

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

FIRST SECTION

# CASE OF POLETTI v. ITALY

*(Application no. 50326/10)*

JUDGMENT

STRASBOURG

2 February 2023

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



**In the case of Poletti v. Italy,**

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

Péter Paczolay*, President*,
Alena Poláčková,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 50326/10) 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, Ms Irma Virginia Poletti, born in 1943 and living in Sondrio ("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 10 January 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 she had paid in Switzerland in respect of work that she had performed there over several years. The *Istituto Nazionale della Previdenza Sociale* ("the INPS") calculated her pension by employing a theoretical level of remuneration (*retribuzione teorica*) instead of her 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 her receiving a much lower pension than that which she 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 her right to a fair hearing under Article 6 § 1 of the Convention and constituted an unjustified interference with her possessions, contrary to Article 1 of Protocol No. 1 to the Convention.

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

8. On 8 February 2019 the applicant died and, by a letter of 3 April 2019, the applicant's representative informed the Court that the applicant's heirs wished to pursue the proceedings in her stead.

# THE COURT'S ASSESSMENT

## I. *LOCUS STANDI*

9. The Court takes note of the information regarding the death of the applicant Ms Irma Virginia Poletti on 8 February 2019 and the wish of her heirs, Ms Brunella Poletti and Mr Marco Poletti, to continue the proceedings in her stead.

10. The Government pointed out that the delay with which the applicant's heirs had manifested their interest in pursuing the application indicated that the representative had lost contact with the applicant.

11. However, the Court notes that the heirs spontaneously expressed their wish to continue the proceedings on 3 April 2019, less than two months after the applicant's demise. Moreover, the Court observes that, unlike similar applications (see *Bolognese and Others v. Italy* (dec.) [Committee], no. 7312/10, §§ 22-23, 5 July 2022), the exchange of observations had already been finalised in October 2018, when the applicant was still alive.

12. In these circumstances, the Court considers that the heirs have standing to continue the proceedings on behalf of the deceased and consequently dismisses the Government's objection.

13. Still, for practical reasons, Ms Irma Virginia Poletti will continue to be called "the applicant" in this judgment.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

14. The applicant complained that the enactment of section 1, subsection 777, of Law no. 296/2006 had violated her right to a fair hearing and that its application to her case had resulted in her receiving a much lower

pension than that which she should have received. She relied on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1 to the Convention.

15. 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.

16. The Government did not contest the applicant's submissions.

17. 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 to a violation of Article 1 of Protocol No. 1 to the Convention in *Stefanetti and Others* (merits) (cited above) and is satisfied that there is no reason to hold otherwise in the present application.

18. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. In respect of pecuniary damage, the applicant submitted that the enactment of the impugned law had resulted in her receiving a pension which was lower than it should have been by 1,054.85 euros (EUR) per month. In respect of non-pecuniary damage, she claimed EUR 40,000. The applicant also claimed EUR 24,711.46 for the costs and expenses incurred before the Court.

20. The Government contested the claim as excessive.

21. The Court considers it reasonable to award the applicant the difference between 55% of the sums which she would have obtained in the absence of the intervention of the contested law and those she actually received (see *Stefanetti and Others v. Italy* (just satisfaction), nos. 21838/10 and 7 others, § 29, 1 June 2017).

22. In order to determine these sums, the Court will use as a basis the calculation made by the INPS, which took into account the difference between what should have been paid as a pension to the applicant in the absence of Law no. 296/2006 and the amount she actually received until 31 January 2018. As to the period from 1 February 2018 to the date of the applicant's death, which the INPS did not take into account in its calculation, the Court considers it appropriate to refer to the sums invoked by the applicant as a basis for its calculation (see *Stefanetti and Others* (just satisfaction), cited above, §§ 22-23). Having regard to the above, the Court awards EUR 113,569 in respect of pecuniary damage.

23. 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.

24. 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 Brunella Poletti and Mr Marco Poletti have standing to continue the present proceedings in the stead of Ms Irma Virginia Poletti;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant's heirs, within three months, the following amounts:
      (i) EUR 113,569 (one hundred thirteen thousand five hundred and sixty-nine 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), 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;

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

Done in English, and notified in writing on 2 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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