

The Third Section of the European Court of Human Rights (ECHR), with a judgement of October 26th 2021, ruled against Spain for a violation of art. 6 of the European Convention on Human Rights which guarantees the right to a fair trial.

The case concerned the revision of the applicant's criminal conviction following the judgment of March 20th 2012 of the European Court in which a violation of art. 6 § 1 of the Convention had already been ascertained regarding the fairness and duration of the previous proceedings; in particular, the applicant complained that his right to a fair trial, as provided by Article 6 § 1 of the Convention, had been breached on account of the Spanish Supreme Court's misinterpretation of the ECHR's judgment, upholding without a fresh hearing his convictions for fraud and forgery of commercial documents.

The Strasbourg judges, in recalling the general principles applicable to the present case, reiterated that the judgments of the European Court have binding force pursuant to art. 46 of the Convention and the Member States remain free to choose the means to be used in order to comply with it, with a view to placing the applicant, as far as possible, in the position in which he would have been if the provisions of the Convention had not been disregarded. The finding by the European Court of a violation of art. 6 of the Convention does not automatically require the reopening of national criminal proceedings; however, this is, in principle, the most appropriate way to put an end to the infringement in question and to remedy its effects.

In the present case, the "new issue" brought before the ECHR was the interpretation made by the Spanish Supreme Court of the Court's judgment of March 20th 2012, within the framework of the applicant's request for the reopening of proceedings. The issue of the applicant's conviction on the basis of evidence not directly examined by the Spanish Supreme Court was the object of the European Court's previous judgment, and it was prevented by art. 46 of the Convention from undertaking a fresh examination of the same issue. As a consequence, the European Court only observed that the Spanish Supreme Court's judgment of 2015 did not freshly convict the applicant; rather, it upheld the previous conviction of 2005 in respect of two of the offences, on the basis of the Spanish Supreme Court's own interpretation of the European Court's judgment of 2012. Nevertheless, where, in its examination of an extraordinary remedy, a domestic court determines a criminal charge and gives reasons for its decision, those reasons must satisfy the requirements of Article 6 § 1. In cases as the present one, the domestic court's presentation of the European Court's earlier findings should not be grossly arbitrary or even amount to denial of justice, resulting in an effect of defeating the applicant's attempt to have the proceedings against him examined in the light of the Court's judgment in his previous case.

In order to decide on the applicant's application for revision, the Spanish Supreme Court extensively examined the grounds for his conviction contained in its previous judgment of 2005. On that basis, the Spanish Supreme Court considered that the applicant's convictions for fraud and forgery of commercial documents did not entail any breach of Article 6 § 1 and that, for that reason, the European Court's findings in the judgment of 2012 could only apply to his conviction for forgery of official documents. Nonetheless, the Spanish Supreme Court's interpretation, namely that the violation of Article 6 § 1 found by the European Court concerned only the offence of forgery of official documents, contradicted the findings in its earlier judgment in the applicant's case. Thus, the Spanish Supreme Court, when making its own interpretation as to the scope and the meaning of the European Court's findings in the judgment of 2012, went beyond the national authorities' margin of appreciation and distorted the conclusions of the European Court's judgment; this resulted in a violation of art. 6 § 1 of the Convention as the impugned proceedings fell short the requirement of a "fair trial".

Riferimenti Normativi:

- art. 6 Convenzione Europea dei Diritti dell'Uomo
- art. 46 Convenzione Europea dei Diritti dell'Uomo