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Confiscation of Direct Profit and Victim Restitution in Embezzlement Offences

The Italian Supreme Court of Cassation, Criminal Division, rules that asset confiscation is unlawful where the defendant has made full restitution of the misappropriated funds prior to final judgment

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Criminal Law & Offences against Public Administration

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Current Legal Framework as of 3 November 2026: The Supreme Court consolidates the prohibition against duplicative punitive measures, excluding patrimonial deprivation under Article 322-ter of the Italian Criminal Code whenever the financial shortfall has been reimbursed in full.

ABSTRACT

The intervention of the **Italian Supreme Court of Cassation, Criminal Division**, in Judgment no. 14179/2026 clarifies the systematic relationship between **confiscation of the proceeds of crime and victim restitution** in offences of embezzlement by a public official (*peculato*), holding that full repayment of the misappropriated funds precludes patrimonial deprivation, including **value-based confiscation** under Article 322-ter of the Italian Criminal Code. The decision reaffirms the overarching scope of the **principle of alternativity** between reparative conduct and asset forfeiture, underscoring that cumulative enforcement would result in an unjustified dual economic penalty incompatible with the proportionality standard and the conventional protection of peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the ECHR. Even within negotiated appellate proceedings under Article 599-bis of the Italian Code of Criminal Procedure, a confiscation order imposed contrary to law constitutes an unlawful penalty subject to *ex officio* revocation and extensible to non-appealing co-defendants.

Key Takeaways

- **Principle of alternativity:** complete reimbursement of the misappropriated sums extinguishes the illicit profit and renders any subsequent patrimonial confiscation unlawful.
- **Prohibition of economic double jeopardy:** the legal order bars dual patrimonial deprivation against the offender's assets in accordance with Article 1 of Protocol No. 1 to the ECHR.
- **Judicial review in appellate sentence agreements:** a negotiated sentence settlement under Article 599-bis of the Code of Criminal Procedure does not bar challenges against the illegality of a patrimonial measure.
- **Extensive effect of appeals under Article 587 CCP:** the annulment of an unlawful confiscation order also benefits a co-defendant in the same offence who did not raise a specific ground of appeal.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Criminal Law & Offences against Public Administration

LEADING DECISION
Italian Supreme Court of Cassation, Criminal Division, Judgment of 17 April 2026, no. 14179 — Full restitution of misappropriated

Legal Principle / Editorial Headnote

Confiscation ordered pursuant to Article 322-ter of the Italian Criminal Code is unlawful where the court has acquired proof that the defendant has made full restitution of the proceeds of the offence, inasmuch as confiscation in such circumstances would entail a dual and unjustified patrimonial deprivation to the detriment of the person held liable, thereby infringing the principle of proportionality as well as Article 1 of Protocol No. 1 to the ECHR on the protection of property.

01. DOCTRINAL FRAMEWORK AND SCOPE OF APPLICATION OF ARTICLE 322-TER OF THE CRIMINAL CODE

1.1 — Legal Nature and Functions of Value-Based Confiscation in Embezzlement Offences

The interplay between **confiscation of criminal proceeds and victim restitution in embezzlement offences** represents one of the most sensitive interpretive crossroads within the Italian regime governing **offences against the public administration**. The asset-recovery mechanism established under Article 322-ter of the Criminal Code performs the primary function of neutralising the **unlawful economic advantages** derived from the commission of the offence. Within the crime of embezzlement by a public official (*peculato*) set forth in Article 314 of the Criminal Code, asset deprivation operates as a **multifaceted punitive response** designed to prevent the unjustified enrichment of the unfaithful public agent. On the intricate subjective dynamics of liability in such offences, see also the analysis on embezzlement and complicity of the outsider in judicial administration.

Criminal law scholarship consistently underscores that **value-based confiscation** possesses an **inherently punitive and afflictive nature**, functioning as an autonomous patrimonial sanction that operates independently of any direct causal or physical nexus between the seized asset and the criminal conduct. Such a doctrinal profile demands strict delineation of its operational boundaries, because **state-ordered patrimonial expropriation** cannot degenerate into an unwarranted duplication of the punitive burden; rather, it must preserve its **preventive rationale** alongside strict proportionality in relation to the statutory harm caused by the offence.

1.2 — Objective Prerequisites of Confiscable Profit and Patrimonial Extinguishment

The lawfulness of a proprietary enforcement measure rests upon the objective existence of a **criminal profit** actually obtained and consolidated within the perpetrator's patrimonial sphere. According to the settled case law of the **Italian Supreme Court of Cassation, Criminal Division**, patrimonial forfeiture presupposes the offender's genuine **economic enrichment**, understood as a net increase in assets or a quantifiable cost saving susceptible to accounting verification. Where no enduring financial advantage persists, the legal system precludes coercive attachment against the defendant's property.

The implementation of **reparative conduct** capable of making the injured public administration whole brings about the immediate **extinguishment of the criminal profit**. Whenever the perpetrator voluntarily repays the unlawfully retained sums prior to the conclusion of criminal proceedings, the **substantive prerequisite for asset deprivation** ceases to exist. In this respect, the Supreme Court has clarified that confiscation cannot target the proceeds of crime once reparative performance has eliminated the economic benefit initially gained, thereby barring the adoption of an expropriative order devoid of any material object[1].

02. PROCEDURAL BACKGROUND AND THE RULING OF THE SUPREME COURT

2.1 — Misappropriation of Hospital Co-Payment Fees and Appellate Sentence Agreement under Article 599-bis CCP

The dispute brought before the Supreme Court originated from an extensive criminal investigation involving two healthcare administrative employees entrusted with collecting patient co-payment fees at a public hospital facility. Abusing their accounting duties, the defendants engaged in the **misappropriation of public funds**, manipulating electronic payment records in order to conceal the cash shortfall. Once proceedings reached the Court of Appeal, the parties resolved the case by entering into an **appellate sentence agreement** pursuant to Article 599-bis of the Code of Criminal Procedure, stipulating a reduction of the **custodial sentence** contingent upon the grant of **generic mitigating circumstances**.

That procedural settlement rested factually upon the defendants' reparative conduct, as they had completed **full restitution of the misappropriated sums** prior to the conclusion of the appellate proceedings on the merits. Notwithstanding that repayment, the appellate court upheld the **value-based patrimonial confiscation** previously ordered. Hearing the ensuing appeal on points of law, the **Italian Supreme Court of Cassation, Criminal Division**, first addressed the admissibility of the grievances, reiterating that the partial waiver of appellate grounds inherent in a negotiated settlement precludes challenges to legal classification on the merits yet never bars review of unlawful penalties[2].

2.2 — Classification of Confiscation as an Unlawful Penalty and Extension to the Co-Defendant

Turning to the substance of the challenge, the Supreme Court looked beyond the binding force of the negotiated settlement, ruling that a proprietary forfeiture measure imposed in the absence of any remaining criminal profit amounts to a genuine **unlawful penalty**. Criminal law cannot tolerate the survival of an expropriative order once the injured party has been compensated in full; otherwise, the measure degenerates into an **unjustified deprivation without legal cause**, directly infringing the statutory safeguards enshrined in Article 322-ter of the Criminal Code.

The Court of legitimacy established the foundational rule whereby confiscation ordered despite full restitution of the proceeds constitutes an illegal measure subject to *ex officio* revocation[3]. Having identified this structural defect, the bench applied the **principle of the extensive effect of appeals** governed by Article 587 of the Code of Criminal Procedure, vacating the **value-based confiscation** with respect to the non-appealing co-defendant as well, thereby safeguarding the overarching **legality of the punitive response**.

03. CONFISCATION OF PROFIT AND RESTITUTION IN EMBEZZLEMENT: ALTERNATIVITY AND PROHIBITION OF DUPLICATION

3.1 — Convergence of Settled Case Law and Special Provisions of the Criminal Legal Order

The principle of **punitive alternativity** stands at the apex of the systematic reconstruction developed by judicial precedent. Examining the interplay between **confiscation of criminal profit and victim restitution in embezzlement offences** reveals a coherent guiding principle aimed at preventing any form of duplicative asset forfeiture. Unlike other statutory offences in which post-offence reparation affects solely the calculation of custodial sentences, the patrimonial measure governed by Article 322-ter of the Criminal Code ceases to apply once the injured public entity has already recovered the entire equivalent value of the misappropriated funds.

Judgment no. 14179/2026 follows the trajectory charted by earlier rulings of the **Italian Supreme Court of Cassation, Criminal Division**, which firmly held that the economic advantage stemming from an offence cannot be subjected to confiscation where it has already been restored in full to the injured party[4]. That conclusion finds positive statutory corroboration across multiple **special provisions of the Criminal Code** — including Article 600-septies of the Criminal Code and Article 452-undecies of the Criminal Code — which confirm the subsidiary character of state forfeiture vis-à-vis **effective patrimonial restitution**, thereby barring the imposition of a **double economic sanction**.

3.2 — Protection of Property under Article 1 of Protocol No. 1 to the ECHR and Proportionality

From the standpoint of supranational obligations, excluding patrimonial confiscation satisfies the imperative of aligning domestic criminal law with the standards elaborated by the case law of the **European Court of Human Rights (ECtHR)**. Pursuant to **Article 1 of Protocol No. 1 to the ECHR**, every state interference with the peaceful enjoyment of possessions must comply with a strict requirement of **sanctioning proportionality**, ensuring that the punitive response does not inflict an excessive or unjustified sacrifice upon individual patrimony.

Viewed from this perspective, Supreme Court jurisprudence draws a clear **distinction** vis-à-vis regulatory domains in which the public interest pursues autonomous punitive objectives, reaffirming that full repayment of the misappropriated sums simultaneously extinguishes both the material object targeted by the forfeiture order and the functional purpose of the patrimonial measure itself[5]. Complete monetary reparation neutralises the **illicit patrimonial taint of the asset**, stripping state expropriative power of its essential constitutional and conventional justification.

04. CONCLUSIONS, PRACTICAL IMPLICATIONS, AND DEFENCE GUIDANCE IN

NEGOTIATED PROCEEDINGS

4.1 — Operational Strategies for Drafting Sentence Agreements and Managing Reparative Conduct

The jurisprudential ruling examined herein consolidates principles of substantial operational significance for **criminal defence counsel** handling offences against the public administration. When addressing **confiscation of criminal profit and victim restitution in embezzlement cases**, practitioners must assemble and file comprehensive accounting records proving full patrimonial reimbursement ahead of the final hearing, both in ordinary trials and in negotiated special proceedings.

When negotiating an **appellate sentence agreement** under Article 599-bis of the Code of Criminal Procedure, defence counsel should include an explicit stipulation recording the completed **restitution of the misappropriated funds** and expressly requesting the non-application or revocation of **value-based confiscation** under Article 322-ter of the Criminal Code. Should the appellate court nonetheless uphold the patrimonial order without legal basis, that sentencing head remains independently reviewable before the Supreme Court on grounds of **illegality of the penalty**, enabling the **Italian Supreme Court of Cassation, Criminal Division**, to quash the confiscation order without remand and fully safeguard the **patrimonial integrity of the defendant**.

References & Authorities Cited

Statutory Provisions

- Italian Criminal Code — Articles 314 (Embezzlement by a public official), 322-ter (Confiscation), 452-undecies (Confiscation in environmental offences), and 600-septies (Confiscation in offences against the person).

- Italian Code of Criminal Procedure — Articles 587 (Extensive effect of appeals) and 599-bis (Appellate sentence agreement).

Case Law Cited

1. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 17 April 2026, no. 14179** — Full restitution of misappropriated funds precludes value-based confiscation of the proceeds of crime as a breach of the principle of alternativity. Outcome: quashed in part without remand solely as to confiscation and declared inadmissible as to the remainder. Para.: 2.1, 2.4. ↑

2. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 17 April 2026, no. 14179** — Waiver of substantive grounds of appeal within an appellate sentence agreement does not bar an appeal to the Court of Cassation challenging the imposition of an unlawful penalty. Outcome: quashed in part without remand and declared inadmissible as to the remainder. Para.: 1, 2. ↑

3. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 17 April 2026, no. 14179** — Confiscation ordered in the absence of any remaining criminal profit is radically unlawful, and its annulment extends to the non-appealing co-defendant under Article 587 of the Code of Criminal Procedure. Outcome: quashed in part without remand as to confiscation, extending effects to co-defendant Marotta, and declared inadmissible as to the remainder. Para.: 2.4, 2.5. ↑

4. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 27 September 2018, no. 42653** — The economic benefit derived from an offence cannot be confiscated once it has already been returned to the injured party. Outcome: quashed without remand, excluding confiscation. Para.: 2. ↑

5. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 25 May 2021, no. 20749** — Upon restitution of the sums constituting criminal profit, both the material object and the functional purpose of criminal confiscation cease to exist. Outcome: quashed without remand, vacating confiscation. Para.: 2. ↑

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