



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

FIRST SECTION

CASE OF CIANCHELLA AND OTHERS v. ITALY

*(Applications nos. 65808/13 and 2 others –
see list in the appendix)*

JUDGMENT

STRASBOURG

23 June 2022

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

In the case of Cianchella and Others v. Italy,

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

Péter Paczolay, *President*,

Raffaele Sabato,

Davor Derenčinović, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the applications (no. 65808/13, no. 58494/14 and no. 66370/14) 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 the applicants listed in the appended table, (“the applicants”), on the various dates indicated therein;

the decision to give notice of the applications to the Italian Government (“the Government”) represented by their former co-Agent, Ms P. Accardo;

the parties’ observations;

Having deliberated in private on 31 May 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns legislative intervention in the course of ongoing civil proceedings. The applicants complained that the enactment of Law no. 296 of 27 December 2006 (“Law no. 296/2006”) had violated their right to a fair hearing under Article 6 § 1 of the Convention.

2. The circumstances of the case are analogous to those described in *D’Amico v. Italy* (no. 46586/14, 17 February 2022).

3. Following their spouses’ death, the applicants received a survivor’s pension calculated as 60% of the pension originally paid to their late husbands. The applicants brought proceedings against the *Istituto Nazionale della Previdenza Sociale* (“INPS”) and the *Istituto Nazionale di Previdenza per i Dipendenti dell’Amministrazione Pubblica* (“INPDAP”, whose functions, following its abolition in 2011, are currently carried out by the INPS), complaining that a special supplementary allowance (*indennità integrativa speciale* – “the IIS”) which formed part of their spouses’ pension should have been paid in its entirety, that is, as an ancillary allowance rather than as a percentage of the benefit originally paid. The applicants relied on the relevant laws applicable at the time their late husbands began to receive their pensions, according to which the pension paid to the survivor of a public-sector employee was calculated as a percentage of only the fixed salary element, and the ancillary allowances were paid in full. They considered that section 15(5) of Law no. 724/1994 had preserved arrangements already in place and, while Law no. 335/1995 had subsequently extended the rules governing survivors’ pensions to all forms of the general

compulsory insurance scheme, the new system only applied to direct pensions which had been paid after 1 January 1995.

4. While those proceedings were pending before the Lazio Court of Auditors, Law no. 296/2006 entered into force. Section 1(774) of that Law provided an authentic interpretation of section 1(41) of Law no. 335/1995, establishing that, in instances where survivors' pensions were received after the entry into force of Law no. 335/1995, regardless of the date of the payment of the direct pension, the IIS had to be paid as a percentage, forming an integral part of the main pension. Pursuant to the entry into force of Law no. 296/2006, the Lazio Court of Auditors dismissed the applicants' claims. The decisions were upheld by the Central Section of the Court of Auditors.

5. Relying on Article 6 § 1 of the Convention, the applicants complained that the enactment of Law no. 296/2006, which departed from well-established case-law while the proceedings in their case were still pending, had violated their right to a fair hearing.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

7. The applicants complained, under Article 6 § 1 of the Convention, that the enactment of Section 1(774) of Law no. 296/2006 had violated their right to a fair hearing.

8. The complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

9. The general principles concerning interference by the legislature with the administration of justice have been summarised in *Zielinski and Pradal and Gonzalez and Others v. France* ([GC], nos. 24846/94 and 9 others, §§ 57, 59 and 132, ECHR 1999-VII), and *Maggio and Others v. Italy* (nos. 46286/09 and 4 others, §§ 45-47, 31 May 2011).

10. The Court has already examined complaints identical to the ones presented in this case in *D'Amico* (cited above, §§ 34-38), and found a violation of Article 6 § 1 of the Convention.

11. The Court finds no reason to depart from its considerations in the aforementioned judgment in the present case. The enactment of Section 1(774) of Law no. 296/2006 while the proceedings brought by the applicants were pending determined the substance of their disputes, and its application by the national courts made it pointless for them to carry on with

the litigation. Thus, the law had the effect of definitively altering the outcome of the pending litigation to which the State was a party, endorsing the State's position to the applicants' detriment.

12. As to the reasons adduced by the Government to justify such interference by the legislature, the Court reiterates that financial considerations cannot by themselves warrant the legislature substituting itself for the courts in order to settle disputes and that, while the aim to achieve a homogeneous pension system, in particular by abolishing a system which favoured pensioners of the public sector over others, could be considered a reason of some general interest, it is not compelling enough to overcome the dangers inherent in the use of retrospective legislation, which has the effect of influencing the judicial determination of a pending dispute.

13. There has accordingly been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. The applicants in applications nos. 58494/14 and 66370/14 failed to submit claims for just satisfaction and costs and expenses within the time-limit set by the Court. Accordingly, the Court considers that there is no call to award them any sum on that account.

15. The applicant in application no. 65808/13 claimed 200,000 euros (EUR) in respect of pecuniary and non-pecuniary damage and EUR 14,307 in respect of costs and expenses incurred before the Court.

16. The Government did not submit any comments on those claims.

17. Making its assessment on an equitable basis as required by Article 41, the Court awards the applicant in application no. 65808/13 EUR 4,804 in respect of pecuniary damage and EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and dismisses the remainder of the claims.

18. 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. In the present case, the applicant did no more than refer to the scale of fees set out in the Ministerial Decree no 55 of 10 March 2014 in respect of her legal representatives' claims and failed to submit any supporting documents such as invoices or any proof of payment capable of showing that the claimed costs and expenses had actually been incurred. The Court therefore rejects the claim made under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay to the applicant in application no. 65808/13, within three months, the following amounts:
 - (b) EUR 4,804 (four thousand eight hundred and four euros) in respect of pecuniary damage;
 - (c) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (d) 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;
5. *Dismisses* the remainder of the claims for just satisfaction.

Done in English, and notified in writing on 23 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Péter Paczolay
President

CIANCHELLA AND OTHERS v. ITALY JUDGMENT

APPENDIX

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	65808/13	Cianchella v. Italy	09/10/2013	Pasqualina CIANCHELLA 1928 Viterbo Italian	Ferdinando Emilio ABBATE
2.	58494/14	Masini v. Italy	13/08/2014	Pierina MASINI 1942 Viterbo Italian	Massimo PISTILLI
3.	66370/14	Trape' v. Italy	02/10/2014	Leonide TRAPE' 1939 Montefiascone (VT) Italian	Massimo PISTILLI