Corte costituzionale

JUDGMENT NO. 61 OF 2011

Ugo DE SIERVO, President

Paolo GROSSI, Author of the Judgment

JUDGMENT NO. 61YEAR 2011

In this case the Court heard a challenge by the President of the Council of Ministers brought against legislation enacted by Campania Region to promote the social, economic and cultural inclusion of foreign nationals, on the grounds that some of the initiatives provided for would also be made available to illegal immigrants. The Court rejected the various challenges as inadmissible or groundless, holding *inter alia* that the fact that legislative powers over immigration as such are vested in the national Parliament does not preclude the regional legislatures from enacting legislation within other areas, such as the right to education, healthcare or social assistance, which also creates rights for foreign nationals. It also dismissed the Government's argument that the provisions were also liable to establish rights for illegal immigrants, and were *ipso facto* unconstitutional, on the grounds that they were "enacted against the backdrop of a legislative framework characterised by the recognition that foreign nationals have an irreducible core of protection for the right to healthcare, as guaranteed under the Constitution as an inviolable sphere of human dignity, even if they do not have a valid legal basis for residence ".

(omitted)

JUDGMENT

in proceedings concerning the constitutionality of Articles 1(2)(a) and (3)(b), 2(1), 3(1), 4(2), 8(2), 14(1) and (2), 16, 17(2), (5), (6) and (7), 18(1) and (3) and 20(1) of Campania Regional Law no. 6 of 8 February 2010 (Provisions on the social, economic and cultural inclusion of foreign nationals present in Campania), initiated by the President of the Council of Ministers by application served on 20-23 April 2010, filed in the Court Registry on 27 April 2010 and registered as no. 62 in the Register of Applications 2010.

Considering the entry of appearance by Campania Region;

having heard the Judge Rapporteur Paolo Grossi at the public hearing of 25 January 2011;

having heard Counsel Rosanna Panariello for Campania Region and the State Counsel (*Avvocato dello Stato*) Paola Palmieri for the President of the Council of Ministers.

(omitted)

Conclusions on points of law

1. – As a preliminary matter, it should be pointed out that Campania Region entered an appearance in these proceedings on the basis of an authorisation to challenge the application granted (by director's decree no. 366 of 17 May 2010) by the Coordinator of the General Coordination Area – Counsel Service, acting on a proposal by the director of the administrative and tax disputes sector of the Region, and not by the Regional Executive, as is by contrast required under Article 32(2) of Law no. 87 of 11 March 1953 (Provisions on the establishment and functioning of the Constitutional Court), with which Article 51(1)(f) of Regional Law no. 6 of 28 May 2009 (Statute of Campania Region) complies. Accordingly, as has been reiterated within the settled case law of the Constitutional Court – which has asserted (also in cases involving identical facts to this case) that the power to authorise the initiation of proceedings before the Constitutional Court must be deemed to include also the resolution to enter an appearance in such proceedings, given the political nature of the assessment which the two acts require (see *inter alia* the order read out at the public hearing of 5 October 2010 relating to the proceedings resolved by judgment no. 325 of 2010) – the entry of appearance is therefore inadmissible.

2. – The President of the Council of Ministers challenges in the first place numerous provisions of Campania Regional Law no. 6 of 8 February 2010 (laying down "Provisions on the social, economic and cultural inclusion of foreign nationals present in Campania"). In particular, the applicant objects to: Article 1(2)(a) on the grounds that it includes amongst its principles and goals that of guaranteeing to foreign nationals present in the regional territory "equality of opportunity in access to services, the recognition and promotion of gender equality and the principle that administrative

action should be aimed at enabling the effective exercise of rights", and to that effect provides that "the policies of the Region and the local authorities shall seek to achieve [...] the removal of obstacles on effective social, cultural and political inclusion"; Article 1(3)(b), according to which "the Region shall organise a system for the social protection and promotion of foreign nationals through initiatives aimed at […] ensuring equality of opportunity in access to housing, employment, education and professional training, the dissemination of information relating to the initiation of self-employed and entrepreneurial activities, the provision of health and social security services and inter-cultural mediation activities"; Article 2(1), according to which the individuals at which the contested legislation is directed are "the nationals of States which are not members of the European Union, stateless persons, asylum seekers and refugees present within the national territory […] hereafter referred to as foreign nationals"; Article 3(1) and Article 4(2) which, in specifying the tasks of the Region and the Provinces, refer to foreign nationals in general terms without any further specification; Article 8(2) [referred to only in the headnote]; Article 14(1) and (2) on the grounds that, in establishing with the regional department with competence over immigration a general register of bodies and associations which work in favour of foreign nationals, it implicitly includes amongst the recipients of the initiatives carried out by such bodies also individuals who do not hold a residence permit, or whose stay is unlawful on other grounds; Article 17(2), (5), (6) and (7); Article 18(1) and (3); and Article 20(1) since, in specifying in detail a series of initiatives intended to guarantee health and social assistance, social integration and professional training, it is stipulated that "foreign nationals present in the regional territory" are to receive such services.

According to the applicant, the use of the broad and generic formula "foreign nationals present in the regional territory", along with the fact that other provisions of the Regional Law (such as for example Article 1(1)(c) and (3)(f), Article 4(1), Article 5, Article 13(4), Article 16, Article 21 and Article 25) by contrast expressly refer to "foreign nationals lawfully resident in the region", means that the aforementioned initiatives will be unequivocally directed also at immigrant foreign nationals without a valid residence permit. However, since the stay within Italy and the expulsion of foreign nationals have been comprehensively regulated by Legislative Decree no. 286 of 25 July 1998 laying down the "Consolidated text of legislative provisions regulating

immigration and rules governing the status of foreigners", (since it does not fall under the regime of exemptions provided for under Articles 19 and 35 of the Consolidated Text) the contested regional legislation violates the fundamental principles laid down in Legislative Decree no. 286, in particular: (i) in Articles 3(5) and 40(1)-bis, which authorise the regions and other local government bodies to adopt measures for the social integration solely of immigrants lawfully resident in the country; (ii) in Articles 4, 5, 10, 11, 13 and 14 on illegal stays by illegal immigrants and the provisions governing deportation, expulsion and detention in centres for identification and expulsion; and (iii) Article 10-bis (introduced by Article 1(16) of Law no. 94 of 15 July 2009, laying down "Provisions on public security"). Therefore, they are claimed to impinge upon the legislation governing the entry by and residence of immigrants, which falls under the matters under the exclusive jurisdiction of the State including "the right of asylum and the legal status of the nationals of States which are not members of the European Union" and "immigration", provided for respectively under Article 117(2)(a) and (b) of the Constitution, along with "public order and safety" and "the criminal law", provided for under letters h) and l).

2.1. – The questions concerning this first group of provisions, which are challenged jointly, are in part inadmissible and in part groundless.

As the Court held in judgment no. 299 of 2010 when ruling on the merits of a challenge formulated in substantially identical terms against analogous legislation of another Region concerning the same matters, it is clear from the first group of challenges that, after having transcribed in part the regional provisions objected to in those challenges, the applicant concluded that they were unconstitutional exclusively due to the fact that, in its opinion, they applied "also to foreign nationals without a valid residence permit", who "not only were not entitled to stay in the country but, once inside the national territory, should be prosecuted under the criminal law". According to the State Counsel, these provisions violate the parameters of constitutional law invoked since "they affect the legislation on the entry by and residence of immigrants" and provide for "initiatives seeking the recognition or extension of rights to illegal immigrants or immigrants pending the formalisation of their status" (judgment no. 299 of 2010).

Therefore, although these provisions regulate various non-homogeneous initiatives relating to different areas of the law (which were not identified by the applicant), the only specific challenges raised relate to the said provisions exclusively insofar as they are claimed to apply to immigrants who do not have a valid residence permit; consequently, it is only subject to these terms and limits that they may be reviewed in these proceedings.

Therefore, it should be pointed out that the challenges concerning the alleged violation of Article 117(2)(h) and (l) of the Constitution, having regard to the alleged encroachment on the State's exclusive jurisdiction over matters relating to "public order and safety" and "the criminal law", are inadmissible on the grounds that the challenge – formulated in this manner – is merely assertive in that it is not supported by any argumentation (judgments no. 312 and no. 200 of 2010). Moreover, the same ground for inadmissibility also applies to the other questions in this regard, in which the alleged breach is also not substantiated, but rather asserted in an identical manner through the mere reference to the said parameters of constitutional law.

The residual challenges relating to the alleged violation of Article 117(2)(a) and (b) are groundless.

It should in fact be stressed once again as a general matter that the Regions must be allowed the ability to enact legislation relating to immigration, as provided for under Article 1(4) of Legislative Decree no. 286 of 1998, notwithstanding that such legislative powers cannot concern aspects relating to polices for the planning of flows of immigrants entering into and residing within the national territory, but rather in relation to other matters, such as the right to education or social assistance, jurisdiction over which is either shared or falls under the residual powers of the regions (judgments no. 299 and no. 134 of 2010). This is because public initiatives relating to foreign nationals cannot be limited to the mere control of their entry into and residence within the national territory, but must necessarily extend to other areas – from social assistance to education, health and housing – involving various strata of legislative jurisdiction, some of which are vested in the State, and others in the regions (judgments no. 156 of 2006, and no. 300 of 2005). This is especially so as foreign nationals are guaranteed fundamental rights which the Constitution recognises as being held by persons as such (judgment no. 148 of 2008).

In this case, notwithstanding the heterogeneous nature of their legislative content, the various provisions challenged all appear to be aimed – moreover as implementation of Article 3(5) of Legislative Decree no. 286 of 1998, according to which "Within the ambit of their respective powers and budgetary resources, the regions, provinces, municipalities and other local authorities shall adopt measures contributing to the pursuit of the objective of removing obstacles which *de facto* prevent the full recognition of the rights and interests guaranteed to foreign nationals within the territory of the State, with particular regard to those relating to housing, language and social integration, in accord with fundamental human rights" – at the provision by the Region, within a context of shared or residual powers, of protection and promotion systems intended to secure the opportunity for foreign nationals present in Campania to exercise rights such as the right to education and professional training, social assistance, employment, housing and health. Whilst these provisions (except as will be specified below in relation to Articles 17(5) and 20(1), which have been challenged individually) are considered to apply also to foreign nationals who do not have a valid residence permit, it is equally true that they seek exclusively to protect fundamental rights, without any minimal impact on policies for regulating immigration or the legal status of foreign nationals present within the national or regional territory, or the status of the beneficiaries of such actions. Consequently, the wording and teleological scope of the contested regional provisions do not enable them to be interpreted to the effect that, where the initiatives provided for thereunder also relate to illegal immigrants, they do not have the effect, even indirectly, of legitimising their presence within the territory of the State, thereby encroaching upon the powers, which fall under the exclusive jurisdiction of the State, on the planning of flows of immigrants entering into and residing within the national territory, or the prerequisites and procedures applicable to the formalisation of the status of foreign nationals.

3. – The applicant raises a distinct challenge against Article 17(2) of the Regional Law – again with reference to Article 117(2)(a) and (b) of the Constitution, invoked for the same reasons – which (insofar as it provides that reception centres for foreign nationals located within the Region are to carry out temporary reception activities for all foreign nationals present within the regional territory who do not have their own housing arrangements) is claimed to breach Article 40(1) and (1-bis) of Legislative

Decree no. 286 of 1998, according to which the reception centres established by the regions are intended to house exclusively "foreign nationals who are lawfully resident on grounds other than tourism, who are temporarily unable to make their own arrangements to satisfy their housing and subsistence requirements" and which also provides that "Access to measures of social integration shall be reserved to foreign nationals who are not nationals of a Members State of the European Union, provided that they are able to establish that they have complied with the legislation governing residence in Italy as laid down in this consolidated text and the regulations applicable to such matters".

3.1. – The question is groundless.

Article 17(2) provides that "The reception centres for foreign nationals located within the region shall carry out temporary reception activities for all foreign nationals present within the regional territory who do not have their own housing arrangements, with particular attention to the following categories: a) asylum seekers and their families, until the definitive conclusion of the administrative and judicial procedures associated with their requests for asylum; reception may also occur pending the issue or renewal of a residence permit on the grounds that a request for asylum has been made or due to the grant of asylum or humanitarian asylum; b) seasonal workers; c) foreign nationals who have been the victims of violence or serious exploitation and who benefit from protection on humanitarian grounds under the terms of social protection programmes falling under Article 18 of Legislative Decree no. 286 of 1998; access to centres may be granted also pending the assessment as to whether the prerequisites for admission to the social assistance and integration programme have been met or pending the issue or renewal of a residence permit on the grounds of social protection or on humanitarian grounds; d) foreign nationals subject to temporary protection measures or extraordinary reception measures ordered by the national Government pursuant to Article 20 of Legislative Decree no. 286 of 1998; e) unaccompanied underage foreign nationals who have been admitted into a civil and social integration project managed by a public or private body pursuant to Articles 32 and 33 of Legislative Decree no. 286 of 1998; and f) foreign sailors for the period of time necessary in order to secure new employment".

As already asserted by this Court (in judgment no. 299 of 2010) it should be stressed first and foremost that, far from encroaching upon the exclusive jurisdiction of the State over immigration (judgment no. 156 of 2006) – and hence in full accord with the provisions laid down by the State legislature governing the entry into and residence within Italy by foreign nationals, including with regard to foreign nationals who do not have a valid legal basis for entry (judgment no. 269 of 2010) – the provision enacts legislation pertaining to the area of law of assistance and social services, which falls under the residual legislative jurisdiction of the Regions (judgment no. 10 of 2010) and the regulation of which – as an expression of the broader legislative autonomy recognised under the Constitution – cannot be assessed as such on the basis of an account based not only on the groundless argument of the alleged encroachment on the exclusive powers of the State, but also on the alleged violation of fundamental principles, which are by contrast intended to regulate matters falling under shared jurisdiction pursuant to Article 117(3) of the Constitution (see judgment no. 247 of 2010).

Besides, the autonomy of the regional legislature over the matters at issue in this case appears to be informed by the desire to extend accessibility to the social right to housing arrangements (albeit of a precarious and temporary nature), which the Court has moreover held to fall under "the inviolable human rights referred to by Article 2 of the Constitution" (judgments no. 209 of 2009 and no. 404 of 1988; order no. 76 of 2010). Moreover, in accordance with the natural "expansive" effect of the requirement to guarantee "respect" for fundamental human rights (which cannot mean anything other than their concrete implementation), this is also in keeping with the legislation enshrined under Legislative Decree no. 286 of 1998 which: a) proclaims in Article 2(1) that "The fundamental human rights provided for under national law and international conventions in force and according to generally recognised principles of international law shall be guaranteed to foreign nationals present on any grounds at the border or within the territory of the State"; and b) provides in Article 3(5) that "Within the ambit of their respective powers and budgetary resources, the regions, provinces, municipalities and other local authorities shall adopt measures contributing to the pursuit of the objective of removing obstacles which *de facto* prevent the full recognition of the rights and interests guaranteed to foreign nationals within the territory

of the State, with particular regard to those relating to housing, language and social integration, out of respect for fundamental human rights".

4. – With reference to the same parameters of constitutional law, the applicant also challenges Article 17(5) which (in granting "foreign nationals" the right to be allocated public residential housing and to receive the allowances which may be paid to tenants under leases for residential use, as well as the right to participate in public competitions relating to the award of residential housing subsidies for the purchase, recovery, construction and lease of housing, both on equal conditions with Italian nationals) is claimed to violate Article 40(6) of the Legislative Decree, which provides that only "foreign nationals who hold a residence card and lawfully resident foreign nationals who hold a residence permit valid for at least two years, shall be entitled to access public residential housing and the intermediation services of any social agencies which may have been charged by a region or local authority with facilitating access to residential leases and loans under beneficial terms in relation to construction and the recovery, purchase or lease of the first home on equal conditions with Italian nationals, provided that they are in regular employment or self-employed activity".

4.1. – This challenge is also groundless, due to the mistaken nature of the interpretative premise.

The legislation provides that "As implementation of Article 40(6) of Legislative Decree no. 286 of 1998, foreign nationals shall be entitled, under the same conditions as Italian nationals, to: a) the allocation of public residential housing available within the territory of Campania Region; b) receive allowances which may be paid to tenants under leases for residential use which may be awarded by the Region following the exercise of the powers provided for under Article 11(6) of Law no. 431 of 9 December 1998 (Provisions governing leases and the release of properties intended for residential use); c) receive capital contributions towards the purchase of the first home which may be made available by the Region; and d) participate in public competitions relating to the provision of any other benefit disbursed by Campania Region in relation to residential housing for the purchase, recovery, construction and lease of housing".

The applicant's starting point is based on the alleged extension also to foreign nationals illegally present in Italy of eligibility for the award of or access to the benefits provided for under the legislation.

However, this argument is refuted not only by the express purpose underlying the implementation of Article 40(6) of the Consolidated text on immigration, but also by a comparison between the generic reference to "foreign nationals" contained in the provision under examination and the more specific reference to a "all foreign nationals present within the [regional] territory" contained in Article 17(2), examined above, which (as such) cannot result in the interpretation of paragraph 5 as also applying to illegal immigrants. Moreover, it is refuted above all by the wording of Article 25 of Regional Law no. 6 of 2010 which – amending Article 2 of Campania Regional Law no. 18 of 2 July 1997 (containing "New provisions on the award of public residential housing") – stipulates as prerequisites for participation in public competitions for the allocation of such housing the requirement of "Italian citizenship or citizenship of a Member State of the European Union or, in respect of the nationals of non-Member States of the European Union, status as a refugee recognised by the competent Italian authorities or possession of a residence card or a residence permit valid for at least two years, conditional in this last case upon the conduct of regular employment or self-employed activity".

It is therefore entirely clear that an expansive reading of the contested provision which disregards the specific designation of the beneficiaries of that right, in a manner which is fully compliant with the provision enacted by the State legislature referred to, having been made within the same legislative context, will be utterly contradictory.

5. - The Government also challenges, again due to the violation of the same parameters of constitutional law, Article 18(1) and (3) which guarantee "to foreign nationals present in the regional territory" the healthcare services falling under Article 34 of Legislative Decree no. 286 of 1998, and provide for the promotion of organisational measures intended to establish access to healthcare services also for foreign nationals not registered with the regional health service. According to the State representative, these provisions violate the principles laid down in Article 35 of the Legislative Decree, which provides in paragraph 3 that "Foreign nationals present within the national territory who have not complied with the provisions governing entry and residence shall be guaranteed" solely "outpatient or hospital treatment which is urgent or otherwise essential, even if on a continuing basis, due to illness or accident,

and the programmes of preventive medicine and to safeguard individual and public health shall be extended".

5.1. – This challenge is also groundless.

Article 18(1) provides that: "Foreign nationals present in the regional territory shall be guaranteed the healthcare services provided for under applicable legislation and regional plans under conditions of equality with Italian nationals, as implementation of Articles 34 and 35 of Legislative Decree no. 286 of 1998"; Article 18(3) in turn provides that "The regional administration shall promote organisational measures intended to establish access to healthcare services also for foreign nationals not registered with the regional health service".

Following an direct application of an analogous provision from a different regional law (judgment no. 269 of 2010), this Court reasserted that "foreign nationals […] enjoy all fundamental rights which the Constitution guarantees to people as such" (judgment no. 148 of 2008), and held with particular reference to healthcare that there is "an irreducible core of the right to health protected by the Constitution as an inviolable sphere of human dignity, which requires that the creation of situations with no protection which may be detrimental to the implementation of that right be prevented". This core of rights must therefore be guaranteed "also to foreign nationals, irrespective of their circumstances with regard to the provisions governing entry into and residence within the State, notwithstanding the legislature's power to provide for different procedures applicable to the exercise of such rights" (judgment no. 252 of 2001).

Accordingly, the contested provisions (in a manner similar to those already reviewed by this Court in judgments no. 299 and no. 269 of 2010 referred to above) were enacted against the backdrop of a legislative framework characterised by the recognition that foreign nationals have an irreducible core of protection for the right to healthcare, as guaranteed under the Constitution as an inviolable sphere of human dignity, even if they do not have a valid legal basis for residence. Therefore, the regional provision – which explicitly implements the fundamental principles laid down by Articles 34 and 35 of the consolidated text on immigration – ensures that also illegal immigrants are guaranteed the fundamental services required in order to secure the right to healthcare, through an exercise of its own legislative jurisdiction in full accord with the provisions enacted by the State legislature on the entry by and residence in Italy of

foreign nationals, including with regard to foreign nationals staying in Italy without a valid legal basis for residence.

6. - Article 20(1) is challenged – insofar as it permits access to training and professional requalification courses to "foreign nationals" stated generically and without closer definition – due to violation again of Article 117(2)(a) and (b) of the Constitution along with Article 39-bis of Legislative Decree no. 286 of 1998, which expressly reserves access to such courses to foreign nationals with a valid residence permit for study purposes.

6.1. – The question is groundless by virtue of its mistaken interpretative premise.

The contested legislation provides that "Foreign nationals shall be entitled to receive all guidance, training and professional requalification courses in relation to initiatives provided for under applicable regional legislation under conditions of equality with Italian nationals".

The assertion (which is moreover not sufficiently motivated) that the provision concerned also applies to foreigners who do not have a valid residence permit is refuted by the fact that the contested provision expressly provides that the right of access to the courses concerned is granted "in relation to initiatives provided for under applicable regional legislation". Moreover, it is precisely this legislation – contained in Article 1(1)(o) of Campania Regional Law no. 14 of 18 November 2009 enacting the "Consolidated text of Campania Region legislation on employment and professional training to promote the quality of work" – which provides, in accordance with the provision of the consolidated text on immigration referred to, that "Non-Community immigrants who are lawfully resident within the regional territory in accordance with applicable Community and state legislation shall be entitled to receive professional training under conditions of equality with Italian nationals, in accordance with the principle of equality of opportunity in the procurement of employment and the analogous right to support for self-employed and entrepreneurial activities", with the goal of "enhancing the instruments to guarantee and promote equal opportunities in access to and the conduct of work with regard to gender or the status as an immigrant or foreign national lawfully present within the national territory, and the social inclusion of and procurement of employment for disabled and disadvantaged individuals".

7. – The applicant finally challenged Article 16 – which provides that foreign nationals lawfully resident in Campania "shall be deemed to be equivalent to Italian nationals for the purposes of the receipt of benefits and services, including of a financial nature, which are provided by the region" – due to violation of Article 1(4) of Legislative Decree no. 286 of 1998 and Article 117(3) of the Constitution", on the grounds that the provision breaches Article 80(19) of Law no. 388 of 23 December 2000 (Provisions on the formation of the annual and multi-year budget of the State – Finance Law 2001) which limits the category of recipients of social services, providing that "Pursuant to Article 41 of Legislative Decree no. 286 of 1998, the social allowance (non-contributory pension) and the financial benefits comprising individual rights under the applicable legislation on social services shall be granted, under the conditions laid down in that legislation, to foreign nationals, provided that they hold a residence card; foreign nationals shall only be treated as equivalent to Italian nationals for all other benefits and social services if they hold a residence permit valid for at least one year". According to the applicant, the regional provision is unconstitutional insofar as it is limited to requiring that the foreign national concerned be lawfully present within the territory of the State, without indicating the specific legal basis for residence required by the foreign national as a prerequisite for eligibility to receive social services.

7.1. – This last question is groundless in the terms in which it has been raised.

By referring to Article 1(4) of Legislative Decree no. 286 of 1998, which provides that "In the matters falling under the legislative jurisdiction of the regions, the provisions of this consolidated law shall constitute fundamental principles for the purposes of Article 117 of the Constitution", the applicant asserts the violation of Article 80(19) of Law no. 388 of 2000.

However, leaving aside the fact that the violation of a fundamental principle has been alleged without having specifically identified the area of law within which the contested legislation is to be classified, it is of decisive significance that the applicant has failed to consider that this provision has already been considered in three rulings by the Constitutional Court (two of which were adopted before these proceedings were initiated) in which this Court ruled manifestly groundless the subjection of the award of the security services concerned to the possession by an individual who is lawfully resident within the territory of the State of particular prerequisites required for the issue

of a residence card or a residence permit. Accordingly, Article 80(19) of Law no. 388 of 2000 was ruled unconstitutional, along with Article 9(1) of Legislative Decree no. 286 of 1998, insofar as these provisions precluded the award of the carer's allowance (judgment no. 306 of 2008) and incapacity benefit (judgment no. 11 of 2009) to non-Community nationals solely because they did not comply with the income prerequisites stipulated for the residence card, and now required, under the terms of Legislative Decree no. 3 of 8 January 2007 (Implementation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents), for the EC residence permit for long-term residents.

Similarly, Article 80(19) of Law no. 388 of 2000 was the sole provision ruled unconstitutional insofar as it imposed the possession of a residence card as a prerequisite for the grant of monthly incapacity benefit to foreign nationals lawfully resident within the territory of the State (judgment no. 187 of 2010).

In particular, this Court grounded these judgments on the consideration that – whilst the Italian legislature is certainly at liberty to enact legislation intended to regulate the entry of non-Community nationals and their stay in Italy, provided that this is not manifestly unreasonable or in breach of international law obligations, and whilst it is possible to subject the award of particular benefits – not intended to remedy serious urgent situations – to the requirement that the legal basis entitling the foreign national to reside within the territory of the State demonstrates its non-occasional nature and that it will not have a short duration, provided that this is not unreasonable – "once the right to reside under the aforementioned conditions is not under discussion, it is not possible to discriminate against foreign nationals by imposing upon them particular restrictions on the exercise of fundamental human rights, which are on the other hand guaranteed to Italian nationals" (judgments no. 187 of 2010 e no. 306 of 2008).

Therefore, having regard to these judgments concerning the specification of prerequisites for the receipt of services, the asserted requirement for a specific legal basis for residence as a prerequisite for the receipt of social services amounts to a restrictive condition which would evidently (from the point of view of application) be diametrically opposed to that specified by this Court, the repeated rulings of which have now established a general effect which is inherent within the system governing the award of the relative benefits. Accordingly, the provisions contained in the contested

legislation in no sense breach that fundamental principle, as was asserted by the applicant.

ON THOSE GROUNDS

THE CONSTITUTIONAL COURT

rules that the questions concerning the constitutionality of Article 1(2)(a) and (3)(b), Article 2(1), Article 3(1), Article 4(2), Article 8(2), Article 14(1) and (2), Article 17(2), (5), (6) and (7), Article 18(1) and (3) and Article 20(1) of Campania Regional Law no. 6 of 8 February 2010 (Provisions on the social, economic and cultural inclusion of foreign nationals present in Campania), raised with reference to Article 117(2)(h) and (l) of the Constitution by the President of the Council of Ministers by the application referred to in the headnote, are inadmissible;

rules that the question concerning the constitutionality of Article 1(2)(a) and (3)(b), Article 2(1), Article 3(1), Article 4(2), Article 8(2), Article 14(1) and (2), Article 17(2), (5), (6) and (7), Article 18(1) and (3) and Article 20(1) of Campania Regional Law no. 6 of 2010, raised with reference to Article 117(2)(a) and (b) of the Constitution and in the light of Articles 3(5), 4, 5, 10, 10-bis, 11, 13, 14, 19, 35 and 40(1)-bis Legislative Decree no. 286 of 25 July 1998 (Consolidated text of legislative provisions regulating immigration and rules governing the status of foreigners) by the application referred to in the headnote, is groundless;

rules that the question concerning the constitutionality of Article 17(2) of Campania Regional Law no. 6 of 2010, raised with reference to Article 117(2)(a) and (b) of the Constitution and in the light of Article 40(1) and (1-bis) of Legislative Decree no. 286 of 1998 by the application referred to in the headnote, is groundless;

rules that the question concerning the constitutionality of Article 17(5) of Campania Regional Law no. 6 of 2010, raised with reference to Article 117(2)(a) and (b) of the Constitution and in the light of Article 40(6) of Legislative Decree no. 286 of 1998 by the application referred to in the headnote, is groundless;

rules that the question concerning the constitutionality of Article 18(1) and (3) of Campania Regional Law no. 6 of 2010, raised with reference to Article 117(2)(a) and (b) of the Constitution and in the light of Article 35 of Legislative Decree no. 286 of 1998 by the application referred to in the headnote, is groundless;

rules that the question concerning the constitutionality of Article 20(1) of Campania Regional Law no. 6 of 2010, raised with reference to Article 117(2)(a) and (b) of the Constitution and in the light of Article 39-bis of Legislative Decree no. 286 of 1998 by the application referred to in the headnote, is groundless;

rules that the question concerning the constitutionality of Article 16 of Campania Regional Law no. 6 of 2010, raised with reference to Article 117(3) of the Constitution and in the light of Article 1(4) of Legislative Decree no. 286 of 1998 and due to violation of Article 80(19) of Law no. 388 of 23 December 2000 (Provisions on the formation of the annual and multi-year budget of the State – Finance Law 2001), by the application referred to in the headnote, is groundless.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 21 February 2011.

(omitted)