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Preliminary Interrogation and Personal Precautionary Orders: System of Nullities

Intermediate nullity under Article 292 of the Code of Criminal Procedure and procedural bars to raising objections in Judgment no. 41645/2025

MG Metodo Giuridico Editorial Board Criminal Law 13 November 2026 Reading time 12 min

Current Legal Framework as of 2 November 2026: the case law of the Italian Supreme Court of Cassation has consolidated the boundaries of the mandatory preliminary interrogation introduced by Law no. 114/2024, classifying its omission as an intermediate nullity that may be raised before the Precautionary Review Court but is irreversibly time-barred before the Court of Cassation if not previously raised in the lower review proceedings.

ABSTRACT

This article examines the mandatory **preliminary interrogation** introduced by Law no. 114/2024 as an essential prerequisite for adopting personal precautionary measures in Italian criminal procedure. Drawing on Judgment no. 41645/2025 of the Italian Supreme Court of Cassation, Criminal Division, the commentary reconstructs the statutory regime of procedural invalidity under Article 292, paragraph 3-bis, of the Italian Code of Criminal Procedure, categorized as an **intermediate nullity** governed by Article 178. The study investigates the structural relationship between **preliminary interrogation and personal precautionary orders**, tracing the resolution of the judicial split concerning the timeliness of defense objections before the Precautionary Review Court and the strict **procedural bar** under Article 182 that precludes raising the defect for the first time in cassation proceedings. Lastly, the operational consequences for defense counsel and the strict limits on supplementary reasoning by the Review Court are critically assessed.

Key Takeaways

- **Objective prerequisite of validity:** failure to conduct the mandatory advance interrogation under Article 291, paragraph 1-quater, of the Code of Criminal Procedure results in the genetic nullity of the precautionary order, which cannot be cured through subsequent custodial questioning.
- **Classification of the procedural defect:** the violation falls within the category of intermediate nullities under Article 178, paragraph 1, subparagraph (c), of the Code of Criminal Procedure, and is therefore subject to the rules of Article 182.
- **Admissibility before the Precautionary Review Court:** the objection may be raised for the first time in the application for review under Article 309 of the Code of Criminal Procedure, since no immediate statutory forfeiture occurs upon conclusion of the post-execution interrogation under Article 294.
- **Procedural bar before the Court of Cassation:** failure to raise the defect before the lower review courts bars the party from invoking it *per saltum* before the Supreme Court of Cassation, rendering the appeal inadmissible.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Criminal Law

LEADING DECISION
Italian Supreme Court of Cassation, Criminal Division, Judgment of 30 December 2025, no. 41645 — Regarding personal precautionary

Legal Principle / Editorial Headnote

The nullity of an order imposing a personal precautionary measure arising from the failure to conduct the prior interrogation of the suspect mandated by Article 291, paragraph 1-quater, of the Italian Code of Criminal Procedure constitutes an intermediate nullity; although it may be raised for the first time before the Precautionary Review Court, it cannot be pleaded for the first time by way of an appeal to the Supreme Court of Cassation, as the standing restrictions and statutory forfeitures set forth in Article 182 of the Code of Criminal Procedure apply.

01. INTRODUCTION: JUDGMENT NO. 41645/2025 OF THE CRIMINAL DIVISION

1.1 — Advance Adversarial Hearing in the Reform of Precautionary Measures

The decision of the **Italian Supreme Court of Cassation, Criminal Division, Judgment of 30 December 2025, no. 41645**, addresses the operational scope of the defense safeguards introduced by Law no. 114 of 9 August 2024. The substantive interplay between **preliminary interrogation and personal precautionary orders** occupies a central position within the procedural architecture governing personal liberty. The legislative reform inserted paragraph 1-quater into Article 291 of the Italian Code of Criminal Procedure, establishing the prior questioning of the suspect as an indispensable procedural condition for issuing custodial and coercive measures other than those justified by non-derogable urgent grounds.

This structural amendment seeks to secure a full adversarial exchange with the defense prior to any curtailment of personal liberty (*status libertatis*), shifting the right to be heard forward to the initial phase of judicial assessment. The legislature's choice responds to the need to place exculpatory elements before the court prior to the restrictive order becoming enforceable, moving beyond the traditional model based exclusively on post-execution questioning. As

highlighted in editorial scholarship on personal procedural guarantees[D1], the dialectic between prosecution and defense now centers on a prior verification of proportionality and the concrete immediacy of precautionary risks. This marks a profound transformation of precautionary procedure.

Advancing the adversarial exchange alters the institutional balance between the parties, imposing upon the court a strict duty to hear the person under preliminary investigation before ruling. Such a procedural step does not represent a mere discretionary faculty, but an authentic **prerequisite of validity** for the initial coercive order. Within this systematic framework, these considerations align with broader reflections on precautionary dialectics, much like the principles examined in the study on conflicts of jurisdiction in precautionary measures, where procedural certainty directly safeguards individual rights.

1.2 — Preliminary Interrogation and Precautionary Orders Between Nullity and Procedural Bars

Omitting the prior examination of the suspect gives rise, pursuant to paragraph 3-bis of Article 292 of the Code of Criminal Procedure, to a specific procedural defect expressly sanctioned with the **nullity of the precautionary order**. The legislature chose to classify non-compliance with this requirement as a defect affecting the **statutory structure of the custodial title**, preventing any restrictive measure issued without a prior hearing from producing valid legal effects. The core doctrinal issue concerns the exact placement of this procedural sanction within the general taxonomy of invalidities established by the Code of Criminal Procedure.

Placing this defect among the **intermediate nullities** governed by Article 178 of the Code of Criminal Procedure, paragraph 1, subparagraph (c), stems directly from the impairment of the suspect's participation and defense assistance in precautionary proceedings. The omission directly infringes the exercise of the **right to personal defense**, preventing the affected individual from submitting extinguishing or modifying facts to the judge before the liberty-restricting decision is issued. Even though it strikes at the root of the initial order, this nullity does not by its nature escape the **procedural bars and time-limits** set by the statutory system.

The judgment under review provides decisive clarification regarding the operation of Article 182 of the Code of Criminal Procedure in proceedings before the Supreme Court of Cassation. Where the invalidity has not been raised before the lower review courts, the preclusive bar becomes irreversible. The Supreme Court of Cassation firmly reaffirms the principle of procedural responsibility of the parties, preventing appeals on points of law from being used as an instrument to circumvent statutory forfeitures accrued during the precautionary review stage.

02. THE CONCRETE CASE DECIDED BY CRIMINAL CASSATION JUDGMENT NO. 41645/2025

2.1 — Procedural Background and the Measure Imposed by the Preliminary Investigations Judge of Trani

The procedural history brought before the Supreme Court of Cassation originated from an order whereby the Judge for Preliminary Investigations (*Giudice per le indagini preliminari*) of the Court of Trani imposed the coercive measure of **house arrest** upon the suspect. The provisional charge concerned complicity in the unlawful possession and trafficking of narcotic substances under Article 110 of the Criminal Code and Article 73, paragraph 1, of Presidential Decree no. 309/1990. As the legal basis for depriving the suspect of personal liberty, the initial order found serious indications of guilt together with specific precautionary needs linked to the **risk of reoffending** pursuant to Article 274 of the Code of Criminal Procedure, paragraph 1, subparagraph (c).

The first-instance judge ordered the restrictive measure without conducting the prior hearing of the suspect mandated by Law no. 114/2024. Challenging the custodial order, defense counsel filed an application for review pursuant to Article 309 of the Code of Criminal Procedure before the Precautionary Review Court of Bari, yet confined its submissions exclusively to disputing the threshold of serious indications of guilt and the existence of precautionary risks (*pericula libertatis*). By a confirmatory order dated 11 August 2025, the Review Court dismissed the precautionary appeal, without the issue of the **failure to conduct the preliminary interrogation** ever having been pleaded or argued by the parties on the merits.

2.2 — Untimeliness of the Objection Raised for the First Time Before the Court of Cassation

Only in its subsequent appeal to the Supreme Court of Cassation did defense counsel object to the omission of the suspect's prior questioning, invoking the resulting **genetic nullity of the custodial order** under Article 292, paragraph 3-bis, of the Code of Criminal Procedure. The appellant contended that, since the measure rested solely on preventive needs relating to recidivism and lacked adequate reasoning establishing an evidentiary connection with statutory bar offenses listed under Article 407, paragraph 2, subparagraph (a), of the Code of Criminal Procedure, the order suffered from an incurable nullity. The Italian Supreme Court of Cassation, Criminal Division[1] rejected the defense argument, holding the belatedly raised ground of appeal radically inadmissible.

The Supreme Court verified from the record of the **post-execution custodial interrogation** held before the Judge for Preliminary Investigations that the defense had raised no objection whatsoever regarding the formal validity of the order imposing the measure. Likewise, no objection of nullity had been submitted either in the written review application or during the hearing before the Review Court. Failing to bring the issue before the precautionary review judges renders the procedural ground irreversibly barred, preventing the Supreme Court of Cassation from examining the validity of the precautionary order for the first time at the legitimacy level.

2.3 — The Intermediate Nature of the Nullity and Statutory Limits on Raising It

The reasoning of Judgment no. 41645/2025 reaffirms that the defect arising from a breach of Article 291, paragraph 1-quater, of the Code of Criminal Procedure belongs to the category of **intermediate nullities** governed by Article 178, paragraph 1, subparagraph (c), of the Code. Because the breach concerns the suspect's defense assistance and participation, the invalidity remains subject to the strict **statutory forfeiture deadlines** (*decadenza*) and standing restrictions established by Article 182 of the Code of Criminal Procedure. This classification rules out equating the omission of a prior hearing with an incurable absolute nullity or with the legal non-existence of the judicial act.

The Court noted the existence of an interpretive split then pending before the highest nomophylactic bench of the Court, centered on the exact deadline for raising the defense objection. Under a stricter line of authority, the objection had to be raised on pain of statutory forfeiture during the post-execution custodial interrogation itself; under a broader view, it could be raised for the first time before the Precautionary Review Court. In the case at hand, however, that interpretive divergence had no bearing on the outcome: the suspect had raised no complaint either before the Judge for Preliminary Investigations or before the Review Court panel, thereby triggering an **insurmountable procedural bar**.

Consequently, the Court declared the **appeal inadmissible**, ordering the appellant to pay the costs of the proceedings as well as a sum of three thousand euros to the Fine Fund (*Cassa delle Ammende*). The ruling sets a rigorous standard: the defense safeguards introduced by the 2024 reform cannot be turned into open-ended procedural remedies invocable without time limits, but instead demand timely **procedural diligence in raising objections** starting from the lower review stages.

03. THE NOMOPHYLACTIC FRAMEWORK BETWEEN JUDICIAL SPLITS AND AUTHORITATIVE PRECEDENT

3.1 — The Strict Approach and Timeliness in the First Available Procedural Act

Immediately following the entry into force of the reform, the case law of the Supreme Court of Cassation exhibited a sharp interpretive split over the procedural time-limit for objecting to the omission of advance questioning. A restrictive line of decisions held that the intermediate nullity had to be raised, on pain of **immediate statutory forfeiture**, in the very first available defense step attended by the suspect. Under that view, the earliest available occasion coincided with the **post-execution custodial interrogation** governed by Article 294 of the Code of Criminal Procedure, conducted shortly after the coercive precautionary order was enforced.

Proponents of the restrictive view reasoned that silence maintained by defense counsel before the Judge for Preliminary Investigations brought about a **cure by acquiescence** of the initial order's nullity under Article 182 of the Code of Criminal Procedure, thereby barring any subsequent raising of the objection on appeal before the Precautionary Review Court. As noted in legal scholarship examining the review powers of collegiate precautionary panels[D2], however, this position risked hollowing out the substantive value of the defense safeguard by burdening counsel with an instantaneous objection requirement within an extremely compressed timeframe.

Moreover, the restrictive approach overlooked the structural nature of the defect, conflating the curing of a mere procedural irregularity with the invalidity of the **initial coercive title** itself. Requiring the invalidity to be pleaded during the post-execution questioning meant conflating two distinct institutions serving different purposes: an *ex post* hearing cannot replace the advance judicial assessment mandated by statute to protect individual liberty. Meaningful defense advocacy requires an effective judicial remedy.

3.2 — The Broader Solution Adopted by the Highest Bench and by Criminal Cassation no. 22911/2026

The opposing protective view gained full endorsement in the decision handed down by the highest nomophylactic bench of the Supreme Court in early 2026, subsequently applied systematically by the **Italian Supreme Court of Cassation, Criminal Division, Judgment of 22 June 2026, no. 22911**[2]. The Court established that omitting the interrogation required under Article 291, paragraph 1-quater, of the Code of Criminal Procedure gives rise to an **original and structural nullity** of the restrictive order, which may be raised for the first time before the Precautionary Review Court or detected there *ex officio*, regardless of whether defense counsel remained silent during the post-execution questioning.

That conclusion rests on the doctrine of the **genetic nature of the invalidity**: advance interrogation stands as an objective and indispensable statutory prerequisite of the precautionary title, whose absence creates a radical defect tainting the order from the very moment of its issuance. The decision also aligns with the authoritative ruling of the **Italian Supreme Court of Cassation, Criminal Division, Judgment of 24 March 2026, no. 11067**[3], holding that such original unlawfulness invalidates the measure retroactively *ex tunc*, requiring the **annulment without remand** of the precautionary order and the immediate release of the suspect.

The nomophylactic ruling clarifies that review proceedings under Article 309 represent the natural forum for scrutinizing the **extrinsic legality prerequisites** of the precautionary title. Raising the objection at that stage is fully timely: no premature statutory forfeiture is triggered upon the closing of the minutes under Article 294 of the Code of Criminal Procedure. Full appellate review vested in the Precautionary Review Court makes it possible to remedy the original procedural omission, restoring legality by declaring the coercive measure void.

04. PRELIMINARY INTERROGATION AND PRECAUTIONARY ORDERS: DEFENSE IMPLICATIONS AND REVIEW POWERS

4.1 — When and How to Raise Nullity Between Preliminary Interrogation and Precautionary Orders

The nullity stemming from the omission of advance questioning must be raised on pain of statutory forfeiture in the application for review or during the chamber hearing under Article 309 of the Code of Criminal Procedure, whereas no procedural bar arises during the post-execution custodial interrogation. Conversely, failing to raise the objection in the lower review proceedings prevents invoking it *per saltum* before the Supreme Court of Cassation, resulting in the inadmissibility of the appeal.

From the standpoint of litigation strategy, defense counsel bears a clear **burden of timely pleading** within the grounds for precautionary review. Although case law acknowledges that the Precautionary Review Court may detect the defect of its own motion, proactive defense pleading proves decisive in ensuring that the expiration of procedural time-limits does not consolidate the restrictive order. As explained in scholarly analysis addressing procedural bars before the Supreme Court[D3], allowing the objection at the review stage preserves the effectiveness of appellate remedies without curtailing the party's ability to advance substantive grounds.

With regard to operational *distinguishing*, it must be emphasized that the duty to conduct an advance hearing **does not apply** in the statutory exceptions exhaustively enumerated by the legislature. Specifically, the requirement is excluded whenever there exist concrete precautionary risks of tampering with evidence or flight as set out in Article 274 of the Code of Criminal Procedure, paragraph 1, subparagraphs (a) and (b). Likewise, the safeguard is excluded in proceedings concerning organized crime or terrorism-related offenses listed in Article 407, paragraph 2, subparagraph (a), of the Code of Criminal Procedure, or where exceptional grounds of urgency are specifically substantiated by the public prosecutor. Outside those exhaustive statutory exceptions, omitting the advance hearing results in the radical invalidity of the precautionary order.

> The genetic nullity of a precautionary order issued without preliminary interrogation safeguards adversarial scrutiny over personal liberty, barring the Precautionary Review Court from supplying supplementary reasoning or curing the defective coercive title ex post.

4.2 — Prohibition of Ex Officio Cure and Post Hoc Supplementary Reasoning

A further issue of paramount importance concerns the limits on the powers vested in the Precautionary Review Court when confronted with an initial order tainted by the omission of advance questioning. Under the principle established by the Supreme Court of Cassation[3], the Review Court holds no power of ***ex post*** **supplementary reasoning** aimed at remedying the original omission committed by the Judge for Preliminary Investigations. Accordingly, the reviewing panel cannot identify of its own motion urgent derogatory grounds that were never articulated in the initial order so as to avert annulment.

The Review Court's ordinary power to supplement or substitute reasoning encounters an impassable boundary in the legality of the initial prerequisites of the coercive act. Where the Judge for Preliminary Investigations based the restrictive measure exclusively on the risk of reoffending under Article 274, paragraph 1, subparagraph (c), of the Code of Criminal

Procedure, the appellate panel cannot compensate for the lack of prior interrogation by retrospectively asserting a risk of evidence tampering or flight. Such remedial supplementation would breach **logical and legal coherence** and irreversibly undermine the defense prerogatives guaranteed by the procedural system.

It follows that establishing the defect requires the **annulment without remand** both of the contested review order and of the underlying initial precautionary order, entailing the immediate release of the person subjected to restraint. Judgment no. 41645/2025 of the Italian Supreme Court of Cassation, Criminal Division[1], even while declaring the belated cassation appeal inadmissible, confirms this coherent doctrinal framework: the balance between protecting advance adversarial participation and preserving procedural stability rests on strict compliance with statutory forfeiture rules, setting clear boundaries for the protection of personal liberty (*status libertatis*).

Decision / Court	Judicial Stance	Core Legal Principle
Supreme Court of Cassation, Criminal Division, no. 41645/2025	Procedural rigor	Nullity arising from omitted preliminary interrogation under Article 292 of the Code of Criminal Procedure is intermediate in nature and cannot be raised for the first time before the Court of Cassation if not pleaded in lower review proceedings, being barred under Article 182.
Supreme Court of Cassation, Criminal Division, no. 22911/2026	Protective and evolutionary	Omitting preliminary interrogation constitutes a genetic defect that may be raised for the first time before the Precautionary Review Court, as no immediate statutory forfeiture occurs upon conclusion of post-execution custodial questioning.
Supreme Court of Cassation, Criminal Division, no. 11067/2026	Radical annulment	Preliminary interrogation is an indispensable prerequisite of the precautionary title; the Review Court cannot supplement the reasoning *ex post* or cure the defect by identifying urgent derogatory grounds of its own motion.

References & Authorities Cited

Statutory Provisions

- Law no. 114 of 9 August 2024 — Amendments to the Criminal Code, the Code of Criminal Procedure, and the Judicial Organization Act.
- Article 291 of the Italian Code of Criminal Procedure — Procedure for applying precautionary measures and mandatory prior interrogation of the suspect under paragraph 1-quater.
- Article 292 of the Italian Code of Criminal Procedure — Statutory requirements of the precautionary order and sanction of nullity for omitted preliminary interrogation under paragraph 3-bis.

- Article 178 of the Italian Code of Criminal Procedure — General intermediate nullities concerning the participation, assistance, and defense representation of the accused.
- Article 182 of the Italian Code of Criminal Procedure — Standing restrictions on raising intermediate nullities and accrual of defense statutory forfeitures.
- Article 274 of the Italian Code of Criminal Procedure — Precautionary needs and exhaustive statutory exceptions to the mandatory prior interrogation of the suspect.
- Article 309 of the Italian Code of Criminal Procedure — Review procedure for coercive precautionary orders and scope of appellate cognition of the Precautionary Review Court.

Case Law Cited

1. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 30 December 2025, no. 41645** — Regarding personal precautionary measures, the nullity of the order imposing the measure resulting from the omission of preliminary interrogation under Article 291, paragraph 1-quater, of the Code of Criminal Procedure constitutes an intermediate nullity and cannot be raised for the first time in an appeal to the Court of Cassation, as the standing limits and procedural bars set forth in Article 182 apply. Outcome: declared inadmissible. Para.: 4.

2. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 22 June 2026, no. 22911** — Omission of the prior interrogation mandated by Article 291, paragraph 1-quater, of the Code of Criminal Procedure constitutes a genetic intermediate nullity of the precautionary order that may be raised for the first time before the Precautionary Review Court or detected there of the court's own motion, irrespective of silence maintained during the post-execution interrogation under Article 294. Outcome: annulled without remand both the contested review order and the initial order of the Preliminary Investigations Judge. Para.: 3.

3. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 24 March 2026, no. 11067** — Preliminary interrogation of the suspect stands as an objective and indispensable prerequisite of the coercive title; its genetic nullity cannot be cured *ex post* by the Precautionary Review Court through supplementary reasoning or *ex officio* identification of derogatory urgent grounds not formalized by the Preliminary Investigations Judge, requiring annulment of the order and immediate release. Outcome: annulled without remand the contested order and ordered the appellant's immediate release. Para.: 1.

Legal Scholarship Cited

D1. Metodo Giuridico, *L'inammissibilità del conflitto di competenza nelle misure cautelari* [Inadmissibility of Jurisdictional Conflicts in Precautionary Measures], 10 July 2026, available at metodogiuridico.it.

D2. Metodo Giuridico, *Il ne bis in idem per la sanzione disciplinare carceraria* [The Principle of Ne Bis in Idem in Prison Disciplinary Sanctions], 9 July 2026, available at metodogiuridico.it. ↑

D3. Metodo Giuridico, *Mandato specifico ad impugnare per l'assente: l'onere è generale* [Specific Mandate to Appeal for Defendants Tried in Absentia: General Scope of the Burden], 16 July 2026, available at metodogiuridico.it. ↑

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