JUDGMENT NO. 149 OF 2022

In the field of offences against intellectual property, the right to *ne bis in idem* enshrined in Article 4 of Protocol n. 7 ECHR prevents the opening or the continuation of a criminal proceeding against an individual for the same behaviour which has already been finally adjudicated in another proceeding of a punitive nature.

A criminal court requested the Constitutional Court rule on the compatibility with Article 117 (1) of the Italian Constitution, in conjunction with Article 4 of Protocol n. 7 ECHR, of the provision of the Italian code of criminal procedure on *ne bis in idem* (Article 649 of the code). This provision states that a court must discontinue any criminal proceeding against the defendant as soon as it becomes apparent that he or she has already been tried for the same offence and the judgment has become final.

In the case at issue, a defendant in a criminal trial concerning an intellectual property offence argued that he had already been sanctioned by an administrative body for the very same infringement of copyright law, albeit qualified differently in law. The referring court essentially asked whether the mentioned provision of the Italian code of criminal procedure was unconstitutional in as far as it did not set forth an obligation to discontinue the proceeding when the defendant has already been adjudicated for the same behaviour in an administrative proceeding, which might potentially lead to the imposition of a punitive sanction according to the *Engel* criteria.

The Court answered the question in the affirmative but limited the scope of its judgment to the specific field of offences against intellectual property, at issue in the main proceeding. The Court applied the criteria set forth by the ECtHR in *A and B v. Norway* and found that the legislation in force in Italy does not establish a sufficient connection in substance and time between the two sets of proceedings envisaged for offences that are essentially the same.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 649 of the Code of Criminal Procedure, initiated by the Criminal Division of the Ordinary Court of Verona in criminal proceedings against P. O., with the referral order of 17 June 2021, registered as Case No. 152 of the 2021 Register of Referral Orders, published in the *Official Journal* of the Republic No. 41, first special series, 2020.

Having regard to the entry of appearance filed by P. O. and the statement in intervention filed by the President of the Council of Ministers;

after hearing Judge-Rapporteur Francesco Viganò at the public hearing of 10 May 2022;

after hearing Counsel Vittorio Manes and Claudio Avesani for P. O. and State Counsel [*avvocato dello Stato*] Salvatore Faraci for the President of the Council of Ministers;

after deliberation in chambers on 10 May 2022.

The facts of the case

1.– With the referral order of 17 June 2021, the Criminal Division of the Ordinary Court of Verona raised questions as to the constitutionality of Art. 649 of the Code of Criminal Procedure, challenging it "insofar as it does not provide for the prohibition of a second trial against the defendant who, with regard to the same facts, has already received a punishment in an administrative proceeding, not sufficiently closely connected in substance and in time to the criminal proceeding, of an essentially criminal nature within the meaning of the European Convention on Human Rights and its protocols", with reference to Article 117(1) of the Constitution, in conjunction with Art. 4 of Protocol No. 7 to the European Convention on Human Rights (ECHR).

1.1.– The referring court, seized with a request opposing an order of summary punishment [*decreto penale di condanna*] against P. O. sentencing him to a fine of €8,100, was called upon to ascertain P. O.'s criminal liability. He had been charged with the offence under Article 171-ter, first paragraph, letter b) of Law No. 633 of 22 April 1941 (Protection of copyright and other rights related to its exercise) for having held for sale and illegally reproduced for pecuniary reward forty-nine photocopied texts of literary works in excess of the permitted number at his copy shop.

The defendant, jointly and severally with the company that runs the copy shop, had already received an unappealable administrative fine amounting to 5,974 euros for the administrative offence under Article 174-bis of Law No. 633 of 1941.

[…]

Conclusions on points of law

[…]

2.2.– In its second objection, the State Counsel remarked that the referring court itself could have applied principles emerging from the case law of the Court of Cassation on market abuse, wholly or partially disregarding the rules on penalties for the offence under consideration in the case in point, where this was necessary to bring the overall penalty imposed on the defendant into line with the proportionality principle. This could be achieved through direct application of Article 50 of the Charter of Fundamental Rights of the European Union (CFREU).

Also the counsel for the defence referred to this possibility in the hearing, requesting – as an alternative – that the question be declared unfounded on the assumption that the referring court could already have avoided infringement of the conventional right invoked by directly applying Article 50 CDFUE and disregarding *in mitius* – in whole or in part – the criminal provisions laid down by Law No. 633 of 1941.

The objection cannot, however, be upheld.

2.2.1.– There is no doubt that copyright protection is governed by the European Union's secondary legislation, and in particular by Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. Article 8 of the Directive imposes on the Member States the obligation to provide for "effective, proportionate and dissuasive" sanctions against infringements of the rights and obligations laid down by the Directive.

This implies that the sanctions that Article 171-ter and Article 174-bis of Law No. 633 of 1941 provide for in the Italian legal system fall within the scope of implementation of European Union law under Article 51 of the CFREU, so that the competent Italian administrative and judicial authorities must respect the rights enshrined in the Charter, including Article 50 of the CFREU, which enshrines the *ne bis in idem* right at EU level. The Court of Justice has already held that the right in question has direct effect in the

legal orders of the Member States (Grand Chamber, Judgment of 20 March 2018 in Case C-537/16 *Garlsson Real Estate SA and Others*, Case C-537/16(66).

Applying this principle, the Court of Cassation has repeatedly acknowledged, as State Counsel rightly remarks, the direct effect of Article 50 CDFUE in proceedings concerning administrative sanctions imposed by the *Commissione nazionale per le società e la borsa* (CONSOB) for offences that had already been definitively adjudicated by a criminal court (Second Civil Division, Court of Cassation, Judgment No. 33426 of 17 December 2019; Second Civil Division, Judgment No. 31632 of 6 December 2018; Fifth Civil Division, Judgment No. 27564 of 30 October 2018). This also applies to criminal proceedings relating to cases already subject to sanctions definitively imposed by CONSOB itself (Fifth Criminal Division Court of Cassation, Judgments No. 39999 of 15 April 2019, No. 5679 of November 2018-5 February 2019, No. 4986921 September 2018).

2.2.2.– Nevertheless, the direct applicability of Article 50 CDFUE cannot be an obstacle to the intervention of this Court, duly solicited by the referring court.

According to a now ample body of constitutional case law, the possible direct effect in the Member States' legal systems of the rights enshrined in the Charter (and the rules of secondary legislation implementing those rights) does not render inadmissible questions of constitutional legitimacy exposing a conflict between a domestic provision and these rights, which to a large extent overlap with the principles and rights protected by the Italian Constitution itself. Instead, the merits of such questions, once raised, must be examined by this Court, which alone must declare, *erga omnes*, the unconstitutionality of provisions contrary to the Charter, under Articles 11 and 117(1) of the Constitution (Judgments No. 54 of 2022, No. 182 of 2021, No. 49 of 2021, No. 11 of 2020, No. 63 of 2019, No. 20 of 2019 and No. 269 of 2017; Ordinances No. 182 of 2020 and No. 117 of 2019). This remedy does not replace, but supplements, that of the ordinary court, disregarding, on a case-by-case basis, a provision contrary to a rule of the Charter that has a direct effect (Judgment No 67 of 2022: "the centralised review of constitutionality enshrined in Article 134 of the Constitution is not an alternative to the widespread mechanism for implementing European law". This aims to increase the range of instruments protecting fundamental rights, which, "by definition, excludes any preclusion" (again, Judgment No. 20 of 2019) and sees the ordinary courts and this Court committed to implementing European Union law in the Italian legal system, each using their own instruments and each within the scope of their respective competences.

In the present proceedings, moreover, the referring court has asked this Court to declare that the challenged legislation is unconstitutional not because of its alleged conflict with Article 50 CDFUE, but – solely – its incompatibility with Article 4 Prot. No. 7 ECHR, through Article 117(1) of the Constitution. There is all the more reason, therefore, for this Court to examine the merits of the question, and, if necessary, declare the challenged provision unconstitutional according to the principles constantly followed since Judgments No. 348 and No. 349 of 2007.

Furthermore, in comparison to the disapplication by a single court of the provisions on sanctions due to their incompatibility with Article 50 CFREU, the declaration of unconstitutionality suggested by the referring court would, moreover, ensure the right to *ne bis in idem* – recognised by the Italian Constitution (Judgment No. 200 of 2016), Article 4 Prot. No. 7 ECHR, and Article 50 CFREU – a certain and uniform protection that runs throughout the entire legal order. This is all the more essential in criminal law,

where the principle of strict legality is of paramount importance (Judgments No. 98 of 2021, No. 115 of 2018, No. 109 of 2017, and Order No. 24 of 2017).

[…]

4.– Again as a preliminary point, it is necessary to specify the boundaries of the question raised by the referring court.

Although the operative part of the referral order raises a question concerning the constitutionality of Art. 649 of the Code of Criminal Procedure in relation to all cases in which, with regard to the same fact, "in an administrative proceeding, not sufficiently closely connected in substance and in time to the criminal proceeding, a sanction within the meaning of the [ECHR] and its protocols has already been definitively imposed", the entire line of reasoning of the order underscores, as correctly observed by the counsel for the defence, that the referring court meant to challenge Article 649 of the Code of Criminal Procedure with specific regard to the "double track" system of penalties envisaged in the field of copyright protection. All the referring court's arguments aiming to demonstrate that the two proceedings are not sufficiently closely connected in substance and in time are, in fact, based on those particular provisions, and do not necessarily extend to all the other cases of "double track" penalty regimes for the same offences.

Since, according to the established case law of this Court, the object of a judgment on constitutionality must be identified by interpreting the operative part of the referral order in the light of its reasoning (among many, Judgment No. 33 of 2019), the question must therefore be understood as seeking solely to extend the rules laid down in Article 649 of the Code of Criminal Procedure to the case where the individual charged with one of the offences under Article 171-ter of Law No. 633 of 1941 has already been definitively subjected to an administrative penalty for the same act pursuant to Article 174-bis of the same law.

5.– Within these limits, the question is well founded.

5.1.– The right to *ne bis in idem*, already considered in this Court's long-established case law to be inherent to the protections laid down in Articles 24 and 111 of the Constitution (Judgment No. 200 of 2016 and numerous precedents cited there), is explicitly recognised at the international level, in Art. 4(1), Prot. No. 7 ECHR, which provides that "[n]o one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State".

5.1.1.– As is immediately clear from its wording, the purpose of this conventional provision […] is to protect the defendant not only from the prospect of being punished twice, but also from facing a second trial for the same offence, irrespective of the outcome of the first one, which may even have ended in an acquittal. The primary rationale for this protection – not seen here as an objective "regulatory" principle functional to legal certainty but as a fundamental right of the individual – is therefore to avoid the further suffering and expenses that arise from a new trial concerning offences for which that individual has already been tried.

On the other hand, the *ne bis in idem* doctrine does not necessarily prevent the defendant from receiving two or more separate penalties for the same offence (e.g., custodial sentences, fines and disqualifications) at the conclusion of the same proceeding – in accordance, of course, with the principle of proportionality of the penalty, which is grounded in a legal basis distinct from that of *ne bis in idem* (in particular, on Articles 3

and 27 of the Constitution on the domestic level, and on Article 49(3) CFREU at the European Union level).

5.1.2.– It is widely known that the essential prerequisites for the application of the conventional right to *ne bis in idem* are:

– the existence of an *idem factum*: a prerequisite which the well-established case law of the European Court of Human Rights, starting at least with the Grand Chamber Judgment of 10 February 2009, *Zolotoukhine v. Russia* (paragraphs 79-84), identifies in the same material facts on which the two charges are based, regardless of their possibly different legal classification;

– the existence of a previous decision on the merits of the defendant's criminal liability, regardless of the outcome, which has become irrevocable, and for which no further ordinary remedies of appeal are available (ECHR, *Zolotoukhine v Russia*, para. 107)

– the existence of a *bis*, that is to say, a second criminal proceeding or trial for the same conduct.

5.1.3.– Although the wording of Article 4 Prot. No. 7 ECHR proscribes "prosecuting" or "punishing" someone again for an "offence" in the context of "criminal proceedings", the established case law of the Strasbourg Court states that these concepts must be interpreted in the light of the well-known Engel criteria, long used by the ECtHR to determine the scope of application of "criminal subject matter" for the purposes set out in Articles 6 and 7 of the Convention (*Zolotoukhine*, para. 52; *A and B* v. Norway, paras. 105-107). What is decisive, therefore, is not the qualification of the proceeding and penalty as "criminal" in the domestic legal system but its substantially "punitive" character, to be established precisely on the basis of the Engel criteria.

Moreover, as this Court has already remarked on several occasions (Judgments No. 145 of 2020, No. 222 of 2019, No. 43 of 2018), at least since the judgment in *A and B v. Norway* mentioned above, the ECtHR holds that the commencement or continuation of a second set of proceedings of an essentially punitive nature concerning an act for which a person has already been "finally" sentenced in another set of proceedings, also of an essentially punitive nature, does not necessarily give rise to a breach of the *ne bis in idem* doctrine. No such infringement can be said to take place, in fact, when the two proceedings are "sufficiently closely connected in substance and in time", so that they represent a complementary and essentially single response to the same offence (ECtHR, *A and B v. Norway*, para. 130).

In this judgment, the Court established, in particular, the following criteria (para. 132) to determine whether such a connection exists:

– whether the different proceedings pursue complementary purposes and thus address different aspects of the misconduct involved;

– whether the duality of proceedings as a consequence of the same conduct is foreseeable, both in law and in practice;

– whether the two proceedings are conducted in such a way as to avoid, as far as possible, any duplication in the gathering and assessment of evidence;

– whether there are mechanisms in place making it possible to take into account in the second proceedings any sanctions already imposed in the first, so as to prevent the individual concerned having to bear an excessive burden.

The *A and B v. Norway* judgment also clarified that, on the one hand, a breach of the right to *ne bis in idem* will be less likely if the competing proceedings carry less of the stigma characteristic of the "hard core" of criminal law. Such a breach will be more

likely the more the formally "administrative" proceedings themselves have stigmatising features largely resembling those of ordinary criminal proceedings in the strict sense (paragraph 133). On the other hand, even when there is a sufficiently close substantive connection between the two proceedings, a violation of the conventional right in question might still occur where there is not, in fact, a sufficient connection between them in time: this requirement is intended to protect the individual from an unjustifiably protracted situation of uncertainty as to his or her fate (paragraph 134).

On the basis of these criteria, after *A and B v. Norway*, the ECtHR has on numerous occasions found violations of Article 4 Prot. No. 7 ECHR due to the pendency of criminal proceedings (in the strict sense) for conduct previously punished by formally administrative measures that were deemed to be substantially punitive, taking into account, on a case-by-case basis, the lack of connection in substance and in time between the two proceedings (Judgments of 18 May 2017, *Jóhannesson and Others v. Iceland*; 16 April 2019, *Bjarni Ármannsson v. Iceland*; 6 June 2019, *Nodet v. France*). Another reason has been the absence of a sufficiently substantive connection between the proceedings, both of which pursued the same aims, and considering the absence of mechanisms to avoid duplication of evidence and, in the second proceedings, the sanctions already imposed (*Nodet v. France*, cited above; 21 July 2020, *Velkov v. Bulgaria*; 6 April 2021, *Tsonyo Tsonev v. Bulgaria* (No. 4); 31 August 2021, *Milošević v. Croatia*). Conversely, a breach has been ruled out on other occasions, such as when the ECtHR deemed that the sanctions imposed on a doctor in disciplinary proceedings were not punitive (Judgment of 29 September 2020, *Faller and Steinmetz v. France*), or that the two proceedings had a distinct purpose, one sanctioning speeding and the other for causing the death of a pedestrian (Judgment of 8 October 2020, *Bajčić v. Croatia*).

It is worth noting here, incidentally, that the Court of Justice of the European Union has reached very similar conclusions to those of the Strasbourg Court summarised above on the corresponding protection provided by Article 50 CFREU (Grand Chamber, Judgments of 20 March 2018, *Garlsson Real Estate SA and others*, cited above; Case C-524/15, *Menci*; Case C-596/16 and C-597/16, *Di Puma and Others*).

5.2.– These are the criteria against which the referring party's challenge, which refers to the specific "double track" sanctioning system envisaged by Italian copyright legislation, must be assessed.

In this regard, it is important to point out *in limine* that these criteria must here be interpreted in relation to the specific logic of the proceedings before this Court, whose task is not to verify the existence of violations of the fundamental right in question in an individual case, but to establish whether the regulatory mechanism created by the legislator is such as to give rise to violations of that fundamental right in an indeterminate number of cases.

5.2.1.– The set of rules laid down in Law No. 633 of 1941 on the protection of copyright as it stands today is entirely constructed around a system of "double track" sanctions, where the same misconduct often constitutes a criminal and an administrative offence at the same time.

In particular, paragraphs 1 and 2 of Article 171-ter of Law No. 633 of 1941 now encompass a wide range of criminal offences punishable by imprisonment (from six months to three years for those mentioned in the first paragraph, and from one to four years for those listed in the second) together with a fine ranging from 2,582 euros to 15,493 euros.

The parallel Art. 174-bis of the same Law No. 633 of 1941, introduced by Art. 8(1), of Law No. 248 of 18 August 2000 (New regulations for the protection of copyright), provides that "[w]ithout prejudice to the applicable criminal sanctions, breach of the provisions of this section" – including, therefore, those of the previous Art. 171-ter – "shall be punished with a pecuniary administrative sanction equal to twice the market price of the work or medium involved in the infringement, and in any case to a value not less than 103.00 euros. If the price cannot be easily established, the infringement shall be punished with an administrative sanction ranging from 103.00 euros to 1,032.00 euros. The administrative sanction shall be applied to the extent established for each infringement and for each copy that is illegally duplicated or reproduced".

The two provisions – Art.171-ter and Art. 174-bis of Law No. 633 of 1941 – therefore sanction precisely the same conduct; and Article 174-bis expressly states that, to prevent any uncertainty of interpretation, the administrative sanctions it establishes are to be applied "[w]ithout prejudice to the criminal sanctions", thus indicating the legislator's unequivocal intention to impose the two types of sanctions on the same offender (thus, also the Second Civil Division Court of Cassation, Judgment No. 30319 of 18 December 2017).

5.2.2.– The challenged provisions, therefore, inherently create the conditions for the same individual to be sanctioned for the same conduct in both criminal and administrative proceedings.

In fact, the reference in Article 174-bis of Law No. 633 of 1941 to the "violations provided for in this section", and therefore also to those contemplated as crimes under Article 171-ter, means that the spheres of the two offences – administrative and criminal – broadly overlap. It is true that, concerning *mens rea* requirements, the crime must be qualified by the perpetrator's intent, which is not necessary for the corresponding administrative offence. However, with respect to the area in which the two offences overlap – represented by the acts described in Article 171-ter committed with intent – the two provisions entail that their perpetrator be punished more than once for an *idem factum*, as interpreted by the ECtHR since the *Zolotoukhine* judgment mentioned and by the case law of this Court (Judgment No. 200 of 2016).

The fact of having two distinct classes of sanctions (one criminal, the other administrative) for the same conduct therefore entails, just as necessarily, the prospect of the perpetrator facing several proceedings at the same time or consecutively: one conducted by the public prosecutor, the other by the administrative authority. Thus, as soon as one of these proceedings concludes with a final decision on the (criminal or administrative) liability of the individual concerned, it is inevitable that the proceedings still open – or yet to be commenced – become a *bis* in relation to the proceedings already concluded.

Nor can there be any question as to the punitive nature of the administrative sanctions laid down in Article 174-bis of Law No. 633 of 1941, in the light of the *Engel* criteria as well as the case law of this Court, which has adopted and independently developed these criteria, at least since Judgment No. 196 of 2010 (most recently, Judgments no. 185 and no. 68 of 2021). The administrative pecuniary penalty laid down in Article 174-bis of Law No. 633 of 1941 is usually determined by doubling the market price of the work or support involved, and multiplying the result by the number of copies unlawfully duplicated or replicated. This means that the offender incurs a financial sacrifice greater than the profit gained from committing the offence, and highlights the markedly dissuasive function of the penalty. This function, indeed, is underlined in the

report on Draft Law A.S. 1496, later to become Law No. 248 of 2000, to which the introduction of Article 174-bis was due. In this report, it is stressed that the purpose of the amendment was to "increase the degree of dissuasiveness of the measures to counter" breaches of copyright through administrative sanctions "that appear to be endowed with autonomous deterrence in that they are rapidly applicable", "regardless [...] of the 'benefits' that may be obtained in criminal proceedings". This aim fully overlaps with that of criminal penalties.

5.2.3.– That being said, it only remains to determine, in the light of the criteria set by the ECtHR in its judgment in *A and B v Norway* (para. 5.1.3. above), whether the two proceedings – whose purpose is to impose criminal and administrative sanctions, both of which are punitive – can be held to be closely connected in substance and in time, so that those proceedings figure as parts of a single integrated system protecting the same legal assets, incapable of producing disproportionate effects on the fundamental rights of the individual concerned. If that were the case, the "double track" system created by the legislator would not in itself be incompatible with Article 4 Prot. No. 7 ECHR and, consequently, with Article 117(1) of the Constitution.

In this regard, there is no doubt that the normative system regulated by Law No. 633 of 1941 allows the individual to foresee being subjected to two distinct proceedings and, consequently, to two distinct categories of sanctions.

However, it cannot be said that the two procedures pursue complementary purposes or address different aspects of the same misconduct. Concerning the aim of the legislator in introducing the administrative sanction, it has already been remarked that the *travaux préparatoires* of Law No. 248 of 2000, which added Article 174-bis to Law No. 633 of 1941, state the intention to improve the general preventive effectiveness of the prohibitions already contained in the law, including those for which criminal sanctions were already in place, these too inherently designed to dissuade potential offenders from committing the offences in question. With regard to the sanctioned conduct, it was likewise emphasised that the actions punished under Articles 171-ter and 174-bis of Law No. 633 of 1941 are exactly the same, except in cases – probably of little more than theoretical importance, considering the nature of the offence in question – of merely negligent conduct, relevant only under the second provision. Nor is there any provision, as is often the case in criminal provisions supporting tax obligations, for a system of thresholds below which the conduct is only subject to an administrative sanction and over which it is also subject to criminal punishment.

Moreover, the regulatory system lacks any mechanism to prevent duplication in the collection and assessment of evidence and to ensure reasonable coordination of the proceedings over time […]. Indeed, the Court of Cassation has ruled out, in the absence of a prejudicial relationship between the criminal offence and the administrative offence, the availability of the connection clause established in Article 24 of Law No. 689 of 1981, which – where applicable – would instead confer on the criminal court the jurisdiction to impose the administrative penalty too (Court of Cassation, Judgment No. 30319 of 2017).

Lastly, there is no mechanism allowing the criminal courts (or the administrative authority in the event of a previous final judgment) to take into account the penalty already imposed in order to ensure the appropriateness of the penalty, thus preventing the same conduct being punished disproportionately. The (severe) fine that the criminal court is currently required to impose is, in fact, simply added to the already burdensome administrative pecuniary penalty.

It follows that the rules for the "double track" system under consideration have not been devised in such a way as to ensure that the two penalty proceedings provide a consistent and substantially uniform response to offences concerning copyright infringements, already criminalised by Article 171-ter of Law No. 633 of 1941. The two proceedings stem from the same conduct, but they then follow their own paths, neither overlapping nor coordinating with each other in any way. This inevitably creates the conditions for systemic violations of the right to *ne bis in idem.*

6.– This state of affairs can at least be partially remedied by declaring Article 649 of the Code of Criminal Procedure partially unconstitutional, as called for by the referring court.

More specifically, this provision must be declared unconstitutional insofar as it does not allow the court to acquit or conclude with a decision of no case to answer against a person charged with one of the offences under Article 171-ter of Law No. 633 of 1941 if he or she has been already subjected to a proceeding for which final judgment has been passed regarding the administrative offence defined in Article 174-bis of the same law.

7.– This Court is aware that such a remedy is not capable of preventing all the possible violations of the right to *ne bis in idem* that Law No. 633 of 1941 may give rise to, in particular in the opposite circumstance where the offender has already been finally sentenced for one of the offences referred to in Article 171-ter of the law and is subsequently subjected to administrative proceedings under Article 174-bis.

Furthermore, this remedy – despite being necessary to prevent breaches of the fundamental right if the criminal proceeding comes after the administrative one – is far from perfect since the two proceedings can be held in parallel, until one of them is concluded by a final decision. This cannot avoid the duplication of the personal and financial costs for the individual concerned, as mentioned above.

It therefore falls to the legislator to reformulate the rules in question to ensure adequate coordination between the provisions regarding procedure and those relating to penalties in the context of a desirable overall reconsideration of the current dual system of penalties in the light of the principles laid down by the ECtHR, the Court of Justice, and this Court itself.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

declares Art. 649 of the Code of Criminal Procedure unconstitutional, in so far as it does not allow courts to hand down a judgment of acquittal or a verdict of no case to answer against a defendant charged with one of the offences under Article 171-ter of Law No. 633 of 22 April 1941 (Protection of copyright and other rights related to its exercise), if he or she has been already subjected to a proceeding for which final judgment has been passed regarding the administrative offence defined in Article 174-bis of the same law.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 10 May 2022.

Signed: Giuliano AMATO, President

Francesco VIGANÒ, Author of the Judgment