



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

FIRST SECTION

**CASE OF AVELLONE AND OTHERS v. ITALY**

*(Application no. 6561/10)*

JUDGMENT

STRASBOURG

9 July 2020

*This judgment is final but it may be subject to editorial revision.*



**In the case of Avellone and Others v. Italy,**

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

Pere Pastor Vilanova, *President*,

Jovan Ilievski,

Raffaele Sabato, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having regard to:

the application (no. 6561/10) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by thirty Italian nationals (“the applicants”), whose details are set out in the Annex to this judgment;

the decision to give notice to the Italian Government (“the Government”) of the complaint concerning Article 6 § 1 of the Convention;

the Government’s observations;

the decision to reject the Government’s objection to examination of the applications by a Committee;

Having deliberated in private on 16 June 2020,

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

## INTRODUCTION

1. The applicants complained that section 6 of Law no. 140 of 15 April 1985 (“Law no. 140/1985”), as interpreted by Law no. 244 of 24 December 2007 (“Law no. 244/2007”), had constituted a legislative interference with pending proceedings which had been in breach of their right to a fair trial under Article 6 of the Convention.

## THE FACTS

2. The applicants were represented by Mr G. Stramandinoli, a lawyer practising in Turin.

3. The Government were represented by their Agent, Mr L. D’Ascia, State Attorney.

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

5. All the applicants fall into one of the categories listed in Law no. 336 of 24 May 1970 (“Law no. 336/1970”) (veterans, disabled war veterans, war widows, civilian victims of war), either directly or because they are heirs of the persons entitled.

6. By virtue of section 6 of Law no. 140/1985, the State introduced a monthly increase in the pensions of persons belonging to one of the categories provided for by Law no. 336/1970, an increase in the amount of 30,000 Italian lira (ITL – 15.49 euros (EUR)).

7. Following the applicants' retirement, the National Social Security Agency (*Istituto Nazionale della Previdenza Sociale* – INPS) recognised that all of them were entitled to the pension increase from the date when they were eligible to claim their pensions.

8. Between 4 February 2002 and 1 March 2006 the applicants brought several administrative actions against the INPS to have the automatic adjustment of the increase in line with the cost of living (*perequazione automatica*) calculated from the year in which the Law had entered into force (1985), rather than from the date when they had become eligible to claim their pensions. The INPS dismissed all of the applicants' actions.

9. Following the dismissal of their administrative actions, between 28 July 2005 and 30 March 2007, by means of individual applications, the applicants instituted judicial proceedings before the Turin Tribunal.

10. Up until the end of 2007 the Turin Tribunal and the Turin Court of Appeal always ruled in favour of the applicants, obliging the INPS to calculate the adjustment on the increase from the year of the entry into force of the Law. Such an interpretation had also been confirmed by the Court of Cassation in its judgment no. 14285/2005 of 4 May 2005 ("judgment no. 14285/2005") concerning an individual in the applicants' position.

11. On 1 January 2008 Law no. 244/2007 entered into force. Section 2(505) of that Law provided for an authentic interpretation of section 6(3) of Law no. 140/1985, establishing that the latter had to be interpreted as meaning that the increase provided for in section 6(1) had to be adjusted from the time it was granted to entitled persons (upon their retirement).

12. On 5 December 2008, by means of its judgment 401 ("judgment no. 401/2008"), the Constitutional Court declared the question of the constitutionality of Law no. 244/2007 ill-founded. According to the Constitutional Court, the Law was in conformity with the principle of equality and reasonableness.

13. The following domestic courts applied the new Law or endorsed the interpretation given by the Constitutional Court and dismissed the claims of all the applicants: the Turin Court of Appeal in the case of Mr T. Maggio on 19 February 2009; and the Court of Cassation in respect of the rest of the applicants, by means of several judgments issued between 9 June 2009 and 19 July 2011.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### I. LAW No. 140 OF 15 APRIL 1985

14. The relevant parts of section 6 of Law no. 140/1985 provide:

1. "Individuals belonging to the categories provided for by Law no. 336 of 24 May 1970, ... are entitled, upon request, to a reversible increase in the respective pension which has been determined in accordance with the ordinary rules, up to a limit of 30,000 Italian lira per month.

...

3. The increase provided for in the preceding subsections shall be subject to the rules on automatic adjustment.

...”

## II. LAW No. 244 OF 24 DECEMBER 2007

15. Section 2(505) of Law no. 244/2007 reads as follows:

**Authentic interpretation of the provisions  
concerning the increase in pension rights for veterans**

“Section 6(3) of Law no. 140 of 15 April 1985 is to be interpreted as meaning that the increase provided for in section 6(1) is to be adjusted from the time when that increase is granted to the persons entitled to it.”

## III. COURT OF CASSATION JUDGMENT OF 4 MAY 2005, No. 14285

16. The gist of judgment no. 14285/2005 of the Court of Cassation can be summarised as follows.

17. The interpretation given by the INPS to section 6 of Law no. 140/1985 – according to which the adjustment of the increase in line with the cost of living should start from the moment when the pension was granted, and not from the entry into force of Law no. 140/1985 – was not acceptable. Indeed, there was no reasonable justification for applying such an interpretation, which clearly impinged upon the principle of equality as enshrined in Article 3 of the Constitution, as this would create an unreasonable difference in treatment between pensioners.

## IV. CONSTITUTIONAL COURT JUDGMENT OF 5 DECEMBER 2008, No. 401

18. Judgment no. 401/2008 of the Constitutional Court, in its main thrust, held as follows.

19. The applicants’ assumption that the right to the pension increase had to be independent from the right to the pension itself was not justified by the rules governing the increase in question. Until the persons concerned became eligible to claim their pensions, no entitlement could arise for them, even if they belonged to one of the categories provided for by the Law. According to the Constitutional Court, if the legislature had wanted to recognise an independent right, it would have ordered the relevant sums to be allocated immediately, on a periodic basis, to all those falling within the categories, irrespective of their social security status.

V. COURT OF CASSATION JUDGMENTS Nos. 27786/2009,  
27798/2009, 27800/2009 AND 27812/2009 OF 30 DECEMBER 2009

20. After Law no. 244/2007 had entered into force and judgment no. 401/2008 of the Constitutional Court had become enforceable, several judgments dismissed the applicants' complaints, including the Court of Cassation's judgments of 30 December 2009, nos. 27786, 27798, 27800 and 27812 (concerning Mr Filli, Mr Castro, Ms Delton and Ms Caenazzo). Those judgments held as follows.

21. The interpretation previously given by the Court of Cassation in its judgment no. 14285/05 (see paragraph 16 above) did not comply with the literal wording and rationale of Law no. 140/1985. In particular, as held in judgment no. 401/2008 of the Constitutional Court, the legislature had intended for the increase in question to be a pension increase, and not an independent benefit. Therefore, it was not possible to envisage it being adjusted in line with the cost of living from the time when the relevant pension did not yet exist (from the time of the entry into force of Law no. 140/1985). In dismissing the applicants' complaints, the Court of Cassation therefore held that the question of constitutional legitimacy raised by the applicants, as well as the entry into force of Law no. 244/2007, were completely irrelevant. In fact, the disputes had to be resolved on the basis that the increase had to be adjusted in line with the cost of living upon retirement, and not from the entry into force of Law no. 140/1985.

## THE LAW

### I. PRELIMINARY ISSUE CONCERNING DEATH OF EIGHT APPLICANTS

22. On 16 September 2019 the Government informed the Court that Mr Bosco, Mr Castro, Mr Devecchi, Ms Durin, Mr Filli, Mr Pareti, Ms Pedrazzini and Mr Perilli had died on various dates, as indicated in the appended table.

23. The applicants' lawyer did not submit any observations in reply to the Government's submissions.

24. The Court notes that following the above-mentioned applicants' death, no heir or close family member expressed a wish to pursue the proceedings in their stead. The Court further considers that there is no general interest which would necessitate proceeding with the examination of the complaints raised by the above-mentioned applicants.

25. In such circumstances, the Court finds that the conditions provided for by Article 37 § 1(c) of the Convention are satisfied and that it is appropriate to strike out of the list of cases the part of the application concerning the complaints lodged by Mr Bosco, Mr Castro, Mr Devecchi, Ms Durin, Mr Filli, Mr Pareti, Ms Pedrazzini and Mr Perilli.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

26. The applicants complained that the legislative intervention – namely the enactment of Law no. 244/2007, which changed well-established case-law while proceedings were pending – had denied them their right to a fair hearing under Article 6 § 1 of the Convention, which reads as follows:

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

### A. Admissibility

#### 1. *Non-exhaustion of domestic remedies*

27. The Government submitted that Mr T. Maggio had not correctly exhausted domestic remedies, in that he had not appealed to the Court of Cassation against the judgment of the Turin Court of Appeal which had set aside his claims following the entry into force of Law no. 244/2007 (see paragraph 13 above).

28. The applicant did not contest the Government’s submissions.

29. The Court notes that the applicant attached to his application a judgment of the Court of Cassation (no. 9249/2010) which concerned another person, Mr A. Maggio.

30. However, even accepting that the applicant did not appeal to the Court of Cassation against the Turin Court of Appeal judgment, the Court notes that it has repeatedly affirmed that the obligation under Article 35 § 1 of the Convention requires only that an applicant should have normal recourse to the remedies likely to be effective, adequate and accessible. In particular, the only remedies which the Convention requires to be exhausted are those that relate to the breaches alleged and are at the same time available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009, with further references to the Court’s case-law).

31. The Court notes that the Government have not shown that the remedies which the applicant could have used to contest the application of Law no. 244/2007 had any prospects of success. Moreover, it notes that the judges of the Court of Appeal and the Court of Cassation were required to apply Law no. 244/2007 in the proceedings before them. This determined the substance of the dispute and made it pointless for the applicant to carry on with the litigation (see *Maggio and Others v. Italy*, nos. 46286/09 and 4 others, § 44, 31 May 2011).

32. It follows that the Government’s preliminary objection in respect of Mr T. Maggio on the grounds of non-exhaustion must be dismissed.

2. *No significant disadvantage*

33. The Government further maintained that the applicants had not suffered a significant disadvantage. They argued that the difference between the increased amount that should have been received in the absence of Law no. 244/2007 and the amount actually received was extremely small, even zero in some cases.

34. The applicants submitted no written observations, arguments or evidence to contest the Government's calculations.

35. The general principle *de minimis non curat praetor* underlies the logic of Article 35 § 3 (b), which strives to warrant consideration by an international court of only those cases where violation of a right has reached a minimum level of severity. Violations which are purely technical and insignificant outside a formalistic framework do not merit European supervision. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case (see, among many other authorities, *Shefer v. Russia* (dec.), no. 45175/04, § 18, 13 March 2012).

36. Having regard to the amounts indicated in the appended table and the Government's calculations, which took into account the difference between what should have been paid to the applicants as a pension in the absence of Law no. 244/2007 and the amount actually received, the Court finds that Ms Ariella Bassanese, Ms Bussio, Ms Genti, Ms Grabar, Ms Sorgini and Ms Usilla did not suffer any significant disadvantage.

37. The Court also notes that "respect for human rights", as defined in the Convention and the Protocols thereto, does not require examination of the present complaint on the merits as far as the above-mentioned applicants are concerned, since the problem of legislative interference with pending proceedings has already been addressed in several of the Court's judgments against Italy (see, among many other authorities, *Maggio and Others v. Italy*, cited above, §§ 43-50, and *Stefanetti and Others v. Italy* (merits), nos. 21838/10 and 7 others, §§ 38-44, 15 April 2014), and will in any event be addressed in this judgment in respect of the remaining applicants.

38. Lastly, the third criterion under Article 35 § 3 (b) does not allow the rejection of an application if the case has not been "duly considered by a domestic tribunal". The purpose of this criterion is to ensure that every case receives a judicial examination, whether at national level or at European level, in other words, to avoid a denial of justice (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010).

39. As far as the above-mentioned applicants are concerned, the Court notes that the alleged violation, namely the interference with pending proceedings, occurred at final instance within the domestic legal system, that is to say, before the Court of Cassation. When examining whether the "significant disadvantage" admissibility criterion has been satisfied in cases where applicants allege a violation of the Convention by a last-instance judicial authority of the domestic legal system, the Court may dispense with



the requirement laid down in Article 35 § 3 (b) of the Convention whereby no case may be rejected on that ground unless it has been “duly considered by a domestic tribunal”. To construe the contrary would prevent the Court from rejecting any claim, however insignificant, relating to alleged violations imputable to a national last-instance judicial authority. Such an approach would be neither appropriate nor consistent with the object and purpose of Article 35 § 3 (b) of the Convention (see *Çelik v. the Netherlands*, 12810/13, § 40, 27 August 2013).

40. In view of the above considerations, the Court finds that the part of the application concerning the complaints lodged by Ms Ariella Bassanese, Ms Bussio, Ms Genti, Ms Grabar, Ms Sorgini and Ms Usilla must be declared inadmissible pursuant to Article 35 §§ 3 (b) and 4 of the Convention.

41. As to the remaining applicants, the Court notes that the differences between the increased amounts that should have been received by the applicants in the absence of Law no. 244/2007 and the amounts actually received range from 434 EUR to 2,189 EUR.

42. Having regard to the financial impact on the applicants, and in particular the specific situation of the applicants, who were all pensioners of a certain age falling into one of the categories of vulnerable persons provided for by Law no. 336/1970, either directly or as heirs (see paragraph 5 above), the Court does not accept that the applicants have suffered no significant disadvantage as a result of the alleged violation of the Convention.

43. The Court accordingly dismisses the Government’s objection with regard to the remaining applicants. The Court notes that the complaint is not inadmissible on any other grounds; it must therefore be declared admissible.

## **B. Merits**

44. In their application, the applicants maintained that by enacting Law no. 244/2007, the Government had interfered in favour of a party in pending proceedings. Law no. 244/2007 had in fact introduced an interpretation of the relevant legal provisions which was diametrically opposed to the meaning given to them by the established case-law of the domestic courts, particularly after judgment no. 14285/2005 of the Court of Cassation (see paragraph 16 above).

45. First and foremost, the Government maintained that the law of authentic interpretation (section 2(505) of Law no. 244/2007, see paragraph 10 above) had not had any impact on the proceedings concerning several of the remaining applicants (namely Ms Sossich, Ms M. Sina, Ms Alida Bassanese, Mr Avellone, Ms R. Sina, Mr G. Sina, Ms Bruna Maisani, Mr E. Bassanese, Mr Xillovich, Ms Delton, Ms Mitton, Ms Caenazzo, Mr Bruno Maisani and Mr Rizzello), since the Court of Cassation had clearly stated that the question of constitutional legitimacy raised by the applicants and the entry into force of Law no. 244/2007 had been

completely irrelevant. According to the Court of Cassation, the disputes had to be resolved on the basis that the increase had to be adjusted upon retirement, and not from the entry into force of Law no. 140/1985 (see paragraph 20 above).

46. In a more general way, the Government maintained that Law no. 244/2007 had been based on compelling grounds of general interest and had not encroached upon the principle legal certainty. In particular, the purpose of the legislature's intervention in enacting Law no. 244/2007 had been to ensure respect for the original will of the legislature. The Government considered that there had been no unjustified interference with judicial decisions, nor any breach of legal certainty, because the interpretation of the Law had not been consistent and long-standing. In particular, they maintained that only one judgment of the Court of Cassation, no. 14285/2005 (see paragraph 16 above), had ruled against the practice of the INPS.

47. The Court has repeatedly held 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, *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 9 others, § 57, ECHR 1999-VII, and *Stefanetti and Others v. Italy*, cited above, § 38).

48. The Court is not persuaded by the arguments advanced by the Government that the disputes were not decided on the basis of the law of authentic interpretation. While it is true that in the judgments mentioned by the Government (see paragraph 45 above) the Court of Cassation expressly maintained that the outcome would have been the same, since the disputes had to be resolved on the basis of the new interpretation, the Court notes that such an interpretation followed the approach of the Constitutional Court in judgment no. 401/2008 (see paragraph 18 above), which in turn concerned the constitutionality of Law no. 244/2007.

49. The Court notes that the Government did not submit any judgment of the Court of Cassation predating the enactment of the Law that had endorsed the position of the INPS. On the contrary, the Court notes that before the enactment of Law no. 244/2007 the domestic courts repeatedly found in favour of the applicants' position, and the interpretation of the relevant legal provisions was also endorsed by the Court of Cassation on one occasion (see paragraph 10 above). Given that the legal provisions had mostly been interpreted in favour of the applicants during the decades when the adjustment of the increase in line with the cost of living had been challenged in the domestic courts, it follows that the legislative interference (shifting the balance in favour of one of the parties) in the present case was not foreseeable.

50. In reality, the enactment of Law 244/2007 when the proceedings were pending did determine the substance of the disputes. Indeed, the Law had the effect of definitively modifying the outcome of the pending litigation to which the State was a party, endorsing the State's position to the applicants' detriment.

51. Lastly, even accepting that the State was attempting to adjust a situation it had not originally intended to create and ensure respect for the original will of the legislature, it could have done so without resorting to a retrospective application of the law (see, *mutatis mutandis*, *Stefanetti and Others v. Italy*, cited above, § 43).

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

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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.”

54. The applicants did not submit any claims for just satisfaction or costs and expenses in accordance with the requirements of by Rule 60 of the Rules of Court. Accordingly, the Court considers that there is no call to award them any sum on that account.

### FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application in respect of applicants 6, 8, 10, 11, 12, 20, 21 and 22 out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;
2. *Declares* the application inadmissible in respect of applicants 2, 4, 13, 14, 27 and 29;
3. *Declares* the application admissible in respect of applicants 1, 3, 5, 7, 9, 15, 16, 17, 18, 19, 23, 24, 25, 26, 28 and 30;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 9 July 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener  
Deputy Registrar

Pere Pastor Vilanova  
President

## APPENDIX

## List of applicants

No.	Applicant's name	Date of birth	Date of death	Nationality	Place of residence	Date application lodged	Difference between the increased amount that should have been received in the absence of Law no. 244/2007 and the amount actually received (in EUR), according to the calculations of the INPS
1	Leonardo AVELLONE	19/10/1943		Italian	Turin	21/11/2009	1.215
2	Vanda Zoia BUSSIO	07/11/1926		Italian	Turin	21/11/2009	0
3	Alida BASSANESE	08/04/1944		Italian	Turin	21/11/2009	2.098
4	Ariella BASSANESE	04/07/1946		Italian	Turin	21/11/2009	28
5	Ezio BASSANESE	27/11/1939		Italian	Turin	21/11/2009	2.003
6	Giorgio BOSCO	22/01/1931	11/11/2011	Italian	Turin	31/05/2010	1.308
7	Giustina CAENAZZO	02/11/1948		Italian	Turin	31/05/2010	1.102
8	Remigio CASTRO	29/05/1946	13/01/2012	Italian	Turin	31/05/2010	1.162
9	Laura DELTON	14/03/1939		Italian	Turin	31/05/2010	2.189
10	Giuseppe DEVECCHI	19/11/1943	14/02/2013	Italian	Lombardore (To)	21/11/2009	85
11	Assunta DURIN	13/08/1943	14/09/2012	Italian	Turin	21/11/2009	1.357
12	Giovanni FILLI	19/05/1936	07/08/2016	Italian	Turin	31/05/2010	1.089
13	Anna Maria GENTI	04/08/1943		Italian	Turin	21/11/2009	0
14	Angela Maria GRABAR	01/11/1948		Italian	Turin	21/11/2009	0
							<b>Difference between the</b>

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					residence	application lodged	increased amount that should have been received in the absence of Law no. 244/2007 and the amount actually received (in EUR), according to the calculations of the INPS
15	Teodoro MAGGIO	10/11/1938		Italian	Turin	31/05/2010	1.408
16	Bruna MAISANI	15/10/1943		Italian	Turin	21/11/2009	1.531
17	Bruno MAISANI	24/01/1942		Italian	Turin	31/05/2010	898
18	Jolanda MELON	30/07/1946		Italian	Turin	31/05/2010	1.160
19	Pierina MITTON	16/04/1945		Italian	Turin	31/05/2010	2.090
20	Sergio PARETI	04/11/1940	09/01/2012	Italian	Turin	31/05/2010	221
21	Celestina PEDRAZZINI	02/04/1911	10/10/2012	Italian	Turin	21/11/2009	949
22	Fioravante PERILLI	09/02/1939	13/08/2013	Italian	Turin	21/11/2009	13
23	Claudio RIZZELLO	25/10/1948		Italian	Turin	24/11/2011	907
24	Giuseppe SINA	18/02/1939		Italian	Turin	21/11/2009	434
25	Margherita SINA	09/01/1942		Italian	Rivoli (To)	21/11/2009	1.332
26	Renata SINA	05/07/1943		Italian	Turin	21/11/2009	1.043
27	Teresa SORGINI	03/02/1943		Italian	Turin	21/11/2009	0
28	Livia SOSSICH	14/09/1944		Italian	Turin	21/11/2009	1.804
29	Marisa USILLA	26/12/1944		Italian	Turin	21/11/2009	0
30	Aldo XILLOVICH	16/07/1937		Italian	Turin	31/05/2010	1.945