



•ALERT•

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# Criminal penalties for non-compliance with Covid-19 containment measures

Just over a week after the entry into force of the measures to contain the contagion issued by the Prime Minister Decree dated 8th and 9th March 2020, the entire population has now been having direct experience of the severe limitations imposed on people's right to freedom.

Indeed, the provisions of the decree have temporarily banned a wide range of actions, among which the ban of movement within the national territory is only one of the most significant and conditioning examples.

At least until next 3rd April, any **movement of persons** within the entire **national territory** will be allowed exclusively for: *a) proven work needs; b) situations of necessity; c) health reasons; d) return to their domicile, home or residence*.

Up to that time, those who will move must be provided with a **self-certification** which demonstrates the existence of one of those conditions in order to acknowledge the Police, during controls, the reasons why they are moving.

As the days go by, it is becoming more and more evident that such self-certification will assume, together with the other behavioural prescriptions provided for in the Decree, a **primary** role both in the implementation of the containment strategy and in everyone's daily life.

Therefore, it is crucial to clarify the criminal consequences of non-compliance with the prescriptions, as well as the criminal consequences for the issuance of misleading declarations in a self-certification, also considering what has been said and written in recent days. Such explanations will focus on the most frequent daily life cases and on the new version of the self-certification issued by the Ministry of the Interior on March 17th, containing an addition that could give rise to some misunderstanding.



## CRIMINAL CONSEQUENCES OF NON-COMPLIANCE WITH THE MEASURES AIMED TO CONTAIN THE CONTAGION

Does anyone who is stopped by the Police without the necessary self-certification commit a criminal offence?

It is necessary to **distinguish** the case of those who are not provided with a self-certification but are in a condition that allows them to move, and those who - quite differently - are not in possession of self-certification because their movement is not allowed.

In the **first case**, such lack of self-certification is purely **formal** (since there is no provision provided for in the Prime Ministerial Decree requiring self-certification at the time of the control) and the person concerned should be allowed to fill in a copy on site; in the absence of such blank copy, the person concerned should at least be allowed to record an oral statement clarifying the reasons for his movement.

In any case, since uneven practices are often put in place throughout the national territory, caution and common sense suggest to **always carry a copy** of the self-declaration, possibly - if there is no chance to print the model at home - by submitting an entirely handwritten self-declaration; in the light of the clarification note issued by the Postal Police on March 19th, it does not seem possible to replace the hard copy with a digital one, saved on smartphone.

In the **second case** (absence of any substantial reasons justifying the movement), there would be a **violation** of the provisions provided for in the Prime Ministerial Decree, which is punished under Article 650 of the Italian Criminal Code "*unless the fact constitutes a more serious offence*" (see below).



Article 650 of the Criminal Code, entitled "non-*compliance with the Authority's measure*", punishes "with arrest for up to three months or with a fine of up to € 206 [...] anyone who does not comply with a provision legally given by the Authority for reasons of justice or public security or public order or hygiene".

To those who violate the ban on movement freedom without valid reasons, are comparable, as potential offenders pursuant to Article 650 of the Italian Criminal Code, all those who are under quarantine or have been tested positive for the virus who are stopped outside their homes: for such categories, indeed, there is an **absolute ban** on leaving home.

Considering this as a misdemeanor, everyone shall be liable also for **negligent conducts**; for instance, it cannot be used as a justification to have wrongly believed that they were in one of the conditions that allowed them to move. Since it is commonly known (or in any case knowable with ordinary diligence) which movements are permitted, in any case the person will be liable pursuant to Article 650 of the Italian Criminal Code.

It is important to underline that no penalty will be contested at that time: **criminal penalties** can **exclusively** be applied by the **criminal judicial authority**.

This is what would happen: the Police officers would send to the Public Prosecutor's Office in charge a report containing the criminal record, following which the Prosecutor's Office would begin a proceeding against the person concerned; the **penalty** would be applied only after a conviction issued by the competent criminal judge.

In this specific case, it is possible that the conviction would not result from a real trial, but by means of a **criminal decree of conviction**: this solution is applicable to the offence provided for in Article 650 of the Italian Criminal Code and consists - oversimplifying - in a criminal penalty directly issued by the Judge for the preliminary investigations upon the request of the Public Prosecutor's Office, *inaudita altera parte* (without hearing other parties).

If the offender receives a criminal decree of conviction for the violation of Article 650 of the Italian Criminal Code, he might be allowed to **oppose to** the criminal decree, for instance by asking for the payment of an oblation in place of the penalty: if the Judge decides to grant the request (on the basis of his own discretion), the offender might be admitted to **extinguish the crime** by paying a sum equal to one half of the maximum fine (in this case, € 103).

Lastly, the Prime Minister's Decree provides for the application of Article 650 of the Criminal Code "unless the fact constitutes a *more serious offence*".

It appears that the Legislator, by means of this provision clause, aims to point out that if more serious violations of the containment measures are committed, **more serious penalties** will be applied to the offender.

Nevertheless these are borderline cases: imagine, for instance, the case of those who, even knowing to be tested positive for COVID-19, anyway decide to move within the territory, without any precautions and ignoring the contagion that they could cause or constantly violating the safety distance of one meter or even intentionally causing contagion by mixing body fluids.

Such reckless conducts could be qualified, for instance, as **negligent, or even intentionally epidemic** (Articles 438 - 452 of the Italian Criminal Code), punished with more serious penalties than those provided for in Article 650 of the Italian Criminal Code.

The same goes for employers who do not comply with the recommendations of the Prime Minister's Decree dated 11th March 2020 on safety in productive and professional activities, by avoiding to implement safety protocols for their employees, or by implementing clearly insufficient protocols. Also in this case, the employer is exposed, in case of contagion among employees, to the criminal risk of being charged with the crime of **negligent injury** (article 590 of the Italian Criminal Code), aggravated by the violation of the rules for safety at work, instead of being charged for infringement of article 650 of the Italian Criminal Code.

## CRIMINAL CONSEQUENCES FOR THE ISSUANCE OF MISLEADING DECLARATIONS IN A SELF-CERTIFICATION

Pursuant to Article 46 of DPR no. 445 of 28th December 2000, statements made in a self-certification «*shall be considered as made to a public official*», a case which, in the criminal system, is assisted by much more serious protection than that provided for in Article 650 of the Criminal Code.

The issuance of misleading declarations in a **self-certification** will be relevant according to:

- article 495 of the Italian Criminal Code (which punishes «*with imprisonment from one to six years*» the conduct of «*anyone who falsely declares or certifies to the public official the identity, status or other qualities of himself or of another person*»), in the case of a person providing false **personal information**, for instance, claiming to be a doctor in order to justify his violation;
- the offence provided for in Article 76 of DPR no. 445/2000, (**falsification of declarations substituting certification or affidavit**) which, provides for the applicability of the criminal provisions on material and/or ideological falsehood committed by private individuals (Articles 482 and 483 of the Italian Criminal Code), in the most common case of lying about the **reasons** of the movement (representation of a state of need or work requirements that do not actually exist).

Lastly, the most recent addition to self-certification: starting from 17th March, besides explaining the reasons of the movement and showing to be aware of the measures in place and the penalties for non-compliance, the declarant must state that he **is not under quarantine and that he is not tested positive for COVID-19**.

As already mentioned, indeed, for these two groups of people there is an **absolute ban** of leaving their home. The insertion of this additional statement is probably intended to worsen the criminal liability of these subjects in case of controls.

Until now, indeed, those who violated the quarantine were only exposed to the sanction provided for in Article 650 of the Criminal Code (except, as mentioned above, the abstract possibility of amount to epidemic, in the most striking cases).

This new provision, instead, adds a new profile of criminal liability: by issuing the self-certification, whoever is found to move in violation of the quarantine (or despite being positive for COVID-19) will be liable not only under Article 650 of the Criminal Code, but also for false statements.

However, it is necessary to focus on the wording of the self-certification: with the new addition, it has to be declared "*not to be subject to the quarantine and not to have tested positive for the COVID-19 virus*".

Therefore, it is not provided a self-certification on the state of health and in particular on the absence of contagion: it has exclusively to be declared **not to have ever carried out the test for COVID-19 with a positive result**.

This might mean that the test has been carried out with a negative result or that has not been carried out at all. It is clear that those who, at the time of self-certification, are affected by COVID-19 but have not yet carried out the test should not face the criminal penalty provided for false declaration.

### CONTACTS

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