



Press Office of the Constitutional Court

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LIFE SENTENCES ASSOCIATED WITH A DISQUALIFICATION FROM ELIGIBILITY FOR INCENTIVES AND EARNED PRIVILEGES FOR PRISONERS CONVICTED OF ORGANISED CRIME OFFENCES: COOPERATION CANNOT BE THE ONLY WAY OF GAINING ELIGIBILITY FOR CONDITIONAL RELEASE. HOWEVER, IT IS NOW FOR PARLIAMENT TO IDENTIFY ALTERNATIVES

Cooperation with the judicial authorities “undoubtedly retains its positive value, as recognised under the applicable legislation on incentives and earned privileges” and it is not unreasonable to presume that a person serving a life sentence who is not cooperating with the authorities will maintain active links with the criminal organisation of which he or she is a member. However, this presumption is unconstitutional on the grounds that it is absolute in nature. This is because, as things currently stand, cooperation with the judicial authorities is the only way in which a “person serving a life sentence associated with a disqualification from eligibility for incentives and earned privileges” [*ergasto ostativo*] can become eligible for the scheme that might result in his or her conditional release. “Cooperation with the judicial authorities is not necessarily symptomatic of credible remorse, just as the opposite cannot establish an insurmountable legal presumption of the absence of remorse. The fact of

cooperation may indeed result from mere utilitarian assessments of the benefits that the law associates with it, and may not also be a sign of effective re-socialisation. Conversely, the choice not to cooperate may be determined by considerations that have nothing to do with the maintenance of links with criminal associations”.

This is the essence of the ruling contained in [Order no. 97](#) (author Nicolò Zanon) filed today (and previously announced in the [press release of 15 April](#)). In this ruling, the Constitutional Court held that it falls however to Parliament, in the first instance, to amend this aspect of the law on “life sentences associated with a disqualification from eligibility for incentives and earned privileges”. In fact, were the Court merely to strike down the legislation concerned, it might have the effect of undermining the overall balance established by that legislation, thereby compromising the requirements of general prevention and collective security that it pursues in order to combat organised crime. On the contrary, the decision as to which further choices may be made when removing cooperation as the only instrument for establishing eligibility for conditional release is a matter of legislative discretion. These choices “might, for example, include the emergence of specific reasons for the failure to cooperate, or the imposition of specific requirements applicable to the period of supervised release of the individual concerned”.

The Court therefore ruled that it was necessary to stay the proceedings and to schedule a new discussion for 10 May 2022, in order to ensure that the legislator has the time necessary in order to consider the matter.

The provisions contested by the Court of Cassation, which were referred to the Constitutional Court for examination, provide that, if any person serving a life

sentence for organised crime offences does not cooperate effectively with the judicial authorities, that person cannot be eligible to benefit from conditional release. This involves a period of supervised freedom, upon conclusion of which the penalty is cancelled and the individual is definitively released, although only upon condition of good behaviour.

On the other hand, all other persons serving a life sentence – including for offences related to organised crime, where they have cooperated effectively with the judicial authorities – are eligible for such benefits, provided that they have served at least 26 years in prison.

The Constitutional Court's order explains, first of all, that according to settled constitutional case law, life sentences are compatible with the Constitution precisely due to the tangible possibility of achieving conditional release; were this possibility to be denied according to an absolute rule, the life sentence would by contrast be at odds with the re-educative purpose of the sentence (Article 27(3) of the Constitution).

However, the current legislation governing “life sentences associated with a disqualification from eligibility for incentives and earned privileges” places this principle under stress.

First of all, it stipulates effective cooperation with the judicial authorities as an indispensable prerequisite for eligibility for conditional release. Secondly, it establishes an absolute presumption that any person serving a life sentence who does not cooperate continues to represent a danger to society. It is absolute in that it cannot be rebutted other than through cooperation and establishes an outright exclusion on eligibility for any benefit.

The Court explained that such a presumption is not in itself unconstitutional. In fact, “membership of an organised criminal organisation generally implies stable membership of a criminal fellowship, with strong roots in the local territory, characterised by a dense network of interpersonal links, associated with particular intimidatory force and capable of enduring over time”. It is thus “entirely possible that membership may continue unchanged also following long periods of incarceration, precisely due to the characteristics of the criminal fellowship in question, unless and until the individual chooses to make a radical break with it, for instance in the manner that generally manifests itself through cooperation with the judicial authorities”.

It is the absolute nature of the presumption that renders it unconstitutional in that it establishes cooperation with the judicial authorities as the only means available to a person serving a life sentence to qualify for the assessment by the supervisory courts on which his or her release is dependent.

Besides, there may also be a question as to whether cooperation is always the result of a free choice. There is no discussion of “the significance and utility of cooperation, understood as a free and pondered decision to demonstrate the break with criminal circles”. However, the order stresses that the current legislation envisages a kind of “exchange” of information that is useful for investigative purposes in return for the resulting possibility to gain eligibility for prison benefits. For a “person serving a life sentence associated with a disqualification from eligibility for incentives and earned privileges” seeking to gain conditional release, this exchange may represent a dramatic step as it obliges him or her to choose between the possibility of regaining his or her freedom and its opposite, that is imprisonment without end. “In borderline cases – the Court writes – it may

involve a ‘tragic choice’: between one’s own (potential) freedom, which may however entail risks to the safety of that person’s loved ones, and the renunciation of freedom in order to protect them from danger”.

Having regard to the current state of the law, the Court nonetheless held that, were it merely to strike down the legislation, this might undermine the overall balance established under applicable legislation, thereby compromising “the requirements of general prevention and collective security that it pursues in order to combat the persuasive and firmly rooted phenomenon of organised crime”.

In reiterating, as mentioned above, that the action taken to change these essential aspects must, in the first instance, result from a more general, considered and coordinated legislative evaluation, the Court concluded that “requirements of institutional cooperation” dictate that it stay the proceedings before it and schedule a new discussion for the questions of constitutionality under examination for 10 May 2022, thus allowing Parliament an appropriate period of time in order to consider the matter.

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