



Press Office of the Constitutional Court

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THE ABSOLUTE INELIGIBILITY FOR HOUSE ARREST OF REOFFENDERS OVER THE AGE OF SEVENTY IS UNCONSTITUTIONAL

Persons over the age of seventy who have received a custodial sentence must be eligible for house arrest, even if they have been declared to have reoffender status. The supervisory judge will have to assess on a case-by-case basis whether they are eligible for this alternative measure, taking into account, *inter alia*, their actual degree of dangerousness to society.

This ruling was made by the Constitutional Court in [Judgment no. 56](#), filed today (author Francesco Viganò), which held that a provision absolutely excluding this entire class of prisoners from house arrest (Article 47-ter(1) of the Law Regulating the Prison System) is unconstitutional.

The Court pointed out that house arrest as a standard alternative to imprisonment for persons over the age of seventy is inspired by the prohibition on inhuman punishments, enshrined in Article 27 of the Constitution.

The underlying idea is twofold. On the one hand, the legislator presumes that an elderly convicted person is, in general terms, less dangerous to society, and that house arrest is, therefore, usually sufficient to contain this dangerousness. On the other hand, the law considers that “the burden of suffering associated with incarceration usually increases with age. An elderly prisoner is in a special need of care and assistance, which are difficult to ensure within a context involving forced cohabitation with a large number of inmates of all ages”.

In view of this fact, the Court stressed the anomalous nature of the provision examined, which sets forth a blanket ban on this particular measure for the entire class of prisoners convicted with the aggravating circumstance of reoffending.

The Court admitted that a declaration of reoffender status by the sentencing judge is not an automatic consequence of the fact that the accused person has been convicted of a previous offence, and in fact results from a specific assessment that the guilty person's actions were more blameworthy and that he or she represents a greater danger for the community. However, the Court observed that this assessment is carried out by the sentencing judge for the sole purpose of determining the amount of sentence to be imposed, and bears no relation to the factors that the supervisory judge normally takes into account in the assessment as to whether a particular prisoner is eligible for house arrest.

Prominent amongst these factors are, in particular, "the changes that the guilty person has undergone, along with any rehabilitation process that may have been embarked upon" by the convicted person after being sentenced, as well as the greater suffering associated with the incarceration of an elderly person.

In line with the Court's settled case law, according to which blanket bans on eligibility for alternatives to imprisonment for entire classes of prisoners are incompatible with Articles 3 and 27(3) of the Constitution, the absolute ineligibility established by the provision was therefore held to be unreasonable, and incompatible with the prohibition on inhuman punishments.

Rome, 31 March 2021