Corte costituzionale

JUDGMENT NO. 85 OF 2008

FRANCO BILE, PRESIDENT

GIOVANNI MARIA FLICK, AUTHOR OF THE JUDGMENT

JUDGMENT No. 85 YEAR 2008

In this case the Court heard a reference from the Rome Court of Appeal against an amendment to the Code of Criminal Procedure removing the right to appeal against acquittals "it does not allow the accused to appeal against judgments which discontinue proceedings due to the application of the statute of limitations, following the decision to take mitigating circumstances into account", along with the provision applying the new arrangements to proceedings in progress. The Court pointed out that the acquittal is not a single genus, but embraces markedly different outcomes, including a finding that the accused was responsible for the offence but cannot be punished. Moreover, such verdicts may have ramifications on civil, administrative or disciplinary proceedings to the detriment of the accused. In particular, following judgment No. 26 of 2007, the exclusion of the public prosecutor's is unconstitutional; thus the prosecution, unlike the accused, may appeal against any verdict, which hence violates the principle of equality before the court. Therefore the Court declared the contested provision unconstitutional, although it did not extend the finding to summary offences for which only a fine may be imposed.

THE CONSTITUTIONAL COURT

Composed of: President: Franco BILE; Judges: Giovanni Maria FLICK, Francesco AMIRANTE, Ugo DE SIERVO, Paolo MADDALENA, Alfio FINOCCHIARO, Alfonso QUARANTA, Luigi MAZZELLA, Gaetano SILVESTRI, Sabino CASSESE, Maria Rita SAULLE, Giuseppe TESAURO, Paolo Maria NAPOLITANO,
gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 1 of law No. 46 of 20 February 2006 (Amendments to the Code of Criminal Procedure concerning the removal of the power to appeal against acquittals), which replaced Article 593 of the

Code of Criminal Procedure, and of Article 10 of the same law, commenced pursuant to the referral orders of 26 April 2006 of the Rome Court of Appeal, of 9 February 2007 of the Bologna Court of Appeal and of 30 March 2007 of the Bari Court of Appeal, respectively registered as Nos. 543, 668 and 742 in the Register of Appeals 2007 and published in the *Official Journal of the Republic*, Nos. 32, 39 and 44, first special series 2007.

Having heard the Judge Rapporteur Giovanni Maria Flick in chambers on 13 February 2008.

The facts of the case

1. – In the the order mentioned in the headnote, the Rome Court of Appeal raised, with reference to Articles 3, 24 and 111(2) of the Constitution, the question of the constitutionality of Article 1 of law No. 46 of 20 February 2006 (Amendments to the Code of Criminal Procedure concerning the removal of the power to appeal against acquittals), insofar as, by replacing Article 593 of the Code of Criminal Procedure, it prevents the accused from appealing against judgments which discontinue proceedings due to application of the statute of limitations following the recognition of mitigating circumstances; it also questioned the constitutionality of Article 10 of the same law, insofar as it requires the court to rule such appeals inadmissible where they were filed before the entry into force of the law in question.

The referring court states that it was seized of the appeal filed by three accused persons against the judgment of the *Tribunale di Frosinone* of 2 March 2004, which had discontinued proceedings against them in relation to a series of offences (aggravated corruption involving conduct in breach of their official duties, multi-aggravated fraud and abuse of office) on the grounds that they had lapsed under the terms of the statute of limitations following the decision to take account of mitigating circumstances, which were found to prevail over the aggravating circumstances as charged.

The appeal – the lower court continues – must be ruled inadmissible pursuant to Articles 1 and 10 of law No. 46 of 2006, since appeals are no longer provided for as a means of challenging acquittals.

The referring court however doubts the constitutionality of this legislation.

It is indeed true – the lower court notes – that the principle of two levels of merits hearings does not have constitutional status: so much so that there has been some debate over whether to abolish appeals, both to render the resolution of trials more rapid, as well as to eliminate the contrast between proceedings before a trial court, which involve predominantly oral contributions, and essentially "paper based" proceedings at second instance. However, so long as law No. 46 of 2006 continues to provide for the institution, the restrictions on this means of challenging decisions by the accused are claimed to be contrary both to the principle of reasonableness, in relation to the right to defend oneself, as well as the principle of the reasonable length of trials.

The exclusion of a second degree of merits judgment in trials concluded at first instance by a declaration that the statute of limitations applies may in fact be reasonable where the trial court has not made "any substantive findings on the merits": as would occur for judgments issued pursuant to Article 129 of the Code of Criminal Procedure, in which the trial court limits itself to ruling that the relevant conduct was not an offence, or that the accused did not commit any offence.

The situation is different where – as in the case before the court – the trial court makes a declaration that the statute of limitations applies to the offence following an assessment on the merits, which presupposes the recognition of the guilt of the accused: such rulings do not result in a conviction only due to the decision to take mitigating circumstances into account, which bring the offence within the ambit of the rules governing exemption from punishment. In such cases, the denial to the accused of a review of the judgment in a second level of proceedings "on the facts" would be irrational in view of the fact that, under the terms of the legislation in force, the accused may appeal even simply in order to request the reduction of a fine, whilst he may not when – as in the case at issue in the principal proceedings – he has in essence been found to be "corrupt".

The contested legislation is also claimed to violate the right defend oneself: whilst a judgment that the statute of limitations applies does not amount to a conviction in the formal sense, and therefore does not count as a valid conviction in civil and administrative proceedings, nevertheless – disregarding the impact which such judgments may in any case have on such trials – Article 24 of the Constitution

guarantees the accused the right to exhaust all means made available by the legal order (including appeals) to protect his own "moral standing": this image is without doubt compromised by a judgment applying the statute of limitations such as that before the court.

Ultimately, the innovation introduced by law No. 46 of 2006 only apparently furthers the goal of the rapid conclusion of trials. In reality, by denying to the accused the possibility, in a second judgment "on the facts", of an acquittal on the merits – and therefore of invoking the favourable outcome in civil, administrative or disciplinary proceedings – the contested legislation exposes the accused "to the prospect of three levels of proceedings before the civil courts and/or of two further levels of administrative litigation", in contrast to the principle of the reasonable length of trials.

2. – By the further order mentioned in the headnote, the Court of Appeal of Bologna raised, with reference to Articles 3 and 24 of the Constitution, the question of the constitutionality of Articles 1 and 10 of law No. 46 of 2006, insofar they provide, respectively, that the accused may not appeal against judgments exempting him from punishment which are based on a finding of criminal responsibility, and that any such appeals filed before the entry into force of the law must be ruled inadmissible.

The referring court states that, in a judgment of 3 October 2002, the *Tribunale di Ferrara* had acquitted two persons of the offence contained in Article 387 of the Criminal Code (Accessory to escape due to negligence of the guard) since they could not be punished pursuant to Article 387(2) (which provides that "the convicted person shall not be punished if within three months of the escape he ensures the capture of the escapee or their turning over to the authorities"). The public prosecutor filed an appeal against the judgment, requesting that the grounds for exemption from punishment be removed and therefore that the accused be convicted; the accused also appealed, requesting that they be acquitted on the grounds that they did not commit the offence, or on the grounds that the relevant conduct was not an offence.

The lower court then goes on to note that the "special excuse" mentioned in Article 387(2) of the Criminal Code is first premised on a finding that the guard responsible for the prisoner's custody wilfully allowed the latter to escape. In addition, the "special excuse" does not amount to an excuse capable of overriding the unlawful status of the

action, but are rather simply grounds for exemption from punishment put in place on clear criminal policy grounds. In the light also of the possible administrative, financial or disciplinary consequences of the contested judgment, it is therefore clear that the accused have an interest in an acquittal which states that they did not commit the offence or were not criminally responsible for it.

For the above reasons, the contested provisions – which require that the appeals of the convicted persons be ruled inadmissible – are claimed to violate Articles 3 and 24 of the Constitution insofar as they prevent a formal judgment that the accused is not liable to punishment, which is however in reality based on a finding of criminal responsibility, from being appealed on the merits; this infringes the principle of reasonableness and the right not only to a procedural but also a substantive defence at every stage and degree of proceedings.

3. – In the order mentioned in the headnote, the Bari Court of Appeal raised, with reference to Articles 3, 24 and 111(2) of the Constitution, the question of the constitutionality of Article 1 of law No. 46 of 2006, insofar as, by replacing Article 593 of the Code of Criminal Procedure, it prevents the accused from appealing against acquittals, with the exception of cases falling under Article 603(2) of the Code where the new evidence is decisive; it also questioned the constitutionality of Article 10(2) of law No. 46 of 2006, insofar as it provides that appeals filed by the accused against acquittals before the entry into force of the same law must be ruled inadmissible.

The lower court states that the Juvenile Court of Bari held in a judgment of 14 April 2005 that proceedings against a minor accused of the offences of threatening behaviour, verbal abuse, bodily harm and damage to property should be discontinued and the minor admonished; the minor then filed an appeal, respecting the time limits, against this judgment, seeking to obtain an acquittal on more favourable terms.

The referring court went on to note that pursuant to Article 593 of the Code of Criminal Procedure, as amended by Article 1 of law No. 46 of 2006, the accused may appeal against convictions but not against acquittals, which include judgments in which the court admonishes the juvenile.

The limitation of the accused's power of appeal to convictions was only justified – the lower court continues – under the original scheme of the 2006 reform, in that it was

accompanied by the almost complete removal of the public prosecutor's power to appeal against acquittals. This justification however lapsed with judgment No. 26 of 2007, in which this court ruled unconstitutional – due to breach of the principle of equality before the court – both Article 1 of law No. 46 of 2006, insofar as it prevented the public prosecutor from appealing against acquittals, with the exception of cases involving new decisive evidence, as well as Article 10(2) of the same law insofar as it provided that appeals already filed by the public prosecutor against acquittals should be ruled inadmissible.

This meant that the restriction of the accused's right to appeal is currently mirrored by the public prosecutor's power of appeal which remains intact compared to the previous system: this clearly violates the principle of equality before the court – both in general as well as in criminal proceedings – enshrined in Articles 3 and 111(2) of the Constitution.

The limitation in question also infringes the right to defend oneself (Article 24 of the Constitution), since defendants acquitted on "unsatisfactory" terms could pursue their case only on conditions which are "significantly worse" than those which apply to the public prosecutor. A rational justification for this more detrimental treatment cannot be found in the nature of the offences prosecuted, since the exclusion of the right of appeal against acquittals covers all types of offence; nor can it be justified by a more "substantive" satisfaction of the interests of the accused. Acquittals on terms other than those which state that the relevant conduct was not an offence, or that the accused did not commit any offence not only establish "involvement" in the offence, which the accused should have the right to contest fully, but could in fact also be relevant (although not binding) in eventual civil proceedings involving damages claims. This would clearly apply to cases in which the court admonishes a minor, which implies a full finding of responsibility.

Conclusions on points of law

1. – The Rome Court of Appeal questions the constitutionality, with reference to Articles 3, 24 and 111(2) of the Constitution, of Article 1 of law No. 46 of 20 February 2006 (Amendments to the Code of Criminal Procedure concerning the removal of the

power to appeal against acquittals), insofar as, by replacing Article 593 of the Code of Criminal Procedure, it does not allow the accused to appeal against judgments which discontinue proceedings due to the application of the statute of limitations, following the decision to take mitigating circumstances into account; it also questioned Article 10(2) of the same law, insofar as it requires the court to rule such appeals inadmissible where they were filed before the entry into force of the law in question.

The lower court's reasoning is based on the premise that an acquittal pursuant to the application of the statute of limitations to an offence following the decision to take mitigating circumstances into account essentially presupposes a finding on the merits that the accused is guilty. It may be true – the referring court notes – that there is no constitutional right to two levels of merits proceedings *per se*: however, as long as the law in force continues to provide for an appeal – allowing the accused to appeal even simply in order to request the reduction of the level of a fine – the denial to the accused of the recourse to that remedy in order to contest the finding of responsibility inherent in the judgment in question would breach the principle of reasonableness.

It is also claimed to violate the right to defend oneself: this is because whilst such acquittals are not binding, they may have an impact on civil and administrative proceedings, or more generally compromise the "moral standing" of the acquitted person.

Finally, the contested provisions are claimed to violate the principle of the reasonable length of trials since – by denying to the accused the possibility, in a second judgment on the merits, of an acquittal on broadly exonerating terms and therefore of invoking the favourable judgment in proceedings not before the criminal courts – they expose the acquitted person "to the prospect of three levels of proceedings before the civil courts and/or of two further levels of administrative litigation".

2. – The constitutionality of Articles 1 and 10 of law No. 46 of 2006 is also questioned, with reference to Articles 3 and 24 of the Constitution, by the Bologna Court of Appeal insofar as, respectively, they prevent the accused from appealing against rulings that an accused is exempt from punishment, which are based on a finding of criminal responsibility, and also provide that any appeals previously filed against such judgments must be ruled inadmissible.

Having been seized of an appeal filed by two accused persons against the judgment which acquitted them of the offence mentioned in Article 387 of the Criminal Code (Accessory to escape due to negligence of the guard), on the grounds that they could not be punished pursuant to Article 387(2), the referring court notes that the "special excuse" provided for under sub-section 2 presupposes a finding both of the *actus reus* and the unlawful nature of the conduct, and limits itself to precluding punishment on "criminal policy" grounds: therefore the accused have a clear interest – given the possible administrative, financial or disciplinary consequences of the aforementioned finding – in an acquittal on broader terms.

By preventing appeals against judgments which do not impose punishments on formal grounds, but which in reality entail a finding of criminal responsibility – with the result of rendering such judgments immune from challenge on the merits – the provisions therefore violate both the principle of reasonableness as well as the right to defend oneself.

3. – The Bari Court of Appeal questions the constitutionality, with reference to Articles 3, 24 and 111(2) of the Constitution, of Article 1 of law No. 46 of 2006, insofar as, by amending Article 593 of the Code of Criminal Procedure, it prevents the accused from appealing against acquittals, with the exception of cases falling under Article 603(2) of the Code of Criminal Procedure where the new evidence is decisive; it also questions the constitutionality of Article 10(2) of law the same law, insofar as it provides that appeals filed by the accused against acquittals before the entry into force of the amendment must be ruled inadmissible

The referring court notes that the limitation of the accused's right to appeal only to convictions, introduced by law No. 46 of 2006, was justified within the original framework of the reform in that it was accompanied by the almost complete removal of the public prosecutor's power to appeal against acquittals. Since however the latter has lapsed – by effect of the ruling of unconstitutionality contained in judgment No. 26 of 2007 of this court – the enduring limitation on the accused's right of appeal currently stands in contrast to the public prosecutor's power of appeal which remains intact compared to the previous arrangements: this clearly violates the principle of equality

before the court – both in general as well as in criminal proceedings – enshrined in Articles 3 and 111(2) of the Constitution.

Correspondingly, the right to defend oneself is also claimed to have been violated since acquittals in terms other than than those which state that the relevant conduct was not an offence, or that the accused did not commit any offence, establish that the accused was "involved" in the offence, a finding which he should be able to challenge fully: moreover, the criminal judgment could also be relevant (although not binding) in eventual civil proceedings involving claims for restitution and damages. The validity of the argument is on the other hand particularly clear in cases – such as that before the lower court – involving acquittals accompanied by an admonition, since these are judgments premised on a substantive affirmation of the guilt of the accused.

4. – The referral orders raise similar questions in relation to the same provisions, which means that the related proceedings must be joined for treatment in a single decision.

5. – The question is well founded, for the reasons set out below.

5.1. – Law No. 46 of 2006 – informed, as is unequivocally clear from the parliamentary *travaux preparatoires*, by the guiding intention of preventing the public prosecutor from appealing against acquittals – had a parallel impact also on the corresponding right of the accused.

Under the terms of the new wording of Article 593 of the Code of Criminal Procedure, pursuant to Article 1 of the amending law, the accused and the public prosecutor may appeal unconditionally – as was previously the case – against convictions (sub-section 1), except those which only impose fines (sub-section 3). However – and this is the new aspect of the reform – prior to this court's decision in judgment No. 26 of 2007, the provision in question allowed both the public prosecutor and the accused to appeal against acquittals only in cases which were entirely marginal in practical terms, i.e. where new decisive evidence comes to light or is discovered after the proceedings before the trial court (essentially during the course of the brief time limit for the filing of appeals).

Behind the formal equal standing of the parties, this system embraced – having regard to the substantive claims which the parties advance – two asymmetries operating

in opposite directions. For trial court judgments which were completely unfavourable, the asymmetry worked against the public prosecutor; the latter could not appeal against judgments which had entirely rejected the punishment requested according to the charges brought; on the other hand, the accused was (and is) allowed to challenge by appeal judgments which completely reject his claim that he is innocent. By contrast, for decisions which were only partially unfavourable, the positions were – and are – reversed: the public prosecutor has the right to appeal against convictions which only partially accept its requests, whilst the accused on the other hand does not dispose of similar rights in relation to acquittals which do not entirely exonerate him.

In effect, the category of acquittals – which the reform subjects to a uniform regime regarding the removal of the accused's right to appeal – is not a single *genus*, but embraces markedly different cases involving different levels of harm to the moral and legal interests of the acquitted person. Alongside broadly exonerating judgments – those which state that "the relevant conduct was not an offence" or the "accused did not commit any offence" – the said category in fact includes judgments which, whilst not imposing any punishment, entail – in different forms and degrees – a substantive recognition of the responsibility of the accused or, in any case, the imputation of the conduct to the accused. The cases at issue in proceedings before the lower courts can be classed under: rulings that the statute of limitations applies to the offence (under the arrangements applicable prior to law No. 251 of 5 December 2005), following the decision to take mitigating circumstances into account; acquittals on the grounds that the accused is not liable to punishment related to conduct or events *post factum*; acquittals accompanied by the granting of an admonition. It is generally accepted that this last case in particular involves a full finding of guilt, following which however no sentence is imposed (although it may not be granted more than once: Article 169(4) of the Criminal Code).

As this court has pointed out in numerous judgments – concerning the provisions of the Code of Criminal Procedure of 1930 which placed broad limits on the accused's right to appeal, both during court proceedings (Articles 512 and 513) as well as at the pre-trial stage (Articles 387, 395 and 399) – judgments such as those mentioned above are liable to cause significant harm to the accused in both moral and legal terms (see,

with reference to acquittals on the grounds that the action was not punishable, which presuppose a recognition of guilt, judgments No. 249 of 1989, No. 922 of 1988, No. 299 of 1985, No. 224 of 1983, No. 53 of 1981, No. 72 of 1979, No. 73 of 1978 and No. 70 of 1975; on acquittals on the grounds that the conduct is not considered to be an offence, see judgment No. 200 of 1986; and for acquittals on the grounds that the accused is not liable to punishment, see judgment No. 140 of 1989).

The detriment in moral terms may in such cases even be greater than that resulting from a conviction: it is sufficient to think of an acquittal on the grounds of total mental infirmity or chronic alcohol or drug addiction, even when no security measure is applied (on this point, see judgment No. 151 of 1967).

The detriments in legal terms are in turn related, in general terms, to the possibility that a finding of responsibility or in any case which imputes to the accused the conduct at issue in the judgments in question – even though its effects are not binding – may in any case have a negative impact on civil, administrative or disciplinary proceedings relating to the same event. Sometimes moreover, the legal harm may be a direct result of the judgment, as is the case for acquittals on the grounds that the action was not punishable which order the confiscation of property of the accused (which may even have a significant value). As regards these security measures – under the terms of Article 579(3) of the Code of Criminal Procedure – it is generally accepted that the reservations contained in Articles 579 and 680, applicable pursuant to Article 593(1) of the Code of Criminal Procedure, in any case cannot apply: one interpretation of this clause (which is however not universally accepted) states that, even following the reform, the accused retains the right to appeal at the very least against the head of the acquittal concerning the application of the security measures.

5.2. – In judgment No. 26 of 2007, this court removed the imbalance against the public prosecutor created by law No. 46 of 2006 concerning appeals against entirely unfavourable judgments. In that case, the court ruled that Article 1 of that law was unconstitutional, due to violation of Article 111(2) of the Constitution, insofar as, by replacing Article 593 of the Code of Criminal Procedure, it prevented the public prosecutor from appealing against acquittals, except in cases where new evidence comes to light; it also found that the transitional provision contained in Article 10 of the

law was unconstitutional, insofar as it provides that appeals previously filed by the public prosecutor against acquittals should be ruled inadmissible.

In this judgment – alongside the conclusions which led the court to find that the contested provisions were incompatible with the principle of equality of the parties before the court, and reiterating that there is no free-standing constitutional guarantee of a dual level of justiciablility – the court found that "the inability to appeal – by either party – against acquittals" ended up "sacrificing also the interests of the accused, in particular where the acquittal is based on a finding of responsibility or entails unfavourable effects". This issue also had the potential to raise additional questions of constitutionality, which were not however placed before the court on that occasion.

5.3. – In the cases before the court, in which it is precisely the issue mentioned above which is the object of scrutiny, there is no doubt that – in order to guarantee full respect for the constitutional principles at issue – the limitation of the accused's right to appeal against acquittals by Article 593(2) of the Code of Criminal Procedure, as amended, must also be removed: and it must be removed – except as argued below – in the broad terms requested by the Bari Court of Appeal, thus also under the terms of the narrower *petita* formulated by the other two referring courts, which have been tailored to the cases before them.

As noted above, by bringing together under the same regime significantly different situations, the contested provision does not allow the accused a second degree of merits proceedings following an acquittal (except where new evidence comes to light), even where these judgments entail a substantial finding of responsibility or otherwise impute the conduct to the acquitted person, thus creating an interest on his part in an appeal; and this is notwithstanding the recognition of the public prosecutor's right to appeal on the merits against convictions which only partially accept the prosecution's requests.

It should be added that, as a result of the reconfiguration ordered by judgment No. 26 of 2007 regarding wholly unfavourable judgments, the public prosecutor – unlike the accused – currently enjoys the unconditional right to appeal against first instance judgments irrespective of the outcome (acquittal or conviction).

It is is important to point out, from a different perspective, that – in the light of the case law which now appears to be settled following the ruling of the Joint Sections of

the Court of Cassation – law No. 46 of 2006 did not limit the power of appeal of private parties against acquittals (regarding which, see also order No. 32 of 2007 of this court). It follows that there is a similar imbalance also in relation to this party since, unlike the accused, the private party may appeal both against acquittals, as well as – where they have an interest in doing so – against convictions.

These clearly asymmetric arrangements violate the principles both of equality of the parties before the court (Article 111(2) of the Constitution), since – as far as the relations between the accused and the prosecution are concerned – they are not based on any rational justification related to the institutional role of the public prosecutor or to requirements of the proper and functional administration of justice; they also violate the principles of equality and reasonableness (Article 3 of the Constitution) by virtue of the equal treatment of the clearly different decisions – such as those falling under the *genus* of acquittals – with the accused being derived of all rights of appeal. These arrangements correspondingly also breach the right to defend oneself (Article 24 of the Constitution), of which the accused's right of appeal is a specific manifestation (see on this last point, in addition to judgment No. 26 of 2007, judgment No. 98 of 1994 and the judgments, cited above, concerning the repealed provisions of the Code of Criminal Procedure).

The remaining complaint of the Rome Court of Appeal, concerning the alleged violation of the principle of the reasonable length of trials, is moot.

6. – The court cannot however declare unconstitutional the provisions governing acquittals for summary offences in relation to which only a fine may be imposed.

On this point, the court finds that – since, following its remittal by the Head of State to Parliament, the law reintroduced an albeit limited right of appeal against acquittals (those concerning decisive new evidence): a possibility not contemplated under the text originally approved – when enacting law No. 46 of 2006 Parliament failed to reintroduce the provision contained in Article 593(3)(2) of the Code of Criminal Procedure as previously in force, which did not permit acquittals against summary offences punished only by fine or by alternative sanctions. And this is in spite of the fact that the amended Article 593(3) of the Code of Criminal Procedure continues to provide

that there may be no appeal against convictions for summary offences for which only fines were imposed.

Such arrangements could in theory be justified if only the public prosecutor's perspective were considered, for whom an acquittal is a less favourable outcome than a non-standard conviction; however, for the opposite reason, it cannot be justified in relation to the accused. It is in fact clearly irrational that the latter be allowed to appeal against judgments which acquit him of a summary offence punishable only by fine (albeit without a full recognition of his innocence), whilst on the other hand he is prevented at root from appealing against judgments which find him to be responsible and actually pass sentence.

It is therefore necessary to ensure that the removal by the present judgment of the prerequisite for the accused's right of appeal of new decisive evidence, imposed by law No. 46 of 2006, does not generalise the above inconsistency (which is currently limited to the entirely marginal case where new evidence comes to light). For this reason the declaration of unconstitutionality should be limited to acquittals for offences other than summary offences for which only fines may actually be imposed (in other words summary offences punished only by fine or alternative sanction).

This solution appears to comply better with the system as a whole than the other solution – in theory possible – of declaring that the provisions contained in Article 593(3) of the Code of Criminal Procedure are unconstitutional *ad consequentiam*, thereby allowing the accused to appeal also against convictions where he was sentenced only to pay a fine; this latter solution would take on a decisively “creative” character, brining about a result – the abolition of all objective limits on appeals – without parallel under the previous legislation governing the institution and which was not intended by Parliament. The court in fact finds that – leaving aside the lack of legislative coordination pointed out above – when enacting law No. 46 of 2006 Parliament did not intend to modify the previous arrangements regarding the absence of any right of appeal against guilty verdicts for less serious summary offences. This is supported by the fact that the objective limit on appeals against convictions contained in Article 593(3) of the Code of Criminal Procedure was maintained, as well as by the entirely marginal status, mentioned above, of the cases in which appeals may be filed against acquittals,

introduced into the legislation following the remittal of the law to Parliament by the Head of State, as well, finally, as the fact that the general objective of law No. 46 of 2006 was to contain and not to broaden the cases in which appeals could be filed.

7. – The court therefore finds that Article 1 of law No. 46 of 2006 is unconstitutional insofar as, by replacing Article 593 of the Code of Criminal Procedure, it prevents the accused from appealing against acquittals for offences other than summary offences punished only by fine or by alternative sanctions, with the exception of the cases provided for under Article 603(2) of the Code, if the new evidence is decisive.

Similarly, the court also finds that Article 10(2) of law No. 46 of 2006 is unconstitutional, insofar as it provides that appeals filed by the accused, pursuant to Article 593 of the Code of Criminal Procedure, before the entry into force of the same law against acquittals concerning offences other than summary offences punishable only by fine or by alternative sanctions must be ruled inadmissible .

Whilst the court is not able to apply Article 27 of law No. 87 of 11 March 1953 due to the non-uniform nature of the case before the court, it nevertheless recommends that Parliament eliminate the imbalance between the powers of the public prosecutor and the accused, which are weighed against the latter, by preventing also the public prosecutor from appealing against acquittals relating to summary offences punished only by fine or alternative sanctions.

on those grounds

THE CONSTITUTIONAL COURT

hereby,

1) *declares* that Article 1 of law No. 46 of 20 February 2006 (Amendments to the Code of Criminal Procedure concerning the removal of the power to appeal against acquittals) is unconstitutional insofar as, by replacing Article 593 of the Code of Criminal Procedure, it prevents the accused from appealing against acquittals concerning offences other than summary offences punished only by fine or by alternative sanctions, with the exception of the cases provided under Article 603(2) of the same code where the new evidence is decisive;

2) *declares* that Article 10(2) of law No. 46 of 20 February 2006 is unconstitutional insofar as it provides that appeals filed by the accused, pursuant to Article 593 of the

Code of Criminal Procedure, before the entry into force of the same law against acquittals for offences other than summary offences punishable only by fine or by alternative sanctions shall be ruled inadmissible.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 31 March 2008.

Signed:

Franco BILE, President

Giovanni Maria FLICK, Author of the Judgment

Giuseppe DI PAOLA, Registrar

Filed in the Court Registry on 4 April 2008.

The Director of the Registry

Signed: DI PAOLA