

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

FIRST SECTION

DECISION

Application no. 7312/10
Cesaria Teresa BOLOGNESE against Italy
and 28 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 5 July 2022 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 the various dates indicated therein;

the decision to give notice of the complaint under Article 6 of the Convention (with respect to applications nos. 48615/11 and 26953/14) and of the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention (with regard to all the other applications listed in the appended table), 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, decides as follows:

## SUBJECT MATTER OF THE CASE

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

2. The applicants were 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. In all applications, except nos. 48615/11 and 26953/14, the applicants also complained that the enactment of the Law in question constituted an unjustified interference with their possessions, contrary to Article 1 of Protocol No. 1 of the Convention.

7. By a letter of 19 July 2017, the Registry invited the representative of the applicants in applications nos. 50293/10, 50299/10, 50305/10, 50312/10, 50331/10, 50335/10, 50349/10, 50365/10, 51036/10, 51043/10, 51048/10, 51060/10, 51067/10, 51077/10, 51083/10, 51951/10, 51966/10, 52009/10, 52011/10, 53210/10, 53282/10, 53283/10, 53292/10 and 53299/10 to inform the Court of any developments in the case. The applicants' representative replied by sending documents regarding the calculation of the applicants' pensions.

8. Notice of the applications was given to the Government on the various dates indicated in the appended table.

9. By a letter of 26 July 2017, the Government informed the Court that the applicant in application no. 48615/11 had died on 17 March 2013.

10. By a letter of 26 September 2017, the representative of that applicant informed the Court that the applicant's heirs wished to pursue the proceedings before the Court in his stead.

11. In their observations of 15 November 2018, the Government informed the Court that the applicants in applications nos. 7312/10, 68947/11,

26953/14 and 30306/14 had died on the various dates indicated in the appended table and noted that no heirs had come forward expressing an intention to pursue the proceedings before the Court.

12. By letters of 24 January 2019 and 4 and 6 February 2019, the representative of those applicants informed the Court that their heirs wished to pursue the proceedings before the Court in the applicants' stead.

13. By a letter of 19 November 2018, the Government informed the Court that the applicants in applications nos. 50293/10, 50299/10, 50331/10, 50335/10, 50349/10, 50365/10, 51036/10, 51043/10, 51060/10, 51067/10, 51077/10, 51083/10, 51966/10, 52009/10, 52011/10, 53282/10, 53283/10, 53292/10 and 53299/10 had died on the various dates indicated in the appended table and noted that no heirs had come forward expressing an intention to pursue the proceedings before the Court.

14. By a letter of 3 April 2019, the representative of those applicants informed the Court that their heirs wished to pursue the proceedings before the Court in the applicants' stead. In the same letter, the applicants' representative informed the Court that the applicants in applications nos. 50305/10, 50312/10, 51048/10 and 53210/10 had also died on the various dates indicated in the appended table and that their heirs wished to pursue the proceedings before the Court in the applicants' stead.

15. By a letter of 30 December 2019, the applicants' representative informed the Court that the applicant in application no. 51951/10 had died on 22 April 2015 and that her son wished to pursue the proceedings before the Court in his late mother's stead.

## THE COURT'S ASSESSMENT

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

17. The Government emphasised that the applicants' representatives had failed to inform the Court of the applicants' deaths in a timely fashion and that the applicants' heirs had expressed their wish to join the proceedings before the Court several years after the applicants' deaths (see appended table).

18. The applicants' representatives insisted that the applicants' heirs wished to pursue the proceedings before the Court.

19. Although the Government did not expressly raise the question of whether the failure of the applicants' representatives to inform the Court of their deaths might constitute an abuse of the right of individual application, the Court finds it appropriate to address the issue of its own motion, as it has done in previous cases (see *Dimo Dimov and Others v. Bulgaria*, no. 30044/10, § 41, 7 July 2020, with further references, and *Lorini v. Italy* (dec.) [Committee], no. 1874/07, § 11, 16 November 2021).

20. The general principles concerning the rejection of an application on grounds of abuse of the right of individual application have been summarised in *Gross v. Switzerland* ([GC], no. 67810/10, § 28, ECHR 2014). In particular, the Court emphasises that an application may be rejected as an abuse of the right of application where new, important developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts (ibid.).

21. Turning to the facts of the present case, the Court notes that, having regard to applications nos. 50293/10, 50299/10, 50305/10, 50312/10, 50331/10, 50335/10, 50349/10, 50365/10, 51036/10, 51060/10, 51067/10, 51077/10, 51083/10, 51951/10, 51966/10, 52009/10, 52011/10, 53210/10, 53283/10, 53292/10 and 53299/10, the applicants' representative was explicitly invited by the Court to provide information on any developments concerning the case before notice of the applications was given to the respondent Government. However, she failed to inform the Court both of the death of the applicants in the above applications, despite the fact that they had occurred prior to the request by the Court (see the appended table), and their heirs' wish to pursue the applications.

22. With regard to applications nos. 7312/10, 51043/10, 51048/10, 48615/11, 68947/11, 26953/14 and 30306/14, the applicants' representatives did not inform the Court of the applicants' deaths either at the time they occurred or in their subsequent observations on the case.

23. With particular regard to application no. 53282/10, the Court notes that the applicant's representative did not inform the Court of the applicant's death either at the time it occurred or on 3 December 2018 when she filed comments on a unilateral declaration proposed by the Government.

24. In relation to all the applications listed in the appended table, except applications nos. 50305/10, 50312/10, 51048/10 and 53210/10, it was the Government, after being given notice of the case, who informed the Court that the applicants had died, some of them several years earlier. As concern the four above-mentioned applications, where the representative informed the Court about their deaths, this was only done in April 2019, after the Government had informed the Court of all other applicants' deaths and, again, some of these four applicants had died many years earlier.

25. Having regard to the importance of the information at issue for the proper determination of the present case, the Court finds that such conduct on the part of the applicants' representatives was contrary to the purpose of the right of individual application and amounted to an abuse of that right within the meaning of Article 35 § 3 (a) of the Convention. The applications must therefore be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

*Decides* to join the applications;

*Declares* the applications inadmissible.

Done in English and notified in writing on 1 September 2022.

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| Liv Tigerstedt<br>Deputy Registrar | Péter Paczolay<br>President |

# APPENDIX

| No. | Application no. | Case name | Date of introduction | Date of notice to the Government | Applicant<br>Year of birth<br>Place of residence | Date of death | Represented by |
|---|---|---|---|---|---|---|---|
| 1 | 7312/10 | Bolognese v. Italy | 15/12/2009 | 01/02/2018 | **Cesaria Teresa BOLOGNESE**<br>**1943**<br>**Martano** | 26/08/2017 | Anna Rita PERRONE |
| 2 | 50293/10 | Gadeschi v. Italy | 27/08/2010 | 01/02/2018 | **Antonio GADESCHI**<br>**1931**<br>**Sondrio** | 25/06/2015 | Roberta PALOTTI |
| 3 | 50299/10 | Lisignoli v. Italy | 27/08/2010 | 01/02/2018 | **Ezio LISIGNOLI**<br>**1934**<br>**Sondrio** | 05/01/2017 | Roberta PALOTTI |
| 4 | 50305/10 | Marazzi v. Italy | 27/08/2010 | 01/02/2018 | **Luigi MARAZZI**<br>**1935**<br>**Sondrio** | 04/12/2011 | Roberta PALOTTI |
| 5 | 50312/10 | Martinucci v. Italy | 27/08/2010 | 01/02/2018 | **Armando MARTINUCCI**<br>**1930**<br>**Sondrio** | 02/01/2015 | Roberta PALOTTI |
| 6 | 50331/10 | Pruneri v. Italy | 27/08/2010 | 01/02/2018 | **Eugenio Pierino PRUNERI**<br>**1933**<br>**Sondrio** | 23/06/2017 | Roberta PALOTTI |
| 7 | 50335/10 | Nonini v. Italy | 27/08/2010 | 01/02/2018 | **Gino NONINI**<br>**1944**<br>**Sondrio** | 29/07/2012 | Roberta PALOTTI |

| No. | Application no. | Case name | Date of introduction | Date of notice to the Government | Applicant<br>Year of birth<br>Place of residence | Date of death | Represented by |
|---|---|---|---|---|---|---|---|
| 8 | 50349/10 | Simone v. Italy | 27/08/2010 | 01/02/2018 | **Mauro SIMONE**<br>**1936**<br>**Sondrio** | 16/02/2014 | Roberta PALOTTI |
| 9 | 50365/10 | Martinucci v. Italy | 27/08/2010 | 01/02/2018 | **Alberto MARTINUCCI**<br>**1936**<br>**Sondrio** | 15/08/2013 | Roberta PALOTTI |
| 10 | 51036/10 | Pellegatta v. Italy | 27/08/2010 | 01/02/2018 | **Diego PELLEGATTA**<br>**1937**<br>**Morbegno** | 26/03/2011 | Roberta PALOTTI |
| 11 | 51043/10 | Scinetti v. Italy | 27/08/2010 | 01/02/2018 | **Gianfranco SCINETTI**<br>**1937**<br>**Sondrio** | 11/09/2017 | Roberta PALOTTI |
| 12 | 51048/10 | Colombini v. Italy | 27/08/2010 | 01/02/2018 | **Luigi COLOMBINI**<br>**1939**<br>**Sondrio** | 23/05/2018 | Roberta PALOTTI |
| 13 | 51060/10 | Cusini v. Italy | 27/08/2010 | 01/02/2018 | **Giorgio CUSINI**<br>**1939**<br>**Sondrio** | 17/01/2011 | Roberta PALOTTI |
| 14 | 51067/10 | Pasini v. Italy | 27/08/2010 | 01/02/2018 | **Adriano PASINI**<br>**1935**<br>**Sondrio** | 15/05/2015 | Roberta PALOTTI |

| No. | Application no. | Case name | Date of introduction | Date of notice to the Government | Applicant<br>Year of birth<br>Place of residence | Date of death | Represented by |
|---|---|---|---|---|---|---|---|
| 15 | 51077/10 | Rodigari v. Italy | 27/08/2010 | 01/02/2018 | **Luciano RODIGARI**<br>**1938**<br>**Sondrio** | 27/12/2014 | Roberta PALOTTI |
| 16 | 51083/10 | Pavioni v. Italy | 27/08/2010 | 01/02/2018 | **Maurizio PAVIONI**<br>**1943**<br>**Sondrio** | 01/12/2016 | Roberta PALOTTI |
| 17 | 51951/10 | Selvetti v. Italy | 27/08/2010 | 01/02/2018 | **Giulia SELVETTI**<br>**1933**<br>**Sondrio** | 22/04/2015 | Roberta PALOTTI |
| 18 | 51966/10 | Valbuzzi v. Italy | 27/08/2010 | 01/02/2018 | **Donato VALBUZZI**<br>**1939**<br>**Sondrio** | 09/07/2017 | Roberta PALOTTI |
| 19 | 52009/10 | Geronimi v. Italy | 27/08/2010 | 01/02/2018 | **Silvio GERONIMI**<br>**1944**<br>**Sondrio** | 15/07/2012 | Roberta PALOTTI |
| 20 | 52011/10 | Del Curto v. Italy | 27/08/2010 | 01/02/2018 | **Lino DEL CURTO**<br>**1936**<br>**Villa di Chiavenna** | 01/06/2012 | Roberta PALOTTI |
| 21 | 53210/10 | Agosti v. Italy | 27/08/2010 | 01/02/2018 | **Zita AGOSTI**<br>**1949**<br>**Sondrio** | 31/05/2013 | Roberta PALOTTI |

| No. | Application no. | Case name | Date of introduction | Date of notice to the Government | Applicant<br>Year of birth<br>Place of residence | Date of death | Represented by |
|---|---|---|---|---|---|---|---|
| 22 | 53282/10 | Gullua' v. Italy | 27/08/2010 | 01/02/2018 | **Luigi Ezio GULLUA'**<br>**1934**<br>**Sondrio** | 13/09/2018 | Roberta PALOTTI |
| 23 | 53283/10 | Gurini v. Italy | 27/08/2010 | 01/02/2018 | **Antonio GURINI**<br>**1938**<br>**Sondrio** | 08/03/2012 | Roberta PALOTTI |
| 24 | 53292/10 | Piganzoli v. Italy | 27/08/2010 | 01/02/2018 | **Aldo PIGANZOLI**<br>**1946**<br>**Sondrio** | 21/10/2012 | Roberta PALOTTI |
| 25 | 53299/10 | Rusconi v. Italy | 27/08/2010 | 01/02/2018 | **Giuditta RUSCONI**<br>**1926**<br>**Sondrio** | 27/01/2011 | Roberta PALOTTI |
| 26 | 48615/11 | Bavia v. Italy | 27/07/2011 | 14/01/2015 | **Giorgio BAVIA**<br>**1934**<br>**MELPIGNANO** | 17/03/2013 | Antonio TOMMASI |
| 27 | 68947/11 | Gabrieli v. Italy | 24/10/2011 | 01/02/2018 | **Lorenzo GABRIELI**<br>**1938**<br>**Sogliano Cavour** | 11/01/2017 | Anna Rita PERRONE |
| 28 | 26953/14 | Palmisano v. Italy | 24/03/2014 | 01/02/2018 | **Leonardo Palmisano**<br>**1937**<br>**Pezze di Greco** | 13/03/2018 | Lilia Lucia PETRACHI |

| No. | Application no. | Case name | Date of introduction | Date of notice to the Government | Applicant<br>Year of birth<br>Place of residence | Date of death | Represented by |
|---|---|---|---|---|---|---|---|
| 29. | 30306/14 | De Simeis v. Italy | 01/04/2014 | 01/02/2018 | **Salvatore DE SIMEIS**<br>**1939**<br>**Martano** | 27/12/2014 | Anna Rita PERRONE |