



Press Office of the Constitutional Court

Press Release of 23 October 2019

OFFENCES WITH PRECLUSIONARY EFFECT: THE REFUSAL TO COOPERATE WITH THE JUDICIAL AUTHORITIES DOES NOT DISQUALIFY A PRISONER FROM BONUS PERIODS OF SHORT RELEASE, PROVIDED THAT THERE ARE GROUNDS TO CONCLUDE THAT HE OR SHE DOES NOT HAVE ANY LINKS WITH ORGANISED CRIME

The Constitutional Court sat today in chambers in order to examine questions raised by the Court of Cassation and the Perugia Supervisory Court concerning the constitutionality of Article 4-bis(1) of the Provisions governing the Law on Incarceration insofar as it prevents the grant of bonus periods of short release to inmates convicted of the offences specified in that Article who are not cooperating with the judicial authorities. Both cases involved two people who had received a life sentence for mafia offences.

Pending the filing of the judgment, the Press Office of the Court announces that, following a discussion, the legislation was ruled unconstitutional as follows.

The Court declared Article 4-bis(1) of the Provisions governing the Law on Incarceration unconstitutional insofar as it does not provide for the grant of bonus periods of short release to inmates who are not cooperating with the judicial authorities, even where there are grounds to conclude that the individual is no longer involved in organised crime, and more generally that there is no longer any risk of him or her re-establishing links with organised crime. The grant of release is obviously conditional upon the inmate having fully proven his or her involvement in a programme of rehabilitation.

In this case - ruling within the limits of the questions put by the referring courts - the Court therefore detached the grant of bonus periods of short relief only from the general application of the “preclusionary” rule (according to which any persons convicted of the offences provided for under Article 4-bis who fail to cooperate with the judicial authorities following conviction are not eligible for the benefits provided

for under the Provisions governing the Law on Incarceration available to inmates in general).

According to the Court's ruling, the presumption of the "social dangerousness" of an inmate who is not cooperating with the judicial authorities is no longer absolute but relative. Therefore, it may be rebutted by the supervisory judge, whose assessment in each individual case must be based on reports from the prison as well as information and opinions received from various authorities, from the anti-mafia or anti-terrorism prosecutor to the competent provincial committee for public order and security.

Rome, 23 October 2019