



Press Office of the Constitutional Court

Press release of 22 May 2020

UNCONSTITUTIONALITY OF ABSOLUTE BAN ON EXCHANGE OF OBJECTS BETWEEN INMATES HELD UNDER ART. 41-BIS OF THE PRISON LAW AND BELONGING TO THE SAME “SOCIALIZATION GROUP”

The absolute ban on exchanging objects of low economic value – such as foodstuffs or products for personal or cell hygiene – no longer applies to inmates held under Article 41-*bis* of the Prison Law and in the same “socialization group” (*gruppo di socialità*). The ban understandably applies when inmates belonging to different socialization groups are involved. However, it becomes unreasonable when it is extended indiscriminately, including to members of the same group. This is without prejudice to the prison authorities’ power to regulate how the exchanges can take place and to set any limits on them in specific cases. These limits are amenable to review by a supervisory court.

This was held in [Judgment No. 97](#), filed today (Judge Rapporteur: Nicolò Zanon), in which the Constitutional Court declared unconstitutional the legislative ban on exchanging objects applying to inmates who are held under Article 41-*bis* of the Prison Law and belong to the same “socialization group”.

Socialization groups are composed of no more than four inmates, and are formed according to a complex set of criteria. They serve to reconcile two potentially opposing needs: on one hand, preventing the most dangerous inmates from maintaining ties with other members of their criminal organization, whether the latter are in prison or free (an essential purpose of the special prison regime); on the other, assuring that these inmates too are able to benefit from minimal opportunities for socialization.

The judgment recalled that members of the same socialization group spend some hours together every day and can of course communicate with one another,

verbally and through gestures. Thus, they have several opportunities to exchange messages, without the prison officers necessarily hearing or knowing.

Therefore, the Constitutional Court stated that while the ban on communicating and exchanging objects between inmates assigned to different socialization groups is understandable, it is unreasonable to extend it indiscriminately also to members of the same socialization group. These already have several chances to communicate with each other easily, and usually do not need to resort to secret or cryptic forms of communication, such as exchanging objects that have been given a certain meaning and that are to be brought outside the prison during family visits.

On one hand, the ban does not serve to enhance public safety; on the other, it prevents a form of socializing, however minimal: ultimately, it emerges as an unreasonable rule, which contrasts with Article 3 of the Constitution, and is unnecessarily harsh, in breach of Article 27(3) of the Constitution.

In addition, one-way exchanges of objects benefitting individual inmates that serve as a symbol of their supremacy within the group can be prevented by applying ordinary prison regulations, and lead to the socialization group being promptly reshuffling.

Finally, the Court specified that the unconstitutionality found, based on the above reasons, concerns the application of the ban required *ex lege*. Therefore, even after this judgment, prison authorities will be able to issue rules regulating exchanges between inmates in the same group, as well as to establish conditions for imposing limits in specific cases.

The application of these limits must be justified by specific needs, which in turn must be supported by express reasons. Supervisory courts will be able to evaluate individual cases against these criteria.

Rome, 22 May 2020