European Court of human rights
SECOND SECTION
CASE OF ARRAS AND OTHERS v. ITALY
(Application no. 17972/07)

STRASBOURG
14 February 2012
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 Arras and Others v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:
Françoise Tulkens, President,
Danutė Jočienė,
Dragoljub Popović,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, judges,
and Stanley Naismith, Section Registrar,

Having deliberated in private on 24 January 2012,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 17972/07) 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 four Italian nationals, Mr Antonio Arras, Ms Celestina Dede, Mr Alessandro Dessi and Mr Bachisio Zizi ("the applicants"), on 20 April 2007.

2. The applicants were represented by Mr G. Ferraro, R. Mastroianni and F. Ferraro lawyers practising in Naples. The Italian Government ("the Government") were represented by Ms Ersiliagrazia Spatafora, Agent of the Government and Ms Paola Accardo, Co-Agent of the Government.

3. The applicants alleged that they had been subject to a legislative interference pending their proceedings which was in breach of their fair trial rights under Article 6.

4. On 3 January 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. On unspecified dates, following the introduction of the application, Mr Arras and Mr Dessi passed away. By a letter of 21 October 2010, the Court was informed that their heirs (Roberto Arras, Mirella Arras and Regina Obbino in respect of Mr Arras, and Giorgio Dessi, Loredana Dessi, Susanna Dessi, Alessio Dessi, Silvia Dessi, Carmela Pilleri, and Rosalba Dessi in respect of Mr Dessi) wished to continue with the proceedings. For practical reasons, Mr Arras and Mr Dessi will continue to be referred to as the applicants in this judgment.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1939, 1933, 1933 and 1925 respectively and lived in Italy.

A. Background of the case

7. The applicants are all pensioners (retired prior to 31 December 1990) and former employees of the Banco Di Napoli (a banking group which was originally a public entity and was later privatised).

8. Before their privatisation, the Banco di Napoli and the Banco di Sicilia were subject to exclusive welfare systems according to Articles 11 and 39 of Law no. 486 of 1985. Their employees benefited from a more favourable equalisation mechanism (meccanismo perequativo) than that available to persons registered with the general compulsory insurance (assicurazione generale obligatoria). In particular, the annual pension increase of their pensioners was calculated on the basis of the salary increases of working employees in equal grades of service (perequazione aziendale).

9. In 1990 the Amato reform provided for the privatisation of public banks such as the Banco di Napoli. It suppressed their exclusive pension regimes, replacing them by integrated ones. It provided for the registration of the Banco di Napoli employees with a new welfare management system which was part of the general obligatory insurance managed by the Istituto Nazionale della Previdenza Sociale ("INPS"), an Italian welfare entity.

10. In 1992 a further partial pension reform took place.

11. In 1993 a number of former employees who had by then retired, entered into a dispute with the Banco di Napoli about the application of certain provisions. In particular, by means of a wide interpretation of section 9 of Law no. 503 of 1992 (hereinafter Law no. 503/92) and section 3 of Law no. 421 of 23 October 1992 (hereinafter Law no. 421/92) (see Relevant domestic law) the Banco di Napoli attempted to suppress the system of perequazione aziendale calculated on the basis of the salary increases of working employees in equal grades of service, also in respect of persons who were already retired, limiting the latter's perequazione to an automatic one, namely a simple increase according to the cost of living (perequazione legale), which resulted in a less substantial pension.

12. The latter stand was taken notwithstanding that, according to the applicants, Law no. 218 of 30 July 1990 (Amato reform), particularly its section 3 paragraph 1 and 2, and section 3 of Law no. 421 of 23 October 1992 (see Relevant domestic law), limited this suppression solely to persons still employed and not persons already receiving a pension. Indeed persons still employed had been given the option of taking up other benefits as agreed by means of corporate collective bargaining.

B. General domestic proceedings on the matter

13. On an unspecified date a number of pensioners in the applicants' position instituted civil proceedings contesting the actions of the Banco di Napoli, since as a consequence they were receiving lesser amounts than those they claimed to be entitled to. They highlighted that Laws nos. 503/92 and 421/92 safeguarded any more favourable treatment applicable to persons who had retired prior to 31 December 1990. Thus, they requested the court to find that they had a right to retain the system of perequazione aziendale as applied before the enactment of such laws, and to order the Banco di Napoli to pay the sums it had failed to pay them.

14. By a judgment of 31 October 1994 in Acocella and others v. Banco di Napoli, the domestic court upheld the claimants' arguments, holding that they had a right to remain under the system of perequazione aziendale even following the entry into force of Law no. 503/92. The same was confirmed in a number of other judgments in various jurisdictions, including the Court of Cassation (for example, judgments nos. 1388/00 and 12912/00) and more specifically the Court of Cassation in its ultimate formation, namely, sitting as a full court (Sezione Unite). The latter in its judgment (no. 9024/01) of 3 July 2001 upheld the claimants' argument on the basis of the interpretation of Law no. 503/92 and Laws nos. 497 and 449 of 1996 and 1997 respectively, which explicitly made reference to perequazione aziendale, confirming that it had not been abrogated by the 1992 laws. The impugned amendments applied solely to persons still employed and not to persons who had retired on or before 31 December 1990. In consequence, the contested right was legitimately due to the former Banco di Napoli employees who had retired by 31 December 1990, for the period between 1 January 1994 (date when a general suspension of pension adjustments ceased) to 26 July 1996 (date when a new suspension of such adjustments started in respect of the Banco di Napoli).

15. This interpretation continued to be followed uniformly by all the judges sitting in such cases.

C. The enactment of Law no. 243/04

16. Subsequently, various legislative amendments took place attempting to limit the application of the system of perequazione aziendale. These culminated in the enactment of section 1 paragraph 55 of Law no. 243/04, which interpreted the relevant law to the effect that retired employees of the Banco di Napoli could no longer benefit from the system of perequazione aziendale and made it effective retroactively, with effect from 1992.

17. In the meantime, section 59 paragraph 4 of Law no. 449 of 27 December 1997 (legge finanziaria of 1998) had definitively suppressed all systems of perequazione aziendale, as from 1 January 1998.

18. Thus, generally the system of pension adjustment according to perequazione aziendale had been recognised and remained in force from 1994 to December 1997 (just before the entry into force of the legge finanziaria of 1998) for other public banking entities that had previously applied a system of perequazione aziendale, except for the Banco di Napoli. In reality, this benefit had already been suspended in respect of the employees of the Banco di Napoli (and Banco di Sicilia) with effect from 26 July 1996 by means of the Salvabanco law. Thus, for the latter's employees the system of perequazione aziendale would have applied only from 1 January 1994 to 26 July 1996.

D. The applicants' domestic proceedings

19. In 1996 the applicants instituted proceedings on the lines of the proceedings mentioned above, namely they argued that Laws nos. 503/92 and 421/92 safeguarded any more favourable treatments applicable to persons who had retired prior to 31 December 1990. Thus, they requested the Naples Tribunal (Labour Section) to find that they had a right to retain the system of perequazione aziendale as applied before the enactment of such laws and to order the Banco di Napoli to pay the sums it had failed to pay them.

20. The applicants expected a favourable outcome in view of the then applicable case-law. Indeed, in accordance with the latter, by a judgment of 26 February 2001, the Naples Tribunal (Labour Section) found in favour of the applicants. It ordered the Banco di Napoli to pay the outstanding amounts with inflation increases and legal interest to run from 1 January 1994.

21. On appeal, by a judgment of 24 April 2004, the Naples Court of Appeal confirmed the first-instance judgment upholding the applicants' right to be covered by the system of perequazione aziendale, however only for the period from 1 January 1994 (date when a general suspension of pension adjustments ceased) to 26 July 1996 (date when a new suspension of such adjustments started in respect of the Banco di Napoli).

22. The Banco di Napoli appealed.

23. By a judgment (no. 22701/06) of 19 September 2006 deposited in the relevant registry on 23 October 2006 the Court of Cassation reversed the lower courts' judgments and found against the applicants, ordering the costs of the three court instances to be paid equally between the parties. The Court of Cassation upheld the ground of appeal that the Naples Court of Appeal could not have taken account of Law no. 243/04 - not yet in force at the time of its judgment - an interpretation law applicable retroactively, which was designed to resolve a conflict of interpretation which had been present in domestic case-law and which had ultimately been resolved by the Court of Cassation (Sezioni Unite). Indeed, Law no. 243/04 was enacted to resolve the matter as to whether Articles 9 and 11 of Law no. 503/92 applied only to employees still in service or also to retired pensioners, and provided that as from 1994 onwards a perequazione legale (increase according to the standard of living) had to apply to "all" pensioners, irrespective of their date of retirement.

24. The Court of Cassation rejected a claim of unconstitutionality in so far as this interpretative law had retroactive effects impinging on the principle of legal and judicial certainty. In this respect it referred to previous Constitutional Court judgments which held that the legislator could impose norms specifying the meaning of other norms in so far as the meaning was one of the options emanating from the original text and in conformity with the principle of rationality.

E. Constitutional Court judgment no. 362 of 2008, in analogous proceedings.

25. In 2007, in two different civil cases, the Court of Cassation referred the matter to the Constitutional Court considering that paragraph 55 of Law no. 243/04 raised issues of constitutionality on a number of grounds: i) recourse to norms of authentic interpretation would be unreasonable in such circumstances, it being disproportionate and counterproductive vis-à-vis the aim sought, namely the extinction of contentious proceedings; ii) the impugned law would make the determination of the parties interest dependent on an unconstitutional factor, namely the length of proceedings, and would constitute an inequality of treatment between persons whose proceedings have terminated and others whose proceedings were still pending; iii) the impugned law would unreasonably obliterate the role of the Court of Cassation.

26. By a judgment filed in the registry on 7 November 2008, the Constitutional Court upheld the legitimacy of Law no. 243/04. It considered that the impugned law was an interpretative norm to the provisions of law no. 503/92 which eradicated perequazione aziendale for all pensioners, irrespective of their date of retirement. Indeed, the interpretative nature of the norm was evident since it had confirmed one of the possible meanings of the original 1992 text, which had also been upheld in some jurisprudence. The impugned law had been reasonable because it aimed to achieve recognition of an equal and homogenous treatment of all pensioners under the current integrative regimes. Moreover, this law had not augmented contentious proceedings since it had rendered their outcome foreseeable. As to the other inconveniences mentioned by the Court of Cassation, it considered that these arose from a random number of circumstances and was not sufficient to consider the norm unconstitutional. It further considered that the legislator could enact interpretative laws, once they were based on one of the possible meanings of the original text even

if there had been consistent jurisprudence about the matter, and this did not affect the role of the Court of Cassation.

II. RELEVANT DOMESTIC LAW

27. Law no. 218 of 30 July 1990, in so far as relevant, reads as follows:

Section 1

"Employees of public banks will remain subject to the provisions in force on the date of the entry into force of the present law, up to the renewal of the national collective bargaining contract applicable to the relevant category or up to the stipulation of a new additional corporate contract.

Section 2

The foregoing is without prejudice to the said employees' acquired rights, effects of special laws or laws pertaining to the original nature of the relevant public entity."

28. Sections 3 and 4 of Law no. 357 of 20 November 1990, in so far as relevant, read as follows:

Section 3

"(3) The pension rates to be paid by the special management system are subject to automatic equalisation of the compulsory general insurance.

(4) Those entitled to pensions or other insurances (in accordance with paragraph 1 ((registration with INPS of bank employees)) retain their right to the more favourable global welfare treatment as provided for by the obligatory invalidity, old-age and survivors' insurance as provided in the following Article.

Section 4

(1) ... is made without prejudice to a more favourable global welfare payment as provided for by the compulsory invalidity, old age and survivors insurance ... which remains applicable.

(2) The difference between the global welfare payments mentioned in paragraph 1 (tempo per tempo determinato) and the pension, or rate of pension, to be covered by the special management system (according to paragraphs 2 and 3), as increased by automatic equalisation, is to be paid by the employer."

29. Section 3 paragraph 1 of Law no. 421/92 delegated to the Government the enactment of the relevant law in accordance with the following principles, which in so far as relevant read as follows:

"(p) the principles and criteria mentioned above (...) apply to employees as mentioned in section 2 of Law no. 357/90 (persons in employment on 31 December 1990)"

30. Section 9 paragraphs 2 and 3, of Law no. 503/92, in so far as relevant, reads as follows:

"(2) Sections 2, 3, 8, 10, 11, 12, and 13 apply with respect to supplementary company regimes with which the employees as mentioned in section 2 of Law no. 357/90 (persons in employment on 31 December 1990) are registered.

(3) Variation to pension payments as a result of paragraph 2 weigh upon the global sum (in accordance with section 4 of Law no. 357/90) unless otherwise agreed through collective bargaining."

31. Section 1 paragraph 55 of Law no. 243/04 (regarding pension norms in the sector of public welfare, in support of complementary welfare and stable occupation and for the reorganisation of welfare entities and compulsory assistance), in so far as relevant, reads as follows:

"In order to extinguish the contentious judicial litigation relative to payments corresponding to each category of pensioners already registered under equivalent welfare regimes, by means of a full recognition of an equal and homogenous payment to all pensioners registered with the supplementary regimes in force, section 3 (1) (p) of Law no. 421 of 23 October 1992 and Article 9 (2) of Legislative Decree no 503 of 30 December 1992, applies to the global payment received by the pensioners in accordance with Article 3 of Legislative Decree no. 357 of 20 November 1990. The relevant expense is to be borne by the obligatory general insurance."

THE LAW

I. PRELIMINARY ISSUE

32. The Court notes at the outset that the first and third applicants died on unspecified dates after the lodging of their application, while the case was pending before the Court. Their heirs informed the Court that they wished to pursue the application lodged by them (see paragraph 5 above). Although the heirs of a deceased applicant cannot claim a general right for the examination of the application brought by the latter to be continued by the Court (see Scherer v. Switzerland, 25 March 1994, Series A no. 287), the Court has accepted on a number of occasions that close relatives of a deceased applicant are entitled to take his or her place (see Epiphaniou and Others v. Turkey, no. 19900/92, § 18, 22 September 2009 and Taylan and Others v. Turkey, nos. 9209/04, 40056/04 and 22412/05, 14 September 2010).

33. For the purposes of the instant case, the Court is prepared to accept that the heirs of the first and third applicants can pursue the application initially brought by Mr Arras and Mr Dessi.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicants complained that Law no. 243/04 as interpreted by the Court of Cassation on 23 October 2006, constituted a legislative interference with pending proceedings which was in breach of their fair trial rights under Article 6 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 ..."

35. The Government contested that argument.

A. Admissibility

36. The Court notes that this 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

37. The applicants submitted that the enactment of Article 1 paragraph 55 of Law no. 243/04 (which they considered a legal mess in its formulation and which had been furtively presented in parliament) appeared to interpret a 1992 norm, but in reality amended its content with retroactive effect after twelve years of its application. According to the applicants, its sole purpose was to thwart the consolidated interpretative orientation which had been adopted by the domestic courts (including the highest court – the Court of Cassation in its ultimate formation, sitting as a full court), namely that the relevant provisions of the 1992 law did not apply to persons who had retired by 13 December 1990. Following the enactment of Law no. 243/04 the domestic courts were bound to find against the applicants. Thus, the State had influenced the result of proceedings, defining their merit and rendering further hearings useless, violating the independence of the judiciary and interfering in the administration of justice. Indeed, the introduction of the 1997 law only confirmed that the 1992 law had not abolished harmonisation regarding long-standing pensioners. Otherwise there would have been no need to enact such law. Neither would there have been need to intervene again in 2004. The State had felt the need to introduce the 2004 legislation only because the courts had adopted a unanimous orientation in favour of the applicants and persons in their position. In this light, according to the applicants such a law could not have been foreseeable.

38. The applicants pointed out that there had been no general interest justifying the adoption of Law no. 243/04 which aimed to eliminate retroactively already acquired rights. They noted that the relevant expense in their cases was not borne by the INPS but by the Private Supplementary Fund which was derived from paid up contributions from the employers. Thus, the general public had not benefited in any way, it was solely the two private banks which had benefited since they were able to recover or save the sums which the domestic judges had deemed to be due to pensioners such as the applicants. Moreover, this law only affected pensioners from the two mentioned banks and thus was consciously directed to affect these specific disputes. It therefore had nothing to do with a general pension reform, namely the harmonisation following Law no. 449/97, and in fact the applicants were not contesting the effects of that law.

39. The Government submitted that there had not been a violation of Article 6. Indeed, the Naples Court of Appeal had found in the applicants' favour, attributing to them the right to perequazione aziendale for the relevant period. While it was true that the Court of Cassation had reversed this decision on appeal, this had been done upon consideration that the laws that had allowed perequazione aziendale had been changed in 1992 by means of laws that aimed to limit public expenditure and to eliminate once and for all this type of perequazione in order to rationalise the novel social security system following the privatisation of banking entities. Moreover, it had been necessary to align national jurisprudence on the matter which had been conflicting. In particular, the State felt bound to satisfy the aim of having a homogenous pension system.

40. The Government submitted that most western states had needed to reform their pension systems which had become unsustainable. Law no. 243/04, together with other laws, had not been aimed at influencing judges' determination of pending litigation, but had been part of a general reform of national relevance. Thus, the Court of Cassation had changed its view following legislative reforms approved by Parliament which, being an expression of the people, had the right and the duty to promote the reforms it considered necessary.

41. The Government considered that if such reforms had to be contrary to the Convention, then the States would never be able to undertake any reforms. In the present case, the aim of such a law was

to abolish a system which had favoured some over others. It was therefore for the Court to determine whether the circumstances of the case had given rise to a violation, bearing in mind the margin of appreciation of the State.

2. The Court's assessment

42. 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).

43. While it is true that in the present case, unlike in other cases of legislative interference before the Court (see, for example, Stran Greek Refineries, cited above) the State was not a party to the proceedings, this does not preclude an assessment on the circumstances of the case (see, for example, Vezon v. France, no. 66018/01, 18 April 2006, and Ducret v. France, no. 40191/02, 12 June 2007).

44. The problem raised in the instant case is fundamentally that of a fair trial, and in the Court's opinion, the State's responsibility is engaged both in its legislative capacity, if it vitiates the trial or affects the judicial outcome of the dispute, and in its capacity as a judicial authority where the right to a fair trial is violated, including in private law cases between private individuals (see Vezon, cited above § 30, and Ducret, cited above, § 34).

45. The Court reiterates that as regards disputes concerning civil rights and obligations, the Court has laid down in its case-law the requirement of equality of arms in the sense of a fair balance between the parties. In litigation involving opposing private interests, that equality implies that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see, Stran Greek Refineries, cited above, § 44 and Forrer-Niedenthal v. Germany, no. 47316/99, § 65, 20 February 2003).

46. In the instant case, the Court notes that Law no. 243/04 did not concern decisions that had become final and it settled once and for all the terms of the disputes pending before the ordinary courts retrospectively. Thus, its enactment 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' position to carry on with the litigation.

47. In these circumstances the Court considers that there cannot be said to have been equality of arms between the two private parties as the State found in favour of one of the parties when it enacted the impugned legislation.

48. The Court further reiterates that only compelling general interest reasons could be capable of justifying interference by the legislature. 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).

49. The Court notes that the domestic courts had consistently applied jurisprudence in favour of the applicants, and this was confirmed also by the Court of Cassation in its highest formation, therefore it cannot be said that there had been diverging jurisprudence as claimed by the Government. As to their argument that the law had been necessary to achieve a homogenous pension system, in particular by abolishing a system which favoured some over others, while the Court accepts this to be a reason of some general interest, it 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. The Government have submitted no other arguments capable of justifying such an intervention in favour of the Banco di Napoli.

50. In conclusion, bearing in mind the above, there was no compelling general interest reason capable of justifying the legislative interference which applied retroactively and determined the outcome of the pending proceedings between private individuals.

51. There has therefore been a violation of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

52. The applicants complained that the legislative changes were discriminatory in different ways. They relied on Article 14 of the Convention, which in so far as relevant reads as follows:

"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."

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

54. 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. The scope of this margin will vary according to the circumstances, the subject-matter and the background (see Stec and Others, [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2006-VI).

A. Vis-à-vis persons still employed

55. The applicants submitted that the changes treated persons in different situations in the same way. Indeed, the applicants had by then already reached pensionable age and unlike persons still employed, they could not receive any benefits which according to the reform could be acquired during working life, such as incentives in terms of contributions and taxation to stipulate a supplementary pension and to set up individual pension schemes, together with strengthening their retirement position through collective agreements. The impugned legislative changes affecting persons who were then 85 years of age had the sole intention of affecting specified subjects to the

advantage of the two above-mentioned banks just before they were to be taken over by a powerful banking group with exceptional influence.

56. The Government submitted that the retention of perequazione aziendale to the benefit of the applicants, in the context of a general pension reform, would have been in contradiction with the principle of equality of treatment of all pensioners. Thus, the reform had only aimed to remove an added benefit which had only been applicable to the applicants and not to other pensioners.

57. The Court notes that discrimination may arise where States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different (see Thlimmenos v. Greece [GC], no. 34369/97, § 44, ECHR 2000-IV). However, the Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment (see Van Raalte v. the Netherlands, 21 February 1997, § 39, Reports of Judgments and Decisions 1997-I). The scope of this margin will vary according to the circumstances, the subject matter and the background (see Petrovic v. Austria, 27 March 1998, § 38, Reports 1998-II).

58. While it is true that the applicants pertained to a group of persons who had already retired and who therefore could not make up their reduction in pension (as a consequence of Law no. 243/04) by means of other benefits which other persons still employed could obtain throughout their working life, the Court notes that the aim of Law no. 243/04 was to achieve an equality of treatment of all pensioners, current and future. Moreover, the Court notes that a wide margin is usually allowed to the States under the Convention when it comes to general measures of economic or social strategy (see, for example, James and Others v. the United Kingdom, 21 February 1986, § 46, Series A no. 98). It follows that, even if the principle derived from Thlimmenos were applied to the applicants' situation, there is, in the Court's view, objective and reasonable justification for not distinguishing in law between persons who had already begun to receive a pension and others who were still working.

59. Thus, this part of the complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Vis-à-vis other pensioners who had been working for other former public banks

60. The applicants claimed that they had been discriminated against vis-à-vis other pensioners who had been working for other former public banks, as certain favourable legal provisions had been made to the exclusion of the former employees of the Banco di Napoli (the Salvabanco law).

61. The Court reiterates that in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations (see D.H. and Others v. the Czech Republic [GC], no. 57325/00, § 175, ECHR 2007, and Burden v. the United Kingdom [GC], no. 13378/05, § 60, ECHR 2008).

62. The Court notes that under this complaint, the difference complained of appears to relate to the fact that while employees of the Banco di Napoli were originally entitled to (but eventually denied) perequazione aziendale from 1 January 1994 to 26 July 1996 as a consequence of the Salvabanco Law, other former employees of other public banking entities were originally, and remained, entitled to this benefit from 1 January 1994 to December 1997.

63. Both in so far as the complaint relates to the fact that the legislative interference caused the applicants - as Banco di Napoli employees - to receive a different treatment from that of other

employees of public banking entities in general, to whom the relevant laws did not apply, and in so far as it relates to the duration of this entitlement, the Court notes that because of their history in the Italian system the employees of the Banco di Napoli (and the Banco di Sicilia) cannot be considered to be in an analogous position to that of employees of other public banking entities.

64. It follows, that this part of the complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

C. Vis-à-vis other pensioners whose domestic proceedings had terminated

65. The applicants alleged that a further discrimination had arisen, between pensioners of the Banco di Napoli whose domestic proceedings had terminated before the change of case-law, and those who were still pursuing proceedings.

66. See paragraph 54 above in respect of the Government's submissions. Moreover, the Government made reference to the court's findings in Maggio and Others v. Italy (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 31 May 2011) which concerned similar circumstances.

67. 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). However, what needs to be considered is whether in the instant case the impugned cut-off date arising out of the application of Law no. 243/04 can be deemed reasonably and objectively justified.

68. While in the present case, the justification is not as strong as that in the Maggio case invoked by the Government, the Court is ready to accept that Law no. 243/04 was intended to level out any favourable treatment arising from the previous application of the provisions in force, which had guaranteed to persons in the applicants' position a higher adjustment, namely a perequazione aziendale as opposed to legale. 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). While it is true that in the present case the impugned legislation affected a smaller number of people, mainly octogenarians who were previously employed by the Banco di Napoli and whose proceedings were still pending, the Court considers that, particularly bearing in mind the wide margin of appreciation afforded to States in this sphere, the impugned cut-off date can be deemed reasonably and objectively justified.

69. The fact that the impugned cut-off date arose out of legislation enacted pending the applicants' proceedings does not alter the above conclusion for the purposes of the examination under Article 14.

70. It follows that, this part of the complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

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

71. The applicants further complained that such a measure constituted an arbitrary interference with their possessions. They relied on Article 1 of Protocol No. 1 to the Convention, which in so far as relevant reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

72. The Government contested that argument.

A. The parties' submissions

73. The applicants submitted that the retroactive legislation constituted a retroactive expropriation of their possessions, namely acquired rights which had matured thirteen years earlier. It compared the situation with the case of Agrati and Others v. Italy, nos. 43549/08, 6107/09 and 5087/09, 7 June 2011), save that in the present case there had been no public interest.

74. The Government submitted that applying a system of perequazione legale as opposed to aziendale could not constitute an illegitimate interference with property under Article 1 of Protocol No. 1 since the provision allowed States to enforce such laws as deemed necessary to control the use of property in accordance with the general interest. Indeed, according to the Court's case-law, even assuming that Article 1 of Protocol No. 1 guarantees benefits to persons who have contributed to a social insurance system, it cannot be interpreted as entitling that person to a pension of a particular amount (Kjartan Ásmundsson v. Iceland, no. 60669/00, § 39, ECHR 2004-IX). Moreover, the Government noted that the applicants' salaries were still subject to adjustment according to the cost of living, thus safeguarding their purchasing power. They further submitted that the aim of the law was to harmonise the pension system, by treating equally all pensioners, and abolishing a distinction between those who had retired before 31 December 1990 and those who retired later. Moreover, the burden imposed on the applicants had been limited and proportionate. The Government made reference to the Court's case-law on this matter, particularly the case of Maggio and Others v. Italy (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 31 May 2011).

B. The Court's assessment

1. General Principles

75. 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).

76. 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). 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).

77. 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).

78. 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).

79. 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).

2. Application to the present case

80. The Court firstly notes that the present case deals with pension adjustments and not salaries arising out of a contractual relationship as in the case of Agrati and Others cited by the applicants. However, the Court does not consider it necessary to decide whether the applicants had a possession within the meaning of 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.

81. 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, for example, Maggio and Others v. Italy, nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, § 60, 31 May 2011). It finds no reason to deem otherwise in the present case. Reiterating that, 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", the Court accepts that the enactment of Law no. 243/04 pursued the public interest (harmonising the pension system by treating equally all pensioners).

82. In considering whether the interference imposed an excessive individual burden on the applicants, 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). Nevertheless, the Court notes that Law no. 243/04 did not affect the applicants' basic pension, and according to the laws in force their pension was still to be augmented over the years according to a perequazione legale. Accordingly, the applicants only lost the more favourable augmentation according to a perequazione aziendale. Thus, the Court considers that the applicants were obliged to endure a reasonable and commensurate reduction, rather than the total deprivation of their entitlements (see, conversely, Kjartan Ásmundsson, cited above § 45).

83. In consequence, the measure at issue did not result in the impairment of the essence of the applicants' pension rights. Moreover, this reduction only had the effect of equalizing a state of affairs and avoiding unjustified advantages (resulting from the Banco di Napoli employees having previously had more favourable treatment) for the applicants and other persons in their position. Against this background, bearing in mind the State's wide margin of appreciation in regulating the pension system and the fact that the applicants endured commensurate reductions, the Court considers that the applicants were not made to bear an individual and excessive burden.

84. It follows that, even assuming the provision is applicable, the complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicants claimed the differential pay-out that they would have received had they not been subject to Law no. 243/04, up to 2010, together with a hypothetical calculation for the years to come according to official statistics on life expectancy and bearing in mind that pensions are transferred to the surviving spouse following death at the rate of 60% of the original pay-out. They therefore claimed the following sums: Mr Arras 31,395.14 euros (EUR), Ms Dede EUR 3,443.16, Mr Dessi EUR 8,599.25 and Mr Zizi EUR 174,822.19 in respect of pecuniary damage. The applicants also claimed non-pecuniary damage in an amount to be specified by the Court.

87. The Government have not submitted any comments in this respect.

88. 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). 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 EUR 9,000 to Mr Arras, EUR 5,500 to Ms Dede, EUR 6,000 to Mr Dessi and EUR 30,000 to Mr Zizi for all heads of damage combined.

B. Costs and expenses

89. The applicants also claimed EUR 41,043.51 plus tax under this head, namely EUR 24,376.96 for the costs and expenses incurred before the domestic courts and EUR 16,666.55 for those incurred before the Court, plus all amounts due in taxes.

90. The Government made no comments in this respect.

91. 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 documents in its possession and the above criteria, together with the fact that the domestic courts only attributed half of the costs to the applicants and that the Court only found a violation in respect of Article 6, considers it reasonable to award the sum of EUR 19,000 covering costs under all heads.

C. Default interest

92. 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 UNANIMOUSLY

1. Declares the complaint under Article 6 § 1 admissible and the remainder of the application inadmissible.

2. Holds that there has been a violation of Article 6 § 1 of the Convention;

3. Holds

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts

(i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, to the heirs of Mr Arras, jointly, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 5,500 (five thousand five hundred euros), plus any tax that may be chargeable, to Ms Dede in respect of pecuniary and non-pecuniary damage;

(iii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, to the heirs of Mr Dessi, jointly, in respect of pecuniary and non-pecuniary damage;

(iv) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, to Mr Zizi in respect of pecuniary and non-pecuniary damage;

(v) EUR 19,000 (nineteen thousand euros), plus any tax that may be chargeable to the applicants, jointly, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. Dismisses the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.