



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

SECOND SECTION

**CASE OF AZIENDA AGRICOLA SILVERFUNGHI S.A.S. AND
OTHERS v. ITALY**

(Applications nos. 48357/07, 52677/07, 52687/07 and 52701/07)

JUDGMENT

STRASBOURG

24 June 2014

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 Azienda Agricola Silverfunghi S.a.s. and Others v. Italy,

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

Işıl Karakaş, *President*,

Guido Raimondi,

Nebojša Vučinić,

Helen Keller,

Paul Lemmens,

Egidijus Kūris,

Robert Spano, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 27 May 2014,

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

PROCEDURE

1. The case originated in four applications (nos. 48357/07, 52677/0/07, 52687/07 and 52701/07) 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”) in 2007 by four firms with registered addresses in Italy (see Annex for details).

2. The applicant companies were represented by Ms Alessandra Mari, a lawyer practising in Rome. The Italian Government (“the Government”) were represented by their Agent Ms Ersiliagrazia Spatafora and their Co-Agent, Ms Paola Accardo.

3. The applicant companies alleged that they had suffered a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention as a result of legislative intervention in pending proceedings.

4. On 11 October 2012 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The background to the cases

5. The applicants are agricultural firms operating in northern and/or disadvantaged areas in Italy as defined in the relevant Italian laws.

6. In the 1980s the Italian legislator instituted a series of norms to favour economic activity in general and, more specifically, agricultural activity.

7. More precisely, Article 1(6) of Law no. 48 of 1988 (Legislative Decree no. 536 of 30 December 1987) (see “Relevant domestic law”, below) provided a concession (*fiscalizzazione*), namely, that as of 1 January 1987 the State would bear a portion of the contributions paid by employers in the agricultural sector for the purposes of Article 31(1) of Law no. 41/48 in respect of each employee.

8. Furthermore, Article 9(5) of Law No. 67 of 1988 (*Legge finanziaria 1988*) (see “Relevant domestic law” below) introduced a system of exemptions (*sgravi contributivi*) in respect of payments for the purposes of premiums and contributions related to welfare and assistance. Such payments were due in the measure of 15% (later 30%) by employers in the agricultural sector in northern regions and 40% (later 60%) by employers in the agricultural sector working in disadvantaged agricultural zones in the south of Italy.

9. According to the applicant companies, Article 9(6) of Law No. 67 of 1988 (see “Relevant domestic law” below) indicated that the latter benefit was not alternative to the one provided for by Law no. 48 of 1988. That sub-article specified that for the purposes of the calculation of the exemption mentioned above, the concession was not to be taken into account. This, they considered, was also clear from the explanatory memorandum (*scheda di lettura*) to the law (see “Relevant domestic law” below).

10. Following further normative changes between 1988 and 1996, the burden to be taken over by the State amounted to the following:

a) 85,000 Italian lire (approximately 44 euros (EUR)) per employee for twelve monthly salaries;

b) a global 5.62 percentage points for exemptions in respect of contributions for the purposes of TBC (Tuberculosis), ENAOLI (Orphans of Italian Employees) and the SSN (National Health Service);

c) a global 4.92 percentage points for exemptions regarding the said contributions in respect of labourers and 5.02 percentage points for employees and directors, as from 1 June 1996.

11. Despite the law, by circular no. 160 of 18 July 1988 the *Istituto Nazionale della Previdenza Sociale* (“INPS”), an Italian welfare entity, considered that the two benefits (concession and exemption) could not be accumulated and had to be considered as alternative.

12. In fact, the applicant companies benefited only from the exemption (*sgravi contributivi*) and not from the concession (*fiscalizzazione*). They considered that this interpretation was contrary to what was provided for in the law.

13. Indeed, from as early as 1994 a number of agricultural firms (in particular Floramiata Spa) instituted proceedings (following administrative refusals) complaining about the matter, and consistent case-law in favour of

the agricultural firms was established by the Italian courts, including the Court of Cassation. The applicant companies submitted that between 1997 and 2003 more than twenty-five first-instance judgments and more than five appeal judgments on the same subject matter had been delivered, together with two Court of Cassation judgments (see “Relevant domestic law and practice”, below) finding in favour of the agricultural firms.

14. In this light, in 2000/2002 the applicant companies instituted proceedings as explained below. Pending these judicial proceedings Law no. 326 of 24 November 2003 (hereinafter Law no. 326/03) was enacted (see “Relevant domestic law” below), providing that the benefits could not be accumulated.

15. By judgment no. 274 of 7 July 2006 the Constitutional Court considered that Law no. 326/03 was legitimate and not unconstitutional (see “Relevant domestic law and practice” below).

B. The domestic proceedings instituted by the applicant companies

1. Azienda Agricola Silverfunghi S.a.s

16. On 7 November 2000 the applicant company requested the INPS to return the monies which it had held contrary to what was provided for by law when it failed to apply the concession in its respect, for the period between 1 April 1990 and 31 December 1997, amounting to 173,738,951 Italian lire (approximately EUR 90,000) plus interest and subject to revaluation.

17. The INPS’s failure to reply amounting to an implicit rejection (*silenzio-rifiuto*), on 26 June 2001 the applicant company instituted an administrative procedure before the INPS. The latter again failed to reply.

18. Thus, on 4 January 2002 the applicant company instituted judicial proceedings to recover the monies due (as mentioned above) for the period not covered by prescription (2000 onwards).

19. By a judgment (no. 56/2003) of 13 February 2003 the Bergamo Tribunal found in favour of the applicant company. Considering that the two benefits could be accumulated and that the applicant company had paid the relevant dues, it ordered the INPS to pay back the misappropriated sums (from 2000 onwards), with interest and subject to revaluation, and to pay its share of the costs of the proceedings.

20. By a judgment (no. 276/03) of 25 September 2003 filed in the relevant registry on 4 November 2003 the Brescia Court of Appeal dismissed the INPS’s appeal and upheld the first-instance judgment.

21. Following the entry into force of Law no. 326/03 the INPS appealed to the Court of Cassation.

22. The applicant company cross-appealed, arguing that the application of Law no. 326 of 24 November 2003 to its case would amount to a

violation of Article 6 of the Convention and a violation of the Italian Constitution in so far as it obliged the State to abide by the European Convention, a matter which had not been considered at all by the Constitutional Court in its judgment of 7 July 2006.

23. By a judgment (no. 10110/07) filed in the relevant registry on 2 May 2007 the INPS's appeal was allowed by the Court of Cassation on the basis of Law no. 326/03. The remaining grounds of appeal were dismissed on the basis that Law no. 326/03 had an authentic interpretative nature and was therefore only apparently retroactive, it having now been given the original intended meaning of the law. Indeed, as a thorough examination of the relevant laws revealed, the benefits at issue could not be awarded cumulatively; rather, one had to identify the most favourable benefits to a firm according to its specific position. Furthermore, the State had legitimate discretion to decide whether benefits could be granted cumulatively or not, thus no issue relating to a fair trial could be considered to arise. Each party was to bear its own costs for the entire proceedings.

2. *Scarpellini S.r.l*

24. On 9 July 2001 and again on 29 January 2002 the applicant company requested the INPS to return the monies which it had withheld contrary to what was provided for by law when it failed to apply the concession in its respect, for the period between 1 April 1990 and 31 December 1997, amounting to 413,928,856 Italian lire (approximately EUR 213,776) plus interest and subject to revaluation.

25. The INPS's failure to reply amounting to an implicit rejection (*silenzio-rifiuto*), on 7 June 2002 the applicant company instituted an administrative procedure before the INPS. The latter again failed to reply.

26. Thus, on 11 June 2002 the applicant company instituted judicial proceedings to recover the monies due (as mentioned above) for the period not covered by prescription.

27. By a judgment (no. 58/2003) of 13 February 2003 the Bergamo Tribunal found in favour of the applicant company. Holding that the two benefits could be accumulated and that the applicant had paid the relevant dues, it ordered the INPS to pay back the misappropriated sums (from 2001 onwards, the date on which prescription was interrupted), with interest and subject to revaluation, and to pay its share of the costs of the proceedings.

28. By a judgment (no. 277/03) of 25 September 2003 filed in the relevant registry on 4 November 2003 the Brescia Court of Appeal dismissed the INPS's appeal and upheld the first-instance judgment.

29. Following the entry into force of Law no. 326 of 24 November 2003 the INPS appealed to the Court of Cassation.

30. The applicant company cross-appealed along the lines mentioned above.

31. By a judgment (no. 12863/07) filed in the relevant registry on 1 June 2007 the INPS's appeal was allowed by the Court of Cassation on the basis of Law no. 326 of 24 November 2003. The remaining grounds of appeal were dismissed for the same reasons outlined above. Each party was to bear its own costs for the entire proceedings.

3. *SAP Pietrafitta S.r.l.*

32. On 14 and 30 July 1999 the applicant company requested the INPS to return the monies which it had withheld contrary to what was provided for by law when it failed to apply the concession in its respect, for the period between 1 January 1989 and 31 December 1997, amounting to 210,609,000 Italian lire (approximately EUR 108,770) plus interest and subject to revaluation.

33. The INPS failed to reply.

34. Thus, on 25 January 2000 the applicant company instituted judicial proceedings to recover the monies due (as mentioned above) for the period not covered by prescription.

35. By a judgment (no. 8/2001) of 3 April 2001 the Siena Tribunal found in favour of the applicant company. Considering that the two benefits could be accumulated and that the applicant had paid the relevant dues, it ordered the INPS to pay back the misappropriated sums, with interest and revaluation (from 1999, the date of its administrative claim, onwards), together with the full costs of the proceedings.

36. By a judgment (no. 249/02) of 16 April 2002 filed in the relevant registry on 24 April 2002 the Florence Court of Appeal dismissed the INPS's appeal and upheld the first-instance judgment.

37. Following the entry into force of Law no. 326 of 24 November 2003 the INPS appealed to the Court of Cassation.

38. The applicant company cross-appealed along the lines mentioned above.

39. By a judgment (no. 13291/07) filed in the relevant registry on 7 June 2007 the INPS's appeal was allowed by the Court of Cassation on the basis of Law no. 326 of 24 November 2003. The remaining grounds of appeal were dismissed for the same reasons outlined above. Each party was to bear its own costs for the entire proceedings.

4. *Floricultura Zanchi*

40. On 10 December 2001 the applicant company requested the INPS to return the monies which it had withheld contrary to what was provided for by law when it failed to apply the concession in its respect, for the period between 1 April 1991 and 31 December 1997, amounting to 163,373,972 Italian lire (approximately EUR 84,375) plus interest and revaluation.

41. The INPS's failure to reply amounting to an implicit rejection (*silenzio-rifiuto*), on 15 May 2002 the applicant company instituted an administrative procedure before the INPS. The latter again failed to reply.

42. Thus, on 11 September 2002 the applicant company instituted judicial proceedings to recover the monies due (as mentioned above) for the period not covered by prescription (2001 onwards).

43. By a judgment (no. 57/2003) of 13 February 2003 the Bergamo Tribunal found in favour of the applicant company. Considering that the two benefits could be accumulated and that the applicant had paid the relevant dues, it ordered the INPS to pay back the misappropriated sums, with interest and subject to revaluation (from 2001 onwards), and to pay its share of the costs of the proceedings.

44. By a judgment (no. 278/03) of 25 September 2003 filed in the relevant registry on 4 November 2003 the Brescia Court of Appeal dismissed the INPS's appeal and upheld the first-instance judgment.

45. Following the entry into force of Law no. 326 of 24 November 2003 the INPS appealed to the Court of Cassation.

46. The applicant company cross-appealed along the lines mentioned above.

47. By a judgment (no. 12864/07) filed in the relevant registry on 1 June 2007 the INPS's appeal was allowed by the Court of Cassation on the basis of Law no. 326 of 24 November 2003. The remaining grounds of appeal were dismissed for the same reasons outlined above. Each party was to bear its own costs for the entire proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Concession (*fiscalizzazione degli oneri sociali*)

48. Article 1(6) of Law no. 48 of 1988 (Legislative Decree no. 536 of 30 December 1987) reads as follows:

“A reduction of contributions for the purposes of Article 31 sub-article 1 of Law no. 41/48, of Lire 133.000 per employee, is granted to employers in the agricultural sector to run from 1 January 1987 throughout the salary period up to 30 November 1988, for every monthly payment up to the twelfth month included. Such a reduction does not apply to employers in the agricultural sector who operate in the territories mentioned in Article 1 of the laws on interventions in the South of Italy (*il Mezzogiorno*) (*testo unico*) approved by Decree no. 218 of the President of the Republic of 6 March 1978.”

B. Exemptions (*sgravi contributivi*)

49. Article 9(5) and (6) of Law No. 67 of 1988 (*legge finanziaria 1988*) read as follows:

“(5) As from 1 January 1988, premiums and contributions related to welfare and assistance in respect of employees, whether on indeterminate or determinate duration contracts, are due in the measure of 15% by their employers in the agricultural sector in Northern regions in accordance with Article 9 of Decree no. 601 of the President of the Republic of 29 September 1973. The said premiums and contributions are due in the measure of 40% by employers in the agricultural sector operating in disadvantaged agricultural zones as defined in Article 15 of Law no. 984 of 1977 and in the measure of 20% by employers in the agricultural sector operating in disadvantaged agricultural zones as defined in Article 1 of the laws on interventions in the South of Italy (*il Mezzogiorno*) (*testo unico*) approved by Decree no. 218 of the President of the Republic of 6 March 1978.

(6) For the purposes of the calculation of the exemption mentioned in sub-article 5, the concession (*fiscalizzazione*) provided for in Article 1 sub-articles 5 and 6 of Legislative Decree no. 536 of 30 December 1987 as modified by Law no. 48 of 1988, is not to be taken into account.”

50. According to the explanatory memorandum (*scheda di lettura*) in respect of sub-article 6, the amount of premiums and contributions due is arrived at by, firstly, calculating the percentage of exemption applicable according to the different rates provided by sub-article 5 of the text and subsequently subtracting the share, per head, of the concession and percentage established in sub-articles 5 and 6 of Article 1 of Legislative Decree 536/1987.

C. Law no. 326 of 24 November 2003

51. Law no. 326 of 24 November 2003, entitled Urgent dispositions to favour development and to adjust the trend in public finances, in so far as relevant, reads as follows:

“Article 9 sub-article 6 of Law No. 67 of 1988 together with any subsequent modifications, must be interpreted to the effect that the exemption referred to in its sub-article 5 (...) cannot be accumulated with the benefits provided for in (...) Law no. 48 of 1988.”

52. According to the *travaux préparatoires* the law provided an authentic interpretation of the non-cumulability of the two benefits, in relation to which a significant number of proceedings had been instituted, with the courts taking the opposite view than that taken and applied in practice by the INPS. Thus, the norm was intended to avoid greater burdens than those which had been borne in previous years.

D. Case-law before the enactment of Law no. 326 of 24 November 2003

1. *Court of Cassation judgment no. 14227/00 of 14 July 2000 filed in the relevant registry on 27 October 2000 in the case of Floramiata Spa (upholding first-instance judgment no. 267/1996 of 31 October 1996 and judgment on appeal no. 85/1998 of 8 February 1998).*

53. The Court of Cassation held that the two benefits (concessions and exemptions) were not incompatible. They had been provided for by different laws and had different aims. Thus, if a firm fulfilled the requirements to be eligible for both benefits, they could not be denied. It considered that the INPS had not submitted any relevant arguments, save for a reiteration of the text of the impugned law. According to the Court of Cassation, by means of Article 9(6) of Law No. 67 of 1988, the legislator had wished to specify that the exemption was to be applied to the entire rate and not to the rate resulting after concession, thus excluding the incompatibility of the two benefits and presupposing the enjoyment of both contemporaneously. The Court of Cassation noted that when the legislator had wished to exclude the application of the concession to employers operating in the South, it had specifically done so (as in Legislative decree no. 536 of 1987). However, the legislator had made no mention of employers operating in disadvantaged areas in the North.

2. *Court of Cassation judgment no. 17806/03 of 26 May 2003 filed in the relevant registry on 24 November 2003*

54. The Court of Cassation reiterated its finding in judgment no. 14227/00 of 27 October 2000 (above), considering that there was no reason to depart from those conclusions. Moreover, it noted that the theory that, in general, benefits could not be granted cumulatively had been proved false even by Article 68 of Legislative Decree No. 388 of 2000, which explicitly mentioned that certain benefits could not be granted cumulatively. Had it been a general principle no explicit statement by the legislator would have been required.

E. Constitutional Court judgment no. 274 of 7 July 2006 regarding the constitutionality of Law no. 326 of 24 November 2003

55. The Constitutional Court noted that the legislator had intervened due to the uncertainty created by a well-established administrative practice and supervening case-law to the contrary ten years later. It considered that it was not necessary to verify whether the enacted law had been interpretative (thus retroactive) or innovative with retroactive effect. Indeed, the prohibition on applying laws retroactively was a constitutional norm only

applicable to the criminal sphere. It considered that the legislator could enact both laws of authentic interpretation – which clarify and determine the extent of the original norm within the content of what was originally plausibly provided – and innovative ones with retroactive effect in so far as such retroactivity was reasonably justified and not in conflict with other values and interests protected by the Constitution. The Constitutional Court noted that a law of authentic interpretation could not be unreasonable in so far as it was limited to assigning to the provision to be interpreted a meaning which was already therein contained and which was one of the possible meanings of the original text. Indeed, in the present case, the prohibition on applying the benefits cumulatively had been one of the possible interpretations of Article 9(6) of Law No. 67 of 1988 which had immediately been contested by the INPS but which ten years later had been given another, indeed possible, meaning by the Court of Cassation. Given this state of uncertainty, the impugned law of authentic interpretation could not be considered unreasonable.

F. More recent case-law - Court of Cassation judgment no. 21692 of 25 June 2008

56. In this judgment the domestic court was again faced with the interpretation of the laws concerning the cumulability of benefits, the constitutionality of Law no. 326/2003 and the subsequent implications under Article 6 of the Convention.

57. Confirming the interpretative nature of Law no. 326/2003, it considered that even if the law were ignored, the interpretation (of the relevant provisions) which conformed to the *ratio legis* was that of the non-cumulability of the benefits at issue. While it was true that the court had twice considered that benefits could be applied cumulatively if i) they were provided to see to different needs and ii) if the law did not expressly prohibit such accumulation, in the present case the reasons justifying the relevant reductions overlapped in part. This was evident from the object, function and method of calculation of the benefits at issue. Thus, had they been intended to be cumulative, it would have had to be expressly provided for in law or authorised. The fact that the benefits at issue were not cumutable was further confirmed by an assessment of the entire legal framework concerning the subject matter, including, for example, other benefits available to the agricultural sector in general. It followed that the enactment of Law no. 326/2003 had no bearing on the interpretation of the provisions, and thus had no effects which were incompatible with Article 6 of the Convention.

THE LAW

I. JOINDER OF THE APPLICATIONS

58. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their similar factual and legal background.

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

59. The applicant companies complained that the enactment of Law no. 326/03 constituted a legislative interference in pending proceedings, in breach of their right to a fair trial as provided for by 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 ...”

60. The Government contested that argument.

A. Admissibility

61. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant companies' submissions

62. The applicant companies relied on the Court's principles regarding access to court and legislative intervention under Article 6 of the Convention, and referred in particular to the Court's judgment in *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-V). They considered that there existed no legitimate reasons or compelling general interest reasons which could allow the Italian legislator to legitimately intervene in pending proceedings by enacting a law with retroactive effect concerning facts which had already come to be and proceedings which had already been initiated, thus usurping the function of the judiciary and violating the applicants' right to a fair trial as well as impairing the very essence of their right to a court. Indeed, the only reason behind the intervention had been financial, namely to avoid payments in a number of judgments, at

first-instance and on appeal, which had found in favour of the applicant companies and other companies in the same position. This was clear even from the name of the law – Urgent dispositions to favour development and to adjust the trend in public finances (*Disposizioni urgenti per favorire lo sviluppo e la correzione dell'andamento dei conti pubblici*). Without the intervention, and in accordance with the established case-law arising from a multitude of cases including judgments of the Court of Cassation, the applicant companies' claims would have succeeded. However, the intervention ensured that, contrary to what had already been established, the INPS would be successful.

63. The applicant companies noted that the “interpretative” law was enacted fifteen years after the original law and in the absence of any divergent case-law. In fact, as from the year 1996 – with the first-instance judgment in the case of Floramiata Spa – until the legislative amendment, the domestic courts had consistently found in favour of companies in their situation. The established case-law had been based on the legislator's intention, as transpired from the explanatory memorandum issued by the Parliament study service (*servizio studi*)¹, and the relevant *travaux préparatoires*², and it therefore could not be said that the enacted law was an interpretative law – its meaning having been totally clear to the parliamentarians. That case-law had established that the benefits could be accumulated both on the basis of the literal meaning of the applicable norms, which were considered to be unequivocal, and on the basis of the rationale behind the two benefits, which had a different function and operated at different levels. Indeed, the applicant companies noted that on the one hand concessions were an instrument adopted by the legislator in lieu of a direct grant of State aid to all firms³ and on the other hand exemptions were direct benefits aimed at supporting employers in the agricultural sector who operated in zones and territories with particular disadvantages. They noted that the Court of Cassation had explicitly held that the two benefits were not incompatible and that they had been provided for by different laws and had different aims (see paragraph 53 and 54 above). In that light, according to the applicant companies, it could not have been considered an interpretative law and it had been referred to as such at the domestic level only to get away with a retroactive application of the law to accommodate the INPS, which had opted not to follow the evident meaning of the then applicable norms.

¹ Which stated that “the percentage of contributions [had] to be calculated without taking the concession into account” (“la percentuale dei contributi dovuti va calcolata senza ritenere conto delle quote fiscalizzate”).

² Where it was stated that “the norm [was] intended to avoid greater burdens than those borne in previous years” (“La norma è pertanto funzionale ad evitare maggiori oneri rispetto agli andamenti tendenziali con riferimento ai periodi pregressi”).

³ “Diritto e processo del lavoro e della previdenza sociale” G. Santoro Passarelli p.1174

64. Moreover, interpretative laws had to be considered as an exception to the rule, particularly given the importance of the separation of powers upon which a democratic society was founded and which provided that it was for the judiciary to interpret and apply laws and therefore to decide disputes. This was even more relevant when a dispute arose between a private party and the public administration. Ergo, even interpretative laws could not be used as an instrument by the legislator to favour the public administration, that is, itself. However, in Italy it was common practice to introduce “interpretative” provisions in matters involving financial interests to secure higher income (or lower expenditure) for the public administration. They referred, for instance, to the various considerations made by the Court of Cassation (in its highest formation) in judgment no. 25506 of 2006 concerning similar circumstances. They further referred to the Court’s judgments in *Maggio and Others v. Italy* (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 31 May 2011), *Agrati and Others v. Italy* (nos. 43549/08, 6107/09 and 5087/09, 7 June 2011), *Arras and Others v. Italy* (no. 17972/07, 14 February 2012), and *De Rosa v. Italy* (nos. 52888/08, 58528/08, 59194/08, 60462/08, 60473/08, 60628/08, 61116/08, 61131/08, 61139/08, 61143/08, 610/09, 4995/09, 5068/09 and 5141/09, 11 December 2012) where the Court had found violations of Article 6 resulting from the retroactive application of various so-called interpretative provisions, enacted solely for financial reasons.

65. The applicant companies distinguished their case from that of *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom* (nos. 21319/03, 21449/93 and 21675/93, 23 October 1997, *Reports of Judgments and Decisions* 1997-VII). They noted that they had been induced into error by the INPS, which had immediately applied the law in the most favourable way to it. Nevertheless, certain companies, particularly Floramiata Spa, had immediately, as early as 1993, taken administrative and subsequently judicial action against the INPS to contest the latter’s interpretation of the law by circular no. 160 of 1988. At the time, the agricultural associations had kept abreast of the developments in the pending case, keeping their members informed. The applicant companies, however, admitted that it was only after the positive final outcome for Floramiata Spa, decided by the Court of Cassation in 2000 – the first time such a body had determined the subject matter at issue – that the four (*sic*) applicant companies had introduced their own administrative and subsequently judicial claims. The applicant companies argued that, in respect of the preceding years, they had chosen to pay the dues demanded by the INPS (calculated on the basis of the impugned interpretation) to avoid the severe financial civil sanctions which would have been applied to them automatically, as well as to avoid the risk of criminal proceedings being brought against them for failure to

pay the relevant dues and any pursuant implications which could have led them into bankruptcy.

66. Nevertheless, the applicant companies considered that there were other factors which distinguished the instant case from the above-mentioned case where the United Kingdom Government and Parliament had officially and immediately declared their intention to correct the law by a norm of authentic interpretation which would have overcome the “technical defects” present in the original law. In the present case the legislator had introduced the “interpretative” law fifteen years after the enactment of the original law, during which time the Parliament had never raised any questions or doubts about the law. Moreover, the law had been introduced after at least (referring only to cases brought by the lawyers in the present case) 140 judgments (forty-three of which had become final, the INPS having failed to appeal) finding against the public entity, including two Court of Cassation judgments (see paragraphs 53 and 54 above), none of which had identified any “technical defects” in the formulation of the original law and none of which had referred to the even remote possibility of giving the self-evident law another interpretation. More importantly, the intention to do so had become apparent after the applicant companies had already obtained two judgments in their favour, at first-instance and on appeal. Furthermore, one could not ignore the difference between the attitude and manifest will of the United Kingdom Government and Parliament over the years and that of the Government in the present case. One also had to note the relationship between the Government and the INPS, an integral part of the State’s administration. Thus, it was reasonable to consider (even on the basis of the *travaux préparatoires* and other statements made in certain domestic judgments) that the INPS, having been unsuccessful in hundreds of proceedings, had itself solicited the executive to act in order to nullify the pronouncements against it, rendering devoid of any meaning the distinction between executive and judiciary, but enabling the improvement of its financial situation. Lastly, the Attorney General’s attitude towards the applicant companies’ case (see paragraph 68 below) also distinguished it from *National & Provincial Building Society* (cited above).

67. It followed that the same findings made by the Court in the above-mentioned case could not be made in the present case. It was rather the Government that had been opportunistic, hiding behind the excuse of the original intention of Parliament, despite judgments and materials indicating the contrary.

68. The applicant companies further submitted that in its judgment no. 274 of 7 July 2006 the Constitutional Court had not examined the constitutional legitimacy of the law on the basis of Article 6 of the Convention, namely the principle of a fair trial as also laid down in the Italian Constitution, and therefore it had not examined the constitutional legitimacy of the law in the light of the applicants’ arguments – the said

analyses having become customary only after the 2009 judgment in *Scoppola v. Italy* (no. 2) ([GC], no. 10249/03, 17 September 2009). Indeed, in its judgment no. 274 the Constitutional Court had made statements which were contradictory to the principles derived from Article 6, and moreover had not categorically stated that the norm was one of genuine interpretation (see paragraph 54 above). Furthermore, the relevance of the applicant companies' arguments had been evident also to the Attorney General to the Court of Cassation (*Procuratore Generale della Repubblica presso la Corte di Cassazione*) who had not considered the challenge under Article 6 as manifestly irrelevant or ill-founded and who had made statements such as "the claimants' reasonable expectation to see their claim granted" and "[the provision] influenced the judge's decision".

(b) The Government's submissions

69. The Government submitted that in allowing the INPS's appeal, in which the latter had pleaded *jus superveniens*, the Court of Cassation had considered that the supervening law was one of authentic interpretation which had intervened in order to regulate the relationship between different benefits. It provided for the rule that facilitations or tax reductions in favour of agricultural firms situated in mountainous territories or disadvantaged agricultural zones could not be accumulated with benefits or tax reductions in favour of agricultural firms in the south of Italy, or with contributory concessions in respect of illness for the financing of the National Health Service. One had to determine which category of territory (Southern Italy, Central-North, mountainous region, or disadvantaged agricultural zone) an agricultural firm fell under in order to identify which benefit was applicable to that firm.

70. The Government submitted that the enactment of and the authentic interpretation given to Law no. 326/03 was justified on the basis of compelling general interest reasons. On that issue, the Constitutional Court had delivered judgment no. 274 of 2006, holding that the impugned law did not minimise the role of the judiciary or violate the principle of *confiance legitime* (*sic*). It considered that the impossibility of cumulating such benefits had been one of the possible interpretations of the law as from the start. That interpretation had immediately been followed by the INPS, but was then contradicted by the Court of Cassation ten years later. Such a situation had created uncertainty and it had therefore been reasonable to intervene by means of a law of authentic interpretation. The Government further submitted that it had been necessary to enact Law no. 326/03 to re-establish the original interpretation of the applicable legal norms which had been applied consistently for ten years by the INPS but which had been given a different meaning by the domestic courts the first time the issue was brought before them (final judgment no. 14227 of 27 October 2000).

71. The Government considered that it was that judgment which then opened the doors to a number of firms which decided to bring proceedings to recover the extra sums they had paid. The interpretative law had therefore not upset the consistent consolidated case-law, but had simply clarified which of the two possible interpretations reflected the *ratio legis*. Referring to the Court of Cassation's judgment no. 21692 of 25 June 2008 (paragraph 57 above) and to a commentary on it by a specialised lawyer who had previously defended the INPS's position, the Government appealed to the Court to trust the domestic authorities with the interpretation of domestic laws, in the light of the applicable national legal framework.

72. They considered that it was of relevance that the applicant companies had acquiesced in paying their dues according to the INPS calculations for about a decade. In fact, until the first final judgment was issued on the matter in 2000, the applicant companies could not have based themselves on any case-law in their favour. Indeed, the Government noted that even in 2008 the Court of Cassation (judgment no. 21692) had considered that in the absence of an express provision one could not apply the cumulability of benefits and that that conclusion could already have been arrived at in 1988. It followed that the legislative intervention had had no bearing on the applicant companies' proceedings.

73. As to the applicant companies' reliance on the explanatory memorandum issued by the Parliament study service, the Government highlighted the Court of Cassation's conclusions (page 9 of the judgment) in that respect, namely, that "the document cannot be strictly attributed to the Acts of Parliament and the interpretive hypothesis formulated therein does not reflect the opinion of the members of Parliament who participated in the procedure by which the law was adopted".

74. The Government further submitted, at a late stage of the proceedings and only following further questions from the Court, that a strict interpretation concerning the cumulability of benefits was imposed by EU legislation concerning State grants. They noted that in 1992 the European Commission had opened infringement proceedings against Italy concerning such benefits, which disproportionately favoured certain enterprises.

75. In reply to the applicant companies' observations, the Government submitted that while it was true that at the time (2006) the Constitutional Court had not taken into consideration Article 6 of the Convention, the principles on which that court had based its judgment were found in the Italian Constitution and were similar to the principles set out in the Convention. Moreover, the Court's case-law had not expressly excluded any intervention pending proceedings by the legislature, which was the same line of reasoning taken up by the Constitutional Court, which had assessed whether compelling general interest reasons had existed and found that they had. In conclusion, apart from financial reasons, the aim of Law no. 326/03 had been to ensure respect for the original intention of the legislator. It was

not irrelevant that the subject matter in the case was in fact benefits given by the State, whether cumulatively or alone, and it was therefore not unreasonable for the legislator to intervene in order to clarify the applicable conditions for the obtaining of, and the limits to, such benefits.

2. *The Court's assessment*

(a) **General principles**

76. 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*, cited above, § 112; and *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII). 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). 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, and *Cabourdin v. France*, no. 60796/00, § 37, 11 April 2006).

(b) **Application to the present case**

77. The Court notes that, as shown by the Court of Cassation's judgments in the applicant companies' proceedings, the enactment of Law no. 326/03, while the proceedings were pending, in reality determined the substance of the disputes and the application of it by the Court of Cassation made it pointless for an entire group of companies in the applicant companies' positions to carry on with the litigation. Thus, the law had the effect of definitively modifying the outcome of the pending litigation, to which the State was a party, through one of its administrative entities, endorsing the State's position to the applicant companies' detriment, despite the latter having been successful at first-instance and on appeal.

78. The Court observes that the Government claimed that the intervention was necessary on the basis of compelling general interest reasons. They referred to financial considerations and the necessity of

establishing the original interpretation of the applicable legal norms, and relied on the findings of the Constitutional Court on the matter. The Court observes that the Constitutional Court considered the intervention necessary due to the uncertainty created by a consistent administrative practice and supervening case-law to the contrary ten years later. It further considered that the law was not unreasonable since it had simply opted for one of the possible meanings of the original text.

79. The Court firstly observes that as early as 1988, when the original law was promulgated, the INPS applied the interpretation of the law which was most favourable to it as the disbursing authority. That law was not contested up until 1993, when Floramiata Spa initiated its administrative requests, which were followed by judicial proceedings. The first judgment on the matter was delivered in 1996 and found in favour of the agricultural firms. After it was upheld on appeal, that judgment became final in 2000 by means of the Court of Cassation's pronouncement. Subsequent to those judgments, numerous courts determined similar cases (as shown from the materials submitted by the applicant companies) reiterating the same findings.

80. Considering the explanations given by those courts, it can hardly be said that the legislator's intention back in 1988 was questionable, let alone evidently to the contrary. Indeed, the Government have not provided any examples of case-law finding otherwise or of any objections by the executive to the recurrent interpretation given by the domestic courts prior to the enactment of Law no. 326/03. While it is true that the Court of Cassation's findings in 2008 (see paragraph 57 above) held otherwise (reversing therefore its own case-law), such findings were subsequent to the enactment of that law and can therefore only be of limited relevance.

81. Nevertheless, the Court considers that even assuming that Law no. 326/03 was indeed interpretative in nature, and reinforced the original intention of the legislator – despite the intention having repeatedly been interpreted as being otherwise in numerous judgments in the light of the entire legal context – that fact, by itself, cannot justify an intervention with retroactive effect.

82. Indeed, even accepting, as stated by the Constitutional Court in 2006, that legislative intervention was necessary to eliminate any doubt about the extent and method of application of the benefits at issue, the Government have not shown that there existed a necessity to apply the legislation retroactively, in such a way as to affect firms whose proceedings were pending. The Court highlights that financial considerations cannot by themselves warrant the legislature substituting itself for the courts in order to settle disputes. While it is true that at a later stage of the observations, in response to further questions by the Court, the Government made reference to compatibility with EU legislation and infringement proceedings in their regard, they failed to give any detail whatsoever on that matter. In the

absence of concrete information in that respect such an argument cannot but be considered as an unsubstantiated allegation. Moreover, the fact that it was brought up at such a late stage of the proceedings indicates that the Government did not consider it to be of any major relevance. Thus, while the aim of the law may have been legitimate, and worthy of intervention to regulate the future provision of the said benefits, the Court is unable to identify in the circumstances of the present case any compelling general-interest reason capable of outweighing the dangers inherent in the use of retrospective legislation which had the effect of influencing the judicial determination of a pending dispute to which the State was a party.

83. The Court will, however, also assess whether the applicant companies were attempting to take advantage of a weakness in the system (compare, *National and Provincial Building Society*, cited above, § 109, and *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, nos. 42219/98 and 54563/00, §§ 69 and 71, 27 May 2004). The Court cannot but observe that the applicant companies did not bring proceedings against the INPS immediately in 1988. Indeed, three of the four applicant companies awaited the outcome of the proceedings undertaken by Floramiata Spa. Only one of the applicant companies, namely S.A.P. Pietrafitta S.r.l, lodged its administrative application and subsequent judicial proceedings before the Court of Cassation judgment in Floramiata Spa had been issued (see paragraphs 31 and 33); however, it did so more than a decade after the enactment of the original law. Undeniably, such a wait had some bearing on the Court's findings in the case of *National & Provincial Building Society* (cited above § 109). Nevertheless, twenty years after that judgment, the Court must take other factors into account. Bearing in mind that justice systems in many Council of Europe member States, including, if not particularly, Italy, are overburdened, the Court considers that waiting for the determination of a principal judgment on the matter could only benefit the interests of judicial economy. Moreover, one cannot lose sight of the fact that by waiting for the outcome of that judgment, the applicant companies were on the one hand protecting themselves from the risk of incurring unnecessary costs and expenses, but, on the other hand, forfeiting parts of the sums that they could have recovered, since claims regarding past years would have become time-barred.

84. The Court further notes that it cannot be said that in the circumstances of the present cases the applicant companies could have foreseen a reaction by Parliament (contrast with *National & Provincial Building Society*, cited above, § 112 and *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others*, cited above, § 72). Indeed, the legislator had not manifested such an intention when the Court of Cassation delivered a final judgment for the first time on the matter in the case of Floramiata Spa. Neither did Parliament manifest such an intention at any point in the three years that followed the first final judgment on the

matter, years during which other companies were successful in their proceedings. Moreover, if, as proclaimed by the Government and the Court of Cassation, there was more than one possible interpretation of the original laws, it would have been entirely reasonable for the applicant companies to believe that the interpretation most favourable to them, as continually upheld by the domestic courts, was in fact the legislator's intention and that, therefore, there be no reason to expect a reaction by the authorities trying to amend the state of affairs.

85. It must be borne in mind that the relevant laws providing for such benefits were aimed at promoting the agricultural industry and helping firms which were in need for one reason or another, in so far as they fulfilled the relevant criteria. It follows that it would not have been unreasonable for the legislator to provide a double benefit if certain firms were suffering two-fold hindrances. Moreover, while such payments constituted substantial amounts and clearly affected the revenues collected by the authorities over the relevant years, it was also true that such payments were made to boost the agricultural sector and consequently to positively impact upon the economy and the collective interests, if not of the nation, at least of the relevant regions.

86. In that connection the Court also takes account of the utility and aim of such monies, which contrasts with the windfall which would have been made by the applicants in *National & Provincial Building Society*, as well as in *OGIS-Institut Stanislas* (both cited above).

87. Lastly, although of less significance, the Court also observes that in the present case, unlike in the two above-mentioned cases, the applicant companies had already obtained first-instance and appeal judgments in their favour, before the intervention of the impugned law.

88. The foregoing considerations are sufficient to enable the Court to conclude that in the circumstances of the present cases the applicant companies' institution of proceedings cannot be considered to have been an attempt to benefit from the vulnerability of the authorities or the law (contrast with *National & Provincial Building Society*, and *OGIS-Institut Stanislas*, §§ 109 and 71, respectively). Neither has it been established that there were any compelling general interest reasons capable of outweighing the dangers inherent in the use of retrospective legislation which has the effect of determining pending proceedings in favour of the State.

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

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

90. The applicant companies also considered that they had been deprived of their possessions. They relied on Article 1 of Protocol No. 1 of 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.”

91. The Government contested that argument.

A. The parties’ observations

92. The applicant companies considered that they had had a possession in the form of a claim, in so far as the INPS held monies which the applicant companies had paid despite the law providing otherwise, and which they had legitimately expected to recover from the INPS. That claim had, at the time when judicial proceedings were undertaken, constituted an existing possession in accordance with the law in force, and even more so when Law no. 326/03 was enacted, given that by that time their claims had been granted by the first-instance court and on appeal. Referring in particular to the Court of Cassation’s judgments nos. 14227/00 and 17806/03 (paragraphs 53 and 54 above), the applicant companies submitted that the circumstances at issue fulfilled the criterion according to which a claim could be demonstrated if it was sufficiently certain in national law, such as when it had been confirmed by the established case-law of the courts. Thus, in the absence of Law no. 326/03 the applicant companies had not only had a legitimate expectation to obtain their claims, they had been almost certain of it.

93. The applicant companies considered that the enactment of Law no. 326/03 amounted to an interference with their property right, as it retroactively and *ope legis* extinguished their claims, thus constituting a deprivation of possessions.

94. While that action had been lawful, it had not pursued any legitimate aim, having been solely aimed at favouring the public administration. The applicant companies referred to their observations under Article 6 above and considered that in the absence of a legitimate aim there had been a violation of the provision relied on.

95. However, without prejudice to the above, even assuming that the aim was legitimate, it had not been proportionate in so far as it had imposed an excessive burden on the applicant companies. Indeed, their claim had not been reduced but totally extinguished, simply so the State could avoid disbursing the dues.

96. The Government considered that Law no. 326/03 had not interfered with any right or legitimate expectation acquired by the applicant companies.

97. According to the Government, managing tax reductions, concessions and so on and modifying such rules over time, whether in a more or a less favourable manner, was an action which fell within the margin of appreciation of States. The Government also opined that the Court's findings in respect of complaints under Article 1 of Protocol No. 1 in *Maggio and Others v. Italy* (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 31 May 2011), *Arras and Others v. Italy* (no. 17972/07, 14 February 2012), *Torri and Others v. Italy* ((dec.), nos. 11838/07 and 12302/07, 24 January 2012) and *Varesi and Others v. Italy* ((dec.), no. 49407/08, 12 March 2013) went to prove that the complaint was manifestly ill-founded.

B. The Court's assessment

1. Admissibility

98. 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).

99. The Court notes that, in the present case, before the intervention of the impugned law, the applicant companies had already obtained first-instance and appeal judgments in their favour, recognising their claims. Moreover, by that time, a constant and substantial jurisprudence had been established in their favour (see paragraph 66 and 79 above). In those circumstances, in the Court's opinion, before the enactment of the law complained of, the applicants had a claim which they could legitimately expect to be determined in accordance with the applicable legislation as interpreted by the domestic courts and therefore a "possession" within the

meaning of the first sentence of Article 1 of Protocol No. 1, which is accordingly applicable in the case.

100. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

101. Given that the present case concerns the failure of the applicant companies to benefit from a double reduction on the social welfare contributions they pay in respect of their employees, the Court considers it to fall within the scope of the rule in the second paragraph of Article 1, namely the enforcement of laws to control the use of property in the general interest or “to secure the payment of taxes or contributions” (see, for example, *Wallishauser v. Austria* (no. 2), no. 14497/06, § 63, 20 June 2013; *Frátrik v. Slovakia* (dec.), no. 51224/99, 25 May 2004; and *Stere and Others v. Romania*, no. 25632/02, § 44, 23 February 2006).

102. According to the Court’s well-established case-law, an interference, including one resulting from a measure taken to secure the payment of taxes or other contributions, must strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. The desire to achieve this balance is reflected in the structure of Article 1 as a whole, including the second paragraph: there must therefore be a reasonable relationship of proportionality between the means employed and the aims pursued (see *James and Others v. the United Kingdom*, 21 February 1986, § 50, Series A no. 98, and *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society*, cited above, § 80). Consequently, “the financial liability arising out of the raising of tax or contributions may adversely affect the guarantee secured under this provision if it places an excessive burden on the person or the entity concerned or fundamentally interferes with his or its financial position” (see *Ferretti v. Italy*, no. 25083/94, Commission decision of 26 February 1997, unpublished, and *Buffalo S.r.l. in liquidation v. Italy*, no. 38746/97, § 32, 3 July 2003).

103. The Court further notes that a wide margin of appreciation is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy (*Wallishauser v. Austria* (no. 2), no. 14497/06, § 65, 20 June 2013), as well as when framing and implementing policy in the area of taxation (see, among many other authorities, *Gasus Dossier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 60, Series A no. 306-B, and *Stere*, cited above, § 51). 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” (see, for example, *Maggio and Others*, cited above, § 57, and *Travers v. Italy*, no. 15117/89, Commission decision of 16 January 1995) and the Court will generally respect the legislature’s policy choice unless it is “manifestly without reasonable foundation” (see *Wallishauser*, cited above, § 65). Thus, it is firstly for the national authorities to decide on the type of tax or contributions they wish to levy. Decisions in this area normally involve, in addition, an assessment of political, economic and social problems which the Convention leaves to the competence of the member States, as the domestic authorities are clearly better placed than the Convention organs to assess such problems (see *Musa v. Austria*, no. 40477/98, Commission decision of 10 September 1998, and *Baláž v. Slovakia* (dec.), no. 60243/00, 16 September 2003).

104. The Court has in previous cases acknowledged that laws with retrospective effect which were found to constitute legislative interference still conformed to the lawfulness requirement of Article 1 of Protocol No. 1 (see *Maggio and Others*, cited above § 60, and *Arras and Others*, cited above, § 81). It finds no reason to find otherwise in the present case. Indeed, in various cases the fact that such an interference was provided for by law as required by Article 1 of Protocol No. 1 was not even disputed by the parties (see for example, *Maurice* [GC], cited above, § 81; *Scordino (no.1)* [GC], cited above § 81; *National & Provincial Building Society*, cited above, § 79; and *Agrati and Others v. Italy*, nos. 43549/08, 6107/09 and 5087/09, § 76, 7 June 2011).

105. The Court further notes that in the present case the State action sought to decrease public expenditure by limiting the aid given to agricultural firms suffering a double hindrance. That aid was provided for from the State’s budget and ultimately the taxpayer. Given that the subject matter concerns the loss of “concessions”, in the form of reductions to the contributions due by the applicant companies to the State, and therefore a benefit or a privileged right (if at all) conceded by the State, and given the wide margin of appreciation applicable in such cases, it cannot be said that the legislature’s choice to cut down on that expenditure was manifestly without reasonable foundation.

106. As to the effects of the interference on the applicant companies’ financial position, the Court notes that the companies uninterruptedly paid the relevant contributions without the concession being applied to them. Thus, they were clearly not in a position whereby they could not run their businesses because of the respective financial burdens. The Court further observes that the applicant companies had even willingly opted to forfeit the benefit at issue for a certain number of years, waiting more than a decade before bringing their claims before the domestic courts (see paragraph 65 above). Furthermore, the applicant companies were still the beneficiaries of another benefit, namely the exemption, conceded by the State to alleviate certain difficulties these agricultural firms were facing.

107. In conclusion, bearing in mind that a wide margin of appreciation is applicable (see paragraph 103 above), the Court considers that the applicant companies' obligation to pay the social welfare contributions without the benefit of the concession at issue struck a fair balance between the demands of the general interest of the community and those of the applicant companies. The impugned measure did not impose an excessive burden on the applicant companies, or fundamentally interfere with their financial position and it is therefore not to be considered contrary to Article 1 of Protocol No. 1.

108. It follows that there has been no violation of that provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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

110. The applicant companies claimed the following sums in respect of pecuniary damage, representing the monies which they had unjustly paid because of an “erroneous” calculation (any sums already paid back by the INPS in the execution of the relevant judgments and not yet returned by the applicant companies would then be deducted), plus interest up to 2013:

Azienda Agricola Silverfunghi – 89,729 euros (EUR) + EUR 27,940

Scarpellini S.r.l. – EUR 213,776 + EUR 62,297

S.A.P. Pietrafitta S.r.l. – EUR 108,770 + EUR 36,924

Floricultura Zanchi Di Zanchi – EUR 84,375 + EUR 23,374

They also claimed EUR 1,000 each in respect of non-pecuniary damage.

111. The Government submitted that in the event of a violation of Article 6 the Court could not speculate as to the outcome of the proceedings, and therefore the applicant companies' claims had no basis in the Court's case-law.

112. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicant companies did not have the benefit of the guarantees of Article 6 in respect of the fairness of the proceedings. Whilst the Court cannot speculate as to the outcome of the trial had the position been otherwise, it does not find it unreasonable to regard the applicant companies as having suffered a loss of real opportunities (see *Maggio and Others*, cited above, § 80, and *Arras and Others*, cited above, § 88).

113. In the present case, in order to quantify such loss, the Court recalls its finding in paragraphs 77 and 87 above, that the applicant companies had already obtained first-instance and appeal judgments in their favour, recognising their claims, before the intervention of the impugned law, the enactment of which together with its application by the Court of Cassation had the direct effect of constituting a violation of Article 6 § 1 of the Convention. Furthermore, the Court notes that the Government have not submitted any arguments e.g. lack of complete uniformity of domestic case-law in the applicant's favour (see, in contrast, *Maggio and Others*, cited above, § 46) or the uncertain nature of the pecuniary calculation of the applicant's claim under domestic law (see, in contrast, *Arras and Others*, cited above, § 86) that can provide a reasonable basis for the Court to call into question that the sums claimed by the applicant companies in pecuniary damage are based on the sums of the claims submitted to the domestic courts and recognised by them before the impugned law came into effect and was applied in their cases by the Court of Cassation. The Court therefore considers it sufficiently established that the applicant companies have suffered a loss of real opportunities, bearing also in mind the objective and foreseeable character of the legislative provisions regarding the calculation of the concessions and benefits afforded to the applicant companies prior to the enactment of Law no. 326/03. However, the Court accepts the Government's contention that it cannot speculate as to the outcome of the proceedings as the Court has only found a violation of Article 6 § 1 on the facts of the present case. Accordingly, the Court awards the applicant companies, in pecuniary damage, the following amounts:

Azienda Agricola Silverfunghi – EUR 44,900

Scarpellini S.r.l. – EUR 106,900

S.A.P. Pietrafitta S.r.l. – EUR 54,400

Floricultura Zanchi Di Zanchi – EUR 42,200

Nevertheless, the Court notes that by execution of the first-instance judgment in favour of the applicant companies, the INPS paid back to the applicant companies the extra monies they had collected. Subsequently, on specified dates for each applicant company, following the Court of Cassation's judgments reversing that finding, the INPS initiated proceedings for the recovery of those sums. By the applicant companies' admission those sums have not been entirely paid back and thus the sums not yet returned must be deducted from the award under this head.

114. To the above amounts must be added an award in respect of non-pecuniary damage, which the finding of a violation in this judgment does not suffice to remedy. The Court therefore awards EUR 1,000 to each applicant company.

B. Costs and expenses

115. The applicant companies also claimed the following sums for the costs and expenses incurred before the domestic courts.

Azienda Agricola Silverfunghi – EUR 8,977

Scarpellini S.r.l.- EUR 19,278

S.A.P. Pietrafitta S.r.l. – EUR 14,206

Floricultura Zanchi Di Zanchi – EUR 20,648

They further claimed EUR 3,300 (3,000 in fees and 300 in expenses), plus Value Added Tax and Lawyers' National Insurance (CPA), each for costs and expenses incurred before the Court.

116. The Government made no comment in this respect.

117. 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, regard being had to the documents in its possession and the above criteria, together with the fact that the Court has only found a violation in respect of Article 6, the Court considers it reasonable to award the following sums covering costs under all heads:

Azienda Agricola Silverfunghi – EUR 10,000

Scarpellini S.r.l.– EUR 20,300

S.A.P. Pietrafitta S.r.l. – EUR 15,200

Floricultura Zanchi Di Zanchi – EUR 21,700

C. Default interest

118. 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*, unanimously, the applications admissible;
3. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*, by five votes to two, that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds*, by six votes to one,
- (a) that the respondent State is to pay the applicant companies, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts from which must be deducted the sums not yet returned by the applicant companies to the INPS:
- (i) EUR 44,900 (forty-four thousand nine hundred euros) in respect of pecuniary damage to Azienda Agricola Silverfunghi;
 - EUR 106,900 (one hundred and six thousand nine hundred euros) in respect of pecuniary damage to Scarpellini S.r.l.;
 - EUR 54,400 (fifty four thousand four hundred euros) in respect of pecuniary damage to S.A.P. Pietrafitta S.r.l.;
 - EUR 42,200 (forty-two thousand two hundred euros) in respect of pecuniary damage to Floricoltura Zanchi Di Zanchi;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, to each applicant company in respect of non-pecuniary damage;
 - (iii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses to Azienda Agricola Silverfunghi;
 - EUR 20,300 (twenty thousand three hundred euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses to Scarpellini S.r.l.;
 - EUR 15,200 (fifteen thousand two hundred euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses to S.A.P. Pietrafitta S.r.l.;
 - EUR 21,700 (twenty-one thousand seven hundred euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses to Floricoltura Zanchi Di Zanchi;
- (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;
6. *Dismisses*, by five votes to two, the remainder of the applicant companies' claim for just satisfaction.

Done in English, and notified in writing on 24 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Işıl Karakaş
President

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

A.I.K.
S.H.N.

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth place of residence
1.	48357/07	31/10/2007	AZIENDA AGRICOLA SILVERFUNGHI S.A.S. AZIENDA AGRICOLA SILVERFUNGHI S.A.S. Grone
2.	52677/07	28/11/2007	SCARPELLINI S.R.L. SCARPELLINI S.R.L. Roma
3.	52687/07	28/11/2007	S.A.P. PIETRAFITTA S.R.L. S.A.P. PIETRAFITTA S.R.L. Siena
4.	52701/07	28/11/2007	FLORICOLTURA ZANCHI DI ZANCHI F.LLI SOCIETA SEMPLICE FLORICOLTURA ZANCHI DI ZANCHI F.LLI SOCIETA SEMPLICE Roma

JOINT PARTLY DISSENTING OPINION OF JUDGES LEMMENS AND KŪRIS

1. We agree with the majority that there has been a violation of Article 6 § 1 of the Convention. To our regret, however, we cannot share the view that there has been no violation of Article 1 of Protocol No. 1 to the Convention. We also disagree on the amount of the just satisfaction to be awarded under Article 41 of the Convention.

2. Like the majority, we consider that the applicant companies had claims which they could legitimately have expected to be determined in accordance with the applicable legislation as interpreted and applied, prior to the legislature's intervention, by the domestic courts in at least one hundred and forty judgments, and that these claims were "possessions" within the meaning of Article 1 of Protocol No. 1 (see paragraph 98).

3. The majority further considers that "the present case concerns the failure of the applicant companies to benefit from a double reduction on the social welfare contributions they pay in respect of their employees". On that premise, the majority considers that the interference with the applicant companies' claims falls within the scope of the rule contained in the second paragraph of Article 1 of Protocol No. 1, that is, the rule which allows a State "to enforce such laws as it deems necessary ... to secure the payment of taxes or other contributions ..." (see paragraph 100).

4. By examining the complaint from the perspective of Article 1, second paragraph, the majority seems to consider that the applicant companies are complaining about the fact that they could no longer enjoy the advantage created by Legislative Decree No. 536 of 30 December 1987, converted into statutory law by Law No. 48 of 29 February 1988. If that had indeed been the complaint, the Court would have had to examine whether there was some sort of legitimate expectation that the legal regime established in 1988 would remain in place for an indefinite period of time. We find it difficult to accept that such an expectation would exist, thus making it impossible, or at least very difficult, for the legislature to ever change the law *ex nunc*.

5. With all due respect, however, we are afraid that the majority has attributed to the applicant companies a complaint that they did not make. Or rather, the majority has overlooked the crux of the complaint actually made. We read in the applicant companies' submissions that they in fact presented for the Court's examination *one single complaint*, which relates to the *retrospective effect* of the "authentic interpretation" given by Law No. 326 of 24 November 2003 to Law No. 67 of 11 March 1988. It does not appear to us that they raised two substantially different complaints. On the contrary, they complained that, solely by the fact of enacting the "interpretative law", the legislature *simultaneously* violated both Article 6 § 1 of the Convention and Article 1 of Protocol No. 1: it violated Article 6 § 1 in that the new law interfered with the judicial determination of pending

disputes, and it violated Article 1 of Protocol No. 1 in that the new law abolished claims in respect of which the applicants had a legitimate expectation that they would be upheld by the courts. However, when the majority examined the complaint under Article 1 of Protocol No. 1, it detached it from the Article 6 § 1 complaint and barely mentioned the fact that the law in question had a retrospective effect (see paragraph 103).

6. We would also like to point out that the applicant companies, as parties to the domestic proceedings, exercised their rights under Article 6 § 1 in order to obtain the “determination” of certain “civil rights”. The present judgment does not enter into detail with respect to the nature of these civil rights. However, it is clear that the applicants, in claiming the return of certain sums paid by them to the *Istituto Nazionale della Previdenza Sociale* (INPS), invoked civil rights of a proprietary nature. By declaring the applicants’ claims well-founded, the domestic courts turned them into claims that constituted “possessions” within the meaning of Article 1 of Protocol No. 1. The partial finding of a violation of the Convention, namely one of Article 6 § 1 but not of Article 1 of Protocol No. 1, is internally inconsistent, as it tends to create the wrong impression that the finding of a violation of the right to a fair trial is in itself sufficient. We would like to emphasise that the domestic courts were unable to recognise the existence of the rights for which the applicant companies sought a judicial determination precisely because of the legislature’s interference.

7. By downplaying the importance of the law’s retrospective effect for the examination of the complaint based on Article 1 of Protocol No. 1, the majority has in fact followed a line of reasoning that was initiated with *Maggio and Others v. Italy* (nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, 31 May 2011) and continued with *Arras and Others v. Italy* (no. 17972/07, 14 February 2012). In these cases, the Court concluded that the retrospective reduction of social security or welfare benefits constituted a violation of Article 6 § 1, but not of Article 1 of Protocol No. 1. In two more recent cases the Court has had to deal, as in the present case, with interpretative laws: *M.C. and Others v. Italy* (no. 5376/11, 3 September 2013) and *Stefanetti and Others v. Italy* (nos. 21838/10, 21849/10, 21852/10, 21822/10, 21860/10, 21863/10, 21869/10, and 21870/10, 15 April 2014, not yet final). In these cases, the Court found that Article 1 of Protocol No. 1 had been violated, but that conclusion was not decisively based on the retrospective effect of the “interpretative” law. In that sense, these cases follow the *Maggio-Arras* line of reasoning. However, while in *M.C.* and *Stefanetti* the Court still found a violation not only of Article 6 § 1 of the Convention, but also of Article 1 of Protocol No. 1, in the present case the majority concludes that there has been a violation only of Article 6 § 1, not of Article 1 of Protocol No. 1. The majority thus seems to cross a new line.

8. We consider that the interference complained of should be qualified, as argued by the applicants (see paragraph 92), as a deprivation of their possessions, within the meaning of Article 1, first paragraph, second sentence, of Protocol No. 1 (see, for an early qualification in that sense of a law with retrospective effect, *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 34, Series A no. 332). The fact that the applicants' claims for reimbursement were related to contributions they had previously made does not, in our opinion, mean that greater weight should be attached to the second paragraph of Article 1, at the expense of the second sentence of the first paragraph of Article 1.

9. Accordingly, we consider that the Court should have examined whether the deprivation of the applicants' possessions was "provided by law", whether it was "in the public interest", and whether it struck a fair balance between the demands of the general interest (if any) and the requirement of the protection of the applicants' fundamental rights (see, *inter alia*, *Pressos Compania Naviera S.A.*, cited above, § 35).

10. When it comes to verifying whether the above-mentioned conditions are met, we find inspiration in the reasoning adopted by the Court in the case of *Agrati and Others v. Italy* (nos. 43549/08, 6107/09 and 5087/09, 7 June 2011). In that case the Court found, as in the present case, that a legislative act which interfered in pending disputes constituted a violation of Article 6 § 1 of the Convention (§§ 58-66). It then went on to analyse the act as an interference with the applicants' right to the peaceful enjoyment of their possessions, namely as a deprivation of their possessions (§ 75). It found that, while the interference was (obviously) "provided by law" (§ 76), it was doubtful whether the sole financial interest of the State could constitute a "public interest" sufficient to justify a retrospective interference by the legislature (§§ 80-81). Leaving that question open, it considered that the legislative interference had in any event made it decisively impossible for the applicants to have their claims upheld (§ 83), thus obliging them to bear an individual and excessive burden and upsetting the balance between the general interest and the rights of the applicants (§ 84). The Court concluded that Article 1 of Protocol No. 1 had been violated.

11. We find no reason to come to a different conclusion in the present case. Once the Court has found that there was no justification for the legislative interference in pending proceedings – in particular in proceedings to which the applicants were parties – because of the absence of "any compelling general interest reasons" (see paragraph 87), it is hard to see how, in the present case, there could be public interest reasons that would justify a *retrospective* interference with the applicants' right to protection of their possessions. Again, the question whether the legislature could abolish the benefit created by Legislative Decree No. 536/87 with *prospective* effect, would, in our opinion, be a different matter.

12. The majority's finding that Article 1 of Protocol No. 1 has not been violated by the application of retrospective "interpretive" legislation is unfortunate. We note that according to the applicants "in Italy it [has become] common practice to introduce 'interpretative' provisions in matters involving financial interests to secure higher income (or lower expenditure) for the public administration" (see paragraph 63). This statement has not been contradicted by the Government. Having regard to similar cases that the Court has dealt with in the recent past and to certain cases that are still pending before it, we tend to agree with the applicants that the Italian legislature is regularly tempted to intervene in pending proceedings when it appears that the outcome of such proceedings may have a significant impact on the State's budget. In the present case, the so-called interpretative act was adopted almost sixteen years after the original act. We find this practice particularly disturbing, and regret that the majority has not condemned it *inter alia* from the perspective of Article 1 of Protocol No. 1.

13. Finally, with respect to the just satisfaction to be awarded to the applicants (Article 41 of the Convention), to our regret we are unable to share the majority's view that the applicants suffered only "a loss of real opportunities" (see paragraph 111). The applicants' claims were upheld at first instance and on appeal. Their claims were based on a legislative provision that left no discretion to the public authorities. The only question was whether the reduction of the contributions to be paid under Legislative Decree No. 536/87 could be combined with the exemptions granted by Law No. 67/88, and, as the Court notes (see paragraph 78), that question had consistently been answered by the Italian courts in a way that was favourable to companies such as the applicant companies. In these circumstances we agree with the applicants that, had Law No. 326/03 not been enacted, they "[would have had] not only [...] a legitimate expectation to obtain their claims, they [would have] been almost certain of it" (see paragraph 91). It was only on account of the enactment of the latter law that the judgments rendered in their favour were quashed by the Court of Cassation and their claims unexpectedly dismissed. We consider that in these circumstances the just satisfaction to be awarded to each applicant company in respect of pecuniary damage should in principle amount to the sum claimed by it from the *Istituto Nazionale della Previdenza Sociale* (INPS) (see paragraph 109) and awarded in full by the court of appeal (respectively EUR 89,729 for Azienda Agricola Silverfunghi, EUR 213,776 for Scarpellini, EUR 108,770 for S.A.P. Pietrafitta, and EUR 84,375 for Floricoltura Zanchi Di Zanchi Fratelli). However, where applicable the sum received by the applicant company from the INPS by execution of the first-instance judgment and not yet returned by that applicant company following the Court of Cassation's judgment should be deducted from this amount. Finally, to the amount thus calculated should be added the statutory interest applicable under domestic law.

14. There is some inconsistency in the Court's case-law about how the operative points relating to the just satisfaction should be understood. This uncertainty has resulted in us voting in different ways, which basically reflect two competing patterns of voting in this Court on just compensation (Article 41 of the Convention): Paul Lemmens voted in favour of point 4 and against point 5 (because the sums indicated in point 4 are seen as due to be paid to the applicants in any event, irrespective of the fact that they are insufficient), while Egidijus Kūris voted against both points 4 and 5 (because the sums indicated in point 4 are insufficient). In substance, however, we are in full agreement, as we would both award the applicant companies more than the majority has decided to award.