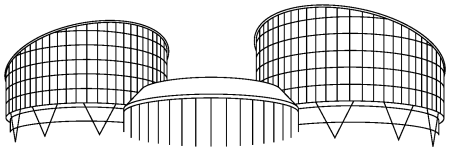

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF CATALDO AND OTHERS v. ITALY

(Applications nos. 54425/08, 58361/08, 58464/08, 60505/08, 60524/08 and 61827/08)

JUDGMENT

STRASBOURG

24 June 2014

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

In the case of Cataldo and Others v. Italy,

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

Işıl Karakaş, *President,*
Guido Raimondi,
András Sajó,
Nebojša Vučinić,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 27 May 2014,

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

PROCEDURE

1. The case originated in six applications (see Annex) 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 six Italian nationals ("the applicants") in 2008 (see Annex for details).

2. The applicants were represented by Ms Elisabetta Fatuzzo, a lawyer practising in Bergamo, Italy. The Italian Government ("the Government") were represented by their Agent, Ms E. Spatafora, and their Co-Agent, Ms Paola Accardo.

3. The applicants alleged that legislative intervention, namely the enactment of Law no. 296/2006, whilst proceedings were pending, had denied them their right to a fair trial under Article 6 § 1 of the Convention.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the cases

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

6. In 1995, by means of the Dini reform, Italy changed its pension system from a retributive one, which applied the remuneration-based ("*retributivo*") method of calculation, to a contributory one, where the amount received in pension was dependent on the contributions paid.

1. Mr Cataldo

7. Mr Cataldo, who had transferred to Italy the contributions he had paid in Switzerland, requested the INPS to establish his pension in accordance with the 1962 Italo-Swiss Convention on Social Security (see Relevant Domestic Law and Practice below) on the basis of the contributions paid in Switzerland for work he had performed there between 1956 and 1994. As a basis for the calculation of his pension (in respect of the average remuneration of the last ten years), the INPS employed a theoretical remuneration ("*retribuzione teorica*") instead of the real remuneration ("*retribuzione effettiva*"). The former resulted in a readjustment on the basis of the existing ratio between the contributions applied in Switzerland (8%) and in Italy (32.7%), which meant that the calculation had as its basis a pseudo-salary which amounted to approximately a quarter of the salary actually received by the applicant and therefore led to a reduction in the pension itself.

8. Consequently, in 2006 Mr Cataldo instituted judicial proceedings, contending that this was contrary to the spirit of the Italo-Swiss Convention. Various individuals in the same position had done the same and had been successful, the domestic courts having determined that persons having worked in Switzerland and who had subsequently transferred their contributions to Italy should benefit from the 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.

9. Pending the proceedings, Law no. 296/2006 (see Relevant Domestic Law and Practice below) entered into force on 1 January 2007.

10. By a judgment of the Lecco Tribunal (Labour and Welfare Section) of 27 February 2008, filed in the relevant registry on 6 May 2008, the court rejected Mr Cataldo's claim in view of the entry into force of Law no. 296/2006.

11. Mr Cataldo did not appeal, deeming it to be futile given that the impugned law had been considered legitimate by the Constitutional Court in its judgment of 23 May 2008, no. 172 (see Relevant Domestic Law and Practice below), which other courts were then bound to uphold.

2. Mr Maggioni

12. Mr Maggioni, who had transferred to Italy the contributions he had paid in Switzerland, requested the INPS to establish his pension in

accordance with the 1962 Italo-Swiss Convention on Social Security on the basis of the contributions paid in Switzerland for work he had performed there between 1965 and 2000. As a basis for the calculation of his pension (in respect of the average remuneration of the last ten years), the INPS employed a theoretical remuneration ("*retribuzione teorica*") instead of the real remuneration ("*retribuzione effettiva*"). The former resulted in a readjustment on the basis of the existing ratio between the contributions applied in Switzerland (8%) and in Italy (32.7%), which meant that the calculation had as its basis a pseudo-salary which amounted to approximately a quarter of the salary actually received by the applicant and therefore led to a reduction in the pension itself.

13. Consequently, in 2006 Mr Maggioni instituted judicial proceedings.

14. By a judgment of the Brescia Tribunal (Labour Section) of 26 June 2006, Mr Maggioni's claim was upheld on the basis of the relevant Court of Cassation case-law at the time.

15. The INPS appealed.

16. By a judgment of 1 March 2007, filed in the relevant registry on 19 May 2007, the Milan Court of Appeal reversed the first-instance judgment in view of the entry into force of Law no. 296/2006. This judgment became final on 19 May 2008 given that Mr Maggioni did not appeal to the Court of Cassation, deeming it to be futile in the circumstances of the case.

3. Mr Ribulotta

17. Mr Ribulotta, who had transferred to Italy the contributions he had paid in Switzerland, requested the INPS to establish his pension in accordance with the 1962 Italo-Swiss Convention on Social Security on the basis of the contributions paid in Switzerland for work he had performed there between 1955 and 1991. As a basis for the calculation of his pension (in respect of the average remuneration of the last ten years), the INPS employed a theoretical remuneration ("*retribuzione teorica*") instead of the real remuneration ("*retribuzione effettiva*"). The former resulted in a readjustment on the basis of the existing ratio between the contributions applied in Switzerland (8%) and in Italy (32.7%), which meant that the calculation had as its basis a pseudo-salary which amounted to approximately a quarter of the salary actually received by the applicant and therefore led to a reduction in the pension itself.

18. Consequently, in 2003 Mr Ribulotta instituted judicial proceedings.

19. By a judgment of the Varese Tribunal (Labour and Welfare Section) of 21 February 2006, Mr Ribulotta's claim was upheld on the basis of the relevant Court of Cassation case-law at the time.

20. The INPS appealed.

21. By a judgment of 16 May 2008, filed in the relevant registry on 5 June 2008, the Milan Court of Appeal reversed the first-instance judgment in view of the entry into force of Law no. 296/2006.

22. Mr Ribulotta did not appeal to the Court of Cassation, deeming it to be futile in the circumstances of the case.

4. Mr Marinaro

23. Mr Marinaro, who had transferred to Italy the contributions he had paid in Switzerland, requested the INPS to establish his pension in accordance with the 1962 Italo-Swiss Convention on Social Security on the basis of the contributions paid in Switzerland for work he had performed there between 1965 and 1994. As a basis for the calculation of his pension (in respect of the average remuneration of the last ten years), the INPS employed a theoretical remuneration ("*retribuzione teorica*") instead of the real remuneration ("*retribuzione effettiva*"). The former resulted in a readjustment on the basis of the existing ratio between the contributions applied in Switzerland (8%) and in Italy (32.7%), which meant that the calculation had as its basis a pseudo-salary which amounted to approximately a quarter of the salary actually received by the applicant and therefore led to a reduction in the pension itself.

24. Consequently, in 2006 Mr Marinaro instituted judicial proceedings.

25. By a judgment of the Como Tribunal (Labour and Welfare Section) of 21 February 2006, Mr Marinaro's claim was dismissed as being out of time.

26. Mr Marinaro appealed.

27. By a judgment of 7 July 2008, filed in the relevant registry on 17 July 2008, the Milan Court of Appeal reformed the first-instance judgment, considering that the applicant's claims for the dues relating to the three years before he lodged his application could not be considered time-barred. However, it rejected the merits of the claim in view of the entry into force of Law no. 296/2006.

28. Mr Marinaro did not appeal to the Court of Cassation, deeming it to futile in the circumstances of the case.

5. Mr Centamore

29. Mr Centamore, who had transferred to Italy the contributions he had paid in Switzerland, requested the INPS to establish his pension in accordance with the 1962 Italo-Swiss Convention on Social Security on the basis of the contributions paid in Switzerland for work he had performed there between 1969 and 2000. As a basis for the calculation of his pension (in respect of the average remuneration of the last ten years), the INPS employed a theoretical remuneration ("*retribuzione teorica*") instead of the real remuneration ("*retribuzione effettiva*"). The former resulted in a

readjustment on the basis of the existing ratio between the contributions applied in Switzerland (8%) and in Italy (32.7%), which meant that the calculation had as its basis a pseudo-salary which amounted to approximately a quarter of the salary actually received by the applicant and therefore led to a reduction in the pension itself.

30. Consequently, in 2006 Mr Centamore instituted judicial proceedings.

31. By a judgment of the Busto Arsizio Tribunal (Labour and Welfare Section) of 9 June 2008, Mr Centamore's claim was rejected in view of the entry into force of Law no. 296/2006.

32. Mr Centamore did not appeal, deeming it futile in the circumstances of the case.

6. Mr Maccarinelli

33. Mr Maccarinelli, who had transferred to Italy the contributions he had paid in Switzerland, requested the INPS to establish his pension in accordance with the 1962 Italo-Swiss Convention on Social Security on the basis of the contributions paid in Switzerland for work he had performed there between 1960 and 2000. As a basis for the calculation of his pension (in respect of the average remuneration of the last ten years), the INPS employed a theoretical remuneration ("*retribuzione teorica*") instead of the real remuneration ("*retribuzione effettiva*"). The former resulted in a readjustment on the basis of the existing ratio between the contributions applied in Switzerland (8%) and in Italy (32.7%), which meant that the calculation had as its basis a pseudo-salary which amounted to approximately a quarter of the salary actually received by the applicant and therefore led to a reduction in the pension itself.

34. Consequently, in 2006 Mr Maccarinelli instituted judicial proceedings.

35. By a judgment of the Bresce Tribunal (Labour and Welfare Section) of 20 June 2008, filed in the relevant registry on 23 June 2008, Mr Maccarinelli's claim was rejected in view of the entry into force of Law no. 296/2006.

36. Mr Maccarinelli did not appeal, deeming it futile in the circumstances of the case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

37. The relevant domestic law and practice concerning the case is to be found in in *Maggio and Others v. Italy* (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, §§ 27-35, 31 May 2011).

Constitutional Court judgment of 28 November 2012, no. 264

The matter came again before the Italian Constitutional Court following the European Court of Human Right's judgment in *Maggio and Others v. Italy* (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 31 May 2011), which had found, in circumstances such as those of the present case, that by enacting Law no. 296/2006 the Italian State had infringed the applicants' rights under Article 6 § 1 by intervening in a decisive manner to ensure that the outcome of proceedings to which it was a party were favourable to it. The Constitutional Court had therefore to examine the compatibility of Law no. 296/2006 with the relevant legal framework and it found that it was in fact compatible.

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

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

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

While the Constitutional Court was in principle bound by the *Maggio* judgment (the principles on which it was based being also constitutionally recognised principles), the Constitutional Court had to lend itself to a balancing exercise. It considered that other opposing interests, which were also constitutionally protected and which related to the matter at issue, prevailed in the circumstances of the case. It followed that there existed compelling general interest reasons justifying a retroactive application of

the law. Indeed, the effects of the new law were such as to avoid a welfare system which privileged some and was advantageous to others, guaranteeing the respect for the principles of equality and solidarity, which because of their founding nature, occupied a privileged position when weighed against other constitutional rights. The impugned law was inspired by the principles of equality and proportionality and took into account the fact that contributions paid in Switzerland were four times lower than those paid in Italy. It thus applied a direct recalculation which allowed pensions to be dispensed in proportion to the contributions paid, thus levelling out any inequalities and rendering the welfare system more sustainable for the benefit of all those making use of it. Indeed, even the ECHR had upheld such reasoning in the *Maggio* case in relation to the complaint under Article 1 of Protocol No., although it had not found such a reason to be sufficient to avoid a violation of Article 6. However, unlike the Court which is bound to examine complaints separately, the Constitutional Court had to take a global approach and evaluate a case on the basis of all the relevant constitutional guarantees. The claim of unconstitutionality was therefore unfounded. Indeed, to conclude otherwise would not only have consequences for the pension system but would also go against the spirit of the Court's judgment in *Maggio*, which had rejected the applicant's claims for their pension according to the previous calculation.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

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

39. The applicants complained under Article 6 § 1 of the Convention that the legislative intervention, namely the enactment of Law no. 296/2006, whilst proceedings were pending, which changed well-established case-law, had denied them their right to a fair trial. The provision, in so far as relevant, reads as follows:

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

40. The Government contested that argument.

A. Admissibility

41. 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

42. The applicants submitted that Law no. 296/2006 had the explicit aim of avoiding the disbursement of millions of euros in order to enforce a multitude of judgments resulting from the cases pending before the domestic courts. The outcome of those cases, namely that they would be favourable to the claimants, had been foreseeable given the constant jurisprudence. Indeed, the legislature had approved a law defined as interpretative (*di interpretazione autentica*), but which was in reality innovative, with the scope of influencing the relevant judicial determinations, thereby reversing the consolidated interpretation given to the laws at issue by the domestic courts. By so doing the State had acted contrary to the rule of law and in breach of the right to a fair trial, which provided that disputes over civil rights and obligations were to be determined by a tribunal and not the legislature

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

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

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

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

2. The Court's assessment

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

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

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

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

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

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

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

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

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

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

53. The applicants further complain that they did not have an effective domestic remedy, since the legislative intervention negated any legitimate expectations they might have held and made the institution of any legal proceedings vain, impinging on the impartiality of the relevant courts. They invoked Article 13 of the Convention, which reads as follows:

> "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."

54. The Government reiterated their observations under Article 6, noting that in *Maggio*, the Court had considered the complaint absorbed by the latter provision.

55. The Court notes that in *Maggio and Others* (cited above, § 67), the Court held that having regard to the finding relating to Article 6 it was not necessary to examine whether there had also been a violation of Article 13.

56. The Court further notes that as evidenced from that case and the present one, there is no doubt that the applicants were not required to continue pursuing their ordinary proceedings given that they had not any prospects of success once domestic courts were bound to apply the new law, which was eventually confirmed as being constitution-compliant by the Constitutional Court judgment of 2008.

57. However, such a conclusion does not necessarily raise an issue under Article 13 of the Convention. Indeed, even assuming the provision is applicable according to the Court's case-law, Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority (see, for example, *Gustafsson v. Sweden*, § 70, 25 April 1996, *Reports of Judgments and Decisions* 1996-II, § 70). Consequently, the applicants' complaint falls foul of that principle in so far as they complained of the lack of a remedy after the promulgation of Law no. 296/2006 (see, *mutatis mutandis*, *Draon v. France* [GC], § 98, no. 1513/03, 6 October 2005 and *Maurice v. France* [GC], § 108, no. 11810/03, ECHR 2005-IX)).

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

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

59. Lastly, without invoking any article of the Convention the applicants further complained that Law no. 296/2006 created a disparity in treatment between persons who had chosen to work abroad, and those who remained in Italy; they further noted that the Constitutional Court judgment confirming the validity of Law no. 296/2006 created a disparity between persons whose proceedings had ended (successfully) and those whose proceedings were still pending.

60. In *Maggio and Others v. Italy*, (dec.) (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 8 June 2010) the Court examined the complaint concerning discrimination against persons, as the applicants, who, unlike most Italians, have opted to leave Italy for work purposes. In that case, the Court considered that the applicants could not claim to be in a relevant, similar position to Italian residents who have worked in Italy. It noted that, in comparison to Italian workers, the applicants, as persons who chose to work in Switzerland, paid much lower contributions into their social security schemes. Moreover, unlike persons who migrated temporarily to Switzerland, Italian nationals were not subject to the relevant international conventions and subsequent Italian legislative norms. It followed that the applicants and Italian residents who remained working in Italy their entire lives could not be considered to be in a comparable situation for the purposes of Article 14.

61. Subsequently, in the *Maggio* judgment the Court also examined the complaint under Article 14 alleging discrimination *vis-à-vis* persons whose proceedings had terminated. In that case the Court recalled that Law no. 296/2006 was intended to level out any favourable treatment arising from the previous interpretation of the provisions in force, which had guaranteed to persons in the applicants' position an unjustified advantage, bearing in mind the needs of the social security system in Italy. The Court reiterated 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 v. the United Kingdom*, no. 25379/02, § 24, 20 May 2008), an inevitable consequence of introducing new regulations to replace previous schemes. Bearing in mind the wide margin of appreciation afforded to States in the sphere of social policy, it considered that the impugned cut-off date arising out of Law no. 296/2006 could be deemed reasonably and objectively justified. The fact that the impugned cut-off date arose out of legislation enacted while proceedings were pending did not alter that conclusion for the purposes of the

examination under Article 14, and there had therefore been no violation of the said provision (see *Maggio and Others*, cited above, §§ 71-75).

62. For the same reasons, it follows that, the entirety of this complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicants claimed the below sums in respect of pecuniary damage. The first sum represented the difference between the amount of pension payable to the applicants and what was actually liquidated to them by the INPS until 2012 taking into account inflation, and the second sum (if applicable) represented the difference in pension awards due for future pensions up to the average life expectancy of 79.4 years:

805, 539 + 182,032 Euros (EUR) Mr Cataldo
EUR 697,328 + 471,978 Mr Maggioni
EUR 590,603 Mr Ribulotta
EUR 563,904 + 304,183 Mr Marinaro
EUR 311,339 + 274,131 Mr Centamore
EUR 268,483 + 206,858 Mr Macarinelli

They further claimed EUR 25,000 each in pecuniary damage. They particularly noted that when they had opted to move back to Italy they had relied on a state of consolidated jurisprudence, but ended up having to get by with a much lower pension than that which they had relied upon and having to initiate judicial proceedings in that respect.

65. The Government considered that the claims were unfounded given that in the *Maggio* case the Court had only found a violation of Article 6 § 1 and awarded a sum for loss of opportunities, which in the Government's view was to be limited to the period before the coming into force of the law.

66. 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 proceedings had the position been otherwise, it does not find it unreasonable to regard the applicants as having suffered a loss of real opportunities (see *Maggio and Others*, cited above, § 80). However, given the many imponderables in

evolving political and economic conditions that could affect future pension entitlements and calculations, an award related to future pensions would be largely hypothetical. The Court further notes that although the Government submitted that the payment should be limited to a specified time, they failed to explain why or to submit any calculations in that respect. Thus, bearing in mind the said considerations and the amount of the applicants' pension as well as the years each applicant worked in Switzerland, the Court awards the following amounts:

EUR 40,000 Mr Cataldo
EUR 35,000 Mr Maggioni
EUR 30,000 Mr Ribulotta
EUR 28,000 Mr Marinaro
EUR 16,000 Mr Centamore
EUR 13,500 Mr Macarinelli

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 10,000 under this head.

B. Costs and expenses

67. The applicants also claimed a lump sum of EUR 10,000 each for the costs and expenses incurred before the domestic courts and before the Court.

68. The Government made no comment.

69. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicants have not submitted any details concerning their costs nor have they substantiated any such disbursements. In those circumstances, the Court rejects the claim for costs and expenses under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT

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

2. *Declares*, unanimously, the complaint concerning Article 6 § 1 admissible and the remainder of the applications inadmissible;

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

4. *Holds*, by five votes to two,
   (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 40,000 (forty thousand euros), in respect of pecuniary damage, to Mr Cataldo,
      EUR 35,000 (thirty-five thousand euros), in respect of pecuniary damage, to Mr Maggioni,
      EUR 30,000 (thirty thousand euros), in respect of pecuniary damage, to Mr Ribulotta,
      EUR 28,000 (twenty-eight thousand euros), in respect of pecuniary damage, to Mr Marinaro,
      EUR 16,000 (sixteen thousand euros), in respect of pecuniary damage, to Mr Centamore,
      EUR 13,500 (thirteen thousand five hundred euros), in respect of pecuniary damage, to Mr Macarinelli;
      (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to each applicant;
   (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*, by five votes to two, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Işıl Karakaş
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Sajó and Kūris is annexed to this judgment.

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

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth place of residence	Years worked in Switzerland	Yearly pension actually received in 2012 in EUR
1.	54425/08	04/11/2008	**Giorgio CATALDO** 11/09/1936 Mandello Del Lario	1956 - 1994	25,585
2.	58361/08	20/11/2008	**Fulvio MAGGIONI** 11/02/1941 Toscolano Maderno	1965-2000	26,613
3.	58464/08	26/11/2008	**Sergio RIBULOTTA** 23/12/1928 Malnate	1955-1991	18,759
4.	60505/08	05/12/2008	**Vito MARINARO** 19/12/1940 Alzate Brianza	1965-1994	17,910
5.	60524/08	05/12/2008	**Alfio CENTAMORE** 27/02/1944 Gallarate	1969-2000	11,747
6.	61827/08	09/12/2008	**Emiliano MACCARINELLI** 28/05/1942 Brescia	1960-2000	10,073

JOINT PARTLY DISSENTING OPINION OF JUDGES SAJÓ AND KŪRIS

We agree with all points of the judgment, except for the application of Article 41 of the Convention. The Court implicitly recognises that there is a causal link between the loss suffered (a loss of real opportunities – see paragraph 66 of the judgment) and the fact that applicants did not have the benefit of the guarantees of Article 6. In the case of the applicants Mr Maggioni and Mr Ribulotta, their claim was upheld by a court on the basis of the relevant Court of Cassation case-law at the time. In comparable circumstances the Grand Chamber found it appropriate to award in respect of pecuniary damage, on an equitable basis, the sums the applicants would have received had the legislation remained as it was before the passing of the relevant Act (see *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, §§ 76 and 79, ECHR 1999-VII; see also, among other authorities, *Arnolin and Others v. France*, nos. 20127/03, 31795/03, 35937/03, 2185/04, 4208/04, 12654/04, 15466/04, 15612/04, 27549/04, 27552/04, 27554/04, 27560/04, 27566/04, 27572/04, 27586/04, 27588/04, 27593/04, 27599/04, 27602/04, 27605/04, 27611/04, 27615/04, 27632/04, 34409/04 and 12176/05, § 87, 9 January 2007, and *Agrati and Others v. Italy* (just satisfaction), nos. 43549/08, 6107/09 and 5087/09, §§ 14-16, 8 November 2012).

While in the present case there was only a judgment of the court of first instance in favour of the applicants, it is unreasonable to assume that the courts of appeal would have ruled differently, as there had been no departure from the Court of Cassation's case-law. We conclude that the amount established by national judgments should have been awarded.

In view of the above logic we consider that it would be unfair to the other applicants to award less than the full, clearly established loss, even in the absence of a judgment, simply because they had the bad luck to have their cases delayed for longer than some of the other applicants. In fact, Mr Cataldo, just like Mr Maggioni, instituted judicial proceedings in 2006 but in the case of Mr Cataldo the judgment was delivered only in 2008, after the entry into force of the impugned law.

Finally, we would like to voice our concern about the case-law concerning the consideration of future pension entitlements. The case-law, as summarised in *Maggio and Others v. Italy* (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, § 80, 31 May 2011) and confirmed in the present case, considers that given the many imponderables in evolving political and economic conditions that could affect future pension entitlements and calculations, an award related to future pensions would be largely hypothetical. Even if the pensions were not defined, as in the present case, such imponderables cannot amount to a conclusion that there is no clear loss, even within the logic of loss of real opportunities. Therefore one

cannot conclude that no loss has been sustained. Moreover, in the present case, contrary to cases involving current contributors to a pension scheme, we are not dealing with future pension entitlements and it is unfair to impose imponderables exclusively on a specific group of pension recipients in the name of hypotheticals. In our view this matter merits the consideration of the Grand Chamber.