

Italian Constitutional Court

Legal summary

Judgment No 203/2024

ECLI:IT:COST:2024:203

THE ORDER TO LEAVE A MUNICIPALITY (*FOGLIO DI VIA*) DOES NOT LIMIT PERSONAL LIBERTY AND CAN THUS BE ISSUED BY THE POLICE WITHOUT SUBSEQUENT VALIDATION BY A JUDGE

In Judgment No 203/2024, the Constitutional Court rejected a constitutional challenge to the statutory measure empowering the chief of police (*questore*) to issue an order to leave a municipality (*foglio di via*) on grounds of public security. The Court found that, on the one hand, this power does not contravene **Article 13 IC**, mandating judicial authorisation (or subsequent validation) of restrictions on personal liberty, and, on the other, it leads to no arbitrary discrimination contrary to **Article 3 IC**.

The Court acknowledged that orders to leave a municipality limit freedom of movement and may interfere with the enjoyment of other fundamental rights by banning access to a specific place. However, since they impose no positive obligations (e.g., to stay in a certain municipality), they restrict the freedom of movement without entailing limitations of personal liberty, which on the contrary require judicial authorisation or validation under Article 13 IC.

Additionally, the Court highlighted that other public security measures – such as police surveillance or bans on attending sporting events accompanied by an obligation to report to the police – need judicial authorisation or validation because they impose more severe limitations of fundamental rights compared to orders to leave a municipality. As a result, the rationale for requiring judicial authorisation or validation does not apply to orders to leave a municipality.

Main proceedings

In 2022, the Chief of Police (*Questore*) of Taranto issued an order to leave a municipality (*foglio di via*) against C.P., pursuant to Article 2 of Legislative Decree No 159 of 2011, known as the *Anti-Mafia Code* (the “**challenged provision**”).¹ The order was based on an individual assessment of social dangerousness, determined by C.P.’s habitual use of illegal drugs. It required C.P. to leave the territory of the municipality of Taranto and return to his residence in a nearby village. The order also precluded him from entering Taranto for three years.

¹ Under Article 2, if the police determines that a person is habitually engaging in criminal conduct in a municipality other than the one where they reside, “the chief of police, by reasoned order, can order the individual to leave the territory of that municipality within 48 hours and prohibit their return without prior authorisation, for a period between six months and four years”.

C.P. subsequently returned to Taranto multiple times, and this conduct led him to face charges in the Criminal Court of Taranto (the “**referring court**”) for breaching the order.

The referring court stayed the proceedings and issued a referral order to the Constitutional Court, asserting that the challenged measure violates the Italian Constitution (IC).

Complaints

The referring court argued that, in the case at stake, the order to leave a municipality interfered significantly with C.P.’s personal liberty and, for this reason, **it should have been issued or at least validated by a judge**. By empowering the chief of police to issue leave orders, the challenged provision **would contravene Article 13 IC (Right to personal liberty), which requires that all restrictions of personal liberty be ordered or validated by a judge**.

In particular, in the case of C.P., the order to leave Taranto (and not return there) did not simply curtail his freedom of movement within the country, as guaranteed by Article 16 IC (**Freedom of movement**). The order also restricted C.P.’s personal liberty in two ways. First, it barred him from entering the entire municipality of Taranto, the only major city near his place of residence. This prohibition severely affected C.P., who was indigent and earned his livelihood as an informal parking attendant in Taranto. Second, the leave order described C.P. as a habitual user of illegal drugs, causing social and legal degradation (*degradazione giuridica*) akin to a restriction of personal liberty.

The challenged provision also arguably violated Articles 3 (Principles of equality and non-discrimination) by providing for an arbitrarily disparate treatment of comparable situations. Unlike orders to leave a municipality, other public security measures with similar effects require judicial validation. Specifically, the referring court cited the orders banning access to sporting events (*divieto di accedere alle manifestazioni sportive*, or DASPO) and orders banning access to specific urban places (the so-called *DASPO urbano*) for more than one year.

Decision of the Court

The Constitutional Court determined that the challenged provision **does not violate Articles 3 (Principles of equality and non-discrimination) and 13 (Right to personal liberty) IC**.

Reasons for the decision

The Court observed at the outset that Article 13 IC protects personal liberty and mandates judicial authorisation or validation for any restriction on it, while Article 16 IC protects freedom of movement, allowing limitations provided by law for security reasons to be imposed without judicial authorisation or validation.

The issue was therefore whether the restriction entailed by an order to leave a municipality amounts to a limitation of personal liberty. The Court answered this question in the negative by recalling its previous rulings in which it had established that **restrictions to personal liberty occur either (a) when there is physical coercion or (b) when they result from**

obligations that (i) cause the **individual's legal degradation** and (ii) are **comparable in intensity to subjugation to an external force**.

Since the parties agreed that the order at issue did not involve any physical coercion, the question before the Court was whether the criteria under (b) (i) and (ii) were satisfied.

In previous judgments,² the Court acknowledged that orders to leave a municipality³ undermine social dignity and carry social stigma as they are based on assessments of the social danger posed by the individual on which they are imposed. However, the Court observed that such orders only curtail the right to access a specific place but leave the person free to go wherever else they like. Therefore, the Court held that the obligation set by the orders does limit freedom of movement but is not comparable in intensity to subjugation to an external force. For this reason, it does not amount to a restriction of personal liberty.

By contrast, in other previous judgments,⁴ the Court examined the preventative measure of police surveillance, which imposes a curfew and an obligation to periodically report to the police. Due to the increased intensity of these restrictions, the Court concluded that police surveillance not only limits freedom of movement, but also impinges on personal liberty, thereby requiring judicial validation.

As to so-called DASPO orders, the Court's previous case law similarly held that, when the order consists of a mere prohibition on attending sporting events, it only implies a restriction of freedom of movement. By contrast, when the order is accompanied by an obligation to report to the police on the days and times of sporting events, it also restricts personal liberty and requires judicial validation since it imposes a constraint akin to physical coercion in that it limits the person's freedom to choose where to be.⁵

In the present case, the Court rejected the request of the referring court and an *amicus curiae*⁶ to depart from this established case law and confirmed that an order to leave a municipality does not restrict personal liberty and, therefore, does not require judicial validation.

Preliminarily, the Court emphasised that overturning its previous decisions could disrupt the expectations of legal stability of the legislature and all public authorities. For this reason, the Court should be relied upon to uphold its own case law, unless there are cogent reasons to depart from it. These reasons arise, for instance, when its previous decisions are incompatible with subsequent ones of the same Court or the supranational courts; when the social or legal context has evolved significantly, requiring to take into consideration new factual or legal elements; or when the Court becomes aware of the undesirable effects of its previous decisions.

Against this background, the Court recognised that orders to leave a municipality may undermine social dignity and carry social stigma as they are based on an assessment of

² Constitutional Court, Judgments Nos 2/1956 and 45/1960.

³ As provided for in Article 157 of the Royal Decree No 773 of 18 June 1931, the so-called Code of Public Security.

⁴ Starting from Constitutional Court, Judgment No 11/1956.

⁵ Constitutional Court, Judgments Nos 143/1996, 144/1997, 136/1998 and 512/2002.

⁶ Namely, the Italian Association of Criminal Law Professors.

social dangerousness that negatively evaluates a person's moral and social worth. However, such legal degradation alone does not engage Article 13 IC. **For a restriction to constitute a limitation of personal liberty, it must impose significant constraints comparable to physical coercion.**

In the factual scenario of the main proceedings, the Court acknowledged the referring court's concerns about the leave order's severe effects on C.P.'s livelihood and fundamental rights other than freedom of movement, such as work, education, family life and health. Yet, these effects were not comparable in intensity to a physical constraint. The negative obligation to avoid Taranto was less constraining than a positive obligation to be somewhere in particular. Unlike other measures of public security, an order to leave a municipality does not impose a range of enforceable positive obligations and prohibitions.⁷

The Constitutional Court has based on this distinction between negative and positive obligations its understanding of the dividing line between restrictions to freedom of movement and personal liberty for almost sixty years. This distinction, moreover, offers a clear and predictable guideline that the legislature can rely upon.

The Court also mentioned the possibility that, **in future, it might reconsider this approach, should the legislature excessively extend the scope of the negative obligations created by these preventive measures**, such as imposing geographically wide or prolonged bans. In this hypothetical scenario, the presumption that negative obligations are less burdensome than positive ones might become untenable.

The Court noted that the European Convention of Human Rights requires no judicial authorisation for restrictions of either freedom of movement or personal liberty.⁸ In this respect, while Italy effectively provides for a higher standard of protection of personal liberty compared to the Convention, the latter does not require the judicial authorisation or validation of measures merely impinging on freedom of movement.

Finally, the Court pointed out that the Italian system provides for the possibility to challenge an order to leave a municipality after it is issued by police before an administrative court. Furthermore, the judicial review of the order's legality is a necessary component of the criminal court's task in criminal proceedings relating to an alleged breach of the the leave order (as was the case in the proceedings before the referring court). In the course of reviewing the legality of an order to leave a municipality, the administrative or criminal court must consider the proportionality between the aims of the police measure and its impact on the person's rights, in terms of freedom of movement as well as enjoyment of their other fundamental rights and freedoms.

Type of proceedings	Constitutional review by referral order
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⁷ For instance, the obligation to stay home between certain hours, to report to the police at specific times, or to reside in a specific place.

⁸ Respectively, see Article 2 of Protocol 4 and Article 25 of the European Convention.

President of the Court	Augusto Antonio Barbera
Judge rapporteur	Francesco Viganò
Composition of the Court	Augusto Antonio Barbera (President), Giulio Prosperetti, Giovanni Amoroso, Francesco Viganò, Luca Antonini, Stefano Petitti, Angelo Buscema, Emanuela Navarretta, Maria Rosaria San Giorgio, Filippo Patroni Griffi, Marco D'Alberti, Giovanni Pitruzzella, Antonella Sciarrone Alibrandi
Delivery of the judgment	17 December 2024
Challenged provision	Article 2 of Legislative Decree No 159 of 6 September 2011 (the "Anti-Mafia Code").