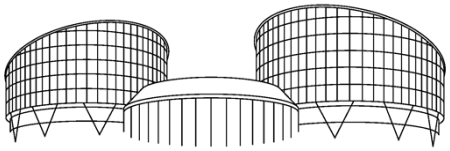

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PICCIONI v. ITALY

(Application no. 42111/14)

JUDGMENT

STRASBOURG

17 July 2025

This judgment is final but it may be subject to editorial revision.

In the case of Piccioni v. Italy,

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

Erik Wennerström*, President*,
Raffaele Sabato,
Artūrs Kučs*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 42111/14) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 May 2014 by an Italian national, Mr Mario Piccioni ("the applicant"), who was born in 1950, lives in Rome and was represented by Mr D. D'Alessandro, a lawyer practising in Trieste;

the decision to give notice of the complaint under Article 6 § 1 of the Convention concerning non-enforcement or delayed enforcement of domestic decisions to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 26 June 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the non-enforcement of a final judgment ordering the applicant's reinstatement in his job position following an unlawful dismissal.

2. By Decree of the Presidency of the Council of Ministers of 1 June 2004, the applicant was appointed Director General of Material Resources, Goods and Services of the Ministry of Justice's Department for Juvenile Justice. The initial term of his contract was two years, subsequently extended until 15 January 2009.

3. By letter dated 27 November 2006, the applicant was informed that his assignment had not been confirmed and that it ended pursuant to Article 19, paragraph 8, of Legislative Decree no. 165 of 30 March 2001, as modified by Decree Law no. 262 of 3 October 2006 (the so-called "spoils system", see paragraph 9 below).

4. The applicant brought a civil action to challenge the dismissal and to seek reinstatement. In a judgment of 15 January 2008, the Rome District Court dismissed his claims. The applicant appealed, citing the fact that, in the meantime, the Constitutional Court's judgment no. 161 of 7 May 2008 had declared the relevant provision unconstitutional.

5. By judgment no. 3622 of 25 May 2010, the Rome Court of Appeal declared the dismissal null and void. It further considered "whether the administration could be ordered to reinstate the applicant, the date initially set for the end of his contract having expired during the proceedings". Referring to judgment no. 3677 of 16 February 2009 of the Court of Cassation – which clarified that public employees dismissed unlawfully, whose contract had meanwhile expired, had "the right to be reinstated for the remaining duration of their contract, deducted the period of unlawful removal" (see paragraph 10 below) – the Court of Appeal declared the applicant's reinstatement for the contractual period corresponding to the unlawful interruption.

6. The Ministry of Justice did not appeal against the judgment, which became final. However, reinstatement never occurred.

7. The applicant then initiated enforcement proceedings (*giudizio di ottemperanza*) before the administrative courts. Both the Latium Regional Administrative Court, in its judgment of 4 May 2011, and the *Consiglio di Stato*, in its judgment of 20 December 2011, rejected the applicant's request for enforcement, stating that reinstatement was not possible since his contract had already expired. The applicant lodged an appeal before the Court of Cassation, arguing that the Council of State had exceeded its jurisdiction by reinterpreting the content of a final judgment. In its judgment of 29 November 2013, the Court of Cassation rejected the applicant's appeal.

8. Relying on Article 6 § 1 and Article 13 of the Convention, the applicant complains that the national authorities failed to enforce the judgment of the Rome Court of Appeal ordering his reinstatement, thereby calling into question a final judicial decision.

RELEVANT LEGAL FRAMEWORK

9. Article 19, paragraph 8 of Legislative Decree no. 165 of 30 March 2001, as modified by Decree Law no. 262 of 3 October 2006, converted into Law no. 286 of 24 November 2006, provided for the possibility to confirm or revoke managerial positions within ninety days from the instalment of a new Government (the so-called "spoils system"). In particular, section 2, subsection 161 of the Decree specified that, as to its first application, all the positions assigned before 17 May 2006 were to cease if not confirmed within sixty days from its entry into force. The Constitutional Court in its judgment no. 161 of 7 May 2008 deemed the latter provision unconstitutional due to the lack of procedural guarantees.

10. In judgment no. 3677 of 16 February 2009, the Court of Cassation, sitting as a full court, addressed the question of whether it was possible to order reinstatement of public employees whose contract expired pending proceedings on the lawfulness of the dismissal, stating, *inter alia*:

"... the awarding of compensation for damages alone would not constitute effective 'disapplication' of the unlawful measure, because that measure would continue to justify ... the dismissal ...

... the specific job position, the department, or the functions previously performed may no longer exist, however, this has never been considered enough to deny reinstatement in the job position, in so far as one thing is the type of measure that the judge can issue, another is its suitability to be enforced by means of *restitutio in integrum* (*eseguito in forma specifica*) ...

... it is accordingly possible to impose an obligation of *facere* on the public administration ... specifying that, in any case, the reinstatement is limited to the remaining duration of the original assignment act, deducted the period of unlawful removal (*dedotto il period di illeggittima sottrazione*).

...once the dismissal was held to be unlawful, the original measure assigning the managerial position became effective again. Indeed, as a result of the latter, managers hold a subjective right (*diritto soggettivo*) to perform, not any managerial assignment, but the specific one that had been attributed to them."

11. In judgment no. 3210 of 18 February 2016 and order no. 29168 of 13 November 2018, the Court of Cassation further clarified that the reinstatement of managers who had been unlawfully dismissed according to the aforementioned unconstitutional provisions was not necessarily deemed impossible, even if the original assignment had expired, or the original position no longer existed. As for the latter aspect, the Court of Cassation also clarified that the applicable national corporate contract (*contratto collettivo nazionale*) allows the reassignment of the manager to similar functions.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING ENFORCEMENT OF A FINAL JUDGMENT

A. Admissibility

12. The Government submitted that the applicant had failed to exhaust the available domestic remedies. In particular, they argued that he could have lodged a claim for damages within the enforcement proceedings pursuant to Article 112 of the Code of Administrative Procedure.

13. The applicant contested the Government's objection, highlighting that the possibility to lodge claims for damages concerning obligations of *facere* had been introduced after he had already lodged the enforcement proceedings at second instance and concerned, in any case, only those situations where *restitutio in integrum* enforcement was no longer possible.

14. Irrespective of the applicability of the invoked provision to the specific case, the Court reiterates that, according to its case-law, an individual who has obtained judgment against the State at the end of legal proceedings cannot be required to then bring enforcement proceedings to have it executed

(see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; *Cocchiarella v. Italy* [GC], no. 64886/01, § 89, ECHR 2006-V; *Ventorino v. Italy*, no. 357/07, § 28, 17 May 2011). Thus, the Court dismisses the Government's objection.

15. The Court further notes that the complaint is not manifestly ill- founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

16. The general principles on the non-enforcement of final judgments concerning an obligation of *facere* are summarised in the Court's judgments *Sabin Popescu v. Romania* (no. 48102/99, 2 March 2004), *Costin v Romania* (no. 57810/00, 26 May 2005) and, with regard to the reinstatement in a job position, *Nicola Silvestri v. Italy* (no. 16861/02, §§ 58-62, 9 June 2009), *Ştefanescu v. Romania* (no. 9555/03, §§ 22-26, 11 October 2007), *Akhundov v. Azerbaijan* (no. 39941/07, §§ 31-37, 3 February 2011) and *Krndija and Others v. Serbia* (nos. 30723/09 and 3 others, §§ 66-72, 27 June 2017).

17. The Government argued that the applicant misinterpreted the content of the judgment of the Rome Court of Appeal. According to them, the Court of Appeal's reference to judgment no. 3677 of 2009 of the Court of Cassation had to be interpreted as giving right to reinstatement only in the exact position originally occupied by the applicant. Since the applicant's contract had expired and his former position had been reassigned to someone else, the Government maintained that the *restitution in integrum* enforcement was objectively impossible.

18. The applicant maintained his claims.

19. The Court reiterates that by lodging an application for judicial review against an administrative act, applicants seek not only the annulment of the impugned decision, but, above all, the removal of its effects (see *Nicola Silvestri*, cited above, § 59, and *Zazanis and Others v. Greece*, no. 68138/01, § 37, 18 November 2004).

20. The Court notes that the Court of Appeal ordered that the applicant should be reinstated for the remaining duration of his contract. It further made reference to judgment no. 3677 of 2009 of the Court of Cassation, the declared purpose of which was to ensure effective protection to public managers unlawfully dismissed, whose contract expired pending proceedings on the dismissal (see paragraph 10 above). Denying the applicant's reinstatement precisely because his contract had expired pending the proceedings would undermine this purpose.

21. The Court also observes that if the Ministry of Justice had any doubt as to the exact terms of the Court of Cassation's judgment and its application by the Court of Appeal, it should have lodged an appeal on points of law. On

the contrary, the administration decided not to appeal against the judgment issued in favour of the applicant, which became final. Moreover, the Court notes that the subsequent case-law of the Court of Cassation (see paragraph 11 above) confirmed the applicant's argument according to which reinstatement had to be enforced for the remaining duration of his contract, even though his original assignment had already expired. It also notes that the Government did not provide any case-law supporting their opposite interpretation.

22. As to the Government's argument concerning the impossibility of *restitution in integrum*, the Court accepts that a situation may exceptionally arise where *restitutio in integrum* enforcement of a court judgment declaring administrative acts null and void may, as such, prove objectively impossible due to insurmountable factual or legal obstacles (see *Costin*, § 57, and *Nicola Silvestri*, § 62, both cited above). However, the Court notes that, in the present case, the Government failed to offer a convincing explanation, referring only to the facts that the applicant's contract had expired, and his position had been occupied by another person. The Court observes that accepting this argument would mean allowing the administration to evade the execution of a court judgment simply by invoking subsequent changes concerning the position previously occupied by the person concerned (see *mutatis mutandis Ştefanescu*, cited above, § 26, and *Ioannidou-Mouzaka v. Greece*, no. 75898/01, § 28-33, 29 September 2005).

23. In light of the above considerations, the Court finds that here has been a violation of Article 6 § 1 of the Convention on account of the non-execution of the Court of Appeal's judgment of 25 May 2010.

II. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 (RIGHT NOT TO HAVE A FINAL JUDICIAL DECISION CALLED INTO QUESTION) AND ARTICLE 13 OF THE CONVENTION

24. The applicant further complained under Article 6 § 1 of the Convention that the domestic authorities, by refusing to reinstate him, had called into question a final judicial decision. He also complained under Article 13 of the absence of an effective remedy for the violations of Article 6 § 1. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the admissibility and merits of these complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 170,000 euros (EUR) in respect of non-pecuniary damage for suffering and distress, psycho-physical damage, damage to his professional image and esteem as well as loss of future career opportunities. He further claimed EUR 22,008.08 in respect of costs and expenses incurred before the domestic courts and EUR 5,000 for the costs and expenses incurred before the Court.

26. The Government submitted that the applicant's claim should be rejected.

27. The Court first notes that the applicant has not requested that it orders that the domestic judgment of 25 May 2010 be enforced. Consequently, also having regard to the specific circumstances of the present case, the Court refrains from doing so. However, the Court considers it reasonable to award the applicant non-pecuniary damage for the obvious distress and moral prejudice suffered by him due to the violation found. In view of the particular context of the present case, it awards the applicant the amount of EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

28. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 13,000 for costs and expenses incurred in the domestic proceedings and EUR 3,000 for the costs and expenses incurred before the Court, plus any tax that may be chargeable to the applicant and dismisses the remainder of the claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the non-enforcement of a final judgment admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention concerning the non-enforcement of a final judgment;

3. *Holds* that there is no need to examine the admissibility and merits of the other complaints under Article 6 § 1 and Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 13,000 (thirteen thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred before domestic courts;

(iii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred before the Court;

(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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President