falling within the Regional competence in health protection.

Indeed, the regional legislation at issue contained a comprehensive and articulated framework for advance directives, reflecting the principle of freedom of medical care (Judgments nos 438 of 2008, 282 of 2002, 185 of 1998, 307 of 1990) and requiring a complex body of rules. It diverted the advance directives from the private to the public domain, by establishing rules on their form and their mention and registration in a public database. While the Region assigned public relevance to the advance directives, it had overstepped into an area – that of 'civil law' – which Art 117, para 2, letter *l*), of the Constitution confers to the State's exclusive legislative competence.

4. The question raised with regard to Art 3, Constitution, was also ruled to be founded.

The principle of equality enshrined in said Art 3, requires that the rules governing consent or refusal of medical treatments at the end of life – and the donation of organs and tissue, likewise – be uniform over the entire national territory, for they affect essential aspects of human identity and integrity. It is for this reason that the exclusive legislative competence for matters of 'civil law' is vested in the State.

While the State has already enacted legislation on the donation of tissue and organs (Law 1 April 1999 no 91), to date, it has not dealt with the issue of the advance directives. Parliament has struggled to find a common solution and the path to reaching such a solution remains long. However, the absence of national legislation could not excuse the Region from legislating on an area of competence that is reserved to the State alone.

Judgment 8 November – 15 December 2016 no 265*

(Direct Review of Constitutionality)

Keywords: Non-Scheduled Public Transport Service – Regional Law – Exercise Limited to Authorized Operators – Impact on Free Competition – Unconstitutionality.

1. The President of the Council of Ministers challenged, before the Constitutional Court, Art 1 of Piedmont's Regional Law 6 July 2015 no 14, concerning non-scheduled public transportation services.

The provision amended the general regulation on these services (Regional Law 23 February 1995 no 24), and introduced a new Article regarding the 'Exclusiveness of transport service', according to which public transportation by reservation of a vehicle through any means in exchange for payment could only be exercised by licensed taxi drivers or by individuals or companies that offered limousine services.

The President of the Council of Ministers questioned the provision, alleging an infringement of exclusive State legislative competences. As a matter of fact, the provision limited the supply of transport services by introducing a ban on all new economic operators other than taxi and limousine drivers, and thus regulated competition, an area that was exclusively reserved to the State's legislative compe-

* By Annalisa Cocco.

tence (Art 117, para 2, of the Constitution). Moreover, with regard to its contents, the provision breached the principle of competition under European Union (EU) law, which allows limitations upon the free market only if strictly necessary and in ways that are concretely tailored to the pursuit of legitimate public interest goals.

To support its challenge, the applicant highlighted that the new regulation obstructed the development of the market because it prevented new kinds of transportation and public mobility making use of technological innovation from developing. Also taking into account the growth of new services offered by non-professional drivers, such as 'car sharing' and 'Uber', which were available with the 'UberPop' smartphone application, the prohibition established by the challenged provision was disproportionate in light of public social needs and interests, also because their development through technological evolution was thus precluded.

2. The Region claimed – in response – that the real effect of the contested provision was not to limit market development and innovation in any way, but simply to limit and prevent unauthorized drivers from entering the regulated transport market. In this regard, the regional law solely reproduced and emphasized the pre-existing general regulations regarding public transport (national Law 15 January 1992 no 21): to guarantee public security and safety, public transport services were allowed only if they were carried out by licensed drivers and other operators with an *ad hoc* authorization issued by the State.

Specific reference was made to Uber International Holding and Raiser Operations. These companies had developed a 'radio-taxi' service using Global Positioning Systems that made booking through smartphones readily accessible. This system resulted in the growth of a taxi-like service without any official license or authorization and, consequently, in the spread of abusive marketing techniques. The regional provision aimed to prevent violations of the rights and the work of authorized and licensed traditional taxi drivers, and protected the safety of private citizens.

3. The Constitutional Court issued a declaration of unconstitutionality.

Regional Law no 14 of 2015, establishing a rigorous definition of the economic operators who were allowed to offer public transport services, limited the initiative of all other economic operators and prevented them from competing in the market.

Thus, it fell entirely under the broad notion of competition (the regulation of which is reserved to the State according to Art 117, para 2, letter *e*), of the Constitution), that includes (as the Court itself ruled in Judgment no 125 of 2014) both negative and affirmative legislative measures. The first ones are actions and practices that are capable of damaging the competitive structure of markets, while the second aim to enlarge the market by reducing the obligations connected with the economic activities, such as barriers to entry and obstacles preventing freedom of expression of entrepreneurial ability and competition.

Furthermore, with specific regard to non-scheduled public transportation services (involving buses), the power to protect open competition, and to define a balance between free exercise of economic activities and the public interests that interfere with them, falls under the exclusive legislative competence of the State (Judgment no 30 of 2016).

As clear from ongoing debates in the

European Union, many Member States and other countries throughout the world, new needs for market regulation require satisfactory responses. The Court, therefore, called for a prompt legislative intervention.

In view of those considerations, the Court ruled that, although the new regulation was consistent with the national legislative framework, it prevented market development by banning new operators from offering their transport services. It also constituted an obstacle to the entrance of new and innovative technologies into the market and therefore had a negative impact on free competition among economic operators. This area, according to Art 117, para 2, letter *e*), of Constitution, is reserved to the State's competence and cannot be regulated by the Regions.

The full text of the English translation of the Conclusions on points of law is available at www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_265_2016.pdf.

Judgment 19 October – 16 December 2016 no 275*

(Incidental Review of Constitutionality)

KEYWORDS: Persons with Disabilities – Right to Education – School Transportation – Allowances Subject to Discretionary Decisions – Unconstitutionality.

1. The issue raised before the Constitutional Court by the Regional Administrative Court of Abruzzo concerned Art 6, para 2-*bis*, of Regional Law 15 December 1978 no 78, as modified by Art 88, para 4, of Regional Law 26 April 2004 no 15. The challenged provision concerned the possibility of limiting regional financial grants to Provinces intended to cover allowances to implement the right to education. The limitation affected Art 5-*bis* of Regional Law no 78, according to which the Regional Government guarantees the coverage of half the costs borne by Provinces for school transportation services granted to students with disabilities.

2. The referring Court argued that Art 6, para 2-*bis*, breached Art 10 of the Constitution (in relation to Art 24 of the Convention on the Rights of Persons with Disabilities ratified and executed by Law 3 March 2009 no 18), which incorporates international law in the national system, and Art 38 of the Constitution, which guarantees the right to education for persons with disabilities. The provision was challenged because it subordinated the funding of school transportation for students with disabilities to decisions merely concerning the allocation of resources, namely to discretionary decisions that had a direct impact on the protection of the right to education for disabled persons. In the Court's view, the importance of the right is incompatible with a protection depending on mere budget provisions.

Contesting this conclusion, the Abruzzo Region claimed that the right to education of disabled persons must be balanced with the requirement of budgetary equilibrium expressed in Art 81 of the Constitution.

3. The issue before the Constitutional Court concerned the need to balance two

* By Matteo Monti.