



Communications and Press Office of the Constitutional Court

Press Release of 24 January 2022

THE CENSORSHIP OF CORRESPONDENCE BETWEEN
PRISONERS HELD UNDER THE “HARD PRISON” REGIME
(ARTICLE 41-BIS) AND THEIR LAWYERS IS
UNCONSTITUTIONAL

The provision contained in Article 41-bis of the Law Regulating the Prison System that – as interpreted by the Court of Cassation – requires correspondence exchanged between a prisoner who is held under the “hard prison” regime and his or her lawyer to be censored violates the rights of defence enshrined in the Constitution.

This ruling was issued by the Constitutional Court in [judgment no. 18](#) filed today (author Francesco Viganò), which held that the question of constitutionality raised by the Court of Cassation was well founded.

The judgment notes that the rights of defence include – according to the settled case law of the Constitutional Court and the European Court of Human Rights – the right to communicate in confidence with one’s own lawyer, and stresses that persons serving a custodial sentence also have this right. This is necessary *inter alia* in order to ensure effective protection for the prisoner against any abuses committed by the prison authorities.

Admittedly, this right is not absolute and may be restricted, insofar as reasonable and necessary – provided that this does not impair the efficacy of the rights of defence – in situations in which other constitutionally significant rights are at stake. Moreover, prisoners held under the Article 41-bis regime are subject to far-reaching restrictions on their fundamental rights in order to prevent any contact between them and their respective criminal organisations.

However, the Court held that the censorship of correspondence between a prisoner and his or her lawyer is not an appropriate instrument for

achieving this object, and thus unreasonably impairs the detainee's rights of defence.

First of all, a prisoner is entitled at any time – by virtue of this Court's judgment no. 143 of 2013 – to speak in private with his or her lawyer whenever he or she considers it necessary. These conversations may not be monitored by the prison authorities. Secondly, according to the provision now before the Court, censorship occurs automatically even where there are no specific grounds to suspect any unlawful conduct on the part of the lawyer.

According to the Court, this reflects a “general and unsustainable presumption [...] of collusion by the accused person's lawyer, thus ultimately casting suspicion on the indispensable role that the legal profession performs in protecting not only the fundamental rights of prisoners, but also the rule of law as a whole”.

In addition, it is noted in the reasons given for the judgment that various circulars issued by the Prisons Administration Department, which have been applicable since 2017, have already been interpreting the current legislation as prohibiting any censorship of correspondence between prisoners incarcerated according to the Article 41-bis regime and their lawyers. As such, in practical terms they are already acting in the manner required under this declaration of unconstitutionality.

Rome, 24 January 2022