JUDGMENT NO. 42 YEAR 2017

In this case, the Court heard a reference from the Council of State concerning the constitutionality of legislation that purportedly consented to the teaching of university courses in foreign languages. On this basis, the Milan Polytechnic created post-graduate courses taught entirely in English, following which the arrangements were challenged before the administrative courts. The Court ruled the legislation unconstitutional insofar as it could be interpreted to this effect, holding that in the globalised age, the Italian language "has become even more crucial for the continuing transmission of the historical heritage and identity of the Republic". According to the Court, were universities permitted to offer study programmes exclusively in a language other than Italian, this would have the effect of "entirely and indiscriminately exclud[ing] the official language of the Republic from university teaching in entire branches of learning". In addition, such an arrangement would unfairly prejudice students with no knowledge of any language other than Italian, who would be forced to choose other study programmes or even other universities. Finally, construed in this manner, the rule violated academic freedom in that it did not permit teachers to choose to teach in Italian.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 2(2)(l) of Law no. 240 of 30 December 2010 (Provisions on the organisation of universities, academic staff and recruitment, and authorisation to the Government to incentivise the quality and efficiency of the university system), initiated by the Sixth Judicial Division of the Council of State in the proceedings pending between the Ministry of Education, Universities and Research and A. A. and others by the referral order of 22 January 2015, registered as no. 88 in the Register of Referral Orders 2015 and published in the Official Journal of the Republic no. 20, first special series 2015.

Considering the entry of appearance by A.A. and others and the intervention by the President of the Council of Ministers;

having heard the judge rapporteur Franco Modugno at the public hearing of 20 September 2016;

having heard Counsel Federico Sorrentino and Counsel Maria Agostina Cabiddu for A.A. and the State Counsel [*Avvocato dello Stato*] Federico Basilica for the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.– The Sixth Judicial Division of the Council of State has raised, with reference to Articles 3, 6 and 33 of the Constitution, questions concerning the constitutionality of Article 2(2)(l) of Law no. 240 of 30 December 2010 (Provisions on the organisation of universities, academic staff and recruitment, and authorisation to the Government to incentivise the quality and efficiency of the university system), "insofar as it enables the general and exclusive activation (i.e. to the exclusion of the Italian language) of [university education] courses in foreign languages".

In specifying the restrictions and guidelines with which universities must comply when amending their own charters, the contested legislation provides for the "enhancement of internationalisation including through the increased mobility of teachers and students, integrated study programmes, inter-university cooperation initiatives relating to study and research activities, and the arrangement of courses, study programmes and selection procedures in foreign languages, having regard to the human, financial and material resources available under the applicable legislation".

The Milan Polytechnic considers that the aforementioned provision would allow universities to teach all of its courses in a language other than the official language of the Republic and thus resolved, with effect from 2014, to create masters and PhD degree programmes exclusively in English, albeit associated with a teacher training and student support plan. The aforementioned resolution by the Milan Polytechnic resulted in the administrative proceedings that led to the referral of the present questions of constitutionality.

1.1.– The contested provision, as interpreted above, is claimed to violate: a) Article 3 of the Constitution in that it purportedly permits the "unjustified total abolition of the Italian language for the study programmes in question", and moreover does not take account of their diversity, "which by contrast is such as to require, for some of them, a different transmission of knowledge, which is of greater relevance to the tradition and values of Italian culture, of which language is the expression"; b) Article 6 of the Constitution, due to the violation of the principle of the official status of the Italian language, which may be inferred *a contrario* from this Article; and c) Article 33 of the Constitution, in compromising the free manifestation of communication with students, which must undoubtedly be considered to be covered by academic freedom.

2.– The State Counsel has raised various objections alleging that the question is inadmissible, which must be examined as a preliminary matter.

2.1.– It is not possible to accept the objections relating to the failure to give reasons as to the relevance and the supposed acritical reiteration of the submissions made by the parties in the proceedings before the referring body.

In fact, the argument that the referring body did not adequately explain the reasons why it considers that it is required to apply the provision, the constitutionality of which is doubted, cannot be accepted. This is because, as has been reasserted on various occasions within the case law of the Constitutional Court, it is sufficient for it to propose plausible reasons in support of the relevance of the question; the implicit provision of reasons has been accepted in this regard, "provided that it is immediately apparent from the description of the facts of the case that the question must be answered in order to be able to rule on the case" (see Judgments no. 120 of 2015, no. 201 of 2014 and no. 369 of 1996). This has occurred in the present case, also as a result of the account of the contested legislation provided by the referring body which, based on the interpretation which it seeks to give, would require the appeal to be allowed.

Moreover, the argument that the reasons have been provided in support of the questions in this case only *per relationem* cannot be accepted, as it is evident that the referral order displays the characteristics of "self-sufficiency" which, according to settled case law, are required in order to proceed to an examination of the merits.

2.2.– In addition, the further objection of inadmissibility made by the State Counsel, according to which the referring court did not consider whether any possible alternative interpretations of the provision were constitutional, must also be rejected. This objection could be considered to be endorsed even by counsel for the respondents in the

proceedings before the referring body, as they consider that the attempt at interpretation in a manner compatible with the Constitution could have borne fruit, as is demonstrated precisely by the judgment appealed against of the Administrative Court for Lombardy annulling the resolution by the Milan Polytechnic, which would thereby have enabled the Council of State to decide without involving the Constitutional Court. However, it is precisely the respondent university teachers who specify in their written statement that it is necessary for the Constitutional Court to consider this issue, as the Council of State concluded that it was impossible to infer from the contested provision any rule other than that identified by the Milan Polytechnic and endorsed by the Ministry of Education, namely the rule that permits the universities to provide all of their courses in a language other than the official language of the Republic.

This issue needs to be considered carefully, and it must be noted that the referring body held, on the basis of adequate reasons, that due to the way in which the legislation had been formulated, its application by the Milan Polytechnic was not implausible. It is thus the very way in which the legislation is formulated – in view in particular of the presence of the conjunction "including" – that enables such application and precludes an interpretative solution that is consistent with the Constitution.

When confronted with adequate reasons as to why an interpretation that is compatible with the Constitution is not possible, due specifically to the "literal wording of the provision", this Court has already held that "the possibility for a further alternative interpretation, which the referring court did not consider it appropriate to pursue, does not have any significance for the purposes of compliance with the rules governing proceedings before the Constitutional Court, as the control as to the existence and legitimacy of such an additional interpretation is a question that relates to the merits of the dispute, and not to its admissibility" (see Judgment no. 221 of 2015). This is a position which has now become consolidated, according to which it may indeed be concluded that "if the interpretation chosen by the referring body is to be regarded as the sole persuasive interpretation, it is an issue that extends beyond admissibility and by contrast pertains to the merits" (see Judgments nos. 95 and 45 of 2016, no. 262 of 2015; see also Judgment no. 204 of 2016).

Therefore, although "laws are not ruled unconstitutional because it is possible to interpret them in a manner that is unconstitutional (and a court decides to interpret them in this manner)" (see Judgment no. 356 of 1996), this does not mean that, where it is unlikely or difficult to envisage an interpretation that is consistent with the Constitution, the question should not be considered on the merits. Indeed, where the above prerequisites are met, such scrutiny proves to be necessary – as it is in this case – even if only to establish whether the solution that is consistent with the Constitution and which was rejected by the referring body is by contrast possible.

3.– On the merits, the questions of constitutionality are unfounded, within the limits and in the manner set out below.

3.1.– It has already been held in the case law of this Court – in relation to the "fundamental principle" (see Judgment no. 88 of 2011) of the protection of linguistic minorities pursuant to Article 6 of the Constitution – that language is a "fundamental element of cultural identity and […] a primary means for transmitting the related values" (see Judgment no. 62 of 1992), as an "element of individual and collective identity of fundamental importance" (see Judgment no. 15 of 1996). This is also the case for the "only official language" within the constitutional system (see Judgment no. 28 of 1982) – the Italian language – the classification of which, being inherent within

Article 6 of the Constitution and expressly reiterated by Article 1(1) of Law no. 482 of 15 December 1999 (Provisions on the protection of linguistic and historical minorities) and in Article 99 of the Special Statute of Trentino-Alto Adige, "evidently has not only a formal function, but operates as a general interpretative criterion" with the aim of preventing other languages from being "considered as alternatives to the Italian language" or otherwise as being such as to place such language "in a marginal position" (see Judgment no. 159 of 2009).

Given its official status, and thus its primacy, the Italian language is a vehicle for conveying the culture and traditions inherent within the national community, which are also protected by Article 9 of the Constitution. The progressive supranational integration of legal systems and the erosion of national boundaries as a result of globalisation may undoubtedly undermine that function of the Italian language in various ways: multilingualism within contemporary society, the use of a particular language in specific areas of human knowledge and the dissemination on a global level of one or more languages are all phenomena which have now permeated into the constitutional order and coexist alongside the national language in a variety of areas. However, such phenomena must not relegate the Italian language to a marginal status: on the contrary, and in fact precisely by virtue of their emergence, the primacy of the Italian language is not only constitutionally unavoidable but indeed – far from operating as a formal defence of a relic from the past, which is incapable of appreciating the changes brought by modernity – has become even more crucial for the continuing transmission of the historical heritage and identity of the Republic, in addition to safeguarding and enhancing the value of Italian as a cultural asset in itself.

3.2.– The central role, required under the Constitution, of the Italian language may be particularly appreciated within schools and universities which, within the context of the "unitary" system of public education (see Judgment no. 383 of 1998), are the bodies that have been institutionally entrusted with the duty of imparting knowledge "within the various branches of learning" (see Judgment no. 7 of 1967) and of educating individuals and citizens. Within this context, the primacy of the Italian language and other constitutional principles combine and, where necessary, balance against one another: the principle of equality, including with regard to the issue of equal access to education, a right which the Republic has a duty under Article 34(3) of the Constitution to guarantee through to the highest level of study to those who are able and deserving, even if they lack resources; academic freedom, which is guaranteed to teachers by Article 33(1) of the Constitution and which, whilst it may manifest itself in the most disparate ways, "nonetheless constitutes […] a continuation and expansion" (see Judgment no. 240 of 1974) of freedom within science and the arts; university autonomy, recognised and protected by Article 33(6) of the Constitution, which must not however be considered solely in terms of internal organisation but also the "relationship of necessary reciprocal implication" (see Judgment no. 383 of 1998) with the constitutional rights of access to services.

4 .– In specifying the restrictions and guiding criteria with which universities must comply when amending their own charters, the contested legislation provides in particular that the enhancement of the internationalisation of universities may occur "including" through the arrangement of courses, study programmes and selection procedures in foreign languages, having regard to the human, financial and material resources available under applicable legislation.

The objective of internationalisation – which the provision at issue legitimately intends to pursue, enabling universities to enhance their own international vocation, whether by offering an alternative study programme to students or by attracting teachers from abroad – must however be satisfied without undermining the constitutional principles of the primacy of the Italian language, equal access to university education and academic freedom. Indeed, the university autonomy recognised under Article 33 of the Constitution must nonetheless be pursued "within the limits laid down under State legislation" and, first and foremost, the various constitutional principles of relevance in the area of education.

Were the provision at issue in these proceedings to be interpreted as permitting universities to draw up a general offer of education including entire study programmes taught exclusively in a language other than Italian, even in areas in which the very object of teaching requires it, this would undoubtedly result in an illegitimate sacrifice of these principles.

In fact, the exclusive status of the foreign language would first and foremost entirely and indiscriminately exclude the official language of the Republic from university teaching in entire branches of learning. The legitimate goals of internationalisation cannot reduce the Italian language within Italian universities to a marginal and subordinate position by negating the function – which is inherent within it – of conveying the history and identity of the national community along with its inherent status as cultural heritage to be preserved and enhanced.

Secondly, it would impose as an eligibility prerequisite for admission to such study programmes, the knowledge of a language other than Italian and hence, given the lack of suitable educational support, thereby preventing those who, despite being able and deserving, do not know that language, from reaching "the highest level of study" other than at the cost – both in terms of choices for their own education and future and also in financial terms – of choosing other university study programmes, or even other universities.

Thirdly, it could violate academic freedom because it would end up having a significant effect on the manner in which teachers are required to teach, depriving them of the choice over how to communicate with students, irrespective of their degree of familiarity with the foreign language; moreover, it would discriminate against teachers with regard to the allocation of courses for teaching, as they would necessarily be allocated on the basis of expertise – knowledge of a foreign language – which has nothing to do with the skills that were examined during recruitment and with the specific knowledge which must be imparted to students.

4.1.– However, the provision contested in these proceedings may indeed be interpreted in a way that is compatible with the Constitution and in a manner that balances out the requirements underpinning internationalisation – which is sought by the legislator and may be pursued by universities in accordance with the autonomy vested in them by the Constitution – with the principles laid down in Articles 3, 6, 33 and 34 of the Constitution, the last-mentioned of which is relevant to the review of the present questions of constitutionality, even though it was not invoked by the referring body.

Whilst these constitutional principles are incompatible with the possibility of entire study programmes being taught exclusively in a language other than Italian, as described above, they by no means preclude the possibility, for the universities that consider it appropriate, to supplement the teaching of university courses in Italian with courses taught in a foreign language, also in consideration of the specific nature of

particular scientific and disciplinary fields. This interpretative option without doubt falls under those permitted by the semantic scope of Article 2(2)(l) of Law no. 240 of 2010 – within the text of which there is moreover no reference to the exclusive status of courses taught in a foreign language – and avoids the emergence of the normative contradiction with the constitutional principles referred to at various points above: an offer of education which envisages that certain study programmes be taught both in Italian and in the foreign language does not by any means impinge upon or indeed sacrifice these principles, and at the same time enables the objective of internationalisation to be pursued.

4.2.– It must naturally be pointed out that the above considerations relate only to study programmes in their entirety.

As demonstration of how internationalisation is an objective that may be, and in any case should be, pursued in various ways, the provision under review here also allows individual courses to be taught in a foreign language. It would be excessively formalistic and strict to assert that the constitutional principles laid down in Articles 3, 6, 33 and 34 of the Constitution require universities to teach also these courses upon condition that there is a corresponding course in the Italian language. By contrast, in consideration of the special nature and specificity of the individual courses, it is reasonable to conclude that universities may also choose to offer them exclusively in a foreign language, acting within the extent of their own autonomy. It goes without saying that, in order to ensure that these possibilities granted by the legislator do not end up circumventing constitutional principles, the universities must take advantage of them in accordance with the principles of reasonableness, proportionality and adequacy, in order to continue to guarantee that the overall teaching on offer respects the primacy of the Italian language along with the principle of equality, the right to education and academic freedom.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

rules that, in the manner and subject to the limits specified in the substantive part, the questions concerning the constitutionality of Article 2(2)(l) of Law no. 240 of 30 December 2010 (Provisions on the organisation of universities, academic staff and recruitment and authorisation to the Government to incentivise the quality and efficiency of the university system), raised by the referral order mentioned in the headnote by the Sixth Judicial Division of the Council of State with reference to Articles 3, 6 and 33 of the Constitution, are unfounded.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 21 February 2017.