



•ALERT•

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# Reform of penalties for non-compliance with Covid-19 contagion containment measures: the penalty is now reduced to administrative sanctions (with few exceptions)

Law Decree No. 19 of 25th March 2020 has radically amended the system of penalties relating to the non-compliance with Covid-19 contagion containment measures.

The Government has decided to set aside the criminal option initially adopted - see [Alert dated March 20th](#) - and instead resort to **administrative penalties**. From now on, those who violate such measures will not be prosecuted for violation pursuant to Article 650 of the Criminal Code (which, punishes the non-observance of any authority's measures) but instead they will just be **fined**.

This is what is set out under Article 4 of the Decree: "*Unless the act constitutes an offence, failure to comply with the containment measures referred to in Article 1, paragraph 2*" (which lists all the measures taken so far: limitation of movement within the national territory except in exceptional cases, closure of commercial activities, prohibition of meetings or gatherings, closure of almost all retail sales activities and business activities that do not provide essential services, etc..) is punished "with the administrative penalty of the payment of a sum of between 400 and 3,000 euros and the penalties provided for in Article 650 of the Italian Penal Code or any other provision of the law conferring powers for health reasons shall not be applied", with an **increase of up to one third** if non-compliance with the measures takes place "*through the use of a motor vehicle*".

In addition to the pecuniary sanction, in case of violations concerning the prohibitions and limitations imposed on commercial businesses and various activities (business, professional, recreational, educational activities, etc.), a corollary sanction of **business or activity closure** would be added **from 5 to 30 days**.



Except for exceptional circumstances, which will be examined below, the offender would not be at risk of being subjected to a criminal proceeding and the related criminal penalty, but he would have to pay only a fine.

At first glance this might be seen as a step backwards in the threat and effectiveness of the penalties. The rapid corrective action was instead justified by the need to produce the opposite effect, through the introduction of a sanction with **more serious, rapid and efficient effects** also from a systematic point of view.

While, on the one hand, the offender risks an offence on his criminal record, on the other hand, he would be sanctioned with a fine **higher** than the one provided for in Article 650 of the Italian Criminal Code (which provides a fine of up to €206) and is **more immediate**, considering that such fine would be applied outside an ordinary criminal proceeding.

Such provision has positive effects for the systematic efficiency, thanks to the cancellation of various criminal proceedings already instituted (it is sufficient to have a look at the data collected in those days, already 100,000 criminal proceedings related to containment measures violations have been instituted) which would have caused the paralysis of the already fatigued machine of the Italian criminal justice.

## WHICH IS THE PROCEDURE FOR THE APPLICATION OF THE INTRODUCED ADMINISTRATIVE PENALTY?

Pursuant to Article 4 of the Decree the procedure provided for in Law No. 689/1981 is characterized by:

- **the possibility of an immediate charge of the offence**: when it is possible, the Police Officer, could charge the violation on site, issuing a specific report to the offender; otherwise, the latter would receive, at his residence, notification of the charge against him;



- **the payment of a reduced amount of the fine:** Art. 4 of the Law No. 689/1981 refers to the provisions provided for in the Highway Code for reduced payment. Thus, the offender, without prejudice to the application of any accessory penalty, might pay, within sixty days from the charge or notification, a sum equal to the minimum set by the provision (**€ 400**). This sum might be then **reduced by 30%** (€280) if the payment would be made within five days from the charge or notification;
- **the injunction order:** if no reduced payment is made, the person charged with the offence would receive the notification of the so-called injunction order, by which the Prefect (or the Region for violations of the measures issued by the latter), if he considers the assessment well-founded, determines the amount due - as mentioned above, in a range between € 400 and € 3000 - and orders the filing within thirty days from the notification;
- **the enforcement action:** the order constitutes an enforcement order, and so, upon expiry of the payment deadline, the sum will be entered on the register.

### **IS IT STILL POSSIBLE TO DEFEND YOURSELF AND ASK FOR THE SANCTION TO BE CANCELLED?**

In the procedure described above, the offender is **allowed to defend himself** and ask for the dismissal (at first) and the cancellation (then) of the charge.

Firstly, within thirty days from the charge/notification, the person concerned could submit to the Prefect defensive briefs, documents or ask to be heard. If the Prefect is convinced by the reasons explained, he will dismiss the case, otherwise he will issue the order-injunction mentioned above.

Secondly, the person concerned could submit an **opposition** before the judicial authority against the order-injunction; within thirty days from the notification, the person concerned might bring an action in court in order to request the cancellation of the order-injunction

With reference to the merits of the defence, regardless of the need to assess case-by-case according to the specific circumstances, it is not very different from the ones envisaged for the criminal cases.

Beyond the nominal distinction between a criminal offence and an administrative one, the defensive arguments relating to a criminal proceeding could also be used in an administrative proceeding.

Thus, it is possible to use the justifications provided for in the criminal law system and referred to in Article 4 of Law 689/1981 (fulfilment of a duty or the exercise of a legitimate right, a state of necessity or self-defence).

In the event of a charge, it is advisable to immediately seek the technical assistance of a lawyer, for a prompt evaluation of the most appropriate defensive strategy.

### **WHICH FACTS STILL CONSTITUTE A CRIMINAL OFFENCE?**

The fact that the Government has finally decided to apply the administrative sanction does not mean that it has completely set aside the criminal option for some limited conducts.

The initial provision clause - "*unless the fact constitutes a crime*" - allows, in the most serious cases, not to apply the administrative sanction and to charge, instead, a **criminal offence**.

The offence would no longer be the one provided for in Article 650 of the Italian Criminal Code, considering the express exclusion provided for in the Law Decree ("*the sanctions provided for in article 650 of the criminal code are not applicable*"); rather, in the most serious and striking cases, the crimes aimed at protecting public health would be integrated, as the negligent, or even intentional, **epidemic** (articles 438 - 452 of the Italian Criminal Code), which, as noted in our [previous Alert](#), in certain cases was already applicable before this reform.

Example: a bar owner does not respect the suspension of the activity of serving beverages and food to the public. This causes the creation of a group of people and one of them, positive to COVID-19, infects the others.

In such a scenario, not the administrative sanction, but the crime of negligent epidemic would be applied, since the violation of the containment measures, due to the offender's negligence, has determined the contagion of other people.

Furthermore: the entrepreneur who continues to carry out non-essential activities could be charged with negligent injury in the case of contagion among his employees in the workplace.

In addition to these examples, the violation of **the absolute ban of leaving home or residence for people under quarantine** because they have tested positive for the virus, is still **surely relevant under criminal perspective** pursuant to the Law Decree: such violation is now "*punished pursuant to Article 260 of Royal Decree No. 1265 dated 27 July 1934, Italian Act of Sanitary Laws*" (Article 4, paragraph 6 of the Law Decree).

Article 260 of the Italian Act of Sanitary Laws punishes those who "do not comply with an order legally given to prevent the invasion or spread of an infectious disease"; the Law Decree has, at the same time, increased the penalty for this offence, which is now punished **with the arrest from 3 to 18 months and a fine from 500 to 5000 euros**.

It is a crime quite similar to the one provided for in Article 650 of the Italian Criminal Code with regard to the incriminated conduct (non-compliance with a provision of the authority), but more severe under the penalties nature perspective.

Please note: also in this case, it is explicitly provided the possibility "that the fact constitutes a violation of Article 452 of the Criminal Code [negligent epidemic, n.d.r.] or, in any case, a more serious crime".

In summary:

- generally speaking, non-compliance with the containment measures determines the application of a pecuniary administrative penalty, unless an offence is committed, which must, however, be different from the crime provided for in Article 650 of the Italian Criminal Code (such as, negligent epidemic);
- in case of violation of quarantine by a person infected by COVID-19, the misdemeanour provided for in Article 260 of the Italian Act of Sanitary Laws shall be applied rather than the administrative penalty; and
- if the violation of quarantine causes more serious consequences (such as an epidemic), the penalties provided for in the Italian Criminal Code for such more serious consequences shall be applied.

## DOES THE REFORM HAVE RETROACTIVE EFFECTS?

Certainly yes. Article 4, paragraph 8 states that "the provisions of this article that replace criminal sanctions with administrative sanctions shall also be applied to violations committed before the date of entry into force of this decree, but in such cases the administrative sanctions are applied in the **minimum amount reduced by one half**".

This provision should determine:

- the **dismissal** of all criminal records (for non-compliance with the containment measures) so far reported to the Public Prosecutor's Office, because the fact is no longer provided for by the law as a crime; and
- the application, in substitution, of a **fine** equal to **one half of the minimum** administrative sanction provided for by the Law Decree (200 €).

### CONTACTS

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