



Communications and Press Office of the Constitutional Court

Press Release of 26 October 2023

**REGENI CASE:
IN CRIMINAL PROCEEDINGS FOR STATE-INFLICTED TORTURE THE
DEFENDANT’S ABSENCE CANNOT TURN INTO A “DE FACTO” IMMUNITY**

The universal status of the crime of torture, as outlined by supranational declarations and treaties, “is inherent in the crime’s radical interference with human dignity”. The State’s obligation to judicially establish whether a torture crime has been committed is thus “the procedural side of the duty to protect dignity”.

This is what the Constitutional Court stated in [Judgment No 192/2023](#) (judge rapporteur Stefano Petitti), filed today and anticipated by a [press release on 27 September](#). The Court held that Article 420-*bis*(3) of the Code of Criminal Procedure is unconstitutional to the extent that it does not provide that courts proceed in the absence of defendants for torture crimes as defined in Article 1(1) of the New York Convention against Torture, whenever – due to lack of cooperation of the defendant’s State – no proof is available that the defendant – albeit aware of the ongoing proceedings – has been notified of the pending trial, without prejudice to the defendant’s right to a retrial in person for the re-examination of the merits of the case.

The Court observed that the indefinite paralysis of trials for torture crimes committed by public servants resulting from the impossibility of serving procedural

documents on defendants due to a lack of cooperation of the defendants' States "is not acceptable under domestic, European and international constitutional law". Indeed, it "engenders a de facto immunity", which infringes the inviolable rights of victims (Article 2 of the Italian Constitution), the principle of reasonableness (Article 3 of the Constitution), and the standards of protection of human rights enshrined in and promoted by the New York Convention (Article 117(1) of the Constitution).

The constitutional necessity to avoid the stalemate of trials can be satisfied without any reduction in the defendants' rights to take part in proceedings. However, this entails a different timeline, with defendants having the right to the reopening of trials at any stage and instance of proceedings.

By referring the implementation of this right to the courts hearing individual cases, the Court emphasised that, precisely because it preserves all the defendants' procedural rights, this right ensures that criminal proceedings for state-inflicted torture "comply with the principle of fair trial".

Rome, 26 October 2023