

Ambiguous Position of Italian Constitutional Court on Life Imprisonment



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News

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On 15 April 2021, the Italian Constitutional Court ruled on the constitutionality of life imprisonment. The main issue concerned the possibility of granting release on licence to convicted criminals sentenced to life imprisonment for very severe offences. According to existing Italian law, life imprisonment cannot be reduced for the most serious crimes (such as Mafia-type criminal activities), i.e., no alternative measure or benefit can be applied at all.

This form of life imprisonment is also called "obstructive" life sentence (*ergastolo ostativo*). The convicted person can only benefit from rehabilitation and resocialisation measures if he/she cooperates with the judicial authorities "usefully" and, as a direct consequence, is able to prove that contacts with criminal organisations have been permanently broken off. However, this kind of "cooperation" does not often take place, *inter alia*, because the imprisoned person fears revenge will be exacted on his/her relatives by the Mafia-type group he/she was affiliated with.

The Italian Constitutional Court declared "obstructive" life sentences to be unconstitutional, on the basis of the principle of equality and the presumption of innocence (Art. 3 and Art. 27 It. Const.) and in accordance with the prohibition of inhuman and degrading treatment (Art. 3 ECHR). The ruling is in line with a judgment of the ECtHR (ECtHR, 13 June 2019, *Marcello Viola v. Italy* (no. 2) (application no. 77633/16)), in which the Strasbourg Court stated that the *ergastolo ostativo* violates Art. 3 ECHR. Nevertheless, the position taken by the Italian Constitutional Court is somewhat peculiar. The Court has been postponing its final decision on this topic for one year and is waiting for the legislator to intervene. As a consequence, the problem still remains unsolved, and persons convicted of irreducible life sentences continue to serve them.

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