



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PALAIA v. ITALY

(Application no. 23593/14)

JUDGMENT

STRASBOURG

10 November 2022

This judgment is final but it may be subject to editorial revision.

In the case of Palaia v. Italy,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Péter Paczolay, *President*,

Raffaele Sabato,

Davor Derenčinović, *judges*,

and Liv Tiggerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 23593/14) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 10 March 2014 by an Italian national, Ms Filomena Palaia (“the applicant”), born in 1953 and living in Squinzano, who was represented by Ms L.L. Petrachi, a lawyer practising in Lecce;

the decision to give notice of the complaint under Article 6 § 1 of the Convention concerning legislative interference with pending proceedings to the Italian Government (“the Government”), represented by their former co-Agent, Ms M.G. Civinini, and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 4 October 2022,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The case concerns legislative intervention in the course of ongoing civil proceedings.

2. The applicant’s father, F.P., was a pensioner who, in accordance with the 1962 Italo-Swiss Convention on Social Security, had transferred to Italy the pension contributions he had paid in Switzerland in respect of work that he had performed there over several years. The *Istituto Nazionale della Previdenza Sociale* (“the INPS”) calculated his pension by employing a theoretical level of remuneration (*retribuzione teorica*) instead of his actual remuneration (*retribuzione effettiva*). This resulted in a readjustment on the basis of the existing ratio between the social security contributions paid in Switzerland (8%) and in Italy (32.7%). The calculation therefore had as its basis a notional salary which, according to the applicant, resulted in F.P.’s receiving a much lower pension than that which he should have received.

3. In 2005 F.P. lodged a claim with the Lecce District Court, contending that the INPS’s calculation methods were contrary to the spirit of the Italo-Swiss Convention.

4. While those proceedings were pending, Law no. 296 of 27 December 2006 (“Law no. 296/2006”) entered into force on 1 January 2007. Section 1, subsection 777, of that Law provided an authentic interpretation of the

relevant legal framework, upholding the calculation methods used by the INPS.

5. In view of the entry into force of Law no. 296/2006, by a judgment of 1 December 2008 the Lecce District Court rejected F.P.'s claim.

6. Following an appeal by F.P., on 4 February 2013 the Lecce Court of Appeal upheld the judgment of 1 December 2008 of the Lecce District Court.

7. On 25 May 2012, while proceedings were pending before the Lecce Court of Appeal, F.P. died.

8. The applicant did not appeal to the Court of Cassation in her capacity as F.P.'s heir, deeming this to be futile in the circumstances of the case.

9. The applicant complained that the enactment of Law no. 296/2006 had violated her right, as F.P.'s heir, to a fair hearing under Article 6 § 1 of the Convention.

10. On 1 February 2018 notice of the application was given to the Government.

11. On 4 February 2019 F.P.'s widow, Ms Maria Petrarulo, and his two sons, Mr Mario Palaia and Mr Claudio Palaia, informed the Court that they were also heirs of F.P. and wished to take part in the proceedings instituted by the applicant.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

12. The applicant complained that the legislative intervention – namely the enactment of Law no. 296/2006, which altered the well-established relevant case-law while proceedings were still pending – had denied her right, as F.P.'s heir, to a fair hearing under Article 6 § 1 of the Convention.

A. Admissibility

13. The Government argued that F.P. had died in 2012 and that several years had elapsed before his heirs had informed the Court of their wish to pursue the application.

14. The Court notes that in the application form the applicant declared herself to be the heir of F.P. and that the Government did not contest that fact. Moreover, she has a definite pecuniary interest in the proceedings at issue, given the fact that the alleged violation of Article 6 § 1 had a direct effect on her property rights in that a judgment in favour of her father would have affected her, as his heir. Therefore, the applicant has standing to lodge the present application (see, *mutatis mutandis*, *Ressegatti v. Switzerland*, no. 17671/02, § 25, 13 July 2006).

15. With respect to the other heirs of F.P., namely his widow, Ms Maria Petrarulo, and his two sons, Mr Mario Palaia and Mr Claudio Palaia, they

expressed their wish to take part in the proceedings instituted by the applicant almost five years after the application was lodged and one year after notice of the application was given to the Government, without providing any explanation of the reasons for the delay or why they had not lodged the present application together with the applicant. In these circumstances, the Court considers that they have not shown a sufficient interest in the present case and, consequently, that they do not have standing to join the proceedings.

16. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

17. The Government did not contest that in accordance with the well-established case-law of the Court, the present case disclosed a violation of Article 6 § 1 of the Convention.

18. The Court observes that virtually identical circumstances gave rise to a violation of Article 6 in *Maggio and Others v. Italy* (nos. 46286/09 and 4 others, 31 May 2011) and *Stefanetti and Others* ((merits), nos. 21838/10 and 7 others, 15 April 2014), and is satisfied that there is no reason to hold otherwise in the present case.

19. There has accordingly been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. In respect of pecuniary damage, the applicant argued that the enactment of the impugned law had resulted in her father's having received a pension which was lower than it should have been by 2,432.34 euros (EUR) per month. She also claimed a sum equal to EUR 3,000 for each year F.P. had worked in Switzerland, in respect of non-pecuniary damage.

21. The Government argued that no award ought to be made by the Court as F.P. was dead and, in any event, found the sums claimed exorbitant.

22. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6 in respect of the fairness of the proceedings. While the Court cannot speculate as to the outcome of the proceedings had the position been otherwise, it does not find it unreasonable to regard the applicant as having suffered a loss of real opportunities (see *Maggio and Others*, cited above, § 80). Having regard to the calculation made by the INPS (see *Stefanetti and Others v. Italy* (just satisfaction), nos. 21838/10 and 7 others, § 22, 1 June 2017), which took into account the difference between the pension that would have been paid to F.P. had Law no. 296/2006 not come into effect and the amount he actually received, the Court awards the total

sum of EUR 17,675 in respect of pecuniary damage resulting from the loss of real opportunities suffered by F.P.

23. With regard to non-pecuniary damage, making its assessment on an equitable basis as required by Article 41, the Court awards the applicant EUR 5,000 under this head.

24. The applicant did not submit a claim for costs and expenses. Accordingly, the Court will not award her any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that Ms M. Petrarulo, Mr M. Palaia and Mr C. Palaia do not have standing to join the present proceedings;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) EUR 17,675 (seventeen thousand six hundred and seventy-five euros) in respect of pecuniary damage;
 - (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President