



Press Office of the Constitutional Court

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PERSONS HELD IN “WORK-HOUSES”: ARTICLE 41-BIS CAN BE APPLIED, BUT THEIR OPPORTUNITY TO WORK MUST ALWAYS BE GUARANTEED

The special limitations established by Article 41-*bis* of the Prison Law also apply to those persons who are considered socially dangerous and, as such, subjected – after they have served their prison sentence – to the detention measure of assignment to a “work-house” [*casa di lavoro*]. However, precisely in light of the specific nature of these measures, and of the constitutional principles of reasonableness and of the rehabilitative purpose [of punishments], the differential treatment envisaged under Article 41-*bis* must be adapted to the conditions of the persons subject to such measures, and enable them to actually perform work.

This is the interpretation underlying [Judgment No. 197](#), filed today (Author of the Judgment: Nicolò Zanon). In the ruling, the Constitutional Court declared the unfoundedness (“in the terms set out in the reasons for the judgment”) of the challenges raised by the Supreme Court of Cassation concerning Article 41-*bis* of the Prison Law.

According to the Supreme Court of Cassation, in executing a detention measure, Article 41-*bis* would allow for application of the same, inflexible differential regime to both persons sentenced to a term in custody and those detained in a work-house. However, applying the same execution regime would entail a duplication of the penalty served. This, in turn, would breach several constitutional principles – ranging from the principle of reasonableness to that of proportionality and culpability. In addition, the rehabilitative aim that is also pursued by the detention measure would be at risk, together with the measure’s purpose of containing the danger posed by the detainee.

The Constitutional Court has rejected all of the challenges raised, provided that Article 41-*bis*, when referring to persons held in work-houses, is given an interpretation that conforms to the Constitution.

The judgment states that, in conformity with Articles 3 and 27(3) of the Constitution, it is necessary to choose an interpretation of Article 41-*bis* that enables application, to persons held in work-houses, only of those restrictions that are proportionate and appropriate to the condition of the individual on whom the differential regime has been imposed, and considered on a case-by-case basis: “this being a detainee assigned to a work-house, the restrictions deriving from his or her subjection to Article 41-*bis* of the Prison Law must be adapted, as far as possible, to the need to organize a work plan and, in turn, the organization of this work must be adapted to the (necessary) restrictions on socializing and moving within the facility. For example, it is necessary to identify professional activities that are compatible with the actual scope for socialization and movement available to the detainees subjected to the differential regime, adjusting, as appropriate, the application of the restriction on time outdoors established by letter f) of paragraph 2-*quater* of aforementioned Article 41-*bis*”.

In conclusion, according to the interpretation affirmed by the judgment, persons detained under the differential regime continue to be excluded from access to partial releases and experimental forms of leave; indeed, they cannot exit the facility to which they have been assigned. However, with regard to socialization and intramural movements, their opportunity to work must be guaranteed.

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