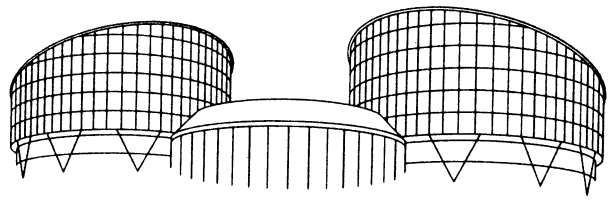

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Applications nos. 11838/07 and 12302/07
Laura TORRI and Others against Italy
and Carmine BUCCIARELLI against Italy

The European Court of Human Rights (Second Section), sitting on 24 January 2012 as a Chamber composed of:

Françoise Tulkens, *President,*
Dragoljub Popović,
Isabelle Berro-Lefèvre,
András Sajó,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to the above applications lodged on 12 March 2007 and 15 March 2007 respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

# THE FACTS

1. The applicants, Ms Laura Torri, Ms Patrizia Tomage, Mr Carlo Caino Rosa, Ms Piera Albanese, Mr Roberto Iodice, Mr Andrea Camera, Ms Loredana Pappada, Mr Antonino Casciolo and Mr Carmine Bucchiarelli, are Italian nationals who live in Rome (see Annex for dates of birth). They were represented before the Court by Mr M. de Stefano, a lawyer practising in Rome. The Italian Government ("the Government") were represented by their Co-Agent, Ms Paola Accardo.

## A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

### *1. Background of the case*

3. The applicants as employees of AGENSUD (*Agenzia per la promozione dello sviluppo nel Mezzogiorno*) had by 12 October 1993 accumulated a certain length of service and had been paying contributions towards their old-age pension into the INPS (*Istituto Nazionale della Previdenza Sociale*), the primary Italian welfare entity. Thus, according to the law in force at the time, on 12 October 1993, even assuming they became unemployed in the future, all the applicants had already accrued all the necessary years of contributions to obtain an old age-pension on attaining pensionable age (sixty for men and fifty-five for women) (see annexed table).

4. AGENSUD had previously been called *Cassa per il Mezzogiorno* (*Cassa*), a public entity having its own juridical personality. Thus, according to the applicants, on 12 October 1993 they were civil servants and all the relevant guarantees applied to them, including Article 29 of Law no. 646 of 10 August 1950 (Law no. 646/50) (the law which had instituted the *Cassa*), providing that on the date of cessation of the *Cassa* or its dissolution, all the rights and obligations of the latter would be transferred to the State.

5. By means of Law no. 488 of 19 December 1992 (Law no. 488/92) AGENSUD was dissolved. However, the working relationship between employer and employee with its duties and obligations was not transferred to the State as had been provided. Instead, this working relationship ceased to have effect and the employees acquired a right to an "end-of-service payment" (*TFR*). They were further given the option to undertake new employment with a new civil service entity. This employment, however, provided for lower salaries than the ones they had previously received, contrary, according to the applicants, to consolidated principles of the public service (Presidential decree no. 3 of 10 January 1997 – see relevant

domestic law). The Government noted that this salary corresponded to that of Administrative State employees in equal grades of service.

6. Eventually, in 1995, the applicants were employed within the Ministry for Forest and Agricultural Policies (the Ministry) with retroactive effect from 13 October 1993. Thus, they had chosen to remain in employment and accepted lower salaries, together with the implications for their future social welfare coverage and pensions, in respect of contributions to be paid during this new employment.

7. At the time, the law (Article 14 *bis* of Law no. 96/1993) provided for two options, one of which (hereinafter referred to as *joining*) entailed that previous contributions paid by the applicants, *viz* by AGENSUD to the INPS, be joined to those that would subsequently be paid by the Ministry to a different welfare entity, namely the INPDAP (*Istituto Nazionale di Previdenza per I Dipendenti dell'Amministrazione Pubblica*).

8. According to the applicants, on the basis of Article 14 *bis* paragraph 1 (b) of Law no. 96/1993, any benefits acquired had to remain untouched and the change of system should have occurred without any disbursements or losses on their part. Thus, the applicants accepted the relevant employment offer and the joining of their contributions, believing that, in accordance with the case-law as it stood at the time (see Title C below), they would receive back any payments in excess which would not go towards the calculation of their pension.

9. Indeed, at the time, the system of joining entailed that only part of the previous contributions (paid to INPS) was used for the calculation of the pensions. However, it eventually resulted that any contributions in excess were to the benefit of the INPDAP and were not given back to the INPS or to the applicants. It followed that a future pension would also not have benefited from the entirety of the contributions paid. Thus, through this move the applicants suffered two disadvantages: firstly, any future pensions would be lower and secondly a good share of the already paid contributions would be lost.

10. In consequence, the legislator provided for a derogation (Article 14 *bis* paragraph 4) applicable to a limited number of employees of the AGENSUD, namely personnel who had left the civil service after 13 October 1993 and before the entry into force of Article 14 *bis* paragraph 1 (b) of Law No. 96/1993. The derogation entailed the restitution of the paid contributions which had not been calculated for the purposes of joining the social security periods. The applicants did not fall within this category.

11. Initially, the civil service started paying up all the AGENSUD employees, without distinction, either spontaneously or as a result of a number of court cases successful at first instance. However, eventually, the civil service limited this payment only to persons who had left the civil service after 13 October 1993 and before the entry into force of Article 14 *bis* paragraph 1 (b) of Law No. 96/1993, thus excluding the applicants, who

had accepted to take up new employment and agreed to the joining of their contributions into one entity.

12. In 1995 the Italian welfare system introduced a new pension calculation, namely the *Sistema Contributivo* (calculation of pension by reference to contributions paid throughout a life-time and revalorisation factors) as opposed to the *Sistema Retributivo* (based on the salaries applicable to employees in their last years of service). The change in system has been gradual and while for young employees the system is obligatory, for older ones it is only optional.

*2. The applicants' domestic proceedings*

13. In 2000 the applicants instituted judicial proceedings to ascertain their right to the restitution of the contributions they had paid to the INPS and which had not been used to calculate their pensions. They contended that if Article 14 *bis* had to be interpreted as not implying the right for them to take back their contributions, it would be discriminatory *vis-à-vis* both a) other AGENSUD employees and/or b) other employees in general who had previously been transferred and had been reimbursed the excess contributions. They requested the reimbursement of the relevant sums.

14. By a judgment of 21 August 2003, the Lazio Administrative Tribunal (TAR) declared the application inadmissible on formal and procedural grounds.

15. On appeal, by a judgment delivered on 15 September 2006 in the relevant registry of the plenary (*Adunanza Plenaria*), the Supreme Administrative Court (*Consiglio di Stato*) rejected the claims on the merits. It held that the contributions which had been paid to INPS but had not been used for pension calculation could validly be vested in the INPDAP. In the ambit of a welfare system based on the principle of solidarity, the circumstances that social benefits do not reflect the contributions paid did not amount to unjust enrichment of the entity receiving the contributions. Lastly, the restitution of contributions was an exceptional measure not regulated by uniform norms and only applicable to a certain category of people. In consequence, in the absence of any specific norm to that effect, the applicants did not have a right to the reimbursement of contributions paid in excess. Moreover, the applicants had accepted to take up new employment with the civil service and requested the joining of their contributory periods.

*3. Other relevant domestic proceedings*

16. In 1992 the plenary (*Adunanza Plenaria*) of the Supreme Administrative Court (*Consiglio di Stato*) had held that it was possible to reimburse contributions in excess to civil servants. The same was reiterated again in 1997 in analogous cases relating to the dissolution of the National

Health Service (*enti mutualistici*), whose employees were transferred to another organ of the civil service.

17. Subsequently, numerous ex-employees of the AGENSUD instituted court proceedings complaining about the lower salaries and social coverage. By a judgment of the Constitutional Court of 19 June 1998 it was held that persons in the applicants' position had acquired a new status equal to their colleagues. Thus, since they had been given the option either to retire and maintain the old welfare regime or to continue in employment and join the contributions into one (at the State's expense and for certain others with the recovery of such contributions), the system was in conformity with constitutional principles.

18. Again in relation to AGENSUD employees, the Supreme Administrative Court had originally by an opinion of 30 June 1999, delivered in the framework of its consultative competence, expressed itself in favour of reimbursement being made to all AGENSUD employees, including the ones in the applicants' situation. On the same lines, a number of decisions at first instance, some of which had become final, were delivered (for example *Antognoni Alberto v the Ministry for transport and Infrastructure, INPS and INPDAP*, judgment of the Lazio Administrative Tribunal of 9 October 2002 and *D'Agostino Caterina v Presidente del Consiglio dei Ministri, Ministry of Economy and Finance, INPS and INPDAP* judgment of the Lazio Administrative Tribunal of 6 April 2004). It was only the Supreme Administrative Court Plenary formation which reversed this jurisprudence in 2006 in the applicants' domestic case.

## B. Relevant domestic law and practice

### *1. The law in force up to 31 December 1992*

19. In accordance with the law in force up to 31 December 1992, persons were eligible to receive an old-age pension on attaining pensionable age, namely sixty for men and fifty-five for women, after fifteen years of welfare contributions. As from 1 January 1993 to 31 December 1993, sixteen years of welfare contributions were necessary to obtain the said benefit. This applied even if persons had been unemployed up to the date when they reached pensionable age. As from 1 January 1994 to 31 December 1994, sixteen years of welfare contributions were necessary to obtain the said benefit; however, pensionable age was increased to sixty-one for men and fifty-six for women. As from 1 January 1995 to 31 December 1995, seventeen years of welfare contributions were necessary to obtain the said benefit when reaching pensionable age, which remained sixty-one for men and fifty-six for women.

*2. Other relevant articles*

20. Article 29 of Law no. 646/50, in so far as relevant, reads as follows:

> "On the date of cessation of the *Cassa* or its dissolution, all the rights and obligations of the latter are transferred to the State."

21. Article 202 of Presidential decree no. 3 of 10 January 1997, provides as follows:

> "In the case of career changes in the same or a different administration, employees having higher salaries than those provided on such change are awarded a personal cheque, relevant to pensions, equal to the difference between the two salaries, without prejudice to future salary increases."

22. Article 14 *bis* paragraph 1 (b) of Law no. 96/1993 provided that Article 6 of Law no. 29 of 1979 was applicable to the persons in the applicants' positions for the purposes of welfare coverage. The latter read as follows:

> "The joining of social security periods related to service rendered with suppressed public entities, in relation to which there has been a transfer of personnel to other public entities, occurs ex officio through the receiving welfare entity, without any charges on the employees."

## COMPLAINTS

23. The applicants complained that they had suffered a violation of Article 1 of Protocol No. 1 to the Convention both because they had been forced to take up lower salaries and because as a consequence of a legislative interference (contrary to Article 6) which interfered with contributory benefits already acquired by them by means of antecedent laws, they had lost substantial amounts of contributions which they had paid. They further invoked Article 14 in conjunction with Article 1 of Protocol No. 1 to the Convention, claiming that they suffered discriminatory treatment *vis-à-vis* i) AGENSUD employees who received back their contributions from the INPDAP voluntarily on the basis of the jurisprudence at the time; ii) AGENSUD employees who maintained their previous welfare status; iii) other employees in general who could opt for joining systems according to a calculation of their own choice or could either request the total aggregation "*totalizzazione*" of their contributions or receive a pro rata payment of their pensions from the multiple welfare entities; iv) other employees in general, who following a change in the Italian welfare system, benefited from a *sistema contributivo*.

# THE LAW

24. Pursuant to Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their common factual and legal background.

## A. Alleged violation of Article 1 of Protocol No. 1 to the Convention

25. The applicants complained that they had suffered a violation of their property rights both because they had been forced to take up lower salaries and because as a consequence of a legislative interference (contrary to Article 6) which interfered with contributory benefits already acquired by them by means of antecedent laws, they had lost substantial amounts of contributions which they had paid. They relied on Article 1 of Protocol No. 1 to the Convention, which 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."

### *1. The parties' submissions*

#### a) The applicants' submissions

26. The applicants complained that their move to the new employer entailed lower salaries than those which pertained to them with AGENSUD, and this resulted in lower future pensions. They maintained that although the applicants had not yet reached pensionable age, in 1993, they had by then worked the required 16 years of service to benefit from old-age pension (see Annex), and other types of pension required even less. Similarly, had the applicants moved to another country, their pensions would have been calculated on the amount of contributions paid to the INPS. Thus, at the relevant time the applicants had already acquired a right to a pension, on condition that they reached pensionable age or any other prefixed condition for the relevant pension regime. This constituted a legitimate expectation which constituted a possession for the purposes of Article 1 of Protocol No. 1 to the Convention.

27. The applicants considered that pensions were due according to the number of months and amount of contributions paid, in consequence they could not imagine that they would have lost the advantages attached to their already paid contributions. Thus, they complained that the further loss of their contributions, in the amounts shown in the Annex, was not foreseeable

for the following reasons: i) Law no. 646/50 (see paragraph 20 above) and Article 14 *bis* paragraph 1 (b) of Law no. 96/1993 (see paragraph 22 above); the latter, more particularly the words "without any charges on the employees", in the applicants' view, meant that the employee was not to sustain any losses, including a loss of contributions which had been retained by the INPDAP, namely the public treasury; ii) the repayment of these contributions by the INPDAP to individuals in the applicants' position had been confirmed in consistent jurisprudence up to 2006; this change in jurisprudence could not be foreseeable at the time.

28. According to the applicants the aim of any change to welfare regimes should be that of augmenting the relevant benefits and not the contrary.

**b) The Government's submissions**

29. The Government submitted that even assuming there was a possession there had been no violation of the provision since the applicants' previous employment contract had ended and the applicants engaged on a new employment contract. The working relationship the applicants had with AGENSUD ceased when the latter was dissolved. The applicants were then given the opportunity to take up new employment as a remedy for the unemployment which had come about. While it was true that the new salaries were lower, this reduction had been justified. Maintaining the applicants' previous salaries would have entailed giving the applicants a privileged status, since they would have earned more than their new colleagues who were working at the Ministry and earning the regular civil service salary. Moreover, the applicants had the possibility to choose freely whether to take up employment with the Ministry. Alternatively, they could have stopped working and safeguarded both the TFR and the contributions they had made towards their pension.

30. The Government submitted that, first and foremost, the applicants had themselves chosen to take up the joining regime, which in effect led to the loss of a certain amount of their contributions. Secondly, they noted that welfare arrangements were not regulated according to private (contractual) law. The payment of contributions was made by virtue of the principle of solidarity, and it was not necessary to receive in pension or other welfare benefits all that had been paid by an employee and an employer.

31. The Government noted that the INPS and INPDAP had different contributory systems which explained why certain contributions could not be transferred from one management to another. They submitted that it fell within the margin of appreciation of a State to determine whether the unused contributions in the present case would be returned to the applicants. Indeed, bearing in mind the above-mentioned legitimate aim, the fact that the unused contributions remained with the welfare entity which could eventually use them to provide other welfare services could not be in breach

of the invoked provision. The Government reiterated that the State had a wide margin of appreciation in regulating pension regimes and made reference to the case of *Maggio and Others v. Italy* (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 31 May 2011).

*2. The Court's assessment*

32. The Court reiterates that, according to its case-law, an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his "possessions" within the meaning of that provision. "Possessions" can be "existing possessions" or assets, including, in certain well-defined situations, claims. For a claim to be capable of being considered an "asset" falling within the scope of Article 1 of Protocol No. 1, the claimant must establish that it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it. Where that has been done, the concept of "legitimate expectation" can come into play (see *Maurice v. France* [GC], no. 11810/03, § 63, ECHR 2005-IX). A "claim" concerning a pension can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 where it has a sufficient basis in national law, for example where it is confirmed by a final court judgment (see *Pravednaya v. Russia*, no. 69529/01, §§ 37-39, 18 November 2004; and *Bulgakova*, cited above, § 31).

33. However, Article 1 of Protocol No. 1 does not guarantee as such any right to become the owner of property (see *Van der Mussele v. Belgium*, 23 November 1983, § 48, Series A no. 70; *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II; and *Kopecký v. Slovakia* [GC], no. 44912/98, § 35 (b), ECHR 2004-IX). Nor does it guarantee, as such, any right to a pension of a particular amount (see, for example, *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX; *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999-V; and *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X). Nevertheless, it has been recognised that the making of contributions to a pension fund may, in certain circumstances, create a property right and such a right may be affected by the manner in which the fund is distributed (see *Skorkiewicz v. Poland* (dec.), no. 39860/98, 1 June 1999). One of the considerations in the assessment under this provision is whether the applicant's right to derive benefits from the social insurance scheme in question has been infringed in a manner resulting in the impairment of the essence of that pension right (see *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999-V and *Kjartan Ásmundsson*, cited above, § 39). Thus, recalculation of one's pension and its decrease may or may not violate Article 1 of Protocol No. 1 (see *Skorkiewicz*, (dec.), cited above). Where the amount of a benefit is reduced or discontinued, this may constitute interference with possessions which requires to be justified (see *Kjartan Ásmundsson*, cited above, § 40, and *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009).

34. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98; *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II; and *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I).

35. An essential condition for interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful. Any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions (see *Terazzi S.r.l. v. Italy*, no. 27265/95, § 85, 17 October 2002, and *Wieczorek v. Poland*, no. 18176/05, § 59, 8 December 2009). Article 1 of Protocol No. 1 also requires that any interference be reasonably proportionate to the aim sought to be realised (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005-VI). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52).

**a) Lower salaries leading to lower pensions**

36. The first of the applicants' complaints under this provision is the fact that they had been forced to take on a new jobs which provided lower salaries and therefore resulted in lower future pensions.

37. The Court reiterates that the Convention does not guarantee a right to work (see *Sobczyk v. Poland*, nos. 25693/94 and 27387/95, (dec.), 10 February 2000; and *Dragan Cakalic v Croatia*, (dec.), 15 September 2003). Nor does it guarantee, as such, any right to a pension of a particular amount (see, for example, *Kjartan Ásmundsson*, cited above

§ 39). Moreover, the Court notes that the applicants were not forced to take up a new job, but they willingly chose to take up the offer made by the State, which had been aimed at reducing the unemployment rate following the dissolution of the AGENSUD. Thus, the applicants in the present case freely entered into a new contractual agreement. The Court further notes that the applicants have not complained of any changes to the salary regime within the Ministry following their employment. Thus, at the time, the applicants were fully aware of the legal significance of the employment contract they were signing up for and in particular the repercussions it would have had on their pensions. In that light the applicants cannot hold that circumstance against the authorities (see, *mutatis mutandis*, *Allan Jacobsson v. Sweden (no. 1)*, 25 October 1989, § 60-62, Series A no. 163; *Fredin v. Sweden (no. 1)*, 18 February 1991, § 54, Series A no. 192, and *Lacz v Poland*, (dec.), no. 22665/02, 23 June 2009).

38. It follows that, even assuming the provision is applicable, the complaint is manifestly ill-founded with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

**b) The loss of paid up contributions**

39. The applicants further complained that as a consequence of a legislative interference (contrary to Article 6) which interfered with contributory benefits already acquired by them by means of antecedent laws, they had lost substantial amounts of contributions which they had paid.

40. The Court starts by noting that there had not been any legislative interference in the form of an enactment of laws in the period 2000-2006 during which the applicants were pursuing proceedings. Thus, their complaint based on that argument is misconceived.

41. In so far as the complaint could relate to the domestic court's interpretation of the law or practice in the applicants' case (namely, in respect of Article 14 *bis*), the Court notes that unlike in *Beian v. Romania ((no. 1)*, no. 30658/05, ECHR 2007-XIII (extracts)) the present case does not deal with divergent approaches by the Supreme Court which could create jurisprudential uncertainty depriving the applicants of the benefits arising from the law. It is true that in the present case jurisprudence to the effect that the contributions paid in access to the INPS which were not transferred to the INPDAP were returned to the former employees of the AGENSUD appeared consolidated. However, the highest administrative court, namely the Supreme Administrative Court, found differently in the applicants' case and thus contrary to the established jurisprudence in identical and similar cases. This constituted a reversal of jurisprudence.

42. The Court reiterates that it is primarily for the domestic courts to interpret and apply domestic legislation (*Worm v. Austria*, 29 August 1997,

§ 38, *Reports of Judgments and Decisions* 1997-V). Principally, the Court notes that there is no indication that in the national court's application of domestic law in the applicants' case there was any arbitrariness capable of raising an issue under the Convention. The law had clearly stated that the refund of contributions applied solely to a certain category of persons, which did not include the applicants (see paragraph 10 above). Moreover, the Court reiterates that as held in *S.S. Balıklıçeşme Beldesi Tarım Kalkınma Kooperatifi et autres v. Turkey* (nos. 3573/05, 3617/05, 9667/05, 9884/05, 9891/05, 10167/05, 10228/05, 17258/05, 17260/05, 17262/05, 17275/05, 17290/05 et 17293/05, § 28, 30 November 2010) a reversal of jurisprudence falls within the discretionary powers of domestic courts, notably in countries having the system of written law (as in Italy) and which are not bound by precedent. In these circumstances, the Court considers that no issue arises in respect of Article 6 in the present proceedings.

43. In so far as the complaint refers to the fact that the change of jurisprudence constituted a disproportionate interference with their possessions, the Court considers that the contributions which the applicants had paid cannot in themselves, any longer, be considered as their possessions. It is the rights stemming from the payment of those contributions to social insurance systems that are, however, pecuniary rights for the purposes of Article 1 of Protocol No. 1 to the Convention (*Gaygusuz v. Austria*, 16 September 1996, *Reports of Judgments and Decisions* 1997, p. 1142, §§ 39-41). Indeed, as mentioned above, it has been recognised that the making of contributions to a pension fund may, in certain circumstances, create a property right and such a right may be affected by the manner in which the fund is distributed (see *Skorkiewicz v. Poland* (dec.), no. 39860/98, 1 June 1999).

44. Even assuming that the applicants had a property right in the present case, the interference was in itself a lawful one, as the Court has already found that the decision in the applicants' case was not arbitrary (see paragraph 42 above).

45. Moreover, the Court notes that the applicants' right to derive benefits from the social insurance scheme has not been infringed in a manner resulting in the impairment of the essence of that pension right (see *Domalewski* (dec.), cited above, and *Kjartan Ásmundsson*, cited above, § 39). Unlike in the case of *Kjartan Ásmundsson*, the applicants did not suffer a total deprivation of their entitlements and will still receive a pension on retirement. Neither has it been claimed that the applicants have lost substantial amounts of their pension, and in any event no appropriate numerical details have been submitted showing to what extent their pensions have been reduced. Against this background, bearing in mind the State's wide margin of appreciation in regulating the pension system (see *Maggio and Others v. Italy*, nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, § 63, 31 May 2011) and the legitimate aim invoked by the

Government, namely the principle of solidarity (see paragraph 30), the Court considers that the applicants were not made to bear an individual and excessive burden.

46. It follows that the complaint is manifestly ill-founded with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

### B. Alleged violation of Article 14 of the Convention

47. The applicants further invoked Article 14 in conjunction with Article 1 of Protocol No. 1 to the Convention, claiming that they had suffered discriminatory treatment *vis-à-vis* i) AGENSUD employees who received back their contributions from the INPDAP voluntarily on the basis of the jurisprudence at the time; ii) AGENSUD employees who maintained their previous welfare status; iii) other employees in general who could opt for joining systems according to a calculation of their own choice or could either request the total aggregation "*totalizzazione*" of their contributions or to receive a pro-rata payment of their pensions from the multiple welfare entities; iv) other employees in general, who following a change in the Italian welfare system, benefited from a *sistema contributivo*. Article 14 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."

48. The Court recalls that Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. The prohibition of discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and Protocols require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Article of the Convention, for which the State has voluntarily decided to provide. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 39, ECHR 2005-X; *Andrejeva*, cited above, § 74).

49. Article 1 of Protocol No. 1 does not include a right to acquire property. It places no restriction on the Contracting States' freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a State does decide to create a benefits or pension

scheme, it must do so in a manner which is compatible with Article 14 of the Convention (see *Stec and Others v. the United Kingdom* (dec.) cited above, § 54). Such legislation has to be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (*Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 53, 16 March 2010).

50. The Court reiterates that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). However, not every difference in treatment will amount to a violation of Article 14. It must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment and that this distinction is discriminatory (see *Unal Tekeli v. Turkey*, no. 29865/96, § 49, 16 November 2004).

51. Moreover, Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed, in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and the background. A wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy (see *Stec and Others v. the United Kingdom* [GC], no. 65731/01, §§ 51-52, ECHR 2006-VI).

52. The Court notes that it is not necessary to determine whether Article 14 in conjunction with Article 1 of Protocol No. 1 to the Convention is applicable in the present case, since the various complaints are in any event inadmissible for the following reasons.

*1. AGENSUD employees who received back their contributions from the INPDAP voluntarily or on the basis of the jurisprudence at the time*

53. The Court considers that, while it is true that there was a difference in treatment, the present case is one where the "others" were treated more favourably. This more favourable treatment depended on voluntary action or judicial determinations which were grounded in an interpretation which was not eventually applied to the applicants' case. The Court has already held that the change in jurisprudence was legitimate (see paragraph 42 above). In consequence, its effects and the apparent difference in treatment, which fall within the wide margin of appreciation of the State in matters such as social security (see *Maggio and Others v. Italy*, nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, § 63, 31 May 2011) can be considered to be objectively justified.

54. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

*2. AGENSUD employees who maintained their previous welfare status*

55. The Court notes that this option was available to former AGENSUD employees who retired and not to those who chose to take up new employment. In consequence, the applicants who had freely chosen the latter option cannot be considered to be in an analogous situation to former AGENSUD employees who chose to retire at the time.

56. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

*3. Other employees in general who could opt for joining systems according to a calculation of their own choice or who could either request the total aggregation "totalizzazione" of their contributions or receive a pro-rata payment of their pensions from the multiple welfare entities*

57. The Court notes that the applicants have not given any details about the other systems and categories of persons *vis-à-vis* whom they have allegedly been treated differently. The complaint is, thus, unsubstantiated.

58. It follows that the complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

*4. Other employees in general, who following a change in the Italian welfare system, benefited from a sistema contributivo*

59. Again the Court notes that the applicants failed to explain what other specific category of persons they are referring to, and to give any detail about the different systems applicable or in which way this alleged discrimination had arisen. The complaint is, thus, unsubstantiated.

60. It follows that the complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Decides* to join the applications;

*Declares* the applications inadmissible.

S. Naismith

Stanley Naismith
Registrar

Françoise Tulkens
President

## ANNEX

| Name | Born in | Yrs of service at AGENSUD | Yrs of INPS contributions | Contributions remained unused (one third of which was paid by the applicants) |
|---|---|---|---|---|
| | | | | |
| (applic no. 11838/07) Torri Laura | 1948 | 19 | 21 | EUR 138,834.21 |
| Tomage Patrizia | 1952 | 19 | 19 | EUR 122,566.40 |
| Rosa Carlo Caino | 1953 | 13 | 18 | EUR 134,933.82 |
| Albanese Piera | 1952 | 19 | 19 | EUR 144,150.60 |
| Iodice Roberto | 1955 | 13,5 | 19 | EUR 143,025.33 |
| Camera Andrea | 1952 | 12 | 16 | EUR 127,755,56 |
| Pappada Loredana | 1957 | 16 | 16 | EUR 108,759.71 |
| Casciolo Antonino | 1954 | 18 | 13 | EUR 135,167.54 |
| (applic no. 12302/07) Bucciarelli Carmine | 1948 | 18 | 23 | EUR 142,650.36 |