

Press Release of 1 February 2022

THE RATE OF 250 EUROS PER DAY FOR CONVERTING A CUSTODIAL SENTENCE INTO A FINANCIAL PENALTY IS EXCESSIVE

A law setting at 250 euro the minimum rate for each day of imprisonment makes the option of converting a custodial sentence into a financial penalty a privilege for the rich.

This finding was made by the Constitutional Court in [judgment no.28](#) filed today (author Francesco Viganò), in which the Court ruled Article 53(2) of Law no. 689 of 1981 partially unconstitutional insofar as it violated the principles of equality and the rehabilitative purpose of criminal punishment. The Court accordingly held that the minimum rate of 250 euros must be reduced to the 75 euros already established by the law regulating the conversion of custodial sentences into financial penalties within the different context of summary penalty orders. The Court did not alter the current maximum daily limit of 2,500 euros. Noting that the Government has recently been delegated by Parliament to amend the legislation governing the replacement of custodial sentences with alternative penalties, the Court stressed that the legislator may, at its discretion, identify different solutions, should these be considered to be more consistent with the constitutional principles set out in the judgment.

The provision contested by the Court of Taranto stipulates that the courts may convert any custodial sentence not exceeding six months into a financial penalty. The amount of that penalty is obtained by multiplying the number of days of the custodial sentence by a daily penalty unit. The amount of the daily penalty unit is set

taking account of the offender's financial circumstances. However, according to the legislation now declared unconstitutional, the minimum value of each unit is 250 euros.

The Court held that, whereas the impact of custodial sentences of any given duration is, as a general rule, the same for all persons convicted of an offence, the same does not apply for financial penalties: for example, a fine of one thousand euros may have a greater or lesser punitive effect depending upon the offender's disposable income and assets. Thus, arguing from the perspective of "substantive" and not merely "formal" equality, the judgment stresses that the courts must always be able to adjust a financial penalty in line with the offender's actual financial circumstances in order to ensure that the sentence is not disproportionately severe.

The Court went on to note that a minimum daily penalty unit of 250 euros is much higher than the amount that the vast majority of people currently living in Italy will reasonably be able to pay. Moreover, when multiplied by the number of days comprising the custodial sentence, a rate set at this level will produce outcomes that are extremely onerous for many people.

The case examined by the Court of Taranto is emblematic: a person convicted of criminal harassment (*violenza privata*) for having parked his car in front of a driveway entrance had concluded a plea bargain, resulting in a sentence of three months' imprisonment. As such, under the terms of the contested legislation, he would be required to pay 22,500 euros, an amount much higher than his annual income.

Within the everyday practice of the courts, the application of a conversion coefficient at such a high level has resulted in a massive fall in the recourse to daily penalty units in lieu of custodial sentences. This option is however a key instrument in avoiding incarceration. Moreover, following the commission of an offence of modest

severity, the effect of incarceration may actually be to foment crime rather than to achieve resocialisation.

The Court concluded that in order to provide a serious alternative to custodial sentences, as occurs as a matter of fact in many other countries, the legislation governing financial penalties must ensure that such penalties are set at a level commensurate with the severity of the offence and the offender's financial circumstances, and later effectively enforced.

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