



Press Office of the Constitutional Court

Press release of 8 March 2019

NARCOTICS: THE MINIMUM PUNISHMENT OF EIGHT YEARS' IMPRISONMENT IS DISPROPORTIONATE

The minimum punishment of eight years' imprisonment for non-minor offences relating to narcotics is disproportionate. This was established by the Constitutional Court, which, in Judgment no. 40, filed today (Judge Rapporteur: Marta Cartabia), declared unconstitutional Article 73(1) of the Consolidated Law on narcotics (d.P.R. no. 309 of 1990), insofar as it envisages, as a minimum punishment, imprisonment for a term of eight years and not six. The maximum punishment – which the legislator established to consist in a term of twenty years' imprisonment, and is applicable to more serious offences – remains unchanged.

In particular, the Constitutional Court noted that the difference of as many as four years between the minimum punishment for the ordinary offence (eight years) and the maximum punishment for minor offences (four years) constitutes an anomaly in terms of punishment, contrasting with the principles of equality, proportionality and reasonableness (Article 3 of the Constitution), as well as with the principle of the rehabilitative function of punishment (Article 27 of the Constitution).

The minimum punishment for non-minor offences was reduced from eight to six years, on the basis of the law on narcotics. Indeed, on several occasions, the legislator has deemed this duration adequate in “borderline” cases, which fall along the limit between the two categories of offence.

This declaration of unconstitutionality follows the Constitutional Court's urgent call upon the legislator to address the discrepancy between the punishment envisaged for minor offences, on one hand, and non-minor offences, on the other, established respectively under Articles 73(1) and 73(5) of d.P.R. 309 of 1990 (see Judgment no. 179 of 2017). However, that call went unheeded, such that the Constitutional Court has deemed it no longer possible to defer intervening to correct the unreasonable disproportion, one that ordinary courts have often noted.

The punishment framework adopted is not constitutionally mandated. Therefore, the legislator may choose to adopt a different solution, in observance of the principle of proportionality.

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