



Communications and Press Office of the Constitutional Court

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FACILITATION OF ILLEGAL IMMIGRATION: A SENTENCE OF NOT LESS THAN 5 YEARS' IMPRISONMENT FOR CASES INVOLVING COMMERCIAL FLIGHTS AND FORGED DOCUMENTS IS DISPROPORTIONATELY SEVERE

The punishment of between five and fifteen years' imprisonment established by the Italian Immigration Law for any person who has assisted another to enter Italy illegally using a commercial flight or forged documents is manifestly disproportionate. Such a draconian punishment for facilitation of illegal immigration can only be reasonably explained within the context of the fight against offences relating to the transnational smuggling of migrants, managed by criminal organisations, which earn massive profits from them. However, the punishment in question is evidently disproportionate under different circumstances, where no such organisations are involved.

This finding was made by the Constitutional Court in [judgment no. 63](#), filed today (author Francesco Viganò), which examined a question referred by the Bologna District Court (*Tribunale di Bologna*).

The case before the referring court involved a Nigerian woman accused of having facilitated the illegal entry into Italy of her daughter and niece, aged respectively thirteen and eight, by a commercial flight using forged documents.

The Constitutional Court held that the purpose of the offence – the basic form of which is punished by between one and five years' imprisonment – is to control immigration and, indirectly, significant public interests, such as ensuring a well-balanced labour market, managing the limited resources of the social security system, and maintaining public order and safety.

On the other hand, the purpose of the aggravated form of the offence, for which much more severe penalties are applicable, is not only to control

immigration but also to protect the interests of migrants, who in such cases are the “victims” of the offence – for example, having their lives or personal safety put at risk, or being subject to inhuman and degrading treatment.

A case such as that at issue in the main proceedings is completely different, and cannot reasonably attract a minimum sentence of five years’ imprisonment.

First of all, a person using a commercial flight or another international carrier must necessarily submit to all of the ordinary border controls, which make it easier to identify foreign nationals who are not allowed to enter Italy. Moreover, it is true that whenever a forged document is used an offence must previously have been committed in order to procure it; however, forgery offences are normally punished under Italian law by penalties much less severe than those envisaged by the contested provision.

Accordingly, the Court concluded that, absent any other aggravating circumstances, cases such as the one before the referring court should be punished by the less severe punishment of between one and five years’ imprisonment, as provided for under Article 12(1) of the Immigration Law, in conjunction with the punishment applicable for the offence of using forged documents.

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