

## Social-security-payments complaint manifestly ill-founded

In its decision in the case of [Morelli v. Italy](#) (application no. 23984/19) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerns the obligation for self-employed people who are the commercial managers of their company to register in two separate social-security schemes of the Istituto Nazionale della Previdenza Sociale.

The Court, in rejecting the case, held that the legislature's intervention clarifying that people in Mr Morelli's situation had to pay into both social-security schemes had been foreseeable and justified on compelling grounds of general interest – protection of the State's financial stability, offsetting of the unexpected effects of the Court of Cassation's judgment of 12 February 2010, and restoration of legal certainty by the re-establishment of the settled administrative practice. The complaint under Article 6 (right to a fair trial) was therefore manifestly ill-founded.

### Principal facts

The applicant, Federico Morelli, is an Italian national who was born in 1968 and lives in Trieste (Italy).

Mr Morelli became the only manager, shareholder and employee of a private limited company in 1996. He registered with the social-security scheme for self-employed professionals (*gestione separata*) of the Istituto Nazionale della Previdenza Sociale ("the INPS"), an Italian welfare entity.

Given that Mr Morelli was the sole employee of the company, and was therefore responsible for commercial management, in 2007 the INPS also registered the applicant with the social-security scheme for commercial operators (*gestione commerciale*), and asked him to pay social-security contributions backdated to 1 January 2002. This was done in accordance with section 1(203) of Law no. 662 of 23 December 1996.

In 2008 Mr Morelli made an administrative complaint, arguing that the Court of Cassation had ruled, in a situation similar to his own, that there was in fact no obligation to register with both schemes. The INPS did not rule on the complaint. Mr Morelli went to the courts.

In February 2010, in a similar case, the Court of Cassation held that administrative and commercial managers of private companies were required to register *only* with one of the social-security schemes rather than both. However, in May 2010 the Italian legislature passed a "provision of authentic interpretation" (enshrined in section 12(11) of Decree-Law no. 78 of 31 May 2010, which became Law no. 122 of 30 July 2010), pursuant to which administrative and commercial managers of private companies had to register in *both* social-security schemes (*gestione separata* and *gestione commerciale*).

Mr Morelli argued before the Italian courts that that provision set out by the legislature could not be retrospectively applied to his detriment. He was unsuccessful before three levels of jurisdiction, including the Court of Cassation, which dismissed three appeals on points of law lodged by him. The latter court refused to refer the issue to the Italian Constitutional Court.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 20 April 2019.

Relying on Article 6 § 1 (right to a fair trial) and Article 1 of Protocol No. 1 (protection of property), Mr Morelli complains, in particular, that the new section 12(11) of Decree-Law no. 78/2010, converted into Law no. 112/2010, constituted a legislative interference retrospectively influencing the outcome of the dispute in his case by reversing the Court of Cassation's previous interpretation of section 1(208) of Law no. 662/1996.

The decision was given by a Chamber of seven judges, composed as follows:

Ivana **Jelić** (Montenegro), *President*,  
Alena **Poláčková** (Slovakia),  
Krzysztof **Wojtyczek** (Poland),  
Lətif **Hüseynov** (Azerbaijan),  
Gilberto **Felici** (San Marino),  
Erik **Wennerström** (Sweden),  
Raffaele **Sabato** (Italy),

and also Ilse **Freiwirth**, *Section Registrar*.

## Decision of the Court

### Article 6 § 1

The question before the Court was whether the legislature's intervention had undermined the fairness of the proceedings brought by Mr Morelli.

The Court examined the case on the basis of the criteria, recently clarified by the Grand Chamber in the case of *Vegotex International S.A. v. Belgium* ([no. 49812/09]), aimed at determining whether there were compelling grounds of general interest which could justify interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute.

The Italian State's interest in this case was financial and concerned the restoration of legal certainty – to what social-security schemes were people in Mr Morelli's situation bound to subscribe.

The Court held that the overturned case-law had not been settled, as the Court of Cassation's judgment had not created an obligation on lower courts to follow suit, and so development had still been possible. It was satisfied that the legislature's action had been timely and appropriate, as the stated aim had been to restore the previous administrative practice. As that intervention had merely restored an established administrative practice, and had then been upheld by the Italian courts, it could not be seen as having been "unforeseeable" to Mr Morelli.

Overall, the Court found that the intervention by the legislature had been foreseeable and justified on compelling grounds of general interest – protection of the State's financial stability, offsetting of the unexpected effects of the Court of Cassation's judgment of 12 February 2010, and restoration of legal certainty by the re-establishment of the settled administrative practice. Therefore, this part of the application was manifestly ill-founded and so the Court rejected it.

### Article 1 of Protocol No. 1

The Court considered that the obligation to pay social-security contributions plus interest and penalties had constituted an interference with Mr Morelli's right to the peaceful enjoyment of his possessions. However, under Article 1 of Protocol No. 1, States are allowed to control the use of property in accordance with the general interest or to secure the payment of taxes. Laws with

retrospective effect, as in this case, could conform with the lawfulness requirement of that Article. The Court concluded that the measure in question had been lawful.

Having regard to the State's discretion ("margin of appreciation") in the matter, and to the fact that Mr Morelli had not submitted any relevant argument in that regard, the Court did not find that the contributions had imposed an excessive burden on him. It therefore found the complaint to be manifestly ill-founded and rejected it.

*The decision is available only in English.*

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