

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

FIRST SECTION

CASE OF LEONI v. ITALY

(Application no. 50338/10)

JUDGMENT

STRASBOURG

2 March 2023

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



In the case of Leoni v. Italy,

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

Péter Paczolay*, President*,
Gilberto Felici,
Raffaele Sabato*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 50338/10) 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 27 August 2010 by an Italian national, Mr Emanuele Leoni, born in 1937 and living in Verceia ("the applicant") who was represented by Ms R. Palotti, a lawyer practising in Milan;

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 Agent, Ms M.G. Civinini, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 7 February 2023,

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 was a pensioner who, in accordance with the 1962 Italo-Swiss Convention on Social Security, 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 his receiving a much lower pension than that which he should have received.

3. The applicant 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 applicant's claims.

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

THE COURT'S ASSESSMENT

I. *LOCUS STANDI*

7. The Court takes note of the information regarding the death of the applicant on 14 December 2018 and the wish of his heirs, Ms Enrica Copes, Mr Prassede Leoni, Mr Ivan Leoni and Ms Lara Leoni, to continue the proceedings in his stead, as well as of the absence of an objection on the Government's part.

8. Therefore, the Court considers that the heirs have standing to continue the proceedings on behalf of the deceased.

9. However, for practical reasons, Mr Emanuele Leoni will continue to be called "the applicant" in this judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

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

11. 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.

12. 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.

13. 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

14. The applicant further complained under Article 1 of Protocol No. 1 to the Convention that the enactment of Law no. 296/2006 and its application to

his case had resulted in his receiving a much lower pension than that which he should have received.

15. The Government submitted that the applicant could not claim to be a victim of the alleged violation of Article 1 of Protocol No. 1 to the Convention because he had suffered a decrease in his pension amounting to 17.6%. The Court considers that it does not have to decide on the Government's preliminary objection concerning the lack of victim status, since the complaint is inadmissible in any event on the following grounds.

16. 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 cases the applicant suffered the reduction in his pension of which he complained, that loss would amount to considerably less than half of his pension.

17. This complaint is therefore manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant claimed EUR 29,409.52 in respect of pecuniary damage, EUR 40,000 in respect of non-pecuniary damage and EUR 24,711.46 in respect of the costs and expenses incurred before the Court.

19. The Government contested the claim as excessive.

20. 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 difference between the pension that would have been paid to the applicant had Law no. 296/2006 not come into effect and the amount he actually received, the Court awards the total sum of EUR 760 in respect of pecuniary damage.

21. Moreover, ruling on an equitable basis, the Court awards EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

22. Finally, the Court considers it reasonable to award the sum of EUR 500 for the costs and expenses incurred before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* that Ms Enrica Copes, Mr Prassede Leoni, Mr Ivan Leoni and Ms Lara Leoni have standing to continue the present proceedings in the stead of Mr Emanuele Leoni;

2. *Declares* the complaint concerning Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

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 to the applicant's heirs jointly, within three months, the following amounts:
      (i) EUR 760 (seven hundred and sixty 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;
      (iii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant's heirs, 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 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 2 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Péter Paczolay
Deputy Registrar	President