



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

FIRST SECTION

CASE OF GUSMERINI AND OTHERS v. ITALY

(Applications nos. 50345/10 and 5 others – see appended list)

JUDGMENT

STRASBOURG

29 September 2022

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

In the case of Gusmerini and Others 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 Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the applications listed in the appended table 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”) by the applicants listed in the appended table (“the applicants”) on 27 August 2010;

the decision to give notice of the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to 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 the remainder of the applications inadmissible;

the parties’ observations;

Having deliberated in private on 6 September 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 applicants are pensioners who, in accordance with the 1962 Italo-Swiss Convention on Social Security, transferred to Italy the pension contributions they had paid in Switzerland in respect of work that they had performed there over several years. The *Istituto Nazionale della Previdenza Sociale* (“the INPS”) calculated their pensions by employing a theoretical level of remuneration (*retribuzione teorica*) instead of their 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 applicants, resulted in their receiving a much lower pension than that which they should have received.

3. The applicants lodged claims with the national courts, contending that the INPS’s calculation methods were contrary to the spirit of the Italo-Swiss Convention.

4. While the relevant 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, the national courts dismissed the applicants' claims.

6. The applicants complained that the enactment of Law no. 296/2006 had violated their right to a fair hearing under Article 6 § 1 of the Convention and constituted an unjustified interference with their possessions, contrary to Article 1 of Protocol No. 1 to the Convention.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

7. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

8. The applicants complained under Article 6 § 1 of the Convention that the enactment of section 1, subsection 777, of Law no. 296/2006 had violated their right to a fair hearing.

9. The Court notes that the complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

10. The Government limited themselves to asserting that the applicants had not suffered any damage on account of the implementation of Law no. 296/2006. They maintained that the amount of the pensions which would have been paid to the applicants in the absence of that Law was equal to or even lower than the amounts they had actually received.

11. 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 v. Italy* ((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.

12. There has accordingly been a violation of Article 6 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

13. The applicants further complained under Article 1 of Protocol No. 1 to the Convention that the enactment of Law no. 296/2006 and its application to their case had resulted in their receiving a much lower pension than that which they should have received.

14. The Government submitted that the applicants could not claim to be victims of the alleged violation of Article 1 of Protocol No. 1 to the Convention because the amount of the pensions which would have been paid to them in the absence of Law no. 296/2006 was equal to or even lower than the amount they had actually received.

15. The applicants in applications nos. 51045/10, 53300/10 and 53301/10 submitted in response that they did not have access to the relevant data. The applicant in application no. 50345/10 maintained that he had suffered a decrease in his pension amounting to 0.62%. The applicants in applications nos. 51064/10 and 53223/10 submitted that they had lost more than half of their pensions.

16. In view of these circumstances, and in the absence of any substantiation to the contrary, the Court considers that the pensions of the applicants in applications nos. 51045/10, 53300/10 and 53301/10 were not interfered with as a result of the proceedings complained of. It follows that they cannot claim to be victims of a violation of their rights under Article 1 of Protocol No. 1 to the Convention by reason of the outcome of those proceedings. Therefore, these complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

17. Having regard to application no. 50345/10, in *Maggio and Others* (cited above, § 62) the Court held that a reduction of less than half of the applicants' pensions was not unreasonable. Accordingly, even assuming that in the present case the applicant suffered the reduction in his pension of which he complained, that loss would amount to considerably less than half of his pension. This complaint is therefore manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

18. As to applications nos. 51064/10 and 53223/10, the Court has 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 indicated that the amount of the pensions which would have been paid to the applicants in the absence of Law no. 296/2006 was equal to or even lower than the amount actually received by them. The applicants have not shown why, in their specific cases, another calculation should be made. It follows that the applicants cannot claim to be victims of a violation of their rights under Article 1 of Protocol No. 1 to the Convention by reason of the outcome of those proceedings. Therefore, these complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. In respect of pecuniary damage, the applicant in application no. 50345/10 claimed 1,338.93 euros (EUR); the applicant in application

no. 51045/10 claimed EUR 441,752.48; the applicant in application no. 51064/10 claimed EUR 246,827.84; the applicant in application no. 53223/10 claimed EUR 479,858.50; and the applicants in applications nos. 53300/10 and 53301/10 did not make any claim in respect of pecuniary damage. The applicants further claimed EUR 40,000 each in respect of non-pecuniary damage and EUR 24,711.46 in respect of the costs and expenses incurred before the Court.

20. The Government contested those amounts.

21. Having regard to its conclusions above (see paragraphs 16-18) and the calculation made by the INPS (see *Stefanetti and Others* (just satisfaction), cited above, § 22), which took into account the difference between the amount of the pensions that would have been paid to the applicants in the absence of Law no. 296/2006 and the amount they actually received, the Court considers that there is no call to award the applicants any sum in respect of pecuniary damage.

22. With regard to non-pecuniary damage, the Court considers that the finding of a violation in this judgment is sufficient to compensate the applicants for any non-pecuniary damage sustained.

23. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 3,000 to the applicants jointly in respect of costs and expenses, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints concerning Article 6 of the Convention admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
5. *Holds*
 - (a) that the respondent State is to pay to the applicants jointly, within three months, EUR 3,000 (three thousand euros), plus any tax that may be chargeable to them, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President

GUSMERINI AND OTHERS v. ITALY JUDGMENT

APPENDIX

No.	Application no.	Case name	Applicant Year of birth Place of residence	Represented by
1.	50345/10	Gusmerini v. Italy	Lino GUSMERINI 1937 Sondrio	Roberta PALOTTI
2.	51045/10	Pasini v. Italy	Rino PASINI 1935 Sondrio	Roberta PALOTTI
3.	51064/10	Pianta v. Italy	Noemi PIANTA 1939 Sondrio	Roberta PALOTTI
4.	53223/10	Via v. Italy	Eligio VIA 1931 Sondrio	Roberta PALOTTI
5.	53300/10	Sala v. Italy	Aldo SALA 1944 Sondrio	Roberta PALOTTI
6.	53301/10	Romeri v. Italy	Lino Attilio ROMERI 1933 Sondrio	Roberta PALOTTI