

The First Section of the European Court of Human Rights (ECHR), with a judgement of April 7th 2022, convicted Italy for violating art. 2 of the European Convention on Human Rights that guarantees the right to life.

The case concerned the alleged non-adoption by the Italian judicial authorities of appropriate measures to protect and assist the applicant and her two children following the domestic violence inflicted on them by her partner, which resulted in the murder of her one-year-old son and the attempted murder of the woman. The applicant turned to the European Court, claiming a violation of art. 2 (right to life) and 14 (prohibition of discrimination) of the Convention.

Regarding the complaint raised under art. 2 of the Convention, the European Court found that the Italian legal framework is able to provide preventive protection against acts of violence in certain cases. In the present case, the competent authorities could well have applied appropriate legal and operational measures to prevent the (deadly) risk suffered by the applicant and her children. However, the Strasbourg judges noted that these authorities failed to fulfil their duty to conduct an immediate and proactive assessment of the risk of recurrence of violent acts committed against the victims, taking preventive measures to protect the interested parties and definitively censoring the criminal conduct of the applicant's partner. In particular, the public prosecutors remained passive in the face of the serious risk of mistreatment of the woman and their inertia allowed her partner to continue to threaten, harass and attack her with total impunity. The national authorities were aware, or should have been aware, of the real and imminent risk to the life of the applicant and her children. They should therefore have assessed the risk of further violence and taken appropriate and adequate measures to protect them but they failed to fulfil this obligation since they did not react "immediately" as required, in particular, in cases of domestic violence. Based on the information known to the national authorities at the time of the facts that there was a real and imminent risk of further violence against the applicant and her children – also considering the mental health problems of her partner – the Court considered that the authorities did not show the necessary expected diligence since they did not carry out a real mortality risk assessment linked to cases of domestic violence. Not taking due account of the wide range of protection measures directly available to them, the authorities – who could have implemented protective measures by alerting social and psychological services and placing the applicant and her children in a reception centre for women – showed insufficient diligence in preventing the violence that led to the attempted murder of the applicant and the actual murder of the one-year-old son. The authorities could have taken the measures provided for by the Italian legal framework regardless of whether there had been a complaint or any change in the victim's perception of the risk. In the light of the foregoing, the Court concluded that, having failed to exercise the diligence required by the present case, the Italian judicial authorities failed to fulfil the positive obligations deriving from art. 2 of the Convention to the extent that it establishes that «everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law».

Moreover, relying on art. 14 of the Convention in conjunction with art. 2, the applicant argued that the lack of legislative protection and an adequate response by the authorities to her allegations of domestic violence constituted discriminatory treatment based on sex. However, the Strasbourg Court stressed that nothing in the present case suggested that the prosecutors acted with discriminatory intent against the applicant: a violation of art. 14 occurs only in the presence of general deficiencies resulting from a clear and systematic inability of the national authorities to assess and address the seriousness and extent of the problem of domestic violence and its discriminatory effect on women. Consequently, the claimed deficiencies – despite being caused by serious inaction on the part of the authorities and being illegitimate and incompatible with art. 2 of the Convention – were not considered in themselves intended to indicate discriminatory attitudes on the part of the authorities and did not constitute a violation of art. 14 of the Convention.

Riferimenti Normativi:

- art. 2 Convenzione Europea dei Diritti dell'Uomo



Right to life (art. 2 of the ECHR): Italy convicted by the Strasbourg Court for not assessing the risk of mortality linked to cases of domestic violence

Diritto processuale penale Misure cautelari

Denise Campagna

07 | 04 | 2022

- art. 14 Convenzione Europea dei Diritti dell'Uomo