

Prisoners sentenced with unconstitutional norms have the right to be resentenced, the Court of Cassation has ruled.

(5 June 2014 - By Grazia Zuffa, Forum Droghe, Italy)

Italian NGOs advocate for law by decree that would immediatly reduce illegitimate penalties.

In February, the Italian Constitutional Court ruled that most of the 2006 drug law norms were unconstitutional. Following this pronouncement, at the end of May, the Court of Cassation decided that people sentenced and incarcerated under the illegitimate norms have the right to be resentenced. The decision may affect about 10.000 prisoners detained for cannabis crimes. In fact, one of the main changes in the new antidrug text as amended by the Constitutional Court concerns the reintroduced distinction between cannabis and “hard” drugs: while in the 2006 - so called Fini-Giovanardi- law, penalties for any drug crime ranged from 6 to 20 years, according to the new text cannabis crimes will be punished with incarceration from 2 to 6 years.

It is worth considering that in these months more norms affecting prison overcrowding have been cancelled by the Constitutional Court: that is the case for the “three strikes and you are out” legislation (the so called Cirielli law), which prevented recidivists to benefit from alternatives to incarceration; and of the norm from the immigration legislation (the so called Bossi-Fini) establishing incarceration (up to 5 years!) for illegal migrants who did not comply with expulsion orders.

Also for the above norms concerning recidivism and immigration, the Court of Cassation has ruled that prisoners sentenced with the illegitimate norms have the right to have their penalties reduced. As a result, both the Constitutional and Cassation Courts’ rulings should reduce prison overcrowding significantly.

It is an important success for the coalition of Italian NGOs (led by Forum Droghe, Società della Ragione, Antigone, Coordinamento Nazionale Comunità di Accoglienza) that have been fighting for the “Drugs, prisons and human rights” campaign, promoting innovative bills while challenging the legitimacy of the Fini-Giovanardi law.

But the fight for the drug law reform and for prisoners’ rights is not over. The first objective concerns the implementation of the Courts’ rulings. Inmates seeking release based on the Cassation’s decision should file a request to the judge to have their penalties reduced: this is not an easy procedure for more helpless prisoners, who often cannot afford a lawyer and may not take advantage of their rights. On the other hand, judges might be overwhelmed with thousands of files from single prisoners, with the risk of blocking the administration of Justice. For this reason, the coalition of NGOs is advocating for an immediate law by decree to have the penalties automatically reduced for all detainees affected by the Courts’ rulings.

Secondly, the Italian drug legislation needs an accurate and consistent editing after so many judiciary interventions. In addition, important problems are still pending: for example, cultivation for personal use has not been decriminalized yet. Therefore, the second step will be the approval of an organic drug law reform.