



Pilot judgment: Italy must pay adjusted supplementary allowances in accidental contamination of blood cases

In today's Chamber judgment in the case of [M.C. and Others v. Italy](#) (application no. 5376/11), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights;

A violation of Article 1 of Protocol No. 1 (protection of property) to the Convention;

A violation of Article 14 (prohibition of discrimination) taken together with Article 1 of Protocol No. 1 (protection of property).

The case concerned the fact that it was impossible for 162 Italian nationals to obtain an annual adjustment of the supplementary part of a compensation allowance paid to them following accidental contamination as a result of blood transfusions or the administration of blood derivatives.

The Court held that the Government's enactment of emergency legislative decree no. 78/2010, which ruled on the disputed issue of adjustment of the supplementary part of the allowance, had infringed the principle of the rule of law and the applicants' right to a fair hearing, had imposed "an abnormal and excessive burden" on them and, lastly, had disproportionately infringed their property rights.

Principal facts

The applicants are 162 Italian nationals who were all contaminated by viruses as a result of blood transfusions or the administration of blood derivatives.

Under Law no. 210/1992, the applicants received or had received an allowance, composed of two parts, from the Ministry of Health: a fixed compensation payment and a supplementary allowance ("the IIS").

By a judgment of 28 July 2005 the Court of Cassation held that the two parts of the allowance in question were to be adjusted in line with the annual inflation rate. In 2009, in a departure from that previous case-law, the Court of Cassation reversed its previous interpretation. It considered that the text of Law no. 210/1992 provided for annual adjustment only in respect of the basic allowance, and not of the IIS.

In May 2010 the Government intervened, enacting an emergency legislative decree (no. 78/2010) on adjustment of the IIS. This legislative decree stated that the IIS was not to be adjusted.

Several courts then submitted the question of the constitutionality of that legislative decree to the Constitutional Court. The Constitutional Court held that the legislative decree's provisions were

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

contrary to the principle of equality enshrined by Article 3 of the Constitution, in that they provided for discriminatory treatment of two categories of individuals: those affected by the “thalidomide syndrome” and those affected by hepatitis. The IIS was in fact adjusted annually for the first category, but not for the second. It concluded that the legislative decree was unconstitutional.

None of the applicants were able to benefit from adjustment of the IIS, even after the Constitutional Court’s judgment.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing) and Article 13 (right to an effective remedy), the applicants complained that the Government had intervened through legislative decree no. 78/2010 in a matter which was the subject of legal debate and, in so doing, had given rise to large numbers of pending proceedings in which the Government were themselves a party.

Relying on Article 1 of Protocol No. 1 (protection of property), they asserted that, if not adjusted, the IIS would gradually lose its value. They further emphasised that the amount of this supplementary payment represented between 90% and 95% of the total allowance awarded.

Relying on Article 14 and Article 1 of Protocol No. 12 (prohibition of discrimination) taken together with Article 2 (right to life), they complained that they were victims of numerous forms of discrimination.

The application was lodged with the European Court of Human Rights on 29 November 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Danutė Jočienė (Lithuania), *President*,
Guido Raimondi (Italy),
Peer Lorenzen (Denmark),
Dragoljub Popović (Serbia),
Işıl Karakaş (Turkey),
Nebojša Vučinić (Montenegro),
Paulo Pinto de Albuquerque (Portugal),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Articles 6 § 1 and 13

The Court noted that the issue of whether the IIS was subject to annual adjustment was at the heart of a debate in which the State was a party. The enactment of legislative decree no. 78/2010 had settled once and for all the terms of the debate by providing an interpretation of the law that was favourable to the State.

This legislative decree had had the consequence of laying down criteria which determined the outcome of the pending proceedings. It invalidated the decisions that were favourable to the applicants, interrupted the execution of decisions that were favourable to them and rendered ineffective potential appeals against decisions dismissing requests for adjustment of the IIS.

The evidence did not indicate that, in enacting the legislative decree, the State was pursuing an aim other than the preservation of its own interests, an aim which could have corresponded to “compelling grounds of the general interest”.

The Court noted that the Constitutional Court had held that those criteria were contrary to the Constitution in that they resulted in a disparity of treatment between two categories of persons who received the allowance provided for by Law no. 210/1992.

As to the effects of the Constitutional Court's judgment on the applicants' situation, the Court observed that the principles established by the legislative decree in question had persisted, since the applicants had not succeeded in having the IIS adjusted after the Constitutional Court's judgment was published.

The Court considered that the enactment of legislative decree no. 78/2010 had breached the principle of the rule of law and the right of some of the applicants to a fair hearing. It held that there had been a violation of Article 6 § 1 and that, in view of its finding of a violation of that Article, it was unnecessary to rule on the complaint under Article 13.

Article 1 of Protocol No. 1

The Court reiterated that interference in the right to peaceful enjoyment of possessions had to strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. Yet, following the enactment of legislative decree no. 78/2010, those of the applicants who had obtained a final decision recognising their right to adjustment were either deprived of their right, or failed to obtain execution of the decision issued in their favour. Requests lodged by other applicants prior to the entry into force of the impugned legislative decree were dismissed, or the applicants were unable to challenge decisions dismissing their requests, given the decree's entry into force. In any event, none of the applicants were able to benefit from adjustment of the IIS, even after the Constitutional Court's judgment.

The Court attached particular attention to the fact that the IIS represented more than 90% of the total allowance paid to the applicants. In addition, this allowance was intended to cover the costs of the applicants' medical treatment and, as was clear from the expert medical report submitted to the Court, the prognosis for their chances of survival or recovery was very closely tied to the award of those allowances.

The enactment of the legislative decree had thus imposed "an abnormal and excessive burden" on the applicants and the interference with their right to the peaceful enjoyment of their possessions had been disproportionate. There had been a violation of Article 1 of Protocol No. 1. Noting also that the complaint submitted by the applicants under Article 2 could be analysed under Article 1 of Protocol No. 1, the Court considered that it was not necessary to examine it.

Article 14 taken together with Article 1 of Protocol No. 1

The Court noted firstly that the Constitutional Court had found one point of legislative decree no. 78/2010 to be unconstitutional. However, the Constitutional Court's judgment had had no effect on the applicants' situations.

The entry into force of the legislative decree had resulted in unequal treatment in respect of the awarding of the adjusted IIS to persons who were in a comparable situation.

Having regard to its finding of a violation of Article 1 of Protocol No. 1, the Court considered that there had also been a violation of Article 14 in this part of the complaint.

Article 46

The Court noted that the violations of the applicants' rights did not concern isolated cases but were the result of a systemic problem resulting from the authorities' unwillingness to adjust the IIS, including after the Constitutional Court's judgment. Having regard to the number of people in Italy who were potentially affected, the Court decided in consequence to apply the pilot judgment

procedure, and also noted the urgent need to provide the persons concerned appropriate redress at national level.

The Court invited the respondent State to set, within six months from the date on which this judgment would become final, a specific time-limit within which it undertook to secure the effective and expeditious realisation of the entitlements in question. The Government was called on to pay a sum corresponding to the adjusted IIS to every person eligible for the allowance provided for by Law no. 210/1992 as soon as that eligibility was recognised.

Pending the adoption by the authorities of the necessary measures within the specified time period, Court decided to adjourn examination of similar applications not yet communicated to the Italian Government for a period of one year from the date on which this judgment would become final.

[Just satisfaction \(Article 41\)](#)

The Court held that the question of the application of Article 41 of the Convention was not ready for decision and reserved it in its entirety.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.