Corte costituzionale

JUDGMENT NO. 61 OF 2009

FRANCESCO AMIRANTE, President
PAOLO MADDALENA, Author of the Judgment

JUDGMENT NO. 61 YEAR 2009

In this case the Court considered a challenge by the Prime Minister's Office to a Valle d'Aosta region law which changed the state and Community law definition of waste, and also lowered the level of environmental protection established under state law. The Court struck down the legislation as unconstitutional on the grounds that, if the state lays down "minimum standards of environmental protection", this means that the regions may enhance such protection, but may not lower it. The Court also rejected as groundless a further complaint by the Applicant challenging provisions which permitted the preliminary deposit of waste in brownfield sites.

THE CONSTITUTIONAL COURT

composed of: President: Francesco AMIRANTE; Judges: Ugo DE SIERVO, Paolo MADDALENA, Alfonso QUARANTA, Franco GALLO, Luigi MAZZELLA, Gaetano SILVESTRI, Sabino CASSESE, Maria Rita SAULLE, Giuseppe TESAURO, Paolo Maria NAPOLITANO, Giuseppe FRIGO, Alessandro CRISCUOLO,

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 14(1), (2), (3) and (6) and 21 of Valle D'Aosta Region law No. 31 of 3 December 2007 (New provisions on waste management) and Article 64 of Valle d'Aosta Region law No. 5 of 13 March 2008 (Provisions governing quarries, mines and and spring and thermal natural mineral water), commenced pursuant to the applications by the President of the Council of Ministers served on 15 February and 20 June 2008, filed in the Court Registry on 25 February and 26 June 2008 and registered as Nos. 13 and 30 in the Register of Applications 2008.

Considering the entries of appearance by Valle d'Aosta Region;

having heard the Judge Rapporteur Paolo Maddalena in the public hearing of 27 January 2009;

having heard the *Avvocato dello Stato* Giuseppe Fiengo for the President of the Council of Ministers and Francesco Saverio Marini, barrister, for Valle d'Aosta Region.

The facts of the case

1. – By the application served on 15 February 2008, filed on 25 February and registered as No. 13 in the Register of Applications 2008, the President of the Council of Ministers, represented and advised by the *Avvocatura Generale dello Stato*, raised with reference to Article 117(1) and (2)(s) of the Constitution and Article 2(1) of constitutional law No. 4 of 26 February 1948 (Special Statute for Valle d'Aosta), the question of the constitutionality of Articles 14(1), (2), (3) and (6) and 21 of Valle D'Aosta Region law No. 31 of 3 December 2007 (New provisions on waste management).

2. – The President of the Council of Ministers argues that "although the regions have shared legislative competence over matters concerning 'territorial government', powers also recognised to the regions governed by special statute pursuant to constitutional law No. 3/2001, matters concerning waste management fall under the exclusive power of the state over issues relating to environmental protection, pursuant to Article 117(2)(s) of the Constitution" and that the provisions contained in legislative decree No. 152 of 3 April 2006 (Provisions concerning environmental matters) amount to minimum standards for uniform environmental protection that are mandatory for regional legislatures.

The state representative goes on to argue that, according to the "combined provisions of Article 117(1) of the Constitution and Article 2(1) of constitutional law No. 4/1948 containing the Special Statute for Valle d'Aosta Region" also the rules laid down by the Community law on waste, including in particular directives 75/422/EEC and 2006/12/EC, as well as the principles developed in this area in the case law of the European Court of Justice, which has developed in particular the definition of waste, are mandatory for the regions.

2.1. – In view of the above, the President of the Council of Ministers challenges first and foremost Article 14(1) and (2) of Valle d'Aosta Region law No. 31 of 2007, which provide:

- (Article 14(1)) that “inert excavated material does not amount to waste and shall not be subject to the provisions of legislative decree No. 152 of 2006 where it consists exclusively in natural soils from hillsides liable to landslips or resulting from water management activities and the maintenance of riverbeds and stream beds, the environmental quality of which corresponds at least to a good chemical state, as defined by Article 74(2)(z) of legislative decree No. 152 of 2006. The origin of the material must be expressly declared by the project manager during the preliminary planning stage for the relevant works or, for projects subject to a statement of commencement of activities, by the individual responsible for the project to which the works refer”;

- (Article 14(2)) that “the inert excavated material shall not be regarded as waste where it is not hazardous, according to the specific classification made pursuant to the detailed procedures laid down by Article 186(3) of legislative decree No. 152 of 2006, if it is derived from:

a) sites for which decontamination procedures are being carried out pursuant to Part IV, Title V of legislative decree No. 152 of 2006;

b) sites already subject to decontamination or permanent safeguarding measures;

c) sites already intended for waste management operations, such as plant for the disposal or recovery of waste;

d) sites where commercial, artisan or industrial production operations have been carried out which are run down and which may have caused environmental contamination, except agricultural activities;

e) water management activities and the maintenance of riverbeds and stream beds, the environmental quality of which does not correspond at least to the chemical state of good, as defined by Article 74(2)(z) of legislative decree No. 152 of 2006”.

2.2. – The Applicant challenges these provisions on two different grounds.

2.2.1. – It complains in the first place that the provisions breach Community law and, therefore, the "combined provisions of Article 117(1) of the Constitution and Article 2(1) of constitutional law No. 4/1948" insofar as, by providing for theoretical conditions which where satisfied specify that inert excavated material does not constitute waste, they provide for generalised exclusions or absolute presumptions that inert excavated material be excluded from the scope of legislation on waste, whilst under Community law (Article 1 of directive 2006/12/EC) waste is "any substance or object […] which the holder discards or intends or is required to discard" and according to the case of law of the Court of Justice (referring in this regard to the judgment of 18 April 2002 in Case C-9/00, *Palin Granit* [2002] ECR I-3533), the determination of the holder's intention to discard the object or substance cannot be made in abstract terms, but must occur on a "case by case" basis.

2.2.2. – On the other hand, it complains that they violate Article 117(2)(s) of the Constitution, insofar as they lay down provisions which diverge from and stipulate a lower level of environmental protection compared to Article 186(1) of legislative decree No. 152 of 2006, according to which "excavated earth and rubble, including from tunnels, and residues from processing stone intended for actual use for filling, backfilling, embanking or as aggregates do not constitute waste and are therefore excluded from the scope of Part Four of this decree only in cases in which, even when they are contaminated during the production cycle by polluting substances resulting from excavation, boring and construction operations, are used without preliminary transformation according to the procedures specified in the project subject to an environmental impact study or, where the project is not subject to an environmental impact study, according to the procedures specified in the project approved by the competent administrative authority, where this is expressly provided for, in consultation with the environmental protection agencies of the regions and the autonomous provinces, provided that the average composition of the mass as a whole does not contain a concentration of polluting substances greater than certain maximum limits".

2.3. – The Applicant also challenges, as a consequence, Article 14(3) of Valle d'Aosta Region law No. 31 of 2007, which provides that "the inert excavated material which does

not amount to waste pursuant to sub-sections 1 and 2 must be allocated as a priority matter for activities involving its direct re-use, or for re-use in fixed plant for processing inert materials; where this is not possible, it must be allocated for activities such as the ordinary management of landfill, the use in decontamination operations or the permanent safeguarding of contaminated sites, the environmental recovery of sites already intended for quarrying, the recovery of hillsides and other areas liable to landslips, land and agricultural improvements, or any other public or private work for which the use of earth, rubble, gravel and sand is necessary".

This provision is argued to be unconstitutional on the grounds that it regulates the management of inert excavated material which the Applicant claims has been unlawfully removed by the contested sub-sections 1 and 2 from the scope of the more rigorous arrangements laid down by state law.

2.4. – The President of the Council of Ministers also challenges Article 14(6) of Valle d'Aosta Region law No. 31 of 2007, which provides that "the creation and operation of equipped storage areas for the inert excavated material shall not be subject to the authorisation procedures specified in legislative decree No. 152 of 2006".

This regional provision is claimed to violate Article 117(2)(s) of the Constitution on the grounds that it enacts provisions which diverge from and stipulate a lower level of environmental protection compared to Article 186 of legislative decree No. 152 of 2006, which lays down "very rigorous" procedural arrangements governing the re-use of inert excavated material and "excludes its application only for inert excavated material already subject to classification, which is not contaminated and therefore is not covered by the waste arrangements".

2.5. – Finally, the Applicant challenges Article 21 of Valle d'Aosta Region law No. 31 of 2007 which provides that:

- (Article 21(1)) "the municipal centres for the acceptance of urban waste activated by Optimal Territorial Sub-units following the reorganisation of collection and transport services shall constitute the acceptance stage for the delivery of separated or unseparated waste by the producers of urban waste and special waste equivalent to urban waste";

- (Article 21, comma 2) “the centres specified in sub-section 1, termed also waste recycling facilities [*isole ecologiche*] since they ensure the grouping of urban waste and of special waste equivalent to urban waste into homogeneous product categories for the purposes of its collection and subsequent dispatch for disposal and recovery operations, do not carry out disposal and recovery operations as defined in Schedules B and C to Part IV of legislative decree No. 152 of 2006, and are not subject to the authorisation procedures specified in Articles 208 and 216 of that decree”.

The Applicant challenges these provisions insofar as they provide that these centres are not subject to authorisation and that the conferral operations are not considered to be recovery or disposal operations, claiming that it breaches directive 2006/12/EC (point R 13 of Schedule 2 B and point D15 of Schedule 2A) and legislative decree No. 152 of 2006 (point R 13 of Schedule C and point D15 of Schedule B), which consider the “green points” [*ecopiazzole*] or waste recycling facilities as storage centres, providing “storage” in the event that the waste is destined for recovery operations, or “preliminary storage” in the event that the waste is intended for disposal operations, and therefore subjects them to the requirement for an authorisation specified under legislative decree No. 152 of 2006.

In this sense the contested Article 21 is claimed to violate both the combined provisions of Article 117(1) of the Constitution and Article 2(1) of constitutional law No. 4 of 1948, as well as Article 117(2)(s) of the Constitution.

2.6. – Finally, the state representative asserts that the contested provisions “may be challenged also in view of the amendments made to Articles 183 and 186 of legislative decree 152 of 2006 by legislative decree 4/2008 which was published on 29 January 2008, though has not yet come into force”.

3. – The Autonomous Valle d'Aosta Region entered an appearance, generically claiming that the application was inadmissible and groundless.

3.1. – In a subsequent written statement, the region's representative developed his own arguments, putting forward first and foremost certain grounds for inadmissibility.

According to the region's representative, the application is inadmissible in the first place due to the failure to explain why a provision of Title V of the Constitution should

apply to a region governed by special statute, since the application was filed in relation to Article 117(1) and (2) of the Constitution without considering the competences of Valle d'Aosta Region under its Statute over matters pertaining to environmental law, such as its primary competence over town planning (Article 2(1)(g) of the Special Statute) and protection of the countryside (Article 2(1)(q)) and that to implement or supplement health and safety law, hospital care and preventive care (Article 3(1)(l)), and without making a comparative evaluation of the two systems of regional self government (i.e. ordinary regions and those governed by special statute).

Moreover, according to the representative, it was not possible to overcome this serious argumentative defect in the Application through the "simple reference" contained in it to Article 2(1) of the Special Statute of Valle d'Aosta Region, in conjunction with Article 117(1) of the Constitution, as constitutional principles in the light of which the breach of Community law on waste management was to be assessed, since "this reference […] should have been accompanied by the identification and consideration of the legislative competences recognised to the Region under the same provision of the Statute", of which however there is no trace.

The Application is also argued to be inadmissible, secondly, due to the mistaken identification of the interposed rules which supplement the constitutional principle since the Applicant, which erred on the applicability of legislative decree No. 4 of 16 January 2008 (Additional provisions to correct and supplement legislative decree No. 152 of 3 April 2006 containing provisions concerning environmental matters), referred to Articles 183 and 186 of legislative decree No. 152 of 2006 in the text previously in force and not that in force at the time when the application was filed, namely that resulting from the amendments made by the corrective legislative decree No. 4 of 2008.

Thirdly, the appeal is also claimed to be inadmissible on the grounds that it does not provide adequate justification for the continuing existence of the interest to sue in the light of the replacement of Articles 183 and 186 by legislative decree No. 4 of 2008 since, according to the region's representative, with the 2008 amendment the state legislature accepted the less restrictive legal notion of excavated earth and rubble and introduced less

stringent arrangements with a lower level of environmental protection compared to the contested regional provisions, both with reference to inert excavated material as well as with reference to waste recycling facilities.

3.2. – In its written statement, the region's representative then goes on to argue that the application is groundless.

3.2.1. – With regard to Article 14 of Valle d'Aosta Region law No. 31 of 2007, the region's representative argues that: a) far from providing for a generalised exclusion of inert excavated material from the concept of waste, the provision is located within a broader legislative scheme which makes it possible to carry out that evaluation on a case by case basis as requested by Community law, as well as to verify the holder's intention to discard the object or material concerned; b) it lays down arrangements which are not less rigorous but if anything more protective for the environment than the state provisions contained in Articles 183 and 186 of legislative decree No. 152 of 2006, as replaced by legislative decree No. 4 of 2008.

This is claimed to follow from Article 13(1)(a) of the contested regional law which, defining the notion of inert excavated material, takes account not only of its characteristics and origin, but also the intention to re-use it "directly or in fixed processing plants of inert materials for aggregates, or for redeployment in environmental recovery, hillside recovery, complete and agricultural decontamination operations, or regular or definitive landfill covering"; it is also clear from the contested Article 14 that it precludes the subjection of excavated inert material to the ordinary arrangements on waste only where (sub-section 1) the project manager or the individual required to issue the declaration of commencement of activities for the works concerned declares the origin of the material and (sub-section 2) only if it is specifically classified as not hazardous in accordance with the detailed procedures contained in Article 186(3) of legislative decree No. 152 of 2006, if it originates from particular sites or extraction activities; and above all it is clear from the combined provisions of Articles 14 and 16, according to which any exclusion of inert excavated material from the notion of waste is expressly subject to the full compliance with the planning procedures specified in Article 16 which, in turn, requires that projects not be

approved by the competent authorities and that declarations of commencement of activities be invalidated where they do not specify the production balance of the material and the waste or indicate their destination.

Ultimately, it is only possible to avoid the subjection to state rules on waste and to apply the different regional arrangements contained in the contested Article 14 where the material is not hazardous and it is certain that it will be reused during a stage that is actually prior to the approval of the individual project which may generate the inert excavated material.

According to the region's representative, this provision fully complies with Community case law, as well as the jurisprudence of the Constitutional Court (judgment No. 62 of 2008), according to which the possibility of considering an object, material or raw material resulting from an extraction or manufacturing process which it not principally intended to produce it as a by-product which the holder does not intend to discard must be limited to situations in which the re-use is not simply contingent, but rather certain, does not require preliminary transformation and occurs during the course of the process for production or reuse.

Nor according to the representative of Valle d'Aosta Region is there any substantial difference between this regional legislation and the state legislation which, where specific conditions relating to effective and certain recovery are satisfied, does not classify excavated earth and rubble as waste, but rather as by-products, other than the fact that “the former provides for more stringent rules relating to the procedures concerning the planning and implementation stages of the works, ensuring that they are fully compatible with the objectives and standards of environmental protection indicated in national legislation”.

3.2.2. – As far as Article 21 of regional law No. 31 of 2007 is concerned, the region's representative points out that Article 183(1)(cc) of legislative decree No. 152 of 2006, in the form amended by legislative decree No. 4 of 2008, defines a collection as the area “supervised and equipped, without additional burdens on the public finances, for the activity of collection through the differentiated separation of waste according to homogeneous product categories provided by holders for transportation to recovery and

processing plant", delegating the Minister for the Environment, Protection of the Land and the Sea to issue more detailed regulations by decree, following consultation with the Joint Assembly for the state, regions, cities and local government and argues that Article 2 of the decree of the Minister for the Environment of 8 April 2008 (Arrangements for collection centres for urban waste gathered separately, as provided by Article 183(1)(cc) of legislative decree No. 152 of 2006, as subsequently amended) provides (no differently from the contested regional legislation) that the realisation of these centres not be subject to the authorisation arrangements specified in Articles 208 and 216 of legislative decree No. 152 of 2006, but to approval by the municipality with territorial competence pursuant to applicable law.

In the light of this definition and the subsequently issued ministerial decree, according to the region's representative the contested legislation does not contrast with the state legislation, as it has indeed been confirmed that the municipal collection centres or waste recycling facilities, which amount to mere areas prepared for collection activity through the separation of urban waste, cannot be considered – as however the Applicant does – as storage centres taking the form of "storage" or "preliminary storage".

4. – By the application served on 20 June 2008, filed on 26 June and registered as No. 30 in the Register of Applications 2008, the President of the Council of Ministers, represented and advised by the *Avvocatura Generale dello Stato*, raised with reference to Article 117(1) and (2)(s) of the Constitution and Article 2(1) of constitutional law No. 4 of 26 February 1948 (Special Statute for Valle d'Aosta) the question of the constitutionality of Article 64 of Valle d'Aosta Region law No. 5 of 13 March 2008 (Provisions governing quarries, mines and and spring and thermal natural mineral water).

4.1. – The contested provision replaced Article 14(5) of regional law No. 31 of 2007 with the following: "the municipalities shall take steps to identify the equipped storage areas, also in agreement between themselves.

The location of these areas must preferably coincide, where space permits, with the landfill areas for inert special waste or with the recovery centres for inert waste already in operation, as well as brownfield sites formerly used for the extraction of inert materials. In

these cases, the management of the inert excavated material may also be assured by the operators of the said plant. With regard to the realisation and operation of the equipped storage areas for the inert excavated material located outwith the areas in which this treatment is already permitted under the municipal regulatory plan, the municipality concerned may, also pursuant to an application by a private individual, approve a specific project for intervention, also according to the procedures specified under Article 31(2) of regional law No. 11 of 6 April 1998 (Provisions governing town planning and territorial planning in Valle d'Aosta), subject to consultation with the Region in order to verify the technical validity of the proposal presented through a Services Conference convened by the regional authority with competence over waste management pursuant to regional law No. 19 of 6 August 2007 (New provisions concerning administrative procedures and the right of access to administrative documents) within 30 days of receipt of the consultation request from the municipality. The consultation with the region replaces for all purposes any approvals, opinions, authorisations and concessions within the powers of the municipalities; approval by the municipality also entails a declaration that the works are urgent, non-deferrable and in the public interest. The management of inert excavated material through one or more storage centres may be carried out in a coordinated manner within the catchment areas for the collection and transport of waste by the Optimal Territorial Sub-units".

4.2 – The Applicant contests this provision insofar as, by removing such materials from the scope of the arrangements governing waste, it permits the storage of inert excavated material also in non-equipped areas such as, above all, brownfield sites formerly used for the extraction of inert materials.

The state representative claims, using arguments essentially identical to those submitted in application No. 13 of 2008, that it violates the combined provisions of Article 117(1) of the Constitution and Article 2(1) of constitutional law No. 4 of 1948 insofar as they provide for a generalised exclusion or absolute presumption of exclusion for inert excavated material from the scope of waste legislation, whilst under Community law (Article 1 of directive 2006/12/EC) waste is "any substance or object […] which the holder

discards or intends or is required to discard" and according to the case of law of the Court of Justice (judgment of 18 April 2002 in Case C-9/00, *Palin Granit* [2002] ECR I-3533), the determination of the holder's intention to discard the object or substance cannot be made in abstract terms, but must occur on a "case by case" basis. The provision is also claimed to violate Article 117(2)(s) of the Constitution insofar as it lays down provisions which diverge from and stipulate a lower level of environmental protection compared to Article 186 of legislative decree No. 152 of 2006, in particular by unlawfully increasing the cases in which inert material may be excluded from the application of the ordinary arrangements on waste.

5. – The Autonomous Region of Valle d'Aosta entered an appearance, arguing generically that the Application was inadmissible and groundless.

5.1. – In its written statement subsequently filed, the region's representative develops arguments essentially identical to those submitted in the proceedings commenced by application No. 13 of 2008, adding further points concerning the grounds which justified the choices made by the regional legislature in Article 64 of regional law No. 5 of 2008, which are stated to consist in the need to ensure a certain management of the re-use of the inert excavated material within a residential, morphological and environmental context which is problematic and not comparable to that of other regions and to identify locations for the storage of materials under public ownership in which that material may be managed adequately for the time necessary for the re-use or recovery as specified under individual projects, taking into account the fact that construction activities in a mountainous area such as Valle d'Aosta occur only during the months between June and October and the difficulties, within this context, in ensuring that the excavation or diversion coincide with the use of the materials resulting from such activities.

Conclusions on points of law

1. – By the application served on 15 February 2008 and registered as No. 13 in the Register of Applications 2008, the President of the Council of Ministers, represented and advised by the *Avvocatura Generale dello Stato* raised, with reference to Article 117(1) and (2)(s) of the Constitution and Article 2(1) of constitutional law No. 4 of 26 February 1948 (Special Statute for Valle d'Aosta), the question of the constitutionality of Articles 14(1), (2), (3) and (6) and 21 of Valle D'Aosta Region law No. 31 of 3 December 2007 (New provisions on waste management).

1.1. – By the subsequent application served on 20 June 2008 and registered as No. 30 in the Register of Applications 2008, the President of the Council of Ministers, represented and advised by the *Avvocatura Generale dello Stato* raised, with reference to Article 117(1) and (2)(s) of the Constitution and Article 2(1) of constitutional law No. 4 of 1948, the question of the constitutionality of Article 64 of Valle d'Aosta Region law No. 5 of 13 March 2008 (Provisions governing quarries, mines and and spring and thermal natural mineral water).

1.2. – Article 14 of Valle d'Aosta Region law No. 31 of 2007 specifies (sub-sections 1 and 2) the conditions under which inert excavated material is not considered to constitute waste and is not subject to the provisions applying to waste, regulates (sub-section 3) the destination (direct re-use or other forms or re-use) of such material and exempts (sub-section 6), both with regard to re-use as well as their operations, the storage areas from the ordinary arrangements provided for under legislative decree No. 152 of 3 April 2006 (Provisions concerning environmental matters).

Article 64 of Valle d'Aosta Region law No. 5 of 2008 replaces Article 14(5), permitting the storage of inert excavated material also at brownfield sites formerly used for operations to extract the same.

Finally, Article 21 of Valle d'Aosta Region law No. 31 of 2007 provides that the grouping of urban waste and special waste equivalent to urban waste in homogeneous product categories for the purposes of its collection and subsequent dispatch for disposal and recovery operations does not amount to a disposal or recovery operation and thus permits the municipalities to create waste recycling facilities, without any requirement to

comply with the procedures stipulated under Articles 208 and 216 of legislative decree No. 152 of 2006.

1.3. – The President of the Council of Ministers challenges:

- Article 14(1) and (2) (and by extension sub-section 3) of Valle d'Aosta Region law No. 31 of 2007 and Article 64 of Valle d'Aosta Region law No. 5 of 2008 with reference to the combined provisions of Article 117(1) of the Constitution and Article 2(1) of the Special Statute for Valle d'Aosta, insofar as they provide for certain generalised exclusions or absolute presumptions that inert excavated material be excluded from the application of the stage legislation on waste, whereas under Community law (Article 1 of directive 2006/12/EC) waste is " any substance or object […] which the holder discards or intends or is required to discard" and according to the case of law of the Court of Justice (referring in this regard to the judgment of 18 April 2002 in Case C-9/00, *Palin Granit* [2002] ECR I-3533), the determination of the holder's intention to discard the object or substance cannot be made in abstract terms, but must occur on a "case by case" basis; as well as in relation to Article 117(2)(s) of the Constitution, insofar as they lay down provisions which diverge from and stipulate a lower level of environmental protection compared to Article 186 of legislative decree No. 152 of 2006;

- Article 14(6) of Valle d'Aosta Region law No. 31 of 2007, with reference to Article 117(2)(s) of the Constitution, insofar as it stipulates a lower level of environmental protection compared to Article 186 of legislative decree No. 152 of 2006, which imposes procedural arrangements for the re-use of inert excavated material which are "very stringent" and "exempts from the application only inert excavated material that has already been classified and is not contaminated, and which therefore is not covered by the arrangements on waste";

- Article 21, with reference to the combined provisions of Article 117(1) of the Constitution and Article 2(1) of constitutional law No. 4 of 1948, as well as in relation to Article 117(2)(s) of the Constitution, insofar as directive 2006/12/EC (point R 13 of Schedule 2 B and point D15 of Schedule 2A) and legislative decree No. 152 of 2006 (point R 13 of Schedule C and point D15 of Schedule B) consider waste recycling facilities as

storage centres, providing “storage” in the event that the waste is intended for recovery operations, or “preliminary storage” where the waste is intended for disposal operations, and therefore exempts them from the requirement for authorisation.

1.4. – The two applications, which are connected on objective and subjective grounds, must be joined for decision with a single judgment.

2. – Before entering into the merits of the questions, it is necessary to assess the objections made by the respondent Valle d'Aosta Region that the applications are inadmissible.

2.1. – The region's representative argues, first and foremost, that the applications are inadmissible since the Applicant relied on, as interposed rules, provisions of legislative decree No. 152 of 2006 which were no longer in force or, more precisely, referred to them in the version prior to the amendment contained in the corrective legislative decree No. 4 of 2008, whereas that legislative amendment had already become effective at the time when the applications were served. In application No. 13, this fact is confirmed by the very argument of the Applicant, which expressly denies that the corrective degree has entered into force, whilst in application No. 30 this may be inferred from the words or phrases used by the Applicant itself, which essentially reproduce the original formulation of Article 186, and not as amended.

Even though the two applications were filed after the entry into force of the corrective amendment, the objection is groundless.

In application No. 13 the Applicant's error regarding whether the interposed rule relied on is currently in force is in fact followed by the express assertion that the contested regional provisions also contrast with the subsequently enacted state legislation. In application No. 30 on the other hand, the Court finds that the exact indication of the interposed rule is sufficient.

The further objection that the application is inadmissible made by the Respondent Region according to which the aforementioned amendment of Article 186 of legislative decree No. 152 of 2006 by legislative decree No. 4 of 2008, which resulted in less stringent

environmental protection arrangements, required that the Applicant had to establish that it still had standing to apply to the Court, is also without foundation.

The objection is irrelevant, since it relates to the merits and not the admissibility of the applications. In any case, as will be seen below, the Court finds that the corrective decree No. 4 of 2008 did not introduce less stringent protection.

Finally, according to the region's representative, the appeal was inadmissible due to the fact that it referred to a provision contained in Title V, Part II of the Constitution without giving any reasons regarding its applicability to a region governed by special statute, and moreover without carrying out a comparative assessment of the two systems, namely constitutional law and the Special Statute. In particular, the application is claimed to have been made with reference to Article 117(1) and (2) of the Constitution without considering the competences of Valle d'Aosta Region under its Statute over town planning (Article 2(1)(g) of the Special Statute), protection of the countryside (Article 2(1)(q)) and that to implement or supplement health and safety law, hospital care and preventive care (Article 3(1)(i)).

The objection is groundless.

The application by the government relates to provisions laying down the legislation on waste, which as such fall within the area of environmental protection (most recently, judgment No. 10 of 2009).

Valle d'Aosta Region therefore has no general competence under its Statute over environmental protection, nor any specific powers under the Statute over waste, which means that any argument by the Applicant in this regard would have been superfluous, as it is moreover clear that this type of assessment would not be admissible before this Court.

3. – Turning to the merits of the questions raised in both of the applications regarding Article 14 of regional law No. 31 of 2007, the Applicant essentially makes two objections: a) the contested regional law adopts a concept of “waste”, which contrasts with that under Community law according to which “waste” is any object which the holder “discards or intends or is required to discard”; b) the contested provisions contrast with state legislation in this area, which constitute “interposed rules” in that they supplement or substantiate

Article 117(2)(s) of the Constitution, and are therefore unconstitutional on the grounds that they infringe the exclusive competence of the state over environmental protection. It is only for the objection to Article 14(6) of regional law No. 31 of 2007 that the application (No. 13) is made on the grounds of the breach only of national law.

In view of the above, the Court finds that the contested provisions do not contain an explicit definition of the concept of "waste". It follows that the solution to the questions raised will essentially depend on the comparison between the state legislation and the contested regional legislation.

4. – Before moving carrying out this comparison it must be recalled that according to the case law of this Court:

a) waste falls under the exclusive competence of the state over environmental protection (most recently, judgment No. 10 of 2009; see also judgments Nos. 277 and 62 of 2008) and, therefore, no regional competence may be acknowledged in the area of environmental protection (see judgments Nos. 10 of 2009, 149 of 2008 and 378 of 2007);

b) when exercising their powers, the regions must respect state environmental protection legislation, but they may stipulate higher levels of protection (see judgments Nos. 30 and 12 of 2009, 105, 104 and 62 of 2008) in order to achieve targets pertinent to their own competences (in the areas of protection of health, territorial government, exploitation of environmental resources, etc.). In doing so they will certainly have an impact on the material resource of the environment, but with the goal not of protecting the environment, already safeguarded under state legislation, but rather of adequately regulating matters falling within their powers. This is therefore a power inherent in the very competences conferred on the regions and in the exercise of those powers.

Moreover, it must be pointed out that the principle, which recurs in the case law of this Court, that the state lays down "minimum standards of protection" in environmental law must be understood as meaning that the state ensures "adequate and non reducible" protection for the environment.

5. – Turning now to an examination of the individual contested provisions of Article 14, the question raised by the referring court regarding sub-sections 1 and 2 with reference to Article 117(2)(s) of the Constitution is well founded.

These are provisions which relate to the very definition of “waste”, concerning the issue of environmental protection reserved to the exclusive competence of the state, and cannot be taken to refer to any other type of competence specifically of the region, or contained in the Statute, or which may be inferred from the combined provisions of Articles 117 of the Constitution and 10 of constitutional law No. 3 of 2001.

In fact, the contested Article 14(1) provides that “inert excavated material does not amount to 'waste' and shall not be subject to the provisions of legislative decree No. 152 of 2006” where it derives from materials “the environmental quality of which corresponds at least to a good chemical state, as defined by Article 74(2)(z) of legislative decree No. 152 of 2006”. The state legislation on the other hand provides that such materials are “waste”, and therefore does not permit the exception made by the regional legislature, in clear violation of Article 117(2)(s) of the Constitution.

6. – The same applies to the contested Article 14(2), which also expands the range of inert excavated materials, restricting the concept of “waste” and in consequence reducing environmental protection by adding to the class of reusable materials inert materials originating from sites currently or formerly subject to decontamination, or formerly destined for waste management operations or subject to environmental contamination, provided that the “not hazardous, according to the specific classification made pursuant to the detailed procedures laid down by Article 186(3) of legislative decree No. 152 of 2006”.

7. – Also the question concerning sub-section 3 is well founded. This sub-section in fact concerns the re-use of excavated materials not considered to be waste, and since the previous provisions concerning the identification of the said materials and, therefore, the identification of the concept of “waste” have been held to be unconstitutional, the Court finds that this last provision is also by extension unconstitutional.

8. – The questions concerning Article 14(5), in the version introduced by Article 64 of Valle d'Aosta Region law No. 5 of 2008, and sub-section 6 are also well founded.

In fact, even though these provisions – both of sub-section 5 which concerns "the identification of equipped storage areas" and their location, as well as sub-section 6 according to which "the creation and operation of equipped storage areas" for inert excavated material are not subject to the authorisation procedures specified in legislative decree No. 152 of 2006 – fall within the Region's competence under Statute over town planning, insofar as they relate to the identification, location, creation and operation of "equipped storage areas", they breach Article 186(2) and (3) of legislative decree No. 152 of 2006, which adopt a broader concept of "waste" and a more stringent regulation of "equipped storage areas", permitting "the storage" only of excavated materials which satisfy the requirements contained in sub-section 1 of the same article and for a limited period of time (depending on the circumstances, one or three years). In other words, it certainly cannot be said that the Region exercised its powers in order to set higher environmental protection limits.

9. – The acceptance of the objections raised with reference to Article 117(2)(s) of the Constitution means that an evaluation of the further (and as clarified, most recently by judgment No. 368 of 2008, logically consequential) grounds for objecting to Article 14(1), (2), (3) and (6) of regional law No. 31 of 2007 and Article 64 of regional law No. 4 of 2008, raised by the Applicant with reference to Community law, is superfluous.

10. – The question raised (in application No. 13) in relation to Article 21 of regional law No. 31 of 2007, which concerns the so-called "waste recycling facilities", is groundless.

The contested legislation provides that the "the municipal centres for the acceptance of urban waste, termed also waste recycling facilities since they ensure the grouping of urban waste and of special waste equivalent to urban waste into homogeneous product categories for the purposes of its collection and subsequent dispatch for disposal and recovery operations", specifying that the said operations are different from "disposal and recovery operations" and as such are not subject to the authorisation procedures laid down by Articles 208 and 216 of legislative decree No. 152 of 2006.

The municipal centres or waste recycling facilities concerned correspond to the "collection centres" mentioned in Article 183(1)(c) of legislative decree No. 152 of 2006, as amended by Article 20(23) of legislative decree No. 4 of 2008, the regulation of which is delegated to a decree to be issued by the Minister for the Environment, following consultation with the state-regions Joint Assembly. This decree was issued on 8 April 2008 and provides, no differently from the contested regional legislation, that the regulation of these centres is not subject to the authorisation regime for the disposal and recovery of waste, provided for pursuant to Articles 208 and 216 of legislative decree No. 152 of 2006.

Therefore, the legislation enacted by the regional provisions only serves to satisfy regional coordination requirements and does not introduce arrangements governing waste which are less stringent than the state legislation.

Moreover, the regional provision does not breach Community law. In fact, directive 2008/98/EC (which repealed and replaced directive 2006/12/EC referred to by the Applicant) defines "collection" as the gathering of waste, including the preliminary sorting and (temporary) preliminary deposit for the purpose of transport to a waste treatment facility (Article 3(10)), distinguishing this from the "storage" or "preliminary storage" provided for under point D of Annex I and point R 13 of Annex II to the new directive.

ON THOSE GROUNDS

THE CONSTITUTIONAL COURT

hereby;

declares that Article 14(1), (2), (3) and (6) of Valle D'Aosta Region law No. 31 of 3 December 2007 (New provisions on waste management) is unconstitutional;

declares that Article 64 of Valle d'Aosta Region law No. 5 of 13 March 2008 (Provisions governing quarries, mines and and spring and thermal natural mineral water) is unconstitutional;

declares that the question of the constitutionality of Article 21 of Valle d'Aosta Region law No. 31 of 2007, raised with reference to Article 117(1) of the Constitution and Article 2(1) of constitutional law No. 4 of 26 February 1948 (Special Statute for Valle d'Aosta), as well as with reference to Article 117(2)(s) of the Constitution, in conjunction with point R 13 of Schedule C and point D15 of Schedule B to legislative decree No. 152 of 3 April 2006 (Provisions concerning environmental matters), by the President of the Council of Ministers in the application mentioned in the headnote, is groundless.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 25 February 2009.

Signed:

Francesco AMIRANTE, President

Paolo MADDALENA, Author of the Judgment

Maria Rosaria FRUSCELLA, Registrar

Filed in the Court Registry on 5 March 2009.

The Registrar

Signed: FRUSCELLA