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

FIRST SECTION

DECISION

Application no. 31141/09
Giovanni Battista PELLEGRINELLI
against Italy

The European Court of Human Rights (First Section), sitting on 7 July 2020 as a Committee composed of:

Aleš Pejchal, *President,*
Pauliine Koskelo,
Tim Eicke, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to:

the above application lodged on 20 May 2009,

the decision to give notice to the Italian Government ("the Government") of the complaints concerning the legislative interference with pending proceedings and to declare inadmissible the remainder of the application;

the observations of the parties,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Giovanni Battista Pellegrinelli, is an Italian national, who was born in 1934 and lives in Ubiale Clanezzo. He was represented before the Court by Mrs E. Fatuzzo, a lawyer practising in Bergamo.

2. The Italian Government ("the Government") were represented by their former Agent, Mrs E. Spatafora, and their former co-Agent, Mrs M. L. Aversano.

A. The circumstances of the case

3. The circumstances of the case are analogous to those described 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).

4. In 1999 the applicant, who had transferred to Italy the pension contributions he had paid in Switzerland, lodged an application with the *Istituto Nazionale della Previdenza Sociale* ("INPS") for his pension to be recalculated, in accordance with the 1962 Italo-Swiss Convention on Social Security (see the Relevant Domestic Law and Practice section below and the authorities cited therein), on the basis of the contributions he had paid in Switzerland in respect of work he had performed there from 1952 to 1984.

5. The INPS dismissed the applicant's application. Consequently, in 2002 the applicant lodged a claim with the Bergamo Tribunal (the body responsible for labour and social security disputes), asking to recalculate his pension on the basis of the real remuneration received in Switzerland.

6. On 9 May 2003 the Bergamo Tribunal dismissed the applicant's claims on the merits, maintaining that in the final five years of his working life (those relevant for its calculation) the applicant had lived and worked in Italy. His application for a recalculation of the pension could not therefore be accepted.

7. The Brescia Court of Appeal (on 16 September 2004) and the Court of Cassation (on 19 February 2009) dismissed the applicant's claims on the same grounds. The Court of Cassation expressly excluded the relevance, for the current dispute, of the difference between the effective and the theoretical retribution (see *Stefanetti and Others*, cited above, § 8).

8. Meanwhile, Law no. 296 of 27 December 2006 ("Law no. 296/2006") had entered into force on 1 January 2007.

B. Relevant domestic law and practice

9. The relevant domestic law and practice concerning the case are to be found in *Maggio and Others*, cited above, §§ 27-35 and in *Stefanetti and Others*, cited above, §§ 13-27.

COMPLAINT

10. The applicant complained, under Article 6 § 1 of the Convention, that the enactment of Law no. 296/2006 had been in breach of his right to a fair trial.

THE LAW

11. The applicant complained that legislative intervention – namely the enactment of Law no. 296/2006, which altered the well-established relevant case-law while proceedings were still pending – had denied him his right to a fair hearing under Article 6 § 1 of the Convention, which reads as follows:

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

12. The Government limited themselves to affirming that the applicant had not suffered any damage from the implementation of the law. They maintained that 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 actually received amounted to zero.

13. The Court notes that domestic courts rejected on the merits the applicant's claims at three instances, without applying – either explicitly or implicitly – Law no. 296/2006. In particular, they maintained at three instances that the applicant did not meet the prerequisites for his pension to be recalculated (see paragraphs 6 and 7 above). The applicant's claim for a recalculation of the pension was therefore inadmissible *ab initio* on the merits, independently of the entry into force of Law no. 296/2006.

14. Having regard to the above-mentioned considerations, the Court finds that the enactment of Law no. 296/2006 did not influence in any way the judicial determination of the applicant's dispute.

15. Accordingly, the Court concludes that the applicant cannot claim to be a victim of the alleged violation of Article 6 § 1 of the Convention.

16. It follows that the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 September 2020.

Renata Degener	Aleš Pejchal
Deputy Registrar	President