JUDGMENT NO. 149 YEAR 2018

In this case, the Court heard a referral order questioning the constitutionality of legislation that excluded persons who had received life sentences for certain serious offences from eligibility for prison benefits before a rigid cut-off date. This threshold applied irrespective of the engagement of the inmate in re-education, or any cooperation with the judicial authorities. The Court ruled that the legislation was inherently unreasonable in that it rendered an inmate eligible for semi-release before he or she would be eligible for other less far-reaching measures of release from prison (which should logically occur prior to semi-release). In addition, "in depriving the sentence deductions for the purpose of early release of any practical effect until twenty-six years, the contested legislation significantly reduces the incentive for persons who have received a life sentence to participate in re-education". The Court reiterated that the goal of re-education was absolute and "must always be guaranteed, even for the perpetrators of the most serious offences", and that the inmate's progress in the process of re-socialisation must be assessed with reference to his or her individual circumstances, and cannot be subject to blanket exclusions, referring also to ECHR case law.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 58-*quater*(4) of Law no. 354 of 26 July 1975 (Provisions governing the law on incarceration and the implementation of measures which deprive of or limit freedom), initiated by the Venice Supervisory Court within the proceedings concerning the imposition of non-custodial sentences brought by D.D.A. by the referral order of 28 April 2017, registered as no. 119 in the Register of Referral Orders 2017 and published in the *Official Journal* of the Republic no. 38, first special series 2017.

[omitted]

Conclusions on points of law

1.– The Venice Supervisory Court has raised, with reference to Articles 3 and 27(3) of the Constitution, questions concerning the constitutionality of Article 58-*quater*(4) of Law no. 354 of 26 July 1975 (Provisions governing the law on incarceration and the implementation of measures which deprive of or limit freedom), "insofar as it provides that persons who have received a life sentence for the offence provided for under Article 630 of the Criminal Code, who have caused the death of the person kidnapped, shall not be eligible for any of the benefits mentioned in Article 4-*bis*(1) unless they have actually served at least twenty-six years of their sentence".

2.– Article 58-*quater* of the law on incarceration, paragraph 4 of which is contested in these proceedings, was introduced into Law no. 354 of 1975 laying down the law on incarceration by Article 1 of Decree-Law no. 152 of 13 May 1991 (Urgent provisions to combat organised crime and on the transparency and proper conduct of administrative activity), converted with amendments into Law no. 203 of 12 July 1991.

In order to better understand the specific legislative framework within which the contested provision was enacted, it is appropriate, as a preliminary matter, to provide a summary of some of the essential features of the 1991 reform, which moreover was enacted shortly after another legislative change – by Decree-Law no. 8 of 15 January

1991 (New provisions on kidnapping for the purposes of extortion and to protect witnesses within judicial proceedings, and for the protection and punishment of state witnesses), converted with amendments into Law no. 82 of 15 March 1991 – which had introduced far-reaching measures in order to combat the abhorrent, and at the time widespread, criminal practice of kidnapping for the purposes of extortion, including the freezing of any assets that could be used in order to pay a ransom (known as "blocking the assets" of the victims of kidnapping and their family members).

2.1.– By means of Decree-Law no. 152 of 1991, the legislator sought to step up the fight against organised crime, *inter alia* by making a variety of changes to the 1975 law on incarceration, which had been subject to far-reaching changes only a few years before by Law no. 663 of 10 October 1986 (Amendments to the law on incarceration and on the implementation of measures which deprive of or limit freedom). The 1991 legislation, known more widely as the "Gozzini Law", had further reinforced the original rationale pursued by the law on incarceration in order to promote the gradual reintegration into society of persons who have received a custodial sentence; this was to occur in particular by enhancing the benefits available to inmates who demonstrably participate in re-education initiatives, as well as through the new provision for bonus periods of short release.

In 1991 – having been understandably alarmed by the growing threat from organised mafia-style crime, which would culminate in the Capaci and Via D'Amelio attacks the following year – the legislator made an initial partial correction to its approach compared to the underlying philosophy of the 1975 and 1986 amendments to the law on incarceration, introducing a system of exclusion from eligibility for benefits, which was applicable to persons convicted of certain specific offences.

That system was structured around a new Article 4-*bis* of the law on incarceration, which in its original formulation drew a distinction between two classes of convicted person. The first class was made up of persons convicted of all offences committed for the purposes of terrorism or subversion, mafia-type association pursuant to Article 416-*bis* of the Criminal Code and of other offences committed under the circumstances provided for in that Article or for the purpose of facilitating such associations, and of conspiracy for the purpose of the trafficking of narcotics and of kidnapping for the purpose of extortion: all of these offences are characterised by the prerequisite that the offender must have been a member of a criminal association, or at least – as is the case for kidnapping for the purpose of extortion – by the fact that this is normally the case, or by their specific linkage with criminal organisations. In relation to these offences, the legislator stipulated in 1991 that the benefits provided for under the law on incarceration could only be granted if, as a positive precondition, information was available from which it could be "excluded that there was any current link with organised crime or subversion". The second class, on the other hand, included the offences of murder and manslaughter, aggravated robbery and extortion, and the production and trafficking of major quantities of narcotics: for these offences, the links with organised crime were, in the assessment of the legislator, merely contingent and the new Article 4-*bis* provided that the grant of benefits should be subject to the negative prerequisite of a lack of any indications to suggest the existence of any links with organised crime or subversion.

The 1991 legislation introduced a series of strict temporal thresholds in relation to persons convicted of all of the offences mentioned in Article 4-*bis* (irrespective of whether they fell under class one or class two) in order to establish eligibility for external work, bonus periods of short release and semi-release, providing in particular

that, for persons convicted of these offences, a certain proportion (equal to two-thirds or, for bonus periods of short release, one-half) of the penalty must be served in prison. In parallel, the new Article 58-*ter* of the law on incarceration provided, as a positive incentive, that in the event that an inmate decided to cooperate with the judicial authorities, those time limits would no longer apply, with the result that the general provision on each benefit would apply again instead.

Article 4-*bis* of the law on incarceration was amended and supplemented on numerous occasions over the following years, although these interventions did not change its essential function as a threshold for exclusion from eligibility for prison benefits to inmates for a variety of – increasingly numerous – offences, even where the conditions laid down by Article 4-*bis* were not met, with the aim, essentially, of preventing inmates from leaving prison – even only for a few hours – where it was considered that they were likely to be still dangerous, in particular due to their persisting links with organised crime. The most far-reaching change compared to the original framework of the provision was moreover implemented in 1992 by Decree-Law no. 306 of 8 June 1992 (Urgent amendments to the new Code of Criminal Procedure and measures to combat mafia-type crime), converted with amendments into Law no. 356 of 7 August 1992, which provided that the benefits available under the law on incarceration, with the exception of early release, could only be granted to persons convicted of class one offences – including kidnapping for the purpose of extortion and kidnapping for the purpose of terrorism or subversion – if the inmate decided to cooperate with the judicial authorities; as a result of judgments of this Court, (in particular, Judgments no. 68 of 1995 and no. 357 of 1994), this condition was subsequently supplemented by the alternative scenarios of so-called "irrelevant" and "impossible" cooperation.

2.2.– With specific regard to persons convicted of the offences of kidnapping for the purpose of extortion or of terrorism or subversion, the original Decree-Law no. 152 of 1991, as converted, also introduced the provision contained in Article 58-*quater*(4) of the law on incarceration, which has not been subsequently amended and is contested in these proceedings; according to that provision, in cases in which such inmates have caused the death of the victim of the kidnapping, none of the benefits mentioned under Article 4-*bis*(1) of the law on incarceration may be granted to them until they have actually served at least two-thirds of the sentence imposed or, in the event that a life sentence was imposed, at least twenty-six years.

Given the specific reference to the "benefits mentioned in Article 4-*bis*(1)", it may be concluded that the benefit of early release is not covered by the exclusion provided for under Article 58-*quater*. In fact, Article 4-*bis* of the law on incarceration – as amended by Decree-Law no. 306 of 1992 and not subsequently amended in this regard – expressly excludes early release from its scope; this means that also the categories of inmate mentioned in Article 58-*quater* are able to accumulate sentence reductions (currently equal to forty-five days for each individual six-month period of sentence served) provided for under Article 54 of the law on incarceration from the start of the sentence. However, the adverb "actually" contained in Article 58-*quater* points to the unequivocal intention of the legislator to render eligibility for each individual benefit conditional upon having served two-thirds of the penalty or, in cases involving a life sentence, twenty-six years. As a result, this renders the so-called presumption of service of the sentence [in respect of accumulated periods of sentence reduction] established in general terms by Article 54(4) of the law on incarceration inoperable for these classes of

inmate for the purpose of the benefits mentioned; according to that provision, "[f]or the purposes of calculating the proportion of the sentence that must have been served in order to be eligible for the benefits of bonus periods of short release, semi-release and release on parole, the share of the sentence deducted pursuant to paragraph 1 shall be deemed to have been served. This provision shall also apply to persons who have received a life sentence".

Therefore, whilst for inmates in general, the temporal thresholds for eligibility for individual benefits may be shortened as a result of the reductions accumulated for the purpose of early release, in proportion with the number of six-month periods in which their involvement in re-education efforts has been positively assessed, for the special categories of inmate to which Article 58-*quater* applies, the threshold of two-thirds of the sentence, or twenty-six years in the event of a life sentence, cannot be reduced as a result of early release, even if such an entitlement has been accrued by the inmate as a result of his or her participation in re-education throughout his or her period of incarceration. This means that, with regard specifically to persons who have received a life sentence, any virtual sentence reductions accumulated for the purpose of early release (which are already incapable of affecting the ultimate duration of the sentence, which is imposed for his or her lifetime) become entirely irrelevant for practical purposes since – once twenty-six years of the sentence have actually been served – the ordinary thresholds for the grant of all other benefits provided for under the law on incarceration have already long since been passed.

This scheme of exceptions from the ordinary legislation is impervious to any procedural cooperation by the inmate, or to any situations deemed equivalent pursuant to Article 4-*bis* of the law on incarceration (cooperation that is impossible or irrelevant). Cooperation, or the equivalent situations, rather remain prerequisites for eligibility for any benefit – with the exception of early release – of inmates convicted of the offences mentioned by Article 58-*quater* which, as stressed on various occasions, include class one offences for the purposes of Article 4-*bis*; however, in the event that they cooperate with the judicial authorities, this does not result in any reduction in the thresholds of two-thirds of the sentence or twenty-six years provided for under Article 58-*quater*. This is in contrast to the position for persons convicted of all other offences mentioned in Article 4-*bis*, for whom cooperation with the judicial authorities renders inoperable, for the purposes of Article 58-*ter*, the higher thresholds for eligibility for each benefit established by the 1991 amendment, thereby resulting in the operation, in their place, of the ordinary thresholds applicable to inmates in general.

The exclusionary thresholds provided for under Article 58-*quater* of the law on incarceration do not however apply to release on parole pursuant to Article 176 of the Criminal Code, which does not fall within the scope of Article 4-*bis*, to which Article 58-*quater* itself refers. On the other hand, a different provision not included in the law on incarceration – Article 2 of Decree-Law no. 152 of 1991, as converted into law – enables persons convicted of kidnapping for the purpose of extortion, terrorism or subversion to qualify for release on parole only upon condition that they cooperate with the judicial authorities, or in the event that cooperation would be irrelevant or is impossible. However, under these circumstances, the inmate may indeed be eligible for release on parole, even where he or she has caused the death of the victim of the kidnapping, under the same conditions as apply for any other inmate, therefore including – for persons who have received a life sentence – the possibility to reduce the

limit of twenty-six years laid down by Article 176 of the Criminal Code as a result of sentence reductions accumulated in the meantime for the purpose of early release.

3.– The legislative framework outlined above shows that the legislation on incarcerations as a whole is significantly stricter for persons who have received a life sentence or a fixed tariff for the offences of kidnapping for the purpose of extortion, terrorism or subversion that have caused the death of the victim. This is the case not only compared to convicted prisoners overall, but also compared to persons convicted of the other offences to which the exclusions provided for under Article 4-*bis* of the law on incarceration apply, including class one offences, for which the grant of benefits is conditional upon their cooperation with the judicial authorities, or equivalent situations.

If the comparative analysis is limited only to persons who have received a life sentence for the offences referred to in Article 58-*quater* of the law on incarceration – the only offences relevant for the question of constitutionality currently before this Court – it is necessary in particular to highlight the following aspects that differentiate it from the regime applicable to such persons compared to that applicable to the general class of other persons who have received a life sentence, regardless of whether or not they are subject to the exclusions under Article 4-*bis* of the law on incarceration.

The general class of persons who have received a life sentence and who are not subject to the regime provided for under Article 58-*quater* of the law on incarceration is as a rule eligible for: a) external work after at least ten years have been served (Article 21(1), last sentence, of the law on incarceration), which may be reduced to a minimum of eight years in the event that the sentence reductions for the purpose of early release are recognised in full; b) bonus periods of release, also after ten years have been served (Article 30-*ter*(2)(d) of the law on incarceration), which may also be reduced to a minimum of eight years thanks to early release; c) semi-release, after twenty years have been served (Article 50(5) of the law on incarceration), which may be reduced to a minimum of sixteen years thanks to early release; as well as d) release on parole, after twenty-six years have been served (Article 176(3) of the Criminal Code), which may also be released to a minimum of around twenty-one years, again thanks to early release.

All of these benefits – which, in specific cases, are naturally always subject to a finding by the competent supervisory judicial bodies that the inmate deserves to receive the relevant benefit on the basis of the applicable prerequisites – may only be granted to inmates convicted of the offences provided for under Article 4-*bis* of the law on incarceration subject to the prerequisites laid down by that provision. The aim of these conditions is to prevent the release from prison of inmates who are still socially dangerous. In particular, for persons who have received a life sentence (also or exclusively) for class one offences, these prerequisites include their cooperation with the judicial authorities, or circumstances deemed to be equivalent by law.

As regards on the other hand only persons who have received a life sentence for kidnapping for the purpose of extortion, terrorism or subversion, the thresholds of incarceration mentioned above do not apply, even where they have cooperated with the judicial authorities or under equivalent circumstances. They are by contrast replaced with a single threshold of twenty-six years (which, as stressed above, cannot be reduced for the purpose of early release), which applies in relation to eligibility for external work, bonus periods of release and also – finally – semi-release. The twenty-six year threshold also applies, as already stressed, to release on parole in accordance with the general rule laid down by Article 176(3) of the Criminal Code (although in relation to

this institute only, the bar on the reduction in the threshold for eligibility as a result of the recognition of any periods of time for the purpose of early release does not operate).

4.– The referring court considers that, with regard specifically to persons who have received a life sentence for the offence of kidnapping for the purpose of extortion and who have caused the death of the victim, this statutory exception is not compatible first with Article 3 of the Constitution, on the grounds that the difference in treatment set out above may be unreasonable, and second, with Article 27(3) of the Constitution, due to the potentially inherent unreasonable nature of the legislation having regard to the necessary re-educative purpose of the sentence.

5.– Starting from the second ground for challenge, which in actual fact clearly covers the combined provisions of Articles 3 and 27(3) of the Constitution, the doubt raised by the referring court is held to be certainly well-founded.

The blanket application, without any exception, of the sole threshold of twenty-six years for eligibility for all prison benefits mentioned in Article 4-*bis*(1) of the law on incarceration in fact violates the principle – which underlies the entire law on incarceration, implementing the constitutional principle of the re-educational purpose of the sentence – of the "progressive evolution in treatment and flexibility of the sentence" (Judgment no. 255 of 2006; followed by Judgments no. 257 of 2006, no. 445 of 1997 and no. 504 of 1995), i.e. of the gradual reincorporation into society of persons who have received a life sentence throughout enforcement of the sentence.

In the framework set out by the law on incarceration, this principle is implemented according to an ideal pathway, the initial stages of which involve eligibility for outside work and the grant of periods of release. The aim of these is to stimulate the "proper conduct" of the inmate, as attested to by the fact that he or she has displayed a "constant sense of responsibility and appropriate personal conduct within activities organised in prisons and within any employment or cultural activity" – Article 30-*ter*(1) and (8) of the law on incarceration – and such initiatives have previously been defined by this Court (in Judgment no. 403 of 1997) as "an often irreplaceable instrument for ensuring that incarceration does not entirely prevent the furtherance of emotional, cultural or employment interests", which are functional to "effectively pursuing the progressive and harmonious reintegration of the individual into society, which constitutes the essence of the re-educative goal". Where these initial experiments are successful, the pathway of the gradual reintegration into society of a person who has received a life sentence continues with his or her eligibility for the more far-reaching benefit of semi-release, which involves the authorisation to "spend part of the day outside prison in order to participate in employment, education or other initiatives conducive to reintegration into society" (Article 48(1) of the law on incarceration). The process then culminates in the grant of release on parole, which is conditional upon a finding that the inmate "has acted in a manner such as to establish with certainty that the inmate shows genuine remorse" (Article 176(1) of the Criminal Code) and involves the full suspension of enforcement of the residual sentence, which is then extinguished unless grounds for revocation arise within five years of the time it was granted (Article 177(2) of the Criminal Code).

The legislation contested in these proceedings unreasonably interferes with this gradualist approach in relation only to persons who have received a life sentence for kidnapping for the purpose of extortion, terrorism or subversion. Moreover, it provides that such inmates may theoretically be eligible for release on parole – as a result of the deductions accrued for the purpose of early release – before the time (twenty-six years)

when they will be eligible for bonus periods of release, external work and semi-release. All of these benefits have been conceived of by the legislator as being naturally prior to release on parole, which implies the complete (and potentially definitive) departure of the inmate from prison.

This is associated with the risk that – even following continuous and proactive involvement in re-education in prison – semi-release may be denied to the inmate upon expiry of the period of twenty-six years precisely due to the lack of any previous positive experiences outside the prison walls during the second decade of the sentence. This is the position under the settled case law of the Court of Cassation, according to which – as an alternative measure to incarceration which enables the inmate to spend part of the day outside the prison, albeit involved in employment and socialising activities – semi-release can only be awarded following positive prior experiences after the grant of other less far-reaching measures within the same territory as that in which semi-release is to occur (*ex plurimis*, Court of Cassation, first criminal division, Judgments no. 41914 of 29 September 2009 and no. 40992 of 14 October 2008). This principle could indeed be extended, *a fortiori*, to release on parole itself, for which the inmate could theoretically be eligible even earlier than twenty-six years.

6.– In this regard, the legislation is inherently unreasonable not only from the perspective of the re-educational goal of the sentence, as objected by the referring court. In fact, it may also be added that, in depriving the sentence deductions for the purpose of early release of any practical effect until the threshold of twenty-six years, the contested legislation significantly reduces the incentive, for persons who have received a life sentence, to participate in re-education, which is essentially the rationale for the very institute of release on parole (Judgments no. 186 of 1995 and no. 276 of 1990).

It must be reiterated in this regard that the only practical consequence of sentence reductions for the purpose of early release for persons who have received a life sentence – for whom the end of the sentence is potentially "never" – consists precisely in bringing forward the cut-off dates for the granting of individual benefits. From the very first six months of the sentence, this mechanism represents a powerful stimulus for a person who has received a life sentence to participate in the re-education programme with a view – in particular – to potential eligibility for the first benefits, once the threshold of eight years since the start of the sentence has been reached (Judgment no. 274 of 1983).

On the other hand, if the possibility of being eligible for any prison benefit whatsoever, including bonus periods of release, are deferred until twenty-six years (which may be reduced to around twenty-one years for the purposes only of release on parole, subject however to all of the practical difficulties mentioned above, which could specifically prevent parole from being granted given the absence of any previous experiences of temporary release from prison), it is highly likely that a person who has received a life sentence for the two types of offence under consideration here may not have any practical incentive – at least during the initial enforcement phase of the sentence – for engaging in the re-education programme, given the absence of any tangible recompense in terms of bringing forward the benefits to sooner than two decades into the future, which is perceived in the common experience of each individual as being extremely distant (Judgment no. 276 of 1990) .

In this way, the legislation now before this Court for examination ends up frustrating the essential purpose of early release, which is however an essential pillar of the current law on incarceration (Judgment no. 186 of 1995) and of the underlying

philosophy of re-socialisation; this philosophy in turn constitutes the direct implementation of the constitutional principle laid down in Article 27(3) of the Constitution. Indeed, this Court has in the past already ruled unconstitutional the ban on early release for persons who have received a life sentence, precisely because that mechanism, which is based on a specific review of the inmate's involvement [in re-socialisation initiatives] throughout the entire sentence, must be deemed to be essential in order for the sentence to have its own (constitutionally mandated) re-educative effect, even in relation to the perpetrators of the most serious offences (Judgment no. 204 of 1974). Moreover, it is precisely by way of implementation of that principle that Article 4-*bis* of the law on incarceration (as in force since 1992) provides that the ineligibility for benefits stipulated for particular classes of inmate does not apply specifically to early release. Early release is therefore guaranteed for any inmate, so as to ensure that there is at all times an adequate incentive – even for inmates who have not yet broken their ties with their criminal associations of origin – for their involvement in re-education, towards which the entire prison experience must ultimately be directed (Judgment no. 274 of 1983).

7.– The contested provision is also inherently unreasonable, having regard to the necessary re-educative goal of the sentence, for a third reason.

The automatic operation of the time limit for eligibility for prison benefits provided for thereunder for persons who have received a life sentence prevents the courts from carrying out any individual assessment of the specific re-educative process completed by a person who has received a life sentence during enforcement of the sentence, due only to the type of offence for which he or she was convicted. That automatic mechanism – and the related fact that it is impossible for the courts to carry out any individual assessments – is however at odds with the role of re-educating the inmate which the enforcement of the sentence must be recognised as having. This goal cannot be disregarded (Judgment no. 189 of 2010), and must always be guaranteed, even for the perpetrators of the most serious offences, who have received the maximum sentence provided for under our legal order, namely life imprisonment (Judgment no. 274 of 1983). This is also the view taken within the settled case law of this Court, which has mentioned *inter alia* as a "constitutionally binding" criterion the requirement to exclude "rigid automatic mechanisms and the need, by contrast, to allow for an individual assessment" of prison benefits "on a case-by-case basis" (Judgment no. 436 of 1999). This is called for in particular where the automatic mechanism is related to non-rebuttable presumptions that the inmate is more dangerous due solely to the type of offence committed (Judgment no. 90 of 2017) since, where it not permitted to have recourse to criteria based on the individual circumstances, "the punitive option would end up overshadowing the re-educational aspect" (Judgment no. 257 of 2006), consequently giving rise to an automatic mechanism "which is certainly at odds with the proportionality principle and the requirement of punishment based on individual circumstances" (Judgment no. 255 of 2006; followed by Judgments no. 189 of 2010, no. 78 of 2007, no. 445 of 1997, no. 504 of 1995).

Once a person who has received a life sentence has served reasonable periods of his or her sentence specified by law and has proved that he or she has been beneficially involved in a re-educational process, any exclusions from eligibility for prison benefits may therefore be justified, as a matter of constitutional law, only where they are still based on individual assessments by the competent judicial bodies as to whether there are specific preventive reasons in favour of such an exclusion, consisting specifically in

the enduring social danger of the inmate. Moreover, such assessments could not fail to have a negative impact on the analysis of the re-socialisation process followed by the inmate, and for this reason may be deemed to be consistent with the principle that the re-educational function may not be sacrificed in favour of any other – albeit legitimate – function of the sentence (Judgments no. 78 of 2007, no. 257 of 2006, no. 68 of 1995, no. 306 of 1993 and no. 313 of 1990).

On the other hand, any provisions (such as the rule objected to in these proceedings) that lay down an absolute bar, for an extremely long period of time, on the eligibility for prison benefits of particular classes of inmate – even if they have participated significantly in the process of re-education and where there is no reason to conclude that they still represent a danger to society on the grounds provided for under Article 4-*bis* of the law on incarceration – owing solely to the particularly serious nature of the offence committed, or the need to send a robust deterrent signal to society at large, are incompatible with the prevailing constitutional framework. These last-mentioned criteria may lawfully be taken into account by the legislator when passing sentence. However – just as they cannot establish absolute presumptions when verifying the degree and adequacy of interim measures during the trial (Judgment no. 331 of 2011) – they cannot likewise offset the constitutional requirement of the re-educational function of the penalty during enforcement of the sentence. This is because the sentence must be considered to be focused fundamentally on the ultimate objective of the re-integration of the inmate into society (Judgment no. 450 of 1998), and enforcement must take account at all times, in the first instance through the law and subsequently by the courts, of the progress made by the individual inmate whilst serving the sentence.

All of this is fully consistent with the interpretative approaches recently adopted by the European Court of Human Rights, which has recognised – notwithstanding the absence from the Convention of a provision comparable to Article 27(3) of the Italian Constitution – that the prospect of the re-socialisation of the inmate as a necessary component of the enforcement of a life sentence is necessarily inherent within the dignity of the individual, the protection of which lies at the heart of the entire system of Convention rights. On this basis, it inferred the obligation for the Contracting States to allow persons who have received a life sentence under all circumstances to atone for their guilt and to reintegrate into society after they have served part of their sentence (European Court of Human Rights, Grand Chamber, judgment of 9 July 2013 in *Vinter and others v. United Kingdom*, paragraphs 111-113). This must occur above all in full accord with the presumption – which underpins Article 27(3) of the Constitution – that the inmate's personality is not irredeemably marked by the offence committed in the past – even if it was one of the most horrible offences – but continues to be open to the prospect of possible change. This prospect considers the individual responsibility of the inmate in embarking upon a path involving a critical re-evaluation of his or her past and the reconstruction of his or her personality, in line with the minimum requirements of respect for the fundamental values upon which civil cohabitation is premised. However, this cannot also fail to consider – also – the related responsibility of society to encourage the inmate to embark upon that path, including through the legislative provision for – and the specific grant by the courts of – benefits that gradually and prudently limit, as a response to the process of change already embarked upon, the just rigour of the sentence imposed for the offence committed, promoting the gradual re-integration of the inmate into society.

8.– On account of the above considerations, it may be concluded that the further objection formulated by the referring court concerning the unreasonable difference in treatment, pursuant to Article 3 of the Constitution, between persons who have received a life sentence to whom the contested provision applies and the general class of other persons who have received a life sentence is moot.

9.– The grounds for unconstitutionality illustrated above apply both to the legislation objected to in these proceedings, which is applicable to persons who have received a life sentence for the offence of kidnapping for the purpose of extortion pursuant to Article 630 of the Criminal Code, as well as the identical legislation laid down by Article 58-*quater*(4) of the law on incarceration for persons who have received a life sentence for the different offence of kidnapping for the purpose of terrorism or subversion pursuant to Article 289-*bis* of the Criminal Code.

Having regard to Article 27 of Law no. 87 of 11 March 1953 (Provisions on the establishment and functioning of the Constitutional Court), the effects of this ruling must be extended to the part of Article 58-*quater*(4) of the law on incarceration that applies to persons who have received a life sentence for the offence provided for under Article 289-*bis* of the Criminal Code and who have caused the death of the victim of the kidnapping.

10.– This Court is aware that this judgment could in turn create differences in treatment compared to the legislation – which has not been subject to constitutional review in these proceedings – laid down by Article 58-*quater*(4) of the law on incarceration in relation to persons who have received a custodial sentence of a specific duration for the offences provided for under Articles 289-*bis* and 630 of the Criminal Code and who have caused the death of the victim of the kidnapping. However, such an awareness cannot preclude a declaration that the legislation examined in these proceedings is unconstitutional. This is due to the settled case law of the Constitutional Court, according to which even if "[a]ny decision upholding a question of constitutionality gives rise to systemic effects[,] this Court cannot however decline to intervene in order to protect fundamental rights due to considerations of abstract formal coherence" at systemic level (Judgment no. 317 of 2009). It will fall to the legislator to specify the appropriate remedies for any differences in treatment that may arise as a consequence of this ruling.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) *declares* Article 58-*quater*(4) of Law no. 354 of 26 July 1975 (Provisions governing the law on incarceration and the implementation of measures which deprive or limit freedom) unconstitutional insofar as it applies to persons who have received a life sentence for the offence provided for under Article 630 of the Criminal Code who have caused the death of the victim of the kidnapping;

2) *declares*, in consequence, pursuant to Article 27 of Law no. 87 of 11 March 1953 (Provisions on the establishment and functioning of the Constitutional Court), that Article 58-*quater*(4) of Law no. 354 of 1975 is unconstitutional insofar as it applies to persons who have received a life sentence for the offence provided for under Article 289-*bis* of the Criminal Code who have caused the death of the victim of the kidnapping.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 21 June 2018.