

Basile F., *Commento all'art. 59 sub B*, estratto da *Aa.Vv., Codice penale commentato*, fondato da E. Dolcini, G. Marinucci, Milano, Wolters Kluwer, V ed., 2021

B) Circostanze aggravanti e attenuanti

SOMMARIO: VII. Nozione, funzione e classificazione delle circostanze - VIII. La distinzione tra circostanze ed elementi costitutivi del reato: rilevanza della distinzione e criteri di distinzione - IX. (*Segue*) criteri di distinzione 'forti' o 'probanti' - X. (*Segue*) criteri di distinzione 'deboli' o 'indizianti' - XI. (*Segue*) criteri di distinzione 'inutili' - XII. (*Segue*): il ricorso, in via residuale, ai classici criteri ermeneutici - XIII. (*Segue*) in particolare, la distinzione tra circostanze aggravanti ed eventi aggravatori dei c.d. reati aggravati dall'evento - XIV. La riforma incompiuta dell'istituto delle circostanze: considerazioni generali - XV. L'art. 59, c. 2: l'imputazione soggettiva delle circostanze aggravanti - XVI. L'art. 59, c. 1: l'imputazione oggettiva delle circostanze attenuanti - XVII. L'art. 59, c. 3: l'irrelevanza delle circostanze putative - XVIII. Tentativo e circostanze - XIX. Precedenti legislativi - XX. Casistica.

VII. Nozione, funzione e classificazione delle circostanze

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Le circostanze sono elementi **accidentali, accessori**, di carattere oggettivo o soggettivo, che, correlati ad un reato già perfetto nei suoi requisiti essenziali, modificano la pena per esso comminata, aggravandola o attenuandola. Esse incidono, quindi, primariamente sulla **misura della punizione**, in termini quantitativi o qualitativi: elemento caratterizzante e immancabile del reato circostanziato è, pertanto, la variazione della sanzione rispetto al reato semplice. Secondariamente, le circostanze possono anche modificare la disciplina sostanziale e processuale del reato cui accedono (determinandone, ad es., la punibilità d'ufficio, anziché a querela, o lo spostamento del giudice competente per materia, oppure ancora determinando la possibilità di procedere, in relazione al reato circostanziato ma non già a quello semplice, all'arresto in flagranza o a intercettazioni telefoniche) [BASILE (8), 1743]. Le circostanze non influiscono, invece, in alcun modo sull'esistenza del reato (di uno specifico titolo di reato), e sulla sua punibilità [MARINI (60), 19; MELCHIONDA (71), 893; SANTORO (97), 19; VALLINI, in DE FRANCESCO, in *Palazzo-Paliero Trattato*, 2; BRICOLA (12), 1051; BRICOLA (13), 359-388; CONTENTO (19), 2; MALINVERNI (56), 68; MALINVERNI (57), 190; MARINI (60), 63; PROSDOCIMI (85), 277-280; DE VERO (28), 119; per una recente

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