



## Legislative interference with pending disputes before Italian courts did not respect equality of arms

In today's Chamber judgment in the case **Arras and Others v. Italy** (application no. 17972/07), which is not final<sup>1</sup>, 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.

The case concerned legislative amendments which affected pending civil proceedings the applicants had brought concerning their pension adjustments.

### Principal facts

The applicants, Antonio Arras, Celestina Dede, Alessandro Dessi and Bachisio Zizi, are Italian nationals who were born in 1939, 1933, 1933 and 1925 respectively. Mr Arras and Mr Dessi are now deceased. They were all pensioners (retired prior to 31 December 1990) and former employees of the Banco Di Napoli, a banking group which was originally public and was later privatised.

Before 1990 Banco di Napoli was subject to exclusive welfare systems whereby their employees benefited from a more favourable equalisation mechanism than in the general compulsory insurance system. In particular, the annual pension increase was calculated on the basis of the salary increases of working employees in equal grades of service (*perequazione aziendale*). With the privatisation of public banks in 1990, the exclusive pension regimes were replaced by integrated ones. A further partial pension reform took place in 1992.

In 1993 a number of former employees entered into a dispute with the Banco di Napoli about the application of certain provisions of the new legislation (1992) which they claimed were being widely interpreted. The bank had attempted to suppress the system of *perequazione aziendale*, which resulted in less substantial pensions, also in respect of persons who were already retired.

Pensioners in the applicants' position instituted civil proceedings contesting the actions of the Banco di Napoli, requesting the court to find that they had a right to retain the system of *perequazione aziendale* as they had already retired when the 1992 laws were enacted, and to order the Banco di Napoli to pay the sums it had failed to pay them. The claimants' arguments were upheld by various jurisdictions including the Court of Cassation and more specifically the Court of Cassation in its ultimate formation.

The subsequent legislative amendments culminated with the enactment of Law no. 243/04 whereby retired employees of the Banco di Napoli could no longer benefit from the system of *perequazione aziendale*, effective retroactively from 1992.

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<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

In 1996 the applicants had instituted proceedings on the lines of those previously instituted by other pensioners. The Naples Tribunal as well as the Naples Court of Appeal found in favour of the applicants. The Court of Cassation reversed these judgments in 2006 and held that the Naples Court of Appeal could not have taken account of Law no. 243/04 - not yet in force at the time of its judgment – which was an interpretation law applicable retroactively. This law 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.

In 2007 the Court of Cassation referred the matter to the Constitutional Court, in two different civil cases. The Constitutional Court upheld the legitimacy of Law no. 243/04 and confirmed the interpretative nature of the norm, 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.

## Complaints, procedure and composition of the Court

Relying on Articles Article 6 § 1 (right to a fair trial), 14 (prohibition of discrimination) and Article 1 of Protocol No.1 (protection of property), the applicants alleged that they had been subject to a legislative interference pending their proceedings.

The application was lodged with the European Court of Human Rights on 20 April 2007.

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

Françoise **Tulkens** (Belgium), *President*,  
 Danutė **Jočienė** (Lithuania),  
 Dragoljub **Popović** (Serbia),  
 Işıl **Karakaş** (Turkey),  
 Guido **Raimondi** (Italy),  
 Paulo **Pinto de Albuquerque** (Portugal),  
 Helen **Keller** (Switzerland), *Judges*,

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

## Decision of the Court

### Preliminary issue

The Court accepted, for the purposes of the present case, that the heirs of Mr Arras and Mr Dessi pursued the application initially brought by their deceased relatives.

### Article 6

The problem raised in the applicants’ case was fundamentally that of a fair trial, and the Court considered that State’s responsibility had been engaged both in its legislative capacity, as affecting the judicial outcome of the dispute, and in its capacity as a judicial authority where the right to a fair trial was violated, including in private law cases between private individuals.

The enactment of Law no. 243/04 in reality determined the substance of the disputes and its application by the various ordinary courts made it pointless for an entire group of individuals in the applicants’ position to carry on with the litigation. Consequently it could not be said that there had been equality of arms between the two private parties as the State had found in favour of one of the parties when it had enacted the impugned

legislation. The Court reiterated that only compelling reasons of general interest could justify the interference by the legislature with the administration of justice.

While the harmonisation of the pension system could be accepted as a reason of some general interest, it was not compelling enough to overcome the dangers inherent in the use of retrospective legislation. In the absence of such a reason, capable of justifying the legislative interference which applied retroactively and determined the outcome of the pending proceedings between private individuals, the Court concluded that there had been a violation of Article 6 § 1.

## Article 14

The applicants alleged that, although persons who had reached pensionable age and persons who were still employed were in different situations, the changes treated them in the same way. The Court found that the Government's justification for not distinguishing in law between them had been objective and reasonable. The Court observed that the aim of Law 243/04 had been to achieve equality of treatment of all pensioners and recalled the wide margin of appreciation usually allowed to Member States concerning economic or social strategy.

The applicants further claimed that they had been discriminated against vis-à-vis other pensioners previously employed by other former public banks. The Court found that, because of their history in the Italian system, the employees of the Banco di Napoli could not be considered to have been in an analogous position to that of employees of other public banks.

Concerning the applicants' allegation that there had been a further discrimination 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, the Court considered that, particularly bearing in mind the wide margin of appreciation afforded to States in this sphere, the cut-off date's choice could be deemed reasonably and objectively justified.

Consequently, the Court rejected, as being manifestly ill-founded, the complaints of the applicants under Article 14.

## Article 1 of Protocol No.1 to the Convention

The Court, reiterating that the national authorities were better placed to decide what was "in the public interest", accepted that the enactment of Law no. 243/04 pursued the public interest of harmonising the pension system by treating all pensioners equally.

While the Court underlined the specific context of Social security schemes, which were the expression of a society's solidarity with its vulnerable members, it observed that the applicants' basic pension had not been affected by Law no. 243/04 but that only the most favourable augmentation according to a *perequazione aziendale* had been lost.

Law no. 243/04 thus had not resulted in the impairment of the essence of the applicants' pension rights and had only had the effect of equalizing a state of affairs and avoiding unjustified advantages. Bearing in mind the Member States' wide margin of appreciation in regulating pension systems and the fact that the applicants had endured commensurate reductions, the Court considered that the applicants had not borne an excessive burden. The Court consequently rejected the applicant's complaint under article 1 of Protocol No.1 as being manifestly ill-founded.

## Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Italy was to pay:

-in respect of pecuniary and non-pecuniary damage: jointly to Mr Arras' heirs 9,000 euros (EUR); to Ms Dede EUR 5,500; jointly to Mr Dessi's heirs EUR 6,000 and to Mr Zizi EUR 30,000.

-in respect of cost and expenses EUR 19,000 jointly to the applicants

*The judgment is available only in English.*

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### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel: +33 3 90 21 42 08

**Céline Menu-Lange (tel: + 33 3 90 21 58 77)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

**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.