JUDGMENT NO. 249 YEAR 2010

In this case the Court heard a referral order objecting to a provision whereby the fact that a person who had committed a criminal offence had previously breached the law on immigration constituted an aggravating circumstance. The Court struck down the provision on the grounds that it breached the requirement of equality in Article 3 of the Constitution, along with the principle under Article 25 that "that a person may only be punished for his or her own conduct and not for his or her personal characteristics".

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 61(11-bis) of the Criminal Code, as introduced by Article 1(f) of Decree-Law no. 92 of 23 May 2008 (Urgent measures on public security), or as in force following the amendments made upon conversion into Law no. 125 of 24 July 2008 (Conversion into law, with amendments, of Decree-Law no. 92 of 23 May 2008 laying down urgent measures on public security), initiated by the *Tribunale di Livorno* by the referral order of 4 February 2009 and the *Tribunale di Ferrara* by the referral order of 26 January 2010, registered respectively as no. 16 and no. 121 in the Register of Referral Orders 2010 and published in the Official Journal of the Republic no. 6 and no. 17, first special series 2010.

Considering the intervention by the President of the Council of Ministers;

having heard the Judge Rapporteur Gaetano Silvestri in chambers on 9 June 2010.

[omitted]

Conclusions on points of law

1. – The *Tribunale di Livorno* and the *Tribunale di Ferrara*, both comprised of a judge sitting alone, have raised questions concerning the constitutionality of Article 61(11-bis) of the Criminal Code, which provides that an ordinary aggravating circumstance shall consist in the fact that the guilty person committed an offence "whilst illegally in the country". The contested provision was introduced by Article 1(1)(f) of Decree-Law no.

92 of 23 May 2008 (Urgent measures on public security), converted with amendments into Article 1 of Law no. 125 of 24 July 2008.

1.1. – The referring courts assert first and foremost that Article 3 of the Constitution has been violated on various grounds.

According to the *Tribunale di Livorno*, the new aggravating circumstance is claimed to establish an undue equivalence in treatment between persons who have committed a mere administrative offence (as violations of immigration law were considered at the time the referral order was made) and those who have abused an official function or personal capacity (Article 61(9) and (11) of the Criminal Code), have already committed an offence in the past (Article 99 of the Criminal Code) or have already been identified in a court order as dangerous (Article 61(6) of the Criminal Code).

Also according to the *Tribunale di Ferrara*, the conduct covered by the contested provision was claimed to be treated in an equivalent manner, without justification, to entirely different scenarios, such as those involving fugitives from justice (based on the intentional avoidance of a measure of incarceration) or re-offenders, where the aggravation of the penalty is generally not automatic, is associated with the commission of an wilful offence, and may only be imposed if there has been an irrevocable conviction for the previous criminal act.

Moreover, both referring courts argue that a presumption of increased danger associated with the mere failure to obtain permission to reside within the country, without drawing any distinction between the various possible violations of immigration law, and without giving any consideration to whether the situation involves a "justified reason", is inherently unreasonable. The *Tribunale di Ferrara* observes in particular that the imposition of a stricter penalty could not be justified where there is no necessary correlation between the status of the perpetrator and the seriousness of the offence committed.

In addition, again according to the *Tribunale di Ferrara*, the difference in treatment established with regard to identical conduct between persons not lawfully in the country, and even between different persons who are in the country unlawfully, depending upon whether they are EU citizens, stateless persons or non-EU citizens, is also not justified.

1.2. – The *Tribunale di Ferrara* argues that both Articles 25(2) and 27(1) of the Constitution have been violated on the grounds that the more severe punishment for the offence is not pertinent and in that it relates exclusively to the "personal status of the perpetrator", thereby amounting to "criminal law tailored to the perpetrator".

1.3. – For its part, the *Tribunale di Livorno* invokes Article 27(1) of the Constitution as a reference parameter on the grounds that the contested provision undermines the relationship of proportionality between the penalty imposed and the degree of responsibility incurred personally by the perpetrator, and that it transfers the basis for punishment from guilt to the "type of perpetrator".

1.4. – Finally, both referring courts object to an alleged violation of Article 27(3) of the Constitution on the grounds that the imbalance caused by the excessive punishment in comparison with the offence, considered both in objective terms and from the subjective viewpoint of the convicted person, deprives the corresponding portion of the penalty of the requisite purpose of rehabilitation.

1.5. – As regards the scope of the request for a ruling striking down the provisions laid down in Article 61(11-bis) of the Criminal Code, the *Tribunale di Ferrara* seeks a declaration that two provisions, the normative effect of which relates entirely to the contested provision, are unconstitutional as a consequence. These include, in the first place, Article 1(1) of Law no. 94 of 15 July 2009 (Provisions on public security), which lays down a provision interpreting the rule establishing the new aggravating circumstance. In addition, it is also requested that Article 656(9)(a) of the Code of Criminal Procedure, which precludes the suspension of executive actions relating to (relatively) short custodial sentences be ruled unconstitutional with regard solely to the phrase "and for the offences for which the aggravating circumstance provided for under Article 61(1), no. 11-bis obtains".

2. – Since the two procedures initiated by the referral orders mentioned in the headnote have an identical object, it is appropriate for the relative proceedings to be joined in order for the questions to be assessed in a uniform manner.

3. – The question raised by the *Tribunale di Livorno* must be ruled inadmissible.

As this Court has already held (see Orders no. 277 of 2009 and no. 66 of 2010), an essential prerequisite for the relevance of the questions concerning the new

circumstantial provision is that it is specifically applicable in the proceedings before the referring court.

In the present case, as in other proceedings, no argument has been provided to illustrate how an aggravating circumstance based on the "unlawful nature" of the stay should be applied also for offences which, as is the case for the offence at issue in the main proceedings, consist precisely in violations of immigration law. Consideration must be given in this regard to the provisions of the first part of Article 61 of the Criminal Code, i.e. to the rule that ordinary [aggravating] circumstances only aggravate the offence "when they do not amount to constituent elements or special aggravating circumstances thereof".

Since no reasons whatsoever were provided for the interpretative assumptions underlying the application by the referring court of the contested provision, the question raised is inadmissible in these interlocutory constitutional proceedings (see *inter alia* Orders no. 346 of 2006 and no. 61 of 2007).

4. – The question raised by the *Tribunale di Ferrara* is well founded.

4.1. – This court has held as a general matter in relation to inviolable rights that they are vested "in individuals not insofar as they are members of a particular political community but as human beings as such" (see Judgment no. 105 of 2001). Accordingly, the legal status of foreign nationals must not be considered – as far as the protection of such rights is concerned – as a legitimate basis for different and less favourable treatment, especially under criminal law, as the area of law most directly related to fundamental human freedoms, which are safeguarded in the Constitution by the guarantees laid down in Articles 24 et seq, which regulate the position of individuals with regard to the state's punitive powers.

Rigorous compliance with inviolable rights implies that more severe criminal treatment based on the personal characteristics of individuals resulting from the commission of previous acts that are "entirely extraneous to the offence", thereby introducing criminal responsibility that is tailored to the perpetrator "in evident breach of the principle of the requirement of harm […]", will be unlawful (see Judgment no. 354 of 2002). On the other hand, "the constitutional principle of equality in general does not tolerate discrimination between the rights of Italian nationals and those of foreign nationals" (see Judgment no. 62 of 1994). Any limitation on fundamental rights must be based on

the assumption that, in situations involving an inviolable right, "its substantive content may not be subject to restrictions or limitations by any of the constituted powers of state except for the essential satisfaction of a primary public interest that is relevant under constitutional law" (see Judgments no. 366 of 1991 and no. 63 of 1994).

On account of the need to identify the constitutional status of the comparator interest, and thereby to establish the inevitable nature of the restriction of a fundamental right, the provision with restrictive effect must pass muster as reasonable, and it is not sufficient, for the purposes of controlling compliance with Article 3 of the Constitution, that it be found simply not to be manifestly unreasonable (see Judgment no. 393 of 2006).

4.2. – With reference to the specific case, it must be recalled that "personal and social circumstances" are included within the seven parameters explicitly mentioned in Article 3(1) of the constitution as prohibitions directly imposed by the Constitution; it is thus indispensable to subject to strict scrutiny situations involving suspected violations of or derogations from the rule that the "characteristics" listed in the constitutional provision are absolutely irrelevant as a basis for the application of different rules.

This Court has applied this method on several occasions in the area of criminal law, ruling unconstitutional provisions that had created criminal offences on the basis of absolute presumptions of dangerousness, thereby establishing unreasonable discrimination. Reference has already been made in this regard to the decision ruling unconstitutional a provision punishing drunken conduct (Article 688 of the Criminal Code) only for those who had already been convicted of a wilfully committed offence against the life or bodily integrity of another person (see Judgment no. 354 of 2002). From an analogous perspective, the Court ruled unconstitutional Article 708 of the Criminal Code (Unjustified possession of valuable items) on the grounds that the said provision endorsed "discrimination against a class of persons comprised of those convicted of offences against property of varying nature and seriousness", and there was no effective and current correspondence between the status in question and the protective function of the rule of criminal law (see Judgment no. 370 of 1996).

The past behaviour of individuals cannot justify criminal legislation that ascribes significance – irrespective of the need to safeguard other interests of constitutional rank – to a personal capacity and, by the provision considered to be discriminatory,

transforms it into a genuine "distinctive mark" of persons falling under a certain category, who are to be treated differently from all other persons.

5. – In accordance with the principles referred to above, it must be held that the aggravating circumstance provided for under the contested provision is not consistent with the causing of greater harm or greater danger to the interest protected by the criminal law provisions establishing and punishing individual offences.

On the other hand, the goal of combating illegal immigration cannot be deemed to be reasonable and sufficient, as this purpose cannot be pursued indirectly by classifying offences committed by irregular foreign nationals as more serious than identical conduct engaged in by Italian or EU nationals. In fact, it would end up entirely detaching the punishment imposed from the offence contemplated under the criminal law provision and the nature of the interests affected by it, which were specifically held by the legislator to be worthy of enhanced protection through the imposition of a criminal sanction.

The contradiction pointed out above takes on particular significance in view of the recent amendment introduced by Article 1(1) of Law no. 94 of 2009, which precluded the applicability of the aggravating circumstance concerned to the nationals of Member States of the European Union. It is in fact well known that EU nationals may be unlawfully resident, such as for example in the event that they fail to comply with an expulsion measure, which is punished under Article 21(4) of Legislative Decree no. 30 of 6 February 2007 (Implementation of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States) by a period of detention of between one and six months and a fine of between 200 and 2,000 euros. It is apparent also in this regard that the specific rules applicable to the aggravating circumstance contested in these proceedings are premised predominantly on the individual status of the perpetrator, as the rule is not applied to the nationals of Member States of the European Union even in more serious situations involving non-compliance with an expulsion measure, that is when the stay has been found to be unlawful and has been assessed as such by the competent law enforcement authorities, which have issued an order that was subsequently breached by the interested party, thereby incurring specific criminal responsibility. In other words, it is evident that the justification for the contested rule cannot be based on a presumption associated with

the violation of the rules governing entry into and stay within the country by non-Italian nationals. This is noted irrespective of the relationship between status as an unlawful immigrant and the typical harm caused by the offence considered in each individual case.

6. – The recent legislative amendments have highlighted with even greater clarity the discriminatory nature of the aggravating circumstance to which this question relates. In fact – at the time the acts that gave rise to the trial pending before the *Tribunale di Ferrara* were carried out – illegal entry into or stay within the national territory were considered by law as administrative offences, whilst at present, following the introduction of a self-standing offence of illegal immigration, such conduct now results in criminal responsibility. The unlawful nature of the stay is therefore relevant on two counts, and results in more severe criminal punishment which must be considered before this Court, as it is an integral part of the overall assessment of the constitutionality of the contested provision. This Court cannot disregard the legislative context at the time of its ruling, with which it must align its judgment, considered overall.

An imbalance has been noted above between the legal treatment of the previous breach of the law (unlawful entry into or stay in the country), which was not a criminal offence at the time, and the provision for a more severe criminal penalty put in place for "ordinary" offences committed by foreign nationals. It is also, and above all, clear that there is no link whatsoever between the breach of the law on immigration and the specific individual conduct targeted by the various provisions establishing criminal offences.

The introduction of the offence of illegal entry into and stay in the country not only did not remove the contradiction resulting from the heterogeneous nature of the previous conduct compared to the subsequent conduct, but also heightened that contradiction by laying the foundations for potential duplicate or multiple punishments, all resulting from the status acquired through a single violation of immigration law – which is now a self-standing criminal offence – but which did not however have any connection with the provisions of the criminal law alleged to have been violated by the person concerned.

A non-EU national is punished a first time when it is discovered that he or she entered into and stayed unlawfully in the country, but is punished again on one or more occasions due to his or her continuing status as an illegal immigrant in relation to breaches of the law – of a potentially indefinite number – that cause harm to interests and values that have nothing to do with the problem of controlling migratory flows.

The unreasonable nature of the consequence may be fully appreciated if it is considered that a minor offence punished only by a fine may give rise to a series of additional penalties, including custodial sentences, which may be particularly lengthy on account of the percentage-based criterion for calculation, giving rise to extended periods of incarceration. Not only are unlawfully resident foreign nationals punished more severely than Italian or EU nationals – assuming conduct of equal criminal relevance – but they are also exposed to the possibility of more severe criminal punishment for the entire duration of their subsequent stay in the country and for all offences provided for under Italian law (except those concerning unlawful conduct that is strictly related to illegal immigration).

All of the above violates the principle of equality enshrined under Article 3 of the Constitution, which does not tolerate any unreasonable differences in treatment.

7. – It is indeed the case that, in order to avoid the occurrence of substantive double jeopardy, the Italian system of criminal justice has put in place techniques whereby specific [patterns of] conduct are considered in unitary fashion, both in situations in which an ordinary aggravating circumstance amounts to an essential element of the offence or a special aggravating circumstance (Article 61(1) of the Criminal Code) – on this basis the question raised by the *Tribunale di Livorno* was ruled inadmissible, as illustrated in section 3 – and also in situations involving complex offences when "the law considers conduct which would in itself amount to an offence as constituent elements or aggravating circumstances of a specific offence" (Article 84(1) of the Criminal Code).

This provision, which seeks to prevent convictions for multiple offences, is not however applicable in the present case, which relates to an ordinary aggravating circumstance. Unlawful entry into and stay within the country are not provided for by the law as constituent elements of offences in general, but only of those involving violations of immigration law, and hence any ordinary offence committed by a foreign national who

is in the country illegally could not be considered as complex, and as such capable of "absorbing" the violation of Article 10-bis of Legislative Decree no. 286 of 1998. On the other hand, the unlawful nature of the stay is not a constituent element of a typical aggravated offence, as is the case for example in situations – provided for under Article 625(1), no. 2 of the Criminal Code – involving theft aggravated by damage to property, which may in itself constitute an act of criminal damage. On the other hand, the figure of a complex offence, which precludes the existence of substantive double jeopardy, amounts to an act which typically encompasses in substantive terms conduct which would otherwise be considered as an independent offence.

The construction of a complex offence must be a matter for the legislator, and cannot therefore result from the combination during application by the courts of individual criminal offences and ordinary aggravating circumstances.

Ultimately, it must be concluded that the contradiction highlighted above cannot be resolved through interpretation or by using systematic instruments already available under positive law.

8. – It must also be acknowledged that it is impossible to interpret the scope of the contested rule in a manner consistent with constitutional law. In fact, the literal wording of the provision containing it precludes the applicability of the aggravating circumstance concerned from being restricted only to cases in which the criminal conduct has been facilitated by the illegal presence of the perpetrator in the country or in which the offence was committed in order to enable illegal entry or stay. The legislative provision does not contain any expressions that can in any way authorise such narrow interpretations, which are at odds with the general and indiscriminate scope of the aggravating circumstance provided for. The case law of the Court of Cassation has already ruled to that effect (Court of Cassation, 3rd Criminal Division, judgment no. 4406 of 26 November 2009).

9. – In the light of the above, it must be concluded that the substantive rationale underlying the contested provision is a general and absolute assumption that illegal immigrants are more dangerous, which has implications for the sanctions imposed in relation to any breach of the criminal law committed by such a person.

This Court has already asserted that the offence itself of unlawfully remaining within the country, which also implies a specific breach of an individual expulsion order, is

limited to sanctioning unlawful conduct and "is a separate manner to any ascertained or presumed dangerousness of those responsible" (see Judgment no. 22 of 2007). The violation of the provisions governing the control of migratory flows may be punished by the criminal law, as a result of a policy choice by the legislator which cannot be censured within constitutional review proceedings. Nevertheless, it cannot automatically introduce an *ex ante* presumption that the person responsible is dangerous, as this may only result from a specific assessment carried out on a case by case basis, having regard to the specific objective circumstances and individual personal characteristics. In keeping with that approach, this Court has held that "the lack of any entitlement to remain in the country […] is not unequivocally symptomatic […] of any particular social dangerousness" (see Judgment no. 78 of 2007).

Ultimately, the status of an "illegal" immigrant – which is acquired through illegal entry into Italy or remaining after the expiry of a residence permit, due also to the careless failure to renew it within the applicable time limits – turns into a "stigma", which operates as a premise for different treatment under the criminal law of a person whose actions appear, in general terms and without reservation or distinction, to be characterised by an accentuated antagonism towards respect for the law. The specific characteristics of the individual person on trial are disregarded in favour of the general characteristics stipulated in advance by the law, on the basis of an absolute presumption which identifies a "type of perpetrator" who is subject to more severe treatment always and under all circumstances.

This means that the contested legislation contrasts with Article 25(2) of the Constitution, which stipulates that criminal responsibility must be based on a person's actions and thus imposes the rigorous requirement that a person may only be punished for his or her own conduct and not for his or her personal characteristics. This principle is undoubtedly valid also in relation to any elements possibly related to the offence.

In the final analysis, the provision in question violates the principle of harm as it does not classify the unlawful conduct as being more seriously harmful with specific reference to the interest protected, but aims to establish a general and presumed negative characteristic on the part of its perpetrator.

Moreover, it cannot be objected that status as an illegal immigrant nonetheless results from an original breach of the law, which may be used to legitimate an absolute

legislative presumption regarding the individual dimension of the unlawful act or the perpetrator's capacity to commit crime. In fact, it has already been noted that such conduct – which was previously punished by law only as an action giving rise to an administrative sanction, but now as a criminal offence – cannot have repercussions on all subsequent acts by the individual, even where there is no link with the original breach of the law, thereby providing for more severe treatment for the perpetrator compared to that stipulated by law for other persons in general.

10. – The arguments relating to the presence within Italian criminal law of aggravating circumstances relating to the fact that the perpetrator is a fugitive from justice (Article 61(6) of the Criminal Code) or a reoffender (Article 99 of the Criminal Code) are not capable of rebutting the conclusions reached above.

In situations involving fugitives from justice – the provision concerning which has not been referred to this Court for review at any time – the person who committed the offence is not generically classified by a characteristic resulting from prior conduct; on the contrary his or her situation results from a measure of incarceration issued by the courts with specific reference to him or her. At the time that measure is to be enforced the fugitive from justice makes a deliberate choice to avoid it, and indeed bears no responsibility for the aggravating circumstance where he or she was unaware of the existence of such a measure, even where this is due to his or her own fault.

In any case, such a scenario is not equivalent to that of an immigrant who is staying illegally in the country, in which the criminal law breached may lack any "individualised" content. In fact, under the rule establishing the aggravating circumstance various highly different scenarios are treated as equivalent in an abstract and general manner, through to cover situations involving persons whose "illegal" status results even from negligence and has not been established by any measure concerning them specifically.

It must be added that a fugitive from justice avoids the implementation of a custodial measure, which presupposes the commission of an offence punished by imprisonment or detention (which is without doubt serious, as it gives rise to an enforceable custodial sentence or implies pre-trial custody), whilst illegal immigration was previously only an administrative offence, which is currently punished by the law with a mere pecuniary fine.

On the other hand, under currently applicable criminal law, abscondment does not amount to an offence in itself, with the consequence that the possibility of double jeopardy does not arise in relation to the aggravating circumstance in question.

The reference to the aggravating circumstance of reoffending is equally inapplicable. In fact, Article 99 of the Criminal Code provides that the application of this circumstance is conditional upon a definitive conviction for a wilfully committed offence, which occurred prior to the offence for which the penalty is to be increased. In addition, reoffending aggravates the penalty only for wilfully committed offences. Therefore, both minor offences and offences committed through negligence are excluded from the scope of this provision of the Code whilst, as mentioned above, the offence of illegal immigration is a minor offence, punishable primarily by a pecuniary fine.

A reoffender is thus a person who intentionally commits a crime even after having been placed on trial and convicted for a wilfully committed offence, demonstrating that the direct and tangible experience of the prison system has had insufficient dissuasive effect. Nevertheless, with the sole exception of more serious offences, the application of the [aggravating] circumstance is conditional upon a specific finding by the court that there is a functional relationship between the perpetrator's previous offences and the new offence committed by him or her, which must be symptomatic – having regard to the nature of the previous offences and the time when they were committed – of his or her guilt and social dangerousness (see most recently Order no. 171 of 2009).

The provisions governing the aggravating circumstance objected to are entirely different, as they may be applicable even where the foreign national is unaware (through his or her own fault) that he or she is illegally resident (Article 59(2) of the Criminal Code), on the grounds that they disregard any functional link with the offence to which they apply, which the court prosecuting the offence must ascertain on an interlocutory basis (without moreover awaiting even any administrative appeals filed by the interested party).

It must be noted in this last regard that the prerequisite of a definitive conviction means that it is impossible in cases involving reoffenders for unfair and contradictory sentences to be adopted, which may by contrast result in the case under examination from a finding that the person was not illegally present in the country, whilst he or she has already been convicted of another offence, with the application of the aggravating

circumstance contested in these proceedings. This eventuality takes on a special significance in cases in which a foreign national seeks recognition of his or her status as a refugee and, whilst the relative procedure is pending, the aggravating circumstance is invoked in proceedings which, in contrast to those concerning the offence of unlawful entry or stay, cannot be stayed (see in this last regard Article 10-bis(6) of Legislative Decree no. 286 of 1998).

These paradoxes are precluded by the legislator in cases involving reoffenders, in line moreover with the presumption of innocence laid down in Article 27(2) of the Constitution, which does not permit further punishment to result from conduct that has not yet been definitively ruled to be unlawful under criminal law.

11. – In consideration of all of the reasons set out above, the contested provision must be ruled unconstitutional on the grounds that it violates Articles 3(1) and 25(2) of the Constitution.

The remaining challenges raised in relation to Article 27(1) and (3) are moot.

12. – The *Tribunale di Ferrara* argues that, following the removal from the legal order of the contested provision, certain further provisions introduced at the same time or subsequently must also be ruled unconstitutional as a consequence.

In effect, the present decision renders entirely superfluous a provision enacted with the sole purpose of introducing a rule concerning the interpretation of Article 61(11-bis) of the Criminal Code, providing that the relative aggravating circumstance should be deemed to relate solely to stateless persons and to nationals of non-EU Member States. This provision is contained in Article 1(1) of Law no. 94 of 2009.

There is therefore an inseparable relationship between the provision in question and that struck down which, according to the case law of this court, means that the former must be ruled unconstitutional as a consequence pursuant to Article 27 of Law no. 87 of 11 March 1953 (see most recently, *inter alia*, Judgment no. 186 of 2010).

An analogous conclusion must be reached with regard to a rule of procedural law which relates directly, and in this case exclusively, to convictions for offences in which the aggravating circumstance provided for under Article 61(11-bis) of the Criminal Code obtains.

Article 656 of the Code of Criminal Procedure regulates the enforcement of custodial sentences, providing *inter alia* for the suspension of enforcement in cases involving

(relatively) short sentences, in view of the possible application of measures alternative to incarceration. Paragraph 9(a) of the Article cited identifies the offences for which suspension may not be ordered. The list was supplemented first and foremost by Decree-Law no. 92 of 2008. The reference to offences aggravated by the perpetrator's status as an illegal immigrant was introduced upon conversion into Law no. 125 of 2008 which, after citing certain offences provided for under the Criminal Code, inserted the phrase "and for the offences for which the aggravating circumstance provided for under Article 61(1), no. 11-bis obtains".

This last provision cited – namely that specifically enacted, within a broader context, by the phrase transcribed above – is inseparably linked to the provision ruled unconstitutional in these proceedings: in fact, when the latter provision is removed, the procedural provision becomes entirely superfluous.

This provision must thus also be ruled unconstitutional in consequence.

On these grounds

THE CONSTITUTIONAL COURT

hereby,

declares that Article 61(11-bis) of the Criminal Code is unconstitutional;

declares that consequently, pursuant to Article 27 of Law no. 87 of 11 March 1953, Article 1(1) of Law no. 94 of 15 July 2009, no. 94 (Provisions on public security) is unconstitutional;

declares that pursuant to Article 27 of Law no. 87 of 1953, Article 656(9)(a) of the Criminal Code is unconstitutional in consequence with regard to the phrase "and for the offences for which the aggravating circumstance provided for under Article 61(1), no. 11-bis obtains,";

rules that the question concerning the constitutionality of Article 61(11-bis) of the Criminal Code, raised by the *Tribunale di Livorno* by the order mentioned in the headnote, is inadmissible.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 5 July 2010.