



Press Office of the Constitutional Court

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NULLUM CRIMEN SINE LEGE AND INTERPRETATION BY ANALOGY: THE COURTS MAY NOT APPLY A CRIMINAL PROVISION TO INSTANCES OTHER THAN THOSE ENVISAGED BY THE PROVISION ITSELF

The prohibition on the interpretation by analogy of a criminal provision *contra reum* “operates as a limit on the options available to the courts when interpreting the text of the law”.

This is the essence of the ruling contained in [Judgment no. 98](#) (author Francesco Viganò), filed today. In this case, the Constitutional Court ruled inadmissible a question of constitutionality raised by the Court of Torre Annunziata.

The referring judge was conducting a trial against a person who had been indicted for the offence of aggravated stalking in relation to a variety of abusive conduct directed against a woman, with whom he had been in a relationship for a few months, and who regularly visited his family home.

At the end of the trial, the judge invited counsel to discuss the possible requalification of the criminal charge as abuse of a family member, which is a more serious offence under Italian law. When doing so, the judge referred to the case law of Court of Cassation, whereby such an offence is established in respect of abusive conduct committed within relationships characterised by “strong and stable links between partners” and the “sharing of life plans”.

The defendant then requested that he be tried summarily, and thereby to have his sentence reduced by one third in the event of conviction. Since the Criminal Procedure Code does not allow summary judgments to be requested at the end of the trial, the judge observed that such a preclusion is incompatible with the principle of equality and the right to a fair trial. In fact, according to the court, the prospect of requalification of a charge entails a fundamental modification of the scenarios of

possible sentences that the defendant considered with his defence lawyer, when he decided to request a full trial rather than seeking a summary judgment or a plea agreement with the prosecution.

The judge accordingly referred a question of constitutionality to the Constitutional Court, with the aim of enabling the defendant to request summary procedures when confronted, for the first time at the end of a trial, with the prospect of a potential requalification of the criminal charge brought against him.

The Constitutional Court did not examine the merits of the question, since it held that, in the particular case at issue, the referring judge had not provided sufficient reasons for the possible change in the legal qualification of the criminal charge.

In this regard, the Court stressed that the legal provision establishing the offence of abuse of a family member requires that the abuse be committed against a person from the same “family”, or sharing the same “household”, whereas the offence of aggravated stalking requires that the conduct be carried out against a person “who is, or has been, in a relationship” with the perpetrator.

It therefore recalled the fundamental canon of interpretation applicable in criminal matters, based on Article 25(2) of the Constitution, which prevents the judge from interpreting criminal provisions by analogy. The Court pointed out that this prohibition prevents the provision being applied to any situations that do not explicitly fall under its wording. The rationale of this prohibition, on the one hand, is linked to the principle of separation of powers – which confers upon the legislator, and not the courts, the power to set the boundaries of criminal offences – and, on the other hand, aims to ensure predictability in the application of criminal law. This purpose would indeed be frustrated, were the courts allowed to apply a criminal provision in instances other than those envisaged by the provision itself.

The Court highlighted that the trial court had not provided any explanation for its conclusion that – in the context of a love affair that had lasted only for a few months, and had involved occasional visits by one partner to the home of the other – the victim could be considered, as a matter of ordinary language, as a person belonging to the same “family”, or sharing the same “household”, as the defendant.

Absent such an explanation, the Court concluded, the application of the offence of abuse of a family member rather than the offence of stalking would result in an

interpretation by analogy, *contra reum*, of the relevant criminal provision, which as such is prohibited by Article 25(2) of the Constitution.

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