



Press Office of the Constitutional Court

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CRIMINAL TRIALS: ALSO STATEMENTS MADE TO THE PRELIMINARY INVESTIGATIONS JUDGE BY A “WITNESS ASSISTED BY COUNSEL” [“TESTIMONE ASSISTITO”] MAY BE CONSIDERED DURING THE ORAL STAGE

Statements made to the preliminary investigations judge during the pre-trial measures hearing [*interrogatorio di garanzia*] by a person accused of a related offence after having been warned that he or she may be heard as a “witness assisted by counsel” concerning any statements implicating a third party may be considered during the oral stage if they have in the meantime become “non-repeatable”.

This ruling was issued by the Constitutional Court in [judgment no. 218](#), filed today (author of the judgment Stefano Petitti), which declared unconstitutional Article 512(1) of the Code of Criminal Procedure, insofar as incompatible with such an interpretation.

Within the proceedings that gave rise to this decision, the statements had been made by a person arrested on suspicion of having committed various offences: during the pre-trial measures hearing before the preliminary investigations judge, after being warned as required under Article 64(3)(c) of the Code of Criminal Procedure, the suspect had accused the public officials who had arrested him of assault and other acts to his detriment; the public prosecutor thus requested that he be summoned as a “witness assisted by counsel”; however, in the meantime the individual absconded, a fact which, according to the *Tribunale di Roma*, had not been foreseeable at the time the statements implicating other persons had been made.

The Court held that it would be “unreasonable” for the contested provision to allow the consideration – on the grounds that they could not be repeated – of statements received by the investigating police, the public prosecutor, the defence counsel and the preliminary hearing judge, but not also those received by the preliminary investigations judge during the pre-trial measures hearing of a person accused of a related offence, where that person had been summoned to be heard as a witness during the oral stage.

Rome, 20 October 2020