



Press Office of the Constitutional Court

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THE “RIGHT TO SILENCE” ALSO APPLIES IN PROCEEDINGS INVOLVING THE BANK OF ITALY AND THE CONSOB

The fundamental right to silence also applies in relation to the powers of investigation of the Bank of Italy and the Consob, where the answers to their questions might establish the liability of the person under investigation for an offence that is punishable by administrative sanctions of a punitive nature.

This ruling was made by the Constitutional Court in [Judgment no. 84](#) filed today (author Francesco Viganò). In this case the Court declared unconstitutional Article 187-quinquiesdecies of Law 58/1998 [*Testo unico sulla finanza*], “insofar as it also applies to natural persons who refuse to provide the Bank of Italy or the Consob with answers that are capable of establishing the liability of the person under investigation for an offence that is punishable by administrative sanctions of a punitive nature, or his/her criminal liability”.

The question examined by the Court arose in a case concerning a company director who had received a heavy fine for having refused to answer questions put by the Consob concerning suspect financial transactions executed by him. The individual concerned had appealed against the penalty, arguing that he had simply exercised his constitutional right to remain silent where he might have risked exposing himself to a liability by answering the questions put to him.

Having been apprised of the case, in 2018 the Court of Cassation referred a question concerning the constitutionality of Article 187-quinquiesdecies, which provides for a fine of between 50,000 and one million euros for any person who “fails to comply on time with requests made by the Bank of Italy or the CONSOB”, without allowing any exception for those already suspected of having committed an offence.

By Order no. [117 of 2019](#) (see the [press release of 10 May 2019](#)), the Constitutional Court observed that EU law itself imposes an obligation on Member States to sanction any failure to cooperate with financial market supervisory authorities. It therefore asked the Court of Justice of the European Union whether, as a matter of EU law, this requirement also applies in relation to persons already suspected of having committed an offence and whether, in such cases, such a requirement is compatible with the “right to silence” recognised under the Italian Constitution, international law and the EU Charter of Fundamental Rights.

The Court of Justice of the European Union answered these questions in its judgment in Case C-481/19 given on 2 February of this year (see the official summary of the judgment [here](#)), holding that the right to silence is an integral part of the notion of a fair trial, as recognised by the EU Charter. This right – the ECJ continued – also applies within administrative proceedings that are liable to result in the imposition of sanctions of a punitive nature, such as those provided for under Italian law for the administrative offence of insider dealing.

By the judgment filed today, the Constitutional Court took note that the interpretation of EU law provided by the ECJ corresponds to the understanding of the right to silence that the Constitutional Court had proposed in its reference for a preliminary ruling, in keeping with the principles derived from the European

Convention on Human Rights and the International Covenant on Civil and Political Rights.

Therefore, a natural person who has refused to answer questions put by the Bank of Italy or the Consob during a hearing or in writing cannot be subjected to any penalty for this refusal, where the answer might have established his or her liability for an offence that is punishable by administrative sanctions of a punitive nature, or his/her criminal liability.

However, the Court clarified that the right to silence cannot justify every failure to cooperate with the competent authorities, such as a refusal to appear at a hearing planned by those authorities or delaying tactics designed to postpone it, or the failure to hand over/deliver data, documents and recordings that already exist at the time of the request made by the authority.

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