

The First Section of the European Court of Human Rights (ECHR), with a judgement of December 16th 2021, ruled against Italy for a violation of art. 6 of the European Convention on Human Rights which guarantees the right to a fair trial.

The applicant – an Italian citizen – turned to the European Court following the non-execution of a judgement of the Tribunal of March 18th 2005, rendered in her favour. The woman has expressly relied on art. 6, paragraph 1 of the Convention, insofar as it establishes that «in the determination of his civil rights and obligations [...], everyone is entitled to a fair [...] hearing [...] by a [...] tribunal established by law».

The ECHR declared the application admissible, disregarding the objections of the Italian Government. According to Italy, the applicant would not have victim status, since on December 12th 2008 she concluded a settlement with the municipality concerning the execution of the judgement in question; moreover, she would not have exhausted all the domestic remedies given that she did not initiate enforcement or compensation proceedings. With regard to the first objection, the Court noted that the settlement provided for a staggering of the payment of the credit and that, in case of non-compliance with the deadlines set for the payment, the applicant could have initiated a new procedure in order to obtain full execution of the judgement. In the present case, it appears from the documents that the payments were not made within the terms provided for in the settlement (the last payment should have been made by January 30th 2013) and that the applicant has not yet obtained full payment of her credit. For this reason, it is possible to consider the woman as a victim of the alleged violation under consideration. As for the second objection, the Court reiterated that it is not appropriate to require a person who has obtained a credit from the State at the end of a judicial proceeding to subsequently have to initiate further proceedings against the same (see *Metaxas v. Greece*, n. 8415/02, § 19, 27th May 2004, and *Ventorino v. Italy*, n. 357/07, § 28, 17th May 2011).

On the merits, Strasbourg judges recalled that the execution of a judgement, issued by any judicial authority, must be considered as an integral part of the "trial" within the meaning of art. 6 of the Convention. The right to a fair trial would be fictitious if the internal legal system of a State allowed a final and mandatory judicial decision not to be applied to the detriment of one of the parties (accordingly, *Ventorino v. Italy*, n.357/07, 17th May 2011, *De Trana v. Italy*, n.64215/01, 16th October 2007, *Nicola Silvestri v. Italy*, n.16861/02, 9th June 2009, *Antonetto v. Italy*, n.15918/89, 20th July 2000, *De Luca v. Italy*, n.43870/04, 24th September 2013). Therefore, in line with its previous case law on the subject, the ECHR considered that in this case the judicial authorities did not do what was necessary to execute fully and within a reasonable period of time the decision of the Tribunal rendered in favor of the applicant.

For these reasons, the European Court unanimously found that there was a violation of art. 6, paragraph 1 of the Convention due to the failure to execute the decision of a national court. Within three months of this judgement, the defendant State is required to execute by appropriate means what is established by the decision of the Tribunal (still enforceable) and to pay the sum of € 9,600.00 in favour of the applicant, by way of non-pecuniary damage.

Riferimenti Normativi:

- art. 6 Convenzione Europea dei Diritti dell'Uomo