

Corte Europea dei Diritti Umani | Sezione 1 | Sentenza | 30 gennaio 2020 |
n. 29483/11

FIRST SECTION

CASE OF CICERO AND OTHERS v. ITALY

(Applications nos. 29483/11 and 4 others

- see list appended)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Application of new retrospective law to pending proceedings

Art 1 P1 • Peaceful enjoyment of possessions • Applicants' remuneration adversely affected by the application of new retrospective law • Excessive and disproportionate burden

STRASBOURG

30 January 2020

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 Cicero and Others v. Italy,

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

Ksenija Turkovic, President,

Krzysztof Wojtyczek,

Armen Harutyunyan,

Pere Pastor Vilanova,

Pauliine Koskelo,

Jovan Ilievski,

Raffaele Sabato, judges,

and Abel Campos, Section Registrar,

Having deliberated in private on 7 January 2020,

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

INTRODUCTION

The case concerns the application of retrospective legislation to pending national proceedings commenced by the applicants. The applicants relied on Article 6 § 1 of the Convention and Article 1 of Protocol No.1.

THE FACTS

1. The applicants were represented by Mr G. Romano, a lawyer practising in Rome, Mr I. Sullam, a lawyer practising in Milan, and Mr P. Biondi, a lawyer practising in Benevento.
2. The Government were represented by their Agent, Mr L. D'Ascia, State Attorney.
3. The facts of the case, as submitted by the parties, may be summarised as follows.
4. The applicants had initially been employed by the local government authorities and were administrative assistants, workers, technical assistants, administrative officers, laboratory teaching assistants or general teaching assistants at a number of Italian State schools.
5. Their remuneration consisted of a basic salary plus other additional pay elements.
6. From 1 January 2000, under Article 8 of Law no. 124/99, the applicants were transferred to work for the Ministry of Education, Universities and Research (Ministero dell'Istruzione, dell'Università e della Ricerca), hereinafter "the Ministry".

7. Unlike the remuneration scheme operated by the local government authorities, the salary for Ministry employees was calculated by reference to a basic salary only which, however, was to increase progressively over the years on the basis of length of service.

8. According to Article 8 § 2 of Law no. 124/99

“... the length of service of those employees with the local government authority and the right to retain their place of employment, for an initial period, where a post is available, shall be recognised for legal and financial purposes.”

9. The Ministry converted the salary paid by the local government authorities to the applicants at 31 December 1999 into a notional length of service with the new employer pursuant to an Inter-Ministerial decree of 5 April 2001 which incorporated a memorandum of understanding between the Agency for the representation of the public authorities (Agenzia per la rappresentanza negoziale delle pubbliche amministrazioni, “ARAN”) and the relevant trade unions.

10. Having thus not obtained full recognition of their length of service with the local government authorities, the applicants lodged proceedings before the domestic courts arguing that the conversion of their salary into a notional length of service with the new employer upon transfer had been unlawful and detrimental.

11. They sought placement in the professional grade corresponding to their full length of service from the date of transfer, as well as determination of any compensation due to them.

12. Pending those proceedings at different levels of jurisdiction, it was enacted Article 1 § 218 of Law no. 266/2005 (“the Budget Law for the Year 2006”) which intended to give effect to what the legislator claimed to be the original intention of the Parliament when adopting Article 8 of Law no. 124/1999.

13. The domestic courts either allowed the Ministry’s appeal or dismissed the applicants’ claims on the basis of the new Article 1 § 218 of the Budget Law for the Year 2006 and the then recent Constitutional Court judgments nos. 234 of 2007 and 311 of 2009.

14. The detailed information relevant to each applicant is set out in the appendix.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

15. The relevant domestic law and practice is set out in the judgments *Agrati and Others v. Italy* (nos. 43549/08 and 2 others, 7 June 2011) and *De Rosa and Others v. Italy* (nos. 52888/08 and 13 others, 11 December 2012).

THE LAW

I. JOINDER OF THE APPLICATIONS

16. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

17. With reference to application no. 14186/12, the Government submitted that the applicants had failed to support adequately their allegation that they had a legitimate expectation pursuant to the principles set out in *Agrati and Others v. Italy*, cited above, and they had suffered an interference as a result of the application of the Budget Law for the Year 2006 to their pending proceedings.

18. Indeed, the Government notes that Ms Di Francescantonio introduced her claim before the domestic courts on 30 March 2006, after the enactment of the Budget Law for the Year 2006.

19. Likewise the Government observes that Mr Ficorella and Ms Cirelli did not provide any evidence to prove that their claims had been lodged with the domestic courts before the enactment of the Budget Law for the Year 2006.

20. The applicants did not reply to the Government's objections.

21. The Court notes that, regard being had to the documents in its possession, Ms Cirelli lodged her claim with the court of Rome on 17 May 2005. Consequently, the Government's preliminary objection in this regard must be rejected.

22. As to Mr Ficorella and Ms Di Francescantonio, the Court considers that it is not possible to establish on the evidence and on the facts that they lodged their claims with the domestic courts before the enactment of the Budget Law for the Year 2006. It follows that their complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

23. The applicants complained that the interference caused by the enactment of the Budget Law for the Year 2006 with their pending proceedings, to which the State was a party, affected their right to a fair trial.

24. They rely on Article 6 of the Convention, which reads as follows:

Article 6 § 1

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

A. Admissibility

25. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

26. The applicants maintained that no compelling grounds of general interest justified such interference, other than mere financial reasons. The applicants noted that the "interpretative" law was enacted six years after the original law and in the absence of any divergent case-law.

(b) The Government

27. As a general remark, the Government pointed out that a number of changes in the domestic case-law had occurred after the applicants' proceedings had been determined.

28. With regard to the specific circumstances of the present case the Government, referring to Constitutional Court judgment no. 311 of 2009, firstly inferred that the intention of the legislator could not have been to recognise the full length of service of the transferred employees as there was no financial provision in Law no. 124 of 1999 to cover such costs. Secondly the Government submitted that there was no absolute legitimate expectation of the interpretation advanced by the applicants because a different reading had already been endorsed by collective agreements in 2000. Thirdly, the Government suggested that at the time of the enactment of the Budget Law for the Year 2006, academic and judiciary discussion on the interpretation of Law no. 124 of 1999 was still open.

2. The Court's assessment

29. 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*, § 112; *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII, and *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, nos. 48357/07 and 3 others, § 76, 24 June 2014). 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, and *Maggio and Others v. Italy*, nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, § 45, 31 May 2011, and *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, cited above, § 76). 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, *Cabourdin v. France*, no. 60796/00, § 37, 11 April 2006, and *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, cited above, § 76).

30. Relying on the above principles, the Court has consistently recognised since 1994 (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 50, Series A no. 301-B) that there is a violation of Article 6 § 1 whenever, in the absence of any compelling general interest reason, the State intervenes in a decisive manner to ensure that the outcome of procedures to which it is a party is favourable to it (see *mutatis mutandis* *Maggio and Others v. Italy*, cited above, § 50, and *Arras and Others v. Italy*, no. 17972/07, § 50, 14 February 2012).

31. The Court reiterates that in earlier cases, namely *Agrati and Others v. Italy*, cited above, *De Rosa and Others v. Italy*, cited above, and *Caligiuri and Others v. Italy*, nos. 657/10 and 3 others, 9 September 2014, the Court already found a violation in respect of issues which are similar to those in the case at hand.

32. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of this complaint.

33. Having regard to its case-law on the subject (see *Agrati and Others v. Italy*, cited above, *Azienda Agricola Silverfunghi S.a.s. and Others v Italy*, cited above, and *mutatis mutandis* *Maggio and Others v. Italy*, cited above, *Stefanetti and Others v. Italy*, nos. 21838/10 and 7 others, and *Arras and Others v. Italy*, cited above), the Court considers that in the instant case the legislative interference caused by the application of retrospective provisions to the pending proceedings in order to determine their outcome cannot be justified by any compelling grounds of general interests.

34. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 1 of Protocol No. 1

35. The applicants further complained that the application of the retrospective law to their proceedings in order to determine the outcome amounted to a disproportionate interference with their right to peaceful enjoyment of their possessions, which had been already recognised by the domestic case-law. They relied on Article 1 of Protocol No.1, which reads as follows:

Article 1 Protocol No. 1

“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.”

A. Admissibility

36. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

37. The applicants argued that they had seen their professional grade and career progression adversely affected by the application of the retrospective provisions of the Budget Law for the Year 2006.

38. They maintained that the legislative measure was not proportionate, as they would have had a legitimate expectation, almost a certainty, that their claim would be upheld if the law had not been applied to their pending proceedings.

39. In particular, the applicants specified that they had been deprived of a number of benefits upon transfer, such as performance bonuses.

40. The Government disputed that the applicants had a legitimate expectation protected by the Convention for the reasons set out in paragraph 28.

41. The Government further submitted that, pursuant to the latest developments in domestic case-law, in any event it was for the applicants to show and corroborate that their remuneration had been substantially curtailed as a result of the transfer, by producing adequate documents attesting to all elements of the remuneration they had been guaranteed to receive before transfer.

2. The Court's assessment

42. Having regard to the principles recalled in *Agrati and Others v. Italy*, cited above, §§ 73-84, and its case-law on the subject (see *Caligiuri and Others v. Italy*, cited above), the Court considers that the applicants were made to bear an excessive and disproportionate burden due to that interference. In particular, the infringement of the applicants' right to the peaceful enjoyment of their possessions upset the fair balance between the public interest and the protection of the rights of individuals.

43. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 1 of the Protocol no.1 to the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

44. With regard to application no. 33534/11, the applicants concerned further complained that they were discriminated against with respect to those persons already employed by the Ministry at the time of the transfer, for whom the length of service had been calculated in its entirety for both financial and legal purposes. Equally they claimed to have been discriminated against compared to those employees who had been transferred to the

Ministry from the local government authorities and in whose favour a final judgment had already been delivered before the enactment of the Budget Law for the Year 2006. They relied on Article 14 of the Convention which provides 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.”

45. The Court notes that this complaint is linked to the one examined above under Article 6 § 1 and must therefore likewise be declared admissible.

46. Nevertheless, having regard to its finding under Article 6 § 1 (see paragraph 34 above), the Court considers that it is not necessary to examine it separately (for a similar finding see *Caligiuri and Others v. Italy*, cited above).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

1. Pecuniary Damage

48. The applicants claimed the amounts set out in the appendix.

49. In particular, they claimed the amounts corresponding to the difference between the salary received from the date of the transfer and the salary which ought to have been paid to them on the basis of the recognition of their full length of service, as accrued at the local government authorities. The applicants referred to the salary scale applicable at the Ministry and the difference between the professional grade allocated upon transfer and the grade they should have been allocated, had the disputed legislative interference not occurred.

50. The applicants who retired following the transfer, namely Ms Duro, Ms Versaci and Ms Federici, each claimed a further amount to reflect the loss in their pension entitlement from the date of their retirement up to September 2019. In order to do so, they relied on the lower salary received in the course of their employment as a result of the disputed legislative interference.

51. The Government did not object to those requests.

52. Having regard to the foregoing, the Court finds it reasonable to award the pecuniary damages sought by the applicants.

2. Non-pecuniary damage

53. The applicants further claimed 10,000 euros (EUR) each in respect of non-pecuniary damage in their initial submissions.

54. The Government did not object to those requests.

55. In the circumstances of the present case and having regard to the Court's case-law, and specifically to *Agrati and Others v. Italy* (just satisfaction), nos. 43549/08 and 2 others, 8 November 2012, *De Rosa and Others v. Italy*, cited above, and *Caligiuri and Others v. Italy*, cited above, the Court considers that the finding of a violation in this judgment is sufficient to compensate the applicants for the non-pecuniary damage sustained.

B. Costs and expenses

56. The applicants also claimed the following amounts for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

57. As regards applications nos. 29483/11, 69172/11, 13376/12 and 14186/12, the applicants' representatives claimed EUR 27,138 each.

58. With reference to application no. 33534/11, the applicants paid EUR 1,198 each for legal costs and expenses before the domestic courts and the Court and sought the reimbursement thereof.

59. The Government did not object to those requests.

60. 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.

61. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in respect of applications nos. 29483/11, 69172/11, 13376/12 and 14186/12 because it is not satisfied that the applicants' costs and fees were actually and necessarily incurred, whilst it considers it reasonable to award the sum of EUR 1,198 covering costs under all heads in respect of each applicant in application no. 33534/11, plus any tax that may be chargeable to the applicants.

C. Default interest

62. 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, by a majority, application no. 14186/12 inadmissible in respect of Mr Ficorella and Ms Di Francescantonio;

3. Declares, unanimously, the complaints concerning applications nos. 29483/11, 33534/11, 69172/11, 13376/12 and the remainder of the application no. 14186/12 admissible;

4. Holds, by six votes to one, that there has been a violation of Article 6 § 1 of the Convention;

5. Holds, unanimously, that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

6. Holds, by six votes to one, that there is no need to examine the complaint under Article 14 of the Convention;

7. Holds, unanimously, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

8. Holds, unanimously,

(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:

Application no. 29483/11

(i) in respect of pecuniary damage:

(1) EUR 4,284 (four thousand two hundred and eighty-four euros);

Application no. 33534/11

(i) in respect of pecuniary damage:

(1) EUR 19,820 (nineteen thousand eight hundred and twenty euros) to Mr Bolignari;

(2) EUR 30,462 (thirty thousand four hundred and sixty-two euros) to Ms Duro;

(3) EUR 32,542 (thirty-two thousand five hundred and forty-two euros) to Ms Federici;

(4) EUR 10,866 (ten thousand eight hundred and sixty-six euros) to Ms Gremoli;

(5) EUR 19,796 (nineteen thousand seven hundred and ninety-six euros) to Ms Picchi;

(6) EUR 15,336 (fifteen thousand three hundred and thirty-six euros) to Ms Versaci;

(7) EUR 15,478 (fifteen thousand four hundred and seventy-eight euros) to Ms

Villareale; (ii) in respect of costs and expenses:

(1)EUR 1,198 (one thousand one hundred and ninety-eight euros) each, plus any tax that may be chargeable to the applicants;

(i) in respect of pecuniary damage:

(1)EUR 13,306 (thirteen thousand three hundred and six euros) to Mr Di Giorgio;

(2)EUR 10,590 (ten thousand five hundred and ninety euros) to Mr Lionello;

(3)EUR 9,077 (nine thousand and seventy-seven euros) to Mr Indaco;

(4) EUR 2,462 (two thousand four hundred and sixty-two euros) to Ms Lanzano;

(5)EUR 11,995 (eleven thousand nine hundred and ninety-five euros) to Mr Santillo;

(6) EUR 11,359 (eleven thousand three hundred and fifty-nine euros) to Ms Mozzillo;

(7)EUR 11,359 (eleven thousand three hundred and fifty-nine euros) to Mr Di

Palma; Application no. 13376/12

(i) in respect of pecuniary damage:

(1)EUR 23,395 (twenty-three thousand three hundred and ninety-five euros) to Mr Greci;

(2)EUR 17,583 (seventeen thousand five hundred and eighty-three euros) to Ms

Giorgi; Application no. 14186/12

(i) in respect of pecuniary damage:

(1)EUR 3,315 (three thousand three hundred and fifteen euros) to Ms Cirelli;

(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;

9. Dismisses, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Ksenija Turkovic

Registrar President

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

K.T.U.

A.C.

PARTLY DISSENTING OPINION OF JUDGE WOJTYCZEK

1. I do not share the view of my colleagues that the present case should have been examined primarily from the viewpoint of Article 6. In my view, that provision does not prohibit changes to the substantive legal rules applicable in judicial proceedings after those proceedings have been started. It has thus not been violated. The case should have been examined first and foremost from the viewpoint of Article 1 of Protocol No. 1, which protects possessions against arbitrary changes to substantive legal rules. I agree with the view of all the applicants that this last provision has been violated in their case.

2. The Italian legislature passed legislation affecting the remuneration of a class of civil servants. The changes pertain to substantive rules governing the legal relationships between individuals and public bodies. The new rules apply irrespective of whether the persons concerned initiated judicial proceedings or not. Moreover, as in the case of *Crash 2000 OOD and Others v. Bulgaria* ((dec.), no. 49893/07, § 84, 17 December 2013), they “did not specifically target any particular pending judicial proceedings”.

I note in this context that all the applicants in the instant case were in exactly the same position in this regard. All faced the same burden, which was declared disproportionate in respect of those who had initiated judicial proceedings before the “enactment” of the law in question, and was considered insignificant (as their complaints were found to be manifestly ill-founded) in respect of those who had not initiated such proceedings before the “enactment” of the law. In the absence of any explanations in this regard, it is difficult to understand the approach adopted. The judgment differentiates between persons who are in identical legal positions and who should therefore be treated identically. This part of the judgment appears arbitrary and fundamentally unjust.

Moreover, the majority refer to the date of “enactment” as the crucial date. No specific day is mentioned. The enactment of legislation is a long process which starts with the introduction of a bill and ends with the entry into force of the legislative provisions. It is not clear which date is considered by the majority as the date of enactment. Is it the date of the final vote in Parliament, the day of signature of the promulgation decree by the President of the Republic, the day of publication of the law in the official journal, or the day the impugned provisions entered into force?

3. The impugned legislation affects the substantive interests of the applicants. Those interests are protected as possessions within the meaning of Article 1 of Protocol No. 1. In order to determine whether the interference is compatible with this provision, it is necessary to assess its proportionality. For this purpose the Court has to identify and balance all the various interests which collide in this case. All of these are substantive interests. They are fully covered by Article 1 of Protocol No. 1 and there is no need to resort to Article 6. The latter provision adds no other interests to the balancing exercise.

The balancing of substantive-law interests determines the outcome of the case. As a result of this process, one can formulate the following general principle: a party to a civil-law relationship governed by Article 1 of Protocol No. 1 should not abuse its sovereign powers vis-à-vis the other party to this relationship. There is no need to resort to Article 6 to achieve this protection against changes in substantive law.

4. The first sentence of Article 6 is worded as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

The provision guarantees judicial protection and a fair and public trial. In a fair trial the judge applies the applicable legal rules, including substantive legal rules. The substantive rules applicable to a legal relationship may be changed during its legal existence. Exceptionally they may even be changed with retroactive effect. The Court has said correctly in the past that “Article 6 § 1 cannot be interpreted as preventing any interference by the authorities with pending legal proceedings to which they are a party” (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 112, Reports of Judgments and Decisions 1997-VII).

Changes to the substantive rules applicable to a legal relationship can (“can” in the sense of a factual possibility - even if they ought not) be unjust but this does not affect the fairness of the trial as such. The fairness of a trial will depend upon other considerations. Article 6 affords procedural protection and formal guarantees but does not protect against changes to the substantive law applicable to legal relationships and thus, as a result, also applicable to judicial disputes concerning the relevant legal relationships. Protection against unjust substantive legislation is secured by substantive provisions of the Convention.

5. In the view of the majority, the Italian legislation influences the outcome of judicial proceedings. The outcome of the proceedings is the content of a judicial decision to be rendered in a judicial procedure concerning a specific substantive-law issue (the object of the proceedings), on the legal basis of specific substantive-law provisions. In the instant case, the State indeed intervened for the purpose of modifying the content of the substantive relationship between itself and the individuals concerned, irrespective of whether the persons concerned had initiated judicial proceedings. It does not make sense to say that the legislation interferes with the outcome of the proceedings, as the subsequent proceedings are different proceedings: they have a different legal basis in (new) substantive law and a different object. To cut a long story short: the State is interfering here not with proceedings but with substantive legal relationships.

Either a change in substantive legislation is compatible with the substantive provisions, and therefore the outcome of the proceedings under the new rules is acceptable from the viewpoint of the Convention, or it is not compatible with the substantive provisions, and therefore the outcome of the proceedings under the new rules is not acceptable under the

Convention. It is difficult to imagine a situation in which a change in substantive legislation would be compatible with substantive Convention provisions but would - at the same time - be incompatible with Article 6.

6. The majority invoke the case of *Stran Greek Refineries and Stratis Andreadis v. Greece* (9 December 1994, Series A no. 301-B) as the point of departure of the case-law protecting judicial proceedings against legislation influencing their outcome. In that case the State indeed interfered with judicial proceedings by trying to change the adjudicating body by redefining its jurisdiction. Later, the concept of “legislation influencing the outcome of judicial proceedings” was extended - without any deeper reflection or explanations - to substantive legislation (see, for instance, the case of *Zielinski and Pradal and Gonzalez and Others v. France* ([GC], nos. 24846/94 and 9 others, ECHR 1999-VII). Yet, as explained above, there is a fundamental difference between changes in procedural and substantive rules. It does not appear legally correct to overextend the protection of Article 6 to changes in substantive law.

The effect of the approach is that persons who are affected by changes to substantive laws benefit from dual protection under Article 6 and Article 1 of Protocol No. 1 provided that they have initiated judicial proceedings against another party. This fact of initiating judicial proceedings results in reinforced protection and, sometimes, in immunity from changes in legislation, whereas persons who are exactly in the same situation but who initiated litigation after the legislation entered into force (or was “enacted”, whatever that may mean) do not benefit from such reinforced protection. In the instant case, those persons were denied any protection. Why this moment of initiating judicial proceedings is considered so important for substantive protection remains a mystery. In my view, it is irrelevant. The price to be paid for this approach is that Article 6 narrows the legal perspective and may hide the most fundamental substantive issues at stake so effectively that it undermines the protection afforded under Article 1 of Protocol No 1.

The paradoxical message from this case-law is the following: if you wish to enjoy enhanced protection against adverse changes in legislation regulating your substantive legal relationship with public bodies, you should initiate judicial proceedings. Starting litigation triggers reinforced protection of existing legal positions.

7. I regret that the reasoning of the instant judgment is so succinct and fails to address the fundamental legal issues which the case raises. The final result is intellectual confusion and acute injustice in respect of two applicants. It is more than high time to revisit the whole approach in respect of protection - to be provided by Article 6 - against changes in substantive legislation.

Appendix

List of cases

No.	Application no.	Lodged on	Applicant Date of Birth Place of Residence	Represented by	Notes	Pecuniary Damages

No.	Application no.	Lodged on	Applicant Date of Birth Place of Residence	Represented by	Notes	Pecuniary Damages
1.	29483/11	05/05/2011	Rosaria CICERO 27/06/1966 Messine	Giovanni ROMANO	<p>On 22 September 2005 the court of Messina (judgment no. 2824/05) recognised the full length of service completed by the applicant within local government authorities and ordered the Ministry of Education to pay the difference between the salary at the time of the transfer and the salary due on the basis of the full length of service. The Ministry appealed against that judgment. On 6 July 2010 the court of Appeal of Messina (judgment no. 489/10) allowed the Ministry's appeal and reversed the lower court judgment relying on Law no. 266 of 2005 and Constitutional Court judgments nos. 234 of 2007 and 311 of 2009.</p>	EUR 4,284 (four thousand two hundred and eighty-four euros)

No.	Application no.	Lodged on	Applicant Date of Birth Place of Residence	Represented by	Notes	Pecuniary Damages
2.	33534/11	28/05/2011	<p>1) Antonino BOLIGNARI 05/12/1953 Florence</p> <p>2) Elisabetta DURO 11/09/1946 Scandicci</p> <p>3) Narcisa FEDERICI 26/02/1951 Scandicci</p> <p>4) Sandra GREMOLI 21/02/1965 Scandicci</p> <p>5) Sonia PICCHI 13/07/1965 Florence</p> <p>6) Carmela VERSACI 01/01/1941 Scandicci</p> <p>7) Claudia VILLAREALE 16/04/1955 Florence</p>	Isacco SULLAM	<p>On 30 December 2003 the court of Florence (judgment no. 1586/2003) recognised the full length of service completed by the applicants within local government authorities and ordered the Ministry of Education to pay the difference between the salary at the time of the transfer and the salary due on the basis of their full length of service.</p> <p>On 24 May 2005 the court of Appeal of Florence dismissed the Ministry's appeal against the lower court judgment (judgment no. 811/2005).</p> <p>On 30 November 2010 the Court of Cassation (judgment no. 24215/10) reversed the lower courts judgments relying on Law no. 266 of 2005 and Constitutional Court judgments nos. 234 of 2007 and 311 of 2009.</p>	<p>1) EUR 19,820 (nineteen thousand eight hundred and twenty euros)</p> <p>2) EUR 30,462 (thirty thousand four hundred and sixty-two euros)</p> <p>3) EUR 32,542 (thirty-two thousand five hundred and forty-two euros)</p> <p>4) EUR 10,866 (ten thousand eight hundred and sixty-six euros)</p> <p>5) EUR 19,796 (nineteen thousand seven hundred and ninety-six euros)</p> <p>6) EUR 15,336 (fifteen thousand three hundred and thirty-six euros)</p> <p>7) EUR 15,478 (fifteen thousand four hundred and seventy-eight euros)</p>

No.	Application no.	Lodged on	Applicant Date of Birth Place of Residence	Represented by	Notes	Pecuniary Damages
3.	69172/11	26/10/2011	<p>1) Nicola DI GIORGIO 13/01/1953 Orta di Atella</p> <p>2) Salvatore LIONELLO 18/08/1945 Orta di Atella</p> <p>3) Salvatore INDACO 20/12/1954 Orta di Atella</p> <p>4) Chiara LANZANO 07/10/1960 Orta di Atella</p> <p>5) Salvatore SANTILLO 04/02/1953 Orta di Atella</p> <p>6) Angela MOZZILLO 31/01/1955 Orta di Atella</p> <p>7) Nicola DI PALMA 30/10/1949 Sant'Arpino</p>	Pasquale BIONDI	<p>In 2002 the applicants lodged a claim at the court of Santa Maria Capua Vetere to have their full length of service completed within local government authorities recognised and their salary adjusted accordingly. The applicants sought also payment from the Ministry of Education for any accrued salary difference. In the public hearing held on 28 April 2010 the court (judgment no. 3438/2010) dismissed the applicants claims relying on Law no. 266 of 2005 and Constitutional Court judgments nos. 234 of 2007 and 311 of 2009.</p>	<p>1) EUR 13,306 (thirteen thousand three hundred and six euros)</p> <p>2) EUR 10,590 (ten thousand five hundred and ninety euros)</p> <p>3) EUR 9,077 (nine thousand and seventy-seven euros)</p> <p>4) EUR 2,462 (two thousand four hundred and sixty-two euros)</p> <p>5) EUR 11,995 (eleven thousand nine hundred and ninety-five euros)</p> <p>6) EUR 11,359 (eleven thousand three hundred and fifty-nine euros)</p> <p>7) EUR 11,359 (eleven thousand three hundred and fifty-nine euros)</p>

No.	Application no.	Lodged on	Applicant Date of Birth Place of Residence	Represented by	Notes	Pecuniary Damages
4.	13376/12	02/03/2012	<p>1) Francesco GRECI 30/10/1945 Rome</p> <p>2) Loredana GIORGI 27/02/1961 Rome</p>	Giovanni ROMANO	<p>In 2005 the applicants commenced proceedings against the Ministry of Education to have their full length of service completed within local government authorities recognised and their salary adjusted accordingly. In addition the applicants sought payment from the Ministry for any accrued salary difference. Both applicants' claims had been dismissed at first instance on the basis of the Law No. 266 of 2005. In separate sets of proceedings the court of Appeal of Rome (judgment nos. 290/2011 and 4073/2011) upheld the lower courts' judgments relying on Law no. 266 of 2005 and Constitutional Court judgments nos. 234 of 2007 and 311 of 2009. The judgments had been delivered on 3 February 2011 and 23 May 2011 respectively.</p>	<p>1) EUR 23,395 (twenty-three thousand three hundred and ninety-five euros) 2) EUR 17,583 (seventeen thousand five hundred and eighty-three euros)</p>

No.	Application no.	Lodged on	Applicant Date of Birth Place of Residence	Represented by	Notes	Pecuniary Damages
5.	14186/12	06/03/2012	Biagio FICORELLA 26/02/1949 Palestrina	Giovanni ROMANO	In the hearing of 19 April 2007 the court of Tivoli (judgment no. 872/2007) recognised the full length of service completed by the applicant within local government authorities and ordered the Ministry of Education to pay the difference between the salary at the time of the transfer and the salary due on the basis of the full length of service. On 1 June 2011 the court of Appeal of Rome (judgment no. 3588/11) allowed the Ministry's appeal relying on the Law No. 266 of 2005 and the Constitutional Court judgments nos. 234 of 2007 and 311 of 2009.	

No.	Application no.	Lodged on	Applicant Date of Birth Place of Residence	Represented by	Notes	Pecuniary Damages
			<p data-bbox="660 775 804 909"> Maria Assunta CIRELLI 15/08/1950 Rome </p>		<p data-bbox="1118 241 1262 1451"> On 23 October 2007 the court of Rome (judgment no. 18367/2007) dismissed the applicant's claim to have her full length of service completed within local government authorities recognised and her salary adjusted accordingly. Likewise the court dismissed her claim for payment of any salary difference. On 3 February 2011 the court of Appeal of Rome (judgment no. 290/2011) upheld the lower court judgment relying on Law no. 266 of 2005 and Constitutional Court judgments nos. 234 of 2007 and 311 of 2009. </p>	<p data-bbox="1318 241 1430 450"> EUR 3,315 (three thousand three hundred and fifteen euros) </p>

No.	Application no.	Lodged on	Applicant Date of Birth Place of Residence	Represented by	Notes	Pecuniary Damages
			<p>Fiammetta DI FRANCESCANTONIO 26/08/1953 Colleferro</p>		<p>In 2006 the applicant commenced proceedings against the Ministry of Education to have her full length of service completed within local government authorities recognised and her salary adjusted accordingly. In addition she sought payment from the Ministry for any accrued salary difference. On 23 August 2010 the court of Velletri (judgment no. 1880/10) dismissed the applicant's claim relying on Law no. 266 of 2005 and Constitutional Court judgments nos. 234 of 2007 and 311 of 2009.</p>	
