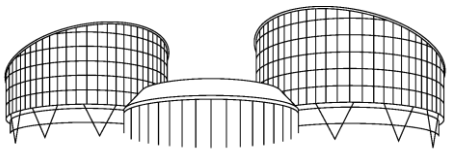

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF NATALE AND OTHERS v. ITALY

(Application no. 19264/07)

JUDGMENT

STRASBOURG

15 October 2013

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 Natale and Others v. Italy,

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

Danutė Jočienė, *President,*
Guido Raimondi,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 24 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 19264/07) 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 sixteen Italian nationals, listed in the annex ("the applicants"), on 20 April 2007.

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

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

4. On 29 August 2012 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants' details are annexed.

A. Background to the case

6. The applicants or their ascendants or spouses (in the cases where the applicants are heirs of a deceased individual) are or were 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).

7. 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*).

8. 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.

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

10. 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.

11. 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

12. On an unspecified date a number of pensioners (or their heirs) in the applicants' (or their predecessors') 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.

13. 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) and 26 July 1996 (date when a new suspension of such adjustments started in respect of the Banco di Napoli).

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

C. The enactment of Law no. 243/04

15. 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.

16. 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.

17. 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

18. In 1994 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 treatment applicable to persons who had retired prior to 31 December 1990. Thus, they requested the Bologna Magistrate (*pretore*) (in his function of Labour judge) 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.

19. By a judgment no. 1352/96 the Bologna Magistrate (*pretore*) (in his function of Labour judge) rejected the applicants' claims.

The applicants appealed. Pending these proceedings Mr Arnaldo Capelli and Mr Luigi Franchescini passed away and their heirs, namely Ms Annalisa Capelli, Mr Stefano Capelli, Mr Gianfranco Capelli and Ms Renata Laffi in respect of the former, and Ms Guerrina Franceschini, Mr Davide Franceschini and Ms Maria Pia Righi in respect of the latter were substituted in their stead in the domestic proceedings.

20. On appeal, by a judgment of 21 January 2004, the Bologna Tribunal (Labour Section), reformed the first-instance judgment. Referring to the highest judicial authorities' jurisprudence (mentioned above) it upheld 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).

21. By a judgment (no. 22829/06) of 19 September 2006 deposited in the relevant registry on 24 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 first-instance court 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.

22. 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.

23. 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 had terminated and others whose proceedings were still pending; iii) the impugned law would unreasonably obliterate the role of the Court of Cassation.

24. 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 AND PRACTICE

25. 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."

26. 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."

27. 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*)"

28. 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."

29. 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

30. The Court notes that Mr Capelli Arnaldo and Mr Luigi Franchescini passed away and their heirs, namely Ms Annalisa Capelli, Mr Stefano Capelli, Mr Gianfranco Capelli and Ms Renata Laffi and Ms Guerrina Franceschini, Mr Davide Franceschini and Ms Maria Pia Righi, applicants before this Court, were substituted in their stead in the domestic proceedings at an unspecified date before 2004 given that pension rights were partly transferable in domestic law and that they were seeking pension claims which had already been due to the deceased.

31. It follows that they themselves are victims of the alleged violations.

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

32. 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 ..."

33. The Government contested that argument.

A. Admissibility

34. 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

35. 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 by an MP who was an ex-consultant of the Banco di Napoli) 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 a law. Neither would there have been any 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.

36. 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, thus favouring the employer (following a strong lobby). 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. Moreover, the applicants had to suffer such repercussion only because of the unreasonable delay in the proceedings, which had started in 1994, as opposed to others who obtained their dues because they were lucky enough to have concluded their proceedings. Furthermore, such disputes had been nearing an end and there was little chance of new disputes arising given that persons affected would by then have been octogenarians, only a few of them were still alive, and also because of the applicable prescriptive periods. This factor diminished even more the need for any such allegedly interpretive intervention twelve years after the original law was enacted.

37. In reply to the Government's arguments, the applicants' submitted that it was untrue that jurisprudence before the promulgation of Law no. 243/04 was incongruent. Hundreds of judgments in various courts, at different instances, had been delivered in favour of persons in the applicants' position, precisely in line with the Amato reform. As in fact highlighted by the Government there had been only one exception, namely the Court of Cassation judgment no. 6767 of 1998, which moreover did not concern ex-employees of the Banco di Napoli but other claimants who were seeking the application of a law abrogated in 1977. Indeed the reference made to the subject matter in that judgment had not even been warranted by the scope of that case. More importantly, following the 2001 judgment of the Court of Cassation, all judgments had followed in that direction, namely finding in favour of the applicants, thus, the matter had been definitively resolved. Moreover, the literal, logical and systemic contents of the cited legislation could not allow for any other interpretation. The applicants considered that on reading Law no. 243/04 and the relevant articles in context it was clear that they were innovative and not interpretive.

38. The Government referred to the Court's case-law that Article 6 § 1 cannot be interpreted as preventing any interference by the authorities with pending legal proceedings (*OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, nos. 42219/98 and 54563/00, § 71, 27 May 2004). They noted that in *Arras and Others v. Italy*, (no. 17972/07, 14 February 2012), the first case dealing with the same circumstances as those of the present case, the Court found that there had been no compelling general interest justifying such an interference. The Government, however, were of the view that one had to consider that the

interpretation of the relevant laws had been controversial up to the Court of Cassation judgment (sitting as a full court) of 2001. Thus, the legislature's intervention through the enactment of Law no. 243/04 was to ensure respect for the original will of the legislator. Indeed, the meaning given by Law no. 243/04 to the laws at issue had been one of possible meanings, an option which had sometimes also been upheld by the domestic courts. They referred to the Court of Cassation judgment no. 6767, 10 July 1998. Thus, the legislator had simply chosen, out of the different meanings available, the one which reflected its original will and which they considered was in conformity with the *ratio legis* of the Amato reform.

39. In conclusion, given that the interpretation of the relevant laws was controversial, that the Court of Cassation by its judgment no. 9024/01 could not have ensured a positive outcome for all the pensioners (since the Italian system did not embrace the system of precedent and thus courts were not bound by the Court of Cassation judgment) and that Law no. 243/04 had no effect on proceedings which had already come to an end, the Government opined that it could not be considered that the principle of legal certainty had been breached.

2. The Court's assessment

40. 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).

41. In analogous circumstances, in the case of *Arras and Others v. Italy*, no. 17972/07, §§ 46-50, 14 February 2012, the Court, in finding a violation of the said provision, held as follows:

> "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.

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.

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).

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.

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."

42. In the present case, the Government submitted further argumentation; in particular, they highlighted that Law no. 234/04 was aimed at restoring the original aim of the legislator.

43. 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 v. France* (nos. 42219/98 and 54563/00, 27 May 2004) 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 to remedy. In the said two cases the domestic courts had acknowledged the deficiencies in the law at issue and action by the State to remedy the situation was predictable (§§ 112 and 72 respectively). However, in the present case, there had been no major flaws in the law, and, before the enactment of Law no. 243/04, the domestic courts had been practically unanimous about the interpretation of the relevant legal provisions, particularly following the judgment of 2001 by Italy's highest court. Indeed, the Government have submitted only one

example of a different interpretation, which is, moreover, dated 1998. Against that background it is difficult to consider that the legislator opted for one of the available interpretations, and even less can it be accepted that it aimed at restoring the original intention of the legislator, which is neither apparent from a reading of the law, nor from the uniform interpretation given to it by the domestic courts. Given also that in twelve years of application of the law there had been a solid interpretation in favour of the applicants, a legislative interference (shifting the balance in favour of one of the parties) in the present case, unlike in the abovementioned cases, was not foreseeable. Lastly, the Court cannot ignore the effect of Law no. 243/2004 as explained in the *Arras* judgment, in conjunction with the method and timing of its enactment (see *Zielinski*, cited above, § 58 and *Papageorgiou v. Greece*, 22 October 1997, § 38, *Reports of Judgments and Decisions* 1997-VI), namely it being tabled in parliament by an ex Banco di Napoli consultant (a matter not contested by the Government), twelve years after the coming into force of the law and after scores of cases finding against the said bank throughout the entire country.

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

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

45. 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."

A. *Vis-à-vis* persons still employed

46. 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.

47. The Court has already held in the *Arras* judgment (cited above, § 58) that while it was 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 aim of Law no. 243/04 was to achieve an equality of treatment of

all pensioners, current and future. Moreover, the Court noted 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 followed that, even if the principle derived from *Thlimmenos v. Greece* [GC] (no. 34369/97, § 44, ECHR 2000-IV) were applied to the applicants' situation, there was, 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.

48. The Court considers that there is no reason to find otherwise in the present case. 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.

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

49. 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).

50. The Court has already held 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 (see, *Arras*, cited above § 63).

51. 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

52. 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.

53. The Court reiterates 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.

54. In *Arras* the Court accepted 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 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*, cited above, § 24). While it was true that the impugned legislation affected a small number of people, mainly octogenarians who were previously employed by the Banco di Napoli and whose proceedings were still pending, the Court considered that, particularly bearing in mind the wide margin of appreciation afforded to States in this sphere, the impugned cut-off date was reasonably and objectively justified (§ 68). The fact that the impugned cut-off date arose out of legislation enacted pending the applicants' proceedings did not alter the above conclusion for the purposes of the examination under Article 14.

55. The Court reaffirms such reasoning. 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

56. 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."

57. The Court reiterates 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 v. Iceland*, no. 60669/00, § 45, ECHR 2004-IX).

58. 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 (see *Arras*, cited above, § 83).

59. 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

60. 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

61. The applicants claimed the differential pay-out that they or their predecessors would have received had they not been subject to Law no. 243/04 (namely with *perequazione aziendale* for the year 1994-1997 and *perequazione legal* thereafter) up to 2013, 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 Natale EUR 53,012
Mr Pini EUR 153,816
Mr Di Domenico EUR 35,447
Mr Carbutti EUR 44,368
Mr Bernardi EUR 47,744
Mr Maglietta EUR 89,858
Mr Bonanni EUR 65,689
Mr Marziano EUR 63,259
Mr Tonti EUR 13,537

Ms Annalisa Capelli, Mr Gianfranco Capelli, Mr Stefano Capelli and Ms Renata Laffi (as heirs of Mr Arnaldo Capelli) EUR 65,406, jointly

Mr Davide Franceschini and Ms Guerrina Franceschini and Maira Pia Righi (as heirs of Mr Luigi Franceschini) EUR 29,742, jointly.

62. The applicants also claimed non-pecuniary damage in an amount to be specified by the Court.

63. The Government submitted that the sums claimed by the applicants represented the full amounts that the pensioners would have received and not a loss of opportunities as was due in such cases according to the Court's case-law.

64. 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; *SCM Scanner de l'Ouest Lyonnais and Others v. France*, no. 12106/03, § 38, 21 June 2007 and *Arras*, cited above, § 88). 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:

Mr Natale EUR 10,500
Mr Pini EUR 20,500
Mr Di Domenico EUR 8,500
Mr Carbutti EUR 9,500
Mr Bernardi EUR 10,000
Mr Maglietta EUR 14,000
Mr Bonanni EUR 11,500
Mr Marziano EUR 11,500
Mr Tonti EUR 6,500

Ms Annalisa Capelli, Mr Gianfranco Capelli, Mr Stefano Capelli and Ms Renata Laffi (as heirs of Mr Arnaldo Capelli) EUR 11,500, jointly, and,

Mr Davide Franceschini, Ms Guerrina Franceschini and Maira Pia Righi (as heirs of Mr Luigi Franceschini) EUR 8,000, jointly.

B. Costs and expenses

65. The applicants also claimed EUR 85,722 plus tax under this head, namely EUR 42,522 for the costs and expenses incurred before the domestic courts (which decided that each party had to pay for its own costs) and EUR 43,200 for those incurred before the Court, plus all amounts due in taxes.

66. The Government made no comment in this respect.

67. 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 Court only found a violation in respect of Article 6 and that these cases are part of a

series and thus most pleadings before this Court and the domestic courts are a reiteration of the same submissions instituted in other cases, considers it reasonable to award the sum of EUR 35,000 covering costs under all heads.

C. Default interest

68. 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 concerning 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 10,500 (ten thousand five hundred euros) plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to Mr Natale,

(ii) EUR 20,500 (twenty thousand five hundred euros) plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage to Mr Pini,

(iii) EUR 8,500 (eight thousand five hundred euros) plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage to Mr Di Domenico,

(iv) EUR 9,500 (nine thousand five hundred euros) plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage to Mr Carbutti,

(v) EUR 10,000 (ten thousand euros) plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage to Mr Bernardi,

(vi) EUR 14,000 (fourteen thousand euros) plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage to Mr Maglietta,

(vii) EUR 11,500 (eleven thousand five hundred euros) plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage to Mr Bonanni,
(viii) EUR 11,500 (eleven thousand five hundred euros) plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage to Mr Marziano,
(ix) EUR 6,500 (six thousand five hundred euros) plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage to Mr Tonti,
(x) EUR 11,500, (eleven thousand five hundred euros) jointly, plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to Ms Annalisa Capelli, Mr Gianfranco Capelli, Mr Stefano Capelli and Ms Renata Laffi (as heirs of Mr Arnaldo Capelli),
(xi) EUR 8,000, (eight thousand five hundred euros) jointly, plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to Mr Davide Franceschini and Ms Guerrina Franceschini and Maira Pia Righi (as heirs of Mr Luigi Franceschini),
(xii) EUR 35,000 (thirty five thousand euros), jointly, plus any tax that may be chargeable to the applicants, 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 amounts 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 15 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Danutė Jočienė
President

ANNEX

N°.	**Firstname LASTNAME**	**Date of Birth**	**Place of residence**
1.	Michele NATALE	01/07/1936	Bologne
2.	Franco PINI	28/09/1933	Bologne
3.	Maria DI DOMENICO SPINOSA	02/09/1921	Bologne
4.	Gerardo CARBUTTI	26/08/1935	Bologne
5.	Paolo BERNARDI	31/03/1942	Fano
6.	Michele MAGLIETTA	24/08/1913	Bologne
7.	Annibale BONANNI	08/10/1934	Casalecchio di Reno
8.	Marziano ALBERTAZZI	31/05/1938	Rastignano di Pianoro
9.	Enzo TONTI	15/08/1936	Bologne
10.	Annalisa CAPELLI (heir of Capelli Arnaldo)	19/03/1954	Bologne
11.	Gianfranco CAPELLI (heir of Capelli Arnaldo)	30/08/1945	Montererenzio
12.	Stefano CAPELLI (heir of Capelli Arnaldo)	06/09/1957	Bologne
13.	Renata LAFFI (heir of Capelli Arnaldo)	14/01/1923	Bologne
14.	Davide FRANCESCHINI (heir of Franceschini Luigi)	01/05/1969	Pianoro
15.	Guerrina FRANCESCHINI (heir of Franceschini Luigi)	18/10/1964	Pianoro
16.	Maria Pia RIGHI (heir of Franceschini Luigi)	06/05/1938	Pianoro