Press Office of the Constitutional Court

Press release of 6 December 2019

JUVENILE PRISONERS: THE ABSOLUTE BANS ON ACCESSING DETENTION IN NON-PRISON STRUCTURES, TEMPORARY RELEASES ON LICENCE AND OUTSIDE WORK ARE UNCONSTITUTIONAL

Juvenile and young adult prisoners sentenced for having committed a so-called preclusive offence can access prison privileges (detention in non-prison structures, temporary releases on licence and outside work) even if they do not cooperate with judicial authorities, after they have been sentenced.

This was held by the Constitutional Court in Judgment no. 263, filed today (Judge Rapporteur: Giuliano Amato), the first judgment on the new Law on Juvenile Detention. The judgment declared unconstitutional Article 2(3) of Legislative Decree no. 121 of 2018.

The Court accepted the question of constitutionality raised by the Juvenile Court of Reggio Calabria on the application, to juvenile and young adult prisoners, of the "preclusive" mechanism established by Article 4-*bis*(1) and (1-*bis*) of the Prison Law, according to which individuals sentenced for having committed one of the offences listed therein and who do not cooperate with judicial authorities cannot access the prison privileges envisaged for the prison population at large.

As for juvenile offenders, this preclusive mechanism was held to contrast, first and foremost, with the principles enshrined in Enabling Law no. 103 of 2017, which reforms the prison law framework, and which broadened the criteria for accessing alternatives to detention and removed all automatic mechanisms for granting prison privileges to juvenile prisoners.

Second, the Court – recalling its settled case law on the rehabilitative purpose of sentences and its implications for minors – determined that the challenged provision contrasts with Articles 27(3) and 31(2) of the Constitution, because the

automatic mechanism set by the law is based on an absolute presumption of dangerousness [of the individual], that is, however, founded only on the offence committed. It therefore prevents sentence supervisory courts from engaging in an individualised evaluation of whether the measures in question are suitable to achieve the pre-eminent purposes of re-socialisation, which must prevail in juvenile sentencing.

In the judgment, the Court explained that "[o]vercoming the preclusive mechanism that prevents granting extramural measures does not necessarily entail making the privileges generally available to all, including individuals sentenced for committing the offences listed in Article 4-*bis* of the Prison Law. Indeed, sentence supervisory courts are required to evaluate the suitability and worthiness of the extramural measures on a case-by-case basis, in accordance with the educational plan tailored to the individual's needs.

"Only through the necessary judicial assessment will it be possible to ensure consideration of the reasons for the failure to cooperate, of concretely reparatory conduct and of the progress made within the rehabilitative plan, in accordance with the requirements established by Articles 27(1) and 31(2) of the Constitution."

Rome, 6 December 2019