus relate to the destination of the revenues resulting from existing taxation and propose that a significant percentage be removed from general public finances for allocation for the exclusive benefit of Veneto Region and its inhabitants.

In doing so the two questions patently encroach upon taxation and thus violate Articles 26(4)(a) and 27(3) of the Statute, which do not permit consultative referendums in relation to tax legislation.

The violation of the constitutional principles concerning the coordination of the public finances and of the limit relating to budgetary laws, interpreted in accordance with the settled case law of this Court concerning referendums pursuant to Article 75 of the Constitution, which can be used as a basis for interpreting also the analogous provision within the Statute (see *inter alia* Judgments no. 6 of 2015, no. 12 of 2014, no. 12 of 1995 and no. 2 of 1994), is no less far-reaching.

The questions under examination propose lasting and deep-seated changes to the equilibria of the public finances, thereby impinging upon the bonds of solidarity between the regional population and the rest of the Republic. Thus, the two questions are directly focused not on individual budgetary initiatives or specific measures provided for thereunder but on certain structural elements of the national system of financial planning, which are indispensable in order to guarantee cohesion and solidarity within the Republic along with its legal and economic unity. In doing so the questions breach principles of certain constitutional significance and strike at the heart of an area of law in which the Regional Statute itself, in line with the Constitution, does not accept referendums, not even consultative referendums.

The further grounds for unconstitutionality raised by the application in relation to these two questions are moot.

8.5.– The question provided for under Article 2(1) no. 4) of the contested law submits to the electorate the following question: “Do you want the proceeds deriving from the sources of financing for the Region do be exempt from hypothecation?”.

Formulated in these terms, the question cannot be interpreted unequivocally. It is apparently asking the electorate whether it wishes to endorse principles which are in reality already incorporated into the Constitution and into applicable legislation. In fact, Article 1(2) and (3) of Legislative Decree no. 68 of 6 May 2011 (Provisions on the tax autonomy of the regions governed by ordinary statute and the provinces, and specification of standard costs and needs within the healthcare sector) provide with regard to regions governed by ordinary statute that joint entitlement to the revenues from taxation, regional taxes and equalisation mechanisms shall constitute the sources of financing "for the overall expenditure of the regions themselves" and that the relative revenues "shall not be hypothecated". This is consistent with Article 119 of the Constitution, which prohibits the state legislator from making provision for new hypothecated financing in areas falling under residual regional competence or over which competence is shared, which may transform into an indirect yet pervasive instrument for interference by the state in the exercise of the functions of the regions and local authorities in the substantive areas within their competence (see *inter alia* Judgments no. 254 of 2013 and no. 168 of 2008).

It is indeed the case that the principle of no hypothecation may be subject to exceptions, such as that provided for under Article 119(5) of the Constitution, which permits the state to grant additional resources to the local self-governing territories in order to promote economic development, cohesion and social solidarity, to remove economic and social imbalances, to promote the effective exercise of the rights of the person or to make provision for purposes different from the normal exercise of their functions. The only plausible meaning of the referendum question under examination is thus that it relates to the removal of all hypothecation requirements that still apply to the financial resources attributed to the region. In this way, the question ends up concerning the constitutional rule itself laid down in Article 119(5) of the Constitution. As has been reiterated on various occasions, the question is not legitimate insofar as it impinges upon a principle of constitutional law, *inter alia* because it does not comply with the Regional Statute, Articles 26(4)(b) and 27(3) of which provide that the terms of regional referendums must respect "constitutional obligations". It is also at odds with the case law of this Court cited above, which has constantly stressed that regional referendums

may not present citizens with questions entailing choices on the level of constitutional law.

Article 2(1) no. 4) of Veneto Regional Law no. 15 of 2014 must therefore be ruled unconstitutional.

8.6.– Article 2(1) no. 5) of Veneto Regional Law no. 15 of 2014 concerns a referendum which will place the following question before the electorate: “Do you want Veneto Region to become a region governed by special statute?”.

The purpose of this plebiscite is to include Veneto Region in the class of regions governed by special statute, which are specified in a closed list in Article 116 of the Constitution. Accordingly, this question also impinges upon fundamental choices on constitutional level which cannot be addressed in regional referendums, according to the case law of this Court, and contrasts irremediably with the Regional Statute, Articles 26(4)(b) and 27(3) of which provide that the terms of regional referendums must respect “constitutional obligations”. The clear wording of the question does not leave scope for interpretations such as that proposed by counsel for the Region, according to whom the referendum seeks to obtain a different classification of the applicant region, albeit still as a region governed by ordinary statute: on the contrary, the question is clearly intended to include Veneto Region alongside the five regions governed by special statute already provided for under Article 116 of the Constitution.

Article 2(1) no. 5) of Veneto Regional Law no. 15 of 2014 must therefore be ruled unconstitutional.

8.7.– Since, out of the questions relating to the questions provided for under Article 2(1), that relating to question number 1) has been ruled unfounded, the request that Veneto Regional Law no. 15 of 2014 be declared unconstitutional in its entirety cannot be accepted, considering that the residual provisions contained in the Law are instrumental for holding the referendum which has passed muster before this Court. Thus, the questions concerning Articles 1, 2(2), 3 and 4 of the Law, along with the question of constitutionality raised with reference to Article 116(3) of the Constitution concerning Article 2(1) no. 1), must also be ruled unfounded. These provisions may obviously apply solely with regard to the one question that has not been declared unconstitutional.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

hereby,

1) rules that the intervention by the association "Indipendenza Veneta" is inadmissible;

2) declares that Veneto Regional Law no. 16 of 19 June 2014 (Calling of the consultative referendum on independence for Veneto) is unconstitutional;

3) declares that Article 2(1) no. 2), 3), 4) and 5) of Veneto Regional Law no. 15 of 19 June 2014 (Consultative referendum concerning autonomy for Veneto) is unconstitutional;

4) rules that the question concerning the constitutionality of Article 2(1) no. 1) of Veneto Regional Law no. 15 of 2014 initiated with reference to Article 116 of the Constitution by the President of the Council of Ministers by the application referred to in the headnote (Register of Applications no. 67 of 2014) is unfounded;

5) rules that the questions concerning the constitutionality of Articles 1, 2(2), 3 and 4 of Veneto Regional Law no. 15 of 2014 initiated by the President of the Council of Ministers by the application referred to in the headnote (Register of Applications no. 67 of 2014) are unfounded.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 29 April 2015.