JUDGMENT NO. 85 YEAR 2013

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 1 and 3 of Law no. 231 of 24 December 2012 (Conversion into law, with amendments, of Decree-Law no. 207 of 3 December 2012 laying down urgent provisions to protect health, the environment and employment in cases involving crises at industrial facilities of strategic national interest) – more correctly, Articles 1 and 3 of Decree-Law no. 207 of 3 December 2012 (Urgent provisions to protect health, the environment and employment in cases involving crises at industrial facilities of strategic national interest), as converted, with amendments, into Article 1(1) of Law no. 231 of 2012 – initiated by the judge for preliminary investigations at the *Tribunale di Taranto* by the referral order of 22 January 2013 and by the *Tribunale di Taranto* by the referral order of 15 January 2013, registered respectively as no. 19 and no. 20 in the Register of Referral Orders 2013 and published in the Official Journal of the Republic no. 6, first special series 2013.

Considering the entries of appearance by Bruno Ferrante in his capacity as the Chairman of the Board of Directors and legal representative of Ilva S.p.A., and the interventions by the Italian Association for the World Wide Fund for Nature (WWF Italia) Onlus [non-profit social utility organisation], Angelo, Vincenzo and Vittorio Fornaro, the General Confederation of Italian Industry (Confindustria), Federacciai - Federation of Italian Steelmakers, and the President of the Council of Ministers;

having heard the judge rapporteur Gaetano Silvestri at the public hearing of 9 April 2013;

having heard Counsel Luisa Torchia, Counsel Francesco Mucciarelli and Counsel Marco De Luca for Bruno Ferrante, in his capacity as the Chairman of the Board of Directors and legal representative of Ilva S.p.A., Counsel Francesca Fegatelli for the Italian Association for the World Wide Fund for Nature (WWF Italia) Onlus, Counsel Sergio Torsella for Angelo, Vincenzo and Vittorio Fornaro, Counsel Giuseppe Pericu for the General Confederation of Italian Industry (Confindustria) and for Federacciai -

Federation of Italian Steelmakers, and the State Counsels [*Avvocati dello Stato*] Maurizio Borgo and Gabriella Palmieri for the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.– The judge for preliminary investigations at the *Tribunale di Taranto* has raised questions concerning the constitutionality of Articles 1 and 3 of Law no. 231 of 24 December 2012 (Conversion into law, with amendments, of Decree-Law no. 207 of 3 December 2012 laying down urgent provisions to protect health, the environment and employment in cases involving crises at industrial facilities of strategic national interest) – more correctly, Articles 1 and 3 of Decree-Law no. 207 of 3 December 2012 (Urgent provisions to protect health, the environment and employment in cases involving crises at industrial facilities of strategic national interest), as converted, with amendments, into Article 1(1) of Law no. 231 of 2012 – with reference to Articles 2, 3, 9(2), 24(1), 25(1), 27(1), 32, 41(2), 101, 102, 103, 104, 107, 111, 112, 113 e 117(1) of the Constitution.

Article 1 of Decree-Law no. 207 of 2012 is challenged insofar as it provides that when the conduct of business activities at facilities that have been recognised as strategic for the national interest by decree of the President of the Council of Ministers and that employ at least two hundred people is indispensable in order to safeguard employment and production, it may continue for a period of up to 36 months, even where the plant has been seized by the judicial authorities, in accordance with requirements laid down in a integrated environmental permit (IEP) issued during a review stage in order to ensure fully appropriate protection for the environment and health according to best available techniques.

Article 3 on the other hand has been challenged having regard to the following findings: a) the Ilva steelworks in Taranto is a facility of strategic national interest pursuant to Article 1; b) the IEP issued to the company Ilva on 26 October 2012 constitutes authorisation for the purposes of Article 1; c) possession of the plant and property seized by the judicial authorities is to be returned to the aforementioned company; d) products in stock, including those manufactured prior to the date of entry into force of the Decree-Law, may be marketed by the company.

In the opinion of the referring body, the contested legislation violates first and foremost Article 3 of the Constitution on various grounds. First, it is claimed to discriminate unjustifiably against companies that use manufacturing processes with similar polluting effects depending upon whether the facilities concerned have been declared to be "of strategic national interest" on a discretionary basis by the President of the Council of Ministers (the prerequisites for which are stipulated by the law only generically), in which case the unlawful activity may continue for 36 months, or whether they have not been so declared, in which case the sanctions provided for by law will apply. Similarly, it is claimed to discriminate unlawfully against certain individuals exposed to polluting emissions depending upon whether or not the facilities from which the emissions originate have been declared to be "of strategic national interest" by the President of the Council of Ministers, since actions to uphold the rights of the individuals affected would only be precluded in the former case.

With specific reference to Article 3(2) of Decree-Law no. 207 of 2012, the referring body considers that individuals exposed to the polluting emissions from Ilva S.p.A. are discriminated against compared to others also suffering from environmental pollution: in the Ilva case in fact, the IEP issued on 26 October 2012 during the review stage "has been elevated to an act with the force of law", with the result that the interested parties have been prevented from challenging the measure in the courts. Such an exclusion – it may hereby be concluded – also implies a violation of Article 113 of the Constitution.

With reference to Article 3(3) it is claimed that there has been an unlawful difference in treatment (which is relevant pursuant to Article 3 of the Constitution) as regards companies whose products may hereafter be seized or were seized prior to the entry into force of the Decree-Law, since only the company Ilva - it is claimed - has been permitted to market both products already seized and those potentially subject to further seizure orders.

A second group of challenges relates to violations of Articles 101, 102, 103, 104, 107 and 111 of the Constitution. In fact, the legislation in question was enacted in order to regulate one single specific case - within which court orders have already been issued and become "final for interim purposes" - through provisions that are not general and abstract, and without altering the reference legislative framework, thereby violating the

reservation of such matters to the judiciary and "the constitutional principle of the separation of powers".

In addition, the contested legislation is claimed to violate Articles 25, 27 and 112 of the Constitution on the grounds that it circumvents the obligation to ascertain and prevent criminal offences and the duty to launch criminal prosecutions, which is incumbent upon the public prosecutor: specifically, that effect is claimed to result from the legitimation of continuing highly polluting production activities for 36 months and the provision solely for a fine based on turnover for any violations of the requirements laid down by the reviewed IEP.

For the reasons set out above, the contested provisions are claimed to violate Articles 25 and 27 of the Constitution in that they imply a removal of conduct unlawful under criminal law from their "natural judge", thus thwarting "the principle of personal criminal responsibility for the perpetrators" of the offences concerned. The legislation is claimed to violate also Article 24 of the Constitution on the same grounds, as it has the effect of preventing individuals harmed by polluting emissions from initiating court action in order to uphold their legitimate rights and interests.

It is objected that the legislation also breaches the Constitution (including in particular Articles 2, 9, 32 and 41) on further "general" grounds since, in permitting the exercise of private economic initiative in such a manner as to cause harm to human safety and dignity, the legislation in question is claimed to annul protection for the fundamental right to health and to a wholesome environment.

Finally, Article 117 of the Constitution is claimed to have been violated in relation to various interposed rules. Specifically, the contested legislation is claimed to violate Articles 3 and 35 of the Charter of Fundamental Rights of the European Union, which protect the right of everyone to physical and mental integrity and health care. It is also claimed to violate Article 191 of the Treaty on the Functioning of the European Union laying down the precautionary principle, which has been disregarded in this case by the legitimation of activity proven to be harmful. Finally, the referring body alleges that Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms has been breached owing to the violation of the right to a fair trial.

2.– The *Tribunale di Taranto*, sitting as an appeal court pursuant to Article 322-bis of the Code of Criminal Procedure, has raised questions concerning the constitutionality

of Article 3 of Law no. 231 of 2012 – more correctly, Article 3 of Decree-Law no. 207 of 3 December 2012, as converted, with amendments, into Article 1(1) of Law no. 231 of 2012 – with reference to Articles 3, 24, 102, 104 and 112 of the Constitution, insofar as it authorises the company Ilva S.p.A. from Taranto "under all circumstances" "to market products including those manufactured prior to the date of entry into force" of Decree-Law no. 207 of 2012, notwithstanding that they have been subject to a preventive seizure order.

According to the referring body, the contested legislation violates Article 3 of the Constitution on various grounds.

It is claimed first and foremost to amount to "tailor-made legislation" by which the company Ilva is unjustifiably benefited compared to any other company whose goods have been seized on the grounds that they result from a criminal offence.

The contested legislation is also claimed to be unreasonable since the authorisation to market the goods seized thwarts the essential function of the interim measure granted and is not moreover justified by the goal of enabling the continuation of production and the maintenance of employment, as the availability of the goods seized is not necessary in order to secure these goals.

There is thus no reasonable justification for the "retroactive" effect of the contested provision.

The lower court also claims that Articles 102 and 104 of the Constitution have been violated on the grounds that Parliament "directly amended a court order" (the order at issue in the appeal before the lower court), "without however altering the legislative framework on the basis of which it was enacted" and undermined the possibility to enforce confiscation upon completion of the proceedings, notwithstanding that the goods seized would still have to be regarded as the result of a criminal offence.

Finally, the contested provision is claimed to violate Articles 24 and 112 of the Constitution owing to the breach of the right of action by private individuals whose rights have been harmed and to the obstacle imposed on the exercise of the public authorities' function of ascertaining, punishing and preventing crime.

3.– Since the proceedings initiated by the two referral orders mentioned in the headnote in part concern identical issues, they may be joined for uniform treatment of the questions raised.

4.– As a preliminary matter, it is necessary to confirm the order adopted during the public hearing, and annexed to this judgment, by which the interventions made in the proceedings initiated pursuant to referral order no 19 of 2013 by the General Confederation of Italian Industry (Confindustria), Federacciai - Federation of Italian Steelmakers and the Italian Association for the World Wide Fund for Nature (WWF Italia) onlus were ruled inadmissible, whilst accepting as admissible the intervention by Messrs Angelo, Vincenzo and Vittorio Fornaro.

The persons referred to above were not parties to the proceedings before the lower court.

According to the settled case law of this Court, only parties to the main proceedings may enter appearances in interlocutory proceedings before the Constitutional Court, whilst interventions by other persons (other than the President of the Council of Ministers and, in cases involving regional legislation, the President of the Regional Executive) are only admissible where such third parties hold a qualified interest pertaining directly and immediately to the substantive right averred in the proceedings, and not simply governed, in the same manner as any other, by the contested provision.

However, Confindustria, Federacciai and WWF Italia are not parties to or holders of such a qualified interest in the proceedings out of which the questions of constitutionality under discussion originated.

On the other hand, Messrs Angelo, Vincenzo and Vittorio Fornaro participated as injured parties in the taking of evidence according to special procedures ordered by the judge for preliminary investigations of the *Tribunale di Taranto* on 27 October 2010; they therefore hold a qualified interest pertaining to the substantive right averred in the main proceedings, which covers both the taking of evidence according to special procedures and procedures relating to the seizures underway.

It follows that the intervention by Messrs Angelo, Vincenzo and Vittorio Fornaro must be ruled admissible and that the interventions by Confindustria, Federacciai and WWF Italia must be ruled inadmissible.

5.– At this stage, it is necessary to consider certain issues concerning the admissibility of the questions raised in relation to case no. 19 of 2013.

5.1.– First and foremost, the President of the Council of Ministers argued that there was an inherent contradiction within the question regarding the alleged encroachment

by the legislature on the prerogatives of the judiciary. In particular, the judge for preliminary investigations from Taranto on the one hand argued that the plant at the steelworks and the products held in the relative storage areas were still officially seized, whilst on the other hand objecting to a kind of direct effect of the law over the prevailing interim arrangements.

Framed in these terms, the objection that the question is inadmissible is groundless. The lower court does not assert that the seizures were "automatically" revoked by the contested legislation, nor that the status as seized property of the goods to which the aforementioned orders refer was reversed. It did not therefore claim that the rules adopted by the Government and by Parliament should not apply in relation to interim measures adopted by the judiciary; in fact, that premise is a prerequisite for the relevance of the questions raised. The referring body rather sought to object to an alleged reversal of the efficacy of the real interim measures adopted against Ilva, which would have a particularly significant effect on the material produced after the factory was seized but before the Decree-Law was enacted: this material was destined for confiscation but was as a matter of fact irreversibly diverted to another end – in its view – by virtue of the marketing provided for under the subsequently enacted legislation.

Whilst the referral order evokes an "amending" effect of the court order which refused to release the goods asserting that, in approving the amendment to Article 3(3) of the Decree introduced upon conversion, Parliament acted as a "hierarchically superior court", this argument aims to highlight a supposed intention on the part of Parliament to interfere with the provisions applicable to the present case with retroactive effect, and not that the provision has any supposed direct effect with regard to the interim relief.

The State Counsel also averred that the questions raised in relation to the interim sub-procedure regarding the seizure of the plant were raised late as the Taranto public prosecutor had already returned possession of the factory to the company Ilva pursuant to Article 3(3) of the Decree at the time the referral order was made. The objection cannot be accepted. In fact, the referring body's position that the contested legislation and Article 3(3) itself must be applied further in a measure recognising and regulating the "ability to use" the plant whilst remaining seized and by a measure evaluating the continuing requirements of the Office of Judicial Guardians and specifying - in the

event of an affirmative answer - the different task vested in them in the light of the subsequently enacted legislation, is not entirely implausible.

Finally, it must be concluded that there is no "supervening lack of interest" as regards the questions concerning the seizure of the finished or semi-finished products, in consideration of the fact that the investigating authority itself recently ordered the "sale" of the goods. The sale of the goods was not ordered pursuant to the contested provision, but rather pursuant to Article 260(3) of the Code of Criminal Procedure and Article 83 of the relative implementing provisions. This legislation regulates situations in which the asset seized is liable to deteriorate and does not by any means imply the release of the asset, so much so that the the restriction is transferred to any profits earned from the sale, a fact which is explicitly highlighted in the order by the judge apprised of the case. Thus, the interest in establishing whether it is legitimate to provide for the introduction of the goods into the normal economic cycle of the business, which entails *inter alia* for the company the direct and unconditional acquisition of the resources obtained from the sale of its goods, has not lapsed.

5.2.– Again in relation to referral order no. 19 of 2013, the company Ilva argued that the question as to whether Article 1 of Decree-Law no. 207 of 2012 breaches Article 3 of the Constitution is "fundamentally inadmissible". In particular, the referring body did not state the comparator with reference to which the reasonableness of the minimum threshold of two hundred employees, to which the contested legislation subjects the possibility that the Ministry of the Environment may authorise continuation of production upon review of the IEP (Article 1(1)), could be reviewed.

There is no doubt that the referral order does not contain any such indication. However, it must be concluded that such an indication is not necessary. The referring body does not appear to be seeking to review the reasonableness of the numerical value chosen by Parliament, either in absolute terms or when compared with similar situations, but rather appears to be calling into question the legitimacy of any difference in treatment between companies with polluting production procedures. The question of constitutionality must be interpreted in this sense, albeit within the context of an extremely "discursive" presentation. Besides, had the referring court intended to raise the question in the terms asserted by the other party, it would have been manifestly inadmissible, given the obscure nature of the way in which it was formulated.

5.3.– On the other hand, the objection raised, again on behalf of the company Ilva, that the questions filed in relation to Article 117(1) of the Constitution are inadmissible is well founded. In effect, the referring body limits itself to invoking a generic overlap between the provisions on the protection of fundamental rights laid down by the Constitution, which have allegedly been violated by the contested provisions, and certain supranational norms, including the European Convention on Human Rights or EU law. However, no detailed argument is provided as to the specific grounds for conflict between national law and the interposed rules, the specific normative scope of which is not presented, even in summary terms. European Union law in particular is generically invoked in relation to the precautionary principle and the polluter-pays principle (Article 191 TFEU), without taking account of the specific legislation applicable to the steel industry, including the recent changes introduced by the Decision of 28 February 2012 (Commission implementing decision 2012/135/EU […] establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for iron and steel production, notified under document C[2012] 903) and the two resolutions adopted by the European Parliament on 13 December 2012, again in relation to the steel industry in the European Union.

It should be added that the questions raised with reference to Article 25(1) and Article 27(1) of the Constitution are supported by such scant reasons that the doubts relating to the relative challenges cannot be overcome. It is not clear what the effective relevance is of the principle of a tribunal established by law, within the context of assertions relating to a supposed immunity resulting from the contested legislation for the responsible persons at Ilva. Had the intention been to assert that every rule providing for exemption from punishment "removes" the interested party from the tribunal "established by law" and that this would be the effect of a hypothetical declassification of the offence to an administrative offence, then much more comprehensive justification for the claim would have been required. It is even more difficult to understand the assertion that, due to the alleged immunity granted for the offences committed in relation to the management of the Taranto plant, the rule of personal criminal responsibility has been violated. The argument remains unsubstantiated both if the rule is construed as a prohibition on the establishment of criminal responsibility for the

actions of other persons and likewise if the related principle of the requirement of "blame" for the conduct outlawed under criminal law is considered.

Thus, the questions raised in relation to the principles indicated must be ruled inadmissible.

6.– Objections of inadmissibility have also been raised in relation to the proceedings initiated pursuant to referral order no. 20 of 2013.

The argument proposed by the State Counsel according to which the recent court order instructing the sale of the goods seized implies that there is now a "lack of interest" in relation to the relative questions has already been discussed. It must now be reiterated that, on the contrary, there is still an interest in establishing the legality of the provision enabling the company Ilva to market the goods as part of its own economic and productive cycle.

For its part, the intervener argues that the question raised by the court is irrelevant on the grounds that the hypothetical removal from the legal order of Article 3(3), or in any case of the indent introduced by Parliament upon conversion relating to products that had already been seized before the Decree-Law was issued, would not impinge upon the decision which the referring court must adopt in the specific case. In fact – according to the representative for Ilva – the provisions merely implement and apply the general provisions laid down by Article 1 of the Decree. In particular, the provision that the seizure orders adopted by the judicial authorities "shall not prevent (…) the conduct of business activity" (paragraph 4) clearly implies the possibility that goods subject to real interim measures may be traded, given that the trade in internally produced goods constitutes the essential core of the operations of a manufacturing company. Thus, even if the contested provision were ruled unconstitutional, the court should in any case allow the appeal by the company Ilva.

The objection must be disregarded irrespective of whether the relationships between the various provisions invoked - which will be addressed once again when considering the merits of the questions - have been correctly presented.

In fact, an essential aspect of the challenges brought by the lower court is the argument that Article 3(3) establishes an unjustified privilege for Ilva compared to the legislation applicable to companies as a whole. In particular, the indent concerning the marketing of the goods seized, including those subject to interim measures prior to

enactment of the Decree-Law, is claimed to represent a genuine innovation compared to the legislation laid down in the Decree-Law, as it has undue retroactive effect. The lower court would have violated the logic of its own challenges had it also challenged Article 4 of the Decree-Law, including in particular paragraph 4 thereof.

Thus, the question of constitutionality appears to be relevant in the manner in which it is framed. Whether it is well-founded is obviously another problem, having regard also to its interpretative prerequisites. However, it cannot be asserted in the present case, as the intervener seeks to do, that the referring court has provided an inadequate (in the sense of incomplete) account of the reference legislative framework.

7.– On the merits, the questions concerning Article 1 of Decree-Law no. 207 of 2012 are well founded.

7.1.– It is necessary to specify the actual scope of the legislation enacted by the contested provision on crises at industrial establishments of strategic national interest, the aim of which is to reconcile environmental and health protection with the maintenance of employment, also in cases in which plant has been seized by the judicial authorities.

7.2.– A general prerequisite for the applicability of the provision in question is that the integrated environmental permit falling under Article 4(4)(c) of Legislative Decree no. 152 of 3 April 2006 (Provisions on the environment), as amended by Article 2(1) of Legislative Decree no. 128 of 29 June 2010 (Amendments and supplements to Legislative Decree no. 152 of 3 April 2006 laying down provisions on the environment, enacted pursuant to Article 12 of Law no. 69 of 18 June 2009) must have been reviewed.

The competent authority may only issue the IEP if the operator of the plant has adopted the best available techniques (BAT), the operation of which must be monitored by the administration. The IEP is therefore a measure which is by its very nature "dynamic" in that it contains an emissions reduction programme, which must be regularly reviewed (generally every five years) with a view to implementing updated techniques achieved through scientific and technological research in the sector. This principle was laid down by Article 13 of Directive no. 2008/1/EC (Directive of the European Parliament and of the Council concerning integrated pollution prevention and control) implemented in Italy by Article 29-octies of the Environmental Code, which

also provides (in paragraph 4) that the IEP shall be reviewed when: a) the pollution caused by the installation is of such significance that revision is necessary; b) substantial changes in the BAT make it possible to reduce emissions significantly without imposing excessive costs; c) the safety of the plant requires other techniques to be used; d) new provisions of Community or national legislation have been enacted.

Article 29-octies(5) provides *inter alia* that, if the authorisation is renewed or reviewed, the competent authority may grant temporary derogations from the requirements applicable to the original measure, provided that the new provisions will secure compliance with these requirements within six months and the project will result in reduced pollution.

7.3.– If the IEP is reviewed on any of the grounds referred to in the previous paragraph, the Minister for the Environment and Protection of the Territory and the Sea may authorise the continuation of production for a fixed period of time, which may not exceed 36 months, where the plant has been designated to be of "strategic national interest" by decree of the President of the Council of Ministers.

The above classification may only be made if: a) the facility has employed at least two hundred workers for at least one year, including workers who have been awarded salary supplement payments; b) it is absolutely necessary in order to safeguard employment and production; c) authorisation is subsequently granted by the Minister for the Environment stipulating the prerequisite of compliance with the requirements of the reviewed IEP, in accordance with the procedures and time limits specified thereunder; d) the initiative is explicitly aimed at "ensuring fully adequate protection for the environment and health according to the best available techniques".

Article 1(4) provides that the provisions cited "shall apply even if the courts have seized the assets of the company that owns the factory. In such an eventuality, the seizures shall not prevent the conduct of business activity pursuant to paragraph 1 for the duration of the period stated in the permit".

7.4.– Article 1(2) of Decree-Law no. 207 of 2012 also provides that: "The foregoing shall be without prejudice to Articles 29-octies(4) and 29-nonies and 29-decies of Legislative Decree no. 152 of 3 April 2006, as amended". Article 1(3) provides, in the event of non-compliance with the requirements of the IEP as reviewed, for an "administrative fine of up to 10 percent of the turnover of the company as reported in

the last approved accounts". The provision specifies the legislative framework within which this sanction is applicable: "Without prejudice to the provisions of Articles 29-decies and 29-quattuordecies of Legislative Decree no. 152 of 2006 and the other criminal and administrative sanctions provided for under sectoral legislation […]".

7.5.– It is important to recall that Article 29-decies of the Environmental Code (which is explicitly referred to by the contested provision) provides for a series of controls and interventions by the competent authorities, which may result in sanctions on an increasing scale of severity, having regard to the seriousness of any violations ascertained.

In particular: 1) the data provided by the operator in relation to emission controls required by the IEP shall be made available to the public according to the procedures provided for under Article 29-quater (publication in daily newspapers and indication in those publications of the offices where the relative documentation may be consulted); 2) the Higher Institute for Environmental Protection and Research (ISPRA) must ascertain: a) compliance with the conditions laid down by the IEP; b) that regular controls have been carried out by the operator, with particular reference to the regular deployment of anti-pollution measures and equipment and compliance with emissions thresholds; c) compliance by the operator with the obligations to communicate regularly the results of monitoring of emissions from its plant, especially in cases involving disruptions or accidents that have a significant effect on the environment.

Extraordinary inspections of plant authorised to continue operation may be ordered.

A duty has also been imposed on the operator to provide all technical assistance necessary in order to carry out any checks relating to the plant, to take samples or to collect any necessary information.

The results of controls and inspections must be notified to the competent authority and to the operator, indicating any instances of non-compliance with requirements and proposing measures for adoption.

If any body conducting supervision, control, inspection and monitoring of plant acquires information relating to the environment that is relevant for the purposes of the Environmental Code, it shall forward that information to the competent authority along with any reports of criminal activity. The results of emissions controls required under the terms of the IEP must be made available to the public.

In the event of non-compliance with the requirements laid down in the permit, the competent authority shall, depending upon the seriousness of the infractions: a) issue a warning, setting a time limit by which the irregularities must be resolved; b) issue a warning whilst also suspending activity authorised for a fixed period of time in any situation involving an environmental hazard; c) revoke the IEP and close the plant in the event of non-compliance with the requirements stated in the warning and in cases involving repeated breaches leading to environmental hazards or dangers.

It should further be stressed that Article 29-quattuordecies provides for penalties against any person who violates the requirements of the IEP, or any requirements otherwise imposed by the competent authority, unless the conduct amounts to a more serious offence (this last reference also constitutes a reference to ordinary criminal offences).

8.– The mere fact of recognition of the legislation on controls and sanctions, which is still in force and is expressly referred to by the contested provision, contradicts in a documented manner the argument of the referring judge for preliminary investigations, namely that the 36 months granted to a company meeting the prescribed prerequisites to bring its operations into line with the reviewed IEP, "constitute a genuine 'cloak' granting full 'immunity' from criminal and procedural rules".

The contested provision not only fails to provide for any criminal immunity for the aforementioned period; on the contrary, for the period specified it expressly refers both to the criminal sanctions laid down by the law in relation to environmental offences as well as the obligation incumbent upon the supervisory and control authorities to transmit any reports of criminal activity to the "competent" authority, that is to the judicial authorities.

Moreover, the provision does not introduce any form of cancellation or mitigation of the responsibility incumbent upon persons who have breached criminal law rules enacted in order to safeguard health and the environment. In other words, the contested provision does not constitute either an *abolitio criminis* or a *lex mitior* and does not therefore impinge in any way on the inquiries, which are still in progress, seeking to establish the guilt of the current suspects in the main proceedings, against whom - as things stand - no request for committal for trial has been submitted. The provision is also incapable of having any effect on any future criminal trial of those persons.

In the view of the referring court, the idea that it is possible to continue production without being subject to any rules during the period provided for under the contested provision results from the fact that the penalties – which as noted above are also criminal – expressly referred to by it "may not under any circumstances be imposed prior to expiry of the 36 months. The only sanction applicable prior to expiry of the 36 months in cases involving non-compliance with the terms of the IEP is that amounting to 10% of turnover. Such a sanction is obviously completely inadequate in order to protect health and the environment".

It is not clear how Article 1 of Decree-Law no. 207 of 2012 can be construed as providing that the fine of up to 10% of turnover is the only sanction which may be imposed during the period considered and that it thus supplants the other sanctions provided for under applicable legislation. The opposite is the case, since the expressions used by Parliament – "save for", "without prejudice" – evidently refer to complex and concurrent legislation, under which the existing administrative and criminal sanctions apply in addition to the offence introduced by Article 1(3), obviously from the date of entry into force of the Decree-Law.

The reasons for this increased responsibility may be found in the need to provide for an adequate response from the authorities charged with supervising and controlling any violations *in itinere* of the provisions of the IEP by an undertaking - having already incurred responsibility for serious irregularities - which has been permitted to continue production and sales upon condition that it abide scrupulously by the aforementioned requirements.

If the effect of the new legislation were to defer until the expiry of the period stated any corrective action or sanctions against the undertaking operating the factory of strategic national interest, which has been permitted to continue operations notwithstanding the judicial seizure, it would make no sense to provide – as is done by Article 3(4) of Decree-Law no. 207 of 2012 – for a Guarantor "responsible for overseeing implementation of the provisions of this Decree". Pursuant to Article 3(6), the Guarantor "shall acquire information and documentation deemed to be necessary which the company, the authorities and the interested bodies must provide timeously, shall report any critical issues encountered during implementation of the aforementioned permit to the President of the Council of Ministers, the Minister for the

Environment and Protection of the Territory and the Sea and the Minister of Health and shall propose suitable measures, including the adoption of an extraordinary administration regime, having regard also to Articles 41 and 43 of the Constitution". The Guarantor must promote all activities aimed at achieving the utmost transparency for the general public".

8.1.– If these provisions are read in conjunction with those stipulating the continuing applicability for the 36 months of the existing administrative and criminal sanctions, it will be concluded that not only has there been no suspension of controls as to whether the actions of the company holding the permit to continue operations are lawful, but that the controls on compliance with the requirements laid down in the IEP as reviewed have been reinforced and expanded.

The distinction between the position under the legislation prior to the entry into force of the Law – and, generally speaking, of the decree of the President of the Council of Ministers referred to under Article 1(1) – and the current legislation lies in the fact that production activity is deemed to be lawful in accordance with the conditions laid down in the reviewed IEP. This specifies the procedures and time-scales for bringing the production facility into line with the rules on health and environmental protection within the relevant period according to a timetable of staggered interventions, failure to comply with which must be deemed to be unlawful and hence liable to prosecution under applicable legislation.

Concluding on this point, the contested provision does not provide *ex post* legitimation for what was previously unlawful – which will continue to be such for the purposes of any criminal proceedings initiated before authorisation was granted to continue production – and does not "sterilise", even temporarily, the future conduct of the company with regard to any breach of the legislation on the protection of health and the environment. By contrast, the provision sets out a roadmap for environmental recovery inspired by the need to strike a balance between protection for the interests indicated, such as employment, all of which interests are protected under the constitution. Any deviation from that roadmap other than those caused by *force majeure* will cause specific responsibility to be incurred under criminal, civil and administrative law, which the competent authorities are required to enforce according to the ordinary procedures. Moreover, the power/duty of the public prosecutor to initiate criminal

prosecutions as provided for under Article 112 of the Constitution, which must still be framed in accordance with the general conditions laid down by applicable legislation, has not therefore been impaired, notwithstanding the fact that, following the entry into force of Decree-Law no. 207 of 2012, the continuation of production by companies subject to seizure orders is deemed to be lawful, upon condition that the requirements of the reviewed IEP which summarises the rules limiting, circumscribing and steering the continuation of such activities are adhered to.

It is not the case that the legislation has prevented the adoption of interim measures in criminal proceedings aimed at establishing whether any unlawful acts were committed before or after the reviewed measure was issued, should new interim requirements arise. Article 1(4) clearly permits measures previously adopted to continue to apply and is only intended to prevent present or future seizures from precluding the continuation of production pursuant to paragraph 1.

8.2.– The continuing power of the competent authorities to ascertain any responsibility on the part of the owners of the company is mirrored by the right of any members of the general public who consider their individual rights to have been violated to apply to the competent court in order to obtain redress and the imposition of the sanctions provided for under applicable legislation. This right is not impaired by the contested provision, but is incorporated - in the same manner as any legal claim - into the reference legislative framework which, as clarified above, does not annul or even suspend controls as to the legality of actions, but focuses such controls on verification of compliance with the health and environmental protection requirements contained in the reviewed IEP.

Ultimately, private individuals are not deprived of the right to initiate court action in order to protect their own individual legal rights, and may file related damages claims, pursuant to Articles 24 and 113 of the Constitution.

9.– The rationale of the contested provision is to strike a reasonable balance between the fundamental rights protected by the Constitution, including in particular the right to health (Article 32) and the derived right to a healthy environment, and the right to work (Article 4), from which the constitutionally significant interest of maintaining employment along with the duty incumbent upon public institutions to take all efforts to that effect are derived.

All fundamental rights protected by the Constitution are mutually related to one another and it is thus not possible to identify any one of them in isolation as prevailing absolutely over the others. Protection must at all times be "systematic and not fragmented into a series of rules that are uncoordinated and potentially conflict with one another" (see judgment no. 264 of 2012). If this were not the case, the result would be an unlimited expansion of one of the rights, which would "tyrannise" other legal interests recognised and protected under constitutional law, which constitute as a whole an expression of human dignity.

For the reasons set out above, it is not possible to share the argument of the referring judge for preliminary investigations that the adjective "fundamental" contained in Article 32 of the Constitution indicates a "predominant status" of the right to health over all other rights of the person. Moreover, the fact that this Court has defined the environment and health as "primary values" (see judgment no. 365 of 1993, cited by the referring judge) does not imply a "rigid" hierarchy between fundamental rights. As is the case under other contemporary democratic and pluralist constitutions, the Italian Constitution requires that an ongoing reciprocal balance be struck between fundamental principles and rights, and that none of them may claim absolute status. The classification of the values of the environment and health as "primary" rather means that they cannot be sacrificed in favour of other interests, even if protected under constitutional law, and not that they are placed at the pinnacle of a hierarchically absolute order. Precisely because it is dynamic and not set in advance, the point of equilibrium must be assessed – by Parliament when enacting legislation and by the Constitutional Court upon review – according to the criteria of proportionality and reasonableness in such a manner as to ensure that their essential core is not sacrificed.

10.– The referring judge also considers that the contested provision "completely annuls the right to health and to a wholesome environment in favour of economic and manufacturing rights". If this assessment were a true reflection of the actual position under the legislation, it would without doubt constitute a violation of Article 32 of the Constitution since, for the reasons illustrated above, no requirement - even if rooted in constitutional law - can justify complete disregard for health and the environment. However, this conclusion is not supported by a detailed analysis of the contested provision.

10.1.– As pointed out in the previous paragraphs, according to Article 1(1) of Decree-Law no. 207 of 2012, authorisation to pursue production is rendered conditional upon compliance with the requirements of the reviewed IEP. This act has administrative status, which means that all remedies provided for by law in order to protect individual rights and legitimate interests before the ordinary and administrative courts will be available against it.

The general reference made by the Law has the effect of continuously subjecting the continuation of production to strict compliance with the requirements contained in the permit, which is issued taking account of various technical and administrative contributions as one single measure and within which, pursuant to Directive no. 2008/1/EC, the principles of prevention, precaution, correction at source, information and public participation, which operate throughout environmental law, must apply in parallel. The procedure resulting in the issue of the IEP, which is characterised by public participation and disclosure, is the instrument by which the legislation intends a balance to be struck regarding the acceptability and management of risks resulting from the activity authorised.

Once that balance has been struck, control of the efficacy of the requirements is decisive. This calls into play the control function performed by the authorities, which rely on ISPRA, along with the possibility that, in the event that a breach by the plant operators is ascertained – as pointed out above – any measures up to and including revocation of the permit, and closure of the plant, will apply in the event of non-compliance with the requirements stipulated in the warning or in the event of repeated breaches that represent a hazard for or cause harm to the environment.

The requirements and measures contained in the IEP may prove to be ineffective, either due to the responsibility of the operators or independently from any individual responsibility. In such cases, the provisions set forth in Article 29-octies(4) of the Environmental Code will apply, which requires the authorities to commence the review procedure.

10.2.– The contested provision applies in such a critical eventuality in which shortcomings are ascertained in a previously issued IEP (which shortcomings may also have resulted in judicial seizures), and launches a second procedure leading to the issue of a “reviewed” IEP which, according to the procedures provided for by law, assesses

the inadequacies of the previous requirements and lays down new requirements – also with the assistance of more effective technologies – which are more suited to avoiding further pollution, which led to the launch of the review procedure.

Ultimately, the reviewed IEP will strike a new balance which, according to the provision contested in these proceedings, will enable production to be continued under different conditions, whereby such activity will be deemed to be lawful up to a maximum period (36 months), which was considered by Parliament to be necessary and sufficient in order to remove the causes of environmental pollution and the resulting hazards for public health, also through extraordinary investments by the company concerned.

10.3.– The general framework of the contested provision thus provides for a combination of an administrative act – which, as will be noted below, remains such even under the rules laid down for Ilva from Taranto – and a legislative provision, which takes as its starting point the new balance struck between production and the environment as set out in the reviewed IEP. As noted above, the balance giving new life to the IEP is struck on the basis of various technical and administrative contributions, which may be disputed before the competent courts if the legitimacy of document is challenged by private individuals who consider that their legitimate rights and interests have been harmed.

Moreover, the document cannot be disputed with regard to the choices made by the competent authorities, whose discretionary assessment as to which measures are suitable to protect the environment and to prevent future pollution cannot be replaced by that of another body, unless the exercise of such discretion amounts to an act which may be challenged before the competent courts. The balance struck in the IEP is not necessarily the best balance in absolute terms – as it is entirely possible that opinions may differ regarding the most effective means for achieving the results desired – but it must be presumed to be reasonable, having regard to the guarantees put in place by the legal order regarding: the involvement of technical bodies and competent staff; the identification of best available techniques; participation by different bodies and persons in the preparatory procedure and the public nature of the decision making stage, which enables private individuals and communities to make their views known through political or even legal channels if aspects are considered to be unlawful.

It need hardly be added that it does not fall to the courts to perform a kind of "review of the review" of the merits of the IEP on the grounds – as the arguments of the referring judge appear to suggest, which will be discussed below during the examination of the provisions relating to the Ilva factory in Taranto – that the requirements laid down by the competent authority are insufficient and will certainly be ineffective in future. In other words, even if the judge's opinions are based on particular interpretations of the technical data available to him, they cannot set aside the conclusions of the environmental protection authority regarding the future activity of a company, by rejecting from the outset the conditions put in place for the conduct of such operations, before even their specific efficacy has been verified.

10.4.– Concluding on this point, as a general matter the combination of an administrative act (the IEP) with a legislative provision (Article 1 of Decree-Law no. 207 of 2012) establishes the conditions governing and limits on the continuation of production for a specific period of time in all cases in which a facility – which has been declared to be of strategic national interest according to the procedures provided for by law – has caused environmental pollution on such a scale as to require intervention by the courts on an interim basis. In fact, the contested legislation does not provide for the pure and simple continuation of operations under the same conditions as those that made it necessary for the criminal courts to intervene, but imposes new conditions, compliance with which must be controlled continuously, and which are subject to all legal consequences stipulated on a general basis under applicable legislation for conduct that unlawfully harms health and the environment. It is thus inspired by the goal of striking a reasonable balance between the principles of protecting health and employment, and not the complete rejection of the former.

11.– The contested provision does not violate the principle of equality pursuant to Article 3 of the Constitution as it does not introduce – as is by contrast asserted by the referring bodies – an unjustified difference between the legislation applicable to "strategic" facilities and that applicable to other facilities on the basis of an administrative act – a decree of the President of the Council of Ministers – adopted under an excessively discretionary power owing to the general nature of the criteria according to which such facilities are identified.

It must be pointed out in this regard that the strategic national interest in one source of production rather than another can vary as it is dependent upon the economic cycle and a whole range of factors which cannot be predicted (effects on competition, technological development, operation of the production chain within a certain industrial sector, etc.). The scope of the discretion granted to the Government, and on its behalf the President of the Council of Ministers, by the provision is thus justified as these bodies act together in establishing the country's industrial policy. As it is moreover an administrative measure, a decree issued by the President of the Council of Ministers may moreover be subject to challenge in the same manner as the IEP reviewed by the Minister for the Environment which, according to the same provision, enables production to continue even if the plant has been seized by the judicial authorities.

As regards the actual number of people employed, it must be recalled that this threshold has already been used in legislation on the extraordinary administration of large undertakings in a state of insolvency, pursuant to Article 2 of Legislative Decree no. 270 of 8 July 1999 (New provisions on the extraordinary administration of large undertakings in a state of insolvency, adopted pursuant to Article 1 of Law no. 274 of 30 July 1998). Under that legislation, the protection of entrepreneurial activity and employment justifies - as indicated above - the removal of the insolvent undertaking from bankruptcy procedures and the application of an ad hoc bankruptcy procedure, with the goal of maintaining company operations through the continuation, reactivation and reconversion of the business.

The contested provision has analogous characteristics as it aims to ensure the continued existence of large companies, the closure of which would have serious effects on employment. The legislation is thus nuanced to take account of situations which are in turn nuanced and deserve specific attention from the law, which does not therefore violate the principle of equality. As is clear from the settled case law of this Court, this principle dictates that identical situations be treated in the same way and that different situations be treated differently, subject to the general limit of the proportionality principle and reasonableness, which is not breached in this case as the repercussions on the national economy and on employment levels will differ as a result of the combined effect of the factors mentioned above. By contrast, any legislation that treated in the same manner all manufacturing companies, irrespective of their size and weight on the

market, and hence of the effects that their disappearance would cause, would be unreasonable.

12.– Article 3(1) of Decree-Law no. 207 of 2012 stipulates that the steelworks owned by the company Ilva from Taranto is a factory of strategic national interest pursuant to Article 1(1).

This is a law adopted in place of an executive order, as it replaces the decree of the President of the Council of Ministers provided for by the general rule.

12.1.– As is known, according to the prevailing literature and the case law of this Court, a law with the status of an executive order is not in itself inherently incompatible with the structure of powers established by the Constitution. In particular, it must be reiterated at this juncture that "no provision of constitutional law […] mandates that acts with specific and concrete content must be reserved to administrative or ' executive' bodies" (see *inter alia*, judgment no. 143 of 1989).

However, laws with the status of executive orders must be subject "to a strict scrutiny as to their constitutionality owing to the risk of differences in treatment inherent within provisions of a specific nature which have derogatory effect" (see *inter alia*, judgment no. 2 of 1997; followed by judgment no. 20 of 2012).

This Court has also specified that the constitutionality of that type of law must be assessed having regard to its specific content, which means that the criteria underlying the choices made by it and the relative arrangements for implementation must be established (see *inter alia*, judgments no. 137 of 2009, no. 267 of 2007 and no. 492 of 1995). Since legislation does not normally include reasons, "it is sufficient that such criteria, the interests that are to be protected and the rationale of the provision be apparent from the provision itself, including through exegesis based on ordinary canons of interpretation" (see judgment no. 270 of 2010).

This Court has also held with regard to the judicial function that Parliament cannot be permitted to "enact legislation to resolve specific disputes and to thwart the effects of a court ruling that has become final, violating the principles governing relations between the legislature and the judiciary and on the protection of rights and legitimate interests" (see judgment no. 94 of 2009, following judgment no. 374 of 2000).

The case law of the European Court of Human Rights has been settled in asserting that "the notion of a fair trial enshrined in Article 6 preclude[s], except for compelling

public-interest reasons, interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute" (ECtHr, second section, judgment of 14 December 2012 [sic., should read 14 February 2012], *Arras v. Italy*, consistent with the previous case law).

For its part, the Court of Justice of the European Union has constantly asserted that "the Member States must provide for a review procedure before a court of law or another independent and impartial body established by law" in order to challenge all acts, including legislation (see the judgment of 16 February 2012, in Case C-182/10, Solvay et al. vs. Région wallone, consistent with the previous case law).

12.2.– As regards the specific designation of the steelworks of the company Ilva from Taranto as a "factory of strategic national interest", it must be observed that a serious and exceptional situation has emerged in Taranto, which has led Parliament to decide, due to reasons of urgency, to leave out the stage involving the adoption of a decree of the President of the Council of Ministers on the above classification.

Both general and specific legislation thus operates against the backdrop of a situation of environmental emergency, given the damage caused to the environment and to the health of the inhabitants of the surrounding areas, along with an employment emergency, given that the closure of Ilva could result in the loss of many thousands of jobs (which are much more numerous if the supply chain is included). Moreover, the temporary nature of the measures adopted complies with one of the conditions laid down in the case law of this Court in order for special emergency legislation to be regarded as constitutional (see judgment no. 418 of 1992). In this case, the brief factual observations relating to the impact of production at Ilva on the environment and on employment in Taranto enable the rationale for the legislation to be discerned as lying "in the special regime characteristic of emergency situations" (see judgment no. 237 of 2007).

Parliament considered that it was necessary to avert an extremely serious employment crisis, the scale of which is even greater within the current national and international recession, without however underestimating the serious harm to a wholesome environment, and hence to the health of residents living in the surrounding areas.

It must be noted in this regard that the reviewed IEP of 26 October 2012, which is explicitly referred to by Article 3 under examination, brought forward by four years the duty to comply with best available techniques in the steel industry laid down in Commission Decision no. 2012/135/EU, cited above. In fact, after referring to Article 21 of Directive no. 2010/75/EU, recital 8 of that Decision provides that "within four years of publication of decisions on BAT conclusions, the competent authority is to reconsider and, if necessary, update all the permit conditions and ensure that the installation complies with those permit conditions".

It must also be stressed that Article 3 of Decree-Law no. 207 of 2012 does not introduce any exception to the general legislation contained in Article 1, but is limited to implementing its requirements to the letter in a measure with the force of law, specifically an ordinance of the government (of which the President of the Council of Ministers is a member), subject to review by Parliament upon conversion and by the Constitutional Court in interlocutory procedures, as has in fact occurred in this case. Moreover, it cannot be asserted, as the referring judge for preliminary investigations seeks to do, that the legislative status of the designation of the Ilva in Taranto as a "factory of strategic national interest" impairs the right to judicial relief, which could by contrast be exercised in relation to an administrative act. This Court has in fact observed that "given the absence from the legal system of a 'reservation of specific acts to the administrative authorities', which may be invoked against the legislature, ordinary legislation cannot be prevented from extending its scope to objects or matters normally reserved to the administrative authorities […], which means that the right to a defence […] will not be negated, but will be structured in accordance with the regime typical for the legislative act adopted, and will be transferred from the realm of administrative justice to that of constitutional justice" (see judgment no. 62 of 1993).

Moreover, the assertion by the referring judge that the IEP reviewed has been "legiferated" is also groundless which means that, in the specific case involving Ilva from Taranto, the administrative act would not be subject to the ordinary judicial remedies. Indeed– as is stipulated in general terms by Article 1, which is not contradicted by Article 3 – the IEP on the contrary is still a prerequisite for the application of the special legal regime, enabling production to continue subject to the conditions specified thereunder. As a prerequisite, it remains external to the legislative

act, with all related consequences in as regards the review of its legality. Article 3(2) refers to the IEP of 26 October 2012 with the purpose of reiterating the fact that the continuation of operations is strictly conditional upon compliance with the new requirements laid down in order to protect health and the environment, without prejudice naturally to the dynamic nature of the measure, which may be subsequently amended or supplemented, and accordingly open to detailed review by the courts. In other words, both the general rule and that relating specifically to Ilva from Taranto may easily be interpreted as providing that the company concerned will be bound to comply with the requirements of the IEP as applicable and as it may be amended hereafter, and that the entry into force of Decree-Law no. 207 of 2012 has not precluded and will not preclude any judicial remedy available against an administrative act.

The case law of this Court has recognised the existence of a presumption that a formal reference is made to administrative acts where these are referred to in a legislative provision, unless the incorporating effect of the reference is unequivocally clear from the text of the legislation (see judgment no. 311 of 1993); however, this situation does not necessarily obtain even when the act is specifically referred to by the legislation (see judgments no. 80 of 2013 and no. 536 of 1990). It is clearly apparent from the wording of the contested provision that Parliament's intention was not to incorporate the IEP into the law but only to provide – as illustrated in paragraph 10 – for combined effect as an administrative act and as legislation, and that this effect will retain its special status and efficiency with respect to the goal, provided that the nature of each remains stable.

12.3.– Following the entry into force of Decree-Law no. 207 of 2012 – which lays down both general legislation on the operation of facilities of strategic national interest that are subject to a reviewed IEP as well as the specific designation of the Ilva from Taranto as the addressee of that legislation – the seizure of material produced ordered by the judge for preliminary investigations and the prohibition on its marketing lost their basis in law, consisting in the prevention of the right to use the facility owing to the seizure. In fact, its only function is to produce steel and that activity in turn only makes sense it if can be sold.

It is important to note that the general rules laid down in Article 1 of the Decree-Law cited provide that, even if the assets of the company that owns the facility are still

seized, “the conduct of business activities” is permitted (paragraph 4), which involves both the production and marketing of the material produced, the one being inseparably related to the other. Neither the general rule referred to above nor the specific rule relating to the Ilva from Taranto provides for or requires the revocation of the seizures ordered by the courts; the rules rather authorise the continuation of activities for a specific period of time, subject to compliance with the requirements contained in the reviewed IEP. The rationale underlying the two sets of rules is thus to launch a gradual, intense process of renovation of the plant from the viewpoint of emissions harmful for health and the environment, without necessarily having to close the facility, which would cause harm to the economy, in turn leading to a steep increase in unemployment, which is already difficult to cope with due to its social costs. Were the upgrading of the production facility not to proceed according to the precise indications set forth in the new permit, it would be a matter for the administrative authorities responsible for controls – and for the judiciary itself, within the ambit of its own competence – to adopt all measures appropriate and necessary in order to punish the relative breaches, including *in itinere*.

12.4.– The referring judge for preliminary investigations complains that Article 3(3) of Decree-Law no. 207 of 2012 has encroached upon the competence reserved under constitutional law to the judiciary, and has thus violated the principle of the separation of powers. The encroachment is claimed to lie in the return to Ilva S.p.A. of possession of company property along with authorisation to market products, including those manufactured prior to the date of entry into force of the Decree-Law. In particular, the reservation of competence to the judiciary, resulting from the combined provisions of Articles 102(1) and 104(1) of the Constitution, is claimed to have been violated. This reservation implies that final judgments have intangible status, arising in this case as a “final interim judgment”, given that no appeal to the Court of Cassation was filed against the review of the order seizing the plant, and that the company Ilva decided not to challenge the analogous measure adopted in relation to finished and semi-finished materials.

It must be specified as a preliminary matter that a so-called “final interim judgment” does not amount to a definitive judicial ruling concluding a trial, but is a concept developed within case law – which is still a matter for discussion and the full

aspects of which have still not been fleshed out – used to refer to an exclusion internal to the trial. It must also be observed that this exclusion operates *rebus sic stantibus*, with the consequence that any significant change to the substantive or legislative reference framework has the effect of revoking it, and re-establishing the duty for the courts to assess the circumstances of the case as a whole.

On the basis of the above, it must be concluded that the contested provision has not overturned a "final judgment" in the technical and procedural sense of the term, namely – it is important to repeat – the definitive court ruling of a dispute. It must by contrast be concluded that the provision has altered the reference framework on the basis of which certain interim measures were adopted, and has thus created a new factual and legal situation as production may resume, though not according to the previous arrangements – which had resulted in action by the judicial authorities – but according to new and partially different arrangements; future events will have to be verified on this basis, which may once again be assessed by the courts if seized in the ordinary manner.

12.5.– It is also necessary to place greater focus on the notion of "reservation of competence to the judiciary" on which the referring bodies base their complaint that the principle of the separation of powers has been violated.

This expression may be used to indicate two distinct, yet related, principles, both of which feature in the Constitution.

The first – which is enunciated explicitly by a series of constitutional rules (Articles 13, 14, 15 and 21) – consists in the requirement that all measures restricting fundamental freedoms must be adopted "by a reasoned decision by the judicial authorities" in order to ensure that the law is applied independently and impartially in this field. When understood in this sense, the reservation of competence to the judiciary is evidently not relevant for these proceedings.

The second principle – which is not explicitly asserted in any single rule of constitutional law, but may clearly be inferred from a systematic interpretation of Title IV of Part II of the Constitution as a whole – stipulates that the courts – including the ordinary and the special courts – must have exclusive competence to rule according to law in order to resolve disputes involving individual rights or legitimate interests brought before them according to the arrangements provided for by the law governing access to the various courts. With reference to the criminal courts, the "reservation of

competence to prosecute" mentioned above is incorporated into the Constitution by way of the reservation to the public prosecutor of the power to bring criminal prosecutions, which amounts to an exclusive power, but also a duty vested in the holders of that judicial office (see Article 112 of the Constitution).

It may be concluded from an examination of the provisions contested in these proceedings that there has been no violation of the "reservation of competence to the judiciary", not even according to the second broader understanding of the concept.

Criminal proceedings are currently pending before the Taranto courts – still at the preliminary investigation stage – aimed at establishing the criminal responsibility of certain persons for offences involving harm and endangerment resulting from the pollution caused over the past years by operations by the Ilva S.p.A. steelworks, which it is alleged were conducted in breach of rules and requirements intended to protect health and the environment.

It may be pointed out with certainty that none of the provisions contested in these proceedings is liable to have a direct or indirect effect on the establishment of such responsibility, and that any application of the sanctions provided for by law falls naturally to the judicial authorities, upon conclusion of a fair trial. As clarified above in paragraph 8, the contested provisions do not cancel any incriminating conduct or mitigate penalties, and do not lay down interpretative and/or retroactive rules that could be capable of influencing in any way the outcome to the criminal proceedings underway, as has by contrast occurred in the majority of cases with which the Italian Constitutional Court and the Strasbourg Court have had to deal in the numerous rulings resolving doubts concerning the legitimacy of laws that have effects on the resolution of trials in progress.

12.6.– There is a further problem regarding the legitimacy of the impact of a legislative rule on interim measures adopted by the judicial authorities, not with the aim of conserving evidence – in which case it would again have an impact on the outcome of the trial – but with a preventive purpose, both with regard to the possibility of an aggravation or continuation of the offences committed or the likely commission of further offences (Article 321(1) of the Code of Criminal Procedure) and in relation to the conservation of assets that may be confiscated in the event that the accused are

convicted (Article 321(2) of the Code of Criminal Procedure in relation to Article 240 of the Criminal Code).

Seizure of the plant, with no right of usage, was ordered pursuant to Article 321(1) of the Code of Criminal Procedure on the grounds that the continuation of production would undoubtedly have worsened environmental pollution, which had already been established in an expert's report ordered during the taking of evidence by special procedures, and would have caused further harm to workers at the plant and the inhabitants of the surrounding areas.

It must be pointed out in this regard that the worsening of the consequences of offences that have already been committed or the commission of new offences may only be prevented where the factual and legal circumstances are the same as they were before the interim measure was adopted. Once the legislative framework has changed – and, contrary to the arguments of the referring bodies, it has not remained unchanged – the conditions for establishing whether production is lawful have changed and any new criminal offences will have to be assessed in the light of current conditions and not previous conditions. It must also be stressed that steel production is in itself lawful, and may only become unlawful where it breaches the rules and requirements laid down in order to safeguard health and the environment. Where those rules and requirements have changed, it will be necessary to assess *ex novo* the lawfulness of the facts and conduct, starting from the new legislative basis. It cannot be accepted that a court (including this Court) may rule the new legislation unlawful on the basis of an assessment that it is inadequate on the merits, irrespective of any violation of precise legislative, constitutional or ordinary rules, thereby imposing its own discretionary assessments in place of Parliament and the competent authorities. Such a review would only be possible in the event that the new legislation enacted by Parliament and the new requirements contained in the reviewed IEP were manifestly unreasonable. Such an eventuality is to be excluded in this case for the reasons illustrated in the previous paragraphs, which point towards the overall conclusion that both Parliament and the competent authorities struck a balance which was not unreasonable. As mentioned above this means that there can be no "review of the review", which does not fall to any judicial body.

It must be concluded as a general matter that Article 1 of Decree-Law no. 207 introduced a new legislative rule into Article 321(1) of the Code of Criminal Procedure in the sense that, where the conditions laid down under paragraph 1 are met, preventive seizure must be associated with a right of usage, unless the requirements in the reviewed IEP are subsequently breached. This has no impact on past activity and on its legal assessment, and hence no implications for ongoing trials, and only concerns the future effects of the new legislation. The return of possession of the plant to the company Ilva S.p.A. is the mandatory consequence of that new legislative framework, in order to enable production to continue under the new conditions, and compliance with these requirements will be assessed by the competent monitoring authorities and the inherent adequacy of which will be assessed - again in future - in accordance with the procedures laid down by the Environmental Code.

On the other hand, seizure of the products was ordered pursuant to both the first and the second paragraph of Article 321 of the Code of Criminal Procedure, which means that the judge apprised of the case intended not only to prevent the commission of new offences but also to preserve those assets for the eventuality that they may be confiscated following the definitive conviction of the accused.

It may be noted that the reasons provided in support of the seizure of materials include a mix of goals related to the first and second paragraphs of Article 321. The purpose stated is in fact to "block ongoing criminal activity given that, as things stand, there is an absurd ongoing situation whereby the fruits of that activity may be marketed and act as a source of profit for the very persons who committed and continue to commit the offence. It is necessary to block without further delay the fruits of the offences charged and hence the profit from such offences which would otherwise flow into the pockets of the accused as a result of the sale of steel on the backs of ILVA workers and residents affected by the polluting activity of the steelworks, which now has to be stopped". Moreover, there is claimed to be no doubt that "the free availability of finished and/or semi-finished products […] and the resulting possibility for them to be placed on the market for consideration is acting as an incentive for company officials to persist in industrial production in a manner contrary to law, given the alluring prospects of further immediate and future profits […]".

As mentioned above, the close link between the seizure of the production facilities and the materials produced is stressed: the two measures share the common goal, which is explicitly declared, of bringing about the closure of the plant, which is considered to be the only way of launching the effective recovery of the area and the only instrument for protecting the health of the population. The seizure of the materials stored within the facility was intended in particular to subtract resources indispensable for the continuation of company operations which originate, as is the case for any manufacturer, from the sale of goods on the market.

The uncertain dividing line between interim measures intended to serve the purposes of the trial, which fall under the competence of the judicial authorities, and general preventive measures, which fall - in accordance with applicable legislation - to the administrative authorities, may easily be encroached upon from either one side or the other. However, when the boundary is breached, it can certainly not have the consequence of precluding the ability to act in accordance with powers granted under constitutional law, including specifically Parliament's ability to enact further regulation in a given area. The fact that the administrative authorities may have supposedly acted improperly in the past is not a sufficient reason under constitutional law to expand the powers of the judicial authorities beyond the adoption of decisions in specific cases. A pessimistic subjective prognosis concerning future behaviour cannot provide a valid basis for an assertion of competence.

Leaving aside any deficiencies in the relationship between judicial precaution and administrative functions regulated by law, it is all too evident that the relevance of the former cannot preclude the operation of the latter on the basis of an undefined residue of previous situations, which came to light within a different legislative framework and within different factual circumstances.

In the light of the above, it may be concluded that no violation of the reservation of competence to the judiciary occurred in the case at issue in these proceedings.

The intervention by Parliament, which by one single provision has authorised the marketing of all products, including those made prior to the entry into force of Decree-Law no. 207 of 2012, is an explicit manifestation of a necessary and implicit effect of the authorisation to continue production, as it would not make any sense to permit production without allowing the goods produced to be marketed, both of which

activities are essential for the ordinary conduct of business activity. Any distinction between materials produced before and after the entry into force of the Decree-Law would be at odds with the rationale of the general rule and the special rule, both of which are intended to ensure the continuation of business activities, as such a distinction would by contrast render these activities more difficult by reducing the resources made available as a result of the sale of material which is not unlawful in itself, as it lacks polluting potential.

The above considerations also apply with specific reference to the amendments introduced into Article 3(3) upon conversion, the purpose of which is clearly to explain the scope of the provision in general terms, and with specific regard to the company Ilva.

Ultimately, the contested provision regulates a factual situation created following the entry into force of the Decree-Law, which is different from the previous situation and thus amenable to different legal regulation which, for the reasons stated, is not unreasonable.

Finally, as regards the dispersion feared of goods which may be the object of a future confiscation order, it must be acknowledged that Parliament once again has the ability to moderate the future effect and scope of an interim requirement depending upon the nature of its subject matter and the converging interests relating to the situation at issue. In this case the balance, which has now been described several times, and the reasonableness of which has been measured several times, implied a significant reduction of the real guarantee as to its capacity to prevent the circulation of the object seized (even though this is not the sole and all-embracing basis for interim action). In any case, the reduction in the guarantee mirrors entirely the benefit pursued by protecting interests of constitutional standing which attach to the assets necessary for the operation of undertakings of strategic significance, with the resulting repercussions on employment. For this reason, it is not unreasonable.

ON THOSE GROUNDS

THE CONSTITUTIONAL COURT

hereby,

rules that the questions concerning the constitutionality of Articles 1 and 3 of Law no. 231 of 24 December 2012 (Conversion into law, with amendments, of Decree-Law

no. 207 of 3 December 2012 laying down urgent provisions to protect health, the environment and employment in cases involving crises at industrial facilities of strategic national interest) – more correctly, Articles 1 and 3 of Decree-Law no. 207 of 3 December 2012 (Urgent provisions to protect health, the environment and employment in cases involving crises at industrial facilities of strategic national interest), as converted, with amendments, into Article 1(1) of Law no. 231 of 2012 – raised by the judge for preliminary investigations at the *Tribunale di Taranto* by the referral order of 22 January 2013 and by the *Tribunale di Taranto* with reference to Articles 25(1), 27(1) and 117(1) of the Constitution by the referral order mentioned in the headnote are inadmissible.

rules that the questions concerning the constitutionality of Articles 1 and 3 of Law no. 231 of 2012 – more correctly, Articles 1 and 3 of Decree-Law no. 207 of 3 December 2012, as converted, with amendments, into Article 1(1) of Law no. 231 of 2012 – raised by the judge for preliminary investigations at the *Tribunale di Taranto* with reference to Articles 2, 3, 9(2), 24(1), 32, 41(2), 101, 102, 103, 104, 107, 111, 112 and 113 of the Constitution by the referral order mentioned in the headnote are groundless;

rules that the questions concerning the constitutionality of Article 3 of Law no. 231 of 2012 – more correctly, Article 3 of Decree-Law no. 207 of 3 December 2012, as converted, with amendments, into Article 1(1) of Law no. 231 of 2012 – raised by the *Tribunale di Taranto* with reference to Articles 3, 24, 102, 104 and 112 of the Constitution by the referral order mentioned in the headnote are groundless;

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 9 April 2013.