



Communications and Press Office of the Constitutional Court

Press Release of 8 May 2023

THE AUTOMATIC REFUSAL TO RENEW A RESIDENCE PERMIT FOR
WORK PURPOSES IN THE EVENT OF A CONVICTION FOR MINOR
OFFENCES IS UNCONSTITUTIONAL. IT IS UP TO THE *QUESTORE*
TO ASSESS THE SOCIAL DANGER POSED BY THE FOREIGNER
ON A CASE-BY-CASE BASIS

An application for the renewal of a residence permit for work purposes is not to be automatically rejected in the event that the foreign applicant was convicted for certain minor offences. The decision as to the renewal is up to the *Questore*, who must assess the social danger posed by the applicant before denying a residence permit.

So held the Constitutional Court in its [Judgment No 88](#) (judge rapporteur Maria Rosaria San Giorgio), filed today, which declared unconstitutional Articles 4 (3) and 5(5) of Legislative Decree No 286/1998 (Consolidated Text on Foreigners) insofar as they include, among the cases of conviction that automatically bar the renewal of a residence permit for work, so-called petty drug dealing (Article 73(5) of Presidential Decree No 309/1990 – Consolidated Text on Narcotic Drugs) and the sale of counterfeit goods (Article 474(2) of the Criminal Code), without requiring that the competent authority verify the actual social danger posed by the applicant.

The questions of constitutionality had been raised by the Council of State during two proceedings initiated upon appeals lodged by foreigners whose applications for the renewal of their residence permits for work purposes had been rejected as a result of convictions for the aforementioned offences.

In line with several rulings – which declared the unconstitutionality of legislative provisions which, in the field of immigration, introduced automatism disproportionately and unreasonably encroaching on the fundamental rights of foreigners – and in accordance with the case law of the European Court of Human

Rights, in its reasoning the Constitutional Court clarified that the legislature indeed has wide discretion in regulating the entry and residence of foreigners on national territory, but such discretion should be exercised within the limits of a reasonable and proportionate balancing of the rights and interests involved.

Given the minor nature of the offences at issue (in one case, unlawful possession of 19 grams and sale of 1.50 grams of hashish; in the other, sale of products with counterfeit marks), the automatic refusal was considered manifestly unreasonable from various perspectives. On the one hand, within the legal framework tackling irregular employment, the granting of a residence permit is not automatically excluded in the event of the same types of convictions but requires a specific assessment of the danger posed by the foreigner. On the other hand, the automatic refusal in case of foreigners already legally staying on the national territory (and who have begun a process of social integration) is contrary to the principle of proportionality, as construed by the case law of the European Court of Human Rights, pursuant to Article 8 of the European Convention on Human Rights (ECHR).

The Court observed that it may well be that the conviction, in the cases considered, does not imply that the offender is socially dangerous. This is so for various reasons: the triviality and the circumstances of the offence, the time elapsed since its commission, the level of social integration achieved by the offender in the meantime. When examining an application for the renewal of a residence permit, it is therefore necessary for the administrative authority to assess these elements in order to avoid that its assessment results in an abstract judgment which, for that reason alone, is prejudicial to the rights enshrined in Article 8 ECHR.

The Court also emphasised that “the State’s interest in security and public order is not adversely affected by the mere fact that the competent administrative authority makes, in the event of a conviction for the abovementioned offences, a concrete assessment of the personal situation of the person concerned, whose lawfulness is in turn subject to possible judicial review”.

Rome, 8 May 2023