JUDGMENT NO 181 YEAR 2024

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 44, paragraphs 7 to 11, of Legislative Decree No 95 of 29 May 2017, containing "Provisions concerning changes to the roles of the police forces, pursuant to Article 8(1)(a) of Law No 124 of 7 August 2015 concerning the reorganisation of the public administration", of annexed Table 37 and of Table A, annexed to Legislative Decree No 443 of 30 October 1992 (Regulations concerning the personnel of the Prison Police Corps, pursuant to Article 14(1) of Law No 395 of 15 December 1990), initiated by the Council of State, first section, in its opinion on the extraordinary appeal to the President of the Republic in proceedings brought by M.C. and others against the Ministry of Justice, with referral order of 16 November 2023, registered as No 57 in the 2024 Register of Referral Orders and published in *Official Journal of the Italian Republic* No 16, first special series 2024.

Having regard to the entry of appearance filed by A.M. and the statement of intervention filed by S.S. and others;

after hearing Judge Rapporteur Giovanni Pitruzzella at the public hearing on 30 October 2024;

after hearing counsel Maria Immacolata Amoroso for A.M;

after deliberation in chambers on 30 October 2024.

The facts of the case

1.– By referral order of 16 November 2023, registered as No 57 in the 2024 Register of Referral Orders, the Council of State, first section, in its opinion on an extraordinary appeal to the President of the Republic, raised questions as to the constitutionality of Article 44, paragraphs 7 to 11, of Legislative Decree No 95 of 29 May 2017, concerning "Provisions concerning changes to the roles of the police forces, pursuant to Article 8(1)(a) of Law No 124 of 7 August 2015, concerning the reorganization of the Public Administration", of annexed Table 37 and of Table A, annexed to Legislative Decree No 443 of 30 October 1992 (Regulations concerning the personnel of the Prison Police Corps, pursuant to Article 14(1) of Law No 395 of 15 December 1990), "insofar as the staffing plan distinguishes the posts for the initial qualification of inspectors of the Prison Police Corps to be filled on the basis of sex". The Council of State alleged that this constitutes a violation of Articles 3(1) and 117(1) of the Constitution.

1.1.– Concerning relevance, the Council of State maintains that it is required to deliver an opinion on the extraordinary appeal to the President of the Republic brought by a number of assistants of the Prison Police Corps challenging the approval of the final list of candidates in the internal hiring process for 606 entry-level posts for the male role of prison police inspector, as well as the related and prior acts.

The Council of State, after rejecting a motion to dismiss for lateness of the action, states that it must apply the challenged provisions, which form the basis of the contested measures and do not lend themselves to an adaptive interpretation, given their clear wording.

1.2.– Regarding the requirement of no manifest groundlessness, the Council of State, as a preliminary point, maintains that it has a duty to dialogue with this Court, which is called upon to protect equality and legal certainty by means of decisions with *erga omnes* effect.

1.2.1.– According to the Council of State, the challenged provisions conflict, first of all, with the "principle of equal treatment between men and women", a principle "now well consolidated in the European system" and, therefore, relevant under Article 117 (1) of the Constitution.

In this regard, according to the referring court, it relies on Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, Article 3(2) of the Treaty on European Union, Article 8 of the Treaty on the Functioning of the European Union, Articles 21 and 23 of the Charter of Fundamental Rights of the European Union, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

It holds that the sex difference requirement for access to the rank of inspector cannot be justified by the "duties actually and predominantly performed in carrying out the ordinary responsibilities to be assigned at the outcome of the hiring process".

1.2.2.– The Council of State also maintains that the exclusion of access to employment "on the sole basis of sex" infringes Article 3 of the Constitution in that it has no correlation with performance of the service and gives rise to "unjustified and arbitrary" discrimination that proves "excessive in relation to the purpose".

2.– A.M., the appellant in the main proceedings, entered an appearance before this Court and requested that the Council of State's questions as to constitutionality be upheld.

3.– S.S., A.R., A.L.M. and E.O.C. intervened in the proceedings, seeking permission to intervene and submitting a brief to substantially the same effect as the appellant.

4.– In anticipation of the public hearing, both A.M. and the intervening parties filed briefs of identical tenor, chiefly requesting a declaration that the challenged provisions are unconstitutional or, in the alternative, an interpretative ruling to eliminate the distinction between male and female roles "for offices and services based outside of prison structures and for those tasks that do not involve direct and continuous contact with prisoners within prison wards".

5.– The President of the Council of Ministers did not intervene in the case.

6.– At the public hearing, A.M. reiterated the conclusions laid out in its defence briefs.

Conclusions on points of law

1.– With referral order No 57/2024, the Council of State, first section, in its opinion

on an extraordinary appeal to the President of the Republic, questions the constitutionality of Article 44, paragraphs 7 to 11, of Legislative Decree No 95/2017, of the annexed Table 37 and of Table A, annexed to Legislative Decree No 443/1992, "insofar as the staffing plan distinguishes the posts for the initial qualification of inspectors of the Prison Police Corps to be filled on the basis of sex".

1.1.– The referring court alleges, first, that the provisions conflict with Article 117(1) of the Constitution, which requires respect for the constraints imposed by EU law.

In this regard, the Council of State mentions Directive 76/207/EEC, on the equal treatment of men and women, a subject now governed by Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

The referring court also refers to Article 3(2) TEU, Article 8 TFEU, Articles 21 and 23 CFREU, Directive 2000/78/EC and the case law of the Court of Justice of the European Union, which has confirmed the importance of the principle of non-discrimination.

It alleges that the lesser treatment of female applicants in the hiring process for prison police inspector is not connected with any essential or crucial requirements for the performance of the service and, therefore, constitutes "a form of discrimination that clashes with the aforementioned European directives and rulings of the Court of Justice of the EU".

1.2.– The referring court further alleges that the challenged provisions infringe the principle of equality and are devoid of any "reasonable justification" (Article 3(1) of the Constitution).

It argues that the unequal treatment proves arbitrary in the light of the specific duties assigned to inspectors, which are performed outside of prison structures, do not include "exclusively or predominantly 'operational' tasks" and, therefore, "do not necessarily require a distinction between men and women for the purposes of achieving the aims of the service to be performed".

2.– It is, first of all, necessary to assess the admissibility of the intervention brought by S.S., A.R., A.L.M. and E.O.C., who assert that they challenged the same provisions before the Regional Administrative Tribunal (*Tribunale amministrativo regionale* – TAR) for Lazio, initiating proceedings which have now concluded with a final judgment.

2.1.– Arguing for the admissibility of the action, the parties submit that they were not admitted to the first training course. The delayed assignment to the post, compared with the other successful candidates in the hiring process, also negatively impacted their transfer privileges. Finally, this Court's acceptance of the questions as to constitutionality, they argue, would offer "greater opportunities" not only in relation to ordinary annual transfer possibilities, but also with a view to eventual promotion to the role of deputy commissioner.

2.2.– None of the arguments put forward in the statement in intervention supports the conclusion that the applicants have a qualified interest directly and immediately inherent to the matter at issue (Article 4(3) of the Rules of procedure of the Constitutional Court).

Participation in the interlocutory proceedings on constitutionality, normally limited to the parties to the main proceedings, in addition to the President of the Council of Ministers and, when a regional law is at issue, the President of the Regional Government (Articles 3 and 4(1) and (2) of the Rules of procedure), can extend to third parties, provided

that their legal situation is such that the outcome of the interlocutory proceedings could cause them immediate and irreparable harm (see, among many others, Order annexed to Judgment No 144/2024).

To demonstrate having an interest of this kind, it is not sufficient that the position of third parties be governed by the challenged provision (Orders annexed to Judgments Nos 140 and 22 of 2024).

In the present case, moreover, the judgment dismissing the appeal brought by the parties has become final, and this Court's acceptance of the questions raised could not produce those immediate and direct consequences on the substantive situation, which alone can grant standing to intervene.

2.3.– It follows that the intervention must be declared inadmissible.

3.– The questions as to constitutionality raised by the Council of State are admissible.

4.– The reasoning related to relevance is analytical and consistent.

4.1.– The Council of State first holds that the challenge to the call for applications and the acts underlying it was timely, given its finding that the basis of the applicants' "concrete and current interest in the challenge" was the final list ranking the applicants. On the contrary, it concluded that the call for applications had an unforeseeable impact on applicants' rank on the list and does not contain any clause which precludes admission per se.

The arguments set out in the referral order to dispel the preliminary objections articulated in the main proceedings by the Ministry of Justice pass the test of non-implausibility which this Court applies to the requirement of relevance.

4.2.– The referral order also provides sufficient reasoning with regard to the applicability of the challenged provisions.

The Council of State observes that the extraordinary hiring process, in which the applicants participated, was announced in accordance with the provisions: the rules in question, in the inseparable linkage of their provisions, constitute the legal basis of all the contested measures.

The framing of the disputed case reflects the interrelationship between the challenged provisions, which should be viewed in a unitary perspective including because of the overall *ratio legis* underlying them.

5.– The referring court also persuasively excludes the feasibility of finding a constitutionally compliant interpretation of the provisions.

As regards the role of inspectors, it is relevant that distinguishing on the basis of sex is a distinctive feature of the Prison Police's personnel allocation, defined in Table A, annexed to Legislative Decree No 443/1992. Concrete personnel allocation, the process for which has been amended several times over the years, most recently by Article 1(863) of Law No 197 of 29 December 2022 (State budget for financial year 2023 and multi-year budget for the 2023-2025 period), in turn affects the distribution of the posts to be filled.

In light of the unambiguous hard letter of the rules, the adaptive interpretation that the Council of State outlines in its explanatory memorandum cannot be explored since it limits sex-based distinctions to services intended to take place inside prisons, in contact with prisoners.

6.– Finally, there are no obstacles to an examination of the merits of this case, including concerning the conflict with provisions of European Union law, which the referring court considers to have direct effect.

6.1.– If a court finds that a national law is incompatible with directly applicable EU law (Court of Justice of the European Union, Third Chamber, judgment of 1 July 2010, Case C-194/08, *Gassmayr*), it may disapply the national legislation, if necessary after referring the matter to the Court of Justice for a preliminary ruling (Article 267 TFEU), or raise a question of constitutionality for violation of Article 117(1) and Article 11 of the Constitution.

It will then be for this Court to address the Court of Justice in the event that the scope and latitude of the guarantees recognised by EU law are uncertain, "which have implications for the constant evolution of constitutional principles, as part of a dynamic of mutual implication and fruitful supplementation" (Order No 182/2020, point 3.2. of the *Conclusion on points of law*).

6.2.– Since Judgment No 269/2017, in cases of "double preliminary questions" (*doppia pregiudizialità*, i.e. disputes that may give rise to questions of constitutionality as well as questions of compliance with EU law), this Court has left it to the discretion of the courts to choose which path to follow (Orders Nos 217/2021 and 216/2021) and has ruled out antithesis or an order of priority between the applicable instruments. Both remedies guarantee the primacy of EU law, one of the cornerstones of European integration, recognised from the earliest rulings of the Court of Justice and then by the case law of this Court (Judgment No 170/1984 and, more recently, Judgment No 67/2022).

Even in Member States where there is, as in Italy, centralised constitutional review, all courts can review the compatibility of a law with EU law (Court of Justice, judgment of 9 March 1978, Case C-106/77, *Simmenthal*).

Nor can the competences of the constitutional courts hinder or limit the power of the courts to make a reference for a preliminary ruling to the Court of Justice and to disapply the state law found incompatible with EU law (Court of Justice, Grand Chamber, judgment of 22 February 2022, Case C-430/21, *RS*), when the latter has direct effect (Court of Justice, Grand Chamber, judgment of 24 June 2019, Case C-573/17, *Popławski*).

6.3.– When, on the other hand, a violation of Article 117(1) of the Constitution is challenged, the essential element is that the law has failed to comply with an EU obligation and is, for this reason, unconstitutional. The State is obliged to ensure compliance with EU law and the principle of primacy; this obligation is infringed regardless of whether the conflict concerns the Charter of Fundamental Rights or another piece of EU law.

For this Court to examine the merits of complaints alleging infringement of a directly applicable rule of EU law, it is necessary for the question raised by the referring court to have a "constitutional dimension", because of its connection with interests or principles of constitutional import.

This connection is present in an exemplary manner in the case at hand.

Directive 2006/54/EC, in implementing the principle of equality of treatment of men and women, already enshrined in Directive 76/207/EEC, and in giving concrete expression to Articles 21 and 23 of the Charter of Nice (Recital No 5), invests fundamental principles in the constitutional design and interacts with these principles when this Court carries out

judicial review meeting the standard of Article 3 of the Constitution, with effectiveness and integration of guarantees.

6.4.– The system is characterised by a concurrence of remedies, intended to enrich protection of fundamental rights and, by definition, to exclude any preclusion (Judgment No 20/2019, paragraph 2.3. of the *Conclusions on points of law*).

The concurrence of remedies is part of a context which "sees the ordinary courts and this Court committed to implementing European Union law in the Italian legal system, each using their own instruments and each within the scope of their respective competences" (Judgment No 149/2022, paragraph 2.2.2. of the *Conclusions on points of law*).

The centralised review of constitutionality, therefore, does not stand in opposition to a decentralised mechanism of implementation of European law, but cooperates with it to construct increasingly integrated protections (Judgment No 15/2024, paragraph 7.3.3. of *Conclusions on points of law*).

6.5.- It falls to the court to choose the most appropriate remedy, weighing the particularities of the case before it.

Dialogue with this Court, which is called upon to render a ruling *erga omnes*, proves particularly fruitful when the interpretation of the applicable legislation is characterised by uncertainties, when a public authority continues to apply the disputed rules, when the questions of interpretation involve systemic impact, destined to have effects far beyond the concrete case, or, again, when a balancing of constitutional principles is required.

If, then, there are doubts as to whether EU law has direct effect, and the decision not to apply national law is debatable and subject to dispute, raising a question as to constitutionality makes it possible to dispel any uncertainty. This Court may declare the question as to constitutionality well-founded if it finds that there is a conflict between the national legislation and the EU rules, irrespective of whether those rules have direct effect.

A declaration of unconstitutionality "offers a further guarantee of the primacy of EU law in terms of its certainty and uniform application. Indeed, even though the obligation to apply provisions with direct effect applies not only to all courts but also to public authorities – with the result that, where any internal legislation is incompatible with those provisions, it must not be applied – it is also possible that internal provisions may continue to be used and applied as a result of any failure to appreciate that incompatibility or in the event that an interpretative approach considers there to be no such incompatibility. Precisely with the aim of avoiding such an outcome, and without prejudice obviously to any other remedies that the legal system adopts in order to ensure the uniform application of the law whenever this occurs, the referral of a question of constitutionality offers the opportunity, where the prerequisites are met, to achieve the removal from the legal order, with the binding effect inherent to a judgment accepting a question of constitutionality, of any provisions that are considered to violate EU law" (Judgment No 15/2024, point 8.2. of the *Conclusions on points of law*).

The declaration of unconstitutionality, precisely because it transcends the concrete case from which it originated, effectively safeguards legal certainty, a value of unassailable constitutional importance (Judgment No 146/2024, paragraph 8 of the *Conclusions on points of law*), of which every court, including the Constitutional Court, is equally a guarantor.

This Court, moreover, thanks to the multiplicity and suppleness of the techniques it employs in reaching its decisions, can most incisively remedy the clashes challenged by the referring courts, including by filling any gaps that may result from striking down unlawful rules.

The Court of Justice (Grand Chamber, judgment of 2 September 2021, Case C-350/20, *O.D.*, paragraph 40) has also emphasised the primary importance of the role of this Court, which is called upon to adjudicate on questions "in the light both of the rules of national law and of the rules of EU law, in order to provide not only to its own referring court but also to all the Italian courts a decision having *erga omnes* effect, which those courts must apply in any relevant dispute upon which they may be called to adjudicate".

In this way, the primacy of EU law is bolstered and interwoven with constitutional guarantees, in a mutually enriching relationship.

6.6.– In keeping with the above reasoning, the referring court has emphasised the specific nature of this case, which has also been subject to differing outcomes: other judgments, in fact, denied any form of conflict with constitutional precepts or with EU law.

The present case demonstrates, with paradigmatic clarity, the need for a ruling with *erga omnes* effect, going beyond the individual dispute and offering unequivocal guidance to citizens and the legislature.

This necessity proves unavoidable in the face of legislation that involves a wide range of stakeholders and lends itself to repeated applications, as A.M.'s counsel recalled in the course of the hearing, in reference to the recurrence of similar issues in a dispute that is still pending.

7.– The questions are well-founded for the following reasons.

8.– Article 3(1) of the Italian Constitution "lays down a principle with foundational value, and therefore inviolable, aimed at guaranteeing the equality of all citizens before the law and prohibiting sex – on a par with race, language, religion, political opinion and personal and social circumstances – from being a source of any discrimination in the legal treatment of persons" (Judgment No 163/1993, point 3, of the *Conclusions on points of law*).

For decades, this Court has affirmed that "today, since the Constitution recognises the equality of all before the law without distinction according to sex, the rule is equality": the legislature may take into account, "in the interest of providing public services, the different aptitudes that characterise membership in each sex, provided that the fundamental doctrine of legal equality is not infringed" (Judgment No 56/1958).

9.– Equal treatment of men and women is also "a fundamental principle of Community law under Article 2 and Article 3(2) of the Treaty and the case-law of the Court of Justice. Those Treaty provisions proclaim equality between men and women as a 'task' and an 'aim' of the Community and impose a positive obligation to promote it in all its activities" (Directive 2006/54/EC, point 2).

Exceptions to the principle of equal treatment must "be limited to those occupational activities which necessitate the employment of a person of a particular sex by reason of their nature or the context in which they are carried out, provided that the objective sought is legitimate and complies with the principle of proportionality" (Directive 2006/54/EC,

point 19).

In the present review, the provision of Article 14 of Directive 2006/54/EC, according to which "[t]here shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to: (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion," is of paramount importance.

Under Article 14(2) of that directive, "a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is proportionate".

10.– The principle of equality (Article 3 of the Constitution) and the requirements of EU law converge to make equal treatment effective, in a harmonious and complementary perspective, which allows for full integration between the guarantees enshrined in the different sources.

11.– The questions raised by the Council of State fall within this framework.

The indissoluble correlation between the principles evoked makes it necessary to perform a joint examination of the complaints made with reference to Articles 3 and 117(1) of the Constitution, the latter in relation to Article 14 of Directive 2006/54/EC.

12.– Law No 395 of 15 December 1990 (Regulations concerning the personnel of the Prison Police Corps) implements the principle of equality between men and women with particular regard to the performance of prison services. It provides that, between male and female staff of the Prison Police Corps, there shall be full equality in terms of attributions, functions, financial compensation and career progression (Article 6(1)).

The general validity of the rule is then safeguarded by the delimitation of its scope of application and the reasons justifying, the exceptions.

In prison wards, the prison staff to be assigned to prison services "must be of the same sex as the inmates or confined persons detained there" (Article 6(2)).

13.– This requirement, however, does not apply to inspectors and does not justify the sex-based differentiation in the staffing of inspectors, which is characterised by a clear preponderance of males: among deputy commissioners, there are 590 men and 50 women, while among senior inspectors, chief inspectors, inspectors and deputy inspectors there are 2640 men and 375 women (Table 37, annexed to Legislative Decree No 95/2017 and intended to amend Table A, annexed in turn to Legislative Decree No 443/1992).

14.– The challenged male majority is not reflected in the characteristics of the tasks to be performed.

Personnel assigned to the role of inspectors – a role divided into the five job titles of deputy inspector, inspector, chief inspector, senior inspector and deputy commissioner – perform "functions requiring adequate professional preparation and knowledge of the methods and organisation of prison treatment, as well as specific functions within the prison services of the Prison Police according to the directives and orders of the department commander of the prison or school or of the responsible Corps official" (Article 23(2),

first sentence, of Legislative Decree No 443/1992).

Inspectors also perform "coordination functions for one or more operational units of the security area and for the units, offices and services where they are assigned, and are responsible for the directives and instructions given in these activities" (Article 23(2), first sentence, of Legislative Decree No 443/1992).

Inspectors are entitled to "participate in the group meetings referred to in Articles 28 and 29 of the regulation approved by Presidential Decree No 230 of 30 June 2000" (Article 23(2), second sentence). The purpose of these meetings is to scientifically observe the personalities of persons subject to a sentence or security measure and to draw up individualised treatment programmes.

Personnel on the inspector rolls may also perform "training or instruction tasks for prison police personnel, in relation to the professionalism they possess" (Article 23(2), third sentence).

Article 39(1) of Presidential Decree No 82 of 15 February 1999 (Service regulations of the Prison Police Corps) identifies the duties of the persons in charge of the individual services, chosen, as a rule, from among the inspectors and superintendents, as follows: "1) personally attend the handover during the change of shifts and verify the precise knowledge, on the part of the staff, of the service rules and provisions; 2) oversee the precise fulfilment of the duties assigned to said staff; 3) inform the direct superior of the progress of the service and of any infringements committed by the staff, as well as of any other relevant fact; 4) attend the searches of inmates and confined persons, as well as of the premises and spaces used by them; 5) attend the transfer of groups of inmates or confined persons; 6) cooperate with superiors in the performance of the latter's duties; 7) assign the service to the employees and provide related instructions; 8) carry out frequent checks on the progress of the service and arrange for the replacement of staff, if necessary, by requesting the necessary additional personnel; 9) observe the provisions contained in the order of service referred to in Article 29, ensure they are scrupulously observed by the employees, and call the commander of the department, if and when necessary".

15.– Collaboration with superiors is, therefore, accompanied by control over the services performed by the employees. Direct and continuous contact with prisoners does not become a qualifying and dominant feature of the work performed.

Regulatory developments have increased the importance of coordination and management tasks. These are also intended to project into the field of training and education, and have bestowed on inspectors the essential function of acting as a link between the role of agents, assistants and superintendents, on the one hand, and that of officials, on the other.

16.– The considerable gap between male and female representation on the inspector rolls reflects, in a radically different context, an arrangement that is related to the particularities of the role of agents and assistants, who are in charge of performing eminently operational tasks, in constant contact with the inmates of the prison wards.

Considering the management and coordination-related tasks that characterise the duties assigned to inspectors, there is no genuine and determining requirement for performing the job that could provide a reasonable justification for the lower representation of women, under the strict terms set out in Article 14(2) of Directive 2006/54/EC.

The challenged inequality does not, therefore, pursue a legitimate objective, linked to the need to preserve the functionality and efficiency of the Prison Corps, and conflicts with the principle of proportionality, precisely because of the extent of the gap it generates.

17.– Furthermore, discrimination in access to a role that is a stepping stone to the attainment of the most prestigious posts violates the right of women, with equal qualifications, to perform an activity in accordance with their possibilities and choices and, thus, contribute to the progress of society.

The challenged system, flying in the face of meritocratic assessment, excludes women who have achieved higher scores from advantageous positions in the ranking list for the simple reason that men are more heavily represented in the staff and in the posts to be filled.

As A.M.'s counsel specified in the course of oral arguments, this eventuality has played out in practice and cannot be dismissed as a mere remote potential inconvenience. The inconsistency at the basis of the complaints is inherent in the very mechanism established by the law and is innately unreasonable.

Unequal treatment, therefore, creates distorting effects that impact the very efficiency of the public authority.

18.– It is emblematic that, for the career of officials of the Prison Police Corps, the distinction based on sex has already been overcome through Legislative Decree No 146 of 21 May 2000 (Adaptation of the structures and staffing of the Prison Administration and of the Central Office for Juvenile Justice, as well as the establishment of the ordinary and special executive roles of the Prison Police Corps, pursuant to Article 12 of Law No 266 of 28 July 1999).

19.– Once any unreasonable, unequal basis of treatment is removed, differences among applicant outcomes will be determined by the score that each candidate obtains, and not by a random mechanism, influenced by the higher representation of men in the staffing plan and in the posts to be filled.

20.– This Court must, therefore, declare that Article 44, paragraphs 7 to 11, of Legislative Decree No 95/2017, annexed Table 37 and Table A, annexed to Legislative Decree No 443/1992, are unconstitutional insofar as they create a sex-based distinction – in the staffing plan – in the posts of inspector of the Prison Police Corps to be filled. The overall staffing system established by legislation remains unchanged.

21.– No examination of the other complaints is necessary.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) *declares* the act of intervention in the proceedings of S.S., A.R., A.L.M. and E.O.C. inadmissible;

2) *declares* that Article 44, paragraphs 7 to 11, of Legislative Decree No 95 of 29 May 2017, containing "Provisions concerning changes to the roles of the police forces, pursuant to Article 8(1)(a) of Law No 124 of 7 August 2015, concerning the reorganisation of the public administration", the annexed Table 37 and Table A, annexed to Legislative Decree No 443 of 30 October 1992 (Regulations concerning personnel of

the Prison Police Corps, pursuant to Article 14(1) of Law No 395 of 15 December 1990), insofar as they create a sex-based distinction – in the staffing plan – in the posts of inspector of the Prison Police Corps to be filled.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 30 October 2024.

Signed: Augusto Antonio BARBERA, President

Giovanni PITRUZZELLA, Judge Rapporteur