

The Third Section of the European Court of Human Rights (ECHR), with a judgement of January 11th 2022, ruled against Russia for a violation of the right to a fair trial (art. 6, §§ 1 and 3 (a), (b) of the European Convention on Human Rights).

The case concerned the reclassification of the criminal charges against the applicant: on June 7th 2016, a Moscow district court found him guilty of the use of malicious computer programs – an offence under art. 273 § 1 of the Russian Criminal Code – sentencing him to one year imprisonment and suspending the sentence. By virtue of an amnesty act, the applicant was subsequently released from serving that sentence. On February 9th 2017, the conviction was modified on appeal: the Russian judges found that the programs used by the applicant were not malicious within the meaning of art. 273 § 1 of the Russian Criminal Code, requalifying the fact pursuant to art. 272 § 1 (unlawful access to computer information entailing its copying), reducing the sentence to eight months' imprisonment and suspending it.

Relying on art. 6 §§ 1 and 3 (a) and (b) of the Convention, the applicant stated that the requalification of the criminal charges against him on appeal violated his right to be informed of the nature and cause of the accusation as well as his right to prepare his defence.

The general principles concerning the right to be informed of the nature and the cause of the accusation and the accused's right to prepare his or her defence have been summarized in *Pélissier and Sassi v. France* [GC], no. 25444/94, §§ 51-54, ECHR 1999-II, and *Penev v. Bulgaria*, no. 20494/04, §§ 33-44, 7 January 2010.

In the present case, the Strasbourg Court noted that, before rendering a new judgement in the criminal case against the applicant, the appellate judges did not inform him of the possibility to requalify the initial charges against him. The elements of the latter offence were never discussed during the trial and the applicant became aware of the new legal characterisation of the facts only through the final appeal judgement. While acknowledging the competence of the Russian judges to requalify the offence, the ECHR stated that they should have afforded the applicant the possibility of exercising his rights of defence with regard to such requalification in a practical and effective manner and, in particular, in good time. The appeal hearing was not adjourned for further argument and the elements of the new offence were not debated in court. Contrary to the assertions of the Russian Government, the European Court found that the scope of the charges initially brought against the applicant did not encompass those that were finally retained by the appellate instance. The ECHR did not rule on the merits of the defence the applicant could have relied on had he had an opportunity to make targeted submissions on the offence of which he was eventually found guilty. However, he should have been afforded an opportunity to do so.

In light of the above findings, the applicant's right to be informed in detail of the nature and cause of the accusation against him and his right to have adequate time and facilities to prepare his defence have been infringed.

## Riferimenti Normativi:

- art. 6 Convenzione Europea dei Diritti dell'Uomo