

Italian Constitutional Court

Legal summary

Judgment No 113/2025

ECLI:IT:COST:2025:113

THE COURT UPHOLDS HARSH PENALTIES FOR KIDNAPPING FOR RANSOM, BUT CALLS FOR A NARROW APPLICATION OF THE RELEVANT PROVISION

In Judgment No 113/2025, **the Constitutional Court dismissed the challenge to Article 630 of the Criminal Code**, which was alleged to impose excessively harsh sentences for offences of comparatively minor gravity.

The Court held that proportionality operates both as a standard of constitutional review and as a requirement of constitutionally conforming interpretation, and therefore rejected the challenges under Articles 3 and 27(1) and (3) of the Constitution.

Criminal courts must first consider the mitigating circumstance for offences of minor gravity, extended to kidnapping for ransom by Judgment No 68/2012. If the resulting sentence remains disproportionate, Article 630 of the Criminal Code must be interpreted restrictively, excluding conduct that does not reach the degree of seriousness requiring the harsh penalty required by law, and applying the penalty envisaged for false imprisonment and extortion where appropriate. This restrictive interpretation is consistent with the principle of legality under Article 25(2) of the Constitution and therefore avoids the need to declare Article 630 unconstitutional.

Main proceedings

The Teramo Assize Court (the “**referring court**”) challenged Article 630(1) of the Criminal Code (the “**challenged provision**”), which punishes kidnapping for ransom with imprisonment of 25 to 30 years.

The referring court was hearing proceedings against three defendants accused of committing four offences. After arranging ostensibly free sexual encounters online, they allegedly demanded payments of between €100 and €320, restraining and threatening the victims and, in three cases, forcing them to withdraw money from cash machines. Although the conduct could fall within the challenged provision, the referring court considered it to be at the lower end of the scale of seriousness. Nevertheless, it doubted whether the mitigating circumstance applicable to offences of minor gravity could be granted, given the repetition of the conduct, the participation of several defendants and the harm to the victims’ liberty and sexual autonomy.

The referring court was doubtful of the compliance with the Italian Constitution (IC).

Complaints

The referring court alleged violations of **Articles 3 (Principle of equality and non-discrimination) and 27(1) and (3) (Criminal responsibility is personal; Rehabilitative function of punishment) IC** as well as of **Articles 11 (Limitations of State's sovereignty and promotion of international organisations) and 117 (Compliance with international obligations) IC**, read in conjunction with the principle of proportionality under **Article 49(3) of the Charter of Fundamental Rights of the European Union (CFREU) (Principles of legality and proportionality of criminal offences and penalties)**.

The referring court argued that the current penalty resulted from emergency legislation adopted in the 1970s in response to kidnappings committed by organised criminal groups, but was now disproportionate to the very different forms that the offence could assume. It compared the minimum sentence of 25 years with the 21- minimum for murder, questioned the identical punishment of kidnapping for ransom and kidnapping for terrorist or subversive purposes, and emphasised the disparity between the challenged provision and the penalties for its constituent offences (false imprisonment and extortion). The narrow five-year sentencing range also allegedly prevented adequate individualisation of punishment and frustrated its rehabilitative purpose.

Decision of the Court

The Constitutional Court (the “**Court**”) declared **the challenge based on Article 49(3) of the CFREU inadmissible** because the referring court had not explained why the case fell within the scope of EU law, as required by Article 51 CFREU.¹

The challenges based on **Articles 3 and 27(1) and (3) IC were deemed admissible but unfounded**.

Reasons for the decision

The Court held that the challenges related to Articles 3 and 27 IC, as well as connected grievance under Article 25(2) IC, were unfounded. Although the legislature has broad discretion in defining offences and penalties, that discretion is limited by proportionality and is subject to particularly close constitutional review because criminal penalties affect personal liberty and other fundamental rights.² Proportionality is not merely a standard for reviewing legislation: it must also guide ordinary courts in interpreting and applying criminal law, as already occurs with the harm principle (“*offensività*”) under Article 25(2) IC and culpability under Article 27(1) and (3) IC.

Under the first principle, criminal courts must treat conduct as falling outside the scope of the offense when, despite formally meeting its statutory definition, it is incapable of harming the protected legal interest.³ This applies both to offences concerning prostitution and to “presumed danger offences” (*reati di pericolo “presunto”*), where there is no reasonable possibility of harm. Similarly, Judgment No [322/2007](#) treated culpability as an interpretative principle and required Article 609-*sexies* of the Criminal Code to be interpreted as excluding unavoidable ignorance of the

¹ Channelled through Articles 11 and 177(1) IC.

² Constitutional Court, Judgments Nos 74/2025, point 6.1, and [46/2024](#), point 3.1.

³ Constitutional Court, Judgments Nos 139/2023, point 4.2; 211/2022, point 7.1; 278/2019 and 141/2019, points 3.1 and 7.3, among others.

victim's age.⁴ **Proportionality must perform the same function by preventing punishments excessive in relation to the objective and subjective seriousness of the particular conduct,⁵ preventing all unreasonableness under Article 3 IC.**

Judgment No 68/2012 had already mitigated the exceptionally severe penalty under the challenged provision by extending to kidnapping for ransom the mitigating circumstance envisaged for offences of minor gravity under Article 311 of the Criminal Code. Its absence was held irrational under Article 3 IC, given its availability for terrorist or subversive kidnapping under Article 289-*bis* of the Criminal Code, and incompatible with the rehabilitative purpose protected by Article 27(3) IC, read in conjunction with Article 3 IC. The mitigating circumstance must be assessed separately for each offence; repetition alone cannot exclude mitigation, since only recidivism – which presupposes a prior conviction – may increase subjective culpability.⁶

Comparable mitigating circumstances have been extended by previous judgments by the Court to military sabotage, extortion, robbery, child pornography, and permanent facial disfigurement. Minor gravity (*"fatto di lieve entità"*) is therefore a relational concept: conduct must be compared with the usual seriousness of the offence at issue. Judgment No 94/2023⁷ accordingly permitted application of mitigating factor even for a potentially lethal anarchist attack.

If the sentence remains disproportionate after applying mitigating factors, the challenged provision must be interpreted restrictively. A brief deprivation of liberty intended to obtain a few hundred euros may constitute false imprisonment under Article 605 of the Criminal Code, combined with attempted or completed extortion or robbery, rather than kidnapping for ransom.

Such restrictive interpretation does not violate legality under Article 25(2) IC. Although courts cannot extend criminal provisions beyond their possible literal meaning,⁸ they may – and sometimes must – exclude conduct as falling outside the scope of the offense when, despite formally meeting its statutory definition, it is incapable of harming the protected legal interest.

Because the 1978 legislature targeted crimes far more serious than those alleged here, a restrictive interpretation of the challenged provision, combined with the mitigating circumstance established by Judgment No 68/2012, **permits proportionate punishment consistent with Articles 3 and 27(1) and (3) IC.**

Type of proceedings	Constitutional review by referral order
President of the Court	Giovanni Amoroso

⁴ Constitutional Court, Judgment No [332/2007](#).

⁵ Constitutional Court, Judgments Nos 83/2025, point 4.5; 86/2024, point 5.8; and 244/2022, point 3.1.

⁶ Constitutional Court, Judgments Nos 141/2023, point 3.2; 56/2021, point 2.4; and [73/2020](#), point 3.

⁷ Constitutional Court, Judgments Nos 94/2023; confirmed by the Court of Cassation, Sixth Criminal Division, Judgment No 26628 of 24 April – 5 July 2024.

⁸ Constitutional Court, Judgments Nos 98/2021, point 2.4, and 107/2025, point 7.

Judge rapporteur	Francesco Viganò
Composition of the Court	Giovanni Amoroso (President), 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, Maria Alessandra Sandulli, Roberto Nicola Cassinelli, Francesco Saverio Marini
Delivery of the judgment	18 May 2025
Challenged provisions	Article 630, first paragraph, of the Criminal Code