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PRISON SEXUALITY DENIED

Inmate's request of temporary leave to share intimacy with his wife "rejected" by the Court of Cassation. Note to Cass. Pen., Sec. I, 29 September 2015 Hearing, (deposed 12 January 2016), No. 882.

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Last September the Court of Cassation's first section issued a bizarre and interesting judgment concerning an inmate who was denied a necessity permit, in accordance with art. 30, par. 2 of Criminal Procedure Code in order to visit his wife and share marital intimacy at the homeless shelter "Piccoli Passi" in Padua.

The inmate, when requesting, was serving a time of imprisonment for more than 24 years due to several felonies, among them, criminal conspiracy, murder, extortion and several more, all aggravated in accordance with article 7 of the law no. 203/1991 – also known as resort to mafia's method - with his imprisonment's end date in October 2034.

The "criminal" status of the inmate, as it was outlined in the sentence, prevented him from having any of the penitentiary benefits, among which, the possibility of receiving temporary release opportunities, in accordance with the first paragraph of art. 30 of Criminal Procedure Code. As is known, the positive admission to temporary release permits is firstly subject to the penalty's limits and, secondly, to the positive acknowledgement of the inmate's good behaviour during the time of imprisonment. Such a measure, indeed, is part of the re-education process that should – ideally - take place in prison.

Because of the crimes committed and the combined total of sentences to serve, the inmate was not part of any of the regulation's categories. In addition, some of the felonies he was condemned for (i.e. art. 416 bis) are included in the regulation ex. art. 4 bis of Criminal Procedure Code, which, as is known, highly restricts the entitlement to prison benefits. As stated in art. 30 ter of the above mentioned Code, the inmate could have been entitled to the benefits only after having served at least half of the sentence, and, in any case, no more than ten years.

What emerges from the sentence is that the inmate did not gain the necessary requisites to make use of the temporary leave. Nonetheless, the inmate's defence claimed the permit's concession ex art. 30, par. 3 of Criminal Procedure Code, that is, a permit accounted for meeting family needs of peculiar seriousness, in order to allow his client to "consume" the marriage and have intercourse with his wife.

The defence also claimed that the law does not fully conform to the constitutional legitimacy. It prevents, in fact, the inmates who have not gained the requirements for benefits, from practising their sexual freedom and family management, in accordance with articles 2, 3,27,29,117 of the Consitution and 2, 8 of CEDU. The instances were rejected by the Cassation, on the grounds that such a request, in accordance with article 30, par. 3 of Criminal Procedure Code, cannot be considered a need of peculiar

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seriousness, while, in accordance to pacific jurisdiction, situations of imminent life threatening of a relative or cohabitant " and, exceptionally, for familiar circumstances of peculiar seriousness" are included. Judges annulled any doubt on the constitutional legitimacy of the law and also maintained that the inmate's sexual freedom is safeguarded, inasmuch his needs can be met within the standard temporary leaves.

According to the Court, public security reasons – seriousness of felonies committed, total of sentences to serve – justify the denial of the permission to share intimacy with his wife – or say "consume" the marriage whose celebration was held by a civil ceremony in prison in 2009, and never enjoyed.

Article 30, par. 1 of the afore-mentioned Code is, so far, the only possibility for the inmate to share intimacy, to which he will not be entitled until 2020, because of having to serve ten years, plus the recognition of good behaviour. Provided that, by 2020, the inmate or the spouse will not choose the marriage annulment for non-consummation.

References

[1] Cfr. Cass. pen., sez. I, 26 novembre 2008, n. 48165.

[2] See the original article