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The sacristy as a place of private dwelling. Brief remarks to Court of Cassation (Criminal Division), Sec. IV, judgment April 30, 2025, No. 16366.

(16 June 2025)

1. Introduction

The subject of the judgment under review is the legal classification of the sacristy as a place of private dwelling for the purposes of applying Article 624-*bis* of the Italian Penal Code (home burglary). In fact, the correct legal classification of this ecclesiastical space has significant procedural and substantive consequences, determining the transition from the basic offence of simple theft under Article 624 Penal Code to the aggravated offence of home burglary, which entails prosecution ex officio and a harsher penalty.

The conduct examined by the Supreme Court concerned the theft of a wallet placed inside a handbag that a woman had left in the church sacristy while she was volunteering. The Brescia Court of Appeal, partially reforming the judgment of the Cremona Court of First Instance, had, upon the appeal of the Public Prosecutor, reclassified the crime originally charged (receiving stolen goods) as the different offence under Article 624-*bis* Penal Code.

An appeal was filed with the Supreme Court against this judgment on the grounds that the conduct did not constitute the offence of home burglary but should have been classified as simple theft. The appellant argued that the notion of private dwelling should apply only to the parish priest and not to the victim, who had only entered the sacristy as a guest to perform volunteer work and had neither availability nor a stable relationship with the sacristy. Unlike the parish priest, she had no *jus excludendi alios*.

2. The Decision of the Supreme Court

In rejecting the appeal, the Supreme Court first noted that, «*as clarified by settled case law, the sacristy, being functional to activities complementary to worship and serving not only the sacred building but also the rectory, must be considered a place wholly or partly designated as 'private dwelling', since entry by third parties is controlled by those who have availability of the space (see, in this regard, Section 4, Judgment no. 13492 of 21/01/2020, Anselmo, Rv. 279002-01; Section 4, Judgment no. 40245 of 30/09/2008, Aljmi, Rv. 241311-01)*».

According to the Court, this classification of the sacristy «*conforms with the general principle expressed by the United Chambers of this Court, whereby, for the purposes of the offence set forth in Article 624-bis of the Penal Code, the definition of private dwelling includes exclusively those places in which acts of private life are carried out not occasionally, and which are not open to the public or accessible to third parties without the consent of the holder, including those intended for professional or working activities (see Section United, no. 31345 of 23/03/2017, D'Amico, Rv. 270076-01)*».

Having established this, even if the availability of the sacristy and the right to exclude third parties rests solely with the parish priest, it does not exempt criminal liability «*on the grounds that the theft was committed against a third party, and not the parish priest himself*».

Thus, the Court clarified that «*the concept of private dwelling, for the purposes of Article 624-bis Penal Code, is purely objective, referring only to the physical location and not to the identity of the victim. It is not required that the victim be the same person who holds the availability of the premises and the right to exclude others. Once access to the place has been granted to a third party, the unlawful taking of property belonging to that third party does not negate the classification of the offence as burglary in a dwelling, as it was committed in a location that, according to the interpretive criteria of the jurisprudence, qualifies as a place of private dwelling.*».

3. Jurisprudential criteria for the qualification of private dwelling and precedents regarding the sacristy

The judgment in question refers to the consolidated case law of the Supreme Court on the classification of a place as a private dwelling and its recognition of this nature in the sacristy.

As specified[1], the notion of private dwelling includes exclusively those places in which acts of private life are carried out not occasionally, and which are not open to the public or accessible to third parties without the consent of the holder. This definition is broader than that of a traditional residence.

Over time, the Supreme Court has developed increasingly rigorous criteria for the classification of a place as a "private dwelling" under Article 624-bis Penal Code. The United Sections[2] have identified three essential elements that must be met cumulatively:

[1] Court of Cassation (Criminal Division), Sec. V, judgment September 26, 2022, No. 36221.
[2] Court of Cassation (Criminal Division), Sec. U, judgment June 22, 2017, No. 31345.

– the use of the space to carry out acts of private life (such as rest, leisure, meals, study, or professional activities) in a reserved way, protected from external intrusions;

– a stable and appreciable duration of the relationship between the person and the place, not characterized by mere occasionality;

– restricted access to the place, with the holder having the *jus excludendi alios*.

In precedents where the sacristy is recognized as a place of private dwelling, the principle has been established that the sacristy, as a space functionally intended for activities complementary to worship and serving both the sacred building and the rectory, constitutes a private dwelling under Article 624-bis Penal Code [3]. The Supreme Court has clarified that such legal classification applies even when the sacristy is used for charitable activities for the needy during specific hours, since the defining element of private dwelling lies in the ability to control third-party access by those who have availability of the space. Importantly, the qualification as private dwelling is not invalidated by the absence of a physical door closing the room, as the key factor lies in the functional nature and intended use of the space.

In another ruling[4], it was reiterated that the sacristy of a church, being functional to activities complementary to worship and serving both the sacred building and the rectory, must be regarded as a private dwelling, given that third-party access is subject to selection by those who hold availability.

The jurisprudence[5] has also identified the types of activities typically carried out in the sacristy, including:

– the dressing of clergy before services;

– preparation of liturgical ceremonies;

– private reception of selected parishioners by the priest;

– management of parish affairs involving confidentiality;

– storage of valuable or sacred liturgical items.

Finally, it was emphasized that the sacristy is «*a place where access can be controlled at the discretion of those who have availability*»[6], and is thus a space characterized by privacy and restricted access.

[3] Court of Cassation (Criminal Division), Sec. IV, judgment February 14, 2023, No. 6142.
[4] Court of Cassation (Criminal Division), Sec. IV, judgment March 22, 2022, No. 9717; in accordance with Court of Cassation (Criminal Division), Sec. IV, judgment Jenuary 21, 2020, No. 13492, e with Court of Cassation (Criminal Division), Sec. IV, judgment September 30, 2008, No. 40245.
[5] Court of Cassation (Criminal Division), Sec. IV, judgment Jenuary 21, 2020, No. 13492, cited.
[6] Court of Cassation (Criminal Division), Sec. IV, judgment February 6, 20182, No. 5475.

4. Final considerations

In a recent judgment[7], attention was drawn to the uniqueness of the sacristy compared to other church areas such as parish halls. It was underlined that the decisive criterion for classifying a space as a private dwelling is functional: the activities carried out must be comparable to the manifestations of private life typical of a home. In particular, regarding parish halls, the Court clarified that such spaces «*cannot automatically be qualified as places of private dwelling simply because they are locked by the parish priest who has exclusive control over them or because the relationship between the hall and the priest is stable*».

Analysis of the case law highlights a substantially settled orientation that recognizes the sacristy as a place of private dwelling for the purposes of Article 624-bis Penal Code, even though it presents features distinguishing it from traditional residential spaces.

This orientation is based on well-reasoned arguments that consider the specific function of this ecclesiastical space and the nature of the activities carried out therein, showing that all three criteria identified by the Supreme Court for classifying a space as a private dwelling are met in the case of the sacristy:

- the performance of reserved activities complementary to worship;
- a stable relationship between the space and the person who holds availability;
- the selective control of access.

The judgment under comment, in line with this jurisprudence, further specifies the objective nature of the concept of private dwelling as it applies to the sacristy, relating it solely to the physical space and excluding the notion that Article 624-*bis* Penal Code applies only if the victim is the parish priest, i.e., the person with availability and the the *jus excludendi alios*.

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[7] Court of Cassation (Criminal Division), Sec. V, judgment February 27, 2025, No. 8248.