



Retroactive application of law on companies' social security payments was unfair but did not violate their property rights

In today's Chamber judgment in the case of [Azienda Agricola Silverfunghi S.A.S. and Others v. Italy](#) (application nos. 48357/07, 52677/07, 52687/07 and 52701/07), 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 trial) of the European Convention on Human Rights; and

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

The case concerned proceedings before the Italian courts brought by a number of Italian agricultural companies based on their possible entitlement to a two-fold reduction of social security contributions. Pending these proceedings the Italian legislator passed a new retrospective law which determined that their benefits would be calculated alternatively, and not cumulatively.

The Court found that in the circumstances of the case there had been no compelling general interest reason capable of outweighing the dangers of retrospective legislation. At the same time, the Court held that the Italian courts' decisions had not violated the companies' property rights, as the decisions had not imposed an excessive financial burden on them.

Principal facts

The applicants, Azienda Agricola Silverfunghi S.A.S., Scarpellini S.r.l., SAP Pietrafitta S.r.l., and Floricoltura Zanchi Di Zanchi F.Lli Società Semplice, are four agricultural companies operating in northern and/or disadvantaged areas in Italy, namely Grone, Rome, Sienna, and Rome respectively.

In 1988, Italy introduced legislation which aimed to favour economic and, in particular, agricultural activity. Based on these new laws, the applicant companies appeared to be entitled to benefit from a series of concessions and exemptions, which would have resulted in a two-fold reduction of the social security contributions which they paid for their employees.

Despite the fact that the relevant law appeared to indicate that the benefits were not alternative to each other, the *Istituto Nazionale della Previdenza Sociale* ("INPS"), an Italian welfare body issued a circular in 1988 which stated that the two benefits could not be received cumulatively, and must be considered as alternative to one another.

The applicant companies brought proceedings, between 2000 and 2002, to assert their entitlements to both the concessions and exemptions as outlined in Italian law. In particular, they pointed to the fact that between 1997 and 2003, more than 25 first-instance judgments, and more than five appeal judgments had found in favour of agricultural firms in proceedings on the same matter. The applicant companies were successful at first instance, and again on appeal, and the INPS were ordered to pay back all the misappropriated sums to the applicants from 2000 onwards. However, in

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

2003, the Italian legislators enacted Law no. 326/03, which stated that the benefits in question could not be held cumulatively, but must be held as alternative to one another.

Following the entry into force of this law, the INPS brought appeal proceedings before the Court of Cassation. The applicants cross-appealed, arguing that the application of Law no. 326/03 to their cases would be a violation of Article 6 of the European Convention. On 7 July 2006, the Court of Cassation issued a judgment finding in favour of the INPS on the basis that Law no. 326/03 had an authentic interpretative nature, and could be applied retroactively in order to give the law its original intended meaning. The court held that on an examination of the relevant laws, the benefits could never have been held cumulatively, and acknowledged the legitimate discretion of the State to decide which benefits could be held cumulatively or not.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), the applicant companies alleged that the new law which retroactively modified their entitlements to the cumulative economic benefits had been enacted while the proceedings to decide on their claims were still pending before the Italian courts, and therefore violated their right to a fair trial. The applicant companies also alleged that under Article 1 of Protocol No. 1 (protection of property), the enactment of Law no. 326/03 retroactively extinguished their claims, and therefore deprived them of their property rights.

The application was lodged with the European Court of Human Rights on 31 October 2007.

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

Işıl **Karakaş** (Turkey), *President*,
 Guido **Raimondi** (Italy),
 Nebojša **Vučinić** (Montenegro),
 Helen **Keller** (Switzerland),
 Paul **Lemmens** (Belgium),
 Egidijus **Kūris** (Lithuania),
 Robert **Spano** (Iceland),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court noted in particular that the enactment of such legislation pending the outcome of the companies' proceedings had effectively decided the result of the dispute, and had made it pointless for the companies to continue with their litigation.

The Court considered that even assuming that Law no. 326/03 was necessary, as it was enacted to clear up uncertainty in the law, and had given one of the possible meanings to the original text, in the circumstances of the case, there had not been a compelling general interest reason, which had been capable of outweighing the dangers of retrospective legislation, to justify the application of Law no. 326/03 retroactively.

The Court considered whether the applicant companies had been attempting to take advantage of a weakness in the system. In this respect, the Court noted that none of the companies had instituted proceedings against the INPS in 1988, when the laws creating the series of concessions and exemptions were first enacted. It also observed that three of the four companies had waited for the outcome of the primary litigation taken by Floramiata Spa before bringing proceedings against the INPS. However, the Court accepted that the justice system of Italy was particularly overburdened,

and that the companies had been protecting themselves financially, and acting in the interests of judicial economy in waiting for the adjudication of the primary judgment before instituting proceedings against the INPS.

The Court therefore held that there had been a violation of Article 6 § 1, as the applicant companies could not be considered as having attempted to benefit from the vulnerability of the law, and that there had been no compelling general interest reasons to justify the use of retrospective legislation which had the effect of determining the pending proceedings in favour of the State.

Article 1 of Protocol No. 1

The Court noted that laws introduced by the legislator to interfere with the payment of taxes or other contributions must strike a fair balance between the general interest of the community, and the protection of the individual's fundamental rights. In this respect, the Court acknowledged that the national authorities were in the best position to decide what was required in the "public interest", and therefore had a wide margin of appreciation in deciding the economic or social strategy of the State.

Moreover, the Court noted that the action of the State in applying the benefits as alternatives had been aimed at reducing public expenditure, the burden of which was ultimately being borne by the taxpayer. In respect of the applicant companies, the Court noted that they had all uninterruptedly paid the contributions without the concessions being applied to them, and therefore had clearly not been in a position where the payment of contributions meant that they could no longer afford to run their businesses. Bearing in mind a State's discretion to regulate their economic or social strategy, and the fact that the companies were still in receipt of the remaining exemptions, the Court held that the application of the benefits as alternative to one another had not imposed an excessive burden, nor had it fundamentally interfered with the financial position of the applicant companies. There had therefore been no violation of Article 1 of Protocol No. 1.

Just satisfaction (Article 41)

The court held that Italy was to pay the applicant companies the sums of 44,900 euros (EUR) (Azienda Agricola Silverfunghi S.A.S.), EUR 106,900 (Scarpellini S.r.l.), EUR 54,000 (SAP Pietrafitta S.r.l) and EUR 42,400 (Floricultura Zanchi Di Zanchi) in respect of pecuniary damage; EUR 1000 to each company in respect of non-pecuniary damage; and the sums of EUR 10,000 (Azienda Agricola Silverfunghi S.A.S.), 20,300 (Scarpellini S.r.l.), EUR 15,200 (SAP Pietrafitta S.r.l) and EUR 21,700 (Floricultura Zanchi Di Zanchi) in respect of costs and expenses.

The judgment is available only in English.

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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.