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

FIRST SECTION

DECISION

Application no. 23984/19
Federico MORELLI
against Italy

The European Court of Human Rights (First Section), sitting on 3 September 2024 as a Chamber composed of:

Ivana Jelić*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato*, judges*,

and Ilse Freiwirth, *Section Registrar,*

Having regard to the above application lodged on 20 April 2019,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Federico Morelli, is an Italian national who was born in 1968 and lives in Trieste. He was represented before the Court by Mr N. Cannone, a lawyer practising in Trieste.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant has been the manager, sole shareholder and only employee of a private limited liability company since 1996. In those capacities 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. That scheme was regulated by section 2(26) of Law no. 335 of 8 August 1995 ("Law no. 335/1995"; see paragraph 19 below). However, the applicant did not pay any social security contributions as he did not pay himself a wage for his activities.

4. In a report of 18 October 2007, the INPS observed that the applicant was the sole shareholder of his company, which did not have any other employees, and that, beyond mere administrative tasks, he oversaw its commercial management. In particular, the report noted that the applicant carried out commercial activities such as client research, relationship management, taking bookings and dealing with the assignment of deliveries to third parties. The INPS therefore also registered the applicant with the social security scheme for commercial operators (*gestione commerciale*), as provided for by section 1(203) of Law no. 662 of 23 December 1996 ("Law no. 662/1996"; see paragraph 20 below), and asked him to pay social security contributions as from 1 January 2002 in respect of the different activities undertaken and the wages received in that capacity, as well as interest and penalties for late payment.

5. On 2 January 2008 the applicant lodged an administrative complaint with the higher administrative authority (*ricorso gerarchico*), namely the board of directors of the INPS. He accepted that the well-established practice of the INPS, in cases such as his own, was to require registration with both social security schemes (see paragraphs 25-26 below). However, he pointed out 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 (see paragraph 29 below). The INPS did not rule on the complaint.

6. Between 2009 and 2010, the applicant instituted three sets of judicial proceedings in the Trieste District Court against the INPS, each time challenging the obligation to pay additional contributions, interest and penalties in respect of the year in question.

7. While those proceedings were pending, in a judgment given on 12 February 2010 in a similar case, the Court of Cassation, sitting as a full court (*Sezioni Unite*), intervened to resolve a conflict of case-law which had arisen in the context of the obligation to register with both social security schemes. The Court of Cassation held that, under section 1(208) of Law no. 662/1996, administrative and commercial managers of private companies were only required to register with one of the social security schemes rather than both. The applicable scheme would be identified on the basis of the "principal" activity carried out within the company, and social security contributions would be paid exclusively in respect of that principal activity (see paragraph 31 below).

8. On 31 May 2010 the legislature adopted a provision of authentic interpretation enshrined in section 12(11) of Decree-Law no. 78 of 31 May 2010 ("Decree-Law no. 78/2010"), converted into Law no. 122 of 30 July 2010 ("Law no. 122/2010"; see paragraph 22 below). Pursuant to that provision, employment relationships for which registration in the *gestione separata* scheme was mandatory (see paragraph 19 below), notably those relationships set out in section 2(26) of Law no. 335/1995 (see paragraph 20 below), were excluded from the application of the exception provided for by

section 1(208) of Law no. 662/1996 (see paragraph 22 below). Accordingly, administrative and commercial managers of private companies had to register in both social security schemes (*gestione separata* and *gestione commerciale*) and were required to pay contributions under both schemes in respect of the different activities carried out within their company.

9. The applicant argued before the Trieste District Court that that provision could not be retrospectively applied to his detriment. He relied on, *inter alia*, Article 117, paragraph 1, of the Italian Constitution, incorporating Article 6 § 1 of the Convention, arguing that the legislature's interference with the outcome of the judicial proceedings in his case had breached those provisions.

10. By three different judgments delivered on 28 October 2010, 19 January and 5 July 2011, the Trieste District Court dismissed the applicant's claims. It observed, in particular, that section 12(11) of Decree-Law no. 78/2010 had merely clarified the meaning of the provision in question by choosing one of the possible interpretations which had been adopted in the previous case-law and which could plausibly be said to correspond to the meaning originally intended. Therefore, the legitimacy of that provision could not be called into question, and it had to be applied in the applicant's case.

11. On 5 March 2011 and 16 February 2012 the applicant lodged three separate appeals with the Trieste Court of Appeal, reiterating his complaints.

12. While those proceedings were pending before the Court of Appeal, the issue of the nature and retrospective application of section 12(11) of Decree-Law no. 78/2010 was referred to the Constitutional Court. By a judgment delivered on 26 January 2012, the Constitutional Court confirmed the interpretative nature of the provision and the possibility of its retrospective application to pending judicial proceedings (see paragraph 33 below). That conclusion was confirmed by an order made by the Constitutional Court on 1 March 2013 (see paragraph 35 below).

13. By three judgments, delivered on 18 June and 30 December 2013 and 15 January 2014, the Trieste Court of Appeal dismissed the applicant's appeals and upheld the first-instance judgments, applying the interpretative provision enshrined in section 12(11) of Decree-Law no. 78/2010.

14. The applicant lodged three appeals on points of law with the Court of Cassation, which were eventually dismissed on 26 October, 31 October and 15 November 2018.

15. In its judgment of 26 October 2018, the Court of Cassation observed that the applicant had been notified of his obligation to pay additional contributions, interest and penalties on 5 October 2010, in other words, after the enactment and entry into force of section 12(11) of Decree-Law no. 78/2010. Therefore, in the court's view the applicant could not be said to have developed a legitimate expectation which had been frustrated by the enactment of that provision.

16. In its judgment of 31 October 2018, the Court of Cassation similarly observed that the applicant had been notified of his obligation to pay the additional contributions on 18 June and 21 August 2010. Therefore, in the court's view, as before, the applicant could not be said to have developed a legitimate expectation which had been frustrated by the enactment of the provision in question.

17. In its judgment of 15 November 2018, the Court of Cassation also noted that the applicant had instituted the relevant sets of judicial proceedings, except one, prior to the Court of Cassation's judgment of 12 February 2010. Accordingly, it could not be said that, when he planned his overall defensive strategy, he had a legitimate expectation to have his cases decided on the basis of that judgment.

18. In all three judgments, the Court of Cassation dismissed the applicant's request to refer the issue to the Constitutional Court for a ruling on the compatibility of the interpretative retrospective provision with Article 117, paragraph 1, of the Italian Constitution, incorporating Article 6 § 1 of the Convention.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Relevant domestic provisions

1. *Law no. 335 of 8 August 1995 (Reform of the mandatory and supplementary social security scheme)*

19. Section 2(26) of this Law reads as follows:

> "As of 1 January 1996, registration with the INPS in a specific and separate social security scheme (*gestione separata*) shall be mandatory ... for persons whose usual, but not exclusive, occupation is a self-employed activity ..."

2. *Law no. 662 of 23 December 1996 (Measures aimed at rationalising public finance)*

20. Section 1(203) of this Law reads as follows:

> "The first paragraph of section 29 of Law no. 160 of 3 June 1975 shall be replaced by the following paragraph:
>
> 'Individuals who meet the following criteria shall be obliged to register with the social security scheme for commercial operators (*gestione commerciale*) provided for by Law no. 613 of 22 July 1966, as subsequently amended and supplemented:
>
> (a) those who are owners or managers of their own business, which, irrespective of the number of employees, is run and/or managed principally by themselves or by family members, including relatives and in-laws up to the third degree, or those who are family members assisting at the point of sale;
>
> (b) those who have full responsibility for the company and assume all the burdens and risks associated with its management. This requirement shall not apply to family members who assist at the point of sale or to members of limited liability companies;

(c) those who participate personally in the work of the company on a regular and predominant basis;

(d) those who, where required by law or regulations, hold licences or authorisations and/or are entered in registers or rolls.'"

21. Section 1(208) reads as follows:

"Where the individuals referred to in the preceding paragraphs simultaneously carry out, including within a single company, various independent activities which are subject to registration with different social security schemes ... they must be registered with the scheme provided for the activity to which they predominantly devote their professional activity. The decision as to which social security scheme corresponds to the individual's principal activity shall be taken by the INPS. The individual concerned may appeal against that decision within ninety days of its notification to the board of directors of the INPS, which shall take the final decision, having consulted the administrative committees of the social security scheme concerned."

3. Decree-Law no. 78 of 31 May 2010 (Urgent measures concerning financial stabilisation and economic competitivity), converted into Law no. 122 of 30 July 2010

22. Section 12(11) of this Decree-Law reads as follows:

"Section 1(208) of Law no. 662 of 23 December 1996 shall be interpreted to mean that the independent activities subject to which the principle of registration with the social security scheme provided for the principal activity shall be those activities carried out in the form of a business by traders, artisans and direct farmers who are registered with one of the corresponding INPS social security schemes.

Therefore, activities subject to compulsory registration with the scheme provided for by section 2(26) of Law no. 335 of 8 August 1995 (*gestione separata*) shall be excluded from the application of section 1(208) of Law no. 662/1996."

23. The Explanatory Report concerning the conversion of that provision into law reads as follows:

"Subsection 11 is aimed at providing an authentic interpretation of the provision enshrined in section 1(208) of Law no. 662/1996, in accordance with the administrative practice consistently followed by the INPS to date. Indeed, pursuant to the above-mentioned Law no. 662/1996, the normal exercise of a self-employed activity in the commercial field entails an obligation to register with the INPS social security scheme for commercial operators (*gestione commerciale*). That obligation is not incompatible with the one enshrined in section 2(26) of Law no. 335/1996, which requires those individuals carrying out professional or collaborative activities to register with the INPS separate social security scheme (*gestione separata*). This is because the social security contributions in that case relate to income of a different nature. That provision therefore supports the above-mentioned interpretation, and clarifies that, where activities of a non-commercial nature are carried out, registration with the relevant social security scheme is required."

24. The preparatory works of Law no. 122/2010, which converted the Decree-Law into law, clarified the purpose of the provision as follows:

"[T]he purpose of this provision is to avoid disputes in the matter, which lead to significant burdens on public finances as a result of lower contributions and the

reimbursement of contributions (quantified by the INPS, on the basis of the available administrative data, as approximately 1.7 billion euros in the first year and 80 million euros per year in subsequent years) not foreseen in the trends under the current legislation."

B. Relevant domestic case-law and practice

1. Administrative practice

25. In its communication no. 14905 of 14 January 1999, the INPS clarified that an administrator of a limited liability company who was also a shareholder and employee of that company was required to register with the social security scheme for self-employed professionals (*gestione separata*), in respect of activities undertaken in the capacity of an administrator, and also with the scheme for commercial operators (*gestione commerciale*), in respect of activities undertaken in the capacity of an employee, and to pay the respective social security contributions under the two different schemes.

26. That interpretation of the relevant provision was confirmed by the INPS in its circular letter no. 32 of 15 February 1999.

27. Following the adoption of the provision of authentic interpretation in question in the present case, the INPS adopted circular letter no. 8 of 18 September 2010, which confirmed that that provision would be applied retrospectively to pending disputes on account of its interpretative nature.

2. Domestic case-law

(a) Lower courts

28. As indicated in the Constitutional Court's judgment no. 15/2012, at that time the vast majority of the lower courts had upheld the INPS's approach, thus finding that registration under different social security schemes in respect of the different activities undertaken within a company, and the payment of social security contributions under both schemes, was lawful and mandatory (see paragraph 33 below).

(b) Court of Cassation

29. By judgment no. 20886 of 5 October 2007, the Court of Cassation ruled that an administrative and commercial manager of a private company was only required to register with one social security scheme, to be chosen on the basis of the principal activity undertaken within the company. In the case of different activities, under section 1(208) of Law no. 662/1996 (see paragraph 21 above), it was for the INPS to identify the principal activity and the corresponding social security scheme with which the individual should be registered. However, although that individual would be registered under a single social security scheme, he or she had a duty to pay social security contributions in respect of both the activities undertaken, by adding

up the total income derived from the different activities (see also Court of Cassation, judgments no. 854 of 17 January 2008, no. 4676 of 22 February 2008, and no. 13215 of 22 May 2008).

30. In other cases, the Court of Cassation found that there was no obligation to register with different social security schemes, without clarifying whether social security contributions should be paid in respect of both activities undertaken (see Court of Cassation, judgments no. 4676 of 22 February 2008, no. 8484 of 2 April 2008, no. 12103 of 14 May 2008, and no. 24403 of 2 October 2008).

31. The issue was referred to the Court of Cassation, sitting as a full court. By judgment no. 3240 of 12 February 2010, it held that dual registration under different social security schemes was incompatible with section 1(208) of Law no. 662/1996, which specified that registration should be with the social security scheme corresponding to the principal activity. The Court of Cassation further held that the amount of the social security contribution was to be determined on the sole basis of the wages received for the principal activity, without including wages received for the other activities.

32. Following the enactment of section 12(11) of Decree-Law no. 78/2010, the issue was referred once again to the Court of Cassation, sitting as a full court. By judgment no. 17076 of 8 August 2011, it confirmed that the provision in question had a clear interpretative nature, which aimed to clarify the meaning of the applicable provision by assigning to it one of the possible interpretations. Although the legislature had chosen a different interpretation from the one adopted by the Court of Cassation, the result remained within the plausible original intended meaning of the provision and, accordingly, had to be considered legitimate. In the light of the above, in the Court of Cassation's view, the provision could not be considered to be in breach of Article 6 § 1 of the Convention.

(c) Constitutional Court

33. By judgment no. 15 of 26 January 2012, the Constitutional Court ruled that section 12(11) of Decree-Law no. 78/2010 was compatible with the relevant constitutional principles. It observed that that provision aimed to clarify the meaning of the relevant provision, section 1(208) of Law no. 662/1996, by assigning to it one of the possible interpretations adopted in administrative practice. This was confirmed by the fact that that interpretation had been adopted by several lower courts and in some judgments of the Court of Cassation, although the issue gave rise to conflicting case-law. In the Constitutional Court's view, the intervention of the legislature aimed to solve the existing conflict in the case-law and to restore legal certainty.

34 Moreover, in the Constitutional Court's view, the provision was compatible with Article 6 § 1 of the Convention. It found that the provision did not prevent the legislature from enacting legislation capable of

influencing the outcome of pending judicial proceedings, provided that such intervention was justified by compelling grounds of general interest.

35. By order no. 32 of 1 March 2013, the Constitutional Court confirmed the above conclusions.

36. By judgment no. 104 of 22 April 2022, the Constitutional Court cited its previous judgment no. 15 of 26 January 2012 and reiterated that the interpretative provision enshrined in section 12(11) of Decree-Law no. 78/2010 had not breached the legitimate expectations of the parties to pending judicial proceedings. The Constitutional Court observed that the interpretative issue had given rise to multiple approaches in the case-law and that the legislation had been passed immediately after the Court of Cassation's judgment of 12 February 2010.

COMPLAINTS

37. The applicant complained that 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. He argued that that interference had breached his right to a fair trial as protected under Article 6 § 1 of the Convention.

38. He also alleged, under Article 1 of Protocol No. 1 to the Convention, that, as a result of the retrospective application of that provision to his detriment, he had been obliged to pay additional social security contributions, including interest and penalties, and that accordingly that obligation had unlawfully and disproportionately interfered with his right to the peaceful enjoyment of his possessions.

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention

39. The applicant complained that the enactment of section 12(11) of Decree-Law no. 78/2010 had constituted an interference by the legislature with the outcome of the judicial proceedings instituted by him, in breach of his right to a fair trial, guaranteed by Article 6 § 1 of the Convention. The relevant part of this provision reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

40. The applicable general principles have been recently summarised by the Court in *Vegotex International S.A. v. Belgium* ([GC], no. 49812/09, §§ 92-94, 3 November 2022). In this regard, the Court reiterates that only compelling grounds of general interest can justify interference by the

legislature with the administration of justice designed to influence the judicial determination of a dispute (ibid., § 102).

41. The Court has already held that disputes concerning contributions under social-security schemes fall within the civil limb of Article 6 of the Convention (see *Schouten and Meldrum v. the Netherlands*, 9 December 1994, § 60, Series A no. 304; see also, *mutatis mutandis*, *Maggio and Others v. Italy*, nos. 46286/09 and 4 others, 31 May 2011, and *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, nos. 48357/07 and 3 others, 24 June 2014), which is therefore applicable to the facts of the present case.

42. In the present case, the question arises as to whether the legislature's intervention, through section 12(11) of Decree-Law no. 78/2010, undermined the fairness of the proceedings brought by the applicant by influencing the outcome of the dispute between him and the INPS while the proceedings were ongoing.

43. The Court notes at the outset that at least some of the sets of judicial proceedings were instituted by the applicant after the enactment and entry into force of section 12(11) of Decree-Law no. 78/2010 (see paragraphs 15-16 above). However, the Court has accepted that, in specific cases, it is possible to argue that a legislative intervention contrary to the Convention may occur even before judicial proceedings have started (see *Azzopardi and Others v. Malta* (dec.), nos. 16467/17 and 24115/17, §§ 44-45, 12 March 2019, and contrast *Organisation nationale des syndicats d'infirmiers libéraux (ONSIL) v. France* (dec.), no. 39971/98, ECHR 2000-IX). In the present case, the applicant contested his registration by the INPS with the second social security scheme by means of an appeal (*ricorso gerarchico*) lodged with the board of directors of the INPS on 2 January 2008 (see paragraph 5 above). Accordingly, the Court considers that the dispute had originated well before the institution of judicial proceedings.

44. Moreover, it is indisputable that section 12(11) of Decree-Law no. 78/2010 had an interpretative nature and was retrospectively applied in proceedings involving the applicant.

45. The Court must therefore ascertain whether, in the specific circumstances of the present case, the legislative intervention in question was based on compelling grounds of general interest (see *Vegotex International S.A.*, cited above, § 101).

1. The existence of a ground of general interest

46. As regards the existence of a ground of general interest, the Court notes that Decree-Law no. 78/2010 introduced "urgent measures concerning financial stabilisation". The Explanatory Report on the conversion of the provision into law clarified that section 12(11) aimed to provide an interpretation of the relevant applicable provision, namely section 1(208) of Law no. 662/1996, in order to restore the well-established administrative practice on the matter (see paragraph 23 above), while according to the

preparatory works of Law no. 122/2010, which converted it into law, it also aimed to avoid a significant financial burden on the State (see paragraph 24 above).

(a) The State's financial interests

47. As regards the purpose of avoiding significant financial burdens on the State, the Court reiterates that the State's financial interests alone do not, in principle, justify the retrospective application of legislation (see, among many others, *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 9 others, § 59, ECHR 1999-VII; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 132, ECHR 2006-V; *Lilly France v. France (no. 2)*, no. 20429/07, § 51, 25 November 2010; *Maggio and Others*, cited above, § 47; and *Azienda Agricola Silverfunghi S.a.s. and Others*, cited above, § 82).

48. However, such interests might justify the application of retrospective legislation to pending judicial disputes in cases in which the financial stability of the State is threatened (see, for example, *Cabourdin v. France*, no. 60796/00, § 37, 11 April 2006, and *Arnolin and Others v. France*, nos. 20127/03 and 24 others, § 76, 9 January 2007).

49. More recently, in the case of *Vegotex International S.A.* (cited above, § 103), the legislative history of the retrospective provision showed that the issue relevant in that case, namely the expiry of a limitation period for a tax debt, had arisen only in "a relatively small number of cases". Nonetheless, the Court considered that, as a whole, the objective, among others, of avoiding arbitrary discrimination between taxpayers and correcting the Court of Cassation's case-law, in order to restore legal certainty, justified the retrospective legislation (ibid., § 123).

50. In the present case, the legislative history of the provision (see paragraph 24 above) made clear that there were numerous disputes concerning the issue of dual registration in different social security schemes and that in the absence of the provision of authentic interpretation there would have been a significant financial burden on the State. The existence of numerous disputes with a significant financial impact was further acknowledged in the Court of Cassation's judgment of 12 February 2010 (see paragraph 31 above).

51. In any case, the Court notes that this was not the sole aim pursued by the provision in question.

(b) The restoration of legal certainty

52. As regards the purpose of restoring the administrative practice that had been consistently followed before the Court of Cassation's judgment of 12 February 2010, the Court reiterates that it has accepted, in exceptional circumstances, that retrospective legislation could be justified by the need to interpret or clarify an older legislative provision (see, for example, *Hôpital*

local Saint-Pierre d'Oléron and Others v. France, nos. 18096/12 and 20 others, 8 November 2018) or to offset the effects of a new line of case-law (see, for instance, *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, *Reports of Judgments and Decisions* 1997-VII, and *Vegotex International S.A.*, cited above, § 117).

53. In the present case, the Court notes that section 12(11) of Decree-Law no. 78/2010 expressly aimed to re-establish the previously settled administrative practice (see paragraph 23 above). Moreover, the Constitutional Court observed that that provision had the purpose of solving the problem caused by the inconsistent interpretations that had resulted in a conflict within the Court of Cassation itself, by attributing to the relevant applicable provision, namely section 1(208) of Law no. 662/1996, one of its possible meanings, as adopted in the relevant case-law and which could plausibly be said to correspond to the meaning originally intended. According to the Constitutional Court, therefore, the interpretative provision aimed to restore legal certainty and was therefore justified by compelling grounds of general interest (see paragraphs 33-35 above).

54. The Court therefore accepts that the legislature's intervention was based on grounds of general interest.

2. Whether those grounds of general interest were compelling

55. The Court must therefore assess the compelling nature of the relevant grounds referred to above as a whole and in the light of the following elements (see *Vegotex International S.A.*, cited above, § 108): whether or not the line of case-law overturned by the legislative intervention complained of had been settled; the manner and timing of the enactment of the legislation; the foreseeability of the legislature's intervention; and the scope of the legislation and its effects.

(a) Whether the overturned case-law had been settled

56. The Court notes at the outset that prior to the Court of Cassation's judgment of 12 February 2010, the well-established administrative practice required administrative and commercial managers of private companies to register with both the *gestione separata* and the *gestione commerciale* schemes of the INPS and to pay contributions to either scheme in respect of their different activities (see paragraphs 25-26 above). That practice was upheld by the vast majority of the lower courts (see paragraph 28 above).

57. The applicant submitted, by contrast, that it was well established in the Court of Cassation's case-law that, in cases such as his own, registration with, and payment into, both schemes was not required.

58. However, the Court notes that several of the judgments referred to by the applicant did not actually support his stance. In particular, although not

imposing an obligation to register with both social security schemes, those judgments held that there was an obligation to pay social security contributions on the basis of the total wages received in relation to the different activities undertaken within the company (see paragraph 29 above). Other judgments found that there was no obligation to register with both schemes but did not clarify how the amount of social security contributions should be calculated. If that calculation was to be made on the basis of the total wages received, that was unfavourable to the position advocated by the applicant (see paragraph 30 above).

59. The Court therefore notes that it was only the Court of Cassation's judgment of 12 February 2010 that provided an interpretation which would have been favourable to the applicant, by specifying that it was not necessary to register with both schemes and that the obligation to pay social security contributions would be calculated exclusively on the basis of the principal activity (see paragraph 31 above).

60. The subsequent Court of Cassation judgment of 8 August 2011 clearly referred to the existence of conflicting case-law and to the fact that the previous judgment had selected one of the possible meanings of the provision but was the only one to have adopted that interpretation (see paragraph 32 above).

61. The Court therefore considers that the case-law which was overturned by the intervention of the legislature was not settled. Indeed, in the Italian legal system, the fact that the judgment of 12 February 2010 was delivered by the Court of Cassation sitting as a full court did not preclude further case-law developments, since lower courts are not completely subordinate to the Court of Cassation sitting as a full court and retain the power to depart from its judgments, as long as they provide reasons for doing so (see, *mutatis mutandis*, *Silvestri and Others v. Italy* (dec.), nos. 76571/14 and 13 others, §§ 12 and 27, 28 June 2022, concerning the similar system in force for the Courts of Audit, and *Lo Fermo v. Italy* (dec.), no. 58977/12, § 37, 20 June 2023, quoting the relevant Council of Europe materials on this issue).

(b) Whether the legislature's intervention was timely and appropriate

62. The Court attaches importance to the fact that, shortly after the delivery of the Court of Cassation's judgment of 12 February 2010, the legislature signalled its intention not to allow the effects of that judgment to continue over time (see *Vegotex International S.A.*, cited above, § 113). Indeed, on 31 May 2010, only three and a half months after the judgment, the Government enacted section 12(11) of Decree-Law no. 78/2010, subsequently converted by Parliament, within sixty days, into Law no. 122/2010. The Court therefore considers that the legislature's intervention was very timely.

63. Moreover, since the Explanatory Report on that provision clearly indicated that it aimed to restore the previous administrative practice

(see paragraph 23 above), the Court considers that the intervention signalled, in an appropriate way, the intention not to allow the effects of the judgment to continue.

64. The Court is mindful of the fact that in taking this action the legislature expressly departed from the Court of Cassation's interpretation of the applicable provision, namely the exception provided for by section 1(208) of Law no. 662/1996. Nevertheless, the judgment of 12 February 2010 could not have had binding force on the legislature or on the domestic courts. Indeed, in a State governed by the rule of law, the legislature may amend legislation in order to correct an interpretation of the law given by the judiciary, subject however to compliance with the legal rules and principles which are binding even on the legislature (see *Vegotex International S.A.*, cited above, § 114; see also, *mutatis mutandis*, *Lo Fermo*, cited above, §§ 65-66, concerning the executive intervention to clarify the relevant law).

(c) Whether the legislature's intervention was foreseeable

65. The Court reiterates that the legislature's intervention in question aimed to restore legal certainty (see paragraphs 53-54 above), following the unexpected judgment of the Court of Cassation in the matter (see paragraph 59 above).

66. The intervention aimed to restore the previous administrative practice which was being followed at the time when the dispute arose (see paragraphs 25 and 33 above) and which had been upheld by the lower courts (see paragraph 28 above). That practice established that registration under both social security schemes was required and that social security contributions were to be paid under both schemes in respect of the different activities undertaken.

67. Contrary to the applicant's submissions, that approach was not contradicted by the Court of Cassation's case-law prior to its judgment of 12 February 2010. Indeed, although not imposing an obligation to register with both social security schemes, the Court of Cassation had specified that social security contributions had to be paid with reference to the total wages paid in respect of the different activities undertaken (see paragraph 29 above).

68. The judgment of 12 February 2010 was a sudden change favourable to the applicant, as it stated for the first time that social security contributions should be paid exclusively in respect of the wages paid for the principal activity (see paragraph 31 above).

69. In that context, in which both the administrative practice and the prevalent case-law were unfavourable to the applicant, it would appear that he hoped, rather than expected, to benefit from the "windfall" resulting from the development in the Court of Cassation's case-law following the judgment of 12 February 2010. While the applicant cannot be criticised for taking advantage, in the process of exhausting the remedies available to him under domestic law, of this new line of case-law that was favourable to him, the

intervention by the legislature in the form of section 12(11) of Decree-Law no. 78/2010 cannot be said to have put an end to a legitimate expectation on the applicant's part that had existed when he commenced proceedings (see *Vegotex International S.A.*, cited above, § 119).

70. In other words, at the time when the obligation to pay social security contributions had been imposed on the applicant and he had instituted proceedings, both the established administrative practice and the predominant case-law were unfavourable to him and thus, at that time, would clearly have led to the dismissal of his claims. The legislature's intervention merely restored the administrative practice which had been established and upheld on the merits by the courts at the time when the applicant had instituted judicial proceedings and which had been followed in the Court of Cassation's case-law, albeit on the basis of different reasoning. It therefore cannot be considered to have been unforeseeable.

(d) The scope and effects of the legislation at issue

71. The Court notes in the present case that the legislature's intervention made it possible to recover unpaid social security contributions from the applicant, plus interest and penalties for delayed payment (see paragraph 4 above).

72. However, the applicant had not even obtained a first-instance decision (contrast *Azienda Agricola Silverfunghi S.a.s. and Others*, cited above, § 87), still less one with final effect, confirming that no additional social security contributions were owed by him, when the legislative interference took place (see, *mutatis mutandis*, *Vegotex International S.A.*, cited above, § 121, and contrast *M.C. and Others v. Italy*, no. 5376/11, §§ 62-71, 3 September 2013).

3. Conclusions

73. Having regard to the specific circumstances of the present case, the Court finds that the timely intervention by the legislature was foreseeable and justified on compelling grounds of general interest. Indeed, the intervention sought to protect the State's financial stability and to offset the unexpected effects of the Court of Cassation's judgment of 12 February 2010 and to restore legal certainty by re-establishing the settled administrative practice, which was also reflected in the predominant case-law of the lower courts in the matter and in the previous case-law of the Court of Cassation.

74. Accordingly, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be declared inadmissible pursuant to Article 35 § 4.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

75. The applicant complained that the retrospective application of section 12(11) of Decree-Law no. 78/2010, resulting in the obligation for him to pay additional social security contributions as well as interest and penalties, entailed a breach of his right to the peaceful enjoyment of his possessions, guaranteed by Article 1 of Protocol No. 1. This provision reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

76. The Court considers that the obligation to pay social security contributions plus interest and penalties constituted an interference with the applicant's right to the peaceful enjoyment of his possessions. It falls under the second paragraph of Article 1 of Protocol No. 1, which recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions (see *Wallishauser v. Austria (no. 2)*, no. 14497/06, § 63, 20 June 2013).

77. The applicant complained that the interference in his case had been unlawful, as it had been based on a retrospective provision, and was disproportionate, as it had imposed an excessive individual burden on him.

78. The Court reiterates that it has previously acknowledged that laws with retrospective effect which were found to constitute legislative interference still conformed with the lawfulness requirement of Article 1 of Protocol No. 1 (see *Maggio and Others*, cited above, §§ 60-64, with further references; *Stefanetti and Others v. Italy*, nos. 21838/10 and 7 others, § 55, 15 April 2014; and *Arras and Others*, cited above, § 81). In the present case, the Court has found that the legislature's intervention was justified under Article 6 § 1 of the Convention (see paragraphs 73-74 above). It therefore finds no reasons to conclude that the measure did not conform with the principle of lawfulness.

79. The Court further accepts that the enactment of section 12(11) of Decree-Law no. 78/2010 aimed to ensure a balanced and sustainable welfare system "in accordance with the general interest".

80. According to the Court's well-established case-law, an interference, including one resulting from a measure taken to secure the payment of taxes or other contributions, must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The desire to achieve this balance is reflected in the structure of Article 1 as a whole, including the second

paragraph: there must therefore be a reasonable relationship of proportionality between the means employed and the aims pursued (see *Azienda Agricola Silverfunghi S.a.s. and Others*, cited above, § 102). Consequently, financial liability arising out of the raising of tax or contributions may adversely affect the guarantee secured under this provision if it places an excessive burden on the person or the entity concerned or fundamentally interferes with his or its financial position (see *Buffalo S.r.l. in liquidation v. Italy*, no. 38746/97, § 32, 3 July 2003).

81. A wide margin of appreciation is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (see *Wallishauser*, cited above, § 65). In considering whether the interference imposed an excessive individual burden on the applicant, the Court has regard to the particular context in which the issue arises in the present case, namely that of a social security scheme. Such schemes are an expression of a society's solidarity with its vulnerable members (see *Arras and Others*, § 82, and *Maggio and Others*, § 61, both cited above).

82. Having regard to the State's margin of appreciation in the matter, and to the fact that the applicant did not submit any relevant argument in that regard, the Court does not find that the contributions imposed an excessive burden on him.

83. It follows that the complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 September 2024.

Ilse Freiwirth Registrar	Ivana Jelić President