Court of Cassation clarifies that compensation can be requested by those unlawfully detained in CPRs

The Supreme Court of Cassation, Joint Sections, with ruling No 18658 of June 9, 2026, shed light on a crucial issue that links immigration law, civil liability and the protection of fundamental rights. The judges ruled that a foreigner who suffers an unlawful deprivation of liberty within a former CIE (now CPR - Repatriation Detention Centre) may directly seek compensation for non-pecuniary damages, without first having to challenge the detention extension order.

Until now, one of the most complex issues concerned the prejudicial issue: whether the foreigner could only claim damages after having had the invalid provision annulled (for example, by appealing to the Supreme Court).

The United Sections responded with a clear no, establishing total autonomy between:

- The lapse remedy: aimed at removing the damaging provision (the appeal).
- Compensatory remedy: aimed at repairing the damage suffered in the subjective right to personal freedom.

The two instruments, the court explained, are "autonomous, complementary and concurrent". Both converge toward the same constitutional objective: ensuring full and effective protection of the individual.

The Court of Cassation also established a clear rule for magistrates: The judge hearing the case for compensation can and must evaluate the legitimacy of the uncontested detention order, but must do so *incidenter tantum* (i.e. only incidentally). The civil judge, therefore, does not formally annul the original administrative act, but analyses its invalidity for the sole purpose of verifying whether the conditions for a civil wrong exist (Article 2043 of the Civil Code) and quantifying the damages to be compensated for the days of unjustified detention and for the violation of the right to defense.

Source(s)

- Court of Cassation | Corte di Cassazione (22 June, 2026), Trattenimento illegittimo nei CPR, sì all'azione autonoma di risarcimento del danno [Unlawful detention in CPRs: independent action for damages is approved.],

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https://integrazionemigranti.gov.it/it-it/Ricerca-news/Dettaglio-news/id/4805/Trattenimento-illegittimo-nei-CPR-si-allazione-autonoma-di-risarcimento-del-danno

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