Italy convicted for a violation of the right to a fair trial for having enacted a law that conditioned the outcome of the proceedings in which a public entity was a party

Diritto processuale civile | Procedimenti speciali

Denise Campagna

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The First Section of the European Court of Human Rights (ECHR), with a judgement of October 14th 2021, ruled against Italy for a violation of the right to a fair trial, guaranteed by art. 6 of the European Convention on Human Rights.

The case concerned legislative intervention in the course of ongoing proceedings: in particular, the applicant complained, under Article 6 § 1 of the Convention, that the enactment of Law no. 296/2006 had denied her the right to a fair trial.

The applicant's late husband, who transferred to Italy the pension contributions he had paid in Switzerland, lodged an application with the Istituto Nazionale della Previdenza Sociale (INPS) for his pension to be recalculated in accordance with the 1962 Italo-Swiss Social Security Convention, because – on the basis of a calculation based on the theoretical level of remuneration made by the Institute – he received a pension equal to one fourth of the pension he should have received. Following the dismissal of this application, the applicant's late husband lodged a claim with the Sondrio District Court, contending that the calculation was contrary to the spirit of the Italo-Swiss Convention. When the relevant proceedings before the Sondrio District Court were pending, Law no. 296/2006 entered into force on 1 January 2007. In November 2008, the applicant's husband died; however, the proceedings continued as if he was still alive because his lawyer did not declare his death at trial. On November 30th 2009, the Sondrio District Court dismissed his claim on the basis of Law no. 296/2006.

The applicant complained that legislative intervention – namely the enactment of Law no. 296/2006, which altered the well-established relevant case-law while proceedings were still pending – had denied her the right, as her husband's heir, to a fair hearing.

In the present case, the ECHR noted that the applicant declared herself to be the heir of her husband and that the Italian Government did not contest that fact. The Court furthermore noted that the applicant had a "definite pecuniary interest" in the proceedings at issue, given the fact that the alleged violation of art. 6 § 1 had a direct effect on her patrimonial rights in that a judgment in favour of her late husband would have affected her, as his heir. With regard to the possibility of the applicant to take part in the proceedings, the European Court clarified that in the absence of the declaration of the applicant's late husband death at trial, proceedings continued by and against the original parties, and that the legal consequences of the trial passed on to the applicant.

She submitted that by means of the enactment of Law no. 296/2006 the Italian Government had interfered in favour of one of the parties in pending proceedings. Law no. 296/2006 introduced an interpretation of the relevant legal provisions that was diametrically opposed to the meaning given to them by the established case-law of the Court of Cassation. Strasbourg Court observed that virtually identical circumstances gave rise to a violation of art. 6 in the cases of Maggio and Others (nos. 46286/09 and 4 others, 31 May 2011) and Stefanetti and Others (merits) (nos. 21838/10 and 7 others, 15 April 2014) and is satisfied that there is no reason to hold otherwise in the present application. Actually, the ECHR had already found, in such cases, that the enactment of Law 296/2006 while the proceedings were pending, in reality determined the substance of the disputes and the application of it by the various ordinary courts made it pointless for an entire group of individuals to carry on with the litigation. Thus, the law had the effect of definitively modifying the outcome of the pending litigations, to which the State was a party, endorsing the State's position to the applicants' detriment. Although the legislature is not prevented from regulating, through new retrospective provisions, rights derived from the laws in force, the principle of the rule of law and the notion of a fair trial enshrined in art. 6 of the Convention preclude, except for compelling public-interest reasons, interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute.

Riferimenti Normativi:

• art. 6 CEDU

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• L. 27 dicembre 2006, n. 296

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