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

FIRST SECTION

DECISION

Application no. 1772/18
Enrico GALLI against Italy
and 33 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 10 May 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 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 complaints under Article 1 of Protocol No. 1 to the Convention to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia and their former co-Agent, Ms M.G. Civinini, and to declare the remainder of the applications inadmissible pursuant to Rule 54 § 3 of the Rules of Court;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The issue in the case is whether the enactment of Law no. 296 of 27 December 2006 ("Law no. 296/2006") and its application to the applicants' pensions constituted an unjustified interference with their possessions, contrary to Article 1 of Protocol No. 1 of the Convention.

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*). The former 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. On 1 January 2007 Law no. 296/2006 entered into force, maintaining the method of calculation used by the INPS.

4. In judgments nos. 172/2008 of 23 May 2008 and 264/2012 of 28 November 2012, the Constitutional Court declared ill-founded two questions as to the unconstitutionality of Law no. 296/2006 raised in different sets of proceedings by other pensioners.

5. The applicants, who had lodged applications with the INPS both before and after the entry into force of Law no. 296/2006 seeking to have their pensions recalculated, considered that following the judgments of the Constitutional Court cited above, the national courts were bound to dismiss claims such as theirs. They therefore either did not challenge in the national courts the decisions of the INPS rejecting their applications or, as regards those applicants who had already instituted judicial proceedings against such decisions, considered that lodging appeals at national level against judgments of first- and second-instance courts would be futile.

6. The applicants complained under Article 1 of Protocol No. 1 to the Convention that the enactment of Law no. 296/2006 had unlawfully and disproportionately interfered with their property rights.

THE COURT'S ASSESSMENT

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

8. The Government submitted, *inter alia*, that the applicants had failed to comply with the six-month rule. In the alternative, they asserted that even if the Court were to subscribe to the view that Law no. 296/2006 amounted to a continuous interference with the applicants' property rights, the complaints under Article 1 of Protocol No. 1 would still have been lodged out of time. The applicants disagreed, arguing that the six-month period had started to run from the date of judgment no. 166/2017 of 12 July 2017 whereby the Constitutional Court had declared inadmissible a further question as to the unconstitutionality of Law no. 296/2006.

9. The Court reiterates that, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures

complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). Where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (*Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009, and *Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001).

10. It further observes that it has already dealt with a similar objection by the Government in *Matteo v. Italy* ((dec.), no. 18773/13, §§ 33-35, 21 September 2021).

11. Turning to the present case, the Court stresses that, in their application forms and observations, the applicants themselves stated that following judgments nos. 172/2008 and 264/2012 of the Constitutional Court, they had become aware that the remedies they were pursuing or could have pursued (namely, proceedings before the national courts) were bound to fail and thus they did not continue or institute such proceedings.

12. For this reason, the Court finds that, irrespective of the instantaneous or continuous nature of the situation complained of, the applicants had a duty of diligence and initiative to lodge their applications with the Court without unexplained or excessive delay in order to ensure legal certainty since they no longer had any hope of obtaining a solution at the domestic level (see, *mutatis mutandis*, *Samadov v. Armenia* (dec.), no. 36606/08, §§ 12 and 14, 26 January 2021). They should therefore have lodged their applications within six months from judgment no. 172/2008 of the Constitutional Court, dated 23 May 2008, which they failed to do (having lodged the applications almost ten years later at the end of 2017 or beginning of 2018 – see the appended table).

13. It follows that the applications are inadmissible for having been lodged out of time and must be rejected under Article 35 §§ 1 and 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 2 June 2022.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President

APPENDIX

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by
1.	1772/18	Galli v. Italy	27/12/2017	**Enrico GALLI** **1940** **Cagno (CO)**	Elisabetta FATUZZO
2.	1777/18	Valcepina v. Italy	27/12/2017	**Luigino VALCEPINA** **1944** **Valdisotto (SO)**	Elisabetta FATUZZO
3.	1781/18	Laiso v. Italy	27/12/2017	**Umberto Samuele LAISO** **1936** **Lauria (PZ)**	Elisabetta FATUZZO
4.	1786/18	de Bernardi v. Italy	27/12/2017	**Giovanni DE BERNARDI** **1941** **Dubino (SO)**	Elisabetta FATUZZO
5.	1794/18	Bellina v. Italy	28/12/2017	**Salvatore BELLINA** **1940** **Cermenate (CO)**	Elisabetta FATUZZO
6.	1803/18	Di Gaspero v. Italy	27/12/2017	**Teresa Maria DI GASPERO** **1940** **Zoppola (PN)**	Elisabetta FATUZZO

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by
7.	1809/18	Rover v. Italy	31/12/2017	**Mario ROVER** **1940** **Sacile (PN)**	Elisabetta FATUZZO
8.	2632/18	Todde v. Italy	03/01/2018	**Michele TODDE** **1944** **Bosa (OR)**	Elisabetta FATUZZO
9.	2633/18	Canal v. Italy	03/01/2018	**Giuseppina CANAL** **1941** **Sacile (PN)**	Elisabetta FATUZZO
10.	2634/18	Bettini v. Italy	03/01/2018	**Ettore BETTINI** **1940** **Piateda (SO)**	Elisabetta FATUZZO
11.	2638/18	Comalli v. Italy	28/12/2017	**Bruno COMALLI** **1941** **Mantello (SO)**	Elisabetta FATUZZO
12.	2639/18	Spinelli v. Italy	28/12/2017	**Giuseppe SPINELLI** **1938** **Albino (BG)**	Elisabetta FATUZZO
13.	2645/18	Leoni v. Italy	28/12/2017	**Eugenio LEONI** **1948** **Novate Mezzola (SO)**	Elisabetta FATUZZO

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by
14.	2661/18	Piccinin v. Italy	28/12/2017	**Egidio PICCININ** **1936** **Selvazzano Dentro (PD)**	Elisabetta FATUZZO
15.	2665/18	de Michiel v. Italy	28/12/2017	**Mario Germano DE MICHIEL** **1939** **Castelnovo del Friuli (PN)**	Elisabetta FATUZZO
16.	2667/18	Randazzo v. Italy	28/12/2017	**Giulio RANDAZZO** **1943** **Carini (PA)**	Elisabetta FATUZZO
17.	2799/18	Tomassacci v. Italy	04/01/2018	**Norma TOMASSACCI** **1940** **Pergola (PU)**	Elisabetta FATUZZO
18.	2803/18	Compagnino v. Italy	04/01/2018	**Angelo COMPAGNINO** **1940** **Licodia Eubea (CT)**	Elisabetta FATUZZO
19.	2804/18	Cantillo v. Italy	04/01/2018	**Vincenzo CANTILLO** **1939** **Agropoli (SA)**	Elisabetta FATUZZO

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by
20.	2805/18	Trivella v. Italy	04/01/2018	**Giovanni TRIVELLA** **1946** **Cedrasco (SO)**	Elisabetta FATUZZO
21.	3448/18	Dall'Osto v. Italy	08/01/2018	**Giancarlo DALL'OSTO** **1946** **Thiene (VI)**	Elisabetta FATUZZO
22.	3888/18	Marino v. Italy	02/01/2018	**Tindara MARINO** **1944** **Patti (ME)**	Elisabetta FATUZZO
23.	3889/18	Baraglia v. Italy	02/01/2018	**Valerio BARAGLIA** **1937** **Dubino (SO)**	Elisabetta FATUZZO
24.	3891/18	Pellicioli v. Italy	02/01/2018	**Donato PELLICIOLI** **1947** **Nembro (BG)**	Elisabetta FATUZZO
25.	3892/18	Ranghetti v. Italy	02/01/2018	**Silvana RANGHETTI** **1954** **Montello (BG)**	Elisabetta FATUZZO
26.	3898/18	Zangrandi v. Italy	02/01/2018	**Siro ZANGRANDI** **1947** **Rapallo (GE)**	Elisabetta FATUZZO

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by
27.	3901/18	Fumagalli v. Italy	02/01/2018	**Carlo FUMAGALLI** **1939** **Tavagnacco (UD)**	Elisabetta FATUZZO
28.	5086/18	Nana v. Italy	05/01/2018	**Rosa Maria NANA** **1945** **Lanzada (SO)**	Elisabetta FATUZZO
29.	5090/18	Velludo v. Italy	05/01/2018	**Giulio VELLUDO** **1941** **Bregnano (CO)**	Elisabetta FATUZZO
30.	5097/18	di Marco v. Italy	05/01/2018	**Severino DI MARCO** **1939** **Zoppola (PN)**	Elisabetta FATUZZO
31.	5345/18	Iob v. Italy	05/01/2018	**Lilia IOB** **1937** **Tolmezzo (UD)**	Elisabetta FATUZZO
32.	5371/18	Iob v. Italy	05/01/2018	**Leandro IOB** **1937** **Tolmezzo (UD)**	Elisabetta FATUZZO
33.	5380/18	Roseano v. Italy	05/01/2018	**Severino ROSEANO** **1940** **Tolmezzo (UD)**	Elisabetta FATUZZO

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by
34.	5398/18	Gianoncelli v. Italy	05/01/2018	**Attilio GIANONCELLI** **1945** **Tresivio (SO)**	Elisabetta FATUZZO