

The First Section of the European Court of Human Rights (ECHR), with a judgement of January 13th 2021, found a violation of art. 6 of the European Convention on Human Rights as well as art. 1 of the Protocol to the Convention by Italy. The two provisions guarantee, respectively, the right to a fair trial and the protection of property.

The applicant company complained about the failure to execute a judgement of the Tribunal which convicted the Municipality to pay a sum as compensation for the damage for the expropriation of its land. To this sum was added a considerable amount for costs and expenses, the contribution to the Forensic Fund and VAT. Following the introduction of this application, in the context of another lawsuit brought by the same company relating to the incompatibility of the expropriation of said land with the right to peaceful enjoyment of one's assets guaranteed by art. 1 of the Protocol to the Convention (*Immobiliare Podere Trieste S.R.L. v. Italy*, no. 19041/04, 16th November 2006), the European Court convicted Italy to pay a significant sum by way of pecuniary damage, non-pecuniary damage and costs and expenses (*Immobiliare Podere Trieste S.R.L. v. Italy* (just satisfaction), no. 19041/04, 23rd October 2012). By letter dated March 15th, 2019, the applicant company informed the ECHR that, by reason of the execution of its judgement rendered in the aforementioned case, it intended to waive the compensation for the damage recognized by the Municipality of Rome; at the same time, it indicated that he did not want to renounce his request relating to costs and expenses. Therefore, relying on art. 6, paragraph 1 of the Convention and art. 1 of the Protocol to the same, the applicant company insisted on the failure to execute the judgment of the Tribunal, in relation to the amount recognized for the costs and expenses of the proceeding.

In the cases *Ventorino v. Italy*, no. 357/07, 17th May 2011, *De Trana v. Italy*, no. 64215/01, 16th October 2007, *Nicola Silvestri v. Italy*, no. 16861/02, 9th June 2009, *Antonetto v. Italy*, no. 15918/89, 20th July 2000, *De Luca v. Italy*, no. 43870/04, 24th September 2013, and *Pennino v. Italy*, no. 43892/04, 24th September 2013, the European Court found a violation of art. 6, paragraph 1 of the Convention and art. 1 of the Protocol on issues similar to those in the present case. After examining all the acts of the case submitted to them, the Strasbourg judges have not found any fact or argument capable of convincing them to reach a different conclusion on the validity of the complaints in question: the execution of a judgement, issued by any authority, must be considered as an integral part of the «trial» pursuant to art. 6 of the Convention. The right to a fair trial would be fictitious if the internal legal system of a Member State allowed a final and mandatory judicial decision not to apply to the detriment of one of the parties; if the administration refuses or fails to execute it, or does it late, the guarantees of art. 6 would lose all reason for being.

Therefore, in line with its previous jurisprudence on the matter, the European Court held that even in this case the authorities did not make all the necessary efforts to enforce fully and in good time the decision of the Tribunal rendered in favor of the applicant company, violating art. 6, paragraph 1 of the Convention and art. 1 of the Protocol to the same.

The applicant company requested an amount, by way of pecuniary damage, namely the sum assigned to it by the judgment of Tribunal of Rome for costs and expenses, plus the amount incurred for general expenses, the contribution to the Forensic Fund and VAT. As for the non-pecuniary damage, the company requested the European Court to rule on an equitable basis, in addition to the expenses incurred in the judgment before it. Given the documents in its possession and the previous jurisprudence (see *Ventorino*, *De Trana*, *Nicola Silvestri*, *Antonetto*, *De Luca* and *Pennino*, judgments abovementioned), the ECHR considered it reasonable to convict Italy to pay € 201,987.03 for pecuniary damage and € 6,700.00 for non-pecuniary damage. As for the costs incurred for the proceeding before it, the Court specified that an applicant can obtain reimbursement only to the extent that its reality, necessity and reasonableness are established. In the present case, given the absence of any proof of payment relating to these expenses, the European judges did not award any sum in that respect.

Riferimenti Normativi:

- art. 6 Convenzione Europea dei Diritti dell'Uomo

- art. 1 Protocollo addizionale alla Convenzione Europea dei Diritti dell’Uomo