JUDGMENT NO. 86 YEAR 2012

In this case the Court considered an application from the President of the Council of Ministers objecting to regional legislation purporting to create a publicly-operated label of origin and quality for regionally produced artistanal products. The Court held that the contested legislation was unconstitutional on the grounds that it breached EU treaty provisions on the free movement of goods as the label amounted to a "measure having equivalent effect" under Articles 34 and 35 TFEU.

(omitted)

THE CONSTITUTIONAL COURT

(omitted)

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 2 and 21 of Marche Regional Law no. 7 of 29 April 2011 (Implementation of Directive 2006/123/EC on services in the internal market and other provisions on the application of European Union law and the simplification of administrative action. Law on the implementation of Community Law 2011), initiated by the President of the Council of Ministers by application served on 7-8 July 2011, filed with the Court Registry on 14 July 2011 and registered as no. 70 in the Register of Applications 2011.

Considering the entry of appearance by Marche Region;

having heard the judge rapporteur Alessandro Criscuolo at the public hearing of 22 February 2012;

having heard the State Counsel [*Avvocato dello Stato*] Angelo Venturini for the President of the Council of Ministers and Counsel Stefano Grassi for Marche Region.

(omitted)

Conclusions on points of law

1.— By an application filed on 14 July 2011 (Register of Applications no. 70 of 2011), the President of the Council of Ministers, represented by the State Counsel's Service, challenged: a) Article 21 of Marche Regional Law no. 7 of 29 April 2011 (Implementation of Directive 2006/123/EC on services in the internal market and other provisions on the application of European Union law and the simplification of administrative action. Law on the implementation of Community Law 2011), which replaced Article 34 of Marche Regional Law no. 20 of 28 October 2003 (Consolidated text of provisions on industry, artisanal businesses and production services); b) Article 2 of Regional Law no. 7 of 2011, insofar as it introduced paragraphs 6 and 7 into the amended Article 29 of Marche Regional Law no. 4 of 23 January 1996 (Provisions governing professional activities in the tourism and recreational sectors).

2.— As regards question a), Article 21, entitled "Replacement of Article 34 of Regional Law no. 20 of 2003", provides as follows: "1. Article 34 of Regional Law no. 20 of 2003 shall be replaced with the following: Article 34 Regulations on production and label of origin and quality.

1. The Regional Executive shall approve dedicated production regulations for each of the forms of artistic, traditional and typical artisanal processing identified under Article 33(2), which shall describe and define both the materials used as well as the special features of production techniques, along

with any other information which may be characteristic of the processing concerned.

2. The resolutions referred to under paragraph 1 shall be adopted pursuant to a proposal by dedicated boards, which shall be appointed by the Regional Executive. The members of the boards shall be paid allowances and reimbursement of expenses as specified under Article 30(3).

3. Artisanal businesses which conduct their operations according to the regulations set forth in paragraph 1 and which are registered in the section referred to under Article 28(1)(b) shall be entitled to use the label of origin and quality "*Marche Eccellenza Artigiana (MEA)*" [Marche Artisanal Excellence].

4. Following consultation with the Regional Artisanal Board, the Regional Executive shall specify the form and technical and aesthetic characteristics of the label of origin and quality falling under paragraph 3.

5. The Regional Executive shall promote the label of origin and quality according to the arrangements laid down in annual implementing regulations issued pursuant to Article 4.

6. The Regional Executive shall oversee the application of the regulations falling under paragraph 1 and the use of the label referred to in paragraph 4 and may adopt the necessary measures in order to re-establish their correct management, provided that prior a warning has been issued.

7. It is prohibited to apply the label to finished goods acquired from third parties".

According to the state representative, the above provision violates Article 118(1) of the Constitution on the grounds that it fails to abide by the restrictions laid down under European Union law in that it clearly contrasts with Articles 34 to 36 of the Treaty on the Functioning of the European Union (TFEU) on the free movement of goods, which prohibit the Member States from placing quantitative restrictions on imports and exports and all measures

having equivalent effect. The establishing by a state or a region of a label of origin and quality is claimed to amount specifically to a "measure having equivalent effect".

Moreover, Article 120(1) of the Constitution is claimed to have been violated since the establishment of a label according to the arrangements indicated above would hinder the free trade in goods also within the national market, as consumers would be attracted by the particular label associated with a specific region compared to goods originating from other regions.

3.— The question is admissible.

It must be stated that the outset that, as this Court has held on various occasions, in providing that Italy "agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations", Article 11 of the Constitution enabled the provisions of Community law to be recognised as having binding effect under Italian law (see *inter alia* judgments no. 102 of 2008; no. 349 and 284 of 2007; and no. 170 of 1984). In providing that "Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation (….)", Article 117(1) of the Constitution – introduced by Constitutional Law no. 3 of 18 October 2001 (Amendments to Title V of Part Two of the Constitution) – reasserted that these restrictions are imposed on the national legislature (including the legislatures of the state, the regions and the autonomous provinces).

It follows from this legislative framework that, in ratifying the Community treaties, Italy became part of a self-standing legal order which is coordinated with the national legal order and, pursuant to Article 11 of the Constitution, transferred powers, including legislative powers, over the matters falling under the treaties. The provisions of European Union law have various forms of binding effect on the national legislature, subject to the sole limit of the inviolability of the fundamental principles of constitutional law and inviolable

human rights guaranteed under the Constitution (see *inter alia* judgments no. 102 of 2008; nos. 349, 348 and 284 of 2007; and no. 170 of 1984).

In cases, such as that at issue in these proceedings, involving regional laws which are suspected of being incompatible with European Union law (as interpreted and applied by the institutions and bodies of the Union), it should be pointed out that the incorporation into the Italian legal order into the Community legal order has two different consequences, depending upon whether the case in which such a doubt is raised is pending before the ordinary courts or before the Constitutional Court seized of a direct application.

In the former eventuality, if they have direct effect, the provisions of EU law require the court to set aside internal state and regional legislation which is considered to be incompatible. In the latter eventuality, the same provisions "give specific form to the general principle contained in Article 117(1) of the Constitution (as clarified in general in judgment No. 348 of 2007), resulting in a declaration of unconstitutionality of the regional provision judged to be incompatible with Community law" (judgment no. 102 of 2008, cited above).

In the light of these principles, the objections raised against Article 21 of Regional Law no. 7 of 2011 must be ruled admissible because the provisions of European Union law have been correctly invoked by the applicant in these proceedings through Article 117(1) of the Constitution, as an element supplementing the principle of constitutional law.

4.— The question is also well founded.

Pursuant to Article 34 TFEU (formerly Article 28 of the EC Treaty): "Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States".

Article 35 (formerly Article 29 of the EC Treaty) goes on to provide that: "Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States".

Finally, Article 36 TFEU (formerly Article 30 of the EC Treaty) provides that: "The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States".

The above provisions make clear the central importance which the prohibition on quantitative restrictions on trade and measures having equivalent effect relating either to imports or to exports have under the law on the common market in goods. In particular, the Court of Justice has elaborated a broad concept of "measure having equivalent effect" within its case law, which may be encapsulated in the principle according to which "measures having an effect equivalent to quantitative restrictions prohibited by the Treaty include all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade" (Case C-8/74, *Dassonville v. Belgium* [1974] ECR 837).

Within the ambit of that principle, the Court of Justice has asserted that the grant by a Member State of a quality label to finished goods produced in that state in itself entailed the breach of the obligations laid down under Article 30 of the EC Treaty, which following amendment subsequently became Article 28 of the EC Treaty (Case C-325/00, *Commission v. Germany* [2002] ECR I-9977).

In the opinion of the ECJ, the contested scheme had, at least potentially, restrictive effects on the free movement of goods between Member States. Such a scheme, set up in order to promote the distribution of agricultural and food products made in Germany and for which the advertising message

underlines the German origin of the relevant products, could encourage consumers to buy the products with the CMA label to the exclusion of imported products.

The Court reached a similar conclusion in its judgment in Case C-6/02 (*Commission v. France* [2003] ECR I-2389) on the national legal protection granted to certain regional labels.

In the present proceedings, the contested provision introduces a label "of origin and quality" entitled "Marche Eccellenza Artigiana (MEA)" which, by providing a clear indication of geographical origin ("Marche") is intended to promote artisanal goods produced within the region, by guaranteeing their origin and quality. Accordingly, , in the light of the Community concept of "measure having equivalent effect" developed by the Court of Justice and the case law referred to above, it cannot be denied at the very least that it is possible that restrictive effects may be generated on the free movement of goods between Member States.

Therefore, the requirements laid down under European Union law and, consequently, under Article 117(1) of the Constitution have indeed been violated as alleged.

Moreover, Marche Region does not dispute the principles set out above, and states that it is fully aware of the case law of the European Court of Justice and the effects of that case law with regard to the assessment of the compatibility of state or regional legislation intended to introduce "labelling systems" for products which are operated by public bodies rather than private parties. However, the Region asserts that, precisely under the terms of that case law, the establishment of labels of "origin" or "quality" by public bodies cannot be deemed to be prohibited on an absolute and unconditional basis. In its opinion, the prohibition only applies where the label in question features precise characteristics or prerequisites, such as to constitute an unlawful barrier on competition and the free movement of goods within the Union.

This position cannot be endorsed.

Without prejudice to the considerations set out above, which are reiterated in this respect, it must be pointed out that the argument that the contested legislation is immaterial for the question as to whether the label concerned relates to the origin, quality or both of these aspects of the goods to which it is applied, and above all whether and in what sense the quality is attributed exclusively to the origin of the goods from the Marche Region is incorrect.

In reality, the literal wording of the provision makes it clear that the label in question relates both to origin and quality (Article 21(3) and (5) of the Regional Law), whilst the origin of the goods from Marche Region is established with similar clarity by the inclusion of the name of the Region in the label.

It is also irrelevant that the contested provision does not specify the "artisanal processing" to which the label may potentially be attributed, as these are left to more detailed regulations which the provision delegates to the Regional Executive.

Finally, regarding the question as to "whether or not producers and economic operators from other Members States of the European Union – or other Italian regions – which comply with the prerequisites laid down in the regulations must be deemed to be excluded *ex ante*", it must be pointed out that this is a hypothetical issue, which moreover lacks any correlation within the wording of the provision and is in any case incapable of precluding the potentially detrimental effect on the free movement of goods highlighted above.

In conclusion, in the light of the considerations set out above, Article 21 of Marche Regional Law no. 7 of 2011, which replaced Article 34 of Regional Law no. 20 of 2003, must be declared unconstitutional due to violation of Article 117(1) of the Constitution.

Having regard to the close connection between the provisions comprising it, the declaration of unconstitutionality applies to the Article as a whole.

All other grounds are moot.

5.— The Court holds with regard to the question on the constitutionality of Article 2 of Marche Regional Law no. 7 of 2011, which replaced paragraphs 6 and 7 of Article 29 of Regional Law no. 4 of 1996, that there is no longer any matter in dispute.

In fact, the Region asserted that Regional Law no. 13 of 6 July 2011 (Amendments to Regional Laws: no. 17 of 1 June 1999 "Establishment of a regional development company"; no. 60 of 2 September 1997 "Establishment of the regional agency for the environmental protection of Marche (ARPAM)"; and no. 7 of 29 April 2011 "Law on the implementation of Community Law 2011") entered into force shortly after service of the application which initiated these proceedings, in Article 7 of which the regional legislature replaced the contested Article 2 in full, and replaced Article 29 of Regional Law no. 4 of 1996 once again. The contested paragraphs 6 and 7 do not appear in the new version, having been replaced by a new paragraph 6 which is limited to providing as follows: "6. Nationals of third countries who wish to exercise the profession of ski instructor shall be subject to the provisions of Presidential Decree no. 394 of 31 August 1999 (Regulations implementing the consolidated text of provisions governing immigration and rules on the status of foreign nationals, pursuant to Article 1(6) of Legislative Decree no. 286 of 25 July 1998)".

The Region also stated that there were no circumstances under which the contested legislation could have been applied during the intervening period.

Acknowledging the above, the state representative asserted that he had no objection to a declaration that there is no longer any matter in dispute. Such a declaration must therefore be made, as stated in the operative part.

ON THOSE GROUNDS

THE CONSTITUTIONAL COURT

1) *declares* that Article 21 of Marche Regional Law no. 7 of 29 April 2011 (Implementation of Directive 2006/123/EC on services in the internal market and other provisions on the application of European Union law and the simplification of administrative action. Law on the implementation of Community Law 2011), which replaces Article 34 of Marche Regional Law no. 20 of 28 October 2003 (Consolidated text of provisions on industry, artisanal businesses and production services), is unconstitutional;

2) *rules* that there is no longer any matter in dispute with regard to the question concerning the constitutionality of Article 2 of Marche Regional Law no. 7 of 2011, which replaced Article 29 of Marche Regional Law no. 4 of 23 January 1996 (Provisions governing professional activities in the tourism and recreational sector [sic.]) through the introduction of paragraphs 6 and 7, as raised by the President of the Council of Ministers with reference to Article 117(3) of the Constitution by the application referred to in the headnote.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 2 April 2012.

(omitted)