

The Second Section of the European Court of Human Rights (ECHR), with a judgement of November 30th 2021, ruled against the Republic of Moldova for a violation of an Italian citizen's right to a fair trial, guaranteed by art. 6 of the European Convention on Human Rights.

The applicant complained of a breach of his right to a fair trial, caused by the insufficient reasoning of a decision adopted by the Moldovan Supreme Court of Justice. The man turned to the Moldovan judicial authorities to recover the sums he had paid to his wife – a Moldovan citizen – in 2003 for the purchase of an apartment in Moldova. The two got married in Italy in 2004 but later separated in 2005. In 2008, the Chişinău Court dismissed the action brought by the applicant, finding it groundless and out of time. The latter, relying on art. 275 of the Moldovan Civil Code, appealed against this decision, arguing that, according to that provision, the expiry of the three-year limitation period was suspended for the entire duration of the marriage. In 2009, the Chişinău Court of Appeal upheld the applicant's appeal, stating that his wife had not objected to the delay and that the first instance judge could not rule *motu proprio* on this matter. However, the woman challenged the decision, claiming that she had not been present at the hearings of the previous levels of judgment. The applicant, in its reply, again relied on art. 275 of the Moldovan Civil Code but the Moldovan Supreme Court of Justice, ruling definitively on the case in December 2009, annulled the judgement of the Court of Appeal and dismissed his appeal as out of time, without giving specific and explicit reasons for such a decision.

Art. 6 of the Convention, in the passages relevant to the present case, provides that: «In the determination of his civil rights and obligations [...], everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law». The Strasbourg Court has preliminarily recalled that this article implies, for the judge, the obligation to conduct an effective examination of the grounds, arguments and evidence submitted by the parties, in addition to the statement of reasons of the decisions. Without requiring a detailed reply to each of the arguments of a plaintiff, this obligation presupposes that a party to a proceeding may expect at least a specific and explicit reply to the decisive issues which determine the outcome of the proceedings in which he or she is involved.

In the present case, the ECHR held that the suspension of the limitation period for marriage between the parties, foreseen by art. 275 of the Moldovan Civil Code, was one of the essential issues that the Moldovan judges had to examine, given the relevance that this provision would have assumed in relation to the outcome of the entire procedure. Actually, if the Moldovan judges would have considered the ground of appeal based on the application of this article to be well-founded, the applicant's action could not have been dismissed as being out of time.

The Strasbourg judges then stated that the applicant's ground of appeal based on art. 275 of the Moldovan Civil Code required an effective examination as well as a specific and explicit statement of reasons; statement of reasons that the Moldovan Supreme Court of Justice failed to provide; in fact, it was not possible to understand whether the Moldovan judges simply neglected this ground of appeal or whether they wanted to reject it. In any case, it was not possible to find the reasons that would have led the Moldovan judicial authorities to this rejection.

The above considerations allowed the European Court to conclude that the entire trial was not fair: the Republic of Moldova violated art. 6 of the Convention and was asked to pay the sum of 3,600.00 euros in favor of the applicant, by way of compensation for the non-material damage suffered.

Riferimenti Normativi:

- art. 6 Convenzione Europea dei Diritti dell'Uomo