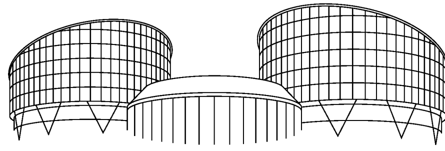

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FORMER SECOND SECTION

CASE OF STEFANETTI AND OTHERS v. ITALY

(Applications nos. 21838/10, 21849/10, 21852/10, 21855/10, 21860/10, 21863/10, 21869/10 and 21870/10)

JUDGMENT

(*Merits*)

STRASBOURG

15 April 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Stefanetti and Others v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Işıl Karakaş, *President,*
Guido Raimondi,
Peer Lorenzen,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Egidijus Kūris, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 25 March 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in eight 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 eight Italian nationals (“the applicants”) in 2010 (see Appendix for details).

2. The applicants were represented by Ms R. Palotti, a lawyer practising in Sondrio, Italy. The Italian Government (“the Government”) were represented by their Agent Ms Ersiliagrazia Spatafora, and their Co-Agent, Ms Paola Accardo.

3. The applicants alleged that legislative intervention while their proceedings were pending had breached their right to a fair trial under Article 6 and their right of property under Article 1 of Protocol No. 1 to the Convention.

4. On 29 August 2012 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The circumstances of the case are analogous to those described in *Maggio and Others v. Italy* (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 31 May 2011).

6. The applicants worked in Switzerland for the following periods of time, in total, over the relevant years:

Mr Stefanetti: approximately 23 years between 1959 and 1996;
Mr Rodelli: approximately 31 years between 1962 and 1996;
Mr Negri: approximately 13 years between 1954 and 1997;
Mr Della Nave: approximately 28 years between 1962 and 1989;
Mr Del Maffeo: approximately 32.5 years between 1959 and 1996;
Mr Cotta: approximately 26 years between 1962 and 1987;
Mr Curti: approximately 28 years between 1962 and 1997;
Mr Andreola: approximately 10.5 years between 1967 and 1977.

7. In 1982 Italy changed its pension system from a contributory one, where the amount received in pension was dependent on the contributions paid, to an earnings- or remuneration-based ("*retributivo*") one.

8. The applicants, who had transferred to Italy the contributions they had paid in Switzerland, requested the *Istituto Nazionale della Previdenza Sociale* ("INPS") to calculate their pensions, in accordance with the 1962 Italo-Swiss Convention on Social Security (see Relevant domestic law and practice below), on the basis of the contributions paid in Switzerland for work they had done there over a number years (see appended table for details). As a basis for the calculation of their pensions (in respect of their average remuneration over the last ten years), the INPS employed a theoretical remuneration ("*retribuzione teorica*") instead of the real remuneration ("*retribuzione effettiva*"). The former resulted in a readjustment on the basis of the contribution rate applied in Switzerland (8%) and that applied in Italy (32.7%), which meant that the calculation had as its basis a pseudo-salary with the result that the applicants received a lower pension than expected. According to the applicants, their pension was approximately a third of what it should have been.

9. As an example, the pension the applicants actually received in 2010 and an estimation, calculated by them, of what they should have received in that same year had this method of calculation not been applied is appended.

10. Consequently, in 2006 the applicants instituted judicial proceedings, contending that this was contrary to the spirit of the Italo-Swiss Convention. Various individuals in the applicants' position had done the same and had been successful. The domestic courts had determined that people who had worked in Switzerland and had subsequently transferred their contributions to Italy should benefit from the remuneration-based pension calculations based on the wages they had earned in Switzerland, irrespective of the fact that the transferred contributions had been paid at a much lower Swiss rate.

11. While their proceedings were still pending, Law no. 296/2006 (see Relevant domestic law and practice below) entered into force on 1 January 2007.

12. The applicants' claims were rejected in separate judgments of the Sondrio Tribunal (filed in the relevant registry as mentioned below), in view of the entry into force of Law no. 296/2006:

Judgment (no. 149/09) of 30 November 2009 in respect of Mr Stefanetti;

Judgment (no. 96/09) of 27 October 2009 in respect of Mr Rodelli;
Judgment (no. 09/10) of 28 January 2010 in respect of Mr Negri;
Judgment (no. 104/09) of 27 October 2009 in respect of Mr Della Nave;
Judgment (no. 09/10) of 28 January 2010 in respect of Mr Del Maffeo;
Judgment (no. 166/09) of 10 December 2010 in respect of Mr Cotta;
Judgment (no. 112/09) of 10 November 2009 in respect of Mr Del Curti;
Judgment (no. 96/09) of 27 October 2009 in respect of Mr Andreola.

None of the applicants appealed further, deeming it to be futile given that Law no. 296/2006 had been found legitimate by the Constitutional Court in its judgment of 23 May 2008, no. 172 (see Relevant Domestic Law and Practice below), which other courts were then bound to uphold.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Italo-Swiss Convention on Social Security

13. Article 23 of the transitional provisions of the Italo-Swiss Convention on Social Security, of 14 December 1962, provides, in so far as relevant, as follows (*unofficial translation*):

> “1. In so far as Switzerland is concerned, performance shall be in accordance with the provisions of this Convention, even in cases where the insured event occurred before the entry into force of the Convention. Old-age and survivors’ ordinary annuities will, however, only apply in accordance with these provisions if the insured event took place before 21 December 1959, and if the contributions were not or will not be transferred or reimbursed in accordance with the Convention of 17 October 1951, or paragraph 5 of this Article. ...
>
> 2. In so far as Italy is concerned, performance shall be in accordance with the provisions of this Convention where the insured event occurred on or after the date of its entry into force. Nevertheless, when the insured event occurred before that date, performance shall take place in accordance with the present Convention from the date of its entry into force, if it would not have been possible to grant such a pension owing to the insufficiency of the insurance periods, and only if the contributions have not been reimbursed by the Italian social insurance scheme.
>
> 3. With the exception of the above provisions, periods of insurance, of contributions and of residence occurring before the entry into force of this Convention will be taken into consideration.
>
> ...
>
> 5. For a period of five years from the entry into force of this Convention, on reaching pensionable age under Italian law, Italian citizens may request, in derogation of Article 7, that the contributions paid by them and their employers into the Swiss old-age and survivors insurance schemes be transferred to the Italian insurance scheme, on condition that they left Switzerland to settle permanently in Italy or in a third country prior to the end of the year in which their pensionable age was reached. Article 5 (4) and (5) of the Convention of 17 October 1951 will apply to the use of such transferred contributions, any reimbursements made and the effects of such transfers.”

14. In so far as relevant, Article 5 of the Italo-Swiss Convention on Social Insurance of 17 October 1951 provides (*unofficial translation*):

> "... (4) Italian citizens not covered by the preceding sub-paragraph (*) or their survivors, may request contributions paid by them and their employers into the Swiss old-age and survivors' insurance schemes to be transferred to the Italian social welfare insurance scheme as indicated in Article 1 (*). The latter will use the said contributions to ensure that the insured person obtains the benefits derived from Italian law quoted in Article 1 (*) and any other provisions issued by the Italian authorities. In the event that, under the relevant Italian legal provisions, the insured person cannot assert his or her right to a pension, the Italian social welfare services will, upon request, reimburse the transferred contributions.
>
> (5) Transfer of contributions as provided for in the above sub-paragraph may be requested:
>
> (a) if the Italian citizen left Switzerland at least ten years before,
>
> (b) on the occurrence of the insured event.
>
> An Italian citizen whose contributions have been transferred to the Italian social insurance scheme cannot assert any right in respect of Swiss old-age and survivors' insurance on the basis of such contributions. Such a person, or his [or her] survivors, may expect an ordinary annuity from the Swiss old-age and survivors' insurance scheme only ... [under] the conditions set out in the first paragraph (*)."

15. It is noted that the articles marked (*) were repealed by Article 26 (3) of the 1962 Convention, except for the purposes of the above-cited Article 23 (5).

16. The transitional provision of Article 23 of the 1961 Convention became final by means of the additional agreement of 4 July 1969, Article 1 (1) and (3) of which read:

> "On reaching pensionable age under Italian law, and where they have not already been in receipt of a pension, Italian citizens may request, in derogation of Article 7, that the contributions paid by them and their employers into the Swiss old-age and survivors' insurance schemes be transferred to the Italian insurance scheme, on condition that they have left Switzerland to settle permanently in Italy ..."
>
> "The Italian social welfare entities must use such contributions in favour of the insured or his or her heirs in such a way as to ensure that they enjoy the benefits derived from Italian law, as cited in Article 1 of the Convention, in accordance with the specific arrangements issued by the Italian authorities. If no benefits can be attained on the basis of such arrangements, the Italian social welfare entities must reimburse the transferred contributions to the interested parties."

B. Case-law relevant to the period before the enactment of Law no. 296/2006

17. The Court of Cassation's judgment of 6 March 2004, and other analogous case-law at the material time, established that in the absence of specific legislation regulating the transfer of contributions, the method of calculation used to determine workers' pensions should be based on the real remuneration received by that person, including any work undertaken in

Switzerland, irrespective of the fact that contributions paid in Switzerland and transferred to Italy were calculated on the basis of much lower rates than those applied under Italian law.

C. Law no. 296 of 27 December 2006

18. Article 1, paragraph 777, of Law no. 296/2006, which entered into force on 1 January 2007, provides (*unofficial translation*):

> "Article 5 (2) of Presidential Decree no. 488 of 27 April 1968 and subsequent modifications must be interpreted to mean that, in the event of transfer of contributions paid to foreign welfare entities to the Italian obligatory general insurance scheme, as a consequence of international social security treaties and conventions, the pensionable remuneration relative to the employment period abroad is calculated by multiplying the amount of transferred contributions by a hundred and dividing the result by the contribution rates for the invalidity, old-age and survivors insurance schemes as applicable during the relevant contributory period. More favourable pension treatment already liquidated before the entry into force of the current law is exempted."

D. Constitutional Court judgment of 23 May 2008, no. 172

19. By a writ of 5 March 2007, the Court of Cassation questioned the legitimacy of Law no. 296/2006 and referred the case to the Constitutional Court. The Constitutional Court gave judgment on 23 May 2008, holding, in sum, as follows.

20. Although interpretative, Law no. 296/2006 was innovative. There had been no conflicting case-law on the pension regime but a single well-established interpretation, according to which the Italian worker could ask to transfer his or her contributions, paid in Switzerland, to the INPS, in order to obtain the advantages provided for by Italian law in respect of invalidity, old-age and survivors' insurance, including that of remuneration-based pension calculations, on the basis of wages earned in Switzerland, irrespective of the fact that the transferred contributions had been paid at a much lower Swiss rate.

21. The Constitutional Court noted that the laws defining pension payments were part of a welfare system which balanced available resources and the services supplied. A change in method of calculating pensions from the contributory one to the remuneration-based one ("*retributivo*") was not to the detriment of the financial sustainability of the system. Thus, the changes brought about by the impugned Law sought to bring the relationship between pensionable remuneration and contributions into line with the system in force in Italy during the same period of time. The Law provided that remuneration received abroad (used as a basis for pension calculations) was to be adjusted by applying the same percentage ratios used for pension contributions paid in Italy during the same period. Thus, the

norm made explicit what had been in the original interpretative provisions. Consequently, there had been no breach of the principle of legal certainty. Nor was the norm discriminatory since the acquired and more favourable rights of earlier pensioners were, by then, unassailable. Furthermore, the Law did not discriminate against people who had worked abroad, because it simply ensured an overall balance in the welfare system, and avoided a situation where people who had contributed relatively little to a foreign pension scheme were entitled to the same pension as those who had paid the much higher Italian contributions. The contested Law did not provide for any *ex post facto* reductions, as it merely imposed an interpretation which could already have been inferred from the original provisions. Lastly, this system still allowed for a sufficient and satisfactory pension, adequate for the lifestyle of a worker. Accordingly, the claim of unconstitutionality of the said Law was manifestly ill-founded.

E. Constitutional Court judgment of 28 November 2012, no. 264

22. The matter came up again before the Italian Constitutional Court following the judgment of the European Court of Human Rights in *Maggio and Others*, cited above, in which the Court found, in circumstances similar to those of the present case, that by enacting Law no. 296/2006 the Italian State had infringed the applicants' rights under Article 6 § 1 by intervening in a decisive manner to ensure that the outcome of proceedings to which it was a party was favourable to it. The Constitutional Court had therefore to examine the compatibility of Law no. 296/2006 with the relevant legal framework, and it found that it was in fact compatible.

23. The Constitutional Court noted that Presidential Decree no. 488 of 27 April 1968 had introduced a new, earnings/remuneration-based pension calculation method (*metodo retributivo*). A constant case-law had been established holding that Italians who had worked in Switzerland and then transferred their contributions into the Italian system would also benefit from the remuneration-based calculation, irrespective of the fact that they had paid lower contributions than those payable in Italy. Subsequently Law no. 296/2006 was enacted, and its constitutionality was confirmed by the Constitutional Court in 2008, since the law had been an authentic interpretation of the original law and was therefore reasonable, and from then onwards the case-law shifted accordingly.

24. The Constitutional Court referred to the findings in *Maggio*, but considered that it should assess the matter itself; the ECHR had acknowledged that it was possible to intervene in pending proceedings where there existed compelling general interest reasons, and in the Constitutional Court's view it was the role of the Contracting States to identify those compelling general interest reasons and intervene legislatively to ensure they were resolved.

25. The case-law of the Constitutional Court showed that when comparing the national and Convention protection mechanisms, it was the protection of the guarantees that must prevail, account being taken, however, of other constitutionally protected interests. The principle of the margin of appreciation established by the Court itself was of particular relevance, and had to be taken into account by the Constitutional Court to ensure a uniform system of coherent laws.

26. While it was in principle bound by the *Maggio* judgment (the principles on which it was based being also constitutionally recognised principles), the Constitutional Court had to lend itself to a balancing exercise. It considered that other, opposing interests which were also constitutionally protected and which related to the matter in issue prevailed in the circumstances of the case. It followed that there existed compelling general interest reasons justifying a retroactive application of the law. Indeed the effects of the new law were such as to avoid a welfare system which privileged some and was disadvantageous to others, guaranteeing respect for the principles of equality and solidarity, which because of their founding nature, occupied a privileged position when weighed against other constitutional rights. The impugned law was inspired by the principles of equality and proportionality and took into account the fact that contributions paid in Switzerland were four times lower than those paid in Italy. It thus applied a direct recalculation which allowed pensions to be dispensed in proportion to the contributions paid, thus levelling out any inequalities and rendering the welfare system more sustainable for the benefit of all its users. Even the ECHR had upheld this reasoning in the *Maggio* case in relation to the complaint under Article 1 of Protocol No. 1, although it did not find it to be sufficient to avoid a violation of Article 6. However, unlike the Court, which is bound to examine complaints separately, the Constitutional Court had to take a global approach and evaluate a case on the basis of all the relevant constitutional guarantees. The claim of unconstitutionality was therefore unfounded. Indeed to conclude otherwise would not only have consequences on the pension system but would also go against the spirit of the Court's judgment in *Maggio*, which rejected the applicant's claims for a pension based on the previous calculation method.

F. Conclusions of the European Committee of Social Rights on the conformity of the situation in Italy with the European Social Charter (2013)[1]

27. The relevant parts of the report read as follows:

1. The full report can be accessed at http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Conclusions/State/Italy2013_en.pdf Last visited in February 2014

"The Committee further notes from MISSOC [EU's Mutual Information System on Social Protection] that in 2011 the amount of minimum pension (*pensione minima*) stood at €6,246.89 (€520 per month). The old-age pension (*pensione di vecchiaia*) is brought up to the amount of the minimum pension if the annual taxable income of the pensioner is less than twice the minimum pension. The Committee observes that the level of minimum pension falls below 40% of the median equivalised income (Eurostat) and is therefore inadequate. (page 29)"

"When assessing adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining income level allowing them to lead a decent life and participate actively in public, social and cultural life.

In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with median equivalised income. However, the Committee recalls that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rate for persons aged 65 and over.

The Committee notes from MISSOC that no statutory minimum pension is provided for in the case of workers first insured starting from 1 January 1996; therefore, only pensions paid under the earnings-related scheme can be topped up till the minimum pension amount is reached. It is a means-tested benefit, therefore, in order to be entitled to it, personal income or household income must not exceed certain limits, which are set annually (€6 247 for a single person, approx. € 521/month in 2011). The annual amount of minimum pension *(pensione minima)* amounted in 2011 to €6 076 (€ 506/month). Beneficiaries of a minimum pension may also receive a supplement or supplements. The information supplied by the Italian authorities mentions different supplements and provides different rates for these. (...)

In addition, the report states that the Social Card – a magnetic card, funded by public funds and private donations, distributed by the Italian Mail Company, allows elderly persons on low income to use it to purchase food in certain shops or pay utility bills up to €40/month. It is available to persons over 65 with a pension below €6 000 per year (€8 000 if aged 70 or more), and financial holdings below €15 000.

The Committee notes that 50% of the Eurostat median equivalised income in 2011 stood at €665 (40% at €532). The minimum pension falls below 40% of the Eurostat median equivalised income, therefore the Committee cannot assess the situation until it receives further information on the supplements available (see above question).

The Committee notes from the supplementary information submitted by Italy that there is a social assistance allowance payable to those over 65 years of age and who have an income below €5 749.90. In 2012 the amount payable to a single person was €442.30 per month. The Committee notes that this also falls below 40% of the Eurostat median equivalised income and again asks whether supplements or other benefits and allowance are payable. (pages 44-45)"

THE LAW

I. JOINDER OF THE APPLICATIONS

28. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their similar factual and legal background.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicants complained that the legislative intervention – namely the enactment of Law no. 296/2006, which changed well-established case-law while proceedings were pending – had denied them their 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 ..."

30. The Government contested that argument.

A. Admissibility

31. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

32. The applicants submitted that by means of the enactment of (Article 1 paragraph 777 of) Law no. 296/2006 the Government had interfered in favour of one of the parties in pending proceedings. Law no. 296/2006 introduced an interpretation of the relevant legal provisions which was diametrically opposed to the meaning given to them by the established case-law of the Court of Cassation (particularly after its 2004 judgment).

33. The offending provision had been included in Law no. 296/2006, the Budget Act (*legge finanziaria*) for the year 2007, which had a different scope altogether, and while it may have been referred to in the domestic system as a norm of authentic interpretation, in substance it was nothing of the sort, as implicitly acknowledged by the Constitutional Court in its judgment no. 72 of 2008, where it stated that "One cannot, even only at face value, attribute an interpretative value to a provision which, with detailed

rules never previously expressed in the system, affects a norm which entered into force thirty-eight years earlier.” The applicants considered that the provision in issue was an innovative norm which introduced an adjustment mechanism (detrimental to the applicants) which had not existed previously in the Italian legal system. While three parameters for calculating pensions existed, none referred to the ratio of contributions paid at the relevant time. Moreover, even the general principles of law provided that the calculations had to be based on the laws of the recipient insurance scheme and on the same criteria as if the applicant had always been registered with the INPS (that is, on the basis of the salaries received).

34. The norm aimed to amend the content of a treaty which had come into force forty-three years earlier and which had moreover been abrogated four years earlier (as a result of a new agreement between Switzerland and the European Union). Thus, the aim of the legislator had been precisely to extinguish the rights of people who had worked in Switzerland (rights which had been confirmed by the Italian tribunals) and in so doing to influence the outcome of those pending cases. The norm was retroactive, excluding people whose proceedings had come to an end, but not those whose proceedings were still pending; and it had not been based on any compelling general interest reasons. The applicants referred to the Court’s findings in *Maggio and Others*, cited above.

(b) The Government

35. The Government recapitulated the facts, highlighting that the Italo-Swiss Convention had been ratified in 1963 and Law no. 1987 had been passed in 1982. That law changed the pension calculation method from a contributory one to a remuneration-based one (*metodo retributivo*). It thus posed a serious problem of coherence in relation to the evaluation of periods worked in Switzerland, in so far as Swiss salaries were subject to a contribution of 8%, compared with 32% for Italian salaries. It followed that the pensions of Italian people who had worked in Switzerland were overvalued *vis-à-vis* both other Italian workers who had paid contributions only in Italy and also Swiss workers who had paid lower contributions but who also received smaller pensions. That is why the Government enacted Law no. 296/2006, which provided that if contributions paid abroad were transferred to the Italian system in accordance with international agreements regarding social security, the remuneration of people having worked abroad, for the period during which they worked abroad, was to be determined by multiplying their paid-up contributions by one hundred and dividing that sum by the contribution rate applicable in Italy in the relevant period. More favourable pension entitlements already liquidated before the entry into force of the law were to be exempt.

36. The Government considered that there had not been an unjustified interference with judicial decisions, nor any breach of legal certainty,

because the interpretation of the law had in any event been controversial – a number of first-instance decisions having confirmed the INPS method of calculation – and because the law had no effect on cases which had already been concluded. The reason behind the enactment of the law, namely to ensure that the method of calculation used by the INPS (and confirmed by the minority case-law) became the prevalent interpretation of the relevant laws, was serious and reasonable because it provided for the same value to be given to periods of work whether they were served in Italy or abroad. It followed that the reasons had not been solely financial as they had been in *Zielinski and Pradal and Gonzalez and Others v. France* ([GC], nos. 24846/94 and 34165/96 to 34173/96, ECHR 1999-VII), and *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-V).

37. The Government considered that the case was comparable to that of *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France* (nos. 42219/98 and 54563/00, 27 May 2004), where the Court had found no violation because the interference was aimed at ensuring respect for the original will of the legislator, and where the Court had also given weight to the aim of re-establishing equal treatment between teachers in private and public establishments. In the present case too, the purpose of the legislature's intervention in enacting Law no. 296/2006 had been to ensure respect for the original will of the legislator, and to coordinate the application of the Italo-Swiss Convention and the new method of calculation which had come into force in 1982 and created an imbalance in the relevant evaluations. It followed that the interference was justified for a compelling general interest reason.

2. The Court's assessment

38. The Court has repeatedly ruled that although the legislature is not prevented from regulating, through new retrospective provisions, rights derived from the laws in force, the principle of the rule of law and the notion of a fair trial enshrined in Article 6 preclude, except for compelling public-interest reasons, interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute (see, among many other authorities, *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 49, Series A no. 301-B; *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 112, *Reports* 1997-VII; and *Zielinski and Pradal and Gonzalez and Others*, cited above). Although statutory pension regulations are liable to change and a judicial decision cannot be relied on as a guarantee against such changes in the future (see *Sukhobokov v. Russia*, no. 75470/01, § 26, 13 April 2006), even if such changes are to the disadvantage of certain welfare recipients, the State cannot interfere with the process of

adjudication in an arbitrary manner (see, *mutatis mutandis*, *Bulgakova v. Russia*, no. 69524/01, § 42, 18 January 2007).

39. In analogous circumstances, in the case of *Maggio and Others*, cited above, §§ 44-50, the Court, in finding a violation of Article 6, held as follows:

> “the Law [296/2006] expressly excluded from its scope court decisions that had become final (*pension treatments already liquidated*) and settled once and for all the terms of the disputes before the ordinary courts retrospectively. Indeed, the enactment of Law 296/2006 while the proceedings were pending, in reality determined the substance of the disputes and the application of it by the various ordinary courts made it pointless for an entire group of individuals in the applicants’ positions to carry on with the litigation. Thus, the law had the effect of definitively modifying the outcome of the pending litigation, to which the State was a party, endorsing the State’s position to the applicants’ detriment.
>
> ... Respect for the rule of law and the notion of a fair trial require that any reasons adduced to justify such measures be treated with the greatest possible degree of circumspection (see, *Stran Greek Refineries*, cited above, § 49). ... The Court has previously held that financial considerations cannot by themselves warrant the legislature substituting itself for the courts in order to settle disputes (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 132, ECHR 2006-V, and *Cabourdin v. France*, no. 60796/00, § 37, 11 April 2006).
>
> The Court notes that, after 1982, the INPS applied an interpretation of the law in force at the time which was most favourable to it as the disbursing authority. This system was not supported by the majority case-law. The Court cannot imagine in what way the aim of reinforcing a subjective and partial interpretation, favourable to a State’s entity as party to the proceedings, could amount to justification for legislative interference while those proceedings were pending, particularly when such an interpretation had been found to be fallacious on a majority of occasions by the domestic courts, including the Court of Cassation.
>
> As to the Government’s argument that the Law had been necessary to re-establish an equilibrium in the pension system by removing any advantages enjoyed by individuals who had worked in Switzerland and paid lower contributions, while the Court accepts this to be a reason of general interest, the Court is not persuaded that it was compelling enough to overcome the dangers inherent in the use of retrospective legislation which had the effect of influencing the judicial determination of a pending dispute to which the State was a party.
>
> In conclusion, the State infringed the applicants’ rights under Article 6 § 1 by intervening in a decisive manner to ensure that the outcome of proceedings to which it was a party was favourable to it.”

40. In the present case, the Government submitted further arguments, highlighting in particular that the enactment of Law no. 296/2006 was intended to ensure respect for the original will of the legislator, and to coordinate the application of the Italo-Swiss Convention and the new method of calculation which had come into force in 1982 and created an imbalance in the relevant evaluations. They relied on the case of *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others* (cited above).

41. The Court considers that the present case is different from that of *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society* (cited above), where the applicant societies' institution of proceedings was considered as an attempt to benefit from the vulnerability of the authorities resulting from technical defects in the law, and as an effort to frustrate the intention of Parliament (§§ 109 and 112). The instant case is also different from the case of *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others* cited by the Government, where the applicants also attempted to derive benefits as a result of a lacuna in the law, which the legislative interference was aimed at remedying. In those two cases the domestic courts had acknowledged the deficiencies in the law in issue and action by the State to remedy the situation had been predictable (§§ 112 and 72 respectively).

42. In the present case there had been no major flaws in the legal framework of 1962, and, as acknowledged by the Government, the need for a legislative intervention only arose as a result of the State's decision, in 1982, to reform the pension system. At that stage the State itself created a disparity which it tried to amend only twenty-four years later (and thirty-eight years after the enactment of the original legal provisions). Indeed it does not appear that there had been any timely attempts at adjusting the system earlier, despite the fact that numerous pensioners who had worked in Switzerland were repeatedly winning their claims before the domestic courts. In this connection the Court notes that before the enactment of Law no. 296/2006 the domestic courts had repeatedly found in favour of people in the applicants' position, and that interpretation of the relevant legal provisions (as confirmed by the Court of Cassation's judgment of 6 March 2004) had become the majority case-law. It follows that, given also that in the decades during which the application of the calculation concerned had been challenged in the domestic courts there had been a majority interpretation in favour of the claimants (save some first-instance decisions), in the present case, unlike in the above-mentioned cases, a legislative interference (shifting the balance in favour of one of the parties) was not foreseeable.

43. The Court further considers that, given the sequence of events, it cannot be said that the legislative intervention aimed at restoring the original intention of the legislator in 1962. Furthermore, even assuming that the law did aim at reintroducing the legislator's original wishes following the changes in 1982, the Court has already accepted that the aim of re-establishing an equilibrium in the pension system, while in the general interest, was not compelling enough to overcome the dangers inherent in the use of retrospective legislation affecting a pending dispute. Indeed, even accepting that the State was attempting to adjust a situation it had not originally intended to create, it could have done so perfectly well without resorting to a retrospective application of the law. Furthermore, the fact that

the State waited twenty-four years before making such an adjustment, despite the fact that numerous pensioners who had worked in Switzerland were repeatedly winning their claims before the domestic courts, also creates doubts as to whether that really was the legislator's intention in 1982.

44. In the light of the above, and reaffirming the Court's considerations in the above-mentioned *Maggio* judgment, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

45. The applicants complained that the enactment of Law no. 296/2006 and its application to their cases constituted an unjustified interference with their possessions. Moreover, it was arbitrary since it created a disparity in treatment between people who had chosen to work in Switzerland and those who had remained in Italy. They relied on Article 1 of Protocol No. 1 to the Convention in conjunction with Article 14 of the Convention. The relevant provisions read as follows:

Article 1 of Protocol No. 1 to the Convention

> "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."

Article 14 of the Convention

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' observations

46. The applicants considered that they had a possession provided for by domestic law that fell within the ambit of Article 1 of Protocol No. 1. Their right to a pension had been based on the salaries they had earned; however, because of Law no. 296/06 that right had been denied to people like the applicants who had worked in Switzerland. While it was true that the Italo–Swiss Convention had provided for the possibility for the State to enact specific norms regulating the matter, norms which totally reshaped the law

to the detriment of the applicants had only come into being thirty-eight years after the adoption of that Convention. By that time, in the absence of a *lex specialis*, the rights in question had matured and become part of the applicants' patrimony in accordance with the applicable general laws. Thus, the new law had interfered with the applicants' peaceful enjoyment of their possessions, in an arbitrary and radically unjustified manner, drastically reducing their pensions. They further considered the interference to be discriminatory and aimed solely at those people who had worked abroad, particularly in Switzerland.

47. The Government reiterated their observations under Article 6.

B. The Court's assessment

1. General principles

48. The Court reiterates that, according to its case-law, an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his "possessions" within the meaning of that provision. "Possessions" can be "existing possessions" or assets, including, in certain well-defined situations, claims. For a claim to be capable of being considered an "asset" falling within the scope of Article 1 of Protocol No. 1, the claimant must establish that it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it. Where that has been done, the concept of "legitimate expectation" can come into play (see *Maurice v. France* [GC], no. 11810/03, § 63, ECHR 2005-IX).

49. Article 1 of Protocol No. 1 does not guarantee as such any right to become the owner of property (see *Van der Mussele v. Belgium*, 23 November 1983, § 48, Series A no. 70; *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II; and *Kopecký v. Slovakia* [GC], no. 44912/98, § 35 (b), ECHR 2004-IX). Nor does it guarantee, as such, any right to a pension of a particular amount (see, for example, *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX; *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999-V; *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X; *Valkov and Others v. Bulgaria,* nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05, § 25, 25 October 2011; and *Frimu and 4 other applications v. Romania* (dec.), nos. 45312/11, 45581/11, 45583/11, 45587/11 and 45588/11, § 42, 7 February 2012). Similarly, the right to receive a pension in respect of activities carried out in a State other than the respondent State is not guaranteed (see *L.B. v. Austria* (dec.), no. 39802/98, 18 April 2002). However, a "claim" concerning a pension can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 where it has a sufficient basis in national law, for example where it is confirmed by a final court

judgment (see *Pravednaya v. Russia*, no. 69529/01, §§ 37-39, 18 November 2004; and *Bulgakova*, cited above, § 31).

50. Where the amount of a benefit is reduced or discontinued, this may constitute interference with possessions which requires to be justified (see *Kjartan Ásmundsson*, cited above, § 40, and *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009).

51. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98; *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II; and *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I).

52. An essential condition for interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful. Moreover, any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions (see *Terazzi S.r.l. v. Italy*, no. 27265/95, § 85, 17 October 2002, and *Wieczorek v. Poland*, no. 18176/05, § 59, 8 December 2009). Article 1 of Protocol No. 1 also requires that any interference be reasonably proportionate to the aim sought to be realised (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005-VI). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52).

2. *Application to the present case*

(a) The complaint under Article 1 of Protocol No. 1 to the Convention

i. Admissibility

53. In the light of its case-law the Court is ready to accept that for the purposes of this case the applicants' pension entitlements constituted a possession within the meaning of Article 1 of Protocol No. 1 to the Convention (see, for example, *Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06, 37205/06, 37207/06 and 33604/07, § 34, 13 December 2011, *Grudić v. Serbia*, no. 31925/08, § 77, 17 April 2012; *Pejčić v. Serbia*, no. 34799/07, § 55, 8 October 2013). It follows that the provision is applicable in the present case.

54. The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

ii. Merits

55. In the case of *Maggio and Others v. Italy*, cited above, §§ 60-64, in the same context and in very similar circumstances, the Court found that Mr Maggio had not suffered a violation of Article 1 of Protocol No. 1. It held as follows:

> "The Court 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 *Maurice v. France* [GC], no. 11810/03, § 81, ECHR 2005-IX; *Draon v. France* [GC], no. 1513/03, § 73, 6 October 2005; and *Kuznetsova v. Russia*, no. 67579/01, § 50, 7 June 2007). It finds no reason to deem otherwise in the present case. It further accepts that the enactment of Law no. 296/2006 pursued the public interest (such as providing a harmonised pension calculation, aiming at a balanced and sustainable welfare system).
>
> In considering whether the interference imposed an excessive individual burden on the first 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, *mutatis mutandis*, *Goudswaard-Van der Lans v. the Netherlands* (dec.), no. 75255/01, ECHR 2005-XI).
>
> The Court notes that Law no. 296/2006 provided that the pensionable remuneration relative to the working period abroad was to be calculated by multiplying the amount of contributions transferred by a hundred and dividing the result by the contribution rates for the invalidity, old-age and survivors' insurance scheme, as applicable during the relevant contributory period. As a consequence, according to the first applicant, between the years 1996 when he started receiving his pension and 2009, he received a monthly pension of EUR 873 as opposed to EUR 1,372 which he would have obtained had his proceedings not been interfered with and had he been successful, and for the year 2010 he received a pension of EUR 1,178 instead of EUR 1,900. On the basis of these calculations the Court observes that the first applicant lost considerably

less than half of his pension. Thus, the Court considers that the applicant was obliged to endure a reasonable and commensurate reduction, rather than the total deprivation of his entitlements (see, conversely, *Kjartan Ásmundsson*, cited above § 45).

In consequence, the applicant's right to derive benefits from the social insurance scheme in question has not been infringed in a manner resulting in the impairment of the essence of his pension rights. In this respect the Court notes that the applicant had in fact paid lower contributions in Switzerland than he would have paid in Italy, and thus he had had the opportunity to enjoy more substantial earnings at the time. Moreover, this reduction only had the effect of equalizing a state of affairs and avoiding unjustified advantages (resulting from the decision to retire in Italy) for the applicant and other persons in his position. Against this background, bearing in mind the State's wide margin of appreciation in regulating the pension system and the fact that the applicant only lost a partial amount of pension, the Court considers that the applicant was not made to bear an individual and excessive burden.

It follows that, even assuming the provision was applicable, there has not been a violation of Article 1 of Protocol No. 1 to the Convention."

56. The Court reiterates that the removal of discriminatory regulations and the control of public expenses by the State are legitimate aims for the purposes of securing social justice and protecting the State's economic well-being, and in implementing social and economic policies the margin of appreciation enjoyed by the national authorities in determining what is in the general interest of the community is a broad one (see, *Hoogendijk v. the Netherlands*, (dec.) no. 58641/00, 6 January 2005).

57. However, the Court notes that unlike in the case of Mr Maggio, the applicants in the present case claim that they have lost more than half of what they would have received in pension. Indeed, the figures submitted by the applicants, which have not been contested by the Government and must therefore be taken to be correct, indicate that the applicants in the present case have suffered the loss of around two-thirds (about 67%) of their respective pensions.

58. The Court observes that in *Maggio and Others*, cited above, the fact that the applicant had lost considerably less than half of his pension, which therefore amounted to a reasonable and commensurate reduction, undeniably carried some weight in the finding that the provision had not been breached. Given the more substantial reduction in the present case and in view of the total contribution of the applicants, the Court must reassess the matter and scrutinise the reduction more closely in the context of the case.

59. The Court observes that the deprivation of the entirety of a pension is likely to breach the said provision (see, for example, *Kjartan Ásmundsson,* cited above*,* and *Apostolakis v. Greece*, no. 39574/07, 22 October 2009) and that, conversely, minimal reductions to a pension or related benefits are likely not to do so (see, for example, among many other authorities, *Valkov and Others*, cited above; *Arras and Others v. Italy*, no. 17972/07, 14 February 2012; *Poulain v. France* (dec.), no. 52273/08,

8 February 2011; *Lenz v. Germany* (dec.), no. 40862/98, ECHR 2001-X; and *Janković*, cited above). However, the fair balance test cannot be based solely on the amount or percentage of the reduction suffered, in the abstract. In all of these cases, and other similar ones, the Court endeavours to assess all the relevant elements of the case against a specific background (see, as other examples, amongst others, *Kuna v. Germany* (dec.), no. 52449/99, ECHR 2001-V (extracts) concerning the reduction of the applicant's pension rights under an additional pension scheme, and *Da Conceiçao Mateus and Santos Januario v. Portugal* (dec.), nos. 62235/12 and 57725/12 concerning the impact of the reduction of some subsidies on the applicants' financial situation and living conditions). In proceeding in this way the Court has found that even reductions of 65%, as substantial as that may be, did not in the specific circumstances of the case upset the said fair balance in the very exceptional context of a punishment of a convicted and dismissed policeman (see *Banfield v. the United Kingdom* (dec.), no. 6223/04, ECHR 2005-XI concerning the forfeiture of part of the applicant's pension after his dismissal from the police force after a conviction).

60. Turning to the present case and its specific circumstances, the Court considers that a reduction of two-thirds of one's pension (and not solely of a benefit linked to pensions) is indisputably, in itself, a sizeable decrease which must seriously affect a person's standard of living. However, their contribution in absolute terms must also be taken into consideration. This loss must be examined in the light of all the relevant factors.

61. Of particular importance are the two factors already considered in *Maggio and Others* (cited above). Primarily, that the applicants paid on the one hand lower contributions, in terms of percentage, in Switzerland than they would have paid in Italy – but on the other hand had to pay, in absolute terms, contributions of a considerable amount during long contributory periods of their entire active life in Switzerland. Secondly, that the reduction was aimed at, but did not have the effect of, equalising a state of affairs and avoiding unjustified advantages (resulting from the decision to retire in Italy) for people in the applicants' position (see above paragraphs 42-43).

62. However, the Court notes that, according to statistical data collected by the INPS for the year 2010[2], in Italy, the average old-age pension for that year was EUR 15,015 that is EUR 1,251 monthly. From the information publicly available it also appears that the minimum pension for that year amounted to EUR 5,993, that is, EUR 461 per month. The Court further notes that according to the European Committee of Social Rights, the amount of minimum pension (*pensione minima*) in 2011 stood at EUR 6,246.89 (EUR 520 per month). The said Committee observed that that

2. http://www.inps.it/docallegati/Mig/Doc/sas_stat/BeneficiariPensioni/Trattamenti_pensionistici_e_beneficiari_-_26_apr_2012_-_Testo_integrale.pdf (last accessed February 2014)

level of minimum pension fell below 40% of the median equivalised income (Eurostat) and thus it considered it to be inadequate (see paragraph 27 above).

63. The Court observes that, in the present case, as transpires from the annexed table, the applicants receive in old-age pension monthly sums varying between EUR 714 (the lowest being Mr Rodelli) and EUR 1,820 (the highest being Mr Andreola) (see annexed table for details about each applicant). Indeed, save for Mr Rodelli, all the applicants receive less than the average monthly pension in Italy, and six out of eight applicants receive less than EUR 1,000 per month. The difference in sums received between the applicants reflects their job category as well as the different periods of time they spent in Switzerland and in consequence the actual contributions they paid. In that connection, the Court highlights that the present case concerns contributory benefits, and while it is true that the Court no longer makes a distinction between contributory and non-contributory benefits for the purposes of the applicability of the provision (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 53, ECHR 2005-X), when assessing a reduction of social security payments, it is indeed of significance that such pensions were based on actual contributions paid by the applicants (transferred to the relevant disbursing authority), albeit lower than those paid by others, and that therefore they were not a gratuitous welfare aid solely funded by the tax-payer in general.

64. Moreover, the Court observes that the Government gave no information as to the quality of life one could expect to have on the basis of the sums received in pension by the applicants. In that light the Court cannot but find guidance in the conclusions of the European Committee of Social Rights and it therefore considers that if the sum of EUR 461 is inadequate as a minimum pension, the majority of the sums at issue, which do not exceed EUR 1,000 a month, must be considered as providing for only basic commodities. Thus, the reductions have undoubtedly affected the applicants' way of life and hindered its enjoyment substantially. The same can also be said of the higher pensions, despite them allowing for more comfortable living.

65. Furthermore, in the present case the Court cannot lose sight of the fact that the applicants made a conscious decision to move back to Italy at a time when they had a legitimate expectation of receiving higher pensions, and therefore a more comfortable standard of living. However, as a result of the calculation being applied by the INPS and eventually the impugned legislative action, they not only found themselves in a more difficult financial situation but they further had to institute proceedings to recover what they deemed was due - proceedings which were frustrated by the Government's actions in breach of the Convention. Through those actions, the Italian legislature deprived arbitrarily the applicants of their claims to the amount of pension which they could legitimately expect to be

determined in accordance with the decided case-law of the highest courts of the land (see above paragraph 42), an element which cannot be ignored for the purpose of determining the proportionality of the impugned measure (see *Maurice v. France, Draon v. France;* and *Kuznetsova v. Russia*, all cited above, §§ 90 -91, §§ 82-83 and § 51, respectively). Contrary to the case-law of the Italian Constitutional Court, there existed no compelling general interest reasons justifying a retrospective application of the Law no. 296/2006, which was not an authentic interpretation of the original law and was therefore unforeseeable (compare and contrast paragraphs 26 and 42).

66. In conclusion the Court considers that, following a life-time of paying contributions, by losing 67% of their pensions the applicants had not suffered commensurate reductions but were in fact made to bear an excessive burden. Thus, despite the reasons behind the impugned measures, in the present cases, the Court cannot find that a fair balance was struck.

67. It follows that Article 1 of Protocol No. 1 to the Convention taken alone has been violated.

(b) The complaint under Article 1 of Protocol No. 1 to the Convention in conjunction with Article 14 of the Convention

68. The Court cannot accept the applicants' argument that the measure was discriminatory. In reference to their argument in this connection, the Court notes that in the partial admissibility decision in the *Maggio* case ((dec.) nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 8 June 2010) the Court found that the complaint that the measure constituted discrimination vis-à-vis people like the applicants who, unlike most Italians, had opted to leave Italy for work purposes was manifestly ill-founded as the applicants could not be compared, for the purposes of Article 14, with Italian residents who had worked in Italy their entire lives. The Court finds no reasons to hold otherwise in relation to people who moved to Switzerland. Furthermore, in the *Maggio* judgment (§ 73), the Court also held that the impugned cut-off date arising out of Law no. 296/2006 was reasonably and objectively justified given that Law no. 296/2006 was intended to level out any favourable treatment arising from the previous interpretation of the provisions in force, which had given people in the applicants' position an unjustified advantage, bearing in mind the needs of the social security system in Italy.

69. Thus, the complaint under Article 1 of Protocol No. 1 in connection with Article 14 must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

71. The applicants claimed the sums listed below in respect of pecuniary damage, representing the difference between the amount of pension payable to the applicants and what was actually liquidated to them by the INPS, in respect of the period from the date of retirement to the average age of life expectancy, bearing in mind that in the cases of Messrs. Stefanetti, Rodelli, Curti, Del Maffeo and Negri the pension benefits paid by the INPS verge on the poverty threshold. They further claimed 40,000 euros (EUR) each in respect of non-pecuniary damage.

The sums claimed for pecuniary damage are as follows:
EUR 435,549 Mr Stefanetti
EUR 394,309 Mr Rodelli
EUR 391,462 Mr Negri
EUR 452,878 Mr Della Nave
EUR 423,348 Mr Del Maffeo
EUR 565,282 Mr Cotta
EUR 375,771 Mr Curti
EUR 873,683 Mr Andreola.

72. The Government considered that the claims were unfounded given that in *Maggio* (cited above) the Court had only found a violation of Article 6 § 1, and no violation in respect of Articles 1 of Protocol No. 1 and 14 of the Convention. They further considered that it was only a loss of opportunities which was owed to the applicants, which in their view was to be limited to the period before the law entered into force.

73. In the circumstances of the case, the Court considers that the question of compensation for pecuniary damage is not ready for decision. That question must accordingly be reserved and the subsequent procedure fixed having regard to any agreement which might be reached between the respondent State and the applicants (Rule 75 § 1 of the Rules of the Court).

74. On the other hand, the Court considers that the applicants must have sustained non-pecuniary damage in view of the violations it has found of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention resulting from the legislative intervention affecting pending litigation relating to the amounts due in pension to the applicants. Ruling on an equitable basis, the Court awards each applicant EUR 12,000 (twelve

thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

75. The applicants also claimed a sum to be awarded in equity for costs and expenses incurred.

76. The Government made no comment.

77. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicants have neither quantified nor substantiated their claims. The Court therefore makes no award under this head.

C. Default interest

78. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Decides,* unanimously to join the applications;

2. *Declares,* unanimously the complaints concerning Article 6 § 1 and Article 1 of Protocol No. 1 admissible, and the remainder of the applications inadmissible;

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

4. *Holds*, by five votes to two that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds,* by five votes to two, that, as far as the financial award to the applicants for any pecuniary damage resulting from the violations found in the present case is concerned, the question of the application of Article 41 is not ready for decision and accordingly,
   (a) *reserves* the said question as a whole;
   (b) *invites* the Government and the applicants to submit, within three months from the date on which this judgment becomes final in

accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
(c) *reserves* the further procedure and *delegates* to the President of the Section the power to fix the same if need be;

6. *Holds,* by five votes to two,
(a) that the respondent State is to pay, each applicant, EUR 12,000 (twelve thousand euros), plus any tax that maybe chargeable, in respect of non-pecuniary damage, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,
(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;

7. *Dismisses,* unanimously, the remainder of the applicants' claim for just satisfaction;

Done in English, and notified in writing on 15 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Işıl Karakaş
Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Raimondi, joined by Judge Lorenzen, is annexed to this judgment.

A.I.K.
S.H.N.

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth place of residence	Years worked in Switzerland	Total pension received in 2010 in EUR (approx. sum per month)	Pension which would have been received in EUR
1.	21838/10	14/04/2010	**Emilio STEFANETTI** 21/10/1940 Dubino	1959-1996	9,898 (825)	29,696
2.	21849/10	14/04/2010	**Giovacchino RODELLI** 18/03/1942 Talamona	1962-1973 1977-1996	8,571 (714)	25,715
3.	21852/10	14/04/2010	**Roberto NEGRI** 11/01/1937 Castione Andevenno	1954-1957 1965-1973 1975-1997	11,513 (960)	34,540
4.	21855/10	13/04/2010	**Luigi DELLA NAVE** 28/03/1933 Morbegno	1962-1989	11,321 (943)	33,965
5.	21860/10	13/04/2010	**Gottardo DEL MAFFEO** 20/10/1938 Spriana	1959-1996	10,583 (882)	31,751
6.	21863/10	13/04/2010	**Rinaldo COTTA** 14/08/1944 San Martino Val Masino	1962-1987	14,132 (1,178)	42,396
7.	21869/10	13/04/2010	**Fausto CURTI** 28/05/1942 Verceia	1962-1976 1978-1997	10,473 (872)	31,419
8.	21870/10	13/04/2010	**Luigi ANDREOLA** 22/10/1944 Tirano	1967-1977	21,842 (1,820)	65,526

PARTLY DISSENTING OPINION OF JUDGE RAIMONDI JOINED BY JUDGE LORENZEN

1. With regret, I cannot join my colleagues of the majority in their view that Article 1 of the Additional Protocol has been breached in this case.

2. In the case of *Maggio and Others v. Italy* (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 31 May 2011) the fact that the applicant had lost considerably less than half of his pension, which therefore amounted to a reasonable and commensurate reduction, undeniably carried some weight in the finding that the provision had not been breached. Given the more substantial reduction in the present case, I agree with the majority that the Court had to scrutinise the reduction more closely in the context of the case.

3. The deprivation of the entirety of a pension is likely to breach the said provision (see for example, *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX, and *Apostolakis v. Greece*, no. 39574/07, 22 October 2009); conversely, minimal reductions to a pension or related benefits are likely not to do so (see, among many other authorities, *Valkov and Others*, cited above; *Arras and Others v. Italy*, no. 17972/07, 14 February 2012; *Poulain v. France* (dec.), no. 52273/08, 8 February 2011; *Lenz v. Germany* (dec.), no. 40862/98, ECHR 2001-X; and Janković v. Croatia (dec.), no. 43440/98, ECHR 2000-X).

4. However, the fair balance test cannot be based solely on the amount or percentage of the reduction, in the abstract. In all of these cases, and other similar ones, the Court endeavoured to assess all the relevant elements of the case against a specific background (for another example see, amongst other authorities, *Kuna v. Germany* (dec.), no. 52449/99, ECHR 2001-V (extracts)). Proceeding in this way, the Court found that even a reduction of 65%, as substantial as that might be, did not in the specific circumstances of the case upset the said fair balance (see *Banfield v. the United Kingdom* (dec.), no. 6223/04, ECHR 2005-XI).

5. I admit that a reduction of two-thirds of one's pension (and not solely of a pension-related benefit) is indisputably, in itself, a sizeable decrease which must seriously affect a person's standard of living. This loss must be examined in the light of all the relevant factors.

6. Of particular importance are the two factors already considered in *Maggio* (cited above). Primarily, the fact that the applicants paid lower contributions in Switzerland than they would have paid in Italy, with the result that they had the benefit of more substantial earnings at the time. Secondly, the fact that the reduction was aimed at, and had the effect of, equalising a state of affairs and avoiding unjustified advantages (resulting from the decision to retire in Italy) for people in the applicants' position.

7. According to statistical data collected by the INPS for the year 2010[1], in Italy, 14.4 % of pensioners received pensions of less than EUR 500; 31 % of pensioners received pensions of between EUR 500 and EUR 1,000; 23.5 % of pensioners received pensions of between EUR 1,000 and EUR 1,500, while 31.1 % of pensioners received pensions of more than EUR 1,500. Those sums take into consideration all pensions received, such as old-age, invalidity and war pensions, etc. Therefore, in the present case, none of the applicants falls into the lowest pension bracket. However, even if they did, given that approximately 15% of the retired population gets by on less than EUR 500 per month, it cannot be said that pensions in that lowest bracket, and still less the old-age pensions actually received by the applicants (which fall into the more advantageous brackets), are at such a low level as to deprive the applicants of the basic means of existence (see, *mutatis mutandis*, *Fiedler v. Germany* and *Mann v. Germany*, nos. 24116/94 and 24077/94, Commission decisions of 15 May 1996, both unreported; see also, more recently, *Koufaki and Adedy v. Greece* (dec.), nos. 57665/12 and 57657/12, §§ 45-46, 7 May 2013). These data further prove the huge and unjustified disparity there would have been, to the advantage of the applicants, had the system not been amended. In that connection one cannot lose sight of the importance of maintaining a healthy and sustainable pensions framework for the good of society at large. The removal of discriminatory regulations and the control of public expenses by the State are legitimate aims for the purposes of securing social justice and protecting the State's economic well-being, and in implementing social and economic policies the margin of appreciation enjoyed by the national authorities in determining what is in the general interest of the community is a broad one (see *Hoogendijk v. the Netherlands*, (dec.) no. 58641/00, 6 January 2005).

8. In conclusion, despite the reduction being a sizeable one, it nevertheless did not deprive the applicants of their pensions altogether. Bearing in mind the State's wide margin of appreciation in regulating the pensions system and all the factors mentioned above, and reaffirming the Court's findings in *Maggio*, cited above, I find that the applicants were not made to bear an individual and excessive burden.

9. It follows that, in my view, Article 1 of Protocol No. 1 has not been breached in this case.

[1]. http://www.inps.it/docallegati/Mig/Doc/sas_stat/BeneficiariPensioni/Trattamenti_pensionistici_e_beneficiari_-_26_apr_2012_-_Testo_integrale.pdf (last accessed 19 November 2013)