

The First Section of the European Court of Human Rights (ECHR), with a judgement of January 24th 2022, found several violations of the European Convention on Human Rights by Italy. The applicant, suffering from bipolar disorder aggravated by drug addiction, was detained in an ordinary prison, despite the decisions of the national judges who had ordered his placement in a REMS on the basis of reports certifying the incompatibility of his state of health with the ordinary prison detention. He relied on arts. 3, 5§1, 5§5, 6 and 34 of the Convention.

With regard to art. 3, the applicant argued that the continuation of his detention in an ordinary prison, despite the contrary opinion of the treating psychiatrists, prevented him from receiving adequate therapeutic treatment and that this aggravated his state of health. According to him, he was the victim of inhuman and degrading treatment within the meaning of art. 3 of the Convention, which establishes: «no one shall be subjected to torture or to inhuman or degrading treatment or punishment». The European Court recalled that this rule enshrines one of the fundamental values of democratic societies. In particular, in order to determine whether the detention of a sick person complies with this provision, it is necessary to take into account the state of health of the person concerned and the effects of detention in relation to it: prisoners with mental disorders are more vulnerable than ordinary prisoners and certain needs of prison life expose them to greater danger to their health. The absence of global therapeutic strategies for the treatment of a detainee suffering from mental disorders can, in fact, configure a «therapeutic abandonment» in contrast with art. 3. In the present case, the Court considered it necessary to assess whether the applicant's state of health was compatible with the ordinary prison regime as well as whether the care provided was sufficient and appropriate; it emerged that his state of health was incompatible with the ordinary prison regime and, despite the clear and unequivocal indications of the doctors, he remained in an ordinary prison for almost two years. Furthermore, the applicant did not benefit from any global therapeutic strategy for the management of his disease, aimed at healing his health problems or preventing them from worsening, and this in a context characterized by poor conditions of detention. This resulted in a violation of art. 3 of the Convention. As regards the violation of paragraphs 1 and 5 of art. 5, provision protecting the right to liberty and security, the applicant stated that his detention was illegal and that he did not have an effective remedy available to obtain compensation for the damage suffered. Then, the immediate placement of the applicant in REMS had been ordered for a period of one year, as this provision was the only one suitable for dealing with the latter's social dangerousness. However, this placement order was never executed. The Court recalled that the purpose of detention in a REMS is not only to protect society, but also to provide the person concerned with the necessary care to improve, as far as possible, his/her state of health and thus make it possible to reduce or control his/her dangerousness; it was therefore essential that the applicant be offered adequate treatment in order to reduce the danger he posed to society. However, even after the judgment by which the Court of Appeal had ordered his release, the applicant was not transferred to a REMS but continued to be detained in an ordinary prison, in precarious conditions, and did not benefit from individualized therapeutic treatment. Since February 2019, the prison administration department has sent numerous requests for reception to REMS in order to find a place for the applicant but, due to the lack of available places, these requests have been rejected. Faced with these refusals, the national authorities did not create new places within the REMS nor did they find another solution: the lack of places in the REMS did not constitute a valid justification for keeping the applicant in an ordinary prison, in violation of art. 5 of the Convention. The ECHR also unanimously found the violation of art. 34, as Italy has failed to fulfill its obligations deriving from this provision due to the delay in the execution of the interim measure adopted by the same Court in accordance with art. 39 of its Regulation; the violation of art. 5§5, for lack of suitable means to obtain, with a sufficient degree of certainty, compensation for the violation of paragraph 1 of the same article; the violation of art. 6§1, due to the failure to execute the judgement that ordered the applicant's release from prison and the order with which his placement in a REMS was decided. Italy will have to pay the applicant 36,400 euros for moral damages as well as 10,000 euros for costs and expenses.

Riferimenti Normativi:

- art. 3 Convenzione Europea dei Diritti dell'Uomo



Italy convicted by the ECHR for the detention of a person with health conditions incompatible with the prison regime due to the absence of REMS

Diritto processuale penale Ordinamento penitenziario

Denise Campagna

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- art. 5(1) Convenzione Europea dei Diritti dell'Uomo
- art. 5(5) Convenzione Europea dei Diritti dell'Uomo
- art. 6(1) Convenzione Europea dei Diritti dell'Uomo
- art. 34 Convenzione Europea dei Diritti dell'Uomo