



Permissible to record and film the conversations with the phone.

Also audiovisual recordings made by one of the participants are valid and highly reliable documentary evidence

Recordings and videos with their cell phone are legitimate and do testing at the hearing that Lucia Izzo –

The audio and / or video recordings made by a participant in the conversation or by a person authorized to assist constitute lawful documentary proof and usable in the process.

This was established by the Court of Cassation, Third Criminal Chamber, in its judgment no. 5241/2017 (attached below). The accused, a police sergeant, is alleged to have induced a prostitute to have sex and abusing his mental inferiority, for having improperly induced a woman to have with him on two occasions sex.

In rejecting the appeal, the Ermellini show that the elements indicated by the two measures of merit, are serious, unique and converging in indicating the applicant author of the facts, and other facts even more serious still under investigation, described in the indictment.

In particular, the judges some considerations necessarily take place on the use of video and sound recordings in cases of sexual violence. In fact, in this case, the defendant had also filmed entirely sexual encounters with women (in addition to those referred also to the allocation for the other), and the movie vision and the content of the conversation had emerged irrefutably (documented by the investigation with video) the serious indications of the disputed offenses.

Although the recordings are, in this case, carried out by the suspect, for these judges might have to be well made by the victim of violence.

Recordings, video and / or sound, including present, or even a telephone conversation, carried out by one of the participants to the interview, or by a person authorized to assist (which does not commit the offense referred to in art. 617 and 623 Criminal Code, in as authorized), is valid and highly reliable documentary evidence, because it crystallizes in definite and objective way a historical fact, that the conversation between present (and throughout the meeting, though with video) or the phone call.

Still, he underlines the Board, the person registering (or, as in the case examined, that is filmed by the same perpetrator) is fully entitled to bear witness, and then the interview documentation excludes any dispute as to the contents of the same, although registration had taken place on board or on behalf of the Judicial Police.

In the particular case of sexual assault in court, video recordings are particularly valuable for the objective reconstruction of the violence. In fact, according to the judges, the modern recording techniques, to everyone because of the massive use of SO-CALLED phones "Smartphone", who have always incorporated voice and video recorders, and a dedicated app for recording calls and sounds, allowing an irrefutable documentation and objective of the talks and / or phone content between the rapist and the victim.

Still, the recordings of conversations (and video) between present, made on its own initiative by one of the parties, do not require authorization of the judge for preliminary investigations,

pursuant to art. 267 of the Code of Criminal Procedure since they do not fall within the concept of interception in a technical sense, but are resolved in a particular form of documentation, not subject to limits and to the interception of the formalities.

As explained in relation to criminal proceedings also it applies in relation to the civil trial, because the video recordings represent documentary evidence within the scope of Article. 2712 cc (Mechanical reproductions).

It should be stressed that registration to be validly used to be carried out by one of the protagonists of the conversation is not possible, therefore, the extension of the limits of applicability of codicistica legislation on telephone and environmental interceptions also to interceptions of conversations between present or the phone not only carried out by a stranger, but also by one of the same conversation interlocutors.

It is, in fact, the situations entirely different from each other and you can not equate to the recording, albeit secretly, to be one of the protagonists of the conversation, external interference on private life constituted by the interception took place through the work of third.

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GECOSEI of Giuseppina Napolitano

Giuseppina Napolitano