



Press Office of the Constitutional Court

Press release of 13 December 2019

DEPORTED ILLEGAL IMMIGRANTS: COURTS MAY CHOOSE NOT TO PROSECUTE, INCLUDING IN CASES INVOLVING OFFENCES TRIED DIRECTLY (FOR WHICH PRELIMINARY HEARINGS ARE NOT HELD)

For all offences tried directly before a court (therefore, for which no preliminary hearing is held), courts can find – including of their own motion – that the migrants have been deported before the court summons can be issued; in this regard, the courts must also be able to assess whether all of the conditions for deciding not to prosecute are met.

This was held by the Constitutional Court in Judgment no. 270, filed today (Judge Rapporteur: Giovanni Amoroso), in which it declared unconstitutional Article 13(3)-*quater* of Legislative Decree no. 286 of 25 July 1998 (the Consolidated Law on Immigration) for violating Article 3(1) of the Constitution.

The provision deemed unconstitutional – which concerned cases requiring a preliminary hearing and therefore did not apply to proceedings heard directly by courts – established that once courts had proof that the accused person had been deported, they could issue a decision not to prosecute before releasing the measure initiating the trial.

According to the Constitutional Court, the fact that the public prosecutor may have already formulated the charges in the court summons, and that this summons may have already been issued, is irrelevant.

Offences tried directly – without a preliminary hearing being held – are minor ones (to the extent that holding a simplified and accelerated procedure is justified). Thus, according to the Court, if supervening circumstances of impossibility to prosecute (because the offender was deported before the court summons was issued) were allowed to act as a bar to the prosecution of serious offences and not

minor ones, the principles of equality and reasonableness would be violated. In relation to the latter, it is clear that the State's interest in prosecuting accused persons (in this case, illegal immigrants) is lower when they have already been deported.

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