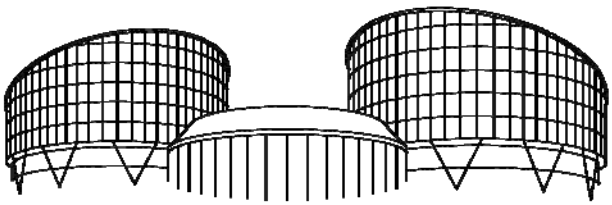

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MAGGIO AND OTHERS v. ITALY

(Applications nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08)

JUDGMENT

STRASBOURG

31 May 2011

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

In the case of Maggio and Others v. Italy,

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

Françoise Tulkens, *President,*
Danutė Jočienė,
David Thór Björgvinsson,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Guido Raimondi, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 10 May 2011,

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

PROCEDURE

1. The case originated in five applications (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08) 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 five Italian nationals, Mr Aldo Maggio, Mr Massimiliano Gabrieli, Mr Carlo Faccioli, Ms Emanuela Forgioli and Ms Maria Zanardini ("the applicants"), on 13 August 2009, 28 October 2008, 3 November 2008, 4 November 2008 and 12 November 2008 respectively.

2. The first applicant was represented by Ms L. Petrachi, a lawyer practising in Lecce. The second, third, fourth and fifth applicants were represented by Mr A. Carbonelli, a lawyer practising in Brescia. The Italian Government ("the Government") were represented by their Agent Ms E. Spatafora, and their Co-Agents, Mr N. Lettieri and Ms P. Accardo.

3. The applicants alleged that the legislative intervention while their proceedings were pending was discriminatory and breached their right to a fair trial. The first applicant also complained that, in consequence, he was deprived of his possessions.

4. On 8 June 2010 the Court declared the applications partly inadmissible and decided to communicate the complaints concerning Article 6 § 1, Article 13 and Article 14 in respect of the alleged discrimination *vis-à-vis* persons whose pensions have not already been liquidated, and Article 1 of Protocol No. 1 to the Convention, to the Government. It also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1). The Court also decided, under Rule 54 § 2 (c) of the Rules of Court, to grant the cases priority under Rule 41 and to invite the parties to submit further written observations on the above applications.

5. The Chamber furthermore decided to inform the parties that it was considering the suitability of applying a pilot judgment procedure in the cases (see *Broniowski v. Poland* [GC], 31443/96, §§ 189-194 and the operative part, ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC] no. 35014/97, ECHR 2006-... §§ 231-239 and the operative part) and requested the parties' observations on the matter. Having considered the circumstances and the observations received, the Chamber decided not to apply the pilot judgment procedure.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1938, 1942, 1939, 1942 and 1940 respectively, and live in Italy.

A. Background of the case

1. Mr Maggio

7. Mr Maggio worked in Switzerland from 1980 to 1992.

8. On 25 June 1997 Mr Maggio requested the *Istituto Nazionale della Previdenza Sociale* ("INPS"), an Italian welfare entity, to re-examine his old-age pension and to liquidate it on the basis of the real remuneration received ("*retribuzione effettiva*") during his years of employment in Switzerland, in accordance with the 1962 Italo-Swiss Convention.

9. On an unspecified date the INPS rejected his request, since the calculation had to be based on the remuneration received in Switzerland and then be re-adjusted on the basis of the tables supplied in Circular no. 324 of 4 January 1978.

10. Mr Maggio instituted proceedings before the Lecce Tribunal, claiming that the payment of old-age pensions had to be calculated on the basis of the real remuneration received (in the last five years of employment) and of the contributions paid in part in Switzerland and in part in Italy.

11. By a judgment filed in the registry on 8 May 2002, his claim was rejected.

12. Mr Maggio appealed to the Lecce Court of Appeal which, by a judgment filed in the registry on 30 October 2003, rejected his claim. It took into consideration a technical expert report in relation to Article 23 of the Italo-Swiss Convention (see Relevant Domestic Law below), which

provided for the transfer of contributions paid in Switzerland to the Italian insurance scheme for use in the calculation of old-age pensions, and guaranteed the benefits of Italian legislation. Consequently, it held that the pension calculation was to be made on the basis of Italian criteria, even though they were less favourable than the Swiss ones. Indeed, Italian law (decree of 27 April 1968 no. 488) provided for a calculation based on higher contributory rates than those in Switzerland, thus providing a lower pension than that expected by Mr Maggio.

13. By a judgment of 11 December 2008 filed in the registry on 13 February 2009, the Court of Cassation dismissed Mr Maggio's claim, after rejecting his request for a preliminary reference to the ECJ. It held that the criteria used by the Court of Appeal were eventually acknowledged in Article 1, paragraph 777, of Law no. 296 of 27 December 2006 ("Law 296/2006"), which had retroactive effect. This Law had not been found to be unconstitutional by the Constitutional Court in a judgment of 23 May 2008 (see Relevant Domestic Law below).

2. Mr Gabrieli

14. In 2005 Mr Gabrieli requested the INPS to establish his pension on the basis of the contributions paid in Switzerland for work he had performed there between November 1963 and June 2001. As a basis for the calculation of his pension, the INPS employed a theoretical remuneration ("*retribuzione teorica*") instead of the real remuneration ("*retribuzione effettiva*"). The former resulted in a re-adjustment on the basis of the existing ratio between the contributions applied in Switzerland (8%) and in Italy (32.7%), which led to a reduction of 25% in the basic amount used to calculate the pension and therefore a reduction in the pension itself. Consequently, in 2006 Mr Gabrieli instituted judicial proceedings.

15. By a judgment of the Brescia Tribunal (Labour Section) of 2 October 2006, Mr Gabrieli's claim was upheld on the basis of the relevant Court of Cassation case-law at the time (see Relevant Domestic Law below).

16. The INPS appealed.

17. By a judgment of 7 August 2007, the Brescia Court of Appeal reversed the first-instance judgment in view of the entry into force of Law 296/2006. Mr Gabrieli did not appeal to the Court of Cassation, deeming it to be futile in the circumstances of the case. Thus, the judgment became final on 7 August 2008.

3. Mr Faccioli

18. Mr Faccioli was entitled to an old-age pension from 1 April 1999.

19. In 2006 Mr Faccioli requested the INPS to establish his pension on the basis of the contributions paid in Switzerland for work he had performed there between 1 December 1958 and 31 March 1999. As a basis for the

calculation of his pension, the INPS employed a theoretical remuneration ("*retribuzione teorica*") instead of the real remuneration ("*retribuzione effettiva*"). The former resulted in a re-adjustment on the basis of the existing ratio between the contributions applied in Switzerland (8%) and in Italy (32.7%), which led to a reduction of 25% in the basic amount used to calculate the pension and therefore a reduction in the pension itself. Consequently, in 2006 Mr Faccioli instituted judicial proceedings.

20. By a judgment of the Brescia Tribunal (Labour Section) of 20 October 2008, Mr Faccioli's claims were rejected in view of Law 296/2006 and the subsequent Constitutional Court judgment. Mr Faccioli did not appeal, deeming it to be futile in view of the relevant case-law at the time.

4. Ms Forgioli

21. Ms Forgioli was entitled to an old-age pension from 1 April 1995 and to a survivor's pension, as a widow, her husband having become a pensioner on 1 April 1997, from the date of her husband's death.

22. In 2006 Ms Forgioli requested the INPS to establish her pension on the basis of the contributions paid in Switzerland for work she had performed there between 1 August 1959 and 30 November 1994, and those paid by her husband. As a basis for the calculation of the relevant pensions, the INPS employed a theoretical remuneration ("*retribuzione teorica*") instead of the real remuneration ("*retribuzione effettiva*"). The former resulted in a re-adjustment on the basis of the existing ratio between the contributions applied in Switzerland (8%) and in Italy (32.7%), which led to a reduction of 25% in the basic amount used to calculate the pension and therefore a reduction in the pension itself. Consequently, in 2006 Ms Forgioli instituted judicial proceedings.

23. By a judgment of the Brescia Tribunal (Labour Section) of 20 October 2008, Ms Forgioli's claims were rejected in view of Law 296/2006 and the subsequent Constitutional Court judgment. Ms Forgioli did not appeal, deeming it to be futile in view of the relevant case-law at the time.

Ms Zanardini

24. Ms Zanardini was entitled to an old-age pension from 1 August 1997.

25. In 2006 Ms Zanardini requested the INPS to establish her pension on the basis of the contributions paid in Switzerland for work she had performed there between March 1960 and July 1997. As a basis for the calculation of her pension, the INPS employed a theoretical remuneration ("*retribuzione teorica*") instead of the real remuneration ("*retribuzione effettiva*"). The former resulted in a re-adjustment on the basis of the

existing ratio between the contributions applied in Switzerland (8%) and in Italy (32.7%), which led to a reduction of 25% in the basic amount used to calculate the pension and therefore a reduction in the pension itself. Consequently, in 2006 Ms Zanardini instituted judicial proceedings.

26. By a judgment of the Brescia Tribunal (Labour Section) of 20 October 2008, Ms Zanardini's claims were rejected in view of Law 296/2006 and the subsequent Constitutional Court judgment. Ms Zanardini did not appeal, deeming it to be futile in view of the relevant case-law at the time.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Italo-Swiss Convention on Social Security

27. 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 due 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, upon the attainment of 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 have left Switzerland for permanent settlement 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, eventual reimbursements and the effects of such transfers."

28. 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 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 dispositions issued by the Italian authorities. In the event that, under the relevant Italian legal provisions, the insured person cannot assert a right to a pension, the Italian social welfare services will reimburse, upon request, the transferred contributions.
>
> (5) Transfer of contributions as provided for in the above sub-paragraph may be requested:
>
> (a) if the Italian citizen has left Switzerland at least ten years before,
>
> (b) on the occurrence of the insured event.
>
> The Italian citizen whose contributions have been transferred to the Italian social insurance scheme cannot assert any right in respect of the 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 (*)."

29. 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).

30. The transitional provision of Article 23 of the 1961 Convention became definitive by means of the additional agreement of 4 July 1969, whose Article 1 (1) and (3) reads:

> "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 scheme be transferred to the Italian insurance scheme, on condition that they have left Switzerland for permanent settlement 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 the attainment of the advantages 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 advantage 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 296/2006.

31. The Court of Cassation's judgment of 6 March 2004, and other analogous jurisprudence at the material time, established that, in the absence

of specific legislation regulating the transfer of contributions, the method of calculation in determining 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 had been calculated on the basis of much lower rates than those established under Italian legislation.

C. Law no. 296 of 27 December 2006

32. Article 1, paragraph 777, of Law 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 the effect 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 scheme, 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

33. By a writ of 5 March 2007, the Court of Cassation questioned the legitimacy of Law 296/2006 and remitted the case to the Constitutional Court. The Constitutional Court gave judgment on 23 May 2008, holding, in sum, as follows.

34. Although interpretative, Law 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 by Italian law on invalidity, old-age and survivors' insurance, including that of remuneration-based pension calculations, on the basis of the wages earned in Switzerland, irrespective of the fact that the transferred contributions had been paid at a much lower Swiss rate.

35. The Constitutional Court noted that the laws defining pension remuneration were part of a welfare system which balanced available resources and the services supplied. A change in calculating pensions from the contributory criterion 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 in 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 the situation whereby persons who had made small contributions to a foreign pension scheme could receive the same pension as those who had paid the much higher Italian contributions. The contested Law did not provide for any *ex post* 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.

THE LAW

I. ADMISSIBILITY

36. The Court considers that any apparent objection *ratione materiae* in relation to the complaint under Article 1 of Protocol No. 1 to the Convention should be joined to the merits. The Court notes that the application 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. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

37. The applicants complained of an alleged breach of their right to a fair hearing as provided in Article 6 § 1 of the Convention, which reads:

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

1. The parties' submissions

38. The applicants submitted that before the entry into force of the *legge finanziaria* of 2007 ("Law 296/2006"), the prevailing established case-law,

which, as confirmed by the Court of Cassation judgment of 6 March 2004 (see paragraph 31 above), had not been ambiguous, could have allowed a favourable evaluation of the applicants' pensions on the basis of the "real remuneration" (salaries earned) while they worked in Switzerland. The law at issue, however, applied a new method of pension calculation, based on an adjusted and therefore "theoretical remuneration". This resulted in a lower amount of pension, since the amount on the basis of which the applicants' pension was fixed, and consequently the pension award, was reduced by approximately 25%. Thus, the new law applied new rules to situations that had arisen before it came into force and which had already given rise to claims in this respect in pending proceedings, thereby producing a retrospective effect. As a result, the applicants as owners of pension rights were deprived of a part of their pensions.

39. According to the applicants such a legislative interference could not be justified by economic reasons under the Court's case-law. Furthermore, the Government had not proved that other persons having worked abroad in countries other than Switzerland, or who had worked in Italy and paid lower contributions in accordance with their specific regimes, had also suffered the same treatment in order to balance the economic situation.

40. Even assuming that the application of the principle of solidarity in welfare regimes amounted to a general interest consideration, accepted by the Court, the applicants noted that the situation of the Italian welfare system had not improved significantly and to the extent that it could annul any (discriminatory) effects on the persons in the applicants' situation.

41. The Government submitted that the system in 1962, when the Italo-Swiss Convention came into force, had stipulated that the calculations should be made on the basis of the contributions paid and not the salaries received. In 1982 this had been changed and the INPS, following certain case-law, had tried to adapt the interpretation of Law no. 1987 of 1982 to a new context while maintaining the spirit of the Italo-Swiss Convention. The criteria applied by the INPS to the applicants took into account the low contributions paid by the applicants in Switzerland, namely 8% of the salary, as opposed to the Italian 32.7%. Otherwise, the applicants as persons having worked in Switzerland would have had greater benefits for the relevant period, which constituted an advantage both *vis-à-vis* other Italian citizens who had paid higher contributions, and other Swiss citizens who ultimately received lower pensions. However, a number of affected individuals applied to the domestic courts contesting their pension calculation. The outcome of such cases created a prevalent but not univocal case-law, favourable to pensioners, which applied the remuneration-based ("*retributivo*") method of calculation, based on the salaries received in Switzerland and not on the basis of the contributions paid.

42. According to the Government there had not been interference by the legislature. The interpretation of the relevant provision had in any event

been controversial, there having been some first-instance judgments and at least one case on appeal confirming the INPS's practice. Moreover, the calculation did not affect already liquidated pensions. The entry into force of the impugned provision catered for an equitable distribution of collective resources. Its enactment had been reasonable, as the provision aimed to reinforce an interpretation already applied by the INPS and confirmed by a minority case-law that made it possible to attribute the same value to periods of work served in Italy or abroad. Thus, although the financial burden was not negligible, the reason had not been solely financial as in the cases of *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). Moreover, the enactment of this legislation had been necessary as the previous interpretation had been a literal one, arising out of provisions set out in a different normative context.

2. The Court's assessment

43. 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 v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII). 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).

44. In the instant case, the Court must look at the effect of Law 296/2006 and the timing of its enactment. It notes that the Law 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.

45. It remains to be determined whether there was any compelling general interest reason capable of justifying such a measure. 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).

46. The Court notes that in their submissions the Government claimed that, apart from any financial reasons, the promulgation of Law 296/2006 had been reasonable as it aimed to reinforce an interpretation already applied by the INPS and confirmed by a minority case-law that made it possible to attribute the same value to periods of employment served in Italy or abroad, thus creating an equilibrium in the welfare system.

47. 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).

48. 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 (see paragraph 31 above).

49. 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 has the effect of influencing the judicial determination of a pending dispute to which the State was a party.

50. 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 were favourable to it. There has therefore been a violation of that Article.

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

51. The first applicant further complained that the reduction in his pension, as a result of the new method of calculation envisaged in Law 296/2006, constituted interference with the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1, which provides:

> "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."

A. The parties' observations

52. The first applicant submitted that his future pension had already matured under the previous laws and therefore constituted a possession. The fact that the first applicant was denied that possession as a consequence of an illegitimate interference was, in his view, in breach of the lawfulness requirement of Article 1 of Protocol No. 1 to the Convention. Moreover, the first applicant submitted that his category of pensioners, as sole targets of the impugned provisions, were made to suffer an excessive individual burden in the name of any general interest that may be invoked, which created an unfair balance.

53. The Government submitted that a possible, more favourable amount of pension could not constitute an already established possession. Thus, at the time the first applicant's only possession was that awarded by the INPS under the impugned law. Moreover, on the basis of the reasons argued above, there had been no violation of the said provision, particularly in view of the general interest invoked, namely the need to ensure the economic and financial stability of the Italian welfare system.

B. General Principles

54. 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).

55. 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; and *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X). 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).

56. 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).

57. An essential condition for interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful. 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).

58. 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).

C. The Court's assessment

59. The Court does not consider it necessary to decide on the Government's preliminary objection and therefore to determine whether the first applicant in the present case had a possession within the meaning of the Protocol No. 1, as in any event it considers that there has been no breach of Article 1 of Protocol No. 1 to the Convention for the following reasons.

60. 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 296/2006 pursued the public interest (such as providing a harmonised pension calculation, aiming at a balanced and sustainable welfare system).

61. 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).

62. The Court notes that Law 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 he had 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).

63. 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.

64. 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.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

65. The second, third, fourth and fifth applicants complained that, as a result of the recent case-law, any judicial remedies would have had no prospects of success. Thus, they did not have at their disposal an effective domestic remedy for their Convention complaints under Article 6 to the Convention. They relied on Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

66. The Government submitted that the applicants had made use of judicial remedies to contest their pension calculation by the INPS. Moreover, the Constitutional Court had also pronounced itself on the matter in its judgment of 28 May 2008, finding that the interpretation given had been rational and had established an equilibrium between contributions paid abroad and the amount to be paid in pension.

67. Having regard to the finding relating to Article 6 (see paragraph 50 above), the Court considers that it is not necessary to examine whether there has been a violation of Article 13 in this case.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

68. The first applicant further complained that he had suffered discrimination in the enjoyment of his Convention rights because his pension claims had not been liquidated at the material time, as opposed to others whose proceedings had been finalised, contrary to Article 14 of the Convention read in conjunction with Article 6 and/or Article 1 of Protocol No. 1 to the Convention. He relied on Article 14 of the Convention, which provides:

> "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."

69. The Government submitted that, in accordance with the Italo-Swiss Convention, the INPS paid out pensions after taking into consideration the working period in Switzerland and contributions paid there, in order to avoid the above-mentioned advantage. In the case of individuals who had not contested the amounts paid by the INPS, the latter was the final decision in respect of the amount of pension. Those who opted to contest that amount could only hope for a favourable outcome. However, the practical effects of Law 296/2006 were that the judicial decisions of the pending proceedings confirmed the original amount awarded by the INPS. Thus, there had been no discrimination, particularly because Law 296/2006 aimed to establish a homogenous situation while eliminating unjustified privileges for persons who had worked abroad. In the Government's subsequent observations, referring to a report prepared by the INPS, they submitted that any favourable treatment enjoyed by persons whose pensions had already been liquidated was an inevitable situation, in view of the necessity of the Government to regulate possessions in the general interest.

70. The Court notes that Article 6 is applicable to the present case and this suffices to hold that Article 14 is also applicable.

71. The Court reiterates that a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *Stec and Others*, [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2006-VI). The scope of this margin will vary according to the circumstances, the subject-matter and the background. The

Court has previously held that the choice of a cut-off date when transforming social security regimes must be considered as falling within the wide margin of appreciation afforded to a State when reforming its social strategy policy (see *Twizell v. the United Kingdom*, no. 25379/02, § 24, 20 May 2008).

72. What needs to be considered is whether in the instant case the impugned cut-off date arising out of Law 296/2006 can be deemed reasonably and objectively justified.

73. It must be recalled that Law 296/2006 was intended to level out any favourable treatment arising from the previous interpretation of the provisions in force, which had guaranteed to persons in the first applicant's position an unjustified advantage, bearing in mind the needs of the social security system in Italy. The Court reiterates that in creating a scheme of benefits it is sometimes necessary to use cut-off points that apply to large groups of people and which may to a certain extent appear arbitrary (see *Twizell*, cited above, § 24). The Court considers that this is an inevitable consequence of introducing new regulations to replace previous schemes. Thus, in the present case, bearing in mind the margin of appreciation afforded to States in this sphere, the impugned cut-off date can be deemed reasonably and objectively justified.

74. The fact that the impugned cut-off date arose out of legislation enacted pending the first applicant's proceedings for the determination of his pension does not alter the above conclusion for the purposes of the examination under Article 14.

75. It follows that there has not been a violation of Article 14 of the Convention read in conjunction with Article 6.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. Mr Maggio claimed EUR 140,000 plus interest to cover the difference in pension received over the relevant years, namely EUR 100,360 revalued according to inflation. He further claimed a future pension of EUR 1,900 per month.

78. The remaining applicants claimed the sum representing the partial loss of their pensions from the date when they were first due, to 78 years of

age in respect of the male applicants and 82 years in respect of the female applicants (representing life expectancy), which, according to their calculations, amounted to the following sums respectively, EUR 1,380,000 in respect of Mr Gabrieli, EUR 746,022.42 in respect of Mr Faccioli, EUR 1,671,082.53 in respect of Ms Forgioli and EUR 903,948.24 in respect of Ms Zanardini.

79. All the applicants claimed non-pecuniary damage, leaving it to the Court to determine an adequate amount.

80. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicants did not have the benefit of the guarantees of Article 6 in respect of the fairness of the proceedings. Whilst the Court cannot speculate as to the outcome of the trial had the position been otherwise, it does not find it unreasonable to regard the applicants as having suffered a loss of real opportunities (see *Zielinski*, cited above, § 79 and *SCM Scanner de l'Ouest Lyonnais and Others v. France*, no. 12106/03, § 38, 21 June 2007). Thus, bearing in mind the amount of years each applicant worked in Switzerland, the Court awards EUR 20,000 to Mr Maggio and EUR 50,000 to each of the other four applicants in respect of pecuniary damage. To that must be added non-pecuniary damage, which the finding of a violation in this judgment does not suffice to remedy. Making its assessment on an equitable basis as required by Article 41, the Court awards each applicant EUR 12,000 under this head.

B. Costs and expenses

81. The first applicant also claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and the Court. The remaining applicants also claimed costs and expenses and left it to the Court to quantify such sums.

82. The Government did not submit any comments in this respect.

83. 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, regard being had to the above criteria and the fact that no documents have been presented justifying the alleged expenses the Court rejects the claim for costs and expenses in its entirety.

C. Default interest

84. The Court considers it appropriate that the default interest 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 UNANIMOUSLY

1. *Decided* to join to the merits the Government's preliminary objection in relation to the first applicant's complaint under Article 1 of Protocol No. 1 to the Convention and *declared* the remainder of the applications admissible;

2. *Held* that there has been a violation of Article 6 § 1 of the Convention in respect of all the applicants;

3. *Held* that there has not been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the first applicant and that it is not necessary to consider the Government's above-mentioned objection after having examined the merits;

4. *Held* that it is not necessary to examine the second, third, fourth and fifth applicant's complaint under Article 13 of the Convention;

5. *Held* that there has not been a violation of Article 14 of the Convention read in conjunction with Article 6 in respect of the first applicant;

6. *Held*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,
   (i) EUR 20,000 (twenty thousand euros) to Mr Maggio and EUR 50,000 (fifty thousand euros) to each of the other four applicants in respect of pecuniary damage;
   (ii) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, to each applicant in respect of non-pecuniary damage;
   (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. *Dismissed* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 31 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Françoise Tulkens
Deputy Section Registrar	President