



CAMMINO DIRITTO

Rivista di informazione giuridica



THE REAL ASSISTANCE CAN AVOID THE DUTY TO RESCUE

If there are injured, you cannot stop to a quick, but serious, proposal of assistance and the required help has to be given.

Loredana Vega (redattore Loredana Vega)

ALTRO - REATI IN GENERALE

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The supreme Court of Cassation, with sentence of **October 21st 2014, n. 43831**, has been pronounced referring to a case which integrated the duty of rescue, crime foreseen by the Traffic Code in the art 189 (how to behave in case of accident) which, in the first comma, prescribes: "The user of the street, in case of accident clearly identified to his demeanor, has the duty to stop and give the needed assistance to whom, eventually, has suffered injuries to the person".

The Court , in the present case, sentenced about the run over of a cyclist from a woman.

The woman was charged because she did not stay and give her generalities, plus she neither gave any help, after hitting a cyclist with her own car and letting him hit the ground. It was affirmed in the sentence of the Court, that the dynamic of the accident and the violence of the impact had been critical for the accusation of the woman, because of the accusation that she caused wounds that the cyclist suffered (with the attribution to the crime as eventual intent(1)). Following this demeanor, the woman should have stopped and gave help to the victim, as seen in the article 189 m.v.c. (2).

According to the complaint to the Court of Cassation, the defence discussed the wrong application of the law and the failure adequately to state reasons to the subsistence of elements of the crimes contested, adducing that after the fall, the cyclist got up and the woman did stop to make sure he was fine, before going away.

The complaint though, was rejected after the deposition of the witnesses to the event, whom gave the opportunity to prove that the woman would stop only to say something to the cyclist, to make sure of his conditions and not to give her generalities and wait for the arrival of the police force or help.

This decision has been a confirmation to an interpretative position already consolidated by the **Court of Cassation**, which **stated that “it responds of the crime foreseen by art 189, sixth comma, the person who, involved in an accident with damages to other people, effectuate only a brief break, not sufficient to guarantee the fulfilment of the constrictions to stop and give generalities aiming for a refund”** (Sentence of Cassation n. 9128 02/02/2012; Sentence of Cassation n. 20235 01/25/2006).

In case there are any injured, is not allowed a quick proposal of assistance but, there has to be a serious offer, one in which **the needed help has to be given, even if it is refused.**

For what concern the verification of the malice, judges affirm that “the verification of malice, that is necessary even if it is an eventual intent, has to be made in regard to the circumstances represented and perceived from the officer on the behaviour, whereas they are univocally indicative of verification of an accident able to cause damages to people”. It highlights, therefore , that the judge “drew the conviction of the possibility for the accused to perceive that the cyclist had suffered injuries, from the fall to the ground other than damages to the bicycle”.

Following the considerations, the judge could only reject the enquiry, confirming the sentence for the woman and adding that “ the unseen groundlessness of motivations, makes incontestable the sentence in question”.

- (1) Psychological element with which the officer foresees as possible the happening of an event, he does not want to realize, acting as always and accepting the risk that it may happen.
- (2) Sixth comma: “ whoever, as stated in first comma, in case of the accident with damages to people, does not follow the duty to stop, is punishable with reclusion from six months to three years. [...]”; Seventh comma: “whoever, as stated in first comma, does not follow the duty to give the needed assistance to the injured people, is punishable with reclusion from one to three years. [...]”.