JUDGMENT NO. 278 YEAR 2020

In this case, the Court heard referral orders from three lower courts questioning the constitutionality of legislation providing for the suspension of trials from 9 March until 11 May 2020 and hence also the running of the statute of limitations in relation to the offences concerned, adopted in connection with the COVID-19 health emergency. In essence, the referring courts maintained that the challenged provisions, entailing as they did the application of rules that changed limitation periods to the detriment of offenders also for offences committed before their entry into force, could well violate Article 25(2) of the Constitution as well as Article 117(1) of the Constitution, in relation to both Article 7 of the European Convention of Human Rights (ECHR) and Article 49 of the Charter of Fundamental Rights of the European Union (CFREU), on the basis of an alleged infringement of the principle of no punishment without law.

Addressing the surmised violation of Article 25(2) of the Constitution, the Court acknowledged that limitation periods fell with the realm of substantive law in Italy and were subject to the principle of legality. However, it held that the suspension at issue constituted one of the general grounds for the suspension of the running of the statute of limitations under the already existing Article 159 of the Criminal Code – which provides specifically that the operation of limitation periods is to be suspended whenever the suspension of the proceedings or the criminal trial is required under a particular statutory provision – and thus did not violate the constitutional principle prohibiting the retroactive effect of less favourable criminal law provisions. Moreover, the Court maintained that the brief duration of the suspension of trials and the ensuing suspension of the running of the statute of limitations was entirely compatible with the right to a trial within a reasonable time and that the challenged provisions were also justified in terms of reasonableness and proportionality by the need to protect public health in the face of the COVID-19 pandemic. Therefore, the Court ruled that the questions as to constitutionality raised with reference to the domestic provisions cited, i.e. Article 25(2) of the Constitution, were unfounded.

As regards, the questions raised with reference to the European provisions cited, i.e. Article 7 ECHR and Article 49 CFREU, the Court declared that they were inadmissible in that the referring courts had not adduced any reasoning as to how, if at all, Article 7 ECHR would offer greater protection of the principle of legality than that afforded by Article 25(2) of the Constitution and as to how, if at all, the matter could be considered as one falling within the scope of implementation of EU law bearing in mind that the CFREU may be invoked in constitutional review proceedings solely when the case in question is governed by EU law, which was clearly not so here.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 83(4) of Decree-Law No. 18 of 17 March 2020 (Measures to strengthen the National Health Service and provide economic support for families, workers and businesses in connection with the COVID-19 epidemiological emergency), converted, with amendments, into Law No. 27 of 24

April 2020, and of Article 36(1) of Decree-Law No. 23 of 8 April 2020 (Urgent measures regarding access to credit and tax obligations of businesses, special powers in strategic sectors, as well as action in the field of health and work, and extension of administrative and procedural deadlines), converted, with amendments, into Law No. 40 of 5 June 2020, initiated by the Ordinary Court of Siena with two referral orders of 21 May 2020, the Ordinary Court of Spoleto with referral order of 27 May 2020 and the Ordinary Court of Rome with referral order of 3 July 2020, registered respectively as Nos. 112, 113, 117 and 132 in the Register of Referral Orders 2020 and published in the Official Journal of the Republic, Nos. 34 and 40, first special series 2020.

Having regard to the entry of appearance filed by A. P. as well as the interventions filed by N. S., E. S., G. T., C. S. and the President of the Council of Ministers;

after hearing Judge Rapporteur Nicolò Zanon at the public hearing and in chambers on 18 November 2020, replaced as regards the drafting of the decision by Justice Giovanni Amoroso;

after hearing Counsel Andrea Longo and Massimo Togna for A. P. and State Counsel Massimo Giannuzzi for the President of the Council of Ministers;

after deliberation in chambers on 18 November 2020.

[omitted]

Conclusions on points of law

1.- By means of the referral orders specified in the headnote (Referral Orders No. 112, No. 113, No. 117 and No. 132 of 2020), mentioned when setting out the facts of the case, the Ordinary Courts of Siena, Spoleto and Rome all raise questions as to the constitutionality of Article 83(4) of Decree-Law No. 18 of 17 March 2020 (Measures to strengthen the National Health Service and provide economic support for families, workers and businesses in connection with the COVID-19 epidemiological emergency), converted, with amendments, into Law No. 27 of 24 April 2020, insofar as it provides for the suspension of the running of the statute of limitations with reference to the criminal proceedings indicated in Article 83(2) of that same Decree-Law, including for offences committed before 9 March 2020.

1.1.- The referral orders registered under No. 117 and No. 132 of 2020 of the Court of Spoleto and the Court of Rome also raise a question concerning the constitutionality of Article 36(1) of Decree-Law No. 23 of 8 April 2020 (Urgent measures regarding access to credit and tax obligations of businesses, special powers in strategic sectors, as well as action in the field of health and work, and extension of administrative and procedural deadlines), converted, with amendments, into Law No. 40 of 5 June 2020, insofar as it provides for the extension to 11 May 2020 of the deadlines laid down in paragraphs 1 and 2 [of Article 83] of Decree-Law No. 18 of 2020.

1.2.- All the referral orders allege violation of Article 25(2) of the Constitution, which prohibits the punishment of anyone by virtue of a law that entered into force after the commission of the offence and which, according to the referring courts, precludes the retroactive application of rules that change the law on limitation periods *in peius*.

1.3.- Referral Orders No. 117 and No. 132 of 2020 also allege a violation of Article 117(1) of the Constitution, in relation to Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, ratified and executed with Law No. 848 of 4 August 1955, which prohibits the application of criminal law to acts committed before the entry into force of the law itself.

1.4.- Lastly, Referral Order No. 132 of 2020 alleges that the challenged provisions violate Article 117(1) of the Constitution, also in relation to Article 49 of the Charter of Fundamental Rights of the European Union (CFREU), proclaimed in Nice on 7 December 2000 and adapted in Strasbourg on 12 December 2007, which prohibits convicting anyone on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed, and likewise prohibits imposing a heavier penalty than the one that was applicable at the time the criminal offence was committed.

2.- The questions of constitutionality raised by the referring courts in the above-mentioned referral orders are essentially similar in law and it is therefore appropriate to deal with them together by joining the proceedings.

3.- Preliminarily, the interventions of N. S., G. T., C. S. and E. S. must be declared inadmissible, interventions filed in relation to the constitutional review proceedings originating from the Court of Siena's referral orders (Nos. 112 and 113 of 2020), adopted in chambers.

Pursuant to Article 4(7) of the Supplementary Rules for Proceedings before the Constitutional Court, as replaced by Article 1 of the Decision of this Court sitting in a non-judicial capacity on 8 January 2020, published in the Official Journal of the Republic, No. 17, first special series, of 22 January 2020, "[i]n incidental proceedings, persons having a qualified interest directly and immediately pertaining to the relationship asserted in the proceedings may intervene".

This provision has incorporated this Court's well-settled case law on the admissibility of interventions in incidental proceedings by persons other than the parties to the main proceedings, in accordance with which those who are not parties to the main proceedings may intervene in the incidental constitutional review proceedings only if they have a qualified interest immediately pertaining to the substantive relationship asserted in the proceedings, and not an interest that is merely regulated, like any other, by the provision that is being challenged (amongst others, see Judgments No. 158 of 2020 with annexed order read out at the hearing on 10 June 2020, No. 119 of 2020, No. 30 of 2020 with annexed order read out at the hearing on 15 January 2020, No. 159 and No. 98 of 2019, No. 217, No. 180 and No. 77 of 2018, and No. 70 and No. 33 of 2015).

Accordingly, in line with this approach, the persons that the interventions concern, who are defendants in other criminal proceedings, are neither parties to the main proceedings before the Court of Siena nor holders of a qualified interest immediately pertaining to the substantive relationship asserted in those proceedings, but rather have an interest which is simply governed, like any other, by the challenged provisions, i.e. the interest of all those who are defendants in pending criminal proceedings not to be affected by those rules on the running of the statute of limitations.

4.- On the other hand, by Decree of the President of the Constitutional Court of 12 October 2020, pursuant to Article 4-*ter* of the Supplementary Rules, introduced by Article 2 of the Decision of the Court sitting in a non-judicial capacity on 8 January 2020, the opinions written by the "Italiastatodidiritto" association and the "Unione camere penali italiane" (UCPI) bar association, as *amici curiae*, were admitted in light of their suitability to provide information helpful for assessing the case submitted to this Court, also in view of its complexity.

5.- The referral orders have been issued in the context of criminal proceedings – concerning charges for town planning offences (Referral Orders No. 112 and No. 113),

for the crime of insulting a public official under Article 341-*bis* of the Criminal Code (Referral Order No. 117 of 2020) and for the offence of making false accusations under Article 368 of the Criminal Code (Referral Order No. 132 of 2020) – pending at the trial stage, in which, if the challenged provisions were to be declared unconstitutional, the referring courts would have to declare the offences extinguished due to the expiry of the maximum limitation period. Whereas, applying the suspension of that period as provided for by the challenged provisions, the offences would not be time-barred.

Therefore, the questions as to constitutionality raised are clearly relevant, even though one cannot fail to note the excessive duration of the proceedings which, at first instance alone, still in course, have almost exhausted the maximum limitation period for the offences (which, at maximum, net of suspensions of the running of time, is five years for the town planning offences and seven and a half years for the crimes of insulting a public official and of making false accusations), such that the response of justice on the merits of the charges depends on a suspension of the running of the statute of limitations of only sixty-four days (from 9 March to 11 May 2020), like the one that the constitutional challenges concern.

5.1.- All the referral orders are supported by ample reasoning to the effect that the doubts as to constitutionality are not manifestly unfounded, such that the questions raised are certainly admissible.

6.- It would appear necessary to briefly recall the regulatory framework in connection with the COVID-19 epidemiological emergency, as it relates to the functioning of judicial activities, into which context the challenged provisions fit.

The first emergency action concerning judicial activities adopted by the Government to meet the needs arising from the outbreak of the epidemic in Italy was Decree-Law No. 9 of 2 March 2020 (Urgent support measures for families, workers and businesses in connection with the COVID-19 epidemiological emergency), Article 10 of which addressed solely civil and criminal proceedings pending before the courts of the judicial districts covering the municipalities listed in Annex 1 to the Decree of the President of the Council of Ministers of 1 March 2020 (Further provisions to implement Decree-Law No. 6 of 23 February 2020, on urgent measures for the containment and management of the COVID-19 epidemiological emergency).

That legislation, which was limited to the territories specified therein, not only provided for the suspension of deadlines and the postponement of hearings, but also established that, as from 3 March 2020, the running of the statute of limitations would be suspended for the time that the trial was postponed or the procedural deadlines were suspended, and in any case until 31 March 2020 (Article 10(10) of the said Decree-Law). This initial case of suspension of the running of the statute of limitations is not addressed by any of the referral orders.

A few days later, the Government intervened again as a matter of urgency with Decree-Law No. 11 of 8 March 2020 (Extraordinary and urgent measures to counter the COVID-19 epidemiological emergency and to contain the adverse effects on the conduct of judicial activities), to regulate the postponement of hearings and the suspension of deadlines in civil, criminal, tax and military proceedings, this time with general effect for the entire country.

In particular, Article 1(1) of the Decree-Law provided that, commencing from the day following the date of entry into force of the Decree-Law (9 March 2020) and until 22 March 2020, hearings in civil and criminal proceedings pending before all courts would

be postponed automatically until after 22 March 2020. This was without prejudice to certain proceedings of particular sensitivity and urgency indicated in Article 2(2)(g) of the Decree-Law.

At the same time, Article 1(2) also provided for the suspension of deadlines for the performance of any acts in those proceedings, without prejudice to those already referred to. It was also provided that if the deadline began to run during the period of suspension, it would be postponed until the end of the period of suspension.

For the following period (23 March-31 May), court managers were given the power to authorise measures to extend trial deadlines according to the needs of the territory and in view of the epidemic. However, this was not an unlimited discretion, as Article 2(4) of Decree-Law No. 11 of 2020 stipulated that a number of procedural deadlines, including those for the duration of pre-trial detention, and in any case, limitation periods would be suspended also for the proceedings concerned, subject to the exceptions already mentioned, but only until 31 May 2020, provided that they had been postponed.

Nine days later, the Government once again intervened with Decree-Law No. 18 of 2020 and, before Decree-Laws No. 9 and No. 11 of 2020 lapsed due to their non-conversion by Parliament, the latter were repealed without prejudice to their effects by Article 1(2) of Law No. 27 of 24 April 2020 (Conversion into law, with amendments, of Decree-Law No. 18 of 17 March 2020 on measures to strengthen the National Health Service and provide economic support for families, workers and businesses in connection with the COVID-19 epidemiological emergency. Extension of deadlines for the adoption of legislative decrees).

Article 83 of Decree-Law No. 18 of 2020 laid down a more targeted and detailed set of rules aimed at halting trial proceedings falling within the sphere of ordinary jurisdiction, including in the criminal field. With regard to criminal proceedings, this provision generally and compulsorily established the *ex officio* postponement of hearings – save for exceptions concerning some types of urgent proceedings – to a date after 15 April 2020 and the suspension of the "deadlines for performing any act in civil and criminal proceedings" from 9 March to 15 April 2020, with no possibility for court managers to intervene (Articles 83(1) and 83(2)).

In relation to these cases, provision was also made for the suspension of the running of the statute of limitations as well as the limits on the maximum duration of personal preventative measures. This was provided for in Article 83(4) of the above-mentioned Decree-Law, the provision that the referring courts focus their doubts on.

The power of court managers – already provided for by Decree-Law No. 11 of 2020 – to adopt not only organisational measures aimed at limiting the influx of the public but also general measures, amongst which, for the purposes of the present case, those aimed at providing for the possibility of postponing criminal hearings to a date after 30 June are relevant, except for those proceedings marked by particular urgency expressly indicated in paragraph 3 of the provision in question (Article 83(7)(g)).

Also with reference to these discretionary cases of postponement of criminal hearings, provision was made for the suspension of the running of the statute of limitations for offences and the duration of preventative measures, but until 30 June, regardless of the postponement of the hearing to a later date (Article 83(9)).

Finally, there is Article 36 of Decree-Law No. 23 of 2020, whereby the Government established that the deadline of 15 April 2020 provided for in Articles 83(1) and 83(2) of

Decree-Law No. 18 of 2020 was to be extended to 11 May 2020, thus changing the scope of Article 83(4) of Decree-Law No. 18 of 2020.
Therefore, as a result of the extension provided by Article 36 of Decree-Law No. 23 of 2020 (a provision challenged by Referral Orders No. 117 and No. 132 of 2020), the suspension of the running of the statute of limitations, at present, operates from 9 March 2020 to 11 May 2020.
It is within this emergency framework that the challenged provision (Article 83(4) of Decree-Law No. 18 of 2020), which provides for a special case of suspension of the running of the statute of limitations for criminal offences, falls. It provides that "[i]n criminal proceedings in which the suspension of deadlines pursuant to paragraph 2 applies, the running of the statute of limitations and the deadlines referred to in Articles 303 and 308 of the Code of Criminal Procedure shall also be suspended for the same period".
7.- It is worth stating at the outset that, in general, the actual determination of the duration of the limitation period for offences is a matter for the discretion of the Legislator, which may be challenged only if it is manifestly unreasonable or disproportionate having regard to the seriousness of the offence (this Court's Judgment No. 143 of 2014).
In exercising this discretion, the Legislator balances constitutional values.
On the one hand, there is the need that – by means of mandatory prosecution (Article 112 of the Constitution) – conduct in breach of the criminal law be prosecuted, because observance of the criminal law is a fundamental tenet of civilisation, whereas violation thereof creates, in direct proportion to the gravity of the offence, social alarm and undermines the trust of the citizenry. In the same vein, likewise of importance is protection of the victims of crime: the injured party is also entitled, when it sues as a civil claimant, to have the crime investigated in order to obtain compensation for the harm suffered.
On the other hand, as opposed to those needs, there is the defendant's interest in securing an exemption from criminal liability due to the passage of time. An interest that ordinary legislation recognises and protects through rules on limitation periods and that translates into the defendant's right to obtain from the criminal court – once the statute of limitations has expired – recognition, with a judgment of acquittal, of the extinguishment of the offence (Article 157(1) of the Criminal Code) provided that it is not evident from the records of the proceedings or trial that the defendant did not commit the act that the charges relate to or the act does not constitute an offence or is not specified by law as an offence (Article 129 of the Criminal Procedure Code) and provided that the defendant does not waive the statute of limitations by requesting a verdict of not guilty (Article 157(7) of the Criminal Code). Similarly, and under the same conditions, it will be possible, at the end of the criminal proceedings, to issue an order closing the case due to the extinguishment of the offence ascribed to the suspect.
The rationale of the importance of this guarantee for the suspect or defendant is primarily linked to the "general interest of no longer pursuing crimes in respect of which the long time that has elapsed since their commission has caused the alarm of the common conscience to wane or be considerably lessened" (Judgment No. 393 of 2006; previously, see Judgment No. 202 of 1971 and Order No. 337 of 1999). Reference has also sometimes been made to the "right to be forgotten" (Judgments No. 115 of 2018, No. 24 of 2017, No. 45 of 2015, No. 143 of 2014 and No. 23 of 2013).

There is, in essence, a "progressive reduction of the community's interest in punishing criminal conduct, the relevant limitation periods for which have been assessed by Parliament in accordance with criminal law policy choices based on the seriousness of the offences" (Judgment No. 23 of 2013), although the passage of time does not in itself extend a veil of full immunity to the offence.

Even after a judgment of acquittal due to the extinguishment of the offence on grounds of the statute of limitations, a civil court may ascertain, given the different rules on limitation periods in civil matters, that an offence has been committed by a person who is called upon to compensate non-economic loss (Article 2059 of the Civil Code with reference to Article 185 of the Criminal Code). Likewise, a criminal court, which has acquitted a defendant due to the extinguishment of the offence on grounds of expiry of the statute of limitations, may nonetheless have to rule on whether or not the offence was actually committed (not in order to punish the defendant but) solely for the purposes of awarding compensation to the injured party, who has intervened in the criminal proceedings as a civil claimant, when the extinguishment of the offence is declared by the appeal court or the Supreme Court of Cassation, in the event that the defendant has already been ordered, including on foot of a judgment establishing only liability, to make restitution or pay damages for the harm caused by the offence (Article 578 of the Code of Criminal Procedure). Moreover, extinguishment of an offence on grounds of the statute of limitations does not preclude the court from applying a security measure such as confiscation, like that, in particular, provided for by Articles 240-*bis* and 322-*ter* of the Criminal Code with reference to Article 578-*bis* of the Code of Criminal Procedure.

8.- That being so, the questions raised with reference to the principle of legality laid down in Article 25(2) of the Constitution are unfounded.

9.- It is necessary first of all to recall and circumscribe the scope of that principle with regard to the institution of the statute of limitations in the criminal field.

In this regard, it must be reiterated – as this Court has repeatedly stated – that the determination of the length of time, the running of which extinguishes the offence on grounds of the statute of limitations (Article 157(1) of the Criminal Code), falls within the scope of application of the principle of legality laid down by Article 25(2) of the Constitution, further to which "[n]o one may be punished except on the basis of a law in force at the time the offence was committed".

It is the law of the *tempus commissi delicti* that not only defines the criminal conduct and determines the penalty, such as imprisonment or a fine (Article 17 of the Criminal Code), but also fixes the time beyond which the penalty cannot be applied because the offence is extinguished by the running of the statute of limitations (Article 157 of the Criminal Code), a period of time that could also be unlimited in the case of very serious offences (punishable by life imprisonment) where the law itself provides that the offences are not time-barred (Article 157, final paragraph, of the Criminal Code).

This diachronic projection of punishability is an element of the offence, in the sense that not only must a perpetrator be in a position to recognise in advance what conduct is criminally punishable (i.e. the offence) and what the consequences of their action will be in terms of the applicable sanctions (i.e. the penalty), but they must also be aware in advance of the rules governing the timeframe within which it will be possible at trial to reach a final judgment concerning their criminal liability (i.e. the duration of the limitation period for the offence), even if this does not entail precise knowledge of the *dies ad quem* on which the limitation period expires.

The principle of legality requires that the person charged with an offence have, at the time of the commission of the act, knowledge of the time horizon – having regard to the 'tabular', so to speak, duration set out in general by Article 157 of the Criminal Code, but sometimes fixed by special rules with reference to particular offences (for example, in the case of offences relating to income tax and value added tax) – within which, in any event, the alleged conduct is punishable. The rules defining this period of time must be in force at the time when the conduct constituting a criminal offence is committed. Although for very serious offences (those punished with life imprisonment) the Legislator – as already mentioned – provides for their punishability without time limits, the principle of legality is also respected to the extent that the absence of a limitation period is prescribed by a provision of law in force at the time of the commission of the act, either expressly (as in the current Article 157, final paragraph, of the Criminal Code) or in implicit terms, as was the case in Article 157 of the Criminal Code as per the original wording, due to the fact that it only takes into consideration temporary penalties, of which life imprisonment was not one (Supreme Court of Cassation, Joint Criminal Divisions, Judgment No. 19756 of 24 September 2015-12 May 2016).

It has also recently been affirmed that the statute of limitations, in our legal system, is an institution of a substantive character "that impacts the liability of persons to punishment, by linking the passage of time with the effect of blocking the application of a punishment", such that it "falls within the scope of the constitutional principle of substantive legality in criminal matters laid down by Article 25(2) of the Constitution in particularly broad terms" (Judgment No. 115 of 2018 and, in the same vein, Judgments No. 324 of 2008 and No. 393 of 2006 as well as Order No. 24 of 2017).

In short, the statute of limitations, while determining, on the procedural side, the halting of the prosecution, is configured as a cause of extinguishment of the offence on a more specifically substantive level.

10.- The diachronic dimension of punishability, therefore, concerns first and foremost the 'tabular' determination of the limitation periods for offences, which captures the strictly substantive component. However, it does not exhaust it because it finds its way into the trial, and can be indirectly affected by how events unfold there and individual acts performed there, to the extent that – from a procedural point of view – the interruption and suspension of the limitation period for crimes under the conditions and within the limits of the law are provided for and regulated (Articles 159 and 160 of the Criminal Code). So that it is never possible to foresee in advance the exact final date on which the statute of limitations expires and the offence becomes time-barred, a deadline that can be reached over a variable period of time and which depends on many factors which, in practice, cannot be predetermined.

In that regard, this Court has observed that the statute of limitations constitutes, in the current legal system, an institution of a substantive character "even though it may also have a procedural value" (Judgment No. 265 of 2017) and "[e]ven though it may also be projected onto the procedural level – contributing, in particular, to achieving the guarantee of the reasonable duration of the trial (Article 111(2) of the Constitution)" (Judgment No. 143 of 2014).

The guarantee of the principle of legality (Article 25(2) of the Constitution) in its entirety (such, therefore, as to cover also the substantive implications of the procedural rules) gives shape and content to a fundamental right of the person accused of having committed a crime. It is a right that – having as its content observance of the principle of legality –

on the one hand, cannot be compressed since a balance does not have to be struck with other potentially competing rights. It is, in fact, a safeguard against the possible arbitrariness of the Legislator, and represents an "absolute value, not susceptible of balancing with other constitutional values" (Judgments No. 32 of 2020, No. 236 of 2011 and No. 394 of 2006).

On the other hand, that guarantee, expressed by the principle of legality under Article 25(2) of the Constitution, is part of the essential core of the rights of liberty that contribute to defining the constitutional identity of the national legal system, as recognised by the European Union legal system, in particular in the general clause in Article 4(2) of the Treaty on European Union (TEU), as signed in Lisbon on 13 December 2007 and entered into force on 1 December 2009 (Order No. 24 of 2017). In the charter of defence rights, the principle of legality referred to in Article 25(2) of the Constitution, which has been extended to include the determination of the length of limitation periods for criminal offences, plays a central role, alongside the principle that the defendant is not guilty until final conviction (Article 27(2) of the Constitution) and the principle of the reasonable length of the trial (Article 111(2) of the Constitution). Lastly, it also affects the enforcement of sentences as regards the rules on alternative measures to detention (Judgment No. 32 of 2020).

11.- Observance of the principle of legality implies above all that – just as the criminal conduct penalised must be defined by the law with sufficient precision and finality such that it would be unconstitutional to provide for an offence in essentially undefined and general terms (as most recently was the offence that Judgment No. 25 of 2019 ruled on) – likewise, the fixing of the duration of the limitation period must be sufficiently determined. That criterion is not met, from the substantive point of view of the guarantee, by the so-called "Taricco rule", derived from the case law of the Court of Justice, which – by extending the 'tabular' measure of the limitation period for certain tax offences in the field of harmonised taxes – has no place in our legal system, not even *ex nunc*, given the lack of determinateness of the assumption that conditions the lengthening of the limitation period (Judgment No. 115 of 2018).

Furthermore, observance of the principle of legality implies the non-retroactivity of the provision of law which, by fixing the duration of the limitation period for offences, extends that period by increasing *in peius* the prosecutability of the act committed. The principle of non-retroactivity of a less favourable criminal provision, in fact, "constitutes an essential instrument for safeguarding private individuals against arbitrary legislation, expressing the requirement that the criminal law consequences of one's own conduct must be 'calculable', as a necessary prerequisite for freedom in individual self-determination" (Judgments No. 236 of 2011 and No. 394 of 2006).

Symmetrically, a rule that by contrast reduces the duration of the limitation period constitutes a more lenient criminal provision under Article 2 of the Criminal Code, applicable *in melius* also to acts already committed previously (therefore retroactively) within the limits of the *lex mitior* principle, as recognised by the case law of this Court (Judgment No. 393 of 2006). The principle of retroactivity of the more lenient criminal provision finds its basis not in Article 25 of the Constitution but in the principle of equality (Article 3 of the Constitution), being therefore "susceptible to limitations and exceptions" which, however, "must be justified in relation to the need to safeguard opposing interests of similar importance" (amongst the many judgments available, see Judgments No. 215 of 2008 and No. 394 of 2006 as well as most recently, Judgment No.

63 of 2019) and may also be based on and limited by conditioning procedural activities (Judgment No. 238 of 2020).
12.- Observance of the principle of legality also involves the rules governing the commencement, suspension and interruption of the limitation period because, in its various forms, it contributes – as already noted – to determining the length of time the expiry of which extinguishes the offence on grounds of the statute of limitations.
These are procedural events that affect the overall duration of the limitation period for offences.
The interruption of the limitation period – which depends on the adoption of certain measures, exhaustively indicated – entails the resetting to zero of the calculation with the resumption *ex novo* of the running of time (Article 160 of the Criminal Code). Therefore, it is impossible, for the defendant, to foresee in advance how many times the limitation period will be reset to zero, but there is the guarantee of a maximum duration of the limitation period even though its running is interrupted. However, for crimes of particular social gravity (such as those pertaining to organised crime), when also subject to the statute of limitations, the interruption of the running of time is not capped as regards the maximum duration of the limitation period (Article 161(2) of the Criminal Code).
Similarly, a defendant will not be able to foresee beforehand how many times the running of the statute of limitations will be suspended (Article 159 of the Criminal Code), without there being any cap on the maximum duration of the limitation period, except in the case of suspension of the trial due to the defendant's absence (Article 159(1)(3-*bis*), of the Criminal Code, in relation to Article 420-*quater* of the Code of Criminal Procedure).
The rules of procedure may also have an impact on the regulation of limitation periods.
It is sufficient to recall that – again on the procedural side – the commonly accepted and long applied rule of case-law origin (starting from Supreme Court of Cassation, Joint Criminal Divisions, Judgment No. 32 of 22 November-21 December 2000; later, in even broader terms, Supreme Court of Cassation, Joint Criminal Divisions, Judgment No. 12602 of 17 December 2015-25 March 2016) that stops the running of the statute of limitations at the time of the judgment on the merits, even if not yet final, if challenged by means of an appeal to the Supreme Court of Cassation that ends up being declared inadmissible. In fact, it is maintained that an inadmissible appeal is incapable of opening a procedural phase apt to be included in the running of time.
13.- In this context, Article 159(1) of the Criminal Code, as replaced by Article 6(3) of Law No. 251 of 5 December 2005 (Amendments to the Criminal Code and to Law No. 354 of 26 July 1975 on mitigating circumstances, re-offending, assessment of the subsistence of constituent elements of the offence for re-offenders, usury and time barring), acts as a hinge because it contains, on the one hand, a general ground for suspension – according to which "[t]he running of the statute of limitations shall remain suspended in any case in which the suspension of the criminal proceedings or the criminal trial [...] is mandated by a particular provision of law" – and, on the other hand, a catalogue of other special "cases".
Even before the 2005 amendment, this dichotomy already existed in the original wording of the provision in the 1930 Code, which also flanked a general provision, in the same terms, with special cases, at the time restricted to instances of authorisation to proceed and matters being referred to another court.
This provision – which is characterised by full continuity between the 1930 wording and that of 2005 – complies with the principle of legality under Article 25(2) of the

Constitution, since its content is a sufficiently precise, specific and open to being supplemented by other more specific provisions of law, which must however respect – as will be discussed in point 14 below – the principle of the reasonable duration of the trial (Article 111(2) of the Constitution) and that of reasonableness and proportionality (Article 3(1) of the Constitution).

It states that a statutorily imposed standstill in the criminal proceedings or trial also determines, symmetrically and as a rule, a break in the running of the statute of limitations for offences. Although it cannot be ruled out that there are, in particular, causes of suspension of a trial that do not also entail a suspension of the running of the statute of limitations, it is generally the case that, if the trial is at a standstill, the consequences affect all the parties: the prosecution, the injured party and the defendant. In the same way as the prosecution and the claim for damages are temporarily halted, likewise, in order to preserve the balance of the protection of the values at stake, the running of the statute of limitations for the suspect or accused person is suspended.

This is consistent with the balance referred to above (point 7), which underlies the setting of the limitation period for criminal offences. A balance which would risk being altered if "a particular provision of law", which provides for the suspension of criminal proceedings or the criminal trial, for example, for the compelling reason of a supervening calamity (such as, in the present case, the COVID-19 pandemic, but similarly, in the past, earthquakes, hydrogeological disasters and others), were always – as the referring courts maintain in support of their doubts as to constitutionality – to permit the statute of limitations to run for offences committed before the challenged provision while halting its running solely for offences committed thereafter. This would lengthen the duration of the limitation period only for the latter offences, incongruously and unnecessarily because that limitation period will have just begun to run.

On the contrary, at the time of the commission of the act, the perpetrator knows in advance that if the proceedings or the trial are suspended by reason of the application of a provision of law to that effect, the running of the statute of limitations will also be suspended (Article 25(2) of the Constitution). In any event, there remains, on the one hand, the guarantee that only law can make provision for a suspension of the proceedings or the trial (pursuant to Article 111(1) of the Constitution) and, on the other hand, as regards the effect on the running of the statute of limitations for offences, the guarantee of their applicability in the future from the date of entry into force of the law providing for such suspension (Article 11 of the Provisions on the Law in General). In other words, a new ground for suspension – which can be traced back to the general ground referred to in Article 159(1) of the Criminal Code and therefore also applicable to previous conduct – cannot start from a date prior to the law that provides for it. This is, of course, in addition to the guarantee of the predetermination of the 'tabular' duration of the limitation period (Article 157 of the Criminal Code), mentioned above at point 9.

However, these cases of suspension of the trial – as this Court has already had occasion to note (Judgment No. 24 of 2014) – "automatically trigger … the rules of substantive law on the time barring of offences". Awareness of this automatism on the part of the perpetrator of the criminal conduct is sufficient to ensure compliance with the principle of legality (Article 25(2) of the Constitution), supplemented, in the present case, by the principle according to which the law only provides for the future (Article 11 of the Provisions on the Law in General) and by the guarantee that, in strict application of this

principle, it is not possible for the indirect impact on the limitation period to have retroactive repercussions.

14.- Nor can it be feared that, in substance, beyond formal compliance with the principle of legality, albeit supplemented in this way, the open reference to any "particular provision of law" – which provides for the suspension of criminal proceedings or the criminal trial – could constitute a loophole, in the sense of a possible unlimited extension of the overall limitation period for the offence by reason of the application of any provision providing for the suspension of criminal proceedings or the criminal trial. In fact, observance of the principle of legality – insofar as the rule whereby the suspension of criminal proceedings or the criminal trial by virtue of a "particular provision of law" is associated with the suspension of the running of the statute of limitations for the offence is predetermined – does not exclude but rather is combined, as already noted, with the possible verification of compliance with both the canon of the reasonable duration of the trial (Article 111(2) of the Constitution) and the principle of reasonableness and proportionality (Article 3(1) of the Constitution), measured against which it will always be possible to verify the constitutionality of the very suspension of criminal proceedings and trials, as well as, more specifically, the ensuing suspension of the running of the statute of limitations.

In the present case, moreover, no doubts as to constitutionality have been raised by the referring courts in that respect. However, it must be observed, on the one hand, that the short duration of the suspension of the running of the statute of limitations is fully compatible with the canon of the reasonable duration of the proceedings and, on the other hand, that, in terms of reasonableness and proportionality, the measure is justified by the aim of protecting public health (Article 32(1) of the Constitution) in order to contain the risk of contagion from COVID-19 in an exceptional period of health emergency.

This should also operate to rule out the risk of abuse of legislative power.

The necessary link with the suspension of the trial means that, in the absence of such a connection, the basis for the suspension of the running of the statute of limitations would be different since it would not fall under the general ground laid down in Article 159(1) of the Criminal Code. Such is the case provided for by Article 1(15) of Law No. 103 of 23 June 2017 (Amendments to the Criminal Code, the Code of Criminal Procedure and the Prison Law), which is therefore only applicable to offences committed on or after the date on which the provision itself came into force.

Finally, it remains within the discretion of the legislator to provide, with reference to specific cases, for a further guarantee of a maximum duration of the temporary halt to the running of the statute of limitations, like in the case of suspension of the trial due to the absence of the defendant (Article 159, final paragraph, of the Criminal Code).

15.- Having clarified the scope of the principle of legality (in its twofold substantive and procedural aspects) and the general ground for suspension of the running of the statute of limitations, referred to in Article 159(1) of the Criminal Code, it is now necessary to verify, at an interpretative level, whether or not the contested paragraph 4 of Article 83 of Decree-Law No. 18 of 2020, read as a whole in the context of the other paragraphs, provides for a suspension of criminal proceedings attributable to that general ground.

In that respect, the case law of the Supreme Court of Cassation has repeatedly tied the suspension of the running of the statute of limitations under the challenged provisions to the general ground set out in Article 159(1) of the Criminal Code and has consequently considered the question of constitutionality examined here to be manifestly unfounded

(Supreme Court of Cassation, Fifth Criminal Division, Judgment No. 25222 of 14 July-7 September 2020; Third Criminal Division, Judgment No. 25433 of 23 July-9 September 2020; Fifth Criminal Division, Judgment No. 30434 of 13 July-2 November 2020; and also Third Criminal Division, Judgment No. 21367 of 2 July-17 July 2020, which reached a similar conclusion, although on the basis of a different line of argument).

This case law, which is becoming ever more well-established as living law, has linked the suspension of deadlines laid down by paragraph 2 of the above mentioned Article 83 for the period 9 March to 11 May 2020 (the so-called "first phase" of the measures established to deal with the epidemiological emergency) to the automatic postponement, for the same period of time, of the hearings in criminal proceedings pending before all courts provided for in paragraph 1 of that same article. The suspension affects the generality of deadlines for the completion of any act such that it covers "the deadlines established for the phase of preliminary investigations, for the adoption of judicial measures and for the filing of the reasons therefor, for the filing of pleadings commencing lawsuits and enforcement proceedings, for appeals and, in general, all procedural deadlines". The case law in question considers the two provisions as a unified whole: suspension of deadlines and postponement of proceedings are, as a rule, inseparably linked. It has been held that "the examination of the combined effect of the rules laid down by paragraphs 1 and 2 of the above mentioned Article 83 highlights how they give shape to a case of suspension of proceedings or trial: the automatic postponement of all hearings and the suspension of all deadlines (with the exceptions established by paragraph 3) combine to attribute the procedural situation determined by the provisions of paragraphs 1 and 2 of the above mentioned Article 83 the connotations of a suspension of proceedings or trial in accordance with Article 159(1) of the Criminal Code" (Supreme Court of Cassation, Judgment No. 25222 of 2020).

In essence – as also stated in the Court of Siena's referral order – the combined provisions of paragraphs 1 and 2 of Article 83 contemplate the complete suspension of judicial activities during the emergency period, providing not only for the postponement of hearings (paragraph 1), but also the suspension of procedural deadlines of any kind (paragraph 2).

Furthermore, this interpretation of Supreme Court case law, which brings the suspension within the scope of the general provision that is Article 159(1) of the Criminal Code, is in line with other cases of suspension of trials – also relevant to suspending the running of the statute of limitations – connected to emergency situations deriving, for example, from seismic events. It concerns cases that exhibit – as already mentioned – a rationale similar to that of the challenged provision, designed to tackle the COVID-19 pandemic. This is the case, for example, of Decree-Law No. 39 of 28 April 2009 (Urgent measures in favour of the populations affected by the seismic events in the Abruzzo region in April 2009 and further urgent civil protection measures), converted, with amendments, into Law No. 77 of 24 June 2009, Article 5 of which provided for the suspension of criminal trials, as well as, expressly, the suspension, for the same period, of the running of the statute of limitations: Supreme Court case law has repeatedly applied it with reference to criminal conduct committed before Decree-Law No. 39 of 2009 (amongst many, Supreme Court of Cassation, Third Criminal Division, Judgment No. 5982 of 13 December 2012-7 February 2013).

Similarly, it has been held – without any doubt as to compliance with the principle of legality – that the suspension of the running of the statute of limitations as a consequence

of the suspension of trials concerned offences committed previously in other cases, such as those relating to town planning and tax amnesties and the reform of so-called extended plea bargaining.
With reference to a case involving a town planning amnesty, in examining the suspension of the running of the statute of limitations as a consequence of suspension of the trial, which occurred after the commission of the act, it was held that [the suspension of the running of the statute of limitations] operated in full without there being room for possible aspects of unconstitutionality, precisely because it was an expression of the general principle set out in Article 159(1) of the Criminal Code, whereby time does not begin to run until such time as the impediment to prosecution is removed (Supreme Court of Cassation, Joint Criminal Divisions, Judgment No. 1283 of 3 December 1996-13 February 1997).
However, it must be a "particular provision of law" that establishes the prerequisites for the case, so that "in identifying the cases in which the suspension of proceedings is relevant for the purposes of the statute of limitations, the need for the court's assessments to be tied to predetermined criteria remains valid" (Supreme Court of Cassation, Joint Criminal Divisions, Judgment No. 1021 of 28 November 2001-11 January 2002).
It has been clarified that it is not sufficient to provide by law for the suspension of the running of the statute of limitations, because "rather it is required that the legislator have also provided for the suspension of the proceedings or the trial" (Supreme Court of Cassation, Joint Criminal Divisions, Judgment No. 40150 of 21 June - 7 September 2018). In other words, the suspension of the trial, to which that of the running of the statute of limitations must be linked, is provided for by a rule imposing a "standstill" of the proceedings based on certain and objective elements.
16.- The fact that the case under consideration falls within the scope of Article 159(1) of the Criminal Code rules out the possibility that the legislation at issue may be in breach of the principle of non-retroactivity of less favourable criminal provisions enshrined in Article 25(2) of the Constitution.
Nor can any argument to the contrary be deduced from the express stipulation, contained in the challenged provision, suspending the running of the statute of limitations for criminal offences, which, based on the reconstruction operated by Supreme Court case law, might appear to be redundant since the suspension itself would derive directly from the general rule contained in Article 159(1) of the Criminal Code. In fact, the stipulation in Article 83(4), pursuant to which the running of the statute of limitations is also suspended by reason of the suspension of the criminal proceedings or trial, is not pointless because it expressly establishes, in clearer terms compatible with the principle of equality, how the provision falls within the general ground for suspension set out in Article 159(1) of the Criminal Code, in accordance with a legislative technique that is not new. A similar instance can be found, with reference to another emergency that imposed a standstill of criminal trials, in Articles 49(6) and 49(9) of Decree-Law No. 189 of 17 October 2016 (Urgent measures in favour of the populations affected by the earthquake of 24 August 2016), converted, with amendments, into Law No. 229 of 15 December 2016.
In that regard, the principle of legality is observed because the suspension of the running of the statute of limitations laid down in the provision at issue, in as much as it is covered by the "particular provision of law" referred to in Article 159(1) of the Criminal Code, may be said to predate the conduct of the defendants in the main proceedings. The rule, further to which when the criminal proceedings or the trial are suspended in application

of a particular provision of law, so too is the running of the statute of limitations, is one that certainly predates the criminal conduct precisely because it is contained in the 1930 Criminal Code and reiterated by the 2005 amendment.

17.- The *tempus regit actum* rule becomes strictly applicable when it concerns the statute of limitations, in the sense that trial acts and events could never have a retroactive effect in terms of indirectly affecting the limitation period for offences, a factor which is also relevant in the present case as regards the initial period of the suspension of criminal proceedings from 9 March to 17 March 2020.

It is true that paragraphs 1 and 2 of Article 83 of Decree-Law No. 18 of 2020, which entered into force on 17 March 2020, provided for the suspension of criminal trials and proceedings as from 9 March and thus (apparently) retroactively for the period from 9 to 17 March; retroactivity which could not likewise be reflected in the suspension of the running of the statute of limitations for offences, generally provided for by the challenged paragraph 4 of that same article.

In reality, however, this is not the case because the statutorily imposed postponement (and therefore the temporary suspension) of criminal proceedings and trials in the (short) period prior to 17 March 2020 and the symmetrical suspension of the running of the statute of limitations have their legal basis in Article 1 of Decree-Law No. 11 of 2020, which entered into force on 9 March 2020. Although it was not converted into law by Parliament and indeed was repealed before that by Article 1 of Law No. 27 of 2020, that same provision preserved the effects produced and the legal relationships that arose on the basis of it, together with those that were the subject of Decree-Law No. 9 of 2020. There is therefore continuity between the provision (for as long as in force) of Decree-Law No. 11 of 2020, which in Article 1(3) refers to Article 10 of Decree-Law No. 9 of 2020 (and thus also to paragraph 13 thereof on the suspension of the running of the statute of limitations), and the saving clause of Law No. 27 of 2020, so that the period of postponement (i.e. suspension) of criminal proceedings and trials from 9 to 17 March is based on a provision already in force at the beginning of this period.

There was thus no retroactive suspension of the running of statute of limitations as a consequence of the suspension of criminal proceedings and trials, but the principle that the law (in this case with procedural content) provides for the future (Article 11 of the Provisions on the Law in General) has been fully applied. Consequently, the effect on the statute of limitations in terms of the suspension of the running of time – provided for by Article 1 of Decree-Law No. 11 of 2020 in conjunction with Article 10(13) of Decree-Law No. 9 of 2020 and totally consistent with Article 159(1) of the Criminal Code – is legitimate.

18.- In conclusion, the questions, raised with reference to domestic provisions, i.e. Article 25(2) of the Constitution, are all unfounded.

19.- On the other hand, the questions raised with reference to European provisions are inadmissible.

The Court of Spoleto invoked – as an interposed provision with reference to Article 117(1) of the Constitution – Article 7 ECHR, paragraph 1 of which provides as follows: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.

Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

In this regard, this Court (Judgment No. 230 of 2012) recalled that "Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms … according to its interpretation by the European Court of Human Rights – on the one hand implicitly enshrines also the principle of the retroactivity of more favourable criminal law provisions, whilst on the other hand drawing into the concept of 'legality' under criminal law not only legislation but also case law".

However, the referring court – while recalling the stance on the procedural nature of the statute of limitations adopted by the Strasbourg Court (Judgment of 22 June 2000, *Coëme and others v. Belgium*, and Judgment of 20 September 2011, *Neftyanaya Kompaniya Yukos v. Russia*) and thus a line of case law that advocates a safeguard that is less extensive in scope than that maintained by this Court, which, as aforesaid, by contrast, has affirmed the substantive character of the statute of limitations – does not indicate, even in the slightest, in what terms the conventional provision would in any case offer greater protection of the principle of legality than that afforded by Article 25(2) of the Constitution.

On the contrary, the aforementioned procedural nature of the statute of limitations reduces the scope of non-retroactivity of the criminal law with respect to the reconstruction of the institution, as present in the case law of this Court, which – as aforesaid – affirms instead its substantive character.

With reference precisely to the principle of legality in criminal matters (Article 25(2) of the Constitution), this Court has stated that "the same principles or similar provisions are to be found in the Constitution and in the ECHR, thus giving rise to competing protections, which, however, may not be perfectly symmetrical and overlapping; there may be a gap in protections, which is especially relevant where the case law of the ECtHR recognises, in certain cases, a broader protection" (Judgment No. 25 of 2019). Thus, in this hypothesis of "competing protections", the Convention provision (Article 7 ECHR) may well offer, in certain cases, a broader protection than the national provision (Article 25(2) of the Constitution). This was the case when the question, initially held to be unfounded in relation to the national provision (Judgment No. 282 of 2010), was subsequently held to be well-founded in relation to the interposed provision (Judgment No. 25 of 2019).

However, the Court of Spoleto does not put forward any arguments on this point and, on the contrary, shows that it is aware that, with reference to the statute of limitations, it is the national provision that has a wider scope than the Convention one.

20.- There is a similar and further ground for inadmissibility with reference to the referral order of the Court of Rome, which invokes as an interposed provision not only Article 7 ECHR but also Article 49(1) CFREU, which affords protection based on the principle of legality. It provides as follows: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable."

In addition to the same absence of arguments on the Convention provision that distinguishes the referral order, there is also a complete lack of any reasoning with regard to the matter falling within the scope of implementation of European Union law. This Court has consistently held that the CFREU may be invoked as an interposed provision

in constitutional proceedings only when the case in question is governed by European law (amongst many, most recently, Judgment No. 254 of 2020). The referring court – although referring to the judgment handed down by the Court of Justice (Grand Chamber, Judgment of 5 December 2017, in Case C-42/17, *M. A. S. and M. B.*), which concerns European matters insofar as it relates to the offence of failure to pay harmonised taxes – does not put forward any arguments on this point, since it appears that it is called upon to rule on the alleged offence of making false accusations, which clearly does not fall within the scope of implementation of European Union law.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having joined the proceedings,

1) *declares* that the interventions of N. S., G. T., C. S. and E. S. in the proceedings concerning the questions of constitutionality raised by the Ordinary Court of Siena with the referral orders listed in the headnote are inadmissible;

2) *declares* that the questions as to the constitutionality of Article 83(4) of Decree-Law No. 18 of 17 March 2020 (Measures to strengthen the National Health Service and provide economic support for families, workers and businesses in connection with the COVID-19 epidemiological emergency), converted, with amendments, into Law No. 27 of 24 April 2020, raised, with reference to Article 25(2) of the Constitution, by the Ordinary Court of Siena with the referral orders listed in the headnote, are unfounded;

3) *declares* that the questions as to constitutionality of Article 83(4) of Decree-Law No. 18 of 2020, converted into law, and of Article 36(1) of Decree-Law No. 23 of 8 April 2020 (Urgent measures regarding access to credit and tax obligations of businesses, special powers in strategic sectors, as well as action in the field of health and work, and extension of administrative and procedural deadlines), converted, with amendments, into Law No. 40 of 5 June 2020, raised, with reference to Article 25(2) of the Constitution, by the Ordinary Courts of Rome and Spoleto with the referral orders listed in the headnote, are unfounded;

4) *declares* that the question as to the constitutionality of Article 83(4) of Decree-Law No. 18 of 2020, as converted, and of Article 36(1) of Decree-Law No. 23 of 2020, as converted, raised – with reference to Article 117(1) of the Constitution, in relation to Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, ratified and executed with Law No. 848 of 4 August 1955 – by the Ordinary Court of Spoleto with the referral order listed in the headnote, is inadmissible;

5) *declares* that the question as to the constitutionality of Article 83(4) of Decree-Law No. 18 of 2020, as converted, and of Article 36(1) of Decree-Law No. 23 of 2020, as converted, raised – with reference to Article 117(1) of the Constitution, in relation to Article 7 ECHR, and Article 49 of the Charter of Fundamental Rights of the European Union (CFREU), proclaimed in Nice on 7 December 2000 and adapted in Strasbourg on 12 December 2007 – by the Ordinary Court of Rome with the referral order listed in the headnote, is inadmissible.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 18 November 2020.

Signed by: Giancarlo CORAGGIO, President
Giovanni AMOROSO, Author of the Judgment