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

# FIRST SECTION

# DECISION

Application no. 19592/14
Antonio SOLIDORO
against Italy

The European Court of Human Rights (First Section), sitting on 10 January 2023 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. 19592/14) 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 20 February 2014 by an Italian national, Mr Antonio Solidoro, who was born in 1940 and lives in Ruffano ("the applicant") who was represented by Ms L.L. Petrachi, a lawyer practising in Lecce;

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 former co-Agent, Ms M.G. Civinini, and to declare the remainder of the application 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 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 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.

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

8. On 12 July 2018 the applicant died.

9. On 3 October 2018, the applicant's representative submitted observations on his behalf without informing the Court of his death.

10. In their observations of 15 November 2018, the Government informed the Court that the applicant had died on the date indicated above and noted that no heirs had come forward expressing an intention to pursue the proceedings before the Court.

11. On 4 February 2019 the applicant's wife, Ms Bernadette Steinhann, and his three daughters, Ms Patrizia Solidoro, Ms Laila Carmela Solidoro and Ms Eva Solidoro, expressed their wish to pursue the application in his stead.

## THE COURT'S ASSESSMENT

12. The Government emphasised that the applicant's representative had failed to inform the Court of the applicant's death in a timely fashion. It further pointed out that the applicant's heirs had expressed their wish to pursue the proceedings only after the Government had informed the Court of the applicant's death.

13. The applicant's representative insisted that the applicant's heirs wished to pursue the proceedings before the Court.

14. Although the Government did not expressly raise the question of whether the failure of the applicant's representative to inform the Court of his death 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 recently *Bolognese and Others v. Italy* (dec.) [Committee], no. 7312/10, § 19, 5 July 2022).

15. 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.).

16. In the present case, the applicant's representative did not inform the Court of the applicant's death either at the time it occurred or in his subsequent observations on the case. It was the Government who informed the Court that the applicant had died.

17. 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 applicant's representative 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 application must therefore be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 2 February 2023.

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