



Press Release of 5 June 2023

THE RIGHT TO SILENCE ALSO APPLIES TO QUESTIONS ABOUT THE DEFENDANT'S PERSONAL QUALITIES

Suspects and defendants in criminal trials must always be expressly informed of their right not to answer questions relating to their personal circumstances.

So held the Italian Constitutional Court in its [Judgment No 111](#), published today (judge rapporteur Francesco Viganò), by which Article 64(3) of the Italian Code of Criminal Procedure and Article 495 of the Italian Criminal Code were declared partially unconstitutional.

The Court of Florence (*Tribunale di Firenze*) had to decide on the criminal liability of a defendant accused of the offence of making false representations to a public official on one's identity or qualities under Article 495 of the Criminal Code. After being escorted to the Police Headquarters (*Questura*) for identification within criminal proceedings, the defendant had told the police that he had never been convicted, without having been informed of the right to remain silent. It had subsequently emerged that, in fact, the defendant had already been convicted twice by final judgment.

The referring court had observed that the Code of Criminal Procedure, as consistently interpreted by the Italian Court of Cassation, only requires that any suspected person be informed of their right not to answer questions relating to the offence of which they are accused, excluding questions relating to the personal circumstances listed in Article 21 of the provisions implementing the Code of Criminal Procedure. These include, among others, questions on whether they have a nickname, what their financial, family and social circumstances are, whether they exercise public offices or services or hold public office, and whether they have already been convicted of a criminal offence.

The Court of Florence had asked the Constitutional Court whether these rules were compatible with the constitutional dimension of the so-called right to silence, which is part of the right of defence recognised, *inter alia*, by Article 24 of the Constitution, Article 6 of the European Convention on Human Rights, and Article 14 of the International Covenant on Civil and Political Rights, adopted by the United Nations.

In Judgment No 111, the Court held that the existing rules are unconstitutional.

The Court emphasised that the right to silence applies whenever the prosecution in a criminal case “asks the person suspected or accused of having committed an offence questions about circumstances which, although not relating directly to the offence, may subsequently be used against them in criminal proceedings or at trial, and are in any event likely to have an impact on the conviction or sentence that may be imposed on them”.

This is precisely the case with the questions listed in Article 21 of the provisions implementing the Code of Criminal Procedure. For example, the fact that a person questioned has already been convicted may lead the police to order their arrest when this is only optional, it may result in an enhancement of the sentence, and it may also be used to assess the danger the person poses to society for the purposes of applying pre-trial measures, recognising mitigating circumstances, or deciding on whether to apply a suspended sentence. Knowing a person’s nickname may also be of great relevance for investigative purposes, for instance in the case of wiretaps where the person is referred to by their accomplices under a pseudonym.

The Court observed that both the Constitution and international standards protecting human rights allow for a person suspected of having committed an offence to be required to provide the prosecution with their personal details (name, surname, place and date of birth), but are incompatible with the imposition of a duty to provide further personal information, since there is no obligation on the suspect or accused person to cooperate with the investigation and trial against them.

In order to effectively safeguard this right, it is necessary to explicitly inform the suspect or accused person of their right not to answer these questions; and it is also necessary to exclude their punishability in the event that they make false representations if they have not been duly informed of their right to silence.

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