



Press Office of the Constitutional Court

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*Press release of 24 November 2020*

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THE “DECREE TO PREVENT PRISONER RELEASE” [*“DECRETO ANTISCARCERAZIONI”*] DOES NOT REDUCE THE PROTECTION AFFORDED TO PRISONERS’ HEALTH

The provisions of the so-called “decree to prevent prisoner release” [*“decreto antiscarcerazioni”*], as supplemented by Law No. 70 of 2010, do not, in any way, lower the standards of protection applying to prisoners’ health established in the Constitution and in the ECHR. This is also true with regard to prisoners posing a high risk to society, including those detained under the 41-*bis* prison regime.

This is one of the key parts of the reasons provided by the Court in [Judgment No. 245](#), filed today (Judge Rapporteur: Francesco Viganò), stating why – as anticipated in the [press release of 4 November 2020](#) – it declared the unfoundedness of the questions as to constitutionality raised by the Sassari Supervisory Court and by supervisory judges from Spoleto and Avellino concerning Decree-Law No. 29 of 2020 and Law No. 70 of 2020, on the release from prison on grounds related to the COVID-19 emergency of prisoners convicted of particularly serious offences.

The provisions examined by the Court require supervisory judges – once they have granted house arrest to such prisoners, on a temporary basis and on grounds related to the health emergency – to re-evaluate the conditions justifying such measures periodically, in light of opinions given by the District and National Anti-Mafia Prosecutors. The judges should also take into account information provided by the Department of Prison Administration as to any health facilities that may have become available in the prison in the meantime, or protected wards that make it possible to resume detention of the prisoners.

The Court has deemed that this legal framework does not breach prisoners’ right to a defence.

In fact, the Prison Law has long given supervisory judges the task of anticipating, in urgent circumstances, the final measures that the relevant Supervisory Court would

take in response to applications for extramural measures on grounds of health, including on the basis of documents obtained directly by the judge and of which defence counsel is unaware. The same situation occurs today, in the re-evaluation proceedings governed by the provisions before the Court, which give judges the opportunity to revoke – on a provisional and urgent basis – house arrest measures that have already been granted, in order to update constantly the balance between the essential need to protect prisoners' health and the equally fundamental need to protect public safety connected with the particular level of dangerousness posed by this category of prisoners. Prisoners can fully exercise their right to a defence in the proceedings before the Supervisory Court, which should be completed within thirty days of any revocation measure that may have been issued, and in which defence counsel has full knowledge of the documents and opinions obtained.

The Constitutional Court then stated that the provisions in question do not conflict with prisoners' right to health and with the separation of powers. In fact, the law is not intended to exert undue pressure on the judge who had granted house arrest. Rather, it aims solely to enrich the judge's knowledge on any intramural alternatives capable of protecting the prisoners' health just as effectively.

Rome, 24 November 2020